No. 24-724

IN THE

Supreme Court of the United States

THE HAIN CELESTIAL GROUP, INC., 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 Fifth Circuit

BRIEF FOR THE NATIONAL ASSOCIATION OF MANUFACTURERS; CONSUMER BRANDS ASSOCIATION; FMI, THE FOOD INDUSTRY ASSOCIATION; NATIONAL RETAIL FEDERATION; AND CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICI CURIAE* SUPPORTING PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes $2.94 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The Consumer Brands Association (CBA) represents the world's leading consumer-packaged goods companies, as well as local and neighborhood businesses. The consumer-packaged goods industry is the largest U.S. manufacturing employment sector, delivering products vital to the wellbeing of people's lives every day. The industry contributes $2 trillion to U.S. gross domestic product and supports more than 20 million American jobs. CBA's industry members are committed to empowering consumers to make informed decisions about the products they use and have long felt a unique responsibility to ensure their products align with the evolving expectations of consumers.

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[1] No counsel for a party authored any part of this brief. No party or counsel for a party, and no person other than *amici curiae*, their members, or their counsel, made a monetary contribution intended to fund its preparation or submission.

FMI, the Food Industry Association, works with and on behalf of the entire food industry to advance a safer, healthier, and more efficient consumer food supply. FMI brings together a wide range of members across the value chain—from retailers who sell to consumers, to producers who supply the food, as well as the wide variety of companies providing critical services—to amplify the collective work of the industry. FMI's membership includes nearly 1,000 supermarket member companies that collectively operate almost 33,000 food retail outlets and employ approximately 6 million workers. Those companies also operate approximately 12,000 pharmacies inside retail grocery stores throughout the United States.

The National Retail Federation (NRF) is the world's largest retail trade association and the voice of retail worldwide. The NRF's membership includes retailers of all sizes, formats, and channels of distribution, spanning all industries that sell goods and services to consumers.

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organization of every size, in every industry sector, and from every region of the country.

Amici frequently file briefs in this Court and others where, as here, the case presents issues of critical importance to *amici*, their members, and industry as a whole. *Amici* submit this brief with two objectives: first, to assist the Court in understanding the perverse and far-reaching outcomes the Fifth Circuit's vacatur rule wreaks on both diverse defendants and the judicial

system overall; and second, to demonstrate the gamesmanship the Fifth Circuit's decision invites from plaintiffs.

INTRODUCTION AND SUMMARY OF ARGUMENT

It is no secret that litigation is "cumbersome, time-consuming, and expensive." *Barrentine v. Ark.-Best Freight Sys.*, 450 U.S. 728, 748 (1981) (Burger, C.J., dissenting). Nor is it any surprise that federal and state courts alike are struggling under caseloads so "crushing" they "can't judge [their] way out of this backlog." U.S. Courts, *The Need for Additional Judgeships: Litigants Suffer When Cases Linger* (Nov. 18, 2024), https://www.uscourts.gov/data-news/judiciary-news/2024/11/18/need-additional-judgeships-litigants-suffer-when-cases-linger; Mark D. Killian, *Chief Justice Canady Says the Courts Are Making a Dent in Case Backlogs*, The Florida Bar (Apr. 11, 2022), https://www.floridabar.org/the-florida-bar-news/chief-justice-canady-says-the-courts-are-making-a-dent-in-case-backlogs/. But when faced with a final judgment issued in favor of The Hain Celestial Group, Inc. ("Hain") after a two-week jury trial in a case between completely diverse parties, the Fifth Circuit wiped away years of litigation between Hain and Respondents. The court did so not because of any substantive or procedural defect in the final judgment but because a completely different and non-diverse defendant, Whole Foods, had been erroneously dismissed years earlier.

The question this Court now faces is one its precedent answered long ago. When all federal jurisdictional requirements are satisfied at the time final judgment is rendered, a district court's "initial

misjudgment" does not "burden and run with the case." *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 70 (1996). To conclude otherwise, and "requir[e] dismissal after years of litigation[,] would impose unnecessary and wasteful burdens on the parties, judges, and other litigants waiting for judicial attention." *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 836 (1989). And, as this Court has recognized, "[o]nce a diversity case has been tried in federal court, … considerations of finality, efficiency, and economy become overwhelming." *Caterpillar*, 519 U.S. at 75.

Despite this line of precedents, the Fifth Circuit has no qualms about erasing hard-fought final judgments in diversity cases where the plaintiffs and defendants are completely diverse at the time of final judgment due to an error in dismissing a non-diverse party at the outset of the case. That is so even if there are no substantive defects in the judgments themselves—where, after denying a motion to remand following removal from state court, the district court made no conceivable errors in discovery, dispositive motion practice, or trial.

If this inefficient and unwise vacatur rule stands, diverse defendants across the country will have no assurance of finality no matter how decisive their district-court victory on the merits. They may spend many years and many millions of dollars defending against claims, but that effort will count for nothing as they are forced to start over in state court. Worse yet, diverse defendants will not bear the brunt of this perverse outcome because of any error the district court made in adjudicating claims asserted *against them*; instead, their wins will be completely wiped out because of an error made with respect to a different, non-diverse defendant.

The Fifth Circuit's vacatur rule is broad by its own terms, and so are its consequences. It applies whether or not the plaintiffs even *attempted* to identify a single error in the district court's rulings with respect to the claims asserted against the diverse defendants. Indeed, the Fifth Circuit vacated and remanded without even *considering* whether there were reversible errors in the final judgment issued in Hain's favor. *See* Pet. App. 23a. That holding ensures that plaintiffs in removed cases can obtain a do-over in state court if their federal-court loss was completely error-free—even where it was occasioned by sanctionable misconduct, like spoliation or the failure to comply with court orders.

This vacatur-regardless-of-the-merits approach ensures that diverse defendants must win (at least) twice to ultimately prevail in a removed case: first in federal court and then, if the case is remanded, again in state court on the very same claims. This duplicative litigation is taxing not only for diverse defendants but also for the federal and state courts overseeing these cases. Federal and state courts are both overwhelmed and under-resourced. The Fifth Circuit's decision ensures that overworked federal courts will see their years of judicial resources spent resolving a case wiped away for an unrelated remand issue while similarly overworked state courts must then bear the brunt of adjudicating cases that a federal court has already cleanly resolved on the merits.

The Fifth Circuit's vacatur rule will not merely affect efficiency and finality; it will also encourage litigation gamesmanship and the filing of meritless claims against retailers. Now that plaintiffs can wipe away federal losses based on unrelated remand errors, plaintiffs will have every incentive to add non-diverse

retailers to a product-liability case to increase their chances of a redo if they ultimately lose in federal court against a manufacturing defendant. And even if their claims against retailers are particularly weak when filed, they can hope for favorable developments in state tort law during the intervening years before an appellate court finally examines whether non-diverse defendants were properly joined at the outset. In other words, the inevitable passage of time between filing a lawsuit and a fraudulent-joinder appeal many years later can further encourage plaintiffs to assert weak, if not frivolous, claims against as many non-diverse defendants as possible.

Our judicial system was never intended to permit parties to relitigate the exact same claims in multiple courts. But that is precisely what the decision below requires. That rule clashes with this Court's longstanding precedent establishing that jurisdictional "misjudgments" do not "burden and run with the case." This Court should reverse.

ARGUMENT

I. A remand error with respect to a non-diverse defendant does not warrant a do-over in state court against a diverse defendant.

Under the rule applied by the Fifth Circuit, a diverse defendant who prevails on the merits after years of litigation will be forced to start over again in state court. This rule applies even if the case went all the way through to trial. And it applies even if the only error the district court made was to dismiss a *different, non-diverse defendant* as fraudulently joined and therefore deny a motion to remand. *See* Pet. App. 22a-23a. The plaintiffs need not even try to identify any

reversible error in the jury's verdict or in any of the district court's decisions regarding the claims against the diverse defendants. Indeed, the Fifth Circuit here explicitly declared that because "the district court erred in denying the Palmquists' motion to remand the case to the state court, we do not address whether the district court erred in granting judgment as a matter of law in favor of Hain." Pet. App. 23a. Under that approach, any remand error is sufficient to warrant vacatur and a redo in state court, even if the federal-court litigation against the remaining parties was entirely error free. *See id.* That rule is both breathtaking and extraordinarily problematic.

A. The lack of guardrails on the Fifth Circuit's decision will permit plaintiffs to benefit from this broad vacatur rule, regardless of the merits of their claims against the diverse defendants—or even the conduct of plaintiffs in the underlying litigation. For instance, a plaintiff whose case is dismissed as a sanction for violating a discovery order or due to egregious spoliation of evidence could have its case reinstated based on a remand error pertaining to a different defendant entirely. But, as even the Fifth Circuit recognizes, dismissal as a sanction can be necessary to "achieve the desired deterrent effect" where a plaintiff refuses to comply with a discovery order out of "willfulness or bad faith" and where that "misconduct … substantially prejudice[s] the opposing party." *See FDIC v. Conner*, 20 F.3d 1376, 1380-1382 (5th Cir. 1994) (citation and quotation marks omitted); *see also Gratton v. Great Am. Commc'ns*, 178 F.3d 1373, 1375 (11th Cir. 1999) (affirming dismissal as sanction because of plaintiff's "spoilation of evidence and misidentification of a witness"). The Fifth Circuit's vacatur rule completely undercuts any such deterrent

effect, allowing plaintiffs who lost in federal court to get a do-over in state court. That would seriously undermine district courts' ability to both manage their dockets and effectively police litigation misconduct.

Even in less egregious scenarios, the Fifth Circuit's vacatur rule affords plaintiffs an undeserved mulligan. This case is a perfect example. The parties proceeded to trial, and the district court found the record completely devoid of credible evidence of general causation connecting trace amounts of heavy metals to autism and ADHD in children—it held that a reasonable jury could not find for the plaintiffs because "the scientific facts are simply not there." Pet. App. 30a-31a. The court even noted the plaintiffs' "valiant effort to persuade the Court otherwise" but observed that the "failure to present any expert evidence on general causation was [not] a failure of lawyering, rather, such general causation is simply not supported by the science." Pet. App. 30a. Despite that determination, the plaintiffs will now have a second try at the same factual question in state court. And given that "the scientific facts are simply not there," Pet. App. 30a, Hain may have to spend years and significant financial resources relitigating the same factually meritless claims.

The Fifth Circuit's all-encompassing rule prevents diverse defendants like Hain from being able to obtain finality. And this strategic detriment is a one-way ratchet. Under the Fifth Circuit's rule, a plaintiff who obtains a favorable judgment after full adjudication on the merits in federal court can enjoy the finality of that judgment. But a plaintiff who loses can seek a second bite at the apple by appealing the denial of its motion to remand, irrespective of whether there were any

procedural or substantive defects in the district court's resolution of the claims against the diverse defendant.

In contrast, a diverse defendant in a removed case must always win (at least) *twice* to ultimately prevail. The defendant must either win in federal court on both the merits and with respect to the remand decision. Or, if the federal appellate court disagrees with the district court's remand decision, the diverse defendant must win again in state court to ultimately prevail. Although defendants who obtain final judgments can generally gain the benefits of finality (so long as the district court did not err in resolving the claims against them), diverse defendants in removed cases cannot rest on their hard-fought judgment. Instead, if the district court erred in dismissing the claims asserted against *non-diverse defendants*, the diverse defendants will lose the final judgment on the merits they achieved at a time when the parties before the court were unquestionably diverse. *See* Pet. App. 23a. And in redoing these proceedings in state court, the diverse defendants will apparently not be able to deploy their earlier federal judgment as part of a preclusion argument, given the federal appellate court's decision to erase that judgment in its entirety.

The asymmetrical detriment extends beyond the finality and preclusion contexts. As demonstrated by this case, plaintiffs can appeal the denial of their motion to remand and argue that the non-diverse defendant *was not* fraudulently joined. But a defendant has no such right. Under 28 U.S.C. § 1447(d), a diverse defendant whose case was remanded to state court due to an erroneous fraudulent-joinder decision has no ability to *ever* appeal that remand order and obtain a federal-court audience if it ultimately loses on the

merits in state court. *See* 28 U.S.C. § 1447(d) (barring appeals from orders remanding cases to state court unless case relates to prosecution of federal officers or agencies or equal civil rights); *Osborn v. Haley*, 549 U.S. 225, 240 (2007) ("[R]emand orders issued under § 1447(c) and invoking the [mandatory] grounds specified therein—that removal was improvident and without jurisdiction—are immune from review." (citation omitted; alteration in original)). Accordingly, diverse defendants cannot take advantage of plaintiffs' gambit. If they lose a remand decision and subsequently lose on the merits in state court, they can never obtain a federal-court redo after appeal. Such a patently unfair, asymmetrical, and illogical rule cannot be right.

B. Giving losing plaintiffs an undeserved do-over against diverse defendants in a different court is costly not just for defendants but also for the judiciary itself. Litigation is, unquestionably, "cumbersome, time-consuming, and expensive." *See Barrentine v. Ark.-Best Freight Sys., Inc.*, 450 U.S. 728, 748 (1981) (Burger, C.J., dissenting). This Court has not ignored this reality in confronting procedural rules that govern lower courts. In the event of an error in a jury verdict, for example, this Court has permitted district courts to recall a jury that has already been discharged because "[c]ompared to the alternative of conducting a new trial, recall can save the parties, the court, and society the costly time and litigation expense of conducting a new trial." *Dietz v. Bouldin*, 579 U.S. 40, 47 (2016). But rather than let stand judgments rendered between completely diverse parties, the Fifth Circuit's vacatur rule forces "the parties, the court, and society" to bear the burden of relitigating claims that the defendants have already prevailed on.

This burden is neither academic nor speculative. The cost of tort litigation in the United States has ballooned in recent years. Between 2016 and 2022, "tort costs [the 'costs of litigating and the compensation paid to claimants together'] at the national level rose an average of 7.1 percent per year—far faster than average annual inflation … and average annual GDP growth." U.S. Chamber of Com. Inst. for Legal Reform, *Tort Costs in America* 2, 6 (3d ed. Nov. 2024), https://instituteforlegalreform.com/wp-content/uploads/2024/11/2024_ILR_USTorts-CostStudy-FINAL.pdf. But for businesses, "tort costs have risen faster, at 8.7 percent a year." *Id.* at 26. And these costs are not just compensation paid to injured tort claimants—instead, "a large portion of the total tort-related expenditures go toward litigating and defending claims and lawsuits rather than compensating claimants." *Id.* at 11.

These litigation burdens fall especially heavily on manufacturers. State law typically limits or even forecloses tort claims against "innocent sellers"—retailers who merely sell the products at issue in the lawsuit. *See, e.g.*, Colo. Rev. Stat. Ann. § 13-21-402(1) ("No product liability action shall be commenced or maintained against any seller of a product unless said seller is also the manufacturer of said product or the manufacturer of the part thereof giving rise to the product liability action."); Ky. Rev. Stat. § 411.340 (retailers "shall not be liable to the plaintiff for damages arising solely from the distribution or sale of such product" as long as retailer did not breach express warranty or know or should have known of defect); Idaho Code § 6-1407 (similar); Md. Code Ann., Cts. & Jud. Proc. § 5-405 (similar); W. Va. Code Ann. § 55-7-31(b) ("No product liability action shall be maintained against a seller, unless," among other things, "[t]he

seller had actual knowledge of the defect in the product").

Given these limitations, plaintiffs generally target manufacturers for their product-liability claims. Ordinarily, these targeted lawsuits would require manufacturers to bear the burden of litigating product-liability claims in just one court. That round of litigation is already costly for manufacturers both in terms of financial resources and time. Indeed, given federal courts' "crushing" caseload, "the average time between filing a civil case and trial is a little over two years." U.S. Courts, *The Need for Additional Judgeships: Litigants Suffer When Cases Linger* (Nov. 18, 2024). But in "many of these overworked courts, the average time between filing and trial is much longer, often three to four years." *Id.* The end result? Parties, particularly defendants, spend years litigating claims "often with no clear end in sight." *Id.*

Two hundred years of this Court's precedents dictate that this arduous journey ends for diverse manufacturers that obtain a favorable final judgment in federal court so long as the parties are diverse at the time of judgment, even if the district court's initial remand decision with respect to a non-diverse defendant was erroneous. *See* Opening Br. 12-17; *see also* pp. 13-15, *infra*. But adopting the rule urged by the plaintiffs would force manufacturers emerging from costly, years-long, federal-court proceedings to undergo Round 2 in overworked state courts for the exact same claims the manufacturers already prevailed on. Indeed, given that the vacatur rule does not consider the merits of the now-vacated final judgment, *see* Pet. App. 23a, a plaintiff who loses once again on remand in state court will still have the opportunity to appeal that adverse

judgment based on substantive or procedural errors in the state-court adjudication, opening the door to a third round of litigation.

C. The judicial system was never meant to entertain such wasteful, duplicative proceedings. Under our adversarial system, each party is supposed to present its best arguments and evidence to a court and have their dispute resolved once by that court. *Cf. United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020) (discussing party-presentation principle); *cf. Will v. Hallock*, 546 U.S. 345, 354 (2006) (noting that "concern" behind res judicata is "avoiding duplicative litigation, 'multiple suits on identical entitlements or obligations between the same parties'" (citation omitted)). To be sure, if a procedural or substantive error was made in the resolution of a plaintiff's claims against a particular defendant, vacatur and retrial is warranted. But where that is not the case—where the district court's error was in dismissing the claims against *a different defendant*—the judicial system was not built to entertain repeat bids on the exact same claims that another court has already resolved on the merits. *Cf. Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 565 n.16 (1983) (recognizing that "[a] comprehensive federal adjudication going on at the same time as a comprehensive state adjudication" is "duplicative" and "wasteful").

Indeed, this antipathy toward duplicative litigation is the bedrock of doctrines like collateral estoppel that serve "the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation." *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979). As this Court

has long made clear, doctrines like collateral estoppel are "central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions." *Montana v. United States*, 440 U.S. 147, 153 (1979) (citing *S. Pac. R. v. United States*, 168 U.S. 1, 49 (1897). "To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." *Id.* at 153-154.

This Court has recognized the importance of "conclusive resolution" in materially similar circumstances. Most notably, in *Caterpillar Inc. v. Lewis*, 519 U.S. 61 (1996), the plaintiff brought state-law personal-injury claims in state court against both a diverse defendant and a non-diverse defendant. *Id.* at 64. The non-diverse defendant settled with the plaintiff, and the diverse defendant removed to federal court. *Id.* at 65. At the time of removal, the non-diverse defendant was technically still a party (because of an intervenor's claim against it). *Id.* And the non-diverse defendant did not cease to be a party to the case until *three years after removal*, when it settled with the intervenor and was dismissed from the case. *Id.* at 66. Yet, the district court denied the plaintiff's remand motion, proceeded to trial between the diverse parties, and ultimately entered final judgment for the diverse defendant. *Id.* at 66-67.

In declining to vacate this judgment, this Court acknowledged that "the complete diversity requirement was not satisfied at the time of removal." *Caterpillar*, 519 U.S. at 70. The question was thus whether "the

District Court's initial misjudgment still burden[s] and run[s] with the case, or [whether] it [is] overcome by the eventual dismissal of the nondiverse defendant." *Id.* This Court concluded the latter, emphasizing that "[o]nce a diversity case has been tried in federal court, … considerations of finality, efficiency, and economy become overwhelming." *Id.* at 75 (citation omitted). Indeed, "[t]o wipe out the adjudication postjudgment, and return to state court a case now satisfying all federal jurisdictional requirements, would impose an exorbitant cost on our dual court system, a cost incompatible with the fair and unprotracted administration of justice." *Id.* at 77.

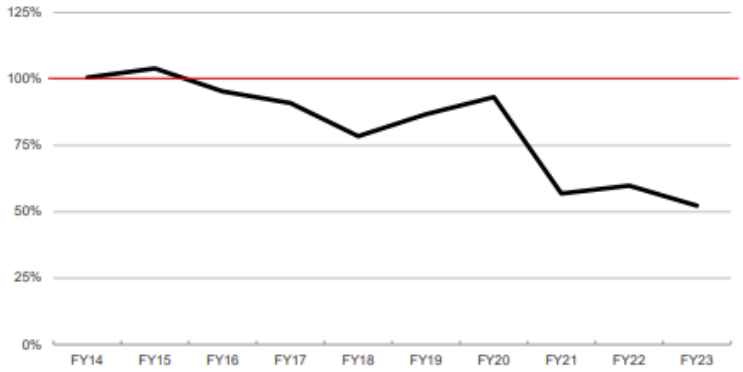
Adopting the plaintiffs' vacatur rule here would impose the very "exorbitant cost on our dual court system" that *Caterpillar* sought to avoid. Just as federal courts are "overworked" with "crushing" caseloads, *see* pp. 10-12, *supra*, so too are state courts. For instance, as of May 2023, almost two thirds of counties in Texas—the state from which this case emanated—reported having significant civil case backlogs. *See, e.g.*, Texas Judicial Branch, *District Dashboard*, https://www.txcourts.gov/programs-services/statewide-caseload-trends/district-dashboard/. And Texas is not alone. Its neighbor and the home of the Fifth Circuit, Louisiana, grew so concerned about "the possibility of an unprecedented backlog of pending cases in all jurisdictions" that the Louisiana Supreme Court developed guidance for addressing case backlogs. Louisiana Supreme Court, *Handling Case Backlog & Post-Pandemic Docket Management* 1 (Mar. 2021) (hereinafter, *Handling Case Backlog*), available at https://www.caddoclerk.com/pdfs/Handling%20Case%20Backlog%20&%20Post-Pandemic%20Docket%20Management.pdf; *see also* Supreme Court of Louisiana, *2021*

Annual Report 1, https://www.lasc.org/press_room/annual_reports/reports/2021_Annual_Report.pdf.

The same landscape exists in the Eleventh Circuit, which is the only other circuit to have adopted the same misguided vacatur rule. *See Henderson v. Wash. Nat'l Ins.*, 454 F.3d 1278, 1284 (11th Cir. 2006); *Florence v. Crescent Res., LLC*, 484 F.3d 1293, 1299 (11th Cir. 2007). To help tackle the enormous case backlogs, Alabama state lawmakers have considered increasing the number of judgeships. *See* Gabriel Tynes, *Bills aim to alleviate backlog in Alabama courts*, Courthouse News Serv. (Mar. 30, 2023), https://www.courthousenews.com/bills-aim-to-alleviate-backlog-in-alabama-courts/. And Florida judges have been left lamenting, "we can't judge our way out of this backlog." *Handling Case Backlog*, *supra*, at 4 (citation omitted); Mark D. Killian, *Chief Justice Canady Says the Courts Are Making a Dent in Case Backlogs*, The Florida Bar (Apr. 11, 2022).

Outside the problematic treatment of vacatur in the Fifth and Eleventh Circuits, the picture is no rosier. State appellate courts in New York have flagged their "significant backlog of perfected civil appeals awaiting calendaring," "stress[ing] how hard the justices of the Court, and … non-judicial staff, work day-in and day-out" but that it nonetheless "can take as long as 18 months for a civil appeal to obtain a place on the court's day calendar and then more time for a decision to be rendered." Alan D. Scheinkman, *Tackling the Backlog: New Initiatives in the Second Department*, App. Div. Sec. Judicial Dep't (last accessed July 6, 2025), https://www.nycourts.gov/courts/ad2/PJ_Scheinkman_Initiatives.shtml. Similarly, the Chief Justice of the Maine Supreme Judicial Court has warned that "[d]espite applying all available resources, technologies, and

revamped processes, [the Maine judicial system] ha[s] yet to be able to cut the backlog in any meaningful way" and "simply lack[ed] the capacity to just 'catch up' or to schedule and hear more cases with [its] existing workforce." Chief Justice Valerie Stanfill, *The State of the Judiciary: A Report to the Convention of the Second Regular Session of the 130th Maine Legislature* (Mar. 15, 2022), https://www.courts.maine.gov/courts/sjc/soj/soj-2022.pdf. Meanwhile, on the opposite coast, California has noted the rapidly declining civil clearance rates of its trial courts—while in 2014, the number of civil cases filed and resolved were roughly in equipoise, as of 2023 there are nearly twice as many cases filed as resolved each year, leaving an annual deficit that just keeps getting larger:



See Judicial Council of California, *Statewide Caseload Trends 2013-14 Through 2022-23*, at 49 (2024), https://courts.ca.gov/sites/default/files/courts/default/2024-12/2024-court-statistics-report.pdf.

Moreover, the sheer volume of tort cases faced by state courts across the country, particularly states like Texas and Louisiana, only exacerbate these state-court backlogs. From 2020 to 2022, "the highest number of

torts cases was filed in the Southern District of Texas." Press Release, LexisNexis, *Lex Machina Releases 2023 Torts Litigation Report* (Nov. 9, 2023), https://www.lexisnexis.com/community/pressroom/b/news/posts/lex-machina-releases-2023-torts-litigation-report. Meanwhile, "the most active judge for torts cases" was located in the Eastern District of Louisiana. *Id.* Given the crushing dockets faced by courts across the country and not merely those in the Fifth and Eleventh Circuits, plaintiffs' Unearned Redo Rule is untenable as a practical matter, not to mention being contrary to this Court's precedents.

D. If the plaintiffs' vacatur rule is adopted, the impacts will be felt far beyond the product-liability context. Take, for example, run-of-the-mill slip-and-fall cases. District courts have already been troubled by plaintiffs fraudulently joining non-diverse defendants in "a transparent attempt to defeat diversity jurisdiction," and courts across the country have had to devote their finite judicial time and resources to addressing these frivolous efforts to defeat diversity jurisdiction. *See, e.g.*, *Madrid v. Walmart Stores E., LP*, 2025 WL 824124, at *1 (E.D. Pa. Mar. 14, 2025); *McKenney v. Kroger Ltd. P'ship I*, 2025 WL 1361465, at *7-8 (E.D. Ky. May 5, 2025) (denying motion to remand where "[w]hat [plaintiff] has done is try to throw darts, through internet sleuthing, and hit the manager(s) employed … at the time of the fall"); *Holliday v. Costco Wholesale Corp.*, 2020 WL 1638607, at *2 (C.D. Cal. Apr. 2, 2020); *Petigny v. Wal-Mart Stores E., L.P.*, 2018 WL 5983506, at *1, 3 (S.D. Fla. Nov. 14, 2018) (collecting cases); *Scipione v. Advance Stores Co.*, 2012 WL 3105199, at *3-4 (M.D. Fla. July 31, 2012).

Indeed, federal courts have referred to how "commonplace" "[t]his jurisdiction-defeating practice has now become" and flagged how "plaintiffs' use of this strategy … has no apparent legitimate purpose other than to keep cases out of the federal courts." *See Branscomb v. Wal-Mart Stores E., LP*, 2020 WL 4501768, at *1 (N.D. Ind. Aug. 5, 2020). But adopting plaintiffs' vacatur rule here would only exacerbate this issue. Plaintiffs would increasingly be incentivized to fraudulently join as many non-diverse defendants as possible in the hope that an appellate court may come to a different conclusion than the district court and grant them a redo on the merits.

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Ultimately, should this Court accept the plaintiffs' vacatur rule, diverse defendants will risk spending years toiling through litigation to obtain a favorable federal-court judgment only to have the rug pulled out from beneath their feet if the plaintiffs can convince an appellate court that their claims against *other, non-diverse defendants* were not fraudulently meritless. This is precisely the type of wasteful outcome that this Court has expressed concerns about. *Cf. Wilkins v. United States*, 598 U.S. 152, 157-158 (2023) ("When such eleventh-hour jurisdictional objections prevail post-trial or on appeal, 'many months of work on the part of the attorneys and the court may be wasted.'" (citation omitted)). Worse yet, these diverse defendants will have to relitigate the claims against them in state courts that are equally if not more overworked than their federal counterparts. This duplicative litigation goes against our dual judicial system and forces defendants to spend significant financial resources and potentially years on additional litigation to achieve the

same finality that they earned in federal court—finality that this Court has held up alongside efficiency and economy as "overriding consideration[s]." *Caterpillar*, 519 U.S. at 75. This Court should not countenance such a perverse outcome.

II. The plaintiffs' vacatur rule would encourage product-liability plaintiffs to assert meritless claims against retailers.

If the plaintiffs' vacatur rule is adopted, it will not only inflict significant costs on defendants as a whole, but it will also expand the number of defendants being haled into court in the first place. Because that rule entitles plaintiffs to a mulligan in state court many years after an erroneous fraudulent-joinder ruling, it will incentivize plaintiffs to bring weak claims against non-diverse defendants to increase the odds of a do-over in the event of a loss on the merits.

These incentives are particularly acute in the product-liability context. Because consumers frequently purchase food products and household goods repeatedly and from multiple retailers, product-liability plaintiffs have an ample supply of retailers they could add as defendants and against whom they can assert weak claims. *See* Emily Rodgers, *Grocery Store Statistics: Where, When, & How Much People Grocery Shop*, Drive Research (Apr. 25, 2024), https://www.driveresearch.com/market-research-company-blog/grocery-store-statistics-where-when-how-much-people-grocery-shop/ ("[T]he average American shops at two grocery stores for their weekly grocery needs."). Any rule that will encourage plaintiffs to add weak claims against multiple retailers will only exacerbate the already pervasive issue of fraudulent joinder. Indeed, as the much-lauded Wright & Miller treatise has noted, "there

has been a virtual epidemic of the invocation of these procedures [removals and remand motions] in the federal courts in the recent past, *most notably in the courts of the Fifth and Eleventh Circuits*"—the only two circuits to have adopted plaintiffs' misguided vacatur rule. *See* Wright & Miller, Fed. Prac. & Proc. § 3641.1 (3d ed. 2024) (emphasis added).

Moreover, the delay in proceedings as federal courts wade through remand issues operates against defendants (both manufacturers and retailers) while offering inverse potential benefits for plaintiffs. Defendants must spend their time and financial resources battling weak claims in federal court with the possibility that their efforts will come to nought and they will have to begin again in state court. *See* pp. 6-10, *supra*. In contrast, the passage of time will only help product-liability plaintiffs, who may assert particularly weak claims under then-governing state tort law in the hopes that the law might develop in their favor by the time they appeal their remand order, which may be years down the road. The Supreme Court of Ohio, for example, has noted a "gradual evolution in the products-liability law [that] was aimed at making manufacturers more accessible to consumer-product lawsuits." *DiCenzo v. A-Best Prods. Co.*, 897 N.E.2d 132, 141 (Ohio 2008) (citations and emphasis omitted). It correctly described these changes as "the 'slow, orderly and evolutionary development' of Ohio products-liability law against manufacturers." *See id.* at 142. And even state laws that "alter[] the landscape of [that state's] product liability law" may not be subject to "judicial statutory interpretation" for years, meaning that the legal sands may continue to unexpectedly shift during the course of duplicative proceedings. *See Murphy v. Columbus McKinnon Corp.*, 982 N.W.2d 898,

908 (Wis. 2022) (noting that "[t]his case presents the first opportunity for judicial statutory interpretation" of landmark product-liability law "since its creation" in 2011).

Given the delays in federal-court proceedings, if state law develops more favorably for plaintiffs in the interim, those developments can provide plaintiffs with a newly viable argument that joinder was not fraudulent. In other words: the chance of success at a do-over may only *increase* as time goes on. Indeed, if a defendant prevails in federal court only to spend years relitigating (under changed state law) on remand, that defendant could ultimately receive two completely contradictory rulings on the exact same facts in the exact same case—based on caselaw that developed after the federal court issued its final judgment. This possibility not only makes a mockery of our system's reliance on finality but also means that there is no real downside to including weak claims against non-diverse defendants in a product-liability case. Those perverse incentives should have no place in our dual judicial system, and they strongly caution against the erroneous approach taken by the court of appeals in this case.

This case provides this Court with the opportunity to prevent that perverse outcome. This Court should reaffirm its longstanding diversity-jurisdiction precedents and once again make clear that when the parties before a federal district court at the time of final judgment are diverse, that judgment should remain standing even if the district court erroneously dismissed non-diverse defendants at an earlier stage of litigation.

CONCLUSION

This Court should reverse the judgment of the Fifth Circuit.

Respectfully submitted.

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July 7, 2025

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