No. 24-849

IN THE
Supreme Court of the United States

LAURA SMITH, as Duly Appointed Representative of the Estate of Andrea Manfredi, et al.,
Petitioners,

v.

THE BOEING COMPANY, et al.,
Respondents.

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

BRIEF OF AMICI CURIAE FORMER JUDGES IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Professor **Paul G. Cassell** served as a district judge on the United States District Court for the District of Utah, and he is currently the Ronald N. Boyce Presidential Professor of Criminal Law and University Distinguished Professor of Law at the S.J. Quinney College of Law at the University of Utah. Professor Cassell was nominated to serve as a judge in 2001 by President George W. Bush, and he was confirmed by the Senate in 2002. Judge Cassell resigned in 2007 to return full time to the College of Law, to teach, write, and litigate on issues relating to crime victims' rights and criminal justice reform. Professor Cassell has published numerous law review articles on criminal justice issues. While on the bench, Judge Cassell presided over more than twenty jury trials.

Professor Cassell is also a leading expert on crime victims' rights and is currently serving as pro bono legal counsel for various families who lost loved ones in two crashes involving Boeing 737 MAX aircraft, including the crash of Lion Air Flight 610 at issue here. Professor Cassell represents families who have been challenging a secretly negotiated deferred prosecution agreement reached between the Justice

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[1] Pursuant to Supreme Court Rule 37.6, Amici represent that this brief was not authored in whole or in part by any party or counsel for any party. No person or party other than Amici or their counsel made a monetary contribution to the preparation of this brief. A law firm, Fernald and Zaffos, located at 15910 Ventura Boulevard, Suite 1702, Encino, California 91436, paid for the printing costs. Counsel gave notice to the parties of Amici's intention to file this brief. See S. Ct. R. 37.2.

Department and Boeing in the criminal proceedings See *In re Ryan*, 88 F.4th 614 (5th Cir. 2023) (finding that while writ of mandamus to enforce crime victims' rights was "premature," the district court in the Northern District of Texas should enforce Crime Victims' Rights Act rights in future proceedings). That criminal proceeding in Texas is separate from the civil proceeding in Illinois at issue here.

Professor **Nancy Gertner** served as a district judge on the United States District Court for the District of Massachusetts, and she currently teaches at Harvard Law School. Professor Gertner was nominated to serve as a judge in 1993 by President William J. Clinton, and she was confirmed by the Senate in 1994. Judge Gertner assumed senior status and then retired in 2011 to teach at Harvard Law. Professor Gertner has been published widely on sentencing, discrimination, and forensic evidence; women's rights; and the jury system. While on the bench, Judge Gertner presided over more than thirty-five jury trials.

Amici have a keen interest in the proper interpretation of the United States Constitution, especially the right to a jury trial under the Seventh Amendment. Amici respectfully submit that this should be a straightforward case. In a wrongful-death action, the Manfredi family properly invoked diversity jurisdiction and multiparty, multiforum jurisdiction under 28 U.S.C. §§ 1332, 1369. They were entitled to a jury trial on the claims that they brought under that federal jurisdiction.

INTRODUCTION

No court should curtail the Seventh Amendment right to a jury trial in cases at law brought by plaintiffs properly invoking diversity jurisdiction and multiparty, multiforum jurisdiction under 28 U.S.C. §§ 1332, 1369. Here, the Manfredi family brought a wrongful-death action against Boeing and other defendants under that jurisdiction. Although the surviving family members potentially could have invoked the district court's admiralty jurisdiction under 28 U.S.C. § 1333, they decided not to do so.

The Manfredi family demanded a jury trial, and they specifically elected not to make a declaration under Rule 9(h) of the Federal Rules of Civil Procedure to assert admiralty jurisdiction under Section 1333. In cases like this one, in which a plaintiff has done nothing affirmative to invoke admiralty jurisdiction, federal courts must consider the action only on the basis of diversity jurisdiction and not admiralty jurisdiction. Yet that is not what the Seventh Circuit did here.

The Death on the High Seas Act gives plaintiffs a choice. It states that a plaintiff "*may* bring a civil action in admiralty" when the death of an individual is caused by a wrongful act or neglect. 46 U.S.C. § 30302 (emphasis added). Here, the Seventh Circuit misinterpreted that permissive statutory language to make it *mandatory*—holding that DOHSA "require[s] cases to be brought in admiralty." Pet. App. 14a.

The Seventh Circuit's ruling is at odds with well-settled principles of federal jurisdiction and constitutional law. The decision should be reversed, and this Court should resolve the circuit split in favor of jury trials in these circumstances.

BACKGROUND

A. Lion Air Flight 610

In October 2018, Lion Air had scheduled a domestic flight in Indonesia that took off from Jakarta en route to Bangka Island. See Pet. App. 36a–37a. Shortly after takeoff, however, the Boeing 737 MAX aircraft experienced technical problems as a defective control system forced the plane into several nosedives. *Id.* at 37a. The pilots tried to gain control of the aircraft as it dove more than two dozen times, but they did not succeed. *Id.*

The Boeing 737 MAX aircraft crashed at high speed into the Java Sea about eighteen nautical miles off the coast. *Id.* No one survived. All 189 people on board died in the crash. It was one of the first major crashes for the 737 MAX, which at the time was still a relatively new aircraft. See Sinéad Baker, *This timeline shows exactly what happened on board the Lion Air Boeing 737 Max that crashed in less than 13 minutes, killing 189 people*, Business Insider (Oct. 29, 2019), https://www.businessinsider.com/lion-air-crash-timeline-boeing-737-max-disaster-killed-189-2019-10.

Boeing "admitted that a manufacturing defect" caused the crash. Pet. App. 2a.

B. Families sued on behalf of lost loved ones.

Following the tragic crash, family members and representatives of the estates for deceased passengers and crew members filed lawsuits against Boeing and other defendants. All actions were filed in, or removed to, the United States District Court for the Northern District of Illinois. Pet. App. 37a. The district court then consolidated all the cases under a single docket.

Boeing eventually settled with 184 decedents. *Id.* But two families and estate representatives did not settle. They brought claims on behalf of Liu Chandra, an Indonesian businessman, and Andrea Manfredi, an Italian professional cyclist and entrepreneur. Both demanded jury trials.

Chandra's family originally filed suit in Illinois state court, alleging wrongful death under the Death on the High Seas Act, 46 U.S.C. §§ 30301–08, and under the Illinois Wrongful Death Act, based on theories of negligence and products liability. Pet. App. at 37a–38a. Boeing removed the lawsuit from state court to the federal district court for the Northern District of Illinois, and Boeing "included a jury demand" in its removal paperwork. *Id.* at 38a.

Manfredi's family filed its suit in federal district court, invoking diversity jurisdiction and multiparty, multiforum jurisdiction, see 28 U.S.C. §§ 1332, 1369, for wrongful death and survival claims under similar theories of negligence and products liability. *Id.* at 3a, 38a. The family also alleged

"survival claims of pre-death injury, negligent infliction of emotional distress, and claims arising under various fraud statutes, including the Illinois Consumer Fraud and Deceptive Practices Act," and the federal Computer Fraud and Abuse Act. *Id.* at 38a.

The parties informally exchanged some discovery during settlement discussions, but they had not yet engaged in formal discovery. Pet. App. 39a. While this litigation was pending, Chandra's family reached a settlement with the defendants. Only the Manfredi family's claims remain.

C. The Manfredi family did not designate their suit as an admiralty case under Rule 9(h).

"Whether a case is an admiralty case turns on whether the plaintiff properly designated the action as an admiralty case." *Wingerter v. Chester Quarry Co.*, 185 F.3d 657, 664 (7th Cir. 1998).

It is well settled that there "'are special procedures for invoking the admiralty jurisdiction of a federal district court,' and those procedures are set forth in Rule 9(h) of the Federal Rules of Civil Procedure, which governs the designation of admiralty claims." *Id.* (quoting *Baris v. Sulpicio Lines, Inc.*, 932 F.2d 1540, 1547 (5th Cir. 1991)).

Rule 9(h) "requires that in order to invoke a federal court's admiralty jurisdiction *where there exists an additional ground for federal jurisdiction*,

the plaintiff must identify the claim as one in admiralty to make it plain that he wishes to invoke that jurisdictional basis rather than some other." *Baris*, 932 F.2d at 1547 (court's emphasis). So, in cases where a plaintiff has alleged claims based on additional grounds for federal jurisdiction or where a plaintiff has provided "conflicting signals as to whether he wished to proceed in admiralty," courts have "concluded that the cause must proceed as an action at law in diversity." *Id.* (citing *Bodden v. Osgood*, 879 F.2d 184, 186 (5th Cir. 1989)); see also *Alleman v. Bunge Corp.*, 756 F.2d 344, 345–46 (5th Cir.1984).

The Manfredi family did not make a Rule 9(h) declaration. See Pet. 10. Though the family potentially could have invoked the district court's admiralty jurisdiction under 28 U.S.C. § 1333, they decided not to do so. *Id.* When a plaintiff has "done nothing affirmative to invoke admiralty jurisdiction," a court should consider the action "in federal court only on the basis of diversity jurisdiction and not admiralty." *Baris*, 932 F.2d at 1547.

D. The district court found that the Manfredi family was not entitled to a jury trial based on admiralty jurisdiction.

Boeing and some other defendants filed motions in the district court "seeking the application of the Death on the High Seas Act." Pet. App. 36a. They urged the district court to rule "that the application of DOHSA preempts all other causes of action and mandates a bench trial." *Id.* The district

court agreed with the moving defendants, and it granted their motions. *Id.*

The district court recognized that "the parties are diverse," but it held that the Manfredi family's claims arose only under DOHSA. Pet. App. 54a. And the district court held that the "clear terms" of the statute limited the Manfredi family's claims only to "admiralty jurisdiction." *Id.*

In its decision, the district court explained that the "Seventh Amendment does not require jury trials in cases brought in admiralty." Pet. App. 45a. At the same time, the court recognized that "jury trials in admiralty are not forbidden." *Id.*

But in reviewing what it described as "murky and often conflicting" case law, the district court found that a jury trial could be granted only in two circumstances. *Id.* First, the court found that a jury trial could occur if "the plaintiff asserts a non-preempted claim in addition to the DOHSA claim that carries a right to a jury trial." *Id.* at 46a. And, second, the court found that a jury trial could occur where, "in addition to asserting a DOHSA claim, a plaintiff also asserts another claim that does not necessarily entitle her to a jury trial, but that invokes the court's diversity jurisdiction." *Id.* (quoting *Lasky v. Royal Caribbean Cruises, Ltd.*, 850 F. Supp. 2d 1309, 1313 (S.D. Fla. 2012)).

The district court concluded that neither one of those circumstances applied here. Both parties "made a jury trial demand," yet the court held that the plaintiffs' jury demand was "waived by virtue of

their invocation" of the district court's "admiralty jurisdiction." Pet. App. 54a. "A jury demand by either party," the court explained, "does not convert an admiralty claim to a nonadmiralty claim." *Id.* at 55a.

Under 28 U.S.C. § 1292(b), the district court then certified the jury trial issue for interlocutory appeal. *Id.*

E. The Seventh Circuit incorrectly affirmed.

On appeal, the Manfredi family argued that they properly could seek a jury trial because they have alleged wrongful-death claims as well as "common-law claims" based on "a non-admiralty source of jurisdiction." Pet. App. 13a. Indeed, they alleged diversity jurisdiction and decided not to make a Rule 9(h) declaration invoking the court's admiralty jurisdiction under 28 U.S.C. § 1333.

The defendants insisted, however, "that plaintiffs with DOHSA claims in federal court can only proceed 'in admiralty,' without a jury trial." Pet. App. 13a. According to the Seventh Circuit, "the defendants have the better reading of the statute." *Id.*

DOHSA is permissive. The statute states that a plaintiff "*may* bring a civil action in admiralty" when the death of an individual is caused by a wrongful act or neglect. 46 U.S.C. § 30302 (emphasis added). But the Seventh Circuit held that this permissive statutory language is actually *mandatory*; it "require[s] cases to be brought in admiralty." Pet. App. 14a.

To interpret DOHSA, the Seventh Circuit characterized its "task" as starting with the statutory "text and the rules of construction aimed at effectuating Congress's intent." *Id.* at 17a. But, in purporting to fulfill that task, the court of appeals rejected the Manfredi family's arguments as to the plain meaning of the statutory text and as to well-established precedent that supported their reading. The court held instead that "the defendants' reading is most consistent with DOHSA's text and Congress's intent." *Id.*

SUMMARY OF ARGUMENT

This Court should grant the petition for a writ of certiorari for at least two reasons.

First, the Seventh Amendment preserves the right to a jury trial in cases like this one, in which a plaintiff properly relies on concurrent federal jurisdiction. In cases where a federal court has an independent basis of jurisdiction over a suit alleging admiralty and non-admiralty claims—such as diversity of citizenship—both the defendant and the plaintiff have a right to demand a jury trial under the Seventh Amendment so long as the suit is one that traditionally could have been brought at common law.

Second, this Court should resolve the circuit split. The Seventh Circuit's decision is an "anomaly" that cannot stand.

ARGUMENT

I. No court should curtail the right to a jury trial in cases at law brought by the plaintiff under diversity jurisdiction.

The Seventh Amendment preserves the right to a jury trial in "Suits at common law." U.S. Const. amend. VII. "While this Court has held that the Seventh Amendment does not require jury trials in admiralty cases, neither that Amendment nor any other provision of the Constitution forbids them." *Fitzgerald v. U.S. Lines Co.*, 374 U.S. 16, 20 (1963). The jury is, after all, "a time-honored institution" in the Court's jurisprudence. *Id.* at 21.

The critical factfinding role played by a jury is of "such importance and occupies so firm a place in our history and jurisprudence" that it has long been recognized that "any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935). Here, the Seventh Circuit's decision cannot withstand that scrutiny.

The Manfredi family properly brought a wrongful-death suit against Boeing and the other defendants, alleging "claims at law under diversity jurisdiction." *Ghotra v. Bandila Shipping, Inc.*, 113 F.3d 1050, 1057 (9th Cir. 1997); see also 28 U.S.C. §§ 1332, 1369. "Under the Seventh Amendment," the Manfredi family consequently was "entitled to a jury trial on the claims brought under the court's diversity jurisdiction." *Ghotra*, 113 F.3d at 1057.

Where "a federal court has an independent basis of jurisdiction over cases involving admiralty claims, such as *diversity of citizenship*, both the defendant and plaintiff have a right to demand a jury trial under the Seventh Amendment so long as the suit is one that could traditionally have been brought at common law." *Craig v. Atl. Richfield Co.*, 19 F.3d 472, 476 (9th Cir. 1994) (internal quotation marks omitted) (emphasis added); see also *The Sarah*, 21 U.S. (8 Wheat.) 391, 394 (1823) ("In all cases at common law, the trial must be by jury.").

A plaintiff essentially has three choices when bringing a lawsuit with in personam admiralty claims. See *Ghotra*, 113 F.3d at 1054. "The difference between these choices is mostly procedural; of greatest significance is that there is no right to jury trial if general admiralty jurisdiction is invoked, while it is *preserved* for claims based in diversity or brought in state court." *Id.* (emphasis added); accord *In re Lockheed Martin Corp.*, 503 F.3d 351, 355 (4th Cir. 2007).

First, a plaintiff may decide to file suit in state court. That is exactly what the Chandra family did. And the Seventh Circuit correctly recognized that "DOHSA claims, like other wrongful-death tort claims, are typically tried by juries when they are in state court." Pet. App. 17a. But the court of appeals refused to allow a jury trial after removal. It downplayed that "potential anomaly," suggesting—incorrectly—that defendants in these circumstances may "effectively extinguish a plaintiff's jury trial right by removing a case to federal court." *Id.* That is wrong. Even so, that was not the decision made by

the Manfredi family; they did not initially file their suit in state court.

Nor did the Manfredi family pick the second option. A plaintiff may decide to "file suit in federal court under the federal court's admiralty jurisdiction." *Ghotra*, 113 F.3d at 1054. There is no doubt that district courts have "original jurisdiction" over civil claims arising under "admiralty or maritime jurisdiction." 28 U.S.C. § 1333(1). And, if a plaintiff decides to proceed under the district court's admiralty or maritime jurisdiction, while also asserting other common law claims "within the court's subject-matter jurisdiction," the plaintiff "*may* designate" those claims as admiralty or maritime claims. Fed. R. Civ. P. 9(h) (emphasis added). In that situation, there is no right to a jury trial.

Rule 9(h) "serves only as a device by which the pleader may claim the special benefits of admiralty procedures and remedies, *including a nonjury trial*, when the pleadings show that both admiralty and some other basis of federal jurisdiction exist." *Romero v. Bethlehem Steel Corp.*, 515 F.2d 1249, 1252 (5th Cir. 1975) (emphasis added). However, that did not occur here.

The Manfredi family decided *not* to file suit in federal court under the district court's admiralty jurisdiction, and they decided *not* to make a Rule 9(h) declaration. So, they plainly did not designate their additional claims as admiralty claims. And they plainly did *not* seek to avoid a jury trial. They demanded one (as did Boeing before it later changed course). Because the Manfredi family did "nothing

affirmative to invoke admiralty jurisdiction," the lower courts should have considered their wrongful-death action "in federal court only on the basis of diversity jurisdiction and *not* admiralty." *Baris*, 932 F.2d at 1547 (emphasis added).

In fact, that is the third choice discussed in *Ghotra*. A plaintiff may decide to proceed "in federal court under diversity jurisdiction if the parties are diverse and the amount in controversy is satisfied." *Ghotra*, 113 F.3d at 1054. In that situation, the district court exercises "concurrent jurisdiction" much like a state court would. *In re Chimenti*, 79 F.3d 534, 537 (6th Cir. 1996); see also *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 232 (1986). Once such a suit "is brought within the bounds of federal jurisdiction," an Article III court must decide it with a jury if the Seventh Amendment applies. *Stern v. Marshall*, 564 U. S. 462, 484 (2011). Here, it does.

"An admiralty plaintiff who chooses to proceed 'at law,' whether in state or federal court," has the right to demand a jury trial. *In re Lockheed Martin Corp.*, 503 F.3d at 355. That is where the Seventh Circuit went wrong. It appears that the court of appeals "believed that because general admiralty law would be the substantive law applied" to some of their claims, the Manfredi family "had no claim cognizable in the [district] court's general civil jurisdiction and no claim which would give rise to a jury trial." *Ghotra*, 113 F.3d at 1055. But that is not how the law works.

"Diversity jurisdiction existed and was asserted by" the Manfredi family "as the

jurisdictional basis for [their] claims." *Id.* The Manfredi family demanded a jury, and they "were entitled to a jury trial on those claims." *Id.*

II. This Court should resolve the circuit split in favor of jury trials.

As the petitioners have explained in detail, the Seventh Circuit created a split. See Pet. 13–18. Only the Seventh Circuit has held that a plaintiff alleging DOHSA claims, along with other non-admiralty claims, has no right to a jury trial even if the plaintiff properly relies on diversity jurisdiction and multiparty, multiforum jurisdiction under 28 U.S.C. §§ 1332, 1369.

At least five circuit courts, as well as several state courts, disagree with that view. The Seventh Circuit's decision should be reversed, and the split should be settled in favor of allowing jury trials in these circumstances.

CONCLUSION

This Court should grant the petition for a writ of certiorari, and it should reverse.

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