No. 25-4

IN THE
SUPREME COURT OF THE UNITED STATES

PRESTON L. MARSHALL, INDIVIDUALLY AND AS CO-TRUSTEE OF THE PEROXISOME TRUST,
Petitioner,

v.

STEPHEN D. COOK, AS CO-TRUSTEE OF THE MARSHALL HERITAGE FOUNDATION AND MARSHALL LEGACY FOUNDATION,
Respondent.

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

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BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the citizenship of a non-party trustee for a traditional trust is considered when determining whether diversity of citizenship exists under 28 U.S.C. § 1332.

PARTIES TO THE PROCEEDINGS

The Peroxisome Trust is a traditional trust organized under the laws of the State of Louisiana. It was settled by Mrs. Elaine T. Marshall ("Mrs. Marshall") in 2011 by her donation of assets valued at $100,000,000.00 to her sons, E. Pierce Marshall Jr. ("Pierce") and Preston L. Marshall ("Preston"), as co-trustees of the trust. Under the Internal Revenue Code, the Peroxisome Trust is a non-grantor charitable lead annuity trust. By virtue of the judgment in this case dated January 23, 2024, *see* Pet. App. at 25a, Preston was removed as a co-trustee of the Peroxisome Trust. Thus, Pierce serves as the sole trustee of the Peroxisome Trust.

The Peroxisome Trust has two charitable income beneficiaries: The Marshall Heritage Foundation ("TMHF") and Marshall Legacy Foundation ("Legacy") (together "Foundations"). Both are traditional trusts organized under the laws of Louisiana. TMHF has three trustees: Mrs. Marshall, Pierce, and Dr. Stephen D. Cook ("Dr. Cook"). Legacy has two trustees: Mrs. Marshall and Dr. Cook.[1]

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[1] These co-trustees removed Preston as a co-trustee of Legacy due to his misconduct in 2015, which was confirmed by a 2023 judgment in the matter entitled "*In Re: Marshall Legacy Foundation,*" Case No. 2015-3683, 14th Judicial District Court for the Parish of Calcasieu, State of Louisiana, and affirmed by the Louisiana Third Circuit Court of Appeal. *See In re: Marshall Legacy Foundation*, 23-522 (La. App. 3 Cir. 6/12/24), 389 So. 3d 1005; *writ denied*, 2024-895 (La. 12/27/24), 397 So. 3d 1216.

Respondent, Dr. Cook, brought this suit in his capacity as a co-trustee of the Foundations, pursuant to authorizations by his respective co-trustees. *See* Pet. App. at 56a and 62a. Dr. Cook is a citizen of Louisiana. He sued Preston, Petitioner and a citizen of Texas, as a co-trustee of the Peroxisome Trust and in his personal capacity.

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INTRODUCTION

Contrary to the hyperbole of Petitioner, the decision of the Court of Appeals for the Fifth Circuit is entirely consistent with the caselaw of this Court concerning traditional trusts created under state law. The decision is also completely consistent with the decisions of the other courts of appeals that have considered the issue. This case is absolutely not a "direct threat to one of this Court's bedrock jurisdictional safeguards."

Petitioner's jurisdictional argument completely disregards decades of the Court's precedents that explicitly distinguish between traditional trusts and unincorporated associations created under state law, such as business trusts, partnerships, and associations. As discussed, the Fifth Circuit correctly applied these precedents in this case. The precedents compel the very same result that the Fifth Circuit reached. In an attempt to avoid their application, Petitioner relies on a completely incorrect analysis of the Court's precedents, unsupported analogies, and policy arguments that do not withstand even minimal scrutiny and have been rejected by courts.

For these reasons, the Petition should be denied.

STATEMENT OF THE CASE

Respondent, Dr. Cook, is a co-trustee of two Louisiana charitable trusts that are the income beneficiaries of the Peroxisome Trust. As noted *supra,* Mrs. Marshall settled the Peroxisome Trust with a donation of assets valued at $100,000,000.00 to her sons Pierce and Preston as co-trustees of the Peroxisome Trust. For twenty years, the Peroxisome

Trust was to receive annually $6,647,126 and distribute this amount to the original Marshall Heritage Foundation. At that time, Dr. Cook, Mrs. Marshall, Pierce, and Preston were the co-trustees of this foundation.

In February 2014, the Marshall Heritage Foundation was decanted/divided into two Louisiana charitable trusts: (1) TMHF with Dr. Cook, Mrs. Marshall and Pierce as co-trustees and (2) Legacy with Dr. Cook and Mrs. Marshall as co-trustees.[2] The sole function of these Foundations is to donate to charities as selected by their co-trustees. It is undisputed that the Foundations are traditional trusts created and governed by Louisiana law. There is no contention whatsoever that the Foundations are business trusts or unincorporated associations under Louisiana law.

Beginning in the third quarter of 2016, Preston, as co-trustee of the Peroxisome Trust, repeatedly breached his fiduciary duties by refusing to approve mandatory distributions to the Foundations. The Trust Code of Louisiana requires the concurrence of both trustees when there are only two trustees. For this reason, after being authorized by his co-trustees, Dr. Cook, in his capacity as co-trustee of TMHF, filed suit in 2017 in the Eastern District of Louisiana against Preston, in his capacity as co-trustee of the Peroxisome Trust, to require him to release the mandatory distributions owed to TMHF. The district court proceeded on the basis of the diversity of

[2] As noted *supra*, Preston was originally a co-trustee of Legacy but was properly removed.

citizenship of the parties as it was uncontested that Dr. Cook was a citizen of Louisiana and Preston was a citizen of Texas. Ultimately, the district court held that Preston had breached his trust and fiduciary duties as a co-trustee of the Peroxisome Trust. The district court ordered Preston to effectuate distributions to TMHF. Pet. App. at 2a. The Fifth Circuit upheld the judgment. *Id.*

Despite these rulings, Preston continued breaching his duties, and he refused to comply with the judgment and orders of the district court. Due to the failure of the Peroxisome Trust to make the required distributions to its income beneficiaries, the Peroxisome Trust incurred federal and state tax liabilities. The district court held Preston in contempt of court and ordered him to authorize Pierce, his co-trustee, to resolve the tax liabilities of the Peroxisome Trust. The payment of taxes by the Peroxisome Trust caused the Foundations to suffer damages exceeding $11,000,000.00, as the funds needed to make the distributions to the Foundations were used by the Peroxisome Trust to pay the taxes.

These actions of Preston, including failing to authorize mandatory distributions and to address tax liabilities, formed the basis of this suit. After being authorized by his co-trustees, Dr. Cook, in his capacity as a co-trustee of each of the Foundations, again brought suit in 2021 in the Eastern District of Louisiana (1) to remove Preston as co-trustee of the Peroxisome Trust and (2) to hold him personally liable for the damages that had been suffered by the Foundations. This litigation was consolidated with the prior litigation between Dr. Cook and Preston.

Preston again did not dispute subject matter jurisdiction based upon diversity of citizenship. Initially, Preston did, however, move to dismiss, partly on the basis that Dr. Cook had failed to join indispensable parties, namely Mrs. Marshall and Pierce as co-trustees of the Foundations. The district court held that Dr. Cook adequately represented the co-trustees' interests so they were not indispensable parties. Pet. App. at 52a. The district court stated:

> This inquiry is necessarily factually intensive. *See* 7 Charles A. Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure, §* 1604 (3d ed. 2021) ("By its very nature Rule 19(a) calls for determinations that are heavily influenced by the facts and circumstances of individual cases."). The party advocating for joinder bears the initial burden of proving a necessary party must be joined. *Colbert v. First NBC Bank,* WL 1329834 (E.D. La. March, 31, 2014). Here, Preston fails to meet his burden of proof that either party must be joined. The Court can grant the relief requested in this case, damages against Preston and his removal as co-trustee, without either additional party being joined. Neither of those parties are claiming any interest that is not represented by Plaintiff: in fact, they authorized Dr. Cook, in his capacity as co-trustee of TMHF and MLF [Legacy], to file this lawsuit against Preston. Because these

> interests are adequately represented, failure to join these parties will not subject Defendant to a risk of incurring multiple or inconsistent obligations. Accordingly, dismissal for failure to join these so-called indispensable parties would be inappropriate.

Pet. App. at 51a-52a. The Fifth Circuit affirmed. Preston has not sought review of this affirmance by this Court.

Following the conclusion of discovery, the district court granted motions for summary judgment filed by Dr. Cook. The district court removed Preston as co-trustee of the Peroxisome Trust, finding "sufficient cause" under Louisiana Revised Statute 9:1789(A) based on, *inter alia*, Preston's post-judgment, contemptuous conduct in which he "squandered" his chance to comply with his duties as co-trustee of the Peroxisome Trust. Pet. App. at 37a-38a. The district court also held Preston personally liable to each of the Foundations for a total of over $11,000,000 in damages. Pet. App. at 18a-24a.

In his appeal at the Fifth Circuit, Preston did not raise the issue of subject matter jurisdiction until his Reply Brief. Instead, Preston appealed initially based on (1) failure to join Mrs. Marshall and Pierce as indispensable parties, (2) *res judicata,* and (3) failure by Dr. Cook, Pierce, and Mrs. Marshall to mitigate the damages suffered by the Foundations. The Fifth Circuit upheld the Eastern District's decision in full. In particular, the lower court faithfully and explicitly applied this Court's precedents in *Navarro Savings Association v. Lee*, 446

U.S. 458 (1980), and *Americold Realty Trust v. Conagra Foods, Inc.*, 577 U.S. 378 (2016), in holding that only Dr. Cook and Preston's citizenship mattered for diversity jurisdiction. Pet. App. at 5a. The Fifth Circuit adhered to the rule that when a trustee of a traditional trust files a lawsuit in his own name, his citizenship is all that matters for purposes of diversity. *Americold*, 577 U. S. at 383. The citizenship of trustees of a traditional trust who are not parties is irrelevant to subject matter jurisdiction. Finally, the Fifth Circuit noted that its decision was consistent with the positions taken by the Seventh and Tenth Circuits on this issue.

REASONS TO DENY THE PETITION FOR A WRIT OF CERTIORARI

The Petition raises no issues warranting this Court's review and should be denied for several reasons.

First, there was no error. The Eastern District of Louisiana and Fifth Circuit properly found diversity jurisdiction in this case where a trustee of a traditional trust has sued in his own name, as this Court has consistently held. Petitioner ignores the true effect of Louisiana law under which Dr. Cook appeared as the sole plaintiff to assert his rights as co-trustee against Preston. Petitioner's analogies to unincorporated associations under state law are incorrect and inapposite. Indeed, this Court has explicitly rejected the asserted analogies with respect to traditional trusts. The Petition does not present an important issue of federal law that this Court has not heretofore had the opportunity to address.

Second, contrary to Petitioner's arguments, there is not any conflict with any decision of a circuit court of appeals. Nor is there "disarray" among the courts below. As recognized by the Fifth Circuit, the decisions of the Seventh and Tenth Circuits are in accord.

Finally, there are no policy considerations that would merit review by this Court. The suggestion that hordes of potential trustees are waiting in the wings to create diversity for trustees who are contemplating litigation borders on the fanciful.

The Petition should be denied.

ARGUMENT

I. The Citizenship of a Trustee Suing in His Trustee Capacity for a Traditional Trust Determines the Citizenship as a Plaintiff.

There is not any dispute that complete diversity of the parties must exist for federal jurisdiction. Petitioner, however, incorrectly argues that the citizenship of *all* trustees of traditional trusts such as the Foundations must be considered for diversity jurisdiction. There is no authority for this proposition. To the contrary, almost a decade ago, the Court in *Americold* eliminated the widely held confusion about the citizenship of a traditional trust, which is not an entity under state law. 577 U.S. at 383-84 (declining to "apply the same rule to an unincorporated entity sued in its organizational name that applies to a human trustee sued in her personal name"). The *Americold* clarification holds that for a traditional trust, which is a fiduciary relationship between parties and not a legal entity, the citizenship of the trustee who sues or is sued is all that matters

for diversity jurisdiction. *Id.* Thus, any alleged confusion on this issue as asserted by the Petitioner does not exist. Cases subsequent to *Americold* have correctly understood and applied its holding.

Petitioner's argument that the decision of the Fifth Circuit is a "radical[] depart[ure] from the core logic of *Navarro*" is simply incorrect. Petitioner's argument is a total misreading of *Navarro* and was correctly rejected by the Fifth Circuit. In *Navarro*, the Court stated, "The question is whether the trustees of a business trust may invoke the diversity jurisdiction of the federal courts on the basis of their own citizenship, rather than that of the trust's beneficial shareholders." 446 U.S. at 458. *Navarro* did not involve a trustee of a traditional trust. Indeed, *Navarro* compels the conclusion that the citizenship of a trustee for a traditional trust who sues is determinative for diversity purposes. *See Americold*, 577 U.S. at 382-83 (noting that *Navarro* "reaffirmed a separate rule that when a trustee files a lawsuit in *her* name, her jurisdictional citizenship is the State to which she belongs—as is true of any natural person") (emphasis in original).

In *Navarro,* the Court held that the citizenship of the trustees of a *business* trust determined diversity jurisdiction, not the citizenship of the trust's beneficiaries, based on a real party interest test. The issue was whether the citizenship of the trustees or the beneficiaries was determinative for subject matter jurisdiction. A control test was thus applied. 445 U.S. at 464-66; *see also Carden v. Arkoma Associates*, 494 U.S. 185, 191 (1990). As recognized by *Americold* and contrary to Petitioner's argument, *Navarro*'s control

test is limited to *business trusts*, which are distinctly and fundamentally different from the Foundations that are traditional trusts under Louisiana law. 577 U.S. at 383-84. Additionally, as all the trustees of the business trust were plaintiffs in *Navarro,* the Court did not even address the issue of an unnamed co-trustee in either a business or traditional trust context.

Carden and *Americold* did directly address traditional trusts, which are fiduciary relationships. *See Americold*, 577 U.S. at 383 (rejecting the effort to conflate every trust and holding that "[f]or a traditional trust, therefore, there is no need to determine its membership, as would be true if the trust, as an entity, were sued"). Business trusts are entities similar to unincorporated associations and partnerships created under state law: they are not fiduciary relationships such as traditional trusts. As *Americold* explained, traditionally trusts are not "considered a distinct legal entity;" rather, a trust is a "relationship" that could not be haled into court. 577 U.S. at 383.

In the context of assessing diversity jurisdiction, the Court has devoted over thirty years to recognizing the distinction between business trusts and traditional trusts arising from a relationship. Appellate courts likewise recognize this distinction. *See Alliant Tax Credit 31, Inc. v. Murphy*, 924 F.3d 1134, 1143 (11th Cir. 2019); *GBForefront, L.P. v. Forefront Mgt. Group, LLC*, 888 F.3d 29, 39 (3d Cir. 2018); *Raymond Loubier Irrevocable Trust v. Loubier*, 858 F.3d 719, 729 (2d Cir. 2017); *Bynane v. Bank of New York Mellon for CWMBS, Inc. Asset-Backed*

Certificates Series 2006-24, 866 F.3d 351, 357 (5th Cir. 2017). Petitioner's attempt to apply *Navarro*'s control test beyond business trusts completely ignores the fact that traditional trusts, such as the Foundations, are categorically, legally, and logically distinct. As correctly recognized by the Fifth Circuit, *Navarro*'s real party in interest test does not have any application to the case before the Court.[3]

II. Louisiana Law Controls the Characterization of the Traditional Trusts at Issue.

The Court in *Carden* recognized that the state legislature is in the best position to legislate rules relative to citizenship for purposes of diversity jurisdiction:

> The 50 States have created, and will continue to create, a wide assortment of artificial entities possessing different powers and characteristics, and composed of various classes of members with varying degrees of interest and control. Which of them is entitled to be considered a "citizen" for diversity purposes, and which of their members' citizenship

[3] As the Fifth Circuit wrote, Petitioner's *Navarro* argument is a repackaging of a failure to join indispensable parties argument. Pet. App. at 7a.

> is to be consulted, are questions more readily resolved by legislative prescription than by legal reasoning.

494 U.S. at 197. In *Americold*, following the reasoning in *Carden*, the Court considered whether the citizenship of the shareholders of a business trust must be considered for diversity jurisdiction and looked to the applicable state law. 577 U.S. at 383. Since Maryland law created a real estate investment trust, which appeared to be in the same position as shareholders of a joint stock company or partners of a limited partnership, the trust members included the shareholders for purposes of diversity jurisdiction. *Id.*

Looking to Louisiana law, the trusts at issue in the instant case are indisputably traditional trusts, as even Petitioner admits. Pet. App. at 21. The Louisiana Trust Code allows Dr. Cook to act solely on behalf of the trusts with the consent of his co-trustees. When there are three or more trustees, the majority can exercise a power, which includes authorizing Dr. Cook to file a lawsuit. La. Stat. Ann. § 9:2114. In the case of two trustees, both must exercise power. La. Stat. Ann. § 9:2113. Nothing in the Louisiana Trust Code requires co-trustees to all file suit or for co-trustees to perform an act together. Louisiana Revised Statute 9:2205 also contemplates that a trustee can delegate administration of the trust to a co-trustee and is liable if the delegation is improper. Finally, the trust instruments of the Foundations do not prohibit Dr. Cook from filing suit without the

other co-trustees. *See Cockerham v. Cockerham*, 2012-1769 (La. App. 1 Cir. 10/3/13), 201 So. 3d 253, 257. The co-trustees, Mrs. Marshall and Pierce, therefore acted within Louisiana law in authorizing Dr. Cook to file suit.

Louisiana courts have allowed a single co-trustee to file suit as Dr. Cook did in the prior lawsuit against Preston and has done in the instant suit. *See Succession of Stewart*, 301 So. 2d 872 (La. 1974); *Joe Conte Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 95-1630 (La. App. 4 Cir. 2/12/97), 689 So. 2d 650, 655; *Holmes v. Hall*, 123 So. 807 (La. 1929); *Couch v. Central Bank & Trust Corp.*, 297 F. 216, 217 (5th Cir. 1924). Thus, under Louisiana law, Dr. Cook properly appeared as the sole plaintiff, and only his citizenship must be considered.

III. There is Not Any Split Among the Circuits or Disarray in the Lower Courts.

The decision of the Fifth Circuit is consistent with the decisions of the courts of appeals who have considered this issue. There is not any split among the circuits or "disarray" in the lower courts. Contrary to Petitioner's arguments, Pet. App. at 21-27, there is no conflict or confusion in the Federal Circuits. These courts are in accord with this Court's clear precedents concerning citizenships of trusts and trustees as discussed *supra*. Petitioner has failed to identify any "confusion" other than his own incorrect application of *Navarro* and its progeny.

The Seventh Circuit addressed this very issue in *Doermer v. Oxford Financial Group, Ltd.*, 884 F.3d 643 (7th Cir. 2018), as recognized by the Fifth Circuit. The court of appeals held that the citizenship of

unnamed co-trustees of a traditional trust need not be considered for diversity. In *Doermer*, there were three co-trustees of a family trust, two siblings and a corporate trustee, but only the brother co-trustee filed suit. 884 F.3d at 645. After the defendant removed the case, the plaintiff challenged the jurisdiction of the court, alleging that the mere existence of the non-diverse sister co-trustee destroyed diversity. *Id.* at 646. The court of appeals declared him to be "wrong." *Id.*

The Seventh Circuit rejected the plaintiff's argument that the traditional trust was the "real party in interest" and therefore, the citizenship of all trustees should be considered. *Id.* at 647. This argument is the very same advanced by Petitioner in this case. According to the Seventh Circuit, the "fatal problem" with this argument was that traditional trusts cannot sue or be sued in their own name. *Id.* Citing *Navarro* and *Americold*, the court of appeals reiterated that when a trustee files suit in his own name, his citizenship is all that matters for diversity jurisdiction. *Id.* The Seventh Circuit applied a Rule 19 analysis as did the courts in this case. Pointedly, the court of appeals held, **"Thus, we may look only to [the brother co-trustee's] citizenship, not the citizenship of his co-trustees."** *Id.* (emphasis added); *see also Sippey v. Cooper Technica, Inc.*, No. 18 C 6744, 2020 WL 7027603, *3 (N.D. Ill. Nov. 30, 2020) (holding under *Americold* and *Doermer*, that the citizenship of the party co-trustee determines diversity and the citizenship of the non-party co-trustee is not considered).

Petitioner's argument was also rejected by the Tenth Circuit in *Lenon v. St. Paul Mercury Ins. Co.*, 136 F.3d 1365 (10th Cir. 1998). The Tenth Circuit reached the same conclusion as in *Doermer*. In *Lenon*, the plaintiffs, trustees of four union trust funds, sued an insurance company, who challenged diversity jurisdiction in the district court. 136 F.3d at 1367-68. The trustees amended their complaint to delete the nondiverse trustee. *Id*. The Tenth Circuit applied *Navarro*, holding that the citizenship of the trustees determined diversity. The court of appeals applied a Rule 19 analysis and held that the non-diverse trustee was not indispensable. The Tenth Circuit then affirmed the dismissal of the nondiverse trustee under Rule 21 of the Federal Rules of Civil Procedure. *Id*. at 1373; *see also Quantlab Financial, LLC v. Tower Research Capital, LLC*, 715 F. Supp.2d 542, 551 (S.D. N.Y. 2010).

The Tenth Circuit unequivocally rejected the defendant's argument that the citizenship of all trustees must be considered regardless of which trustees are the named plaintiff. 136 F.3d at 1371. The Tenth Circuit, looking to Rule 19, stated, "We also reject [defendant's] argument that all trustees must be indispensable under Rule 19(b) and that a trustee is therefore not susceptible to dismissal under Rule 21." *Id*. at 1372.

Petitioner cites to a footnote in *G.B. Forefront* to support his contention that the courts below are in "disarray." The citation is to no avail. In *G.B. Forefront*, the plaintiff was a limited partnership, and its limited partners were all traditional trusts. 888 F.3d at 32. The issue was the citizenship of the

limited partnership, which pursuant to *Carden* was the citizenship of its general and limited partners. Applying *Americold*, the court of appeals held that the citizenship of the trustees controlled. Thus, the citizenship of all the trustees had to be considered. *Id.* at 41. None of the trustees were parties to the litigation. None were enforcing the rights of a trustee against a third party. Thus, the statement in a footnote in *G.B. Forefront* is both *dicta* and correct in the context within which it is made.

Petitioner also cites to *Momenian v. Davidson,* 878 F.3d 381, 389 (D.C. Cir. 2017); *Wang ex rel. Wong v. New Mighty U.S. Tr.,* 843 F.3d 487, 494 (D.C. Cir. 2016); and *Loubier,* 858 F.3d at 731. None are applicable to this case for the reason noted by the Fifth Circuit: "Preston cites a bevy of other cases supposedly supporting this view. [citations omitted.] None of those cases even concerns an unnamed co-trustee."[4] Pet. App. at 6a n.1.

There is not any confusion or inconsistency in the opinions of the courts of appeals that would warrant consideration by this Court.

IV. There Are Not Any Policy Concerns Relating to the Rule as Articulated by *Americold.*

In a final futile attempt to obtain review by this Court, Petitioner advances policy arguments contending that the decisions of the Fifth, Seventh and Tenth Circuits will open the flood gates to

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[4] *See Martinez v. KLLM Transport Services, LLC*, No. 24-412, 2025 WL 925798 (M.D. La. Feb. 27, 2025), for an example of the correct understanding of this Court's precedents.

uncontrolled diversity jurisdiction as trustees of traditional trusts are able to manipulate jurisdiction. In *Lenon*, the defendant made a similar argument that parties could "forum shop by selectively choosing which of its trustees to name as plaintiffs in a particular action." 136 F.3d at 1367-68, 71. The Tenth Circuit rejected this policy argument by pointing out that such concerns are addressed through the analysis of indispensability under Federal Rule of Civil Procedure 19 as this rule considers the interest of the courts in complete and efficient resolution of claims. *Id*. at 1372. Just as the Fifth Circuit has done here, the Tenth Circuit also found that the Rule 19 analysis weighed in favor of dispensability of the unnamed, nondiverse co-trustee[5] and upheld jurisdiction based on the diversity of the parties in the litigation. *Doermer, Lenon*, and this case demonstrate that Rule 19 provides the necessary protection for any abuse.

CONCLUSION

The Petition should be denied. The legal issue is straightforward: Must the citizenship of a non-party trustee for a traditional trust be considered when determining whether diversity of citizenship exists under 28 U.S.C. 1332? Consistent with this

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[5] Notably, the Tenth Circuit cited that the issue of the nondiversity of the trustee and his indispensability did not arise until two years after the filing of the complaint. 136 F.3d. at 1373. Here even more so, Petitioner did not assert the issue of diversity jurisdiction until three years after the filing of the complaint in the second suit; seven years after the first suit was filed; and four years after the Fifth Circuit ruled in the first suit.

Court's decisions and its sister circuits, the Fifth Circuit correctly answered in the negative.

This Court in a trilogy of cases, *Navarro, Carden and Americold*, has recognized the distinction between traditional trusts and unincorporated entities for purposes of determining the citizenship of the parties for federal jurisdiction purposes. For traditional trusts, the citizenship of the trustee who is the party is determinative; the citizenship of any non-party trustee is irrelevant. For unincorporated entities such as partnerships (general and limited), associations (e.g. unions) or business trusts, the citizenship of the real parties in interest is determinative.

In this case, the Fifth Circuit correctly applied these precedents and followed the decisions of its sister circuits in *Doermer* and *Lenon*. These cases applied a Rule 19 analysis as did the courts in this case to determine that only the citizenship of the trustee (Dr. Cook) was relevant under 28 U.S.C. § 1332. This decision was not only legally correct but also consistent with any policy considerations of this Court.

Additionally, there are not any policy reasons for this Court's consideration. As recognized by the courts of appeals who have considered this issue, there are ample protections in place to prevent any possible abuse as imagined by Petitioner.

For the above and foregoing reasons, the Court should deny the petition for a writ of certiorari.

Respectfully submitted:

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