No. 24-724

IN THE
Supreme Court of the United States

THE HAIN CELESTIAL GROUP, ET AL.,
Petitioner,

v.

SARAH PALMQUIST, INDIVIDUALLY AND AS NEXT FRIEND OF E.P., A MINOR, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF CIVIL PROCEDURE PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 3

I. The Fifth Circuit wisely recognized *Caterpillar*'s limited reach 3

II. Conscientious judging, not strategic party behavior, is the right metric for choosing among approaches 6

III. The Fifth Circuit's approach more fairly allocates error costs among the parties and imposes minimal burden on courts 11

IV. The Fifth Circuit's jurisdiction-respecting rule is more faithful to federalism values 19

CONCLUSION 27

APPENDIX 1a

TABLE OF AUTHORITIES

Page(s)

Cases

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200 U.S. 206 (1906).....8

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564 U.S. 211 (2011).....20

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416 P.3d 595 (Utah 2017) 24

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337 U.S. 541 (1949).....5

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38 So. 3d 722 (Ala. 2009)..... 25

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493 U.S. 455 (1990).....19

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822 F.2d 535 (5th Cir. 1987).....23

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INTEREST OF *AMICI CURIAE*[1]

Amici are law professors whose scholarship and teaching focus on civil procedure. *Amici* have devoted substantial parts of their professional careers to studying that subject, including conducting theoretical and empirical analyses of how different procedural orderings shape litigation and regulatory schemes.

This brief reflects the consensus of the *amici* that this Court should affirm the Fifth Circuit's decision and hold that the rule announced in *Caterpillar Inc. v. Lewis*, 519 U.S. 61 (1996), does not extend to a situation in which a jurisdictional error remains uncured at the time of judgment. *Amici* are as follows:[2]

Professor David Freeman Engstrom is the LSVF Professor of Law at Stanford Law School.

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that none of the parties or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Professor Engstrom, as counsel for *amici*, was compensated for his work on this submission by Lyons & Simmons LLP.

[2] Amici's institutional affiliations are included solely for identification purposes. The views expressed in this brief do not reflect the views of those institutions.

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SUMMARY OF THE ARGUMENT

In *Caterpillar*, this Court held that all's well that ends well where a district court's "initial misjudgment" about its own jurisdiction is voluntarily cured by the parties *before* entry of judgment. This case is different. Because the district court's erroneous jurisdictional ruling remained interlocutory, the defect persisted through final judgment. Accordingly, *Caterpillar*'s narrow and pragmatic exception simply does not apply. See *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 76-77 (1996) ("[I]f, at the end of the day and case, a jurisdictional defect remains uncured, the judgment must be vacated.") (emphasis omitted). As this Court's more recent decisions underscore, federal courts may not turn a blind eye to uncured jurisdictional defects simply to salvage a judgment. When a district court lacks subject-matter jurisdiction at the time it enters judgment, the only appropriate remedy is vacatur.

Lacking doctrinal support for their finality-despite-error approach, Petitioners and their *amici* fall back on lurid tales of far-fetched litigation incentives, one-sided claims of prejudice, and the usual, long-debunked warnings about a civil justice system run amok. On each count, Petitioners and their *amici* are simply wrong—and their bare assertions do not

withstand even basic empirical scrutiny. Getting these background facts right is particularly important where, as here, judge-made rules would not only nullify congressionally conferred procedural rights but also disregard significant federalism interests and frustrate states' considered policy judgments.

ARGUMENT

I. The Fifth Circuit wisely recognized *Caterpillar*'s limited reach.

Petitioners and their *amici* are swimming against a strong tide. True, in three decisions scattered across several decades, this Court chipped away at strict jurisdictional purity and pushed the boundaries of federal jurisdiction by permitting court-made rules to reshape, in certain narrow instances, the federal courts' diversity jurisdiction. In *Caterpillar*, this Court licensed retroactive jurisdiction where the parties voluntarily cured the defect on their own, in order to conserve judicial resources. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 75-76 (1996). Some years before, in *Grubbs v. Gen. Elec. Credit Corp.*, 405 U.S. 699, 700 (1972), the Court also recognized the utility of the doctrine of waiver in the suspect circumstance where a party, having chosen not to object to removal, suffers an adverse judgment at trial and raises the jurisdictional issue for the first time in a post-judgment appeal. *See Caterpillar*, 519 U.S. at 72-73 (interpreting *Grubbs* in this light). Finally, in *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 836-38 (1989)—a case commenced in federal court rather than removed, and so outside Congress's clear policy choices in 28 U.S.C. §§ 1441, 1446 and 1447—this Court allowed the court of appeals to dismiss a non-diverse "spoiler" party under Rule 21 where the

party was dispensable and no other party would suffer prejudice. *Id.* at 836-38.

More recently, however, this Court has wisely resisted further jurisdictional flexibility in the name of efficiency. First, in *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 42-43 (1998), a statutory construction case interpreting 28 U.S.C. § 1407's remand mandate in multidistrict litigation, this Court unanimously distinguished *Caterpillar* in rejecting a harmless-error contention. Values of finality, economy, and efficiency were relevant in *Caterpillar*, this Court explained, only because jurisdiction was satisfied at the time of judgment and so did not constitute "continuing defiance of the congressional condition." *Id.* at 43. But Congress's command, the Court continued, "would lose all meaning if a party who continuously objected to an uncorrected categorical violation of the mandate could obtain no relief at the end of the day." *Id.*

This Court's decision in *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567 (2004), limited *Caterpillar*'s reach in even more decisive terms. *Id.* at 572-73. Writing for the Court, Justice Scalia addressed whether a subsequent change in a party's citizenship could cure a defect in diversity jurisdiction present when the lawsuit was filed. The Court held that it could not, reaffirming the longstanding "time-of-filing" rule—namely, that jurisdiction must exist based on the facts at the moment the complaint is filed. The Court reiterated that "'the jurisdiction of the court depends upon the state of things at the time of the action brought.'" *Id.* at 570 (quoting *Mollan v. Torrance*, 22 U.S. (9 Wheat.) 537, 539 (1824)). In so doing, this Court emphasized that *Caterpillar* did not announce a new approach to jurisdiction—indeed, it

"broke no new ground"—but rather carved out a narrow, preexisting exception to the usual time-of-filing rule. *Id.* at 572.

The *Grupo Dataflux* Court took further pains to reject any suggestion that considerations of finality, efficiency, or economy were relevant to the "cure of the jurisdictional defect." 541 U.S. at 574 (emphasis omitted). This was so, the Court explained, because its analysis in *Caterpillar* "took as its starting point that subject-matter jurisdiction had been satisfied" by the time judgment was entered. *Id.* (emphasis omitted). Values of finality, efficiency, and economy, the Court made clear, might be deployed to overlook violation of a congressional condition at an earlier stage in the case, but those court-directed values have no purchase where the violation continues *through to final judgment*. *Id.* at 571 (noting that dismissal is required in such a case "regardless of the costs it imposes"). Thus framed, *Grupo Dataflux* limited *Caterpillar*'s reach to cases about statutory defects in removal procedure, under 28 U.S.C. § 1441(a), not jurisdictional ones, under 28 U.S.C. § 1332. *See* 16 *Moore's Federal Practice* § 107.151[2][f] (3d ed. 2025); 14C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3723 (Rev. 4th ed. 2025).[3]

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[3] That distinction is critical to this case because, as Respondents ably explain (at 20-21), they neither settled nor abandoned their claims against Whole Foods. *See Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949) (underscoring that interlocutory orders "are but steps towards [the] final judgment in which they will merge"); *Dupree v. Younger*, 598 U.S. 729, 735 (2023) (observing that interlocutory rulings "merge into the final judgment"). And, because Whole Foods remained in the case at the time the district court entered judgment, both the Section 1441(a) and the Section 1332 violations persisted at that judgment's entry.

Reaffirming the principle that federal courts possess only limited jurisdiction, this Court has thus wisely signaled a retreat from the fragile position in *Caterpillar*, *Grubbs*, and *Newman-Green* that jurisdiction can be salvaged, judgments resurrected, and Congress's command ignored where necessary to preserve judicial resources. This Court should not now reenter the jurisdiction renovation business by minting a new, *Caterpillar*-expanding exception to the statutory requirements of subject-matter jurisdiction. Doing so would run roughshod over Congress's clear command in the removal statutes, which nowhere so much as hint at support for the extreme jurisdictional flexibility that Petitioners urge here.

II. Conscientious judging, not strategic party behavior, is the right metric for choosing among approaches.

Even if this Court were inclined to ignore *Lexecon* and *Grupo Dataflux* and let efficiency concerns override Congress's jurisdictional directives—a tall order—Petitioners and their *amici* misread the strategic incentives involved in this case. Indeed, it is not party incentives that should occupy the Court here but rather judicial ones.

A vital aim of civil procedure is to temper costly forms of strategic behavior by the parties. As Roscoe Pound cautioned many decades ago, civil procedure should not enact a "sporting theory of justice." Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice, Address Before the Annual Convention of the American Bar Association* (Aug. 29, 1906), *in* 14 AM. LAW. 445, 447 (1906); *see also Murr v. Wisconsin*, 582 U.S. 383, 402 (2017) (warning of the "risk of gamesmanship"); *Giles v. Maryland*, 386 U.S. 66, 102 (1967) (Fortas, J., concurring) (arguing that a

trial is "not a sporting event"). For this reason, the Rules Committee and this Court have long tried to structure procedures to limit delay and curb discovery abuse, among other costly forms of procedural maneuvering. *See Hickman v. Taylor*, 329 U.S. 495, 508 (1947) (explaining that limitations on discovery are appropriate to prevent examination "conducted in bad faith or in such a manner as to annoy, embarrass or oppress the person subject to the inquiry"); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991) (explaining that courts possess inherent powers to sanction bad-faith tactics, including "delaying or disrupting the litigation") (citation omitted). But in so doing, courts and rulemakers must be clear-eyed about what the incentives are and where they point.

Petitioners and their *amici* fail badly in that regard by distorting, at nearly every turn, the strategic incentives at issue in this case. For starters, the core of the elaborate account imagined by Petitioners' *amici* is fanciful. On their view, the Fifth Circuit's jurisdiction-respecting rule will boost a plaintiff's incentive to join non-diverse defendants based in the hope that, should a remand motion be wrongly denied, the case might proceed in federal court and, in the event of an unfavorable trial outcome plus an appellate court's assignment of error, yield vacatur and retrial in state court. The prospect of vacatur and remand, they suggest, will induce plaintiffs to *over*-join non-diverse defendants at the outset of a case with that distant end-game in mind. Atl. Legal Found. Br. 2; Prod. Liab. Advisory Council Br. 4; Nat'l Ass'n of Mfrs. Br. 5-6. *Cf.* Petr. Br. 21 (asserting "mischief" supposedly caused by the Fifth Circuit's approach).[4]

[4] Petitioners, for their part, focus on the fact that Respondents did not file a Rule 54(b) motion for partial final judgment as to

The reality is that plaintiffs in Respondents' shoes *already* have powerful incentives to structure their lawsuit to stay in state court. Litigating in state court offers numerous advantages, including more familiar procedures, lower litigation costs, a local judge and jury, the additional settlement leverage that can come with litigating against multiple defendants simultaneously, and preempting a defendant's effort to point to the "empty chair" of an absent defendant as the true culprit. Pursuit of these advantages is thought to be well within a plaintiff's prerogatives as the "master of the complaint" under the American way of law. *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 35 (2025) ("The plaintiff is 'the master of the complaint,' and therefore controls much about her suit.") (citation omitted); *Ala. Great S. Ry. Co. v. Thompson*, 200 U.S. 206, 216 (1906) ("[T]he plaintiff may elect his own method of attack.").[5]

Whole Foods. But both Petitioners, no less than Respondents, had the ability, if they were confident in the district court's jurisdictional ruling, to seek a Rule 54(b) certification as to Whole Foods and achieve finality, but they did not do so.

[5] It should also be noted that defendants, no less than plaintiffs, have strong forum preferences—and typically prefer federal court. *See* 4 LAWRENCE G. CETRULO, TOXIC TORTS LITIGATION GUIDE § 47:38, Westlaw (database updated Feb. 2025) ("Generally, civil defendants prefer to litigate in federal court. Reasons cited by defendants as to why they favor federal jurisdiction include a more favorable appointed judge, favorable rules of discovery, a potential choice of venue out of the state, and a more diverse jury pool. Another common generalization of federal courts is that they are more likely to dismiss a pleading on a motion to dismiss or summary judgment."); *see also* Neal Miller, *An Empirical Study of Forum Choices in Removal Cases Under Diversity and Federal Question Jurisdiction*, 41 AM. U. L. REV. 369, 392-423 (1992).

Given these already-existing incentives, it is highly unlikely that a rational plaintiff, in framing a lawsuit at its outset, would be *further* moved to join a non-diverse defendant based on the slim and distant prospect of a do-over after a twisting chain of events that includes removal, an erroneous remand ruling, an adverse trial outcome, and an appellate court's determination that the trial court committed error in denying a remand motion. That convoluted, *Palsgraf*-ian sequence is far too speculative and remote to impact how cases are framed or complaints drafted at the outset of a case. Indeed, in *Caterpillar* itself, this Court rejected a similarly attenuated chain of events grounded in a dubious assumption regarding "defendants' readiness to gamble that any jurisdictional defect, for example, the absence of complete diversity, will first escape detection [and] then disappear prior to judgment." *Caterpillar*, 519 U.S. at 77. The absurdity of the "gamble" imagined by Petitioners and their *amici* in this case is further underscored by the paucity of cases in which the court's subject-matter jurisdiction was called into question post-judgment—at best, a small handful every few years. *See infra* Part III and Appendix A.

In truth, neither side in cases like this one—neither plaintiffs nor defendants—is likely to craft a filing or removal strategy at the front-end of a case based on the remote chance of vacatur at the case's distant back-end. Put more concretely, defendants are no more likely to *over-remove* cases under Petitioners' finality-despite-error rule than are plaintiffs to *over-join* non-diverse defendants under the Fifth Circuit's jurisdiction-respecting approach. Because both parties already face far more potent incentives to steer the case into one forum or another, this Court should

not be distracted by the efforts of Petitioners' *amici* to smoke out perverse incentives that simply do not exist.

Rather than consider the effect of competing rules on the *parties'* incentives, it would be far more productive for this Court to instead consider the effect of those rules on *judges*. As a respected procedure scholar has noted, an alternative rule in *Caterpillar* that elevated jurisdictional boundaries over finality, economy, and efficiency would have had a "powerful effect on federal district judges, encouraging them to police their removal jurisdiction more carefully rather than risk an embarrassing and wasteful removal and appeal." Amanda L. Tyler, After *Justice Ginsburg's First Decade: Some Thoughts About Her Contributions in the Fields of Procedure and Jurisdiction*, 90 GEO. WASH. L. REV. 1572, 1590 (2022).

This is not to suggest that district judges will "balk at" applying jurisdictional rules with due care—and this Court has rightly refused to indulge any such assumption. *Caterpillar*, 519 U.S. at 77. But it does not follow that this Court must blind itself to the likely incentive effects of its rulings. Well-crafted procedures can and should create incentives for judges to carefully resolve threshold matters before investing time and energy in more resource-intensive stages of litigation. *See Newman-Green, Inc. v. Alfonzo-Larrain R.*, 854 F.2d 916, 923 (7th Cir. 1988) (noting "the importance of scrupulous adherence to the jurisdictional limitations of the federal courts"); *Coury v. Prot*, 85 F.3d 244, 249 (5th Cir. 1996) (noting role for judges as watchdogs to prevent litigants from "'playing fast and loose with the judicial machinery' and using the federal courts' limited subject matter jurisdiction in bad faith") (citation omitted). Moreover,

a modest, stop-and-think incentive to consider the soundness of a court's jurisdiction before permitting a case to go forward is entirely consonant with the principle that federal courts should "presume[] that a cause lies outside [their] limited jurisdiction," *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994), and, further, that they should narrowly construe the removal statutes to avoid infringing on a state court's authority to decide a case within its jurisdiction, *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941).

Far from fueling perverse party incentives, the Fifth Circuit's jurisdiction-respecting rule would promote efficiency over the long-term. By nudging district courts to proceed cautiously in deciding remand motions, the threat of vacatur would induce more accurate jurisdictional determinations upfront while aligning judicial incentives with the federal courts' role as courts of limited jurisdiction. Not only that, but the Fifth Circuit's rule would minimize burdensome litigation seeking new, judge-made exceptions to Congress's directives—enhancing long-term efficiency without ignoring congressional command. *See Grupo Dataflux*, 541 U.S. at 580-81.

III. The Fifth Circuit's approach more fairly allocates error costs among the parties and imposes minimal burden on courts.

Another important aim of procedure is to allocate error costs in the face of inevitable imperfection. *Cf. Santosky v. Kramer*, 455 U.S. 745, 755 (1982) (keying procedural due process analysis to "how the risk of error should be distributed between the litigants"). When mistakes are made, who should shoulder the burden?

Petitioners offer a bracing answer. Their finality-despite-error rule would have Respondents bear *all* of the cost of the district court's jurisdictional error: first, a trial in a court, and with a party structure, they did not choose; second, the expense of two trials rather than one if they pursue Whole Foods in a separate state court action; and third, facing down the near-certain invocation of issue preclusion by Whole Foods if they do.

The Fifth Circuit's jurisdiction-respecting approach, by contrast, would more evenly and equitably distribute error costs between the parties. For starters, vacatur would reduce (but not eliminate) the costs to plaintiffs in Respondents' shoes—requiring them to incur the expense of conducting a second trial, but at least one in the forum they initially chose.

At the same time, vacatur would visit comparably modest harm on defendants in Petitioners' position. True, Petitioners suffered a multi-day trial in federal court that would be unwound in the event of vacatur, and they also litigated (but lost) before the Fifth Circuit in their fruitless effort to defend the district court's erroneous jurisdictional ruling. That is an unfortunate, but hardly unusual, circumstance in litigation. *See Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 818 (1988) ("The age-old rule that a court may not in any case, even in the interest of justice, extend its jurisdiction where none exists has always worked injustice in particular cases. Parties often spend years litigating claims only to learn that their efforts and expense were wasted in a court that lacked jurisdiction."); *see also Grupo Dataflux*, 541 U.S. at 569 (dismissal after three years of pre-trial litigation and a six-day trial). But the claims of Petitioners and their *amici* are nonetheless

exaggerated in this regard. Every good lawyer knows that pre-trial litigation is where many and even most litigation costs accrue. JAMES S. KAKALIK ET AL., RAND INST. FOR CIVIL JUST., DISCOVERY MANAGEMENT: FURTHER ANALYSIS OF THE CIVIL JUSTICE REFORM ACT EVALUATION DATA, at xxi (1998). So does this Court. *See Grupo Dataflux*, 541 U.S. at 577 (noting that pretrial litigation, particularly discovery and motions practice, often accounts for a large portion of litigation costs).

Here, those costs are sunk. Much of the pretrial work performed in the run-up to trial before the district court would transfer, more or less seamlessly, to any remanded state court case against both defendants. *See* 8A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2044.1 (3d ed. 2025) (noting that the "prevailing approach" permits the use of discovery materials obtained in one proceeding in another action to reduce expense); TEX. R. CIV. P. 203.6(b) (authorizing use of depositions in the "same proceeding," defined to include "a proceeding in a different court but involving the same subject matter and the same parties").

Petitioners' proposal that plaintiffs should bear all of the cost of the district court's jurisdictional error rests on their further unfounded assertion (at 29) that the vacatur required by the Fifth Circuit's rule would impose substantial and unnecessary burdens on federal and state courts. *See also* Atl. Legal Found. Br. 4-5; Nat'l Ass'n of Mfrs. Br. 6-20. Their contentions here are demonstrably false.

To begin, federal courts would incur burdens only if the Fifth Circuit's jurisdiction-respecting approach landed more cases in federal court. But, as just noted in Part II, plaintiffs are no more likely to *over-join*

defendants under the Fifth Circuit's rule based on a distant endgame after a twisting chain of events than are defendants to *over-remove* to federal court under Petitioners' alternative approach. Much as Petitioners try to convince the Court otherwise, this is not a case about perverse party incentives. And, as already noted in Part II, the Fifth Circuit's jurisdiction-respecting rule will *lower* the burden on federal courts by creating salutary incentives for district judges to conscientiously consider their own jurisdiction before advancing a case.

A more general problem with the court-burden claims of Petitioners and their *amici* is that the number of cases that might trigger the endgame of vacatur or retroactive jurisdiction under *either* approach is likely to be vanishingly small. Indeed, a comprehensive search of both reported and unreported cases in Westlaw turned up only 42 cases between 1990 and 2025—slightly over one per year. *See* Appendix A. And all but one went up on appeal from a dispositive motion, not a trial—a finding that is entirely consistent with the near-complete vanishing of trials throughout the American legal system. *See generally* Nora Freeman Engstrom, *The Diminished Trial*, 86 FORDHAM L. REV. 2131 (2018). While hard-won experience conducting empirical legal studies suggests that dozens of hours of further research using direct PACER docket searches or similar tools might turn up a handful of additional cases, the total is all but certain to remain something less than a very small blip on the federal court radar.

The remaining empirical assertions by Petitioners' *amici* that relate to court burdens—that federal and state courts are "chronically clogged" (Atl. Legal Found. Br. 5) and laboring under "crushing" caseloads

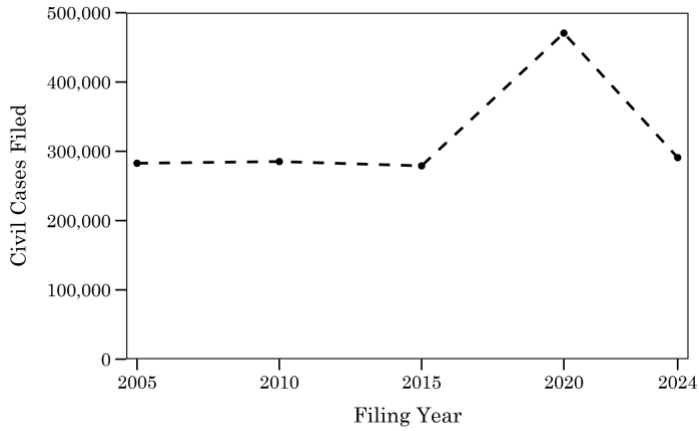
(Nat'l Ass'n of Mfrs. Br. 3), and that tort claims are on the rise (Nat'l Ass'n of Mfrs. Br. 17-18)—do not survive even basic empirical scrutiny.

Far from "chronically clogged" or laboring under "crushing" caseloads, federal and state courts have seen substantial *reductions* in docket loads in recent years. Start with federal courts. As reflected in Figure 1 below, federal district court filings declined precipitously between 2020 and 2024 after a spike in filings caused by a single multidistrict litigation. Zoom out and federal civil case filings have hovered around 280,000 per year for twenty years, despite substantial population growth (roughly 17 percent) over that same period.[6]

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[6] This paragraph's claims and Figure 1's data visualization derive from five official sources: *Judicial Caseload Indicators – Judicial Business 2024*, U.S. COURTS, https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states-courts/judicial-business-2024/judicial-caseload-indicators-judicial-business-2024 (last visited Aug. 17, 2025) (reporting filings between 2015 and 2024); *Judicial Business 2020*, U.S. COURTS, https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states/judicial-business-2020 (last visited Aug. 17, 2025); U.S. COURTS, TABLE C-3, U.S. DISTRICT COURTS—CIVIL CASES COMMENCED, BY NATURE OF SUIT AND DISTRICT, DURING THE 12-MONTH PERIOD ENDING JUNE 30, 2005, https://www.uscourts.gov/sites/default/files/statistics_import_dir/C03jun05.pdf; U.S. COURTS, TABLE C-3, U.S. DISTRICT COURTS—CIVIL CASES COMMENCED, BY NATURE OF SUIT AND DISTRICT, DURING THE 12-MONTH PERIOD ENDING JUNE 30, 2015, https://www.uscourts.gov/sites/default/files/c03jun15_0.pdf; U.S. COURTS, TABLE C-3, U.S. DISTRICT COURTS—CIVIL CASES COMMENCED, BY NATURE OF SUIT AND DISTRICT, DURING THE 12-MONTH PERIOD ENDING JUNE 30, 2010, https://www.uscourts.gov/sites/default/files/statistics_import_dir/C03Jun10.pdf. For population growth, see *National Population Totals and Components of Change: 2020-2024*, U.S. CENSUS

FIGURE 1. U.S. DISTRICT COURT CIVIL CASE FILINGS, 2005–2024

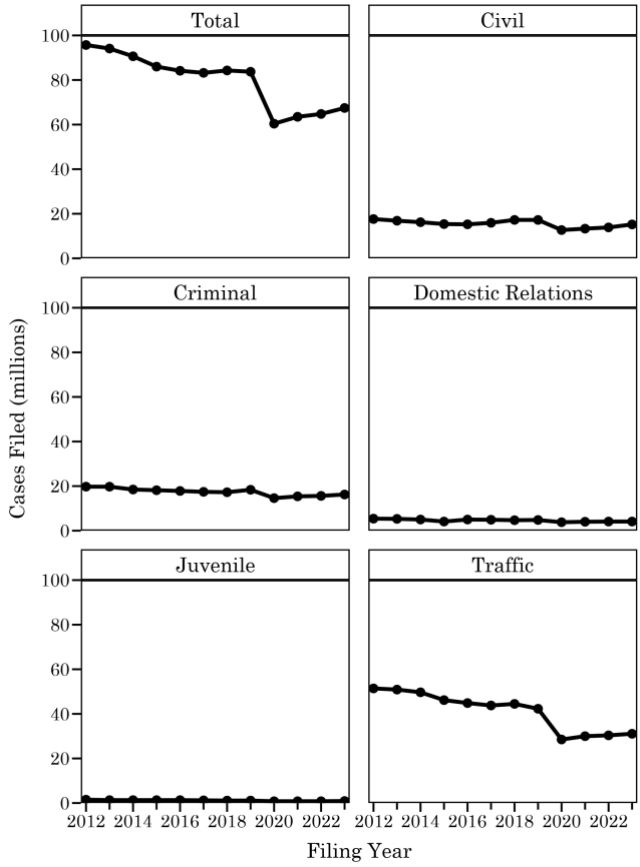


State court docket loads, meanwhile, have seen steady and substantial declines. As reflected in Figure 2, total state court filings dropped a whopping 30 percent between 2012 and 2023, with civil, domestic relations, and juvenile matters seeing drops of 18 percent, 14 percent, and 41 percent, respectively.[7]

BUREAU (Dec. 2024), https://www.census.gov/data/tables/time-series/demo/popest/2020s-national-total.html; *Historical Population Change Data (1910-2020)*, U.S. CENSUS BUREAU (April 26, 2021), https://www.census.gov/data/tables/time-series/dec/popchange-data-text.html.

[7] These numbers and Figure 2's data visualization are derived from a dashboard tool maintained by the National Center for State Courts. *See Trial Court Caseload Data*, NAT'L CTR. FOR STATE CTS., https://www.ncsc.org/explore-court-caseload-data (last visited Aug. 17, 2025).

FIGURE 2. STATE COURT CASE FILINGS, 2012–2023



The empirical claims made by Petitioners' *amici* about tort-filing trends are similarly shoddy. In fact, federal court tort filings declined nearly 70 percent between 1985 and 2016. *See* Nora Freeman Engstrom, *Supplying a Key Piece of the Tort-Decline Puzzle*, JOTWELL (Mar. 20, 2020), https://torts.jotwell.com/supplying-a-key-piece-of-the-tort-decline-puzzle/ (reporting that, in the federal system, there were 29,655 tort lawsuits filed in 1985 but only 12,114 such cases in 2016, a decline of 69 percent).

Drop down to the state level and tort cases have almost entirely disappeared from court dockets. Today, torts account for just 4 percent of state-level case filings, a sharp drop from the mid-1980s, when personal injury cases made up about 20 percent of state court civil filings, and the mid-1990s, when such cases made up roughly 16 percent of filings. *See* Engstrom, *Supplying*, *supra*; Joe Palazzolo, *We Won't See You in Court: The Era of Tort Lawsuits Is Waning*, WALL ST. J. (July 24, 2017), https://www.wsj.com/articles/we-wont-see-you-in-court-the-era-of-tort-lawsuits-is-waning-1500930572 (reviewing a wide range of empirical research). The reduction in medical malpractice claims has been particularly sharp. *See* Myungho Paik et al., *The Receding Tide of Medical Malpractice Litigation: Part 1—National Trends*, 10 J. EMPIRICAL LEGAL STUD. 612, 613 (2013) (reporting a 57 percent nationwide drop in malpractice claims paid out by doctors or their insurers between 1992 and 2012, and a 34 percent decline in malpractice lawsuits from 2001 to 2010).

The reasons for tort's disappearance from federal and state court dockets are many. Tort reform efforts have surely played a role. *See generally* STEPHEN DANIELS & JOANNE MARTIN, TORT REFORM, PLAINTIFFS' LAWYERS, AND ACCESS TO JUSTICE (2015). So has the surge in binding arbitration. *See* Elizabeth G. Thornburg, *Contracting with Tortfeasors: Mandatory Arbitration Clauses and Personal Injury Claims*, 67 LAW & CONTEMP. PROBS. 253 (2004). Whatever the cause, and as Justice Gorsuch no doubt knows, the majority of civil cases filed in state courts are not torts but instead contract actions, primarily debt collections, evictions, and home foreclosure cases that pit an institutional plaintiff, typically with a lawyer, against an individual defendant without one.

See Rebecca Love Kourlis & Neil M. Gorsuch, *Legal Advice is Often Unaffordable. Here's How More People Can Get Help*, USA TODAY (Sept. 17, 2020), https://www.usatoday.com/story/opinion/2020/09/17/lawyers-expensive-competition-innovation-increase-access-gorsuch-column/5817467002/. Neck and neck just four decades ago, contract cases now dominate state court dockets, with torts merely a footnote. *See* Nora Freeman Engstrom & David Freeman Engstrom, *The Making of the A2J Crisis*, 75 STAN. L. REV. ONLINE 146, 149 (2024) (reviewing data).[8]

In short, clear thinking and rigorous data put the lie to the assertions of Petitioners and their *amici* about party costs and court burdens. Even if the Court was inclined to elevate finality, efficiency and economy over jurisdiction and Congress's considered policy judgment, Petitioners' finality-despite-error approach heaps all of the error costs on the wrong party. The Fifth Circuit's jurisdiction-respecting rule, in contrast, spreads them fairly without so much as causing a ripple on the federal docket.

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[8] Yet another empirical claim made by Petitioners' *amici*—about allegedly excessive jury verdicts—fares no better and merits only a brief response. *See* Atl. Leg. Found. Br. 5, 8-10; Prod. Liab. Advisory Council Br. 17. Not only is the unsupported empirical assertion dubious, Petitioners' *amici* do not and cannot explain how the distribution of jury verdicts between federal and state courts is relevant to this case. This Court should condemn, in the strongest terms, any implication that it is appropriate for federal courts to interpret Congress's jurisdictional directives by reference to merits outcomes in one court system compared to another. *See Tafflin v. Levitt*, 493 U.S. 455, 465 (1990) (emphasizing the Court's "full faith in the ability of state courts" to adjudicate claims and warning that assuming otherwise would "denigrate the respect accorded coequal sovereigns").

IV. The Fifth Circuit's jurisdiction-respecting rule is more faithful to federalism values.

Petitioners' finality-despite-error approach raises a final and substantial risk of harm: By supercharging *Caterpillar*'s emphasis on judicial economy above all else, Petitioners' approach would undermine federalism values by frustrating the considered policy choices of the many states. In stark contrast, the Fifth Circuit's jurisdiction-respecting rule would do no such injury to state sovereignty interests.

The injury to state sovereignty under Petitioners' proposed finality-despite-error approach is two-fold. First, whenever a federal court exercises judicial power without first establishing its jurisdiction, the federal court intrudes upon the sovereign territory of the state in which it sits. "[O]ur Constitution establishes a system of dual sovereignty" that divides power "between the States and the Federal Government." *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). Recognizing that state sovereignty is an important safeguard of liberty, this Court has long presumed that Congress legislates with the aim of "preserv[ing] 'the constitutional balance between the National Government and the states.'" *Bond v. United States*, 572 U.S. 844, 862 (2014) (quoting *Bond v. United States*, 564 U.S. 211, 222 (2011)). Indeed, to displace that presumption, Congress must use "exceedingly clear language." *U.S. Forest Serv. v. Cowpasture River Pres. Ass'n*, 590 U.S. 604, 622 (2020).

This federalism canon takes on special salience when interpreting statutes that confer jurisdiction. "Out of respect for state courts, this Court has time and again declined to construe federal jurisdictional

statutes more expansively than their language, most fairly read, requires." *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374, 389 (2016); *see also Romero v. Int'l Terminal Operating Co.*, 358 U.S. 354, 380 (1959) ("Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined.") (quoting *Healy v. Ratta*, 292 U.S. 263, 270 (1934)). That interpretive stance is warranted because whenever a federal court exercises judicial power without first establishing its jurisdiction, "the federal tribunal poaches upon the territory of a coordinate judicial system, and its decisions, opinions, and orders are of no effect." *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 n.6 (5th Cir. 2001).

The intrusion on sovereignty is particularly sharp in the case of removal, which wrests from a state court a legal proceeding that has already commenced, and does so without any say by the state court. *See* 28 U.S.C. § 1446(d) (supplying procedures for a "notice of removal," not a motion); *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941) (noting that the policy underlying removal statutes "is one calling for the strict construction of such legislation").

A district court's jurisdiction-less exercise of judicial power also thwarts a state's control over the elaboration of its own law. This Court has held that the "proper construction of state statutes" is "a matter primarily for determination by the local courts." *Gilchrist v. Interborough Rapid Transit Co.*, 279 U.S. 159, 208 (1929); *Harman v. Forssenius*, 380 U.S. 528, 535 (1965) (state courts are the ultimate "expositors of state law") (citation omitted). Federal courts'

"pronouncements on the content of state law inherently involve a significant intrusion on the prerogative of the state courts to control that development." *Lexington Ins. Co. v. Rugg & Knopp, Inc.*, 165 F.3d 1087, 1092 (7th Cir. 1999) (citation omitted).

Even where jurisdiction is proper, a federal court's prediction as to how state courts would resolve an issue can burden the states. They often amount to no more than "*Erie* guesses," as the former Chief Judge of the Third Circuit has put it. *See* Dolores K. Sloviter, *A Federal Judge Views Diversity Jurisdiction Through the Lens of Federalism*, 78 VA. L. REV. 1671, 1679 (1992). And federal courts often guess wrong. *See id.* at 1677-78 (cataloging cases); John R. Brown, *Certification–Federalism in Action*, 7 CUMB. L. REV. 455, 457 (1977) (same). These incorrect predictions "inequitably affect the losing federal litigant," sow confusion, and can even mislead lower courts, who have "shown a preference for citing federal decisions on state law instead of state decisions." *See* Sloviter, 78 VA. L. REV. at 1681-82.

This case proves the point. The district court went astray in its fraudulent joinder analysis because it relied on a series of federal district court decisions predicting how Texas law would treat claims against product sellers, instead of focusing on the authoritative Texas Supreme Court decisions and Texas state-court opinions interpreting the relevant statute, as the Fifth Circuit did. *See* Pet. App. 19a-20a. By retroactively excusing jurisdictional error, Petitioners' approach entrenches *Erie* guessing and invites more mispredictions that burden state courts with potential preclusion tied to non-authoritative federal readings of state law. By contrast, and as

noted in Part II, the Fifth Circuit's jurisdiction-respecting rule creates salutary incentives for district courts to be certain of their jurisdiction before allowing a case to proceed.

Second, a federal court's erroneous exercise of jurisdiction can intrude on state sovereignty by frustrating the states' considered policy judgments. Many states, including Texas, have made a deliberate policy choice to hold nonmanufacturing sellers liable in strict product liability actions, whether generally or in specified circumstances. *See* Restatement (Third) of Torts: Product Liability § 1, cmt. e reporter's note (1998) (explaining that "any seller in the chain of distribution (manufacturer, wholesaler, retailer) is liable for the sale of a defective product that was a cause of the plaintiff's injury" and that "[s]upport for the rule is widespread"); *id.* (noting that only a few "states bar a strict liability action against nonmanufacturer sellers"); Restatement (Second) of Torts § 402A (1965) (similar); TEX. CIV. PRAC. & REM. CODE § 82.003(a) (imposing liability on "[a] seller that did not manufacture a product" where, *inter alia*, the nonmanufacturing defendant made an "express factual representation about an aspect of the product" (as was alleged in this case), the nonmanufacturing defendant "participated in the design of the product," the manufacturer is insolvent, or the manufacturer is not subject to the court's jurisdiction).[9]

[9] The same is true in admiralty. *See, e.g.*, THOMAS J. SCHOENBAUM, ADMIRALTY & MARITIME LAW § 5.13 (6th ed. 2019) (citing Restatement (Second) of Torts § 402A); *Vickers v. Chiles Drilling Co.*, 822 F.2d 535, 538 (5th Cir. 1987) (applying Restatement (Second) of Torts § 402A's liability for "sellers" in maritime products liability claim).

These frameworks reflect a sensible policy judgment that sellers in the chain of distribution (including the manufacturer, distributor, wholesaler, and retailer) should, under at least some circumstances, be held liable for the sale of a defective product in order to spread loss and increase the likelihood of plaintiffs' recovery. *See, e.g.*, *Bylsma v. R.C. Willey*, 416 P.3d 595, 606 (Utah 2017) (explaining that liability for nonmanufacturing sellers serves the "policy goal" of ensuring "that the injured plaintiff has a party from whom she can recover"); *Zamora v. Mobil Corp.*, 104 Wash. 2d 199, 206 (1985) (noting that "[t]he primary policy justification" for extending strict liability to sellers is "provision of the 'maximum of protection' to the consumer").

Petitioners' proposed rule would intrude upon these considered policy judgments by preventing plaintiffs in Respondents' position from pursuing both manufacturers and sellers in the chain of distribution in a single action. If adopted, the rule would force future plaintiffs to bear the cost and burden of filing a second lawsuit against a wrongly dismissed defendant while also grappling with preclusion arguments based on a federal court's ruling that should never have been rendered. Some dogged plaintiffs may overcome these barriers. Many will not. In either case, by retroactively excusing a district court's jurisdictional error and compelling piecemeal proceedings, Petitioners' proposed rule would encumber the state's decision regarding how liability is assessed and where it is assigned. In sharp contrast, the Fifth Circuit's jurisdiction-respecting approach, and its vacatur order in the case below, ensures that plaintiffs in Respondents' position retain the ability to seek full

relief against all potentially liable parties in accordance with state law.

The intrusion on state sovereignty can be no less acute in cases asserting plain-vanilla (non-product) negligence claims, especially where states have adopted several liability. Some states continue to impose joint-and-several liability on tortfeasors, thus permitting a plaintiff to recover the full amount of damages from any culpable defendant, regardless of that defendant's share of fault. *See, e.g.*, *Holcim (US), Inc. v. Ohio Cas. Ins. Co.*, 38 So. 3d 722, 729 (Ala. 2009); *Shantigar Found. v. Bear Mountain Builders*, 804 N.E.2d 324, 332 (Mass. 2004); VA. CODE ANN. § 8.01-443. However, many other states, including Texas, have abrogated joint-and-several liability by statute and replaced it with a version of several liability, which typically requires a court to perform a comprehensive allocation of damages and fault across all responsible parties.[10]

Petitioners' finality-despite-error approach risks upending these latter frameworks. By forcing plaintiffs to re-file against wrongly dismissed

[10] Roughly a dozen states hold a solvent defendant severally liable only for his or her percentage of fault. Another dozen states (including Texas) have abolished joint and several liability only for cases in which the defendant is at fault below a specified threshold, usually 50 percent. *See* TEX. CIV. PRAC. & REM. CODE § 33.003(a). A few states, including California, have retained joint and several liability for economic damages but not for non-economic damages. A handful of states have abolished joint and several liability when the plaintiff is partially at fault but have retained it when the plaintiff is not at fault. Finally, a handful of states have retained joint and several liability but reallocate the percentage share of any insolvent defendant to the other parties. *See* MARC A. FRANKLIN, ROBERT L. RABIN, MICHAEL D. GREEN, MARK A. GEISTFELD, & NORA FREEMAN ENGSTROM, TORT LAW AND ALTERNATIVES: CASES AND MATERIALS 462 (11th ed. 2021).

defendants in separate proceedings, Petitioners' approach invites fragmented litigation that undermines the accurate and efficient assignment of fault among the parties and risks inconsistent judgments.

In Texas, for instance, a federal court's allocation of liability to a wrongly dismissed defendant would enjoy no preclusive effect in state court. *See, e.g.*, TEX. CIV. PRAC. & REM. CODE § 33.004(i)(2) (a finding of fault against a non-party tortfeasor "may not be used in any other proceeding, on the basis of res judicata, collateral estoppel, or any other legal theory, to impose liability on the person"). With two courts independently assigning fault to the defendants, a plaintiff could be left with a finding of 20 percent liability as to one defendant and 30 percent as to the other or, conversely, 70 percent liability as to one defendant and 80 percent as to the other. The very real threat of inconsistent judgments, with some plaintiffs not made whole and others enjoying a clear windfall, is a high price to pay to salvage a federal district court's erroneous jurisdictional ruling.

Petitioners' approach would work an especially serious intrusion on state sovereignty in jurisdictions that take the opposite approach—where an allocation of fault in a single action is treated as the final adjudication of responsibility for the injury and has preclusive effect. Indiana provides an illustrative example. Under the State's Comparative Fault Act, the trier of fact must determine "the percentage of fault of the claimant, of the defendant, and of any person who is a nonparty." IND. CODE § 34-51-2-7(b)(1). The Indiana Supreme Court has explained that this single action "necessarily adjudicates all the liability and damages for the plaintiff's alleged injury"

and that issue preclusion bars re-adjudication of this determination in subsequent litigation against other tortfeasors. *Davidson v. State*, 211 N.E.3d 914, 922-23 (Ind. 2023). Under Petitioners' rule, if a federal court wrongly retains a diversity case and allocates fault to the non-diverse party, that allocation will bind the plaintiff in later state court proceedings—effectively stripping the state court of its prerogative to adjudicate the core state-law question of who is liable for the injury sustained by one of the state's own citizens.

In short, Petitioners' proposed approach, by tolerating a district court's error and forcing plaintiffs in Respondents' shoes to pursue defendants piecemeal, in multiple courts, will intrude upon state sovereignty and frustrate the considered policy judgment of numerous states that several liability is the best way to achieve an optimal allocation of fault among responsible parties and an optimal level of care in protecting the health and safety of their citizens.

CONCLUSION

For the foregoing reasons, the Court should affirm the Fifth Circuit's decision.

Respectfully submitted,

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APPENDIX

TABLE OF CONTENTS

Appendix A List of Appeals Court Decisions Reversing Remand Denials for Fraudulent Joinder After Judgment.....1a

APPENDIX A

List of Appeals Court Decisions Reversing Remand Denials for Fraudulent Joinder After Judgment

Based on a comprehensive search and analysis of cases in Westlaw, this appendix lists appellate decisions since 1990 in which a district court erroneously denied a motion to remand on the basis of fraudulent joinder, the case against the remaining diverse defendant proceeded to judgment, and the court of appeals reversed the jurisdictional ruling and held that complete diversity was lacking.

The table below also includes how the district court judgment came about: whether appeal followed a motion to dismiss (MTD), summary judgment (SJ), a motion to compel arbitration (Arb.), a trial, or some other disposition.

No.	Case	Citation	Trial
1	*Bounds v. Pine Belt Mental Health Care Resources*	593 F.3d 209 (2d Cir. 2010)	SJ
2	*Bayer v. Snap-on Tools Corp.*	913 F.2d 108 (3d Cir. 1990)	SJ
3	*Batoff v. State Farm Ins. Co.*	977 F.2d 848 (3d Cir. 1992)	MTD
4	*Fister v. Allstate Life Ins. Co.*	166 F.3d 332 (4th Cir. 1998)	SJ

5	*Mayes v. Rapoport*	198 F.3d 457 (4th Cir. 1999)	MTD
6	*Baltimore Cnty. v. Cigna Healthcare*	238 Fed. Appx. 914 (4th Cir. 2007)	SJ
7	*Jones v. Wells Fargo Co.*	671 Fed. Appx. 153 (4th Cir. 2016)	MTD
8	*Brewer v. UNUM Life Ins. Co. of America*	95 F.3d 50 (5th Cir. 1996)	SJ
9	*Valdes v. Wal-Mart Stores, Inc.*	158 F.3d 584 (5th Cir. 1998)	SJ
10	*Cobb v. Delta Exports, Inc.*	186 F.3d 675 (5th Cir. 1999)	SJ
11	*Riley v. F.A. Richard & Assocs., Inc.*	46 Fed. Appx. 732 (5th Cir. 2002)	MTD
12	*Travis v. Irby*	326 F.3d 644 (5th Cir. 2003)	SJ
13	*Collins ex rel. Collins v. American Home Prods. Corp.*	343 F.3d 765 (5th Cir. 2003)	MTD
14	*Smallwood v. Illinois Cent. R.. Co.*	385 F.3d 568 (5th Cir. 2004) (en	SJ

		banc)	
15	*McKee v. Kansas City Southern Ry. Co.*	358 F.3d 329 (5th Cir. 2004)	Trial
16	*De La Hoya v. Coldwell Banker Mexico, Inc.*	125 Fed. Appx. 533 (5th Cir. 2005)	MTD
17	*Vargas v. Stone Container Corp.*	144 Fed. Appx. 365 (5th Cir. 2005)	SJ
18	*Salazar v. Allstate Texas Lloyd's, Inc.*	455 F.3d 571 (5th Cir. 2006)	SJ
19	*Gasch v. Hartford Accident & Indem. Co.*	491 F.3d 278 (5th Cir. 2007)	SJ
20	*Smith v. Petsmart Inc.*	278 Fed. Appx. 377 (5th Cir. 2008)	SJ
21	*Elam v. Kansas City. S. Ry. Co.*	635 F.3d 796 (5th Cir. 2011)	MTD
22	*African Methodist Episcopal Church v. Lucien*	756 F.3d 788 (5th Cir. 2014)	SJ
23	*Davidson v. Georgia-Pacific, LLC*	819 F.3d 758 (5th Cir. 2016)	SJ
24	*Cumpian v. Alcoa World Alumina, LLC*	910 F.3d 216 (5th Cir. 2018)	SJ

25	*Williams v. Homeland Ins. Co. of New York*	18 F.4th 806 (5th Cir. 2021)	MTD
26	*Wilson v. Kemper Corp. Servs., Inc.*	134 F.4th 339 (5th Cir. 2025)	Arb.
27	*Walker v. Philip Morris USA, Inc.*	443 Fed. Appx. 946 (6th Cir. 2011)	MTD
28	*Schur v. L.A. Weight Loss Ctrs., Inc.*	577 F.3d 752 (7th Cir. 2009)	SJ
29	*Wilkinson v. Shackelford*	478 F.3d 957 (8th Cir. 2007)	Rule 41(a)
30	*Junk v. Terminix Intern. Co.*	628 F.3d 439 (8th Cir. 2010)	SJ
31	*In re Prempro Prods. Liab. Litig.*	591 F.3d 613 (8th Cir. 2010)	MTD
32	*Cal. Dump Truck Owners Ass'n v. Cummins Engine Co., Inc.*	24 Fed. Appx. 727 (9th Cir. 2001)	Rule 12(c)
33	*Evans v. Mutual of Omaha Ins. Co.*	134 Fed. Appx. 194 (9th Cir. 2005)	MTD
34	*Hunter v. Philip Morris USA*	582 F.3d 1039 (9th Cir. 2009)	MTD
35	*Woods v. Ross*	833 Fed.	SJ

	Dress for Less, Inc.	Appx. 754 (10th Cir. 2021)	
36	*Henderson v. Washington Nat'l Ins. Co.*	454 F.3d 1278 (11th Cir. 2006)	MTD
37	*Florence v. Crescent Res., LLC*	484 F.3d 1293 (11th Cir. 2007)	MTD/SJ (in alternative)
38	*Stillwell v. Allstate Ins. Co.*	663 F.3d 1329 (11th Cir. 2011)	SJ
39	*SFM Holdings, Ltd. v. Fisher*	465 Fed. Appx. 820 (11th Cir. 2012)	MTD
40	*Ullah v. BAC Home Loans Servicing LP*	538 Fed. Appx. 844 (11th Cir. 2013)	MTD
41	*Kimball v. Better Bus. Bureau of W. Fla.*	613 Fed. Appx. 821 (11th Cir. 2015)	MTD
42	*Dever v. Family Dollar Stores of Georgia, LLC*	755 Fed. Appx. 866 (11th Cir. 2018)	SJ