No. 24-724

In the

Supreme Court of the United States

THE HAIN CELESTIAL GROUP, ET AL.,
Petitioners,

v.

SARAH PALMQUIST, INDIVIDUALLY
AND AS NEXT FRIEND OF E.P., A MINOR, ET AL.,
Respondents.

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

BRIEF OF WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether a district court's final judgment as to completely diverse parties must be vacated when an appellate court later determines that the district court erred by dismissing a non-diverse party at the time of removal.

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INTEREST OF AMICUS CURIAE*

Washington Legal Foundation (WLF) is a nonprofit public-interest law firm and policy center dedicated to defending free enterprise, individual rights, limited government, and the rule of law. To that end, WLF often appears as amicus curiae before this Court to defend the Constitution's allocation of jurisdiction between the state and federal courts. *See*, *e.g.*, *B.P. v. Mayor of Baltimore*, 593 U.S. 230 (2021); *Dart Cherokee Basin Oper. Co. v. Owens*, 574 U.S. 81 (2014).

INTRODUCTION AND SUMMARY OF ARGUMENT

There is no question that Hain Celestial Group secured a fair judgment under Texas law without even offering a defense in the federal district court. Pet. App. 29a-34a; Fed. R. Civ. P. 50(a). Yet Hain now faces being sent on a one-way trip back to Texas state court on the same allegation that the Palmquists so decisively lost.

In *Caterpillar v. Lewis*, this Court determined that "[o]nce a diversity case has been tried in federal court, with rules of decision supplied by state law under the regime of *Erie Railroad Company v. Tompkins*, 304 U.S. 64 (1938), considerations of finality, efficiency, and economy become [so] overwhelming" that they "overrid[e]" any other

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* No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief's preparation or submission.

standard that "would have kept the case in state court." 519 U.S. 61, 75 (1996) (internal citation modified for clarity). Indeed, *Caterpillar* expressly held that the practical consequences of vacating a federal judgment ousted "adherence to the rules Congress prescribed for removal" had the jurisdictional flaw been properly recognized at the outset. *Id*. at 75.

Beyond bog-standard certainty and judicial economy, two additional "finality" consequences support reversal. *Caterpillar*, 519 U.S. at 75.

First, Hain already has a judgment in a forum less likely to discriminate against an out-of-state defendant. The Framers chose to privilege federal fora over state courts in diversity cases, and they did so precisely out of concern that "the prevalency of a local spirit," The Federalist, No. 81, "whether real or perceived," might have a "crippling effect . . . on interstate commerce." Charles J. Cooper and Howard C. Nielson, Jr., *Complete Diversity and the Closing of the Federal Courts*, 37 Harv. J.L. & Pub. Pol'y 295, 296 (2014). Federal courts, "owing [their] official existence to the Union," The Federalist, No. 80, "enable[] investors and commercial enterprises" such as Hain "to cross state lines with confidence that their legal disputes would be fairly adjudicated in new markets." Cooper and Neilson at 304.

That's what happened in the district court. After a fair trial, the federal court recognized the fundamental weakness of the Palmquists' case and ordered judgment as a matter of law. Pet. App. 28a-34a. That judgment should be reinstated, not reconsidered in a forum that might discriminate

against an out-of-state defendant, "the proverbial 'home cooking.'" *Smallwood v. Ill. Cent. R.R. Co.*, 385 F.3d 568, 576 (5th Cir. 2004).

Second, Hain has received a fair judgment from a federal district court. But if sent back to Texas, it will appear as an out-of-state defendant before an elected state-court judge. Tex. Const., art. V (providing for comprehensive judicial elections in the State of Texas). True, "[j]udges are not politicians," *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 437 (2015), but neither are they "angels." The Federalist, No. 51. Finality interests counsel against the "mere possibility" of bringing elective politics into cases like this one. *Williams-Yulee*, 575 U.S. at 447 (internal quotation marks and citation omitted).

Consider a very sympathetic plaintiff and a potential out-of-state payor. *See* Richard Neely, *The Product Liability Mess: How Business Can Be Rescued from the Politics of State Courts* at 4 (The Free Press 1988) ("As long as I am allowed to redistribute wealth from out-of-state companies to in-state plaintiffs, I shall continue to do so . . . because the in-state plaintiffs, their families[,] and their friends will re-elect me"). If "it would be natural that the [state court] judges, as men, should feel a strong predilection to the claims of their own government," The Federalist, No. 80, how much more so—even unconsciously—when that judge owes a continued term of office to the voters?

In prior cases, this Court has tried to protect judicial legitimacy from the consequences of judicial elections. *Williams-Yulee*, 575 U.S. at 457; *Caperton*

v. A.T. Massey Coal Co., 556 U.S. 868 (2009). It should do so again here.

ARGUMENT

TWO FINALITY INTERESTS COMMEND PRESERVING THE DISTRICT COURT JUDGMENT.

Hain was already tried as a defendant in "a diversity case . . . with rules of decision supplied by state law." *Caterpillar*, 519 U.S. at 75. The federal trial itself had no procedural flaws to speak of—and the Palmquists allege none. Hain spent much time and money to defend itself. That paid off: Hain prevailed when the district court granted its Rule 50(a) motion. If *Caterpillar*'s mandate that federal courts defer to the "overwhelming" "considerations of finality, efficiency, and economy" once a federal diversity case has been tried to judgment mean anything, it should resolve this case for Hain. *Id.* Beyond avoiding sheer waste, however, there are two additional finality considerations at play.

First, the Court should defer to the Framers' fears that state courts unnecessarily risk bias against out-of-state defendants like Hain—an old concern still relevant today.

Second, that risk of bias against out-of-staters takes on a new meaning now, when most state court judges are directly elected by a (necessarily) in-state population.

A. Hain should not be re-tried in a forum that might disfavor an out-of-state defendant.

The Framers wisely provided federal fora for "determining causes . . . between the citizens of different States" because they concluded that doing so was essential for "the tranquility of the" Nation. The Federalist, No. 80 (spelling modernized). Why? Because in such cases "the State tribunals cannot be supposed to be impartial and unbiased." *Id*. Animated by those fairness concerns, the Framers deemed it "*necessary*" that such cases "should be committed to that tribunal which . . . owing its official existence to the Union, will never be likely to feel any bias inauspicious to the principles on which it is founded." The Federalist, No. 80 (emphasis supplied).

Handing a state court the authority to produce a new *Palmquist v. Hain Celestial* decision would strike against that considered constitutional choice. After all, the new *Palmquist v. Hain Celestial* won't be a scene-for-scene remake of the original. It will be a reboot carried out in a fundamentally different forum. This would set the stage for "determining [a] cause[]," *id*., with an incredibly sympathetic in-state plaintiff and a potential out-of-state pocket. Those circumstances risk the very "prevalency of a local spirit" the Framers feared from "local tribunals." The Federalist, No. 81.

Some have doubted whether the Framers' concerns about "parochial prejudice by the citizens of one State toward those of another . . . would lead to unjust treatment of citizens of other States." *Lumbermen's Mut. Cas. Co. v. Elbert*, 348 U.S. 48, 54

(1954) (Frankfurter, J., concurring). But it turns out that the Framers knew what they were talking about.

"Of particular concern to the Framers in establishing federal jurisdiction over disputes between citizens of different states was the crippling effect that judicial bias favoring in-state interests, whether real or perceived, would have on interstate commerce." Cooper and Nielson at 296 (internal quotation marks and citation omitted). Those commercial considerations remain sadly relevant today. It was the 109th Congress, not the Ninth Congress, that passed the Class Action Fairness Act because "'State and local courts' were . . . 'acting in ways that demonstrated bias against out-of-State defendants' and imposing burdens that hindered 'innovation' and drove up 'consumer prices.'" *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. 435, 449 (2019) (Alito, J., dissenting) (citation and brackets omitted).

By contrast, just as the Framers intended, Hain "cross[ed] state lines with confidence that" the company's "legal disputes would be fairly adjudicated in new markets" by federal courts. Cooper and Nielson at 304. And having rested safely in the Nation's guarantees, it swiftly received the Nation's justice. Pet. App. 29a-32a (recounting Rule 50(a) judgment for Hain).

When cases *must* be tried in state courts as a matter of law, there can be no other forum. But that's not the case here. Respondents ask for a federally concluded case—which they do not claim was unfair, and which they decisively lost—to be *re-tried* in a state court. The Framers' considered choice to reduce out-of-state bias, and its attendant commercial

upshots, should control. *Cf. Martin v. Hunter's Lessee*, 1 Wheat. 304, 348 (1816) ("The judicial power . . . [is] not to be exercised exclusively for the benefit of parties who might be plaintiffs . . . but also for the protection of defendants who might be entitled to try their rights, or assert their privileges, before the same forum") (spelling modernized).

B. Hain should not be re-tried in a forum where out-of-state bias may be amplified by elective politics.

Emphasizing the need for a federal forum in diversity cases, Alexander Hamilton turned to basic human nature. "[I]t would be natural that the [state court] judges, as men, should feel a strong predilection to the claims of their own government." The Federalist, No. 80. At the time, Hamilton merely feared undue emotional attachment to one's own State. Since Hamilton's day, however, the States have largely moved from a judicial selection process of nomination-and-confirmation to direct judicial elections.

While "[t]he first 29 States of the Union adopted methods for selecting judges that did not involve popular elections," *Republican Party of Minn. v. White*, 536 U.S. 765, 790 (2002) (O'Connor, J., concurring), "[e]very state entering the Union since 1845 has provided for the election of judges in one way or another." Charles Gardner Geyh, *Why Judicial Elections Stink*, 64 Ohio St. L.J. 43, 52 (2003). "Today, ninety percent of state judges," including those in Texas, "face some kind of popular election," Nino C. Monea, *The Political Roots of Judicial Elections*, 55 Creighton L. Rev. 427, 432 (2022); Tex. Const., art. V.

Of course, "[j]udges are not politicians, even when they come to the bench by way of the ballot," *Williams-Yulee*, 575 U.S. at 437, but neither are they "angels" immune to electoral pressure. The Federalist, No. 51. As this Court has pointedly observed, "elected judges . . . *always* face the pressure of an electorate who might disagree with their rulings and therefore vote them off the bench." *Republican Party of Minn.,* 536 U.S. at 782 (emphasis in original).

Some elected judges have been candid about the "palpable" and "special risks to the integrity of the courts and the judicial function"—both conscious and unconscious—that attach to holding a gavel by popular consent. Joseph R. Grodin, *Developing A Consensus of Constraint: A Judge's Perspective on Judicial Retention Elections*, 61 S. Cal. L. Rev. 1969, 1980-81 (1988). "A judge may hope that conscience will triumph over retention anxiety, but as [former California Supreme Court Justice] Otto Kaus put it so well, ignoring the political consequences of visible decisions is 'like ignoring a crocodile in your bathtub.'" Julian N. Eule, *Crocodiles in the Bathtub: State Courts, Voter Initiatives and the Threat of Electoral Reprisal*, 65 U. Colo. L. Rev. 733, 739 (1994) (internal citation omitted).

As former Chief Justice of the Supreme Court of Appeals of West Virginia Richard Neely aptly described the incentives, "[If] I am allowed to redistribute wealth from out-of-state companies to in-state plaintiffs, I shall continue to do so. Not only is my sleep enhanced when I give someone else's money away, but so is my job security, because the in-state

plaintiffs, their families[,] and their friends will re-elect me." Neely, *The Product Liability Mess* at 4.

Texas, along with most other States, "has voluntarily taken on the risks to judicial bias described above." *Republican Party of Minn.*, 536 U.S. at 792 (O'Connor, J., concurring). This Court should control for those risks. "The rule of law requires neutral forums for resolving disputes," and the American "legal system takes seriously the risk that for certain cases, some neutral forums might be more neutral than others," or just "might appear that way, which is almost as deleterious." *Home Depot U.S.A., Inc.*, 587 U.S. at 446 (Alito, J., dissenting).

This Court has repeatedly acknowledged the "context of judicial elections" and found *lex specialis* to deal with it. *Caperton*, 556 U.S. at 881-82. The Due Process Clause, for example, requires stricter recusal rules from elected state court judges than their unelected brethren. *Id.* at 889-90. The "First Amendment has its fullest and most urgent application" in the context of a "campaign for political office," *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989) (internal quotation marks and citation omitted), unless that campaign is for an elected judgeship, then "'the mere *possibility* that judges' decisions may be motivated' . . . (even unknowingly)" by "'a possible [election-sourced] temptation'" ousts the usual constitutional rule. *Williams-Yulee*, 575 U.S. at 447 (quoting *Republican Party of Minn.*, 546 U.S. at 790 (O'Connor, J., concurring) and *Tumey v. Ohio*, 273 U.S. 510, 532 (1927)) (emphasis supplied).

Securing "public confidence in the disinterestedness of the" judiciary, *Mistretta v. United States*, 488 U.S. 361, 407 (1989), is a "genuine and compelling" goal. *Williams-Yulee*, 575 U.S. at 447. This Court should make it an "overriding consideration" here and preserve the finality of the district court's directed judgment for Hain. *Caterpillar*, 519 U.S. at 75.

CONCLUSION

Founding era concerns and modern practice point in the same direction. The Court should reverse.

Respectfully submitted,

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