No. 21-

IN THE

Supreme Court of the United States

RAYMOND BENITEZ, individually and on behalf of all others similarly situated,

Petitioner,

v.

THE CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY, d/b/a Carolinas HealthCare System, d/b/a Atrium Health,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In relevant part, a federal statute—the Local Government Antitrust Act of 1984—provides antitrust immunity from private damages actions against "local government[s]," a term the statute defines as "(A) a city, county, parish, town, township, village, or any other general function governmental unit established by State law," or "(B) a school district, sanitary district, or any other special function governmental unit established by State law in one or more States." 15 U.S.C. §34(1). The question presented is:

> Can a multibillion-dollar "hospital authority" that operates in multiple States in a manner indistinguishable from private hospitals be a "local government" for purposes of the Local Government Antitrust Act of 1984?

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

RELATED PROCEEDINGS

There are no related proceedings.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Raymond Benitez, individually and on behalf of all others similarly situated, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The decision of the court of appeals (Pet. App. 1a-28a) is reported at 992 F.3d 229. The decision of the district court granting the motion for judgment on the pleadings (Pet. App. 29a-43a) is not published in the *Federal Supplement* but is available at 2019 WL 1028018. The decision of the district court granting the renewed motion for judgment on the pleadings (Pet. App. 44a-46a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on March 23, 2021. This petition is timely filed under this Court's March 19, 2020 order, which extends the deadline to file any petition for a writ of certiorari to 150 days from the date of the lower court judgment, and remains in effect in this case pursuant to this Court's July 19, 2021 order. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

15 U.S.C. §34 provides:

§34. Definitions applicable to sections 34 to 36

For purposes of sections 34 to 36 of this title—

(1) the term "local government" means—

(A) a city, county, parish, town, township, village, or any other general function governmental unit established by State law, or

(B) a school district, sanitary district, or any other special function governmental unit established by State law in one or more States,

(2) the term "person" has the meaning given it in subsection (a) of the first section of the Clayton Act, but does not include any local government as defined in paragraph (1) of this section, and

(3) the term "State" has the meaning given it in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

15 U.S.C. §35 provides in relevant part:

§35. Recovery of damages, etc., for antitrust violations from any local government, or official or employee thereof acting in an official capacity

(a) Prohibition in general

No damages, interest on damages, costs, or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from any local government, or official or employee thereof acting in an official capacity.

* * *

15 U.S.C. §36 provides in relevant part:

§36. Recovery of damages, etc., for antitrust violations on claim against person based on official action directed by local government, or official or employee thereof acting in an official capacity

(a) Prohibition in general

No damages, interest on damages, costs or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) in any claim against a person based on any official action directed by a local government, or official or employee thereof acting in an official capacity.

* * *

INTRODUCTION

Respondent is a healthcare enterprise called Atrium Health that stretches across several cities and counties in multiple States and brings in several billion dollars in annual revenue. The Fourth Circuit nonetheless held that Atrium is a "local government" under the Local Government Antitrust Act of 1984 (LGAA), 15 U.S.C. §§34-36, which is a federal law that immunizes local governments from federal antitrust damages actions.

The court of appeals' interpretation of the LGAA's definition of "local government" is in direct conflict with the Tenth Circuit's, which previously held that a healthcare entity in Oklahoma sharing all the relevant features of respondent's operation is *not* a local government for purposes of the Act. The Fourth Circuit concluded that Atrium meets the LGAA's definition of "local government" even though it effectively

has no powers or rights different from those available to a private hospital. Examining the criteria that actually matter, the Tenth Circuit has reached the precisely opposite result, and this Court's attention is needed to resolve this square split.

Moreover, the Fourth Circuit's decision is wrong. The statute's plain text, as well as the structure and legislative history of the Act, refute the lower court's view of the LGAA's protections. "In settling on a fair reading of a statute," the Fourth Circuit should have "consider[ed] the ordinary meaning of [the] defined term"—local government—"particularly [given] there is dissonance between that ordinary meaning and the reach of the definition." *See Bond v. United States*, 572 U.S. 844, 861 (2014). The Fourth Circuit somehow believed that respondent—the second largest public health system in the United States, with a present presence in three States—is a "special function governmental unit" akin to "a school district" or "sanitary district." Pet. App. 16a-17a. But companies that operate across any recognizable municipal or state lines at their own choosing cannot possibly be "local governments" under any intelligible meaning of that term, and there is no reason to stray from common sense.

This Court instructs judges not to get lost in contextless contemplation of the words of a definition and "forget that we ultimately are determining the meaning of [a] term" that has its own "ordinary meaning." *Leocal v. Ashcroft*, 543 U.S. 1, 11 (2004). That is why driving drunk is not a "crime of violence" despite Congress's confusing definition of that term. *Id.* at 12-13. Nor is a criminal battery based on *de minimis* touching a "violent felony," even though some such state battery statutes fall within Congress's broad

definition of that term. *Johnson v. United States*, 559 U.S. 133, 140 (2010). So too, a multibillion-dollar firm with far-flung operations throughout multiple States is not a "local government." As these cases and the decision below show, lower courts have struggled with this interpretive principle, and this Court should clarify that it meant what it said in these cases.

Finally, this case is the perfect vehicle to address these complex questions of statutory interpretation regarding the important question presented. First, the healthcare entities that were sued in the Fourth and Tenth Circuits share unusually similar features, which both courts considered in coming to their opposing decisions. Second, another court has already decided that the underlying allegations have merit. Third, respondent's anticompetitive behavior surrounds an essential service that customers often do not have the option to forgo, and absent this Court's intervention, future "hospital authorities" in other States can be expected to follow the lead set here and engage in anticompetitive behavior knowing they are safe from damages actions. Fourth, and relatedly, private damages actions are essential to antitrust enforcement, and the Fourth Circuit's opinion will necessarily affect the ability to keep other multibillion-dollar enterprises from violating the antitrust laws.

STATEMENT

I. Statutory Background

Congress enacted the LGAA to protect taxpayers from antitrust judgments against their local governments after a series of decisions from this Court led to a boom in antitrust actions against municipalities.

In a series of cases beginning with *Parker v. Brown*, 317 U.S. 341 (1943), this Court held that, based on "principles of federalism and state sovereignty," it would not "construe the Sherman Act as applying to the anticompetitive conduct of a State acting through its legislature." *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 38 (1985). This doctrine places most state action beyond the reach of the Sherman Act, including many actions undertaken by private entities or state agencies that are "required by the State acting as sovereign." *Goldfarb v. Va. State Bar*, 421 U.S. 773, 790 (1975).

When the actions of someone other than the State are at stake—including state agencies or authorities like a state-created legal bar (*e.g.*, *Goldfarb*, 421 U.S. at 790) or board of dental examiners (*e.g.*, *N.C. State Bd. of Dental Exam'rs v. FTC*, 574 U.S. 494 (2015))—this immunity applies only if the allegedly anticompetitive actions can be traced back to the State itself. Under the now-governing test, a defendant other than the State is only immune if it (1) "acted pursuant to a 'clearly articulated and affirmatively expressed … state policy," that was (2) "'actively supervised' by the State." *Hallie*, 471 U.S. at 39 (quoting *City of Lafayette v. La. Power & Light Co.*, 435 U.S. 389, 410 (1978) (plurality)).

Although some version of this state-action immunity has been around since the 1940s, this Court only made clear in 1978 that this antitrust immunity does *not* apply to sub-state, municipal-level entities like cities, counties, and towns. *See Lafayette*, 435 U.S. at 411-12. Indeed, the test described above—which this Court eventually formalized for cases involving quasi-public actors in *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105-06 (1980)—was initially created to test whether a municipality could claim immunity after its argument that it was "automatically" exempt from the Sherman Act was rejected. *Lafayette*, 435 U.S. at 410-12.

This Court later decided that, although municipalities claiming state-action immunity had to show that their allegedly anticompetitive actions were taken pursuant to a clearly articulated *state* policy to displace competition, they did not need to satisfy the "active supervision" requirement applicable to other actors—including state-level agencies. *See N.C. State Bd. of Dental Exam'rs*, 574 U.S. at 506-11. But even that limitation was not clarified until 1985, and the years after the plurality decision in *Lafayette* thus saw a major surge in antitrust litigation targeting municipal-level actors. *See, e.g.*, *Cmty. Commc'ns Co. v. City of Boulder*, 455 U.S. 40, 52-56 (1982) (applying *Midcal* test even to "home rule" municipality in Colorado with full authorities of state legislature).

Congress responded in 1984 with the LGAA. The House Committee on the Judiciary, which drafted the legislation, explained that the statute was enacted "in response to concern with Supreme Court decisions … that appear to have limited the extent that antitrust immunity applicable to States will be accorded to local

governments." H.R. Rep. No. 98-965, at 2 (1984) (House Report). "These decisions ha[d] spawned an increasing number of antitrust suits, and threatened suits, that could undermine a local government's ability to govern in the public interest." *Id.* Congress's solution was to immunize local governments from damages in antitrust suits whenever "they act within their authority, dispensing with the test in *Community Communications Co. v. City of Boulder* that a local government act in every instance pursuant to a 'clearly articulated and affirmatively expressed' state policy." *Id.* (citation omitted).

Thus, the structure of the LGAA demonstrates an effort to essentially recreate the scheme of state-action immunity at a lower level of government—with municipalities filling the spot that the States fill under *Parker*. Section 35 provides that "[n]o damages, interest on damages, costs, or attorney's fees may be recovered … from any local government, or official or employee thereof acting in an official capacity," mirroring the absolute immunity applicable to the States under *Parker*. 15 U.S.C. §35(a). Section 36 then provides that damages will be equally unavailable in suits "against a person" of any kind "based on any official action directed by a local government, or official or employee thereof acting in an official capacity." *Id.* §36(a). This mirrors the state-action immunity available to private actors and quasi-public state agencies when their actions are "directed by" a state government under the *Midcal* test. *See* House Report 21-22 (explaining that test like *Midcal* would apply for continuing activities putatively authorized by municipal governments).

The definition of "local government" under the LGAA is consistent with this structural approach.

Section 34 defines all "local government[s]" as "unit[s] established by State law." 15 U.S.C. §34(1). It further contemplates that States may establish two kinds of local governments: "(A) a city, county, parish, town, township, village, or any other general function governmental unit," or "(B) a school district, sanitary district, or any other special function governmental unit." *Id.* The parallelism demonstrates Congress's understanding that governmental units should all share the same basic features, while being distinguished by whether they were created to serve the "general" or "special" purposes of the relevant local citizens. The legislative history thus explains that "States or their agencies with state-wide jurisdiction" are excluded because they are not "political subdivisions" of the State and so receive whatever immunity they may or may not have "directly from the 'state action' doctrine." House Report 19.

In contrast, the kind of "political subdivisions" contemplated by the statute "have a geographic jurisdiction that is not contiguous with, and is generally substantially smaller than, that of the State that established it." House Report 20. Indeed, the Committee went on to list other kinds of geographically constrained, special-purpose subdivisions like the "school district" and "sanitary district" that appear in the statutory text: On its view, "included within the definition are planning districts, water districts, sewer districts, irrigation districts, drainage districts, road districts, and mosquito control districts," as well as the kinds of "regional planning boards, environmental organizations, or airport or port authorities" that have a similar geographic constraint but "may be established in two or more States" simultaneously. *Id.* at 19-20.

The no-damages solution of the LGAA was driven by the concern that antitrust suits could impose punitive costs on taxpayers. The Committee emphasized testimony that,

> given the potential damage awards to which localities are now subject, a judgment could possibly 'bankrupt' a municipality, or at a minimum, severely restrict a local government's capacity to provide essential services. In addition, … payment of any antitrust judgment would ultimately be drawn from the 'general revenues,' thus shifting the burden of the punitive damage award (in the form of threefold damages) from the local officials to the 'innocent' taxpayers—a most misdirected and inequitable result.

House Report 10-11 (footnote omitted). The attorney for Lake County, Illinois—which was then under suit—explained that even the $29 million antitrust judgment then sought against it would eliminate the county's cash reserves almost twice over and take the taxpayers 70 years to pay without compromising essential services or imposing a huge assessment on the average taxpayer. *Id.* at 10 n.17.

The Committee also emphasized the risk that such suits would leave local governments afraid to *regulate* in the public interest. The Committee pointed to testimony about

> the in terrorem effects of … antitrust suits … on localities and their officials …. [and] the potential dislocations confronting governmental operations should an obstructionist plaintiff threaten a local government with an

> antitrust suit simply because he disagrees with a regulatory decision. Such threats could paralyze governmental decisionmaking or divert it from the course elected officials believe to be in the public interest. Particular concern was expressed about the ability of local governments to continue to attract qualified persons for elected office in the face of potential liability exposure.

House Report 11. The Committee thus resolved to treat municipalities like the States for purposes of immunity from damages suits, while leaving state-action immunity doctrine otherwise unchanged. *See id.* at 2, 21-22.

Nothing in the statute discusses or contemplates immunity for corporations or corporate "authorities" created by municipalities themselves (rather than States). But the structure of the Act and legislative history suggest that, if they were contemplated at all, they would be covered only if their actions were "directed by" a municipal government under the same test that applies to other "person[s]" under 15 U.S.C. §36. Just like with state-action doctrine, absolute immunity was available only to the municipal government itself.

II. Procedural History

1. This petition arises from an antitrust suit against Atrium Health, the respondent, which is the dominant healthcare provider across wide swaths of the American Southeast. Atrium was initially created in 1943 as the Charlotte-Mecklenburg Hospital Authority, with the goal of providing hospital services to Charlotte residents. C.A.J.A.109. But it has grown

into a much different and much larger entity since. Over the seven intervening decades, Atrium has transformed itself into "the largest healthcare system in North and South Carolina" and "the second largest public health system in the United States." C.A.J.A.12, 30, 109.

Atrium achieved this growth largely by acquiring additional hospitals and other facilities across North Carolina and then South Carolina. Atrium also recently merged with Navicent Health, a Georgia hospital system, acquiring seven more hospitals in the distant Macon, Georgia area and surrounding counties. Accordingly, its website now boasts that it provides care "throughout the Southeast, from the Carolinas to Georgia." Atrium Health Navicent, *About Us*, https://tinyurl.com/std9ssjw (last visited Aug. 19, 2021). This includes "70,000 teammates serving patients at 40 hospitals and more than 1,400 care locations." Atrium Health, *About Atrium Health*, https://tinyurl.com/444mjax3 (last visited Aug. 19, 2021); *see also* C.A.J.A.117. Nearly two-thirds of those locations are outside the Charlotte metropolitan area, C.A.J.A.117, and the Navicent acquisition grows that proportion larger still.

Respondent changed its name to the Carolinas HeathCare System, and then to "Atrium Health," in order to "reflect[] [its] transformation" from a local hospital to "a healthcare system with a regional footprint and national profile." C.A.J.A.146. According to Atrium, it was "important to have a name that doesn't limit the organization to a specific geographic area." C.A.J.A.152. As of a few years ago, Atrium operated in seven distinct regional areas, with over $11 billion in

net operating revenue. *See* Atrium Health, *2018 Annual Report* 63-64 (2018), https://tinyurl.com/qo8h7nd.

Atrium used its market power as the dominant healthcare provider in the region to impose so-called "anti-steering provisions" in its insurer contracts, requiring insurers to use Atrium's care networks even when they cost more than comparable providers in the area, thus keeping prices up and competition down. In 2016, the Antitrust Division of the United States Department of Justice and the Attorney General of North Carolina sued Atrium for using anti-steering restrictions that raise customer prices and entrench its monopoly. *See* Complaint, *United States v. Charlotte-Mecklenburg Hosp. Auth.*, No. 3:16-cv-00311-RJC-DCK (W.D.N.C. June 9, 2016). After petitioner initiated this private action, Atrium settled the government case and has now abandoned the practice of demanding anti-steering provisions from insurers, apparently recognizing that it raised the serious prospect of antitrust liability. *See United States v. Charlotte-Mecklenburg Hosp. Auth.*, 2019 WL 2767005 (W.D.N.C. Apr. 24, 2019).

2. Because the government frequently does not seek damages in its antitrust suits, and indeed did not in its case against Atrium, the Sherman Act affirmatively encourages private litigants to bring their own suits, giving preclusive effect in any such suit to judgments obtained by the government. *See* 15 U.S.C. §16(a). Private damages actions help to deter future violations; indeed, in the absence of the threat of damages, defendants could continue running the Sherman Act's red lights, confident that the only consequence of being caught will be an order not to do so again. Petitioner thus sought to supplement the efforts of the

United States and North Carolina by filing a private class action against Atrium on February 28, 2018.

The named plaintiff, Raymond Benitez—petitioner—sued as a "representative of persons residing in the Charlotte Combined Statistical Area making direct payments for general acute care inpatient procedures to [Atrium]." C.A.J.A.20. Direct payments from patients like petitioner were directly inflated by the higher overall cost that Atrium maintained for its services when Atrium was using its anti-steering provisions, and it was entirely separate from the (higher) costs that petitioner's insurer would also have paid for its portion of the bill. *See* C.A.J.A.20 (explaining coinsurance).

Atrium moved for dismissal on multiple grounds, including that it is immune from damages as a "local government" under the LGAA. The district court agreed, granting judgment on the pleadings to respondent under Federal Rule of Civil Procedure 12(c). *See* Pet. App. 29a-46a. The Fourth Circuit affirmed.

The court of appeals rejected petitioner's textual argument that Atrium could not be a *local* government. Despite acknowledging the "common-sense appeal" of viewing Atrium as anything *but* local, given that it "operate[d] in 47 different locations spread across North and South Carolina, with nearly two-thirds of those locations being located outside the Charlotte metropolitan area" and "plans to open in Georgia," the Fourth Circuit nonetheless held that "the language of the [LGAA] does not support" petitioner's argument. Pet. App. 3a, 24a-26a (quotation marks omitted). Even though the court recognized that there is nothing "local" about Atrium, it

nevertheless held that Atrium qualifies as a "special function" local governmental "unit." *Id.* at 18a-23a, 26a.

The Fourth Circuit also rejected petitioner's argument that entities like Atrium cannot be local "governmental unit[s]" if they lack any of the features of local governments. Pet. App. 14a-17a. Petitioner had explained that under the correct rubric, applied by the Tenth Circuit, Atrium could not be a "special function governmental unit." The Tenth Circuit emphasized two factors in answering this question regarding a public-trust hospital in Oklahoma: (1) whether liability for damages would have fallen on taxpayers; and (2) whether the hospital was immune from damages under state law in the way many governmental tortfeasors are. *See Tarabishi v. McAlester Reg'l Hosp.*, 951 F.2d 1558, 1566-67 (10th Cir. 1991). Neither was true there, and neither is true here. The Fourth Circuit nonetheless "reache[d] a different result than" the Tenth Circuit in "*Tarabishi*." Pet. App. 24a.

REASONS FOR GRANTING THE WRIT

I. The Fourth Circuit's Decision Creates A Square Split With The Tenth Circuit On The Question Presented.

The Fourth Circuit held that Atrium is a local government under the LGAA and thus immune from damages liability in federal antitrust actions. The Tenth Circuit previously held that an Oklahoma healthcare entity of a remarkably similar character to respondent was *not* a local government under the LGAA, rejecting arguments indistinguishable from those that the Fourth Circuit accepted in this case. *See Tarabishi*,

951 F.2d at 1566-67. This Court should grant the petition to resolve the circuit disagreement.

In *Tarabishi*, an Oklahoma hospital argued that it should be immune because it "was formed as a trust for furtherance of public functions under" state law. 951 F.2d at 1565 n.6. Likewise, "[t]he Declaration of Trust which created the Hospital stated that the Hospital was created for the benefit of the city of McAlester and that the purpose of the trust was to provide hospital and public health services to the residents of McAlester." *Id.* And that hospital had trustees who were "public officers, appointed by the mayor of McAlester," and who had to "take the oath of office required of elected public officials," with meetings "subject to the open meeting laws like other public boards and commissions." *Id.* The Tenth Circuit rejected these arguments by focusing on the key indicia of a "governmental unit."

First, and perhaps most importantly, the court emphasized that the taxpayers in McAlester were not liable for any of the hospital's debts. *See Tarabishi*, 951 F.2d at 1566. A "significant consideration" under the LGAA, according to the Tenth Circuit, "is where liability for an antitrust damage award will actually fall, in light of the LGAA's obvious concern to limit the imposition of treble damage awards on taxpayers." *Id.* Because the state law creating the public-trust hospital in *Tarabishi* made "the City of McAlester … clearly not liable for any damage award made against the trust," the court concluded that "the LGAA's concern about imposing unfair burdens on the taxpayers [wa]s not implicated." *Id.*

The Fourth Circuit rejected this reasoning, finding that the Tenth Circuit, "like [petitioner], places

significant emphasis on the Act's legislative history." Pet. App. 23a. And although the Fourth Circuit found that such "argument might be persuasive" based on "the Act's legislative history," *id.* at 15a, the court ultimately rejected the idea that it is relevant whether the burden of paying damages would ultimately fall on local taxpayers.

Second, the Tenth Circuit in *Tarabishi* emphasized that state law distinguished between entities like the public-trust hospital and a municipality or other conventional governmental unit for purposes of tort immunity. The "clear exclusion" of the hospital from the State's immunity law "suggest[ed] that the Oklahoma legislature at the time did *not* view public trust hospitals as entities comparable to municipalities, school district[s], or counties," so the Tenth Circuit concluded that the hospital "enjoy[ed] no immunity from damage claims under the LGAA." 951 F.2d at 1566-67.

The Fourth Circuit rejected this consideration, too. The court "disagree[d]" that a hospital authority like Atrium must be akin to the exemplars in the LGAA's definition of "any other special function governmental unit" to be one. Pet. App. 15a-17a. Rather, according to the court, a health authority like Atrium is a "special function governmental unit" regardless of the fact that it does not have "the corresponding power to tax" or "immunity from tort liability" common to a "school district" or "sanitary district." *Id.* at 16a.

The court below emphasized that Atrium was "'established by' North Carolina law," and that the "legislative purpose" of the state law on which Atrium was founded is "to protect the public health, safety, and welfare, including that of low income persons, … a

public purpose." Pet. App. 18a, 21a (citation omitted); *see also id.* at 18a, 20a-21a (repeatedly emphasizing importance of hospital's "public purpose" to benefit public health, safety, and welfare). This is *squarely* contrary to the Tenth Circuit's reasoning and holding, as the hospital in *Tarabishi* likewise emphasized that it was "formed as a trust for furtherance of public functions." 951 F.2d at 1565 n.6.

The Fourth Circuit also stressed that North Carolina's "Hospital Authorities Act specifically defines a 'hospital authority' as 'a public body and a body corporate and politic.'" Pet. App. 22a (citation omitted). Accordingly, the Fourth Circuit viewed it as extremely significant that North Carolina law regarded Atrium as having been "created by the City of Charlotte, pursuant to statute, to provide public healthcare facilities for the benefit of the municipality's inhabitants." *Id.* at 21a (quoting *DiCesare v. Charlotte-Mecklenburg Hosp. Auth.*, 852 S.E.2d 146, 161 (N.C. 2020)). But, again, the Tenth Circuit rejected these same features of the Oklahoma hospital in *Tarabishi*—which was likewise "created" by and "for the benefit of the city of McAlester," for "the purpose of … provid[ing] hospital and public health services to the residents of McAlester." 951 F.2d at 1565 n.6.

Finally, the Fourth Circuit emphasized that hospital authorities are "governed by a Board of Commissioners, whose members are appointed by the mayor or chairman of the county commission." Pet. App. 19a (quoting *DiCesare*, 852 S.E.2d at 149). It was thus important to the court that "the mayor of Charlotte appointed eighteen individuals to serve as commissioners" of Atrium, with "the mayor having maintained the authority to remove commissioners," and that Atrium

"is subject to annual audits by the mayor or the chairman of the county commission … [,] to the Public Records Law, and to regulation by the Local Government Commission." *Id.* at 20a-21a (quoting *DiCesare*, 852 S.E.2d at 161). These features, in addition to the ones quoted above, were the "foundation" for the court to find that respondent is a "special function governmental unit" under Section 34(1)(B). *See id.* Once again, this directly conflicts with the Tenth Circuit's decision, because the Oklahoma hospital's officers were likewise appointed and removable by the mayor and "subject to the open meeting laws like other public boards and commissions." *Supra* p.16. Given that regimes for entities like "hospital authorities" will at least vary somewhat from State to State, it is hard to imagine two cases where the facts are so similar, and the two holdings thus so at odds.

The Fourth Circuit itself noted that its decision "is seemingly at odds" with the Tenth Circuit's. Pet. App. 23a. But with very little explanation, the court—likely to protect its published and thus binding opinion from review in this Court—attempted to cast its "holding [as] not inconsistent" with *Tarabishi*. *See id.* at 24a. That is hard to understand, given the Fourth Circuit's rejection of the two reasons given by the Tenth Circuit for coming to the opposite conclusion, and, in turn, the Tenth Circuit's rejection of the considerations relied on below. Accordingly, there is no denying the square split, and a better opportunity to resolve the disagreement over the meaning of this important statute is unlikely to arise.

II. Certiorari Is Warranted Because The Fourth Circuit's Decision Is Wrong.

This Court's intervention is also necessary because the Fourth Circuit's decision is wrong, and should not become a model for other hospital authorities in other States to follow.

Indeed, the Fourth Circuit's holding that Atrium qualifies as a "local government" for purposes of the LGAA because it is a "special function governmental unit" within the meaning of 15 U.S.C. §34(1)(B) fails in two separate respects. First, Atrium is in no way "local": Atrium's geographic scope now spans widely dispersed metropolitan areas across the Southeastern United States, and it lacks any connection *at all* to the citizens in most of the areas where it operates. The Fourth Circuit failed to consider the ordinary meaning of a defined term—"local government"—and instead got lost in the less-than-clear definition provided in the statute, as other courts of appeals have repeatedly done despite this Court's direction. Second, Atrium is in no way a "governmental unit": It is a non-profit business entity that lacks any of the hallmarks of a traditional government and operates indistinguishably from a private firm. This Court should grant the petition to resolve these statutory interpretation issues that the lower courts continue to struggle with.

A. A Multibillion-Dollar Entity Spread Across Several States Is Not A "*Local* Government."

"In settling on a fair reading of a statute, it is not unusual to consider the ordinary meaning of a defined term, particularly when there is dissonance between

that ordinary meaning and the reach of the definition." *Bond*, 572 U.S. at 861.

1. Fundamentally, the underlying term that Congress defined in 15 U.S.C. §34(1) is "local government." That term has its *own* ordinary meaning, and the institutions it brings to mind look nothing like respondent. Atrium's annual revenue is several times larger than the entire City of Charlotte, and none of it is derived from taxes. *See supra* pp.11-12. And unlike, say, the local government of Charlotte or Mecklenburg County, Atrium does not provide services solely within any defined geographic borders, or restrict its aspirations to accommodating the local citizens it ostensibly exists to serve and represent. *Id.* Indeed, Atrium doesn't hold itself out as a local government in any other context—it even changed its name to avoid limiting itself "to a specific geographic area." C.A.J.A.152. It simply blinks reality to assert that, when the citizens of Macon, Georgia go to their local emergency room, they are interacting with a "local government" located in Mecklenburg County, *North Carolina*—a county to which the most efficient route by car is over 300 miles, traversing a third, entirely separate State.

This Court has expressly endorsed the interpretive principal that most easily resolves this case, and yet it is one that the lower courts (like the court below) continue to struggle with. That simple proposition is this: Rather than getting lost in the technicalities of a difficult definition—and particularly a federal-law definition that needs to account for possible variations across state laws—"an unclear definitional phrase may take meaning from the term to be defined." *United States v. Stevens*, 559 U.S. 460, 474 (2010)

(citing *Leocal*, 543 U.S. at 11); *see also United States v. Castleman*, 572 U.S. 157, 164 (2014) (same).

Indeed, the parallels between this case and *Leocal*—the foundational case for this canon of interpretation—are striking. In *Leocal*, this Court confronted the question whether a state offense of driving while intoxicated is a "crime of violence" within the meaning of 18 U.S.C. §16. 543 U.S. at 6-7. By focusing on the notoriously confounding language Congress used to define "crime of violence," rather than that term itself, courts of appeals had been misled into holding that drunk driving was such a crime because it could be said to involve a "substantial risk that physical force against the person or property of another may be used in the course of committing the offense." *Id.* at 5-7 (quoting 18 U.S.C. §16(b)). And yet this Court *unanimously* ruled drunk driving out of this definition by refusing to "forget that we ultimately are determining the meaning of the term 'crime of violence,'" and recognizing that the "ordinary meaning" of that underlying term "suggests a category … that cannot be said naturally to include DUI offenses." *Id.* at 11.

So too here. Whatever Congress meant by "special function governmental unit," it was defining the term "local government," and that term "suggests a category … that cannot be said naturally to include," 543 U.S. at 11, multistate megafirms like respondent.

Leocal is not the only such example. This Court applied the same interpretive principle in *Johnson v. United States*—another case involving a federal-law definition that covers varying state-law regimes—to hold that a battery statute that criminalizes essentially all unwanted touching is not categorically a "violent felony" because, notwithstanding the broad

definition Congress gave to that term, it nonetheless called out for some limitations. *See* 559 U.S. at 140; *see also Yates v. United States*, 574 U.S. 528, 536 (2015) (knowingly disposing of undersized fish in order to prevent government from taking lawful custody and control of them did not violate Sarbanes–Oxley Act, even though fish are "tangible object[s]," because in context that term "is better read to cover only objects one can use to record or preserve information, not all objects in the physical world"); *Bond*, 572 U.S. at 848-51 (statute imposing criminal penalties for possessing and using a chemical weapon, which implemented a chemical weapons treaty, did not reach "unremarkable local offense" perpetrated by defendant, even though she "'knowingly' 'use[d]' a 'chemical weapon'" as required by the text of the definition); *Lopez v. Gonzales*, 549 U.S. 47, 53-55 (2006) (rejecting government's argument that state felony conviction for drug possession, treated as a misdemeanor under federal law, qualifies as an "illicit trafficking" predicate under the INA because doing so is "incoheren[t] with any commonsense conception of 'illicit trafficking,' the term ultimately being defined," and the "everyday understanding of 'trafficking' should count for a lot").

As these examples indicate, this seems to be a point that routinely escapes the lower courts, even though this Court has made it again and again. Believing that textualism requires it, those courts have very often focused on highly technical points about a statutory term's definition while giving no attention to the ordinary meaning of the *term itself*. To be sure, Congress is free to adopt counterintuitive definitions—"Humpty Dumpty used a word to mean 'just what he chose it to mean—neither more nor less,' and

legislatures, too, are free to be unorthodox." *Lopez*, 549 U.S. at 54 (brackets and citation omitted). But this Court has made clear that, before we deem Congress to have adopted a definition characterized by "incoherence with any commonsense conception of … the term ultimately being defined," there must be some clear indication that Congress has chosen this "unorthodox" route. *Id.* at 53-54. And that is not the approach the Fourth Circuit took below.

Indeed, the Fourth Circuit's contrary holding that a multibillion-dollar, multistate megafirm like Atrium is a "local government" does not pass the smell test, and nothing about Congress's definition of "local government" requires this Court to conclude otherwise. Atrium thus received a decidedly "unorthodox" result under the plain meaning of the "term ultimately being defined," without any good reason for reaching a result that is "just what the English language tells us not to expect." *See Lopez*, 549 U.S. at 53-54.

Notably, the Fourth Circuit's departure from the ordinary meaning of the defined term here is unusually vivid, because Atrium (unlike many hospital authorities) has taken the brazen step of expanding into *multiple States*. *See supra* pp.11-12. And treating a business like respondent as a "local government" runs afoul not just of the ordinary meaning of that term, but also other contextual clues in the statutory text as well. One of the shared features of "cities," "towns," and "school" and "sanitary districts" (and, for that matter, "mosquito control districts," *see supra* p.9) is that they are not just entities pursuing certain "general function[s]" or "special function[s]," 15 U.S.C. §34(1), but also the *places* in which those functions are pursued. A school *district* is a place in which the

residents come together to offer an education to the *local* children; a mosquito control *district* is a place in which they come together to control the *local* mosquitos. Just as it is not an intelligible use of the English language to describe a nationwide pest-control company as a mosquito control "district," it is likewise nonsense to talk about a hospital firm that operates in and expands into an ever-growing number of different States and counties of its own choosing as a "local" unit of government in any way akin to a school or sanitary "district."

2. Similarly, it is difficult to find a logical description of Atrium as a "local" entity of any kind; or to describe the area or authority of which it is a "unit" for purposes of 15 U.S.C. §34(1)(B). Atrium operates several hospitals in Macon, Georgia, *see supra* p.12, but it has no relationship to Georgia as a "unit" of the Georgia government, nor was it in any way "established by [Georgia] law." 15 U.S.C. §34(1). Atrium can operate in any State it wants, and while it is headquartered in Charlotte, it could theoretically exist in all fifty States at once. Only the *federal* government has a geography that large, and no governmental "unit" has that kind of geographic reach.

That is why the LGAA, by terms, requires that a "special function governmental unit" that operates in multiple States be established in *each* of the States in which it operates. And that is why respondent Atrium does not fall within the definition.

A "special function governmental unit" must be "established by State law in one *or more* States." 15 U.S.C. §34(1)(B) (emphasis added). That term encompasses regional transportation and other authorities *jointly* established by States that share metropolitan

areas. The text is clear enough, especially when contrasted with "general function governmental unit[s]" which are only "established by State law," *id.* §34(1)(A), but the legislative history confirms that the LGAA's reference to "special function governmental unit[s]" being "established by State law in one or more States," *id.* §34(1)(B), describes special entities formed at a metropolitan-area level that will sometimes span multiple States within the relevant, defined geographic zone. Again, "included within the definition," Congress explained, are the kinds of "regional planning boards, environmental organizations, or airport or port authorities" that have a similar geographic constraint to "planning districts, water districts, sewer districts, irrigation districts, drainage districts, road districts, and mosquito control districts," but "may be established *in two or more States*" simultaneously. *Supra* p.9 (emphasis added).

Examples might include WMATA (which spans the metro-D.C. area, including parts of Maryland and Virginia) or the Port Authority of New York and New Jersey. Each of these examples and those Congress identified requires the agreement of *each* of the relevant States. In contrast, Atrium was created in one county and then—like any other private firm—chose on its own to start expanding into and operating in other States *without* establishment by those States. Under the plain text of the definition, that fully excludes respondent from the LGAA.

Indeed, the contrary view would raise serious federalism concerns, as it would allow North Carolina law to create federal-law immunities for businesses operating in Georgia and vice versa. In cases presenting quite parallel questions of statutory interpretation,

this Court has stressed that such anti-federalism outcomes should generally be avoided in giving terms their ordinary meaning as well. This Court's "precedents make clear that it is appropriate to refer to basic principles of federalism embodied in the Constitution to resolve ambiguity in a federal statute," especially where "ambiguity derives from the improbably broad reach of the key statutory definition given the term … being defined; the deeply serious consequences of adopting such a boundless reading; and the lack of any apparent need to do so in light of the context from which the statute arose." *See Bond*, 572 U.S. at 859-60 ("insist[ing] on a clear indication that Congress meant to reach purely local crimes" regarding the reach of "chemical weapon," the term being defined there, "before interpreting the statute's expansive language in a way that intrudes the police power of the States").

Finally, treating Atrium as a "local" entity for the LGAA's purposes not only causes textual and logical mischief, but anomalous policy outcomes as well. The reason the LGAA makes sense is that when a geographically defined local government unit decides to displace competition in providing a service to residents, it is ultimately accountable to those residents for that choice. If a sanitary district wants to freeze out private firms that might provide services to residents of that district more cheaply, the residents of that district will pay for it, or they will use their political will to pursue a different outcome. But this scheme has no application to the residents of Macon, Georgia, who might be forced to contend with Atrium's anti-steering policies, or any other restraint of trade Atrium might invent in the future. Such an absurd result does nothing to advance Congress's goal in the

LGAA of allowing local governments to regulate within their local jurisdictions free from the fear of antitrust suits. *See supra* pp.10-11.

B. A Multibillion-Dollar Entity Spread Across Several States But Established Only By One Is Not A "Special Function Governmental Unit."

Helpfully, it is also clear that nothing about the definition of "local government" requires giving it the "unorthodox" meaning the Fourth Circuit adopted. *Lopez*, 549 U.S. at 54.

1. To begin, as just noted, the Fourth Circuit's rule ignores the statutory requirement that such units be "established by State law in one or more States." *Supra* pp.25-26. The natural reading of this language is that the entity can be established in one State, or established in more than one State, but not created in one State and then operating in all the others at its own election. And that is made extra clear in the legislative history, which identified "regional planning boards, environmental organizations, or airport or port authorities," which Congress contemplated "may be established *in two or more States*." *Supra* p.9 (emphasis added). At least one example in the actual statutory text—a "sanitary district," 15 U.S.C. §34(1)(B)—has this character as well.

2. Moreover, the Fourth Circuit was clearly wrong to think that hospital authorities have any powers or authorities that one would regard as unique to "special function governmental unit[s]."

As noted above, *see supra* pp.17-18, Atrium's public *purpose* does not distinguish it from the public-trust hospital in *Tarabishi*, and can of course be shared by

private non-profit hospitals. The Fourth Circuit did not identify any *consequence* of designating a hospital authority as "a public body and body corporate" with a "public purpose," in terms of the powers, liabilities, or requirements imposed. Indeed, North Carolina law imposes no substantive requirement that a hospital authority be "created to serve"—or that it be operated to serve—any special public interest. Charlotte could pass an ordinance designating Bank of America or any other important corporation with a headquarters there a "body politic and corporate" because it serves critical "public purposes," but that would not immunize such private firms from antitrust damages. Particularly because all such forms of antitrust immunity are to be narrowly construed, *see, e.g.*, *N.C. State Bd. of Dental Exam'rs*, 574 U.S. at 503-10, the stakes for granting immunity to an unsupervised entity that allegedly serves public interests under state law must be higher than that.

And the public *powers* the court identified are equally undistinguishable from private hospitals. The Fourth Circuit suggested that hospital authorities have two such powers (revenue bonds and eminent domain), *see* Pet. App. 22a, but it made no effort to distinguish those powers from the powers of private businesses. And the truth is that they are exactly the same. Revenue bonds are the same kind of debt that a private entity can issue (*i.e.*, debt that is secured by the entity's revenue and *not* the full faith and credit of taxpayers).[1] And the "eminent domain" power

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[1] *See* N.C. Gen. Stat. §131E-26(a) (hospital authorities have power to issue revenue bonds); *id.* §159-94(a) ("The principal of

available to hospital authorities is the power to *ask someone else* to condemn property for it, something private parties can do as well.[2] *Stout v. City of Durham*, 468 S.E.2d 254, 256 (N.C. Ct. App. 1996) (municipality lawfully condemned property for use by a private developer to build "a shopping center known as 'New Hope Commons' containing approximately twenty stores" because it was for a public purpose).

3. Finally, although this Court has not yet further refined the meaning of "special function governmental unit," all statutory interpretation "begins with the text," and here there are a few key textual clues as to the limited meaning intended by that term. *Ross v. Blake*, 136 S. Ct. 1850, 1856 (2016).

First, under the well-known canon of *noscitur a sociis*, "words grouped in a list should be given related meanings." Antonin Scalia & Bryan A. Garner, *Reading Law* 195 (2012) (quoting *Third Nat'l Bank in Nashville v. Impac Ltd.*, 432 U.S. 312, 322 (1977)). That canon is relevant here because "any other special function governmental unit" comes at the end of a list of examples—"school district[s]" or "sanitary district[s]"—and also because the statute separates

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and interest on revenue bonds shall not be payable from the general funds of the State or the municipality[.]").

[2] *Compare* N.C. Gen. Stat. §40A-3(a) (certain *private* condemnors have power of eminent domain), *and id.* §40A-20 (they exercise this power by petitioning in superior court themselves), *with id.* §40A-3(c)(5) (hospital authorities exercise eminent domain pursuant to "the provisions of [Section] 131E-24(c)"), *and id.* §131E-24(c) (hospital authorities must obtain "a certificate of public convenience and necessity" from "the North Carolina Utilities Commission," and the *Commission* may then conduct condemnation proceedings).

"special function" and "general function" governmental units but still defines both as "governmental" units, so the Court ought attend to the core, shared features of cities, counties, towns, townships, villages, *and* school and sanitary districts in determining what makes a unit "governmental." 15 U.S.C. §34(1).

Certain features immediately recommend themselves as the core features of the listed "governmental" units. For one, each of these units serves a geographically defined set of residents from whom it almost always *raises taxes*—a point central to enacting the LGAA. *See supra* p.10. North Carolina empowers certain kinds of public hospitals to levy taxes. *See* N.C. Gen. Stat. §131E-7(a)(2) (municipal hospitals and hospital districts have this power). Hospital authorities like Atrium, though, cannot. *See id.* §131E-23.

Second, the statutory examples will tend to be viewed within the State that creates them as traditional governmental entities that are presumptively immune from tort liability, and who can only be sued as permitted by state law. If state law tends to view an alleged "special function" entity as *different* from municipalities in this regard—as presumptively liable just as any private corporation would be—that is an important clue that an entity is not really a governmental unit, as the Tenth Circuit has held. *See supra* p.17. And hospital authorities like Atrium, "*just like any other corporate employer*, are liable in tort for the[ir] negligent acts." *Sides v. Cabarrus Mem'l Hosp., Inc.*, 213 S.E.2d 297, 304 (N.C. 1975) (emphasis added). That is because in North Carolina "the operation of a public hospital is not one of the 'traditional' services rendered by *local governmental units*," and "it is common knowledge that hospitals derive

'substantial revenues' from daily room rents, nursing care, laboratory work, etc." *Id.* at 303-04 (emphasis added).

Third, these entities share a common relationship to the State. Towns, cities, counties, school districts, and sanitation districts are all *political subdivisions* of the State itself—they represent a geographically defined authority organized and created by the State, rather than a corporation or service provider organized entirely by a municipality or other subdivision. Again, the statute refers to special function governmental units as being "established by *State* law in one or more *States*." 15 U.S.C. §34(1)(B) (emphasis added). And the initial draft of the LGAA—which was not altered for any substantive reason—defined "local government" as including "special purpose *political subdivision[s]* of one or more States." *See Tarabishi*, 951 F.2d at 1564 & n.4 (emphasis added). Atrium is in no way so constrained.

Finally, recall that any activity a municipality or other governmental unit itself "direct[s]" is also immune from damages liability, whether carried out by the local government or not. *See* 15 U.S.C. §36(a). This would make immunity for a municipal government's own creations bizarre in two respects. First, it would mean that immunity was available not only when a municipality "direct[s]" an action, but also when it creates a separate, corporate entity and leaves it entirely unsupervised. And, worse, it would mean that any action *directed* by an entity that a municipality creates but does not supervise would also be immune. Atrium could direct its doctors to boycott competitors or engage in the most fragrantly anticompetitive behavior,

and not only would Atrium be immune from damages, but the boycotting doctors would be, too.

The Fourth Circuit rejected these textual clues, reasoning that treating Atrium as a "special function governmental unit" does not "diverge from the accompanying" terms "school district" or "sanitary district," and because not *all* school or sanitary districts have, for example, complete autonomy to tax residents. Pet. App. 16a-17a. But the important point here is how *North Carolina* law distinguishes its political subdivisions from other entities—remember, the LGAA's definition of local government looks to the "*State law*" to determine whether an entity is a "special function government unit." 15 U.S.C. §34(1)(B) (emphasis added). And that law distinguishes hospital authorities like Atrium from other kinds of *public hospitals*, which, as already noted, much more resemble general or special local governmental units in both (a) broad public powers like the ability to tax, obligate the citizenry for the payment of debts, and even to exercise eminent domain without having to involve a *separate* governmental entity—all things respondent cannot do—and (b) geographic limitation, which quite obviously does not constrain respondent. *Compare* N.C. Gen. Stat. §131E-7(a)(2) (municipal hospitals/hospital districts' power to levy taxes), *id.* §131E-7(a)(3) (municipal hospitals/hospital districts' power to issue general obligation bonds and notes with full faith and credit pledged), *and* §131E-10 (municipal hospitals/hospital districts' eminent domain power), *with supra* pp.29-30, nn.1-2 (hospital authorities cannot levy taxes, obligate citizens with revenue bonds, or exercise eminent domain).

III. This Case Is A Good Vehicle To Resolve The Important Question Presented.

This case is the perfect vehicle to answer the question presented because the split between the Fourth and Tenth Circuits involves healthcare entities that share unusually similar features under state law; the underlying antitrust claims are already established to have merit; the case involves anticompetitive behavior regarding an essential service that consumers often do not have the option to forgo; and private damages actions are essential to antitrust enforcement.

First, given the unusually similar natures of the Oklahoma and North Carolina authorizing statutes pursuant to which the hospital authorities were founded in each, and the considerations on which the Fourth and Tenth Circuits based their opposing conclusions, the split on the question presented is square. *See supra* pp.15-19. Indeed, in cases (like this one) involving federal-law definitions that must be read onto potentially varying state-law regimes, it is rare to find so precise a conflict. This is an unusually good vehicle for the question presented, and a better one is unlikely to arise.

Second, there is little dispute that the antitrust claims have merit. As set forth *supra* p.13, the United States and North Carolina jointly sued Atrium in 2016 based on the very allegations of anticompetitive behavior alleged in this case. Atrium attempted to dismiss the governments' claims, but the district court denied Atrium's motion. The court found, based on the same allegations here, that the governments had sufficiently alleged *both* "direct evidence of market harm … for a violation of 15 U.S.C. §1," *and* "the indirect method that [Atrium's] steering restraints are an

unreasonable restraint on trade." *United States v. Charlotte-Mecklenburg Hosp. Auth.*, 248 F. Supp. 3d 720, 730 (W.D.N.C. 2017).

Third, and relatedly, Atrium exercised its dominant market power to harm consumers where it matters most—essential healthcare services that vulnerable consumers do not have the option to forgo. There is always antitrust harm when consumers are deprived of competitive choices, even when the goods at issue are luxuries. But the harm is much more acute when the good or service is one people desperately need, and will accordingly buy no matter how inflated the price might be.

This is also an important issue because many States have very quasi-public health entities or authorities like Atrium, *cf. FTC v. Phoebe Putney Health Sys., Inc.*, 568 U.S. 216, 233-34 & n.9 (2013) (majority of States have public hospital authorities that are required "to obtain a certificate of need from state regulators" before they may "establish or significantly expand certain medical facilities, including hospitals"), and anti-steering rules are a pervasive way that dominant hospital systems with market power keep health care costs and insurance premiums high, and prevent the competitive market from working, *see* Anna Wilde Mathews, *Behind Your Rising Health-Care Bills: Secret Hospital Deals That Squelch Competition*, Wall St. J. (Sept. 18, 2018), https://tinyurl.com/6feyz8b4 ("Dominant hospital systems" throughout the United States "use an array of secret contract terms to protect their turf and block efforts to curb health-care costs," including "so-called anti-steering clauses that prevent insurers from steering patients to less-expensive or higher-quality health-care providers").

Fourth, the Fourth Circuit's opinion will necessarily affect the ability to keep other multibillion-dollar enterprises from violating the antitrust laws. It is quite common for the government to forgo seeking damages in antitrust actions, and the related enforcement proceedings here were no different. This is largely because the "United States relies on a combination of federal, state, and private enforcers to combat anticompetitive conduct," and it is the "[p]rivate enforcers" who "usually seek[] damages for any antitrust harms." *See* Directorate for Fin. & Enter. Affs. Competition Comm., Organisation for Econ. Coop. & Dev., *Relationship Between Public And Private Antitrust Enforcement* 2 (June 15, 2015), https://tinyurl.com/25f38nsc (footnotes omitted).

To ensure that private parties have an adequate economic incentive to undertake costly antitrust litigation, federal law authorizes the award of treble damages, plus attorneys' fees, to prevailing plaintiffs. 15 U.S.C. §15(a); *Hawaii v. Standard Oil Co. of Cal.*, 405 U.S. 251, 262 (1972). This "treble-damages provision … is a chief tool in the antitrust enforcement scheme," because the treble-damage threat creates "a crucial deterrent to potential violators." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 635 (1985). And that threat is essential. Recent data shows that private enforcers bring over *twenty times* the number of federal antitrust cases than the U.S. government is able to bring. *See* Admin. Office of the U.S. Courts, *Statistical Tables for the Federal Judiciary, Table C-2*: *U.S. District Courts—Civil Cases Filed, by Jurisdiction and Nature of Suit—During the 12-Month Periods Ending June 30, 2020 and 2021* (June 30, 2021), https://tinyurl.com/dhhzeydv (between June

2020 and June 2021, government brought 25 antitrust cases and private plaintiffs brought 534).

Petitioner does not doubt Congress's wisdom in protecting truly "local governments" from trebled-damages judgments, which would ultimately harm the local taxpayers. But this is not that case. The Court's attention is necessary to ensure the continued and essential private enforcement of the antitrust laws against multibillion-dollar, multistate megafirms like Atrium, which the United States relies on.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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