24-6986

ORIGINAL

In the Supreme Court of the United States

Michele Blakely, *Petitioner*

v.

CarMax Auto Superstores Inc., et al.,

ON PETITON FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE 10TH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This petition for a writ of certiorari is procured to determine and resolve significantly important jurisdictional matters that effect the administration of justice. Those jurisdictional matters concern federal District Courts' subject matter jurisdiction in removal actions and to confirm or vacate arbitration awards under the Federal Arbitration Act. In removal actions, federal District Courts' subject matter jurisdiction is granted when a federal question is presented on the face of the Plaintiff's petition (28 U.S.C. § 1331) or when the parties are diverse and the amount in controversy exceeds $75,000 (28 U.S.C. § 1332(a)). In removal actions based on federal diversity jurisdiction, pursuant to 28 U.S.C. § 1332(c)(1), a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.

The Federal Arbitration Act does not, in itself, grant federal subject matter jurisdiction simply because an FAA matter is presented before the court. This Court has held that federal courts may entertain an action brought under the FAA only if there is an "independent jurisdictional basis", "that means the applicant must identify a grant of jurisdiction… conferring access to a federal forum" *Badgerow v. Walters, 596 U.S. 1,4, 8 (2022)*. That holding further held that determining "whether an action brought under Section 9 or 10 has an independent jurisdictional basis" is by the "face of the application itself". *Id.*

The following questions presented for review will resolve conflicts of federal District Court's subject matter jurisdiction for removal actions pursuant to 28 U.S.C. § 1332(a), 28 U.S.C. § 1332(c)(1), 28 U.S.C. § 1441(b)(2) and jurisdiction to confirm or vacate arbitration awards:

1. **In removal actions involving multiple defendants, does a District Court have federal subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) when one defendant's citizenship is not plead in a notice of removal or known at the time of removal and prior to judgment?**
2. **In a removal action, does a District Court have federal subject matter jurisdiction when the amount in controversy cannot be exceeded because a request for special damages, which may exceed the jurisdictional amount, is prohibited without leave of the State court for diversity of citizenship purposes?**
3. **For diversity of citizenship purposes, is a corporation a citizen of every state in which it has incorporation status deeming it to have multiple states of incorporation or only the original state in which the corporation is incorporated?**
4. **Does a District Court have federal subject matter jurisdiction to confirm or vacate arbitration awards under the Federal Arbitration Act when diversity of citizenship is not pled, the amount of the award does not exceed the jurisdictional amount, and the application presents no federal question?**

PARTIES TO THE PROCEEDING

Petitioner is Michele K. Blakely

Respondents are CarMax Auto Superstores, Inc. and American Credit Acceptance, LLC

LIST OF PROCEEDINGS

1. **Blakely v. CarMax Auto Superstores Inc., et. al**
    i. Johnson County District Court of Kansas
    ii. Docket No.: 23-cv-2736
    iii. Consumer Credit
    iv. Date of Removal: June 16th, 2023

2. **Blakely v. CarMax Auto Superstores Inc., et. al**
    i. District Court of Kansas
    ii. Docket No.: 2:23-cv-02272-TC-ADM
    iii. Petition for Removal
    iv. Date of Judgment Entry: February 12th, 2024

3. **Blakely v. CarMax Auto Superstores Inc., et. al**
    i. Tenth Circuit Court of Appeals
    ii. Docket No.: 24-3034
    iii. Date of Judgment Entry: November 26th,2024
    iv. Date of Rehearing (Denial): January 6th, 2025

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The District Court of Kansas conferred its subject matter jurisdiction to decide whether to vacate or confirm an arbitration award under the Federal Arbitration Act based on the statutory provisions of 9 U.S.C. § 9. The opinion of the District Court further determined that because the parties' arbitration agreement states that any court having jurisdiction may confirm or vacate an arbitration award procured through the agreement, the District Court had subject matter jurisdiction to confirm or vacate the award. The District Court confirmed the arbitration award on February 12th, 2024 and dismissed the action with prejudice based on res judicata principles through its confirmation of the award. The District Court did not elaborate an opinion on its subject matter jurisdiction upon removal of the action from the Johnson County District Court. A timely appealed followed. Upon appeal, the Tenth Circuit Court of Appeals upheld the District Court's jurisdictional grounds and affirmed the dismissal of the action on November 26th, 2024 (App., 1).

JURISDICTION

On appeal from the District Court of Kansas, whose entry of judgment was February 12th, 2024, the Tenth Circuit Court of Appeals affirmed the District Court's judgment on November 26th 2024. A timely petition for rehearing was denied on January 6th, 2025 (App., 2). A writ of certiorari is timely as of April 6th, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions and statutes in this case are set out in the following:

- **28 U.S.C. § 1331**: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

- **28 U.S.C. § 1332(a)**: **(a)**The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—
  (1) citizens of different States;
  (2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;
  (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
  (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States
- **28 U.S.C. § 1332(c)(1)**: For the purposes of this section and section 1441 of this title— a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business
- **28 U.S.C. § 1441(b)(2)**: A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.
- **28 U.S.C. § 1446(a):** A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.
- **28 U.S.C. § 1446(b)(1):** A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.
- **28 U.S.C. § 1446(b)(2)(B):** Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.
- **28 U.S.C. § 1446(c)(2)(A)(ii)**: If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that—
  the notice of removal may assert the amount in controversy if the initial pleading seeks— a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and
- **28 U.S.C. § 1446(c)(2)(B)**: removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

- **9 U.S.C. § 9:** If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.
- **K.S.A 60-3703:** No tort claim or reference to a tort claim for punitive damages shall be included in a petition or other pleading unless the court enters an order allowing an amended pleading that includes a claim for punitive damages to be filed. The court may allow the filing of an amended pleading claiming punitive damages on a motion by the party seeking the amended pleading and on the basis of the supporting and opposing affidavits presented that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim pursuant to K.S.A. 60-209, and amendments thereto. The court shall not grant a motion allowing the filing of an amended pleading that includes a claim for punitive damages if the motion for such an order is not filed on or before the date of the final pretrial conference held in the matter.

Introduction

This case presents an indisputable conflict over significant jurisdictional questions; District Courts subject matter jurisdiction in removal actions and arbitration awards under the Federal Arbitration Act. This Court has held that District Courts are courts of limited jurisdiction and that they only hold judicial power where Congress has allocated such power statutorily. Without a statutory basis, the federal forum is closed, and federal courts lack jurisdiction to adjudicate civil disputes. Federal forums are opened to litigants when the court is presented with one of two circumstances of subject matter jurisdiction; federal question and diversity of citizenship. This Court has also held that the Federal Arbitration Act does not bestow federal question subject matter jurisdiction on federal courts; the court must have an independent

jurisdictional basis. In the proceedings below, the courts have far exceeded their judicial power which has adversely affected the Constitutional rights of the pro se petitioner.

Additionally, there has been a circuit split on how various Circuit courts interpret the diversity statute regarding corporation citizenship to confer subject matter jurisdiction in removal actions. The Fourth, Sixth, Seventh and Nineth Circuits have held that corporations only have two states of citizenship, while the Fifth and Eleventh Circuit holds that corporations have multiple states of citizenship. The statutory language has been construed in ways that defeat or confer subject matter jurisdiction. Thus, there lacks a jurisdictional standard in Congress' statutory intent on corporate citizenship in removal actions when such citizenship averment is a requisite in removal actions.

This action was initiated before the Johnson County District Court of Kansas predicated on violations of Kansas statutes. Blakely, Plaintiff/Petitioner, filed a complaint against the defendants American Credit Acceptance, LLC and CarMax Auto Superstores Inc. for violations of the Kansas Uniform Consumer Credit Code, Kansas Consumer Protection Act, and Kansas Fair Credit Reporting Act. The action was removed by one Defendant from the Johnson County District Court of Kansas to the United States District Court for the District of Kansas. One defendant pled in its removal petition that the action was removable pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1332(a), while the other did not plead subject matter jurisdiction at all. The district court's jurisdiction was conferred without question. Upon removal, CarMax Auto Superstores, Inc filed an answer and American Credit Acceptance, LLC filed a motion to dismiss with the federal district court. The motion to dismiss was based on res judicata and collateral estoppel principles which American Credit Acceptance, LLC annexed a previously unconfirmed arbitration award to the motion to dismiss. CarMax Auto Superstores, Inc. filed a motion to join

the motion to dismiss. The plaintiff's complaint does not mention an arbitration proceeding nor an award thereof. Subsequently, Blakely filed a motion to vacate the unconfirmed arbitration award disputing its validity under the Federal Arbitration Act and Kansas Arbitration Act. Thereafter, American Credit Acceptance, LLC filed a motion to confirm the arbitration award that was annexed to the motion to dismiss under the Federal Arbitration Act. The district court took judicial notice of the unconfirmed arbitration award and confirmed the arbitration award without converting the motion to dismiss into a summary judgment motion; therefore, depriving the plaintiff of due process. The district court notes that although the arbitration award was previously unconfirmed, its judgment to render the award confirmed allows the court to determine the preclusive effect of the complaint and dismiss the case with prejudice. Plaintiff filed a timely appeal. The Tenth Circuit Court of Appeals affirmed the erroneous judgment, denied plaintiff's motion to remand based on a lack of subject matter jurisdiction (Appx. 1), and denied a motion for rehearing en banc (Appx 2). No inquiry was made by the district court nor the Tenth Circuit into whether subject matter jurisdiction in fact existed. The district and Circuit court's judgment directly obstructs the Fifth Amendment rights of the plaintiff in which her property and effects are jeopardized by the erroneous judgment rendered without subject matter jurisdiction to do so.

This case easily satisfies the traditional criteria for granting review. The conflict is acknowledged, obvious, and entrenched. There has been an inconsistency on how the eleven circuit courts establish federal subject matter jurisdiction in civil matters and private arbitral disputes. The questions presented for review raise legal and practical issues of surpassing importance. Its correct disposition is essential to uphold and clarify Congress' legislative and statutory intent regarding subject matter jurisdiction in the federal forum. Because this case

presents an optimal vehicle for resolving these significant questions of federal law, the petition should be granted.

STATEMENT OF THE CASE

I. Removal Actions

a. Notice of Removal

Pursuant 28 U.S.C. § 1446(a), a defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal… containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action. The notice of removal shall be filed 30 days after a copy of the initial pleading is served on the defendant or defendants, 28 U.S.C. § 1446(b)(1). Not only must each defendant consent to or join in the removal of the action, 28 U.S.C. § 1446(b)(2)(A); each defendant shall have 30 days after service of the initial pleading to file the notice of removal, 28 U.S.C. § 1446(b)(2)(B). In this case, the record shows that only one defendant filed a notice of removal. The other defendant failed to allege jurisdiction by filing a separate notice of removal alleging a federal question or diversity of citizenship. The defendant that failed to aver jurisdiction has unknown citizenship evidenced by the record below. The only notice of removal submitted did not include both defendant's predication for jurisdiction. The notice of removal only portrays the citizenship of one defendant and a conclusory statement that there is a federal question presented on the face of the complaint. Just as plaintiffs must initially plead federal subject matter jurisdiction in a complaint/petition originally filed with a federal district court, filing a notice of removal requires defendants to allege the basis for federal subject matter jurisdiction, 28 U.S.C. § 1446(a). Federal district court subject matter jurisdiction is

granted by a showing of either a federal question on the face of the complaint or complete diversity of the parties with the amount in controversy exceeding $75,000. To access a federal forum based on diversity jurisdiction, the party must allege that the citizenship of the plaintiff and defendant are completely diverse. A lack of complete diversity "deprives the district court of original diversity jurisdiction over the entire action". *Exxon Mobil Corp. v. Allapattah Servs., 545 U.S. 546, 553, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005)*. Without a party asserting its federal jurisdictional basis, there is nothing upon which the district court can determine its subject matter jurisdiction over the removal action. Granting access to a federal forum absent a showing of complete diversity on the basis of 28 U.S.C. § 1332(a) would "allow the requirement of complete diversity to be circumvented" and "simply flout the congressional command." *Owen Equipment Erection Co. v. Kroger, 437 U.S. 365, 98 S.Ct. 2396 (1978)*. Thus, the lack of a notice of removal filed by one defendant, in which multiple defendants are involved, is not procedurally defective, but is jurisdictionally fatal. It has been a long-standing Supreme Court precedent that a notice of removal is jurisdictionally defective when the notice of removal does not show the parties were diverse when the plaintiff initiated the action in state court and when the defendant filed the notice of removal in federal court.

> A petition for removal which alleges the diverse citizenship of the parties in the present tense is defective, and if it does not appear in the record that such diversity also existed at the commencement of the action, the cause will be remanded to the Circuit Court with directions to send it back to the state court, with costs against the party at whose instance the removal was made. *Stevens v. Nichols, 130 U.S. 230, 9 S.Ct. 518 (1889)*.

A case is not removable from the state court, unless it appeared affirmatively in the petition for removal, or elsewhere in the record, that at the commencement of the action, as well as when the removal was asked. *M.C.L.M. Railway Co. v. Swan, 111 U.S. 379, 4 S.Ct. 510 (1884)*. The Eighth Circuit upheld this holding in *Reece v. Bank of N.Y. Mellon, 760 F.3d 771, 777 (8th Cir. 2014)*(finding removal defective because defendant's notice failed to specify party's citizenship

"when the action was commenced"). A rightful review of this case reversing the Circuit Court's order with directions to remand the action to state court properly adheres to statutory requirements, 28 U.S.C. § 1447(c)("if at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded"). The federal district court did not have jurisdiction to take cognizance of this case.

II. Federal Question Jurisdiction

American Credit Acceptance, LLC filed a removal petition asserting that a federal question was presented on the face of the plaintiff's complaint. The complaint merely mentions that the defendants made "several Truth In Lending Act violations", yet the claim and entitlement to relief is purely a matter of state statute which arose under K.S.A. 16a-2-302 and K.S.A. 16a-5-201(2), respectively. These Kansas statutes relate to the requirement of a supervised loan license to conduct supervised loans in Kansas and the entitlement to relief for such a violation thereof. For, "a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction, or effect [of federal law] upon the determination of which the result depends." *Shulthis v. McDougal, 225 U.S. 561, 569, 32 S.Ct. 704,706, 56 L.Ed. 1205 (1912)*(Where jurisdiction is claimed on the ground that there is a Federal question involved, it is not sufficient that jurisdiction may be inferred under averments, and the allegations showing the Federal question must be positive, and the Federal question must clearly appear). The district and Tenth Circuit Court of Appeals did not make a determination whether removal was granted based on federal question jurisdiction, but rather, conferred jurisdiction based on diversity.

III. Diversity Jurisdiction

a. Amount in Controversy

If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a); the sum demanded in good faith in the initial pleading shall be deemed to be the amount

in controversy, 28 U.S.C. 1446(c)(2). The removal petition for this case was solely constructed by American Credit Acceptance, LLC (App. 3). American Credit Acceptance, LLC alleged that because the complaint requested an undisclosed amount of punitive damages, such request causes the amount in controversy to be exceeded for diversity purposes (App. 3, pg. 3, ¶ 15). The amount in controversy in the Plaintiff's petition is $71,930.00 "plus punitive damages the court deemed just" (App. 3, pg. 3, ¶ 15).. The amount in controversy in a diversity case is the stakes that the plaintiff or defendant alleges, and provided the allegation is not false to a "legal certainty" the amount is taken as true for purposes of jurisdiction. *Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 276-77, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977).* In other words, "when the complaint includes a number, it controls unless [the plaintiff] recovering that amount [in the litigation] would be legally impossible. *Rising-Moore v. Red Roof Inns, Inc., 435 F.3d 813, 815-16 (7th Cir. 2006).* A federal court sitting in diversity applies the substantive law of the forum state. *Ace American Ins. Co. v. Dish Network, LLC, 883 F.3d 881,887 (10th Cir. 2018).* In Kansas, no claim of punitive damages shall be included in a petition unless the court enters an order allowing an amended pleading that includes a claim for punitive damages to be filed, K.S.A. 60-3703. Upon submitting a motion to request leave to amend the pleading to include punitive damages, the court determines the sufficiency of the motion through supporting affidavits establishing that there is a probability that the plaintiff will prevail on a request for punitive damages. *Id.* In this action, there was no formal motion to request or determine punitive damages, nor was the matter adjudicated to grant its inclusion in the complaint. Therefore, the complaint cannot include punitive damages, and such erroneous inclusion cannot be used to determine the amount in controversy in a removal action. Various district courts of Kansas have recognized that K.S.A. 60-3703 does not apply to complaints

originally filed in federal court on diversity grounds. *Pappe v. ACandS, Inc., No. 95-2175-GTV, 1995 WL 405107 (D. Kan. 1995)*. However, a removal action requires the court to examine the sufficiency of the complaint at the time it was filed in state court, and under Kansas law it is a "legal impossibility for the petition to assert a claim for punitive damages." *Barnes v. General Motors Corp., No. 93-1128-MLB, 1993 WL 245740 (D. Kan. 1993)*(removal action where court held that punitive damages could not be included in state court petition and, thus, could not be considered in the amount in controversy calculation). Both the requisite amount in controversy and the existence of diversity must be affirmatively established on the face of either the petition or the notice of removal. *Laughlin v. Kmart Corp., 50 F.3d 871 (10th Cir. 1995)*. The party seeking federal jurisdiction in district courts has the burden of establishing such invocation. A conclusory prediction as to the amount of damages the plaintiff will claim is arguably insufficient to carry its burden of establishing by a preponderance of evidence the amount in controversy. *McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936)*. There is a lack of subject matter jurisdiction because the jurisdictional requisite amount in controversy is not exceeded.

b. <u>Diversity of Citizenship</u>

The court must deny its own jurisdiction… in all cases where such jurisdiction does not affirmatively appear in the record. *Bender v. Williamsport Area School Dist., 475 U.S. 534, 546-47, 106 S. Ct. 1326, 89 L.Ed. 2d 501 (1986)*.

> Jurisdiction must appear affirmatively from distinct allegations, or facts clearly proven, and is not to be established argumentatively or by mere inference and when jurisdiction depends upon diverse citizenship, absence of sufficient averments or of facts in the record, showing such diversity is fatal, and the defect cannot be waived by the parties, nor can consent confer jurisdiction. *Thomas v. Board of Trustees, 195 U.S. 207, 25 S. Ct. 24 (1904)*. The trial or appellate courts shall determine whether jurisdiction affirmatively appears from the record, if it does not, it must be held that that court had no authority to take cognizance of it. *Id.* It is vital that the corporate character of the collective body should be averred or shown. *Id.*

The removal petition lacks the foundation to properly allege the citizenship of either defendant under federal diversity jurisdiction requirements. For citizenship of artificial entities, such as limited liability companies, its citizenship is predicated on the citizenship of all its members and sub-members. *Carden v. Arkoma Assocs., 494 U.S. 185, 187-92, 110 S.Ct. 1015, 108 L.Ed.2d 157 (1990).* In the removal petition in this action, American Credit Acceptance, LLC only alleged some of its members' citizenship by merely listing states in which some of its members are domiciled. The identities of the members were not disclosed in the removal petition. To determine the citizenship (of an artificial entity), "we need to know the name and citizenship(s) of its general and limited partners. *Guaranty Nat. Title Co. v. J.E.G. Asso., 101 F.3d 57 (7th Cir. 1996).* By merely listing the states of citizenship of its members, without more, that party fails to demonstrate that the plaintiffs were "citizens of different States" than the defendants. *Americold Realty Trust v. Conagra Foods, Inc., 577 U.S. 378, 136 S.Ct. 1012, 194 L.Ed. 2d 71 (2016).* Upon appeal, in its appellate brief, American Credit Acceptance, LLC further elaborated additional states in which its members were citizens and identified the members by person. Jurisdictional reliance, for diversity purposes, depends on facts existing at the time of the filing of the suit. *Grupo Dataflux v. Atlas Global Group, L.P., 541 U.S. 567,570-71, 124 S.Ct. 1920,158 L.Ed.2d 866 (2004).* This court found that, "we have never held that an artificial entity, suing or being sued in its own name, can invoke the diversity jurisdiction of the federal courts based on the citizenship of some but not all of its members" *Carden v. Arkoma Assocs., 494 U.S. 185, 187-92, 110 S.Ct. 1015, 108 L.Ed.2d 157 (1990).* The Tenth Circuit court could not have found a jurisdictional reliance because such information was not found in the district court record and only presented for the first time on appeal.

Of significant importance, the citizenship of CarMax Auto Superstores, Inc. was not disclosed in the removal petition nor did CarMax Auto Superstores, Inc. file a separate removal petition detailing its citizenship for diversity purposes.. The Tenth Circuit concluded that it was "undisputed" that CarMax is incorporated and has its principal place of business in Virginia (Appx. 1, pg. 6). According to this Court's decision in *Gibson v. Bruce, 108 U.S. 561*, the difference of citizenship on which the right of removal depends must have existed at the time when the suit was begun, as well as at the time of the removal. According to the uniform decision of this Court, the jurisdiction of the Circuit Court fails, unless the necessary citizenship affirmatively appears in the pleadings or elsewhere in the record. *Grace v. American Central Insurance Co., 109 U.S. 278, 283, 3 S.Ct. 207 (1883)*. In this case, the record does not satisfactorily show the citizenship of the parties. American Credit Acceptance, LLC's notice of removal does not disclose the citizenship of CarMax Auto Superstores, Inc. Where the citizenship of a party is not averred in the complaint or shown by the record, jurisdiction does not appear. *Sun Printing Publishing Assn. v. Edwards, 194 U.S. 377, 24 S.Ct. 696 (1904)*. But there is nothing in the district court record before the Circuit that reflects a finding for the determination that CarMax Auto Superstores, Inc.'s citizenship is "undisputed". This Court adhered to the rule that a federal court may not hypothesize subject matter jurisdiction for the purpose of deciding the merits. *Steel Co. v. Citizens for Better Environment, 523 U.S. 83, 118 S.Ct. 1003 (1998).* Accordingly, neither the District Court nor Tenth Circuit could have readily determined the parties were diverse at the time the removal action commenced, during the pendency of the case, at and after judgment. Absent an averment of a corporations citizenship status, places of incorporation and principal place of business, jurisdiction cannot be obtained in the federal forum for diversity purposes.

In removal actions, defendants are statutorily required to plead the grounds for removal in a notice of removal, 28 U.S.C. § 1446(a). It is also a statutory requirement that each defendant file a notice of removal, 28 U.S.C. § 1446(b)(2)(B). Other documents in the record, such as the corporate disclosure submitted by CarMax Auto Superstores, Inc., does not positively show where the parent company nor the subsidiary are incorporated and has its principal place of business (Appx. 4). The only record evidence that could be ascertained to determine citizenship is in the defendant's answer which admitted that its branch location in Johnson County, Kansas is where the violation of first instance occurred. This shows that the entity has incorporation status in Kansas to operate business.

> When formal separation is maintained between a corporate parent and its corporate subsidiary, federal court jurisdiction over the subsidiary is determined by that corporation's citizenship, not the citizenship of the parent. So far as we can determine, every court of appeals that has considered the question has reached this conclusion. *Schwartz v. Electronic Data Systems, Inc., 913 F.2d 279 (6th Cir. 1990).*

A subsidiary's citizenship remains separate from its parent corporation for the purpose of diversity jurisdiction. *Nauru Phosphate Royalties, Inc. v. Drago Daic Interests, Inc., 138 F.3d 160,164 (5th Cir. 1998); J.A. Olsen Co. v. City of Winona, Mississippi, 818 F.2d 401 (5th Cir. 1987)*(When a subsidiary chooses to be incorporated separately from its parent, for whatever reason, it is treated as an independent entity for purposes of determining federal court jurisdiction). Thus, in a suit against a subsidiary, courts look only at the subsidiary's state of incorporation and principal place of business. *USI Props. Corp. v. M.D. Constr. Co., 860 F.2d 1, 7 (1st Cir. 1988).*

> [A corporation] may also gain additional places of citizenship for purposes of diversity jurisdiction if it is consolidated with another corporation or if it is the alter ego of another corporation. *Freeman v. Northwest Acceptance, Corp., 754 F.2d 553 (5th Cir. 1985).* For example, when a subsidiary is the alter ego of a parent, the parent is deemed to be a citizen of (1) the place where it is incorporated, (2) the place where its subsidiary is incorporated, and (3) the place where it has its principal place of business. *Id.*

A removable action solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which the action is brought, 28 U.S.C. § 1441(b)(2). The corporate disclosure stated that CarMax Inc. in the parent company of CarMax Auto Superstores Inc.. CarMax Auto Superstores Inc. was served as a party of interest in Kansas, the violations incurred by the corporate defendant occurred in Kansas, and the defendant has incorporation status in Kansas. The "Inc." designation is indicative that the defendant is a corporation. Therefore, CarMax Auto Superstores Inc. is a citizen of Kansas, and the state action was not statutorily removable to the federal forum. The defendants intentionally failed to disclose the citizenship status of CarMax Auto Superstores, Inc because diversity of citizenship would be defeated. Despite no federal question being presented, the failure to plead the citizenship of all the parties to the suit, and no preponderance of evidence presented before the court that the amount in controversy was exceeded, the Tenth Circuit determined there was no want of the court's subject matter jurisdiction.

IV. Congress' Statutory Intent on Corporation Citizenship

Circuit courts are divided on how corporation citizenship should be pleaded to establish federal subject matter jurisdiction. A corporation shall be deemed to be a citizen of *every* State and foreign state by which it has been incorporated and of the State and foreign state where it has its principal place of business, 28 U.S.C. § 1332(c)(1). The statutory language of § 1332(c)(1) is unambiguous. Yet, various Circuits' change of one simple word in the statute makes all the difference in how subject matter jurisdiction is conferred on federal courts. The Fourth, Sixth, Seventh and Nineth Circuits interpret the statute using the term "the state" as opposed to the statutory wording "every state"; limiting citizenship to only two states that are required to be

averred for diversity purposes. Whereas "the state" is interpreted as a singular status and "every" means multiple. The Fourth, Eighth, and Nineth Circuit have held, "a corporation is a citizen only of (1) the state where its principal place of business is located, and (2) the state in which it is incorporated". *Athena Automotive, Inc. v. Digregorio, 166 F.3d 288 (4th Cir. 1999); GMAC Commercial Credit v. Dillard Dept. Stores, 357 F.3d 827 (8th Cir. 2004); Johnson v. Columbia Properties Anchorage, LP., 437 F.3d 894, 899 (9th Cir. 2006).* The Sixth and Seventh Circuit have held that a corporation only has two places of citizenship; the state where it is incorporated and the state where it has its principal place of business. *Smoot v. Mazda Motors of America, 469 F.3d 675 (7th Cir. 2006); Star v. Centimark Corp., 596 F.3d 354 (6th Cir. 2010).* This can be easily interpreted that corporations only have citizenship in states of original incorporation where the company was initially formed and the principal place of business where a significant majority of corporate matters are handled. On the other side of the same token, the Eleventh and Fifth Circuits have held that corporations, in fact, have multiple states of incorporation and are not limited to the original state where the company is formed. This means that if a corporations has multiple business spanning multiple states, that corporation also has the citizenship of that state. see *Molinos Valle Del Cibao, C. par A. v. Lama, 633 F.3d 1330, 1346 (11th Cir. 2011)*(noting that corporations are "citizens" for diversity purposes wherever they are incorporated and have their principal place of business, and as a result, "corporations may be citizens of multiple states"); *Alliant Tax Credit Fund XVI, Ltd. v. Thomasville Cmty. Hous., LLC, 713 F. App'x 821, 824 (11th Cir. 2017)*(To allege the citizenship of a corporation, a party must identify every state by which the company has been incorporated and the state where it has its principal place of business); *Harvey v. Grey Wolf, 542 F.3d 1077 (5th Cir. 2018)*(A corporation shall be deemed to be a citizen of any state by which it has been incorporated and of the state where it has its principal place of

business). The Fifth and Eleventh Circuit's interpretation of § 1332(c)(1) is consistent with the legislative intent of the statutory language imposed by Congress. Therefore, corporate defendants in removal actions must disclose "every" state by which the entity has incorporation status. Having failed to offer this information, the defendant has not met its burden in establishing the Court's subject matter jurisdiction. For example, it is counterintuitive to establish that a company originally formed in Virginia, then subsequently branched out to incorporate that company to operate business in multiple states, only has citizenship in Virginia for diversity purposes. A party cannot, however, pick and choose among the places of citizenship ignoring one or more in an effort to preserve diversity jurisdiction. *Panalpina Welttransport GMBH v. Geosource, 764 F.2d 352, 752 F.2d 352 (5th Cir. 1985)*("Through multiple places of incorporation [and the] principal place of business doctrines, a corporation may become a citizen of several places for purposes of diversity jurisdiction. Such a result is in keeping with Congress' intendment to constrict the availability of diversity jurisdiction."). The federal diversity statute does not permit domestic corporations to select among their two jurisdictional citizenships in order to preserve or defeat diversity. *see Panalpina, 764 F.2d at 354*. The Circuit Courts that hold that corporations' citizenship is limited to two states of citizenship and conferring federal subject matter jurisdiction through the absence of disclosing every state in which the corporation has incorporated status circumvents Congress' intent to limit the cases imposed on the federal forum.

V. Jurisdiction Over Arbitration Awards Under the Federal Arbitration Act

a. FAA Subject Matter Jurisdiction

Upon removal, American Credit Acceptance, LLC filed a motion to dismiss based on a res judicata affirmative defense through the procurement of an arbitration award annexed to the motion. CarMax Auto Superstores, Inc. filed a motion to join the motion to dismiss. The amount

of the award therein was $14,077.21 (Appx. 1, pg. 3). Blakely then filed a motion to vacate by virtue of disputing the validity of the arbitration award. A motion to confirm the arbitration award was filed by American Credit Acceptance, LLC thereafter. The District Court conferred that it had jurisdiction and further predicated its jurisdiction on deciding the FAA motions under 9 U.S.C. § 9 and the parties' arbitration agreement. The District Court established jurisdiction based on the arbitration clause stating, "judgment upon the award given by the arbitrator may be entered in any court having jurisdiction". An application under 9 U.S.C. § 9 or any other provisions under the FAA does not independently confer subject matter jurisdiction on federal courts and does not create federal question jurisdiction. *Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 25 n. 32, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983).* The Federal Arbitration Act bestows no federal jurisdiction, but rather requires an independent jurisdictional basis. *Hall Street Assoc. v. Mattel, Inc., 552 U.S. 576 (2008).* Furthermore, the District Court found no independent jurisdictional basis to render judgment on the arbitration award. Thus, the District Court's jurisdiction was not established on any statutory basis, but upon a clause in a private agreement. Because the FAA is not jurisdictional, there is no merit in the argument that enforcing the arbitration agreement's judicial review provision would create federal jurisdiction by private agreement. *Southland Corp. v. Keating, 465 U.S. 1, 15-16 (1984).* The Tenth Circuit has held that parties may not contract for expanded judicial review. *Bowen v. Amoco Pipeline Co., 254 F.3d 925, 936 (10th Cir. 2001).* Without an independent basis for federal court jurisdiction, the parties could not petition the district court to compel arbitration or to enter judgment on an award. *Bowen, 254 F.3d 925* citing *Lapine Technology Corp. v. Kyocera Corp., 130 F.3d 884 (9th Cir. 1997).* Absent a statutory basis, federal subject matter jurisdiction in this case should not have been predicated on the FAA applications, a FAA statute, or a clause in a

private arbitration agreement. The Tenth Circuit reasoned that, because the district court "had diversity jurisdiction over the parties' dispute, it also had jurisdiction to enter judgment upon the arbitration award" (Appx. 1, pg.11). This directly contradicts the Supreme Court holdings regarding subject matter jurisdiction over arbitration awards. Not only does an FAA application not confer federal jurisdiction and requires an independent jurisdiction basis, *Hall Street, 552 U.S. 576,* this Court held, to find an independent jurisdiction basis the "obvious place is the face of the application itself". *Badgerow v. Walters, 596 U.S. 1,4, 8 (2022).* In Badgerow, this Court further established that if the FAA application "shows that the contending parties are citizens of different states (with over $75,000 in dispute), then § 1332(a) give the court diversity jurisdiction. Or if it alleges that federal law (beyond section 9 or 10 itself) entitles the applicant to relief, then § 1331 gives the court federal-question jurisdiction". *Badgerow, 596 U.S. 1,4, 8 (2022).* The holding makes no contention that subject matter jurisdiction can be obtained other than by the face of the FAA application. Therefore, the Tenth Circuit's contending that a petition for an underlying dispute, that makes no mention of the arbitration proceeding or award thereto, grants jurisdiction exceeds the scope of authority and does not establish an independent basis for federal subject matter jurisdiction over an arbitral dispute. No federal question was presented on the face of either application, the amount of the arbitration award does not exceed the amount in controversy, nor was the knowledge of the citizenship of the Defendants fully disclosed on the face of the application for either defendant. Contravening the Supreme Court's precedent, the U.S. Court of Appeals for the Tenth Circuit in this case held that the district court had subject matter jurisdiction to confirm the arbitration award and dismiss the action in its entirety based on the confirmation thereto. Thus, the Circuit Court erroneously conferred subject matter jurisdiction.

b. Rule 12(b)(6) Motions and Matters Outside the Pleading

The district court considered the defendant's motion to dismiss solely based on the affirmative defense of res judicata and claim preclusion predicated on an unconfirmed arbitration award attached thereto. A res judicata objection based on a prior arbitration proceeding is a legal defense that, in turn, is a component of the dispute on the merits and must be considered by the arbitrator, not the court. *National Union Fire Ins. Co. v. Belco Petroleum Corp., 88 F.3d 129 (2nd Cir. 1996).* Upon being presented with the Federal Arbitration Act applications, the District Court of Kansas determined that it had subject matter jurisdiction, confirmed the award, and dismissed the action based on the confirmation by the District Court judge. Because [a motion to dismiss] is intended to test the legal adequacy of the complaint, not to address the merits of any affirmative defenses, a defense may generally be raised under Rule 12(b)(6) only if it clearly appears on the face of the complaint. *Suarez Corp. Indus. v. McGraw, 125 F.3d 222, at 229 (4th Cir. 1997).* Otherwise, affirmative defenses are more properly reserved for consideration on a motion for summary judgment. *Id.* If the District Court considered "matters outside the pleading" in deciding a motion to dismiss, Rule 12(b)(6) requires that the motion "be treated as one for summary judgment." *Casazza v. Kiser, 313 F.3d 414, 417-18 (8th Cir. 2002).* Materials considered "matters outside the pleading" are "any written or oral evidence in support of or in opposition to the pleadings that provides some substantiation for and does not merely reiterate what is said in the pleadings." *Gibb v. Scott, 958 F.2d 814, 816 (8th Cir. 1995).* The pleadings include the complaint, the answer, and any written instruments attached as exhibits. Fed. R. Civ. P. 10(c). *Beam v. IFCO Corp., 838 F.2d 242, 244 (7th Cir. 1988).* Pleadings are categorically distinguished from motions. *Sorbo v. United Parcel Service, 432 F.3d 1169 (10th Cir. 2005).* The Tenth Circuit acknowledged that "Blakely's complaint made no mention of the arbitration proceeding" nor an award thereafter (Appx. 1, pg. 8). In *Brody v. Hankin, 145 F.App'x 768, 772*

(3rd Cir. 2005), the 3rd Circuit reversed a granting of a motion to dismiss on res judicata principles because the District Court expressly relied on facts related to an arbitration proceeding, but not mentioned in, or attached to, the complaint. Finding that the District Court further erred due to effectively converting the motion to dismiss for summary judgment without notifying the plaintiff. Additionally, an Eighth Circuit Court of Appeals holding sets an identical circumstance to this issue. In *BJC Health System v. Columbia Cas. Co., 348 F.3d 685 (8th Cir. 2003)*, the defendant asserted that since the complaint alleged the existence of a contract, the documents attached to the motion were central to the plaintiff's complaint. The Eighth Circuit rejected this contention finding that the specific documents attached to the motion were not central to the plaintiff's complaint. Here, American Credit Acceptance LLC contended that since the complaint mentioned the contract, which contains an arbitration clause, the arbitration award attached to the motion was central to the complaint. The unconfirmed arbitration award should have been considered matters outside the pleading. Since the District Court considered the award, the plaintiff should have been given the opportunity to oppose the documents through converting the motion into one for summary judgment. Fed. R. Civ. P. 12(d). *Hamm v. Rhone-Poulenc Rorer Pharms., Inc., 187 F.3d 941, 948 (8th Cir. 1999).* Instead, the District Court took judicial notice of the award.

c. <u>Judicial Notice of Arbitration Awards:</u>

The district court took judicial notice of the unconfirmed arbitration award. The Tenth Circuit found no error in the district court doing so. The District Court may take judicial notice of public records and may thus consider them on a motion to dismiss. *Faibisch v. Univ. of Minn., 304 F.3d 797,802-03 (8th Cir. 2002).* A district court, however, may take judicial notice of its own files and records, as well as facts which are a matter of public record, without converting a

motion to dismiss into a motion for summary judgment. *Tal v. Hogan, 453 F.3d 1244, 1264 (10th Cir. 2006)*. But an unconfirmed arbitration award is not a matter of public record, and such unconfirmed arbitration award was not previously confirmed by the district court judge. Therefore, such unconfirmed arbitration award was not a matter of a prior judicial act. The holding of 28 U.S.C. § 1738 states "judicial proceedings… shall have the same full faith and credit in every court within the United States… as they shall have by law or usage in the courts of such State." Generally speaking, § 1738 requires federal courts to give state court judgments preclusive effect. This Court considered whether federal courts are obligated by statute to accord res judicata or collateral estoppel effect to the arbitrator's decision. The Supreme Court has held, however, that § 1738 does not apply to unconfirmed arbitration awards or unappealed state administrative proceedings because they are not "judicial proceedings" as § 1738 requires. *University of Tenn. v. Elliott, 478 U.S. 788, 794, 106 S.Ct. 3220, 92 L.Ed.2d 635 (1986)*; *Kremer v. Chemical Constr. Corp., 456 U.S. 461, 477, 102 S.Ct. 1883, L.Ed.2d 262 (1982)*(unconfirmed arbitration decisions are not subject to the mandate of § 1738). Since the award was not previously confirmed by a state or federal court, the award is not subject to the mandate of § 1738.

REASONS FOR GRANTING THE PETITION

A. The U.S. Court of Appeal's Decision Has So Far Departed From The Accepted And Usual Course Of Judicial Proceeding Due To The Clear Overstep Of The U.S. Constitution And The Jurisdictional Powers Granted To It By Congress

This writ for certiorari should be granted predicated on the Tenth Circuit Court of Appeals' far departure from accepted and usual course of judicial proceeding. The Circuit's departure calls for an exercise of this Court's supervisory power. Federal courts are courts of limited jurisdiction. *Nw. Airlines, Inc. v. Transp. Workers Union of Am., AFL-CIO, 451 U.S. 77, 95 (1981)*. Congress

has the constitutional authority, within the contours of Article III, to define the subject matter jurisdiction for the lower federal courts. *Palmore v. United States, 411 U.S. 389, 400-401 (1973).* "It follows, then, that the [lower federal courts] must look to the statute as the warrant for their authority..." *Cary v. Curtis, 44 U.S. (3 How.) 236, at 245 (1845).* Congress has imposed federal jurisdiction on federal courts by statute under federal question jurisdiction, 28 U.S.C. §1331 and diversity, 28 U.S.C. §1332. Although, upon the removal of the state action to the federal forum, the amount in controversy was not exceeded, the lack of full disclosure of the Defendants citizenship, the complete absence of one Defendant's citizenship, and the lack of an independent jurisdictional basis to confer subject matter jurisdiction to confirm the arbitration award; the Tenth Circuit found that there was federal subject matter jurisdiction to confirm the award and such confirmation merited the dismissal of the action with prejudice through res judicata principles. The Tenth Circuit Court of Appeals erroneously affirmed the District Courts jurisdiction and its judgment thereof. With the absence of jurisdiction granted through §1331 and/or §1332(a), the District Court of Kansas exceeded jurisdictional power that can only be granted through Congressional statutory empowerment. Upon affirming the District Court's judgment and federal jurisdiction, the Tenth Circuit Court of Appeals erroneously conferred federal jurisdiction upon the District Court that it never had at the outset or throughout the entirety of the suit. This is a direct attack on the U.S. Constitution which strictly grants the power of jurisdictional authority to Congress through federal statute. Without Congressional statutory allocation, District and Circuit Courts of Appeal shall not exceed the scope of their authority. The rulings in this case directly affect the administration of justice and contravenes jurisdictional power that can only be granted by Congress. District Courts deciding judicial matters in the federal forum without jurisdiction circumvents the U.S. Constitution and the subsequent

affirmation through the Circuit Court of Appeals allows federal courts to confer their own jurisdiction without a statutory basis to do so. Courts have a duty to act fairly, justly, and follow established legal procedures. Courts exceeding or conferring their own jurisdiction is an abuse of judicial power, prevents pro se litigants from having a full and fair opportunity to adjudicate disputes, and denies due process of the law. The District Court acknowledged that there must be an independent basis to confirm or vacate arbitration awards under the FAA in the judgment and still intentionally deviated from jurisdictional allocation of power by Congress. The Circuit Court willfully undermined federal statutes and Supreme Court precedent to grant jurisdiction where it was lacking completely. This writ of certiorari should be granted by the Supreme and superior court because this case involves an inferior tribunal, in the course of exercising judicial functions, who has exceeded its jurisdiction. There is no appeal nor adequate remedy to resolve the disparities in the subject matter jurisdiction of the trial and appellate courts. Review by this Court is necessary, warranted and excessively meets the criteria for discretionary supervisory power. Moreover, courts, including this Court, have an independent obligation to determine whether subject matter jurisdiction exists. *Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583, 119 S.Ct. 1235, 163 L.Ed.2d 1097 (1999).*

B. The Questions Presented Are Of Exceptional Importance and Warrants Review Of This Case Because There Is A Clear Contravention Of Supreme Court and Various U.S. Courts of Appeal Precedent

The necessity for review is evident. This court granted review in *Badgerow* to resolve the same jurisdictional power to confirm or vacate arbitral awards under the Federal Arbitration Act as this case. Furthermore, review will ensure that federal courts, rather District Courts or U.S. Courts of Appeal, do not exceed the scope of their authority and adhere to the strict and limited jurisdiction of federal forums granted by Congress. Not only has the Tenth Circuit deviated from its own

holdings; the Circuit has circumvented Congress' statutory intent and Supreme Court precedent upholding such intent of Congress. This shows the inconsistency in how the Circuit performs its judicial review duty in adjudicating matters that lack a statutory basis for subject matter jurisdiction. Granting review of this case will settle the inconsistencies of the Tenth Circuit and the other Circuits that rely on their holdings to validate judgments. Review of this case is of significant importance because it will acknowledge fundamental and procedural rights of pro se litigants who may be bound by judgments where such federal forums lack subject matter jurisdiction. Review will also ensure that state courts are not stripped of their jurisdiction to adjudicate state matters and diminish forum shopping of defendants who remove actions to federal courts which are otherwise not removable. Review eliminates the waste of judicial resources and allows state courts to properly adjudicate matters within its jurisdiction.

C. There Is A Clear And Intractable Conflict Over A Significant Jurisdictional Requisite

This petition for certiorari should also be granted on the grounds that Circuit Courts are split on how citizenship of corporations should be averred to establish federal subject matter jurisdiction. As elaborated herein, various Circuits are split on the statutory interpretation of 28 U.S.C. § 1332(c)(1). Some Circuits interpret the statute to mean that a corporation only has the citizenship of "the" state of incorporation and the principal place of business. While other Circuits hold that corporations have citizenship in "every" or "any" state where the corporation is incorporated. This Courts supervisory discretion will eliminate the disparities in the invocation of federal subject matter jurisdiction and set precedent on the Congressional statutory legislation and intent regarding diversity of citizenship.

CONCLUSION

The petition for a writ of certiorari should be granted for review.

I declare under the penalty of perjury hat the foregoing is true and correct. Executed on April 5th, 2025.

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CERTIFICATE OF SERVICE

I, hereby certify that this Petition For A Writ of Certiorari was served on the American Credit Acceptance, LLC and CarMax Auto Superstores, Inc at 1201 Walnut Street STE 2900 Kansas City, MO 64106 attorney, Megan McCurdy 816-691-2649, by certified mail, return receipt requested, on April 6th, 2025. I declare under the penalty of perjury hat the foregoing is true and correct. Executed on April 5th, 2025.

Michele Blakely