No. 25-213

IN THE
Supreme Court of the United States

ATLAS TURNER, INC.,

Petitioner,

v.

DONNA B. WELCH, individually and as Personal Representative of the Estate of Melvin G. Welch, and PETER D. PROTOPAPAS, in his capacity as Receiver for Atlas Turner, Inc.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of South Carolina

BRIEF OF NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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BRIEF OF NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*[1]

The Honorable Jean H. Toal, in the role of an acting trial court judge, is presiding over all asbestos litigation in South Carolina. She has placed Atlas Turner Inc. ("Atlas Turner") and *23 other* asbestos defendants into receivership. One of those defendants is Payne & Keller Company, later renamed Frentex Enterprises Company of Texas ("Payne & Keller"), a Texas corporation that dissolved in 1986 and, under Texas law, could no longer be sued as of 1989.

National Union Fire Insurance Company of Pittsburgh, PA ("National Union") is an insurance underwriter that, as relevant here, has issued policies that cover asbestos-related liabilities. National Union has been sued in multiple cases by Payne & Keller's South Carolina Receiver—the same South Carolina attorney appointed as receiver for Atlas Turner. Those suits include a third-party action in an asbestos personal-injury case, where the Receiver alleges that National Union issued insurance to Payne & Keller and seeks a declaration that Payne & Keller's insurance policies are the property of the South Carolina receivership.

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[1] Pursuant to this Court's Rule 37.2, *amicus* gave at least 10 days' notice to counsel for petitioner and respondents of its intent to file this brief. Pursuant to this Court's Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the brief's preparation or submission. No person other than *amicus* or its counsel made a monetary contribution to the brief's preparation or submission.

Like the Atlas Turner receivership over a Canadian corporation, the Payne & Keller receivership over a Texas corporation involves an extraterritorial and unconstitutional exercise of in rem jurisdiction. But the extraterritorial activities by the South Carolina court and the court-appointed Payne & Keller Receiver go well beyond the Receiver's initial appointment. Following the Receiver's appointment, the South Carolina trial court issued an order revoking Payne & Keller's Texas dissolution. The Receiver then purported to convert the Texas company into a South Carolina corporation under the Receiver's exclusive control. Those actions by the South Carolina trial court and court-appointed Receiver usurping the corporate powers and property rights of a Texas corporation overrode the constitutional limits on the South Carolina trial court's in rem jurisdiction and infringed the sovereign powers of Texas.

The South Carolina Supreme Court's decision in *Welch* found no due-process deficiencies in the extraterritorial features of the Atlas Turner receivership, and, in upholding that receivership, exacerbated a division in authority on this crucial legal issue. In light of the active litigation between the Payne & Keller Receiver and National Union and the overlapping constitutional deficiencies in the Atlas Turner and Payne & Keller receiverships, this Court's grant of review and reversal in *Welch* would directly affect National Union's interests by confirming that the Constitution does not permit courts to exercise in rem jurisdiction extraterritorially.

SUMMARY OF ARGUMENT

As a Texas corporation, Payne & Keller was entirely "a creature of" Texas law. *Braswell v. United States*, 487 U.S. 99, 105 (1988) (internal quotation

marks omitted). It incorporated in Texas, exercised rights and powers granted to it by Texas, dissolved in Texas, and, under a Texas statute, was shielded from litigation as of 1989, three years after its dissolution. Yet, like Atlas Turner—a Canadian corporation—this Texas corporation has been placed into receivership by a South Carolina trial court. The South Carolina Receiver has purported to exercise his authority to engineer the revocation of Payne & Keller's Texas dissolution and to re-domesticate the company in South Carolina. As a direct result of the receivership order and the Receiver's actions, a dissolved Texas corporation no longer subject to suit under Texas statute—a law to which South Carolina must give full faith and credit—is now purportedly an active South Carolina corporation controlled by a South Carolina Receiver and has been sued in more than 200 lawsuits in ten States.

The Due Process Clause does not countenance South Carolina's extraterritorial incursion on the corporate powers and out-of-state property of a Texas corporation. Yet, in the decision below, the South Carolina Supreme Court upheld a similarly extraterritorial and unconstitutional receivership over a Canadian corporation. South Carolina's boundless conception of in rem jurisdiction disregards the territorial limits imposed by due process and creates an intolerable intersovereign conflict between South Carolina and Texas—while inviting similar extraterritorial assertions of jurisdiction by other States looking to lay claim to out-of-state property. This Court should grant certiorari to stamp out South Carolina's unconstitutional receiverships over out-of-state companies and property, and to clarify and reinforce the due-process limits on in rem jurisdiction.

ARGUMENT

I. SOUTH CAROLINA IMPOSED A RECEIVERSHIP OVER A DISSOLVED TEXAS CORPORATION AND THEN PURPORTED TO REVOKE ITS DISSOLUTION, CREATING A CONSTITUTIONALLY UNACCEPTABLE INTERSTATE CONFLICT.

The South Carolina trial court's orders placing Payne & Keller into receivership and revoking its dissolution powerfully illustrate the sovereign clashes created by the extraterritorial exercise of in rem jurisdiction.

Payne & Keller was a construction company incorporated in Texas in 1961.[2] The company changed its ownership and structure over the ensuing years but always remained a Texas corporation. After more than two decades in business, Payne & Keller decided to close. It filed Articles of Dissolution with the Texas Secretary of State, as required under Texas law, and officially dissolved on December 3, 1986.[3]

Payne & Keller's dissolution meant not only that it could no longer do business but also that, after a three-year period had elapsed, it would no longer be subject to suit. The law of the State of incorporation controls whether a dissolved corporation remains subject to suit after dissolution. *See Chi. Title & Trust*

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[2] *See* Articles of Incorporation of Payne and Keller, Inc., *Childers v. Davis Mech. Contractors, Inc.*, No. 2021-CP-40-03484 (S.C. Ct. C.P. June 25, 2025) (Exhibit 1 to Certain Insurers' Notice of Motion and Motion to Dissolve or Discontinue the Payne & Keller Receivership).

[3] *See* Articles of Dissolution, *Childers v. Davis Mech. Contractors, Inc.*, No. 2021-CP-40-03484 (S.C. Ct. C.P. June 25, 2025) (Exhibit 7 to Certain Insurers' Notice of Motion and Motion to Dissolve or Discontinue the Payne & Keller Receivership).

Co. v. Forty–One Thirty–Six Wilcox Bldg. Corp., 302 U.S. 120, 124–26 (1937).[4] Under Texas law—both at the time of Payne & Keller's dissolution and today—suits against Texas corporations are barred three years after dissolution. *See* Tex. Bus. Corp. Act art. 7.12 (1984); *see also* Tex. Bus. Orgs. Code § 11.359 (current equivalent). Other States are required to give full faith and credit to Texas' sovereign prerogative to limit post-dissolution suits against its own corporations. *See In re All Cases Against Sager Corp.*, 967 N.E.2d 1203, 1207 (Ohio 2012) (holding that the Full Faith and Credit Clause required Ohio to give effect to Illinois' statute barring claims against dissolved Illinois corporations and that the trial court could not circumvent the bar through the appointment of an Ohio receiver). Accordingly, as a matter of both Texas law and constitutional doctrine, Payne & Keller could not be sued *in any jurisdiction* after 1989—nor could it be revived or placed in receivership in another jurisdiction to achieve the same ends.

Nevertheless, in July 2021, Lenora Childers named Payne & Keller and nine other dissolved companies as the only defendants in an asbestos personal-

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[4] *See also*, *e.g.*, *Casselman v. Denver Tramway Corp.*, 577 P.2d 293, 295 (Colo. 1978) ("[W]hether a foreign corporation can be sued after dissolution depends upon the law of the state of incorporation."); *Halliwell Assocs., Inc. v. C.E. Maguire Servs., Inc.*, 586 A.2d 530, 531–32 (R.I. 1991) ("Massachusetts law governs the capacity of a Massachusetts corporation or its shareholders to sue or be sued."); *Velasquez v. Franz*, 589 A.2d 143, 149 (N.J. 1991) ("The choice-of-law question regarding a corporation's capacity to be sued has been answered by reference to the laws of the state of incorporation since long before the rule's incorporation into the federal rules of civil procedure.").

injury lawsuit in South Carolina state court.[5] One month later, after Payne & Keller (unsurprisingly) failed to answer, the South Carolina trial court granted Childers' request to appoint a receiver for Payne & Keller. Order at 1, *Childers v. Davis Mech. Contractors, Inc.*, No. 2021-CP-40-03484 (S.C. Ct. C.P. Aug. 27, 2021) ("Receivership Order").[6] The trial court appointed Peter Protopapas—the same South Carolina lawyer it appointed as receiver for Atlas Turner (and nearly two dozen other companies)—as Receiver for Payne & Keller. *Id*. at 1–3.

By placing Payne & Keller into receivership, the South Carolina court effectively revived the dissolved company in contravention of the litigation bar under Texas law. The Receivership Order empowered the Receiver to "fully administer all assets of Payne & Keller," to "accept service on behalf of Payne & Keller," to "engage counsel on behalf of Payne & Keller," and to "take any and all steps necessary to protect the interests of Payne & Keller whatever they may be." Receivership Order at 1. The Receivership Order further stated that the Receiver possesses "the right and obligation to administer any insurance assets of Payne & Keller as well as any claims related to the actions or failure to act of Payne & Keller's insurance carriers." *Id*. The South Carolina trial court also ordered that neither the Receiver nor Payne & Keller

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[5] *See* Complaint, *Childers v. Davis Mech. Contractors, Inc.*, No. 2021-CP-40-03484 (S.C. Ct. C.P. July 14, 2021).

[6] *See also* Order Granting the Receiver for Payne & Keller Company's Motion to Clarify the Receiver Order at 1, *Childers v. Davis Mech. Contractors, Inc.*, No. 2021-CP-40-03484 (S.C. Ct. C.P. Sept. 30, 2021) (clarifying the various Payne & Keller corporate entities to which the Receivership Order applies).

"may . . . be sued outside [the trial court] without obtaining the Receiver's consent or an order of [the court] prior to doing so." *Id*. at 3.

Several months later, the Receiver exercised the authority purportedly conferred by the trial court to file a third-party complaint in the *Childers* action against several companies alleged to have been Payne & Keller's insurers, including National Union.[7] The complaint seeks, among other relief, a declaration that insurance policies issued to Payne & Keller are the property of the South Carolina receivership.

Two years later, the South Carolina trial court went further still. At Childers' request, backed by the Receiver, the trial court issued an order retroactively applying a Texas statute enacted in 2006 to revoke Payne & Keller's 1986 dissolution—entirely ignoring Texas' constitutional prohibition on the retroactive application of new laws. *See* Tex. Const. art. I, § 16; Findings of Fact and Conclusions of Law on Pls.' Mot. to Revoke the Termination of Payne & Keller Co. at 8, *Childers v. Davis Mech. Contractors, Inc.*, No. 2021-CP-40-03484 (S.C. Ct. C.P. Oct. 5, 2023) ("Revocation Order"). The South Carolina trial court interpreted the 2006 Texas statute to "authorize[ ] a court to revoke a corporation's termination of its own corporate existence if that termination was 'as a result of actual or constructive fraud'"; determined, without adequate factual basis, that such fraud had supposedly occurred when Payne & Keller dissolved; and declared that its

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[7] Amended Third-Party Complaint, *Childers v. Davis Mech. Contractors, Inc.*, No. 2021-CP-40-03484 (S.C. Ct. C.P. Feb. 23, 2022); *see also* Complaint for Declaratory Judgment and Breach of Contract, *Protopapas v. Am. Int'l Grp.*, No. 2021-CP-4005768 (S.C. Ct. C.P. Nov. 23, 2021) (asserting similar claims against National Union).

revocation of Payne & Keller's dissolution enables the company to sue and be sued "as if it were never dissolved." Revocation Order at 6–7 (quoting Tex. Bus. Orgs. Code § 11.153).

In finding "constructive fraud" in Payne & Keller's dissolution, the trial court relied on the fact that "no party opposing Plaintiffs' motion [had] come forth with any evidence to suggest that the facts as set forth in Plaintiffs' motion are not accurate." Revocation Order at 7. But the Receiver—far from "protect[ing] the interests of Payne & Keller"—had directed Payne & Keller's counsel *not to oppose* Childers' motion to revoke.[8] Payne & Keller was thus deprived of the opportunity to dispute the factual assertions in the motion and Revocation Order and to explain that the Texas Constitution prohibits retroactive application of statutes to resurrect time-barred claims against the company.

The Receiver then took full advantage of the South Carolina Receivership Order to further his own ends. Without giving notice to National Union and the other insurers he had sued, the Receiver filed a copy of the Revocation Order in Texas state court to domesticate the order, identifying only himself (as Payne & Keller's South Carolina-appointed Receiver)

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[8] *See* Receiver for Third-Party Plaintiff Payne & Keller Company's Objections and Responses to Third-Party Defendant National Union Fire Insurance Co. of Pittsburgh, PA's First Set of Interrogatories at 18, *Childers v. Davis Mech. Contractors, Inc.*, No. 2021-CP-40-03484 (S.C. Ct. C.P. June 6, 2024) ("On June 27, 2023, the Receiver objected and declined the insurers' request to authorize Payne & Keller's defense counsel to oppose Plaintiffs' Motion to Revoke the Termination of Payne & Keller Company.").

and Childers in the Texas case caption.[9] After the Texas court clerk file-stamped the Receiver's notice of domestication, the Receiver presented that file-stamped notice to the Texas Secretary of State, who immediately issued a certificate revoking Payne & Keller's dissolution.

With the certificate of reinstatement in hand, the Receiver then purported to convert Payne & Keller into a South Carolina corporation.[10] He changed Payne & Keller's principal office to his own South Carolina law office, identified a new registered agent for service of process, authorized the issuance of 100,000 shares of common stock, and unilaterally approved a "plan of conversion" to change Payne & Keller's corporate structure.[11]

The Receiver's appointment and subsequent conduct have generated an onslaught of litigation against Payne & Keller. Under Texas' three-year post-dissolution bar, Payne & Keller had been protected from litigation since 1989. But in the time since the South Carolina court purported to override that protection, Payne & Keller has been named as a defendant in more than 200 asbestos suits across ten States. The Receiver has accepted service of those suits, regardless of where they were filed, and National Union has been paying for Payne & Keller's defense in many of those cases. Despite his obligation "to protect the in-

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[9] *See* Notice of Domestication of a Foreign Order, *Childers v. Payne & Keller Co.*, No. 2023-70875 (Tex. Dist. Ct. Oct. 12, 2023).

[10] *See* Receiver for Payne & Keller Company's Notice of Filing, *Childers v. Davis Mech. Contractors, Inc.*, No. 2021-CP-4003484 (S.C. Ct. C.P. Apr. 18, 2024) (attaching exhibits).

[11] *Id.*

terests of Payne & Keller whatever they may be," Receivership Order at 1, the Receiver has opposed efforts to raise Texas' dissolution statute as a defense in those cases—even going so far as to sue one Texas defense attorney for presenting the argument.[12]

The interstate conflict created by the South Carolina trial court's Receivership Order is unmistakable and unconstitutional. Texas dissolved Payne & Keller and barred any future claims against the company as of 1989. Yet South Carolina has (1) imposed a court-appointed receiver who is controlling Payne & Keller's affairs and property; (2) purported to revoke Payne & Keller's dissolution; and (3) in taking these steps, opened the door to scores of new suits against the company, which the South Carolina Receiver has now seized and reincorporated in South Carolina. South Carolina's unprecedented assertion of exclusive and worldwide in rem jurisdiction to appoint a receiver for a dissolved Texas company directly conflicts with Texas' exclusive jurisdiction to create, dissolve, and revive corporations incorporated in Texas, as well as with Texas' statute prohibiting future claims against dissolved Texas corporations.

Avoiding these types of interstate conflicts is precisely why the Constitution imposes territorial limitations on state courts' in rem jurisdiction. But as the Payne & Keller receivership makes clear, no company—active or dissolved, domestic or foreign—is safe from the extraterritorial receivership practices that the South Carolina Supreme Court permitted in *Welch* as to Atlas Turner. This Court's intervention is necessary to clarify and reinforce the territorial limits

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[12] *See Protopapas v. Baker*, No. 2023-CP-40-05203 (S.C. Ct. C.P.).

on state courts' in rem jurisdiction and to put an end to the interstate conflicts that inevitably follow from evading those limits.

II. LIKE THE ATLAS TURNER RECEIVERSHIP, THE PAYNE & KELLER RECEIVERSHIP EXCEEDS THE DUE-PROCESS LIMITS ON STATE COURTS' IN REM JURISDICTION.

The Payne & Keller receivership, like the Atlas Turner receivership, constitutes an exercise of the South Carolina trial court's in rem jurisdiction because the court-appointed Receiver purports to control Payne & Keller's corporate powers and all of its property, including its contractual insurance rights. *See*, *e.g.*, 12 Wright & Miller, *Federal Practice & Procedure* § 2985 (4th ed. 2025) (noting that a receivership appointment "is in the nature of a proceeding in rem"); *accord Buist v. Williams*, 62 S.E. 859, 861 (S.C. 1908) ("The administration of a receiver is a proceeding in rem . . . ."). Because Payne & Keller's corporate powers and out-of-state property are beyond the South Carolina trial court's territorial bounds, the receivership exceeds the due-process limits on the court's in rem jurisdiction.

A. In Rem Jurisdiction Extends Only To Property Within A Court's Territory.

"*All* assertions of state court jurisdiction" are subject to the limitations of due process. *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977) (emphasis added). That includes a court's in rem jurisdiction over property, which is "[f]ounded on physical power" and "the presence of the subject property within the territorial jurisdiction of the forum State." *Hanson v. Denckla*, 357 U.S. 235, 246 (1958). As a matter of due process, a

court's in rem jurisdiction extends only to "property within its territory." *Shaffer*, 433 U.S. at 199.

This due-process limit is essential because in rem jurisdiction is a particularly potent tool that "affects the interests of all persons in [the] designated property." *Hanson*, 357 U.S. at 246 n.12. The court's disposition of that property establishes a party's rights to the property "against all the world"—regardless of whether other interested parties participated in the litigation. *McKinney v. Alabama*, 424 U.S. 669, 673 (1976).

In rem jurisdiction thus differs markedly from personal jurisdiction. It is not unusual for courts in two States to simultaneously exercise personal jurisdiction over the same person (for example, a personal-injury action in Maryland and a contract dispute in Virginia); the defendant need only have sufficient suit-related contacts with each State to make the exercise of personal jurisdiction compatible with principles of "fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945). But, with respect to in rem jurisdiction, it is self-evident that more than one court "cannot possess or control the same thing at the same time," lest "unseemly conflict" result. *Toucey v. N.Y. Life Ins. Co.*, 314 U.S. 118, 135 (1941) (internal quotation marks omitted); *see also Marshall v. Marshall*, 547 U.S. 293, 311–12 (2006) ("[W]hen one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*."). It has been "long-accepted" that the "purpose" of the territorial limitation on in rem jurisdiction "is to avoid conflicts in the administration of justice and the unseemliness of two courts vying simultaneously for control of the same property"—the very conflict the South Carolina trial

court's extraterritorial receivership practice invites. *Scarabin v. DEA*, 966 F.2d 989, 994 (5th Cir. 1992).

That no two sovereigns can simultaneously control the same property is obvious when applied to physical property. *See*, *e.g.*, *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 679 (1974) (allowing the pre-hearing seizure of a yacht because it "permit[ted] [a court] to assert in rem jurisdiction over the property"). The principle is equally applicable to intangible property and rights, such as the status and powers a State grants to a corporation incorporated under its laws. As this Court has recognized, the jurisdiction to adjudicate the *status* of persons—including, for corporations, whether they exist or are dissolved—is jurisdiction in rem. *See Pennoyer v. Neff*, 95 U.S. 714, 722 (1877) ("every State has the power to determine for itself the civil *status* and capacities of its inhabitants," and "no State can exercise direct jurisdiction and authority over persons or property without its territory"); *Shaffer*, 433 U.S. at 201 (*Pennoyer* "carefully noted that cases involving the personal status of the plaintiff, such as divorce actions, could be adjudicated in the plaintiff's home State even though the defendant could not be served within that State"). A corporation is "a creature of the State" in which it is incorporated. *Braswell*, 487 U.S. at 105 (internal quotation marks omitted). Its State of incorporation is therefore the *only* jurisdiction that can exercise in rem powers to regulate the formation, dissolution, and revival of a corporation because that State's laws are the source of the corporation's rights. *See*, *e.g.*, *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89–90 (1987) ("No principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations . . . .").

The Third Circuit recently reaffirmed this principle in considering another of the South Carolina trial court's extraterritorial receiverships—this one over Whittaker, Clark & Daniels, Inc. ("Whittaker"), a New Jersey corporation. In holding that the South Carolina trial court's receivership order did not displace the authority of Whittaker's board over its corporate affairs—including the board's authority to declare bankruptcy—the Third Circuit emphasized that "the Due Process Clause of the Fourteenth Amendment is long understood to impose limitations on state courts' authority to determine non-resident parties' rights," including the "authority a state court can exercise over a corporation incorporated in a sister state." *In re Whittaker Clark & Daniels Inc.*, __ F.4th __, 2025 WL 2611753, at *7 (3d Cir. Sept. 10, 2025). "[T]he state of incorporation enjoys the exclusive authority to govern the internal affairs of its corporations," *id.* at *8, which means that "a state 'has no interest in regulating the internal affairs of foreign corporations,'" *id.* at *7 (quoting *Edgar v. MITE Corp.*, 457 U.S. 624, 645–46 (1982)). For a State nevertheless to attempt to exercise such control over a foreign corporation would constitute a "radical intrusion into the province of a co-equal sovereign." *Id.* at *8.

By ignoring these due-process guardrails, the South Carolina courts' approach to in rem jurisdiction invites intersovereign conflict, with multiple States competing for control over the same tangible assets and intangible corporate powers and rights. In particular, if courts were able to rely on specific personal jurisdiction over a defendant as a sufficient basis for asserting exclusive, in rem jurisdiction over the defendant's out-of-state property—as the South Carolina Supreme Court did in *Welch* in upholding the Atlas Turner receivership, *see* Pet. App. 26a–27a—*every*

State in which the defendant is subject to specific jurisdiction could claim control over the entirety of the defendant's property, no matter its location. But just as multiple States cannot simultaneously control the disposition of a single item of physical property, they cannot simultaneously control the corporate powers and status of a corporation without breeding intractable conflict and confusion.

The South Carolina Supreme Court's boundless approach to in rem jurisdiction wrongly conflates the constitutional standards for personal and in rem jurisdiction, and defies the principles underpinning our federal system in which "[t]he sovereignty of each State . . . [has] implied a limitation on the sovereignty of all of its sister States." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980).

B. The Payne & Keller Receivership Contravenes The Territorial Limits On In Rem Jurisdiction.

The Payne & Keller receivership is incompatible with due process because a *South Carolina* Receiver is exercising control over the affairs and worldwide assets of a *Texas* corporation. Like Atlas Turner, Payne & Keller is not a South Carolina corporation (despite the masquerade of Payne & Keller's purported redomestication); its corporate powers are subject to in rem jurisdiction only in Texas, its State of incorporation, and any remaining assets it possesses are subject to in rem jurisdiction only in the State in which they are located. Yet the court-appointed South Carolina Receiver reached outside the court's own territory by exercising control over Payne & Keller's corporate rights—invading the sovereign domain of Texas—as well as over its assets anywhere in the world. This

Court should grant review and, by rejecting the similarly flawed Atlas Turner receivership, make clear that these types of extraterritorial assertions of in rem jurisdiction are unconstitutional.

In fact, the powers exercised by the Payne & Keller Receiver are even more expansive, and thus arguably even more constitutionally problematic, than those of the Atlas Turner receiver. Whereas the South Carolina Supreme Court limited the Atlas Turner receivership to marshaling "Insurance Assets," Pet. App. 26a, the Payne & Keller Receiver has asserted control over Payne & Keller's corporate affairs and "all assets of Payne & Keller." Receivership Order at 1. And, as with the Atlas Turner receivership, the Payne & Keller Receivership Order imposes no geographic limitation on these powers. The South Carolina Receiver has thus exercised his authority over Payne & Keller nationwide, including by accepting service of new lawsuits filed across the country.

By appointing an officer of the court who is controlling the affairs and worldwide assets of a Texas corporation, the South Carolina trial court has created a constitutionally intolerable interstate conflict. The actions of the South Carolina Receiver directly usurp Texas' authority over its own corporations. The Receiver has purported to take over all the corporate rights and powers of Payne & Keller, a company incorporated in, governed from, and ultimately dissolved in Texas. In particular, the Receiver overrode Texas' dissolution of Payne & Keller by domesticating the South Carolina trial court's Revocation Order in Texas, filing the domesticated order with the Texas Secretary of State, and then converting the company into a South Carolina corporation subject to his exclusive control.

In taking each of these extraordinary actions, the Receiver invoked authority purportedly granted to him by the South Carolina trial court. And the South Carolina Supreme Court has now made clear that, at least as to the Atlas Turner receivership, it sees no due-process problems with the trial court's extraterritorial assertion of in rem jurisdiction. In upholding the Atlas Turner receivership, the South Carolina Supreme Court held that there are no territorial limits on the trial court's in rem jurisdiction as long as it has specific personal jurisdiction over the defendant. *See* Pet. App. 23a ("Because equity has jurisdiction over the defendant, it is immaterial that the res is beyond the territorial jurisdiction of the court.") (internal quotation marks omitted).

The South Carolina courts' borderless approach to in rem jurisdiction—manifested in both *Welch* and the Payne & Keller Receivership Order—aligns with the Eleventh Circuit's equally flawed endorsement of extraterritorial in rem powers. *See Citronelle-Mobile Gathering, Inc. v. Watkins*, 934 F.2d 1180, 1183–84, 1187 (11th Cir. 1991); *see also* Pet. 14–15. But it departs from the jurisdictional precedent of both this Court and other state and federal courts. *Id.* at 11–13, 16–25. Most recently, as discussed above, the Third Circuit declined to give extraterritorial effect to another of the trial court's receivership orders, characterizing a broad reading of that order as "an unprecedented exertion of power over a foreign corporation whose internal affairs are governed by the laws of a sister state." *In re Whittaker Clark & Daniels*, 2025 WL 2611753, at *8. The South Carolina courts have thus deepened a division of authority and fostered a jurisdictional regime in which multiple competing state and federal courts can each assert control over a

corporation—no matter where the company is incorporated or where its property is located.

If allowed to stand, the South Carolina Supreme Court's decision in *Welch* and the South Carolina trial court's other extraterritorial receivership orders would present unending opportunities for jurisdictional conflict and confusion. In our federal system, the "several States are of equal dignity and authority," and "the independence of one implies the exclusion of power from all others." *Pennoyer*, 95 U.S. at 722. A chaotic jurisdictional contest in which *multiple* States claim authority to control the affairs of out-of-state corporations and their out-of-state assets is irreconcilable with these foundational principles. To prevent such unseemly and unwarranted interstate conflict, this Court should step in now to address this critically important issue and reaffirm the territorial limits on courts' in rem jurisdiction.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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