No.

In the Supreme Court of the United States

CHANGZHOU SINOTYPE TECHNOLOGY CO., LTD.,

Petitioner,

v.

ROCKEFELLER TECHNOLOGY INVESTMENTS (ASIA) VII,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of California

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The United States and dozens of other states are parties to the Hague Service Convention. The Convention permits a party to "send judicial documents, by postal channels, directly to persons abroad" if the law of the forum authorizes such service. But because many states regard service of process by post as an infringement of their judicial sovereignty, the Convention permits states to object to the use of postal channels, and many states have objected. Here, the successful claimant in a US arbitration brought a petition in the California Superior Court for confirmation of a $414 million arbitral award, and it served the summons and the petition by FedEx in China, a country that has objected to service of process by postal channels.

The questions presented are:

1. whether a private litigant can, by agreement with its opponent, waive a foreign state's objection to service by postal channels in its territory under the Hague Service Convention; and
2. whether the Convention preempts state law that defines the transmission of judicial documents abroad for the purpose of obtaining jurisdiction over a defendant as something other than service of process and thus as outside the scope of the Convention.

PARTIES TO THE PROCEEDING

All parties to the proceedings below are identified in the caption.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

The petitioner is wholly owned by SinoType Technology International, Inc. and Changzhou Huaxin Printing Materials Co., Ltd.

STATEMENT OF RELATED PROCEEDINGS

Rockefeller Technology Investments (Asia) VII v. Changzhou SinoType Technology Co., Ltd., No. S249923 (Cal.) (opinion filed Apr. 2, 2020; remittitur issued Jun. 3, 2020).

Rockefeller Technology Investments (Asia) VII v. Changzhou SinoType Technology Co., Ltd., No. B272170 (Cal. Ct. App., 2d Dist.) (opinion filed Jun. 1, 2018).

Rockefeller Technology Investments (Asia) VII v. Changzhou SinoType Technology Co., Ltd., No. BS149995 (Los Angeles County Super. Ct.) (judgment entered Oct. 23, 2014; order denying motion to set aside judgment entered Apr. 15, 2016).

There are no other directly related proceedings.

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Changzhou SinoType Technology Co., Ltd., respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of California.

OPINIONS BELOW

The opinion of the California Supreme Court reversing the judgment of the California Court of Appeals (App. 1) is reported at 9 Cal.5th 125, 460 P.3d 764 (2020). The opinion of the Court of Appeal of California reversing and remanding the Los Angeles County Superior Court's denial of a motion to set aside the judgment (App. 27) is reported at 24 Cal. App. 5th 115, 233 Cal. Rptr. 3d 814 (2018). The opinion of the Los Angeles County Superior Court denying the motion to set aside the judgment (App. 58) is unreported.

JURISDICTION

The judgment of the California Supreme Court was entered on April 2, 2020. By order dated March 19, 2020, this Court extended the deadline to file a petition for a writ of certiorari due on or after that date to 150 days from the date of the lower court judgment. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND TREATY PROVISIONS INVOLVED

Article VI of the Constitution provides: "This Constitution, and the laws of the United States which

shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

The Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters is reproduced at App. 82.

STATEMENT OF THE CASE

A. The Hague Service Convention and Service by Postal Channels.

The United States is party, along with all its largest trading partners,[1] to the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, 658 U.N.T.S. 163, a multilateral convention that came into force in the middle of the last century. The Convention provides a simplified method for transmitting judicial documents abroad for service. Each contracting state designates a central authority to receive requests for service from applicants abroad. The central authority then executes the request in accordance with local law, or by a method the requester specially requests, and it then returns a certificate of service to the applicant. *See* Convention art. 3-6, 20 U.S.T. at 362-63, 658 U.N.T.S. at 167-68.

The Convention also permits alternative methods of service, including service by sending "judicial documents, by postal channels, directly to persons abroad."

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[1] Except Taiwan.

Convention art. 10(a), 20 U.S.T. at 363, 658 U.N.T.S. at 169; *see Water Splash, Inc. v. Menon,* 137 S. Ct. 1504, 1513 (2017) (holding that Article 10(a) permits service of process by postal channels). But it provides that states opposed to these alternative methods of service can object. *See Water Splash,* 137 S. Ct. at 1508. Giving states that enter into treaties on service of process the power to opt out of service by post is a longstanding international practice: both the Convention of 17 July 1905 on Civil Procedure, 99 B.F.S.P. 990, and the Convention of 1 March 1954 on Civil Procedure, 286 U.N.T.S. 265, the two direct predecessors to the Convention, provided for service by post, but only if the two states concerned had agreed to allow it, or if the state of destination did not object. *See* 1905 Convention art. 6, 99 B.F.S.P. at 993; 1954 Convention art. 6, 286 U.N.T.S. at 271. China, the state at issue in this case, has objected to service by postal channels.

The Convention applies "in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad." Convention, art. 1, 20 U.S.T. at 362. In *Volkswagenwerk AG v. Schlunk,* 486 U.S. 694 (1988), the Court held that the Convention was therefore "mandatory," and that "by virtue of the Supremacy Clause … the Convention pre-empts inconsistent methods of service prescribed by state law in all cases to which it applies." *Schlunk,* 486 U.S. at 699. In other words, the Convention is self-executing: it "has automatic domestic effect as federal law upon ratification." *Medellín v. Texas,* 552 U.S. 491, 502 n.1 (2008). The Convention is the "supreme law of the land," and "the judges in every state [are] bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." U.S. Const. art. VI.

Schlunk reflects the universal international consensus:

> [T]he Convention's exclusive character is now ***undisputed.*** Thus, if under the law of the forum a judicial or extrajudicial document is to be *transmitted abroad* for service, the Convention applies and it provides the relevant catalogue of possible means of transmission for service abroad.

Permanent Bureau of the Hague Conference on Private International Law, *Practical Handbook on the Operation of the Service Convention* ¶ 50 (4th ed. 2016) (emphasis in original).

China, like every state party to the Convention, has designated a central authority to receive requests for service from abroad and to provide for their execution. It is undoubtedly true that service of process via the Chinese central authority takes longer than service of process in US domestic litigation typically takes. But China is hardly unique. According to the latest data available from the Hague Conference on Private International Law, of the twenty states that provided information, the state with the highest percentage of service requests that took more than a year to execute was Ireland, followed distantly by China, Bulgaria, Canada, and Portugal. About forty-seven percent of the requests China executed were executed within four months, and about seventy-seven percent were executed within six months. *See* Permanent Bureau of the Hague Conference on Private International Law, *Synopsis of Responses to the Questionnaire of November 2013 Relating to the Hague Convention of 15 Nov. 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (rev. ver. 2014) at 19-20,

available at https://assets.hcch.net/docs/661b8dec-a0c8-45a1-9b71-0144798e2597.pdf.

B. The Arbitration

Changzhou SinoType Technology Co., a Chinese typeface design company, and Rockefeller Technology Investments (Asia) VII, an American investment firm, signed a memorandum of understanding memorializing their intent to form a new California company, World Wide Type. The MOU contemplated that each party would contribute its entire interest in its own business to World Wide Type and receive a share of the new business. The MOU included an arbitration provision, and it contained the following notice provisions

> 6. The parties shall provide notice in the English language to each other at the addresses set forth in the Agreement via Federal Express or similar courier, with copies via facsimile or email, and shall be deemed received 3 business days after deposit with the courier.
>
> 7. The Parties hereby submit to the jurisdiction of the Federal and State courts in California and consent to service of process in accord with the notice provisions above.

(App. 3).

A dispute arose before the parties consummated the transactions outlined in the MOU. The parties disagreed about the effect of the document they had signed. Rockefeller contended that it was a binding contract; SinoType contended that it was what Chinese law calls a

bèi wàng lù, a signed memorandum of understanding that reflects the current state of negotiations but is not a binding agreement or even a binding agreement to agree. Rockefeller demanded arbitration. It served the demand for arbitration on SinoType in China by FedEx, with a copy by email, as specified in Paragraph 6 of the MOU. (App. 74-75). SinoType did not participate in the arbitration. (App. 75).

The arbitrator found that the MOU was a binding contract and that SinoType was liable for damages. Rockefeller's damages expert opined that at the time of the termination, Rockefeller's damages were approximately $172 million. But the expert also opined that damages should be measured at the time of the arbitration, and treating Apple Corp. as a comparable company and assuming that World Wide Type would have appreciated in value by 240% over the relevant time, as Apple had, he opined that Rockefeller's damages were $414 million. The arbitrator credited the opinion and awarded that amount in damages. (App. 79-80).

C. The California Petition.

China is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Jun. 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38 ["New York Convention"], which requires China to recognize arbitral awards as binding and to enforce them in accordance with its own rules of procedure, with exceptions set out in the Convention. *See* New York Convention art. 3, 21 U.S.T. at 2519. Despite anecdotal skepticism, empirical study "presents a broadly favorable picture of Chinese judicial practice and the New York Convention." *See* Roger P. Alford *et al., Perceptions and Reality: The*

Enforcement of Foreign Arbitral Awards in China, 33 UCLA Pac. Basin L.J. 1, 10-11 (2016).

Rockefeller could have sought recognition of the arbitral award in China, where SinoType and its assets are located. Instead, it chose to seek a judgment on the award in California, where SinoType consented to personal jurisdiction but where it had no presence and no property. Rockefeller, relying on ¶ 7 of the MOU, served the summons and its petition on SinoType in China by FedEx. It justified its method of service under Cal. Civ. Proc. Code § 1290.4(a), which provides that a petition to confirm an arbitral award "shall be served in the manner provided in the arbitration agreement for the service of such petition and notice."[2]

The summons, which was in the form ordinarily used in civil actions in the California superior courts, was titled "SUMMONS." It warned SinoType that the court "may decide against you without your being heard unless you respond within 30 days." It informed SinoType that it had "30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court …" It was signed by a deputy clerk on behalf of the clerk and sealed. (App. 98-101).

SinoType did not appear, and as the summons had warned, the trial court entered a default judgment. (App. 70).

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[2] California law differs here from federal law and from the many states' laws. The Federal Arbitration Act provides that an application to confirm an award must be served on an adverse party outside of the judicial district where confirmation is sought "in like manner as other process of the court." 9 U.S.C. § 9. The Revised Uniform Arbitration Act, versions of which are enacted in twenty-one states and the District of Columbia, provides for service "in the manner provided by law for the service of a summons in a civil action." Revised Uniform Arbitration Act § 5(b), 7 U.L.A. 23 (2009).

SinoType then appeared specially and moved to set aside the judgment, arguing that because the service did not comply with the Convention, it had not validly been served with process and that the judgment was therefore void. In particular, SinoType argued, in its Motion to Quash and to Set Aside Default Judgment for Insufficiency of Service of Process, that under *Schlunk,* the Convention preempted any California law providing for service not authorized or permitted by the Convention (App. 105-06) and that SinoType had not waived the service requirements of the Convention. (App. 106-07). The trial court called for supplemental briefing on the question whether China had objected to service by postal channels under the Convention and, if so, whether private parties could contractually waive the Convention's requirements. (App. 110-13). SinoType filed a supplemental brief arguing that private parties cannot contractually waive a foreign state's objection to service by postal channels. (App. 115-18).

The trial court denied SinoType's motion, reasoning that "allow[ing] parties to simply return to their respective countries in order to avoid any contractual obligations" would "essentially result in anarchy and turn entire international arbitration law on its head" (App. 65), but ignoring the internationally sanctioned method of service Rockefeller had available to it that it failed to attempt, namely service via the Chinese central authority under the Convention—and ignoring the practical reality that armed with its California judgment, Rockefeller would eventually have to seek recognition and enforcement in a Chinese court anyway.

SinoType appealed. It again argued that the Convention preempted state law to the extent state law permitted methods of service that the Convention did not and that Chinese law and the Chinese objection to service

by postal channels made the service by FedEx ineffective. (App. 120-26). The appellate court reversed. It agreed with SinoType that in light of China's objection, service by postal channels in China is impermissible in cases where the Convention applies (App. 45-47), and that private parties cannot "contract around" the Convention. (App. 47-51). Citing *Société Nationale Industrielle Aérospatiale v. U.S. District Court,* 482 U.S. 522, 533 (1987), it emphasized that the Convention, like other treaties, is "in the nature of a contract between nations" (App. 47), and it remarked that the Convention "emphasizes the right of *each contracting state*—not the citizens of those states—to determine how service shall be effected" in each state's territory. (App. 48). It noted, for example, Article 11 of the Convention, which provides that "two or more contracting States"—states, not litigants—may "agree[] to permit … channels of transmission other than those provided for in the preceding articles." (App. 48-49).

In the California Supreme Court, SinoType argued again that the Convention preempted California law and that the parties could not waive China's objection to service by postal channels. (App. 129-44). The California Supreme Court reversed. It recognized that the Convention is mandatory and that it applies whenever "there is occasion to transmit a judicial or extrajudicial document for service abroad." (App. 48). But to reach its result, it skirted the Convention's requirements and contradicted the holding of *Schlunk*. First, it held that the parties had waived formal service of process under California law, even though the MOU provided that they "consent[ed] to service of process in accord with the notice provisions above;" and second, it held that the Convention does not apply to the transmission of documents if the transmission constituted "informal

notification" rather than formal service of process. (App. 20-26).

REASONS FOR GRANTING THE PETITION

A. The California Decision Conflicts with This Court's Holding in *Volkswagenwerk AG v. Schlunk.*

"[I]n cases governed by the Hague Service Convention, service by mail is permissible if two conditions are met: *first, the receiving state has not objected to service by mail;* and second, service by mail is authorized under otherwise-applicable law." *Water Splash,* 137 S. Ct. at 1513 (emphasis supplied). Because China has objected to service of process by postal channels under Article 10(a) of the Convention, service of process by postal channels is impermissible in China whenever the Convention applies. Under *Schlunk,* any state statute or procedural rule to the contrary is preempted.[3] The lower court failed to apply this straightforward rule in this case for two reasons. Both are not just erroneous but are plainly contrary to *Schlunk* and threaten to undermine the supremacy of treaties over state law and to create frictions between the United States and its treaty partners that may prejudice US litigants seeking to serve process abroad.

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[3] If service via FedEx, the method Rockefeller used here, is permissible under the Convention, it is permissible because the use of a private courier is equivalent to use of the postal channel. *See* Conclusions & Recommendations Adopted by the Special Commission on the Practical Operation of the Hague Apostille, Evidence & Service Conventions ¶ 56 (2003), *available at* https://assets.hcch.net/docs/0edbc4f7-675b-4b7b-8e1c-2c1998655a3e.pdf.

1. A Litigant Cannot Waive a Foreign State's Objection to Service by Postal Channels.

Like many countries, China objects to service by postal channels. *See* Declarations of the People's Republic of China, *available at* https://treatydatabase.overheid.nl/en/Verdrag/Details/004235_b#China. Foreign states have given many reasons for their objections to service by post. In some cases, the objections are matters of the protection of judicial sovereignty. Some states have observed that under their law only a bailiff, *huissier,* or some other competent official may serve process.[4] *See generally* Hague Conference on Private International Law, *Synopsis of Responses to the Questionnaire of July 2008 Relating to the Hague Convention of 15 Nov. 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* at 86-88 (rev. ver. 2009), *available at* https://assets.hcch.net/upload/wop/2008synopsis14.pdf.

States that object to service by postal channels on these grounds take their objections seriously, and objections have led to diplomatic protests. The United

[4] Under modern federal civil procedure any adult non-party can serve process. *See* Fed. R. Civ. P. 4(c)(2). But the federal courts fully adopted this liberal rule only in 1983. *See* Federal Rules of Civil Procedure Amendments Act of 1982, Pub. L. No. 97-462, § 2(2), 96 Stat. 2527 (1983). Some states continue to follow traditional limitations. *See, e.g.,* Mass. R. Civ. P. 4(c) (process must be served by the sheriff or another person authorized by law or by court order). And the liberal American practice is exceptional internationally. *See* Eric Porterfield, *Too Much Process, Not Enough Service: International Service of Process under the Hague Service Convention,* 86 Temple L. Rev 331, 337 (2014).

States position is that service of a summons by mail in states *not a party to the Convention* does not violate international law, but in response to diplomatic protests from abroad, the Departments of State and Justice "routinely advise[] American courts and litigants" of foreign objections and have reassured foreign states that "American courts have consistently held that international mail service of civil summonses is not proper in the case of states party to the [Convention] … which have entered an appropriate reservation under Article 10 thereof." *See* Exchange of Notes between the United States and Switzerland, *in* 2 Office of the Legal Adviser*, Cumulative Digest of United States Practice in International Law, 1981-1988,* 1445-1449 (1994).

The lower court's mistake was to hold that SinoType could waive China's objection to service of process by postal channels by contract. Allowing the parties to contract around China's objection to service by postal channels by agreeing, by contract, to transmission of judicial documents for service in China by post is contrary to the Convention and thus to *Schlunk,* because it treats China's objection to service by postal channels as a personal right belonging to SinoType, which SinoType could waive: a waiver is "an intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst,* 304 U.S. 458, 464 (1938). But the objection was China's, not SinoType's. The Chinese state made the objection at the time of accession to the Convention for its own reasons. While China's statement of its objection did not specify the reason, the objection is consistent with Chinese law. Under Article 277 of the Civil Procedure Law of the People's Republic of China, a foreign embassy or consulate "may serve documents on … its citizens, provided that the law of the People's Republic of China is not violated and that no compulsory measures are

adopted." Civil Procedure Law (promulgated by the National People's Congress, Apr. 9, 1991, rev'd Jun. 27, 2017), art. 277, *available at* http://cicc.court.gov.cn/html/1/219/199/200/644.html. But the law goes on to provide:

> Except for the circumstances set forth in the preceding paragraph, no foreign agency or individual may, without the consent of the competent authorities of the People's Republic of China, serve documents … within the territory of the People's Republic of China.

Id.

Because state objections to Article 10(a) are expressly authorized by the Convention, the United States is bound by them as a matter of customary international law. *See Restatement (Third) of the Foreign Relations Law of the United States* § 313(2)(a), (3) (1987). And the transmission of a summons and petition to a person in China's territory, contrary to the agreement between the United States and China, is an affront to China, not a violation of the personal rights of SinoType that SinoType can waive. The United States is responsible, in international law, for violations of the Convention carried out by its constituent states. *See id.* § 321 cmt. b.

2. A State Cannot Declare That Service of a Summons and Pleading Are Not "Formal Service of Process," So As To Avoid the Application of the Convention.

Holding that delivery of a summons and a petition or complaint to the defendant is not service of process, even

when necessary to entry of a default judgment against the defendant, is contrary to the Convention, which provides that it applies "in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad." Convention, art. 1. As this Court said in *Schlunk:*

> The Convention does not specify the circumstances in which there is "occasion to transmit" a complaint "for service abroad." But at least the term "service of process" has a well-established technical meaning. Service of process refers to a formal delivery of documents that is legally sufficient to charge the defendant with notice of a pending action. The legal sufficiency of a formal delivery of documents must be measured against some standard. The Convention does not prescribe a standard, so we almost necessarily must refer to the internal law of the forum state. If the internal law of the forum state defines the applicable method of serving process as requiring the transmittal of documents abroad, then the Hague Service Convention applies.

Schlunk, 486 U.S. at 700 (citations omitted). There is no question that California law required the summons and petition to be transmitted to China. Nor is there any questions that the documents, at least if the California Supreme Court's decision is correct, were "legally sufficient to charge [SinoType] with notice of [the] pending action" to confirm the petition—they form the basis of the trial court's judgment and of Rockefeller's efforts in the trial court to execute on the judgment, which are ongoing. So there can be no real question that the transmission of documents to SinoType in China

constituted "service of process in the technical sense," *Schlunk,* 486 U.S. at 700. Nevertheless, the court below held the transmission of the summons and petition to SinoType was not governed by the Convention, because the only role of the summons and petition were to provide notice, not to serve process. (App. 24).

The lower cited *Schlunk* in support of its conclusion, but its view of *Schlunk* was clearly mistaken. In *Schlunk,* this Court held that the Convention did not apply where Illinois law allowed the plaintiff to serve process on a foreign defendant by delivering the papers to its US subsidiary. The key fact in *Schlunk* was that under Illinois law, the service on the foreign defendant was complete when the summons was delivered to the defendant's subsidiary in Illinois. Under Illinois law, there was no "occasion to transmit a judicial or extrajudicial document for service abroad," and the Convention did not apply. *Schlunk* stands for the proposition that the forum state gets to decide when it is necessary to transmit a summons abroad for service. Here, everyone agrees that it *was* necessary to transmit the summons abroad. The lower court's error was to hold that the transmission abroad was not "for service," even though the summons and petition did exactly what *Schlunk* itself defined as the essence of "service of process in the technical sense," namely, delivering the documents to SinoType in a way "legally sufficient to charge the defendant with notice of a pending action."

The contract in case did not have a cognovit clause, "the ancient legal device by which the debtor consents in advance to the holder's obtaining a judgment without notice or hearing," *see D.H. Overmyer Co. v. Frick Co.,* 405 U.S. 174, 176 (1972). If it had—if SinoType had waived service altogether—then the Convention would not have applied, since there would have been no occasion to

transmit any documents to China.[5] Nor does it involve a written request for a waiver of service of process, *cf.* Fed. R. Civ. P. 4(d), which does have to be sent abroad but which is not sent abroad "for service" because it is just a request for a waiver and has no compulsory effect. *Cf.* Fed. R. Civ. P. 4(d) Advisory Committee Note (1993) ("It is hoped that, since transmission of the notice and waiver forms is a private nonjudicial act, does not purport to effect service, and is not accompanied by any summons or directive from a court, use of the procedure will not offend foreign sovereignties, even those that have withheld their assent to formal service by mail or have objected to the 'service-by-mail' provisions of the former rule"). Here, California law required the transmission of documents to China in order to give SinoType the notice of the action to which California law entitled it before the trial court could enter a judgment against SinoType, and California's courts cannot avoid the preemptive force of the treaty by defining the delivery of the summons and petition to be something less than formal service of process.

B. The Case Implicates Important Foreign Relations Interests and the Interests of US Litigants.

This Court uniquely has the power to ensure that the state courts do not interpret their own laws in such a way as to put the United States out of compliance with its treaty obligations. Preemption of state laws inconsistent

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[5] This distinction suffices to distinguish *Alfred E. Mann Living Trust v. ETIRC Aviation S.A.R.L.,* 78 A.D.3d 137, 910 N.Y.S.2d 418 (2010), one of the cases on which Rockefeller relied heavily below. In *Mann,* the contract waived service altogether and did not simply provide for service in a particular manner. *See Mann,*78 A.D.3d at 139-40, 910 N.Y.S.2d at 420-21.

with treaties was one of the motivations for the Supremacy Clause:

> The treaties of the United States, under the present [Articles of Confederation], are liable to the infractions of thirteen different legislatures, and as many different courts of final jurisdiction, acting under the authority of those legislatures. The faith, the reputation, the peace of the whole Union are thus continually at the mercy of the prejudices, the passions, and the interests of every member of which it is composed. Is it possible that foreign nations can either respect or confide in such a government?

The Federalist No. 22 (Alexander Hamilton). Thus this Court has had the power to review state court decisions construing treaties since the founding. *See* Judiciary Act of 1789, § 25, 1 Stat. 73, 85-86.

This Court may lack the power to enforce compliance by the states with a US treaty where the treaty is not self-executing and Congress has not enacted implementing legislation. *See, e.g., Medellín,* 552 U.S. at 504-05. But that difficulty does not exist here. Where this Court *can* act to prevent states from causing the United States to violate a treaty, it *should* act.

The Convention is one of several private international law conventions that facilitate international judicial cooperation but rarely, if ever, come to the attention of the public or of lawmakers. But disagreements about the correct construction of the Convention can give rise to serious conflicts between the United States and other states and can prejudice US litigants. The clearest example is the case of Russia, which for almost twenty years has refused to execute requests for service under

the Convention emanating from the United States because of a disagreement about the permissibility of the US position on charging a fee for executing requests for service of process emanating from abroad. *See, e.g., Delex Inc. v. Sukhoi Civil Aircraft Co.*, 372 P.3d 797, 801 (Wash. Ct. App. 2016) (noting Russia's refusal). This creates difficulties for US plaintiffs, especially considering Russia's objections under the Convention to service by alternate means. This Court should grant review in order to prevent such frictions from prejudicing US litigants who need to serve process in states that have objected to service of process by postal channels. And it should go without saying that the United States has its own strong interest in honoring its treaty obligations. The Court should grant review to vindicate that interest against a state court that has plainly misconstrued a US treaty.

CONCLUSION

For these reasons, the petition should be granted.

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