No. 25-4

IN THE
Supreme Court of the United States

PRESTON L. MARSHALL, IN HIS OFFICIAL CAPACITY AS CO-TRUSTEE OF PEROXISOME TRUST AND IN HIS PERSONAL CAPACITY,
Petitioner,

v.

STEPHEN D. COOK, DOCTOR, IN HIS CAPACITIES 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

REPLY BRIEF FOR PETITIONER

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Litigants for more than two centuries have sought to expand diversity jurisdiction, bringing ever-increasing numbers of state-law claims in federal court. Nearly half of all federal cases today are based on diversity and lack a single federal claim. This Court time and again has limited diversity jurisdiction and thus enforced the foundational principle that federal courts are of limited jurisdiction. Those decisions respect state autonomy and that state judges are fully if not more competent than federal judges to adjudicate state claims.

The Court should grant review here to quell yet another inappropriate expansion. The core historical concern of diversity is local bias – that a state court might favor a local over a foreigner, hence the requirement of complete diversity. The Fifth Circuit's decision below disregards that limitation by allowing trusts with both diverse and nondiverse trustees who share the same powers – and thus are each real parties to the controversy – to fabricate diversity by designating a single diverse trustee to bring suit.

There is no rational or policy-based reason to allow a diverse trustee who shares powers with nondiverse co-trustees to sue on state claims in federal court. The existence of a nondiverse trustee eliminates any concern about local bias and destroys complete diversity. In other areas, unincorporated associations have the citizenship of all members because *all members* share a stake in the outcome. Similarly, *all trustees* share a stake in the outcome, so the citizenship of all trustees must count for diversity.

Cook's opposition provides no reason to conclude otherwise. Nor should the Court wait to resolve this straightforward issue and thus prevent numerous additional cases added inappropriately to federal diversity dockets. The Court should grant the petition.

ARGUMENT

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS LIMITING DIVERSITY JURISDICTION FOR TRUSTEES AND UNINCORPORATED ASSOCIATIONS

A. *Navarro*'s Rationale Means The Citizenship Of All Trustees Counts, Regardless Of Whether They Were Named As Parties

In *Navarro*, this Court considered whether the citizenship of trustees was all that mattered for diversity, or if the citizenship of all *beneficiaries* also counted. The trust had eight trustees who jointly brought the action. 446 U.S. at 459. The Court applied a real-party-in-interest standard in holding that "a trustee is a real party to the controversy for purposes of diversity jurisdiction when he possesses certain customary powers to hold, manage, and dispose of assets for the benefit of others." *Id.* at 464.

Because all eight trustees jointly held "title to real estate investments in trust for the benefit of . . . shareholders," "manage[d] the assets," and "control[led] the litigation" relating to the trust's affairs, "they [we]re real parties to the controversy." *Id.* at 459, 465; *see also id.* at 459. Accordingly, beneficiary citizenship could be disregarded. But the Court nowhere suggested co-trustees who share the same "customary powers" are not real parties for diversity merely because they were omitted strategically from the caption. To the contrary, *Navarro* focused on function, not form. It was the exercise of traditional powers that made the co-trustees real parties. Pet. 9-10.

The Court had no occasion to address unnamed trustees because all eight co-trustees were parties. But *Navarro*'s reasoning forecloses that a trustee jointly holding customary powers can be excluded

from the jurisdictional analysis. Had there been a ninth nondiverse trustee excluded from the caption, there can be little doubt the Court would have found complete diversity lacking.

Here, all three trustees in Heritage and Legacy are real parties for diversity purposes under *Navarro*, and two are nondiverse to the defendant. Pet. 11-12. Because the citizenship of all three trustees counts, complete diversity is lacking.

B. Cook's Arguments Are Unpersuasive

1. Cook essentially relies erroneously on the logic of Federal Rule of Civil Procedure 17, not *Navarro*. That Rule provides "[a]n action must be prosecuted in the name of the real party in interest" such that "a trustee of an express trust" may sue in her "own name[] without joining the person for whose benefit the action is brought." Fed. R. Civ. P. 17(a)(1)(E); *see also* Opp. 11-12 (arguing that, because Louisiana law allows a single trustee to file suit, diversity here is proper).

As *Navarro* explained, however, Rule 17 is not concerned with diversity jurisdiction so there is only a "rough symmetry" between it and "the rule that diversity jurisdiction depends upon the citizenship of real parties to the controversy." 446 U.S. at 462 n.9. The two doctrines "serve different purposes and need not produce identical outcomes in all cases." *Id.* But, here, the beneficiaries of the trust – like the beneficiaries in *Navarro* – are not part of the diversity calculus. Rather, the trustees control the trust property and therefore have a joint fiduciary duty to manage it. By way of example, *Navarro* explained "a labor union may file suit in its own name as a real party in interest under Rule 17(a)," but "[t]o establish diversity . . . the union must rely upon the citizenship of each of its members." *Id.*; *see* Pet. 11 n.1.

The same is true here for trustees. Just as the all-members rule for unincorporated associations requires *all members* to be diverse, *Navarro*'s logic requires *all trustees* whether named or unnamed to be diverse before bringing state claims in federal court.

2. Cook provides no reason to interpret *Navarro* as permitting trusts with nondiverse trustees to exclude them from the diversity calculus. To the contrary: Cook acknowledges that, in *Navarro*, a "control test was thus applied" "based on a real party interest test." Opp. 8. Cook does not dispute that all three trustees of Heritage and Legacy satisfy that control test. Nor does he contend that *Navarro* limited its holding to formally named parties or that the Court's real-party logic could support that limitation. Opp. 8-9. Rather, Cook acknowledges *Navarro* "held that the citizenship of the *trustees* of a *business* trust determined diversity jurisdiction." Opp. 8 (first emphasis added).

Instead, Cook seeks (at 8-10) to evade *Navarro* by creating a new category of "business trusts" as contrasted with "traditional trusts." He asserts *Navarro* applies only to "business" as opposed to "traditional" trusts and claims Heritage and Legacy are traditional trusts. Cook's novel approach is erroneous.

First, *Navarro* did not distinguish between business and traditional trusts. Rather, the Court referred to an "express trust" whereby trustees share traditional powers, as distinguished from "naked trustees who act as mere conduits for a remedy flowing to others." 446 U.S. at 462, 465 (cleaned up); *see id.* at 462 (framing question regarding citizenship of express trust); *id.* at 462, 465 (business activities did not alter that the trustees expressly held traditional rights and duties).

Indeed, express trusts are simply those "resulting from the transfer of title to property to a person the trustee to be administered by him as a fiduciary for

the benefit of another." *National Collegiate Student Loan Tr. 2006-1 v. Thomas*, 322 So. 3d 374, 378 (La. Ct. App. 2021); *see Walden v. Skinner*, 101 U.S. 577, 577 (1880) (explaining that express trusts are those created by the intentional act of the settlor). Heritage and Legacy are express trusts created by the intentional act of the settlor and in which the three trustees share traditional "active trustee[]" powers, just like the trust in *Navarro*. *See* Pet. 11-12; La. Stat. Ann. § 9:2271; *see also Succession of Baker*, 432 So. 2d 817, 820-21 (La. 1983) (charitable Louisiana trust arises from settlor's intent).

Second, Cook's attempt to distinguish between business and traditional trusts for jurisdictional purposes is unfounded. He asserts the two are "fundamentally different" because business trusts are "similar to unincorporated associations and partnerships created under state law," while traditional trusts like Heritage and Legacy are "fiduciary relationship[s]," not "state law" "entit[ies]." Opp. 7, 9.

That distinction fails. Heritage and Legacy, like the express trust in *Navarro*, are express trusts created pursuant to statute under Louisiana law. Pet. 11 (citing La. Stat. Ann. § 9:1731). Further, *Navarro* declined to treat the business trust there like an unincorporated association subject to the all-members rule, as advocated by the dissent. *See* 446 U.S. at 460-62. Rather, because the co-trustees shared traditional fiduciary powers and sued in their own names, only their citizenship counted. *See generally id.* at 463-65; *accord Americold*, 577 U.S. at 383 (explaining *Navarro*'s analysis was rooted in the traditional understanding of a trust as "a 'fiduciary relationship'"); *see also* Pet. 7, 13-18.

Third, *Americold* does not support Cook's claim that *Navarro* "compel[led] the conclusion that the citizenship of a trustee for a traditional trust who sues is determinative for diversity purposes." Opp. 8; *see also* Opp. 9-10. *Navarro* never used the term "traditional trust," referring instead to an "express trust." *Supra* pp. 4-5. *Americold*'s characterization of *Navarro* as stating that, where a trustee sues in her own name, "her jurisdictional citizenship is the State to which she belongs," did not alter that conclusion. 577 U.S. at 382-83 (citing *Navarro*, 446 U.S. at 465).

Americold held only that the citizenship of a real estate investment trust – an unincorporated association under state law sued in its organizational name – included all of its members. *Id.* In rebutting the trust's argument that *Navarro*'s real-party test should govern, the Court explained *Navarro* "reaffirmed a separate rule" for suits brought by or against trustees in their own names, as opposed to those by an artificial entity in its organizational name. *Id.*

The Court explained that *Navarro*'s application of the real-party test was rooted in the historical understanding that, "[t]raditionally, a trust was not considered a distinct legal entity, but a 'fiduciary relationship' between multiple people," which "was not a thing that could be haled into court." *Id.* at 383; *see* Pet. 17-18. Accordingly, for "a traditional trust, . . . there is no need to determine its membership, as would be true if the trust, as an entity, were sued." *Americold*, 577 U.S. at 383. What matters is the citizenship of the *trustees*.

It therefore is clear that *Americold* used the term "traditional trust" to mean the same thing as what *Navarro* called an "express trust." And *Americold*'s recounting of the historical antecedent that trusts

traditionally lacked juridical existence as legal entities says nothing about whether co-trustees who jointly hold traditional powers, but are not named, are real parties in interest for diversity purposes. Under *Navarro*'s analysis of "express trusts," every co-trustee is a real party for diversity purposes. The citizenship of each must count, regardless of whether the purpose of the express trust is to further business or other interests. Cook's sole basis for avoiding *Navarro* – that the Court's holding was confined to business trusts – thus fails.

C. The Fifth Circuit Decision Was Wrongly Decided

As Cook acknowledges, *Navarro* held that, where one co-trustee sues or is sued in her own name, the citizenship of all trustees with customary powers must be considered for diversity purposes. Pet. 9-11. It is undisputed that the Fifth Circuit failed to properly apply *Navarro*'s rationale. With little analysis, it held that, because Cook sued in his own name, only Cook's citizenship counted. The court failed to assess whether Elaine and Pierce satisfied *Navarro*'s real-party test (they do) and to address that the eight co-trustees in *Navarro* each jointly held traditional powers and happened to be named. Pet. 19.

The result allows trusts with equally empowered nondiverse trustees to manufacture diversity simply by omitting them from the caption. Such an outcome is contrary to *Navarro*'s core logic and to this Court's deliberate move away from corporate-style citizenship, reflected in its requirement that unincorporated associations have the citizenship of all members to prevent jurisdictional manipulation. Pet. 13-18.

The Fifth Circuit's decision also subverts the purposes of complete diversity: to drastically *restrict* federal jurisdiction, provide a neutral forum against

home-state bias, and preserve States' authority over state-law matters. Pet. 7-9, 20. Cook's own factual recitation (at 1-6) shows this is a quintessential state-law dispute – an intrafamily conflict governed by state fiduciary principles among Texans, aside from Cook. (For example, Texas citizens Preston and Pierce Marshall are the remainder beneficiaries of Peroxisome Trust. In turn, Heritage and Legacy are the income beneficiaries of Peroxisome Trust.) No aims of diversity jurisdiction are satisfied by permitting such nondiverse litigants – and potentially thousands like them – to slide into federal court through caption manipulation.

II. REVIEW ALSO IS WARRANTED BECAUSE THE LOWER COURTS ARE IN DISARRAY

The decision also warrants this Court's review because it deepens the existing disagreements over the citizenship of trustees and the interpretation and scope of *Navarro* and its progeny. *See*, *e.g.*, *Demarest v. HSBC Bank USA, N.A. as Tr.*, 920 F.3d 1223, 1227 (9th Cir. 2019) ("[c]ourts applying *Navarro* and *Carden* to the question of a trust's citizenship for diversity purposes have reached different conclusions") (citing *Raymond Loubier*, 858 F.3d at 727) (collecting cases); *Wang*, 843 F.3d at 491-94; *Emerald Invs. Tr. v. Gaunt Parsippany Partners*, 492 F.3d 192, 201-06 (3d Cir. 2007) (collecting approaches), *abrogation recognized by GBForefront*, 888 F.3d at 39. That disarray particularly warrants relief because nearly half of all federal civil cases rely on diversity jurisdiction. Pet. 6. Even before a fully developed circuit split, this Court's review would clarify these questions and establish clearer rules for trust litigation. Pet. 21-27.

Cook's contention (at 12-15) that there is no lower court confusion is unpersuasive. Together now with

the Fifth Circuit, the Tenth and Seventh Circuits have misapplied *Navarro*, citing it to quickly disregard the nondiverse citizenship of unnamed trustees but without applying *Navarro*'s real-party test, considering that all eight trustees in *Navarro* were plaintiffs, or engaging with *Navarro*'s reasoning that all eight were real parties because they shared customary trustee powers. Pet. 21-22 (citing *Doermer*, 884 F.3d at 647; *Lenon*, 136 F.3d at 1369-72). Cook asserts (at 13-14) those cases were correctly decided but fails to respond to those key analytic failures. Cook's own concession that *Navarro* adopted a control test establishes those cases were wrongly decided. Opp. 8-10.

By contrast, the Third Circuit properly has reasoned (albeit in dicta) that, "where a traditional trust has multiple trustees, we consider it to have the citizenship of each of its trustees." *GBForefront*, 888 F.3d at 34 n.6. Cook tries (at 14-15) to distinguish *GBForefront* because it concerned the citizenship of a limited partnership, in which the partners themselves were express trusts. But that structure made no difference. The court applied the all-members rule to assess the citizenship of the partnership, which necessarily required evaluating the citizenship of the underlying partner trusts. *GBForefront, L.P.*, 888 F.3d at 34. In so doing, it reaffirmed that diversity requires that each trustee be completely diverse, regardless of whether each is a named party. *Id.*

Cook also attempts to discard the single-trustee cases that stated "'the citizenship of a traditional trust is the citizenship of its trustees.'" Pet. 22 (quoting *Momenian*, 878 F.3d at 389; citing *Wang*, 843 F.3d at 494, and *Raymond Loubier*, 858 F.3d at 731). Cook only points out (at 15) that these cases did not concern unnamed co-trustees. But the point remains:

the circuits have diverged on how to determine a traditional trust's citizenship, creating a persistent and consequential disagreement on an important jurisdictional question that merits review now. Pet. 24-27 (discussing cases in which this Court has granted review of jurisdictional and other important questions before a well-developed circuit split).

III. GRANTING REVIEW WILL ADVANCE THIS COURT'S TRADITION OF ENFORCING LIMITS ON FEDERAL JURISDICTION

This Court long has barred tactics by litigants to evade the diversity requirements of Article III and § 1332. Pet. 27-29. The Fifth Circuit's decision departs from that tradition, opening the door for co-trustees to manufacture diversity through caption play.

Cook contends (at 15-16) this result poses no threat because Federal Rule of Civil Procedure 19 can compel joinder of an omitted nondiverse trustee if that trustee is "indispensab[le]." That argument misunderstands the nature of both Rule 19 and *Navarro*'s real-party test. Rule 19 is a procedural device that applies only *after* federal jurisdiction is conferred; it asks whether the court can afford complete relief in the absence of a non-joined party. *See Republic of Philippines v. Pimentel*, 553 U.S. 851, 857 (2008). It cannot override the requirements for diversity jurisdiction, which turn on the citizenship of all real parties in interest. *See Navarro*, 446 U.S. at 462-66.

Nor does Rule 19 prevent diversity jurisdictional manipulation. Where co-trustees delegate litigation authority to a single diverse trustee to manufacture diversity – as occurred here – those non-named trustees may not meet Rule 19's indispensability threshold because their interests might be adequately

represented by the named trustee. *See* Pet. 5, 12. Yet, when those co-trustees jointly hold customary powers, they remain real parties in interest whose citizenship counts under *Navarro*. *Cf. supra* Part I.B.1 (distinguishing between real-party-in-interest test as applied under diversity-jurisdiction analysis and Rule 17).

Contrary to Cook's characterization (at 16), *Doermer* does not demonstrate otherwise. The Seventh Circuit there declined to join a nondiverse trustee. It recognized Rule 19's limits – including that the Rule does not require the joinder of a party whose presence would destroy subject-matter jurisdiction, and instead provides "a number of adjustments that may be (and often are) possible" for the case to proceed without that person. *Doermer*, 884 F.3d at 646 (declining request to join nondiverse trustee). Nor does *Lenon* aid Cook. Opp. 16. The Tenth Circuit there acknowledged Rule 19 could, in theory, address forum-shopping, but that observation is unpersuasive. *See Lenon*, 136 F.3d at 1372. The court held a nondiverse co-trustee was dispensable because the named trustees adequately represented his interests, prejudice could be avoided through relief shaping, and judicial economy favored proceeding. *Id.* at 1372-73. That reasoning reinforces that Rule 19's indispensability standard is a high bar, and absent co-trustees may be found dispensable even when they share legal title and control.

Reaffirming that the citizenship of all co-trustees must be considered thus would further this Court's longstanding tradition to "rigorously enforce[]" the "intent of Congress drastically to restrict federal jurisdiction in controversies between citizens of different states." *St. Paul*, 303 U.S. at 288.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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