No. 24A_____

IN THE
SUPREME COURT OF THE UNITED STATES

PRESTON L. MARSHALL, IN HIS OFFICIAL CAPACITY AS CO-TRUSTEE OF PEROXISOME TRUST AND IN HIS PERSONAL CAPACITY,
Applicant,

v.

STEPHEN D. COOK, DOCTOR, IN HIS CAPACITIES AS CO-TRUSTEE OF THE MARSHALL HERITAGE FOUNDATION AND MARSHALL LEGACY FOUNDATION,
Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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May 16, 2025

PARTIES TO THE PROCEEDINGS

Petitioner Preston L. Marshall, in his Official Capacity as Co-Trustee of Peroxisome Trust and in his Personal Capacity, was the defendant in the district court and the appellant in the court of appeals. The Peroxisome Trust is a Louisiana Nongrantor Lead Annuity Trust with two trustees. The other Co-Trustee of the Peroxisome Trust is E. Pierce Marshall, Jr.

Respondent Stephen D. Cook, Doctor, in his Capacities as Co-Trustee of the Marshall Heritage Foundation and Marshall Legacy Foundation, was the plaintiff in the district court and the appellee in the court of appeals. The Marshall Heritage Foundation is a charitable trust organized under the laws of the State of Louisiana. The other Co-Trustees of The Marshall Heritage Foundation are Elaine Marshall and E. Pierce Marshall, Jr.

RELATED CASES

Cook, etc. v. Marshall, etc. (5th Cir. Feb. 27, 2025) (No. 24-30222) (denying rehearing)

Cook, etc. v. Marshall, etc., 126 F.4th 1031 (5th Cir. Jan. 23, 2025) (No. 24-30222) (affirming district court)

Cook, etc. v. Marshall, etc., 2024 WL 983355 (E.D. La. Mar. 7, 2024) (No. 17-5368 C / W 21-2139) (granting in part and denying in part defendant's motion for reconsideration)

Cook, etc. v. Marshall, etc., 2024 WL 147837 (E.D. La. Jan. 11, 2024) (No. 17-5368 C / W 21-2139) (granting plaintiff's amended motion for partial summary judgment)

Cook, etc. v. Marshall, etc., 2023 WL 8257983 (E.D. La. Nov. 29, 2023) (No. 17-5368 C / W 21-2139) (granting plaintiff's motions for partial summary judgment)

Cook, etc. v. Marshall, etc., 645 F. Supp. 3d 543 (E.D. La. Dec. 9, 2022) (No. 17-5368 C / W 21-2139) (denying defendant's motion to dismiss)

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States Supreme Court and Circuit Justice for the Fifth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.3 of the Rules of this Court, applicant Preston L. Marshall, in his Official Capacity as Co-Trustee of Peroxisome Trust and in his Personal Capacity, respectfully requests a 58-day extension of time, up to and including July 25, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

The court of appeals entered its judgment and issued an opinion on January 23, 2025, and denied a petition for rehearing on February 27, 2025. The court of appeals' opinion (reported at 126 F.4th 1031) is attached hereto as Exhibit A, and the order denying rehearing is attached as Exhibit B. The orders of the district court are available at 2024 WL 983355, 2024 WL 147837, 2023 WL 8257983, and 645 F. Supp. 3d 543; they are attached hereto as Exhibits C-F, respectively.

The petition would be due on May 28, 2025, and this application is made at least 10 days before that date. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

1. This case presents an important question about whether a federal court may exercise diversity jurisdiction over a traditional trust based solely on the citizenship of one trustee, notwithstanding the presence of two additional co-trustees

who jointly share legal title and control over the trust property but are non-diverse. The decision below presents a significant question of diversity jurisdiction and conflicts with the rationales of *Navarro Savings Ass'n v. Lee*, 446 U.S. 458 (1980), *Carden v. Arkoma Associates*, 494 U.S. 185 (1990), and *Americold Realty Trust v. Conagra Foods, Inc.*, 577 U.S. 378 (2016).

In *Navarro*, the question was whether the citizenship of eight trustees was all that mattered for diversity, or if the citizenship of trust beneficiaries also counted. 446 U.S. at 462. The Supreme Court held the citizenship of the beneficiaries could be disregarded for purposes of diversity jurisdiction because the trustees were the real parties in interest – they were "active trustees" who have "legal title," "manage the assets," and may sue and be sued as trustees. *Id.* at 465; *see generally id.* at 462-66. But it nowhere suggested that the citizenship of unnamed trustees could be ignored for purposes of diversity.

On the contrary, all eight trustees in *Navarro* were named plaintiffs. The Court's rationale for disregarding the citizenship of trust beneficiaries rested on the fact that they collectively held and exercised full control over the trust and its litigation. *Id.* at 459. "They have legal title; they manage the assets; they control the litigation. In short, they are real parties to the controversy." *Id.* at 465. *Navarro* and the cases it relied on concerned multiple trustees; none allowed unnamed trustees to be disregarded.

This Court never has allowed a jurisdictional sleight of hand to circumvent the complete-diversity requirement. For unincorporated entities, including partnerships, limited partnership associations, and labor unions, the Supreme Court has held that

all members of the entity must be completely diverse for access to federal court. *See Chapman v. Barney*, 129 U.S. 677, 682 (1889); *Great S. Fire Proof Hotel Co. v. Jones*, 177 U.S. 449, 456-57 (1900); *United Steelworkers v. R.H. Bouligny, Inc.*, 382 U.S. 145, 150-51 (1965); *Carden*, 494 U.S. at 192-96. The all-members rule *limits* federal diversity jurisdiction, and this Court strictly has adhered to it.

In *Carden*, the Court reaffirmed that the all-members rule applies to a limited partnership, requiring all general and limited partners to be diverse. 494 U.S. at 192-96. And in *Americold*, the Court assessed a real estate investment trust that, pursuant to state law, was "a 'separate legal entity' that itself can sue or be sued." 577 U.S. at 383. The Court rejected the claim that such a trust was covered by *Navarro*, holding that, "[s]o long as such an entity is unincorporated, we apply our 'oft-repeated rule' that it possesses the citizenship of all its members." *Id.* (quoting *Carden*, 494 U.S. at 195). *Americold* distinguished *Navarro* because, "[t]raditionally, a trust was not considered a distinct legal entity, but a fiduciary relationship between multiple people," that "could [not] be haled into court" so "legal proceedings involving a trust were brought by or against the trustees in their own name." *Id.* (cleaned up). In so holding, the Court made clear that, while *Navarro* governs trust citizenship, it does so only where trustees sued in their own names. *Id.* That case, like *Carden*, underscored the Court's consistent refusal to dilute the all-members rule.

The decision below flouts those teachings. It dramatically expands diversity jurisdiction by allowing a so-called "traditional trust" (*id.*) like Heritage or Legacy to name only a single diverse trustee to sue and thus gain access to federal court by excluding non-diverse co-trustees as plaintiffs – even though Louisiana law required

their majority approval to authorize this suit. *See* La. R.S. § 9:2114. As in *Navarro*, Cook's co-trustees similarly "have legal title," "manage the assets," and "control the litigation." 446 U.S. at 465. Accordingly, the co-trustees are the "real parties to the controversy" for diversity purposes and cannot be excluded from the diversity calculation, despite the artful pleading. *Id.*

To conclude that Heritage and Legacy may nominate Cook to sue by a majority vote that includes a non-diverse trustee who jointly holds and manages trust property evades the core logic in *Navarro*, *Carden*, and *Americold*, and converts a strict jurisdictional requirement into a tool of strategic pleading. Here, Stephen D. Cook ("Cook") (a Louisiana citizen) sued Preston L. Marshall ("Preston") (a Texas citizen). But in the next case, Cook's co-trustees (both Texas citizens) could sideline Cook and sue a Louisiana defendant in federal court. If the next defendants are citizens of both Louisiana and Texas, then a Mississippi trustee could be newly drafted to sue.

Allowing such trickery by trusts with multiple trustees likewise clashes with the rationale for diversity jurisdiction – namely, "opening the federal courts' doors to those who might otherwise suffer from local prejudice against out-of-state parties." *Hertz Corp. v. Friend*, 559 U.S. 77, 85 (2010). Here, Cook's two co-trustees are trustees with powers equal to Cook's. And as Texas citizens they could not be subject to local prejudice by suing Preston, also a Texas citizen, in a state court.

2. The 58-day extension of time to file a certiorari petition is necessary because undersigned counsel needs the additional time to review the record and prepare the petition and appendix in light of other, previously engaged matters, including: (1) a brief in opposition in this Court in *Monsanto Co. v. Durnell*, No.

24-1068 (due June 9, 2025); (2) a petition for a writ of certiorari in this Court in *Gesture Technology Partners, LLC v. Apple Inc.* (due June 11, 2025); and (3) a brief in opposition in this Court in *Monsanto Co. v. Johnson*, No. 24-1098 (due June 23, 2025).

For all these reasons, there is good cause for a 58-day extension of time, up to and including July 25, 2025, within which to file a certiorari petition in this case to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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