

No. 24-876

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IN THE  
**Supreme Court of the United States**

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NVWS PROPERTIES, LLC,

*Petitioner,*

*v.*

CASUN INVEST, A.G., A SWISS CORPORATION,

*Respondent.*

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

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**REPLY BRIEF FOR THE PETITIONER**

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## ARGUMENT

### **I. Under the Second Restatement, an LLC's domicile is determined by the domicile of its natural owner.**

In its opposition brief, Casun Invest, A.G., insists that NVWS was domiciled in Nevada, and not in Switzerland—at the time Casun conveyed the California property to NVWS. (Op.Br.5-8, 10-12). But this is based on the incorrect legal assumption that, for choice of law purposes, an LLC's domicile as a juridical person is determined by its state of incorporation. Nothing could be further from the truth. As NVWS noted in its opening Petition, the Nevada Supreme Court has adopted the Second Restatement of the Conflict of Laws. *See General Motors Corp. v. Eighth Judicial Dist. Court*, 134 P.3d 111, 116 (Nev. 2006).<sup>1</sup> But the Second Restatement does “not include a provision regarding the domicile of juridical persons, determining that the domicile concept, with its intent component, was best confined to natural persons.” Restatement (Third) of the Conflict of Laws § 2.08 cmt. b. (Am. Law Inst., Tentative Draft No. 2, 2021).<sup>2</sup> In other words, the domicile of juridical persons like limited liability companies must be determined by looking at the

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1. As Casun rightly notes (Op.Br. 5 n.2), NVWS incorrectly referred to *General Motors* as a Nebraska Supreme Court decision in its Petition. This was a clerical error on the part of undersigned counsel. *General Motors* is, in fact, a Nevada Supreme Court decision, and undersigned counsel apologizes both to Casun and this Court for any confusion his clerical error may have caused.

2. The Third Restatement is still in its draft form, and has not yet been adopted by the American Law Institute. Nevertheless, the above excerpts shed light on the meaning of the Second Restatement.

domicile of their members who are natural persons, as opposed to their state of incorporation.

Because Lezlie Gunn is the sole member of NVWS, and because her domicile was in Switzerland at the time Casun conveyed the California property to NVWS, this means that at the time of the events giving rise to the lawsuit NVWS was domiciled in Switzerland, and not in Nevada. Indeed, Gunn was domiciled in Switzerland at the time she created NVWS in the first place. This is similar to how an LLC’s citizenship is determined in the context of assessing a district court’s diversity jurisdiction. While the citizenship of a traditional corporation such as an S Corporation or a C Corporation is determined by looking at both its place of incorporation and its principal place of business, this is not so with unincorporated entities like LLCs. *See Americold Reality Trust v. Conagra Foods, Inc.*, 577 U.S. 378, 381 (2016). For such “unincorporated entities, we too have adhered to our oft-repeated rule that diversity jurisdiction in a suit by or against the entity depends on the citizenship of all its members.” *Id.* (cleaned up).<sup>3</sup> The citizenship of an LLC’s member, in

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3. While *Americold*’s discussion was limited to unincorporated entities like joint-stock companies, limited partnerships, and trusts, 577 U.S. at 381-82, every single circuit court—except the Federal Circuit, which has never examined the matter—has held that this principle applies just as much to LLCs. *See Berkley Nat’l Ins. Co. V. Atlantic-Newport Realty LLC*, 93 F.5th 543, 549 (1st Cir. 2024); *Handelsman v. Bedford Village Assocs. Ltd. P’ship*, 213 F.3d 48, 51 (2d Cir. 2000); *GBForefront, LP v. Forefront Management Group, LLC*, 888 F.3d 29, 34 (3d Cir. 2018); *Gen. Tech. Applications, Inc. v. Exro Ltda*, 388 F.3d 114, 121 (4th Cir. 2004); *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080-81 (5th Cir. 2008); *Stryker Employment Co., LLC v. Abbas*, 60 F.4th 372, 380-81 (6th Cir. 2023)

turn, is determined by the member’s domicile—that is, the member’s permanent home. *See Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828-29 (1989); *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 858 (9th Cir. 2001). If an LLC’s member, as a natural person, has a domicile in a foreign country, then that foreign country constitutes the LLC’s citizenship. *See Newman-Green*, 490 U.S. at 828-29.

Because Gunn, as NVWS’s sole member, had her domicile in Switzerland at the time of the California property’s sale, that made Switzerland the domicile of NVWS as well. This is in complete accord with the Second Restatement. While the Second Restatement does not have a section on juridical entities like LLC’s, it does briefly discuss traditional corporations. And even then, its analysis of their domicile for choice of law purposes is even more strict than this Court’s analysis for diversity jurisdiction purposes. “No useful purpose . . . is served by assigning a domicil[e] to a corporation.” Restatement (Second) of Conflict of Laws § 11, cmt. 1 (Am. Law Inst. 1971). This is because “[m]ost of the uses which the concept of domicil[e] serves for individuals . . . are inapplicable to corporations. . . .” *Id.* As such, “[a]ttribution of a domicil[e] to a corporation may lead to complications and should be avoided.” *Id.* This applies even more strongly to unincorporated entities like NVWS as a limited liability company.

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*Cosgrove v. Bartolotta*, 150 F.3d 729, 731 (7th Cir. 1998); *GMAC Commercial Credit LLC v. Dillard Dep’t Stores, Inc.*, 357 F.3d 827, 828-29 (8th Cir. 2004); *Johnson v. Columbia Prop. Anchorage, LP*, 437 F.3d 894, 889 (9th Cir. 2006); *Choice Hospice, Inc. v. Axxess Tech. Solutions, Inc.*, 125 F.4th 1000, 1008-09 (10th Cir. 2025); *Rolling Greens MHP, L.P. v. Comcast SCH Holdings LLC*, 374 F.3d 1020, 1022 (11th Cir. 2004); *CoastCommand v. WH Administrators, Inc.*, 820 F.3d 19, 21 (D.C. Cir. 2016).



What's more, while Casun now insists that NVWS is domiciled in Nevada, it was singing a very different tune before the district court. There, it alleged that NVWS was simply the alter ego of Gunn. (ER 2098-2030). In other words, Casun alleged that NVWS's alleged Nevada domicile was irrelevant as it was simply a front for Gunn's actions that she undertook in Switzerland. His attempt to now insist that NVWS's status as a Nevada LLC is dispositive of this issue rings hollow.

In short, there is no question that all of the parties were citizens of Switzerland at the time of the California property's conveyance, and that under Nevada's choice of law provisions the benefit was conferred in either Switzerland or California. The grant deed itself, furthermore, was recorded in California, and not in Nevada. (ER 57). As such, either Switzerland's one-year statute of limitations or California's two-year statute of limitations bars this lawsuit. The district court and the Ninth Circuit were both wrong to conclude that Nevada's four-year statute of limitations applied, thus allowing the lawsuit to proceed.

**II. Even in the absence of a circuit split, this is a question of general interest and importance justifying this Court's review.**

Casun further points out that there does not appear to be a circuit split on this issue. (Op.Br.12-13). But certiorari is appropriate not only where a circuit split exists, but also where there exists "an important issue of federal law that has not been, but should be, settled by this Court . . . ." Sup. Ct. Rule 10(c). As Casun itself notes (Op.Br.12), federal courts apply state substantive

law and federal procedural law to diversity jurisdiction cases, pursuant to *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). The correct application of choice-of-law provisions for determining the proper statute of limitations in diversity cases under *Erie* is an important issue of federal law. And as NVWS noted in its Petition (Pet.6-8), the Ninth Circuit's decision, if left to stand, will encourage forum shopping. This is to say nothing of how the Ninth Circuit's decision will also encourage lower courts to discard the statute of limitations in conflict-of-laws cases, to the detriment of all Americans. This makes it all the more appropriate to grant certiorari.

### CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

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