

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

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THE HAIN CELESTIAL GROUP, INC.,)
ET AL.,)
 Petitioners,)
 v.) No. 24-724
SARAH PALMQUIST, INDIVIDUALLY AND)
AS NEXT FRIEND OF E.P., A MINOR,)
ET AL.,)
 Respondents.)
- - - - -

Pages: 1 through 55
Place: Washington, D.C.
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10 Respondents.)
11 - - - - -
12
13 Washington, D.C.
14 Tuesday, November 4, 2025
15
16 The above-entitled matter came on for
17 oral argument before the Supreme Court of the
18 United States at 10:41 a.m.
19
20 APPEARANCES:
21 SARAH E. HARRINGTON, ESQUIRE, Washington, D.C.; on
22 behalf of the Petitioners.
23 RUSSELL S. POST, ESQUIRE, Houston, Texas; on behalf of
24 the Respondents.
25

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1 P R O C E E D I N G S

2 (10:41 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear
4 argument next in Case 24-724, The Hain
5 Celestial Group versus Palmquist.

6 Ms. Harrington.

7 ORAL ARGUMENT OF SARAH E. HARRINGTON

8 ON BEHALF OF THE PETITIONERS

9 MS. HARRINGTON: Thank you, Mr. Chief
10 Justice, and may it please the Court:

11 The Fifth Circuit erred in holding
12 that it was required to vacate the district
13 court's final judgment after determining that
14 Whole Foods should have been dismissed.

15 For nearly 200 years, this Court has
16 instructed that even if a federal court makes a
17 jurisdictional error at the inception of a
18 case, a final judgment in that case should
19 stand if the district court had jurisdiction
20 over the suit in the form it took at the time
21 of final judgment. That is exactly what
22 happened here because the only parties left
23 were completely diverse. Excuse me.

24 Plaintiffs' primary argument is that
25 Whole Foods was a party in the district court

1 through trial into final judgment because the
2 order dismissing it could have been and
3 eventually was reversed on appeal.

4 But, if you accept that argument, that
5 would wipe out the fraudulent joinder doctrine
6 completely. In order to be a party in a suit,
7 you have to be subject to the district court's
8 jurisdiction. But, when a nominal defendant is
9 dismissed as fraudulently joined, that
10 defendant is never subject to the jurisdiction
11 of the federal court. The whole reason a
12 fraudulent joinder case is even removable in
13 the first place is because the fraudulently
14 joined defendant is not treated as a real
15 defendant.

16 So, if you view that dismissed
17 defendant as a party through final judgment
18 based on the possibility of reversal on appeal,
19 then there would never be jurisdiction in a
20 fraudulent joinder case because, even if the
21 dismissal was later determined to be correct,
22 the non-diverse defendant would have been
23 lurking through the whole case to final
24 judgment. Instead, when a defendant is
25 dismissed as fraudulently joined, it's as if

1 they never got in the door to the federal court
2 in the first place, and the case moves forward
3 as a suit between completely diverse parties.

4 Here, the Fifth Circuit's later
5 conclusion that the district court should not
6 have dismissed Whole Foods didn't retroactively
7 make Whole Foods a party all along. And
8 because the only parties to the final judgment
9 were completely diverse, many of this Court's
10 cases, including Caterpillar, instruct that
11 that final judgment should be preserved.

12 Finally, if this Court harbors doubts
13 that the district court had jurisdiction to
14 enter a final judgment, the decision in
15 Newman-Green makes clear that the final
16 judgment should be preserved by dismissing
17 Whole Foods now.

18 Either way, the Fifth Circuit's
19 decision should be vacated, and I welcome the
20 Court's questions.

21 JUSTICE THOMAS: Can you think of a
22 case where a jurisdictional defect was cured
23 non-consensually, that the court imposed a
24 dismissal rather than the party consenting --
25 the plaintiff consenting to it?

1 MS. HARRINGTON: Well, in Caterpillar,
2 the original plaintiff who objected to removal
3 was not a party to the -- to the settlement
4 that this Court found cured the jurisdictional
5 defect in that case.

6 But I'd like to, if I -- if I can,
7 just address the concept of curing a
8 jurisdictional defect. That is how this Court
9 has talked about it in cases like Caterpillar
10 and Newman-Green, and we picked up on that in
11 the briefing. But, when you're talking about
12 fraudulent joinder, it might not even be the
13 best framing because, when you're talking about
14 fraudulent joinder, there isn't an erroneous
15 assertion of jurisdiction ever in the way that
16 there was in cases like Caterpillar because the
17 non-diverse defendant is just treated as not a
18 real party to the case and there's never an
19 assertion of federal jurisdiction over the
20 claim against that non-diverse party.

21 And so, here, the question is, if you
22 should have remanded a case to -- to state
23 court and you didn't, but there was no
24 assertion of federal jurisdiction over claims
25 over which there was no jurisdiction, what do

1 you do? And when there's no prejudice --

2 JUSTICE SOTOMAYOR: But there is
3 inherent prejudice, and that's the thing that
4 you're ignoring, which is this plaintiff wanted
5 to be in state court. It sued two parties,
6 your client and Whole -- and Whole Foods.

7 MS. HARRINGTON: Right.

8 JUSTICE SOTOMAYOR: All right? It
9 wanted to litigate. It couldn't because
10 someone that it had a right to include, Whole
11 Foods, was dismissed erroneously. It was
12 deprived permanently of its opportunity,
13 tactical opportunity, to try this in state
14 court. Isn't that inherent prejudice?

15 MS. HARRINGTON: I don't think it is,
16 Justice Sotomayor.

17 JUSTICE SOTOMAYOR: Why?

18 MS. HARRINGTON: Well, so, first of
19 all, it has the right still to pursue its
20 claims against Whole Foods in state court.

21 JUSTICE SOTOMAYOR: No, but it's -- it
22 wanted to apportion liability between two whole
23 clients. Now it can't do that.

24 MS. HARRINGTON: Well, it can't do
25 that because it lost on the merits.

1 JUSTICE SOTOMAYOR: Well, but the
2 point is that it had a tactical advantage that
3 it was erroneously deprived of.

4 MS. HARRINGTON: I don't think that's
5 right, Justice Sotomayor. Being able to sue in
6 state court isn't a tactical advantage.

7 JUSTICE SOTOMAYOR: Oh, absolutely. I
8 mean, we wouldn't have all the removal
9 arguments that we encounter if it wasn't.
10 Parties don't fight removal simply because they
11 want to. They see tactical advantages in
12 remaining in one forum versus another.

13 MS. HARRINGTON: Well, unless you're
14 going to formally adopt a rule that state
15 courts are always better for plaintiffs and
16 federal courts --

17 JUSTICE SOTOMAYOR: No. That's not
18 the point --

19 MS. HARRINGTON: -- are always better
20 for defendants --

21 JUSTICE SOTOMAYOR: No. The rule is
22 very simply this plaintiff filed in the forum
23 it wanted and it filed appropriately. It filed
24 against a non-diverse defendant. It was
25 entitled to stay in state court. And it wasn't

1 required to drop a client -- a defendant that
2 it didn't want to drop.

3 MS. HARRINGTON: It is true that the
4 case did not go the way that the plaintiffs
5 wanted, but that's not enough for prejudice.

6 JUSTICE SOTOMAYOR: Well, yes --

7 MS. HARRINGTON: For prejudice --

8 JUSTICE SOTOMAYOR: -- because what
9 you're saying is it's prejudice to the court
10 that you're looking at and not prejudice to the
11 party affected.

12 MS. HARRINGTON: Not at all. For it
13 to be prejudice to a party, you need to have a
14 material impairment to that party's ability to
15 assert a claim or to defend itself.

16 JUSTICE SOTOMAYOR: There -- then I
17 think we're going to have to stop there because
18 I do think suing the people you want to sue in
19 the forum you want to sue them is a material
20 disadvantage.

21 JUSTICE BARRETT: Do you think,
22 Ms. Harrington, I mean, kind of picking up on
23 Justice Sotomayor's point, it seems -- it's
24 difficult for me to untangle here the problem
25 of jurisdiction, which I kind of agree with

1 you. I mean, if there wasn't a problem with
2 diversity at the beginning and there was no
3 problem with diversity at the end, and for
4 reasons of efficiency, I mean, Caterpillar
5 would not preclude your position.

6 But there is a sense of unfairness, I
7 think, to the plaintiffs because they just
8 never get the opportunity to appeal or to try
9 to remedy this wrong unless -- I mean, is it
10 just your position they have try to get an
11 interlocutory appeal at removal, and that --
12 that's it? Otherwise, they just are out of
13 luck?

14 MS. HARRINGTON: Well, I think, if
15 there were -- if the dismissed non-diverse
16 defendant were an indispensable party or
17 somehow the absence of that defendant at the
18 trial affected the outcome of the trial, then
19 you might have an ability on appeal to get the
20 judgment vacated and the whole thing sent back
21 to state court. But, here, the absence of
22 Whole Food had literally no effect on the
23 outcome of the trial.

24 JUSTICE BARRETT: So she -- so -- but
25 just to kind of put then a finer point on it,

1 yes, you're saying there just isn't an
2 opportunity to appeal it in the same way, you
3 know, the defendant has a right of removal but
4 can't appeal a remand.

5 MS. HARRINGTON: Right. Well, I mean,
6 this Court explained in Caterpillar that the
7 rules -- the way the rules are structured, it
8 puts a premium on deciding very early in a
9 removed case whether it should be in state
10 court or federal court. And it tolerates some
11 sort of errors, right? If a case is remanded
12 to state court, that decision is never
13 reviewable on appeal, no matter how wrong it
14 was.

15 The -- ordinarily, a plaintiff has 30
16 days to object to a removal on
17 non-jurisdictional grounds. And if there's
18 some reason they could have objected and they
19 didn't object in the 30 days, it's too bad. It
20 stays in federal court.

21 JUSTICE BARRETT: So it's never
22 reviewable unless there's some sort of
23 prejudice like a necessary and indispensable
24 party?

25 MS. HARRINGTON: Right. So I'm not --

1 it's not never reviewable, but it's not -- you
2 wouldn't correct it if you go all the way to
3 final judgment and there was no jurisdictional
4 problem through that time, unless there -- the
5 absence of that dismissed party somehow
6 affected the outcome of the trial, yes.

7 JUSTICE GORSUCH: What do we do about
8 the fact that the problem here was created by
9 your client through an improper removal? I
10 mean, in terms of fairness, that -- you know,
11 your hands aren't exactly clean here.

12 And -- and what do we do about
13 Lexecon, where it was two federal district
14 courts -- we aren't even talking about state
15 court -- and a judgment was entered and there
16 was no argument that the judgment in one
17 district court's better than a judgment in
18 another district court, and we completely sent
19 it back to start over because the plaintiffs'
20 choice of forum was denied?

21 MS. HARRINGTON: Well, it wasn't --
22 I'll start with the second if that's all right.
23 In Lexecon --

24 JUSTICE GORSUCH: Let's start with the
25 first.

1 MS. HARRINGTON: Start with the first,
2 okay. The -- I mean, it's not as if -- there's
3 no argument that it was a frivolous argument,
4 right? The district court agreed with us. The
5 Fifth Circuit reversed. We accept that for the
6 purposes of this --

7 JUSTICE GORSUCH: I'm not saying it
8 was frivolous.

9 MS. HARRINGTON: Right. No, I
10 understand.

11 JUSTICE GORSUCH: I mean, Rule 11, my
12 goodness, I would never accuse you of that,
13 but --

14 MS. HARRINGTON: Thank you.
15 Appreciate that.

16 JUSTICE GORSUCH: However --
17 however --

18 MS. HARRINGTON: But, in Cat --

19 JUSTICE GORSUCH: -- however, the
20 plaintiffs' choice of forum was effectively
21 denied through an improper removal --

22 MS. HARRINGTON: Yes.

23 JUSTICE GORSUCH: -- by your client.

24 MS. HARRINGTON: And that's exactly
25 the argument that was made in Caterpillar, and

1 this Court said: The plaintiff says, look, if
2 we let this happen, if we take an "all's well
3 that ends well" approach, in the words of this
4 Court --

5 JUSTICE GORSUCH: Well, it was fixed
6 by the time of final judgment in Caterpillar
7 and -- and --

8 MS. HARRINGTON: Well, here, it was to
9 your thing, but if I can just -- if I can
10 finish just the thought that they said, you
11 know, it will reward defendants for improper
12 removal and it will override the plaintiffs'
13 choice of forum.

14 And the court said those are very
15 important considerations, but they are
16 overridden, when you have a final judgment,
17 by principles of efficiency, economy --

18 JUSTICE GORSUCH: All right. Move
19 on to the second one.

20 MS. HARRINGTON: -- and finality.

21 So, for Lexecon, the problem there was
22 that there -- the -- the problem hadn't been
23 cured by the time of final judgment. The
24 district court that entered the judgment never
25 had the authority to do that.

1 But, here, again, because the
2 non-diverse defendant never really made it in
3 the door to federal court, through the whole
4 trial and at final judgment, there were only
5 completely diverse parties.

6 And so there is no lingering
7 jurisdictional defect. There really never was
8 a jurisdictional defect with this case in the
9 district court.

10 JUSTICE KAGAN: Well, I guess that's a
11 question. You know, last year, we talked about
12 36 -- 1367(c) in Royal Canin, and we talked
13 about how 1367(c) says when you have a federal
14 claim and a supplemental state claim and the
15 federal claims drop out --

16 MS. HARRINGTON: Yeah.

17 JUSTICE KAGAN: -- that 1367(c)
18 contemplates that the state claims, just those,
19 there's still discretionary jurisdiction over
20 them.

21 Now it's obvious that for various good
22 and prudential reasons the court should dismiss
23 those a lot of the time but not all of the
24 time. The court -- you know, the court still
25 has jurisdiction, supplemental jurisdiction,

1 over the -- the state supplemental claims once
2 the federal claims drop out.

3 And the way Royal Canin talks about
4 that is that -- is because the federal claims
5 have not dropped out for good. They can re-
6 emerge on appeal. And -- and because they're
7 not gone for good, there remains jurisdiction
8 over the state claims. And it seems to me
9 there should be no different rule with respect
10 to diversity, that even once one of the parties
11 was dismissed, because that party still had the
12 potential to -- to get back into the suit and
13 destroy complete diversity, in fact, the -- the
14 jurisdictional defect was not cured.

15 MS. HARRINGTON: So the difference
16 there is that when you have a federal claim
17 that is dismissed by the court or you -- you
18 know, someone is taken out of the case by the
19 court, that is the federal court exercising
20 jurisdiction over that claim. So that claim is
21 in the case.

22 When you have a non-diverse defendant
23 dismissed as fraudulently joined, there is no
24 exercise of jurisdiction over the claim
25 between -- from the plaintiffs to that

1 non-diverse defendant, right, because I think
2 everyone agrees the district court doesn't have
3 jurisdiction over the case if that claim is in
4 the case.

5 And so there's jurisdiction to
6 determine jurisdiction always. And so the
7 federal court says: I don't have jurisdiction
8 over this defendant because it's not a real
9 defendant and it's out of the case, and,
10 therefore, I have jurisdiction over what
11 remains, which is state law claims between
12 completely diverse parties.

13 JUSTICE KAGAN: I think I'm missing
14 it. In one case, the court says: I'm getting
15 rid of these federal claims because you failed
16 to state a claim, right?

17 MS. HARRINGTON: Yeah.

18 JUSTICE KAGAN: And in the other case,
19 I'm getting rid of this party because it -- the
20 party's been fraudulently joined. And that
21 produces a difference in outcome such that
22 there remains jurisdiction over the federal
23 claims, but there doesn't remain jurisdiction
24 over the remaining part --

25 MS. HARRINGTON: Yes.

1 JUSTICE KAGAN" -- over the diversity
2 suit?

3 MS. HARRINGTON: Yes, because, in the
4 former, there's a merits determination as to
5 the claims. There's an exercise of
6 jurisdiction over those federal claims.

7 JUSTICE KAGAN: I mean, I get the idea
8 that that's -- I mean, that's true. It's like,
9 why should that difference make a difference?

10 It's saying, in both cases, the thing
11 that created the federal jurisdiction is gone,
12 and the question is, does the -- the federal
13 court still have jurisdiction over what
14 remains? And -- and what Royal Canin says is,
15 yes, because the -- the thing that created
16 federal jurisdiction can still come back.

17 MS. HARRINGTON: So it is opposite
18 here, right? The thing that would have
19 destroyed federal jurisdiction --

20 JUSTICE KAGAN: Correct. All right.

21 MS. HARRINGTON: -- never gets in
22 the --

23 JUSTICE KAGAN: I got that.

24 MS. HARRINGTON: Right. But never
25 gets in the door.

1 I mean, fraudulent joinder is a little
2 bit of a weird doctrine, right, because the
3 only reason you can bring a fraudulent joinder
4 case to federal court is on this fiction that
5 one of the defendants isn't actually a
6 defendant in the case because, if it were,
7 there wouldn't be jurisdiction.

8 JUSTICE JACKSON: But, Ms. Harrington,
9 don't you have to be right about that in order
10 to be able to rely on this argument? I mean,
11 I think the problem is that to the extent the
12 district court was wrong about the fraudulent
13 joinder and that Whole Foods should have been
14 in this case, then you do have a jurisdictional
15 defect, which is non-diversity in a
16 circumstance in which there should be -- you
17 have to have diversity in order to have federal
18 jurisdiction.

19 I don't know that you can just isolate
20 that unless you're right, and the problem is
21 you're not in this case.

22 MS. HARRINGTON: Right. So a great
23 question. And I think you're wrong about the
24 implications. And so you either would view the
25 dismissed non-diverse defendant as out of the

1 case, not a party, or as continuing to be a
2 party.

3 My friends on the other side want to
4 say that's still a party because it might be
5 reversed on appeal.

6 If that's true, you can never have
7 jurisdiction in a fraudulent joinder case
8 because that jurisdiction --

9 JUSTICE JACKSON: No, you could have a
10 situation where, as you urged in this case, the
11 party could actually do an interlocutory appeal
12 and get the final question as to whether or not
13 this person should have been a party.

14 MS. HARRINGTON: But my point is, even
15 if the -- even if the Fifth Circuit had gone
16 our way and said, no, that -- Whole Foods was
17 correctly dismissed, there wouldn't have been
18 jurisdiction over the final judgment because,
19 under their view and under the view you're
20 positing, Whole Foods --

21 JUSTICE KAGAN: I get -- I mean, I get
22 the idea it's a little bit of a conundrum,
23 but -- but if -- if, in fact, you're right and
24 that there is a fraudulent joinder, doesn't
25 that just get read back in to the -- to the

1 situation that existed at final judgment?

2 MS. HARRINGTON: I don't think so. I
3 mean, the Fifth Circuit's decision, with all
4 due respect to them, they don't have a time
5 machine. They can't go back and change what
6 actually happened.

7 JUSTICE JACKSON: No, but that's the
8 Caterpillar situation. You would just concede
9 at that point. I mean, you would cure it,
10 right?

11 So, fine, fine, you know, Whole Foods
12 was -- was fraudulently joined and we could
13 continue to go on, but, because you win in this
14 situation, you would cure it.

15 MS. HARRINGTON: No, but, I mean, that
16 would be Newman-Green.

17 In Caterpillar, the -- the non-diverse
18 defendant had already -- was already out of the
19 case before final judgment was entered.

20 JUSTICE JACKSON: I understand. But
21 the idea is that some jurisdictional defects
22 can be cured by the time we get to final
23 judgment. And Caterpillar, the cure was the
24 person was actually settled out of the case
25 permanently.

1 MS. HARRINGTON: Yeah.

2 JUSTICE JACKSON: And so we don't
3 worry about the fact that it -- previously
4 in the case there might have been a
5 jurisdictional problem.

6 What I'm saying is that same solution
7 would seem to me to be the answer to the
8 conundrum that you're talking about with
9 Justice Kagan.

10 MS. HARRINGTON: I -- I disagree,
11 Justice Jackson. I think either a party is in
12 a case or isn't in a case in the district
13 court.

14 JUSTICE JACKSON: No, I understand.
15 And that creates the defect. And the question
16 is, can that be cured?

17 And in the situation you're positing,
18 maybe because, by the time you get to final
19 judgment, then perhaps the plaintiff would
20 agree to -- to the defect in this way or agree
21 to the cure, and then we'd be fine.

22 MS. HARRINGTON: So but I
23 understood -- I mean, what I was saying is
24 that if -- if the Fifth Circuit had decided
25 on appeal that Whole Foods was correctly

1 dismissed, that -- that the fraudulent joinder
2 ruling was correct, under the view you're
3 positing where Whole Foods was a party all
4 along, there still wouldn't have been
5 jurisdiction to enter a final judgment because
6 Whole Foods would have been a party until it
7 was affirmed on appeal that their dismissal was
8 correct.

9 JUSTICE BARRETT: Ms. Harrington --
10 I'm sorry, were you finished?

11 MS. HARRINGTON: No, go ahead. I mean
12 go ahead.

13 JUSTICE BARRETT: So you said at the
14 beginning this would kind of destroy fraudulent
15 joinder doctrine, and I take it that one of the
16 reasons is this conundrum that you're
17 discussing.

18 MS. HARRINGTON: Yeah.

19 JUSTICE BARRETT: What about the
20 incentives for people like your client who
21 remove and then can't count on the fraudulent
22 joinder dismissal? I mean, then your client --
23 I mean, would you want to remove if you thought
24 you were at risk of investing all the resources
25 in litigating the case to a final judgment and

1 then potentially losing it on appeal?

2 I mean, what would it do to the
3 doctrine just from a matter of litigation
4 incentives?

5 MS. HARRINGTON: I mean, I think it
6 creates strange incentives, but I'm not sure --
7 you know, I think defendants who think they
8 have a right to remove will still remove. We
9 assume good faith by parties. They're not
10 going to assert a fraudulent joinder argument
11 if they don't think it's valid.

12 But it creates opportunity for a
13 great deal of waste and sort of violence to
14 principles of finality and economy because
15 nothing that happened in this case after the
16 initial dismissal of Whole Foods involved any
17 non-diverse party.

18 There was two years of litigation.
19 There was a trial. There was final judgment
20 on the merits. All of that was among
21 completely diverse parties. Whole Foods never
22 got in the door.

23 And so there's no reason to go back
24 and say: Well, we're just going to get rid of
25 all of that and have a do-over because the

1 absence of Whole Foods didn't have any effect
2 on the outcome, it didn't have any effect on
3 what happened at trial.

4 The plaintiffs could have sought
5 third-party discovery against Whole Foods.
6 They didn't. Whole Foods was barely even
7 mentioned in the trial.

8 JUSTICE JACKSON: But can we go back
9 to Justice Sotomayor's point about prejudice?

10 So is it your view that there would
11 be no potentially preclusive effect of this
12 judgment on a subsequent determination or a
13 subsequent trial related to Whole Foods?

14 I mean, is your client not going to
15 argue that Hain should lose that as well?

16 MS. HARRINGTON: I mean, if they --
17 if -- that Hain should lose. I mean, if -- if
18 the plaintiffs --

19 JUSTICE JACKSON: Or that Whole Foods
20 should lose.

21 MS. HARRINGTON: So I think --

22 JUSTICE JACKSON: Whole Foods.

23 MS. HARRINGTON: Right. That's --

24 JUSTICE JACKSON: I mean, I -- I sense
25 a potential prejudice from having to try this

1 twice when initially the plaintiff here wanted
2 to bring one lawsuit against both of these
3 defendants.

4 And so I guess I'm asking, if we say
5 it's okay to affirm the judgment with respect
6 to this one defendant and it's fine because the
7 plaintiff can go on to sue -- sue Whole Foods,
8 is there any possibility of some kind of
9 preclusion in the Whole Foods lawsuit?

10 MS. HARRINGTON: So that's a question
11 for state law that would need to be decided by
12 the state court, I think. But, even if there
13 were, even if the state court did say, yes,
14 this determination that was made by the
15 district court has preclusive effect with
16 respect to the claims against Whole Foods, that
17 wouldn't be prejudice.

18 JUSTICE JACKSON: Why not?

19 MS. HARRINGTON: That's just the
20 ordinary consequence of losing at trial, right?
21 I mean, there's nothing about the absence of
22 Whole --

23 JUSTICE JACKSON: But we wanted to
24 have one trial where both of these defendants
25 were in there, and perhaps we wouldn't have

1 lost under those circumstances.

2 MS. HARRINGTON: But nothing about the
3 absence of Whole Food -- Whole Foods or the
4 federal forum affected the outcome of the case.
5 The district court judge, after hearing the
6 plaintiffs' entire case, said you didn't
7 present evidence of causation. The absence of
8 Whole Foods had no effect on that. The federal
9 forum had no effect on that. That's just a
10 failure of proof by the plaintiffs.

11 And so, if it were determined in the
12 state courts that having to live with that,
13 with a preclusion effect, that's not prejudice.
14 That's just what happens --

15 JUSTICE JACKSON: So is your rule
16 turning on the actual judgment, whether it's
17 about causation or whatnot? I mean, in a -- in
18 a different case, let's say there was some
19 implication of having another defendant in it,
20 would you have a different rule as to whether
21 or not the judgment should be upheld?

22 MS. HARRINGTON: Yes. If the absence
23 of the dismissed defendant affects the outcome
24 of the case, then I think the plaintiff would
25 have a good argument that the judgment should

1 be vacated, and they should have a chance to
2 start over in state court. But nothing like
3 that happened here.

4 There really -- the trial would have
5 been exactly the same if Whole Foods has been
6 there, and the outcome also would have been the
7 same.

8 To pick up on one aspect of your
9 question --

10 JUSTICE GORSUCH: So are you saying
11 sometimes?

12 MS. HARRINGTON: Sometimes what?

13 JUSTICE GORSUCH: Vacatur is the
14 appropriate remedy?

15 MS. HARRINGTON: If the absence of the
16 dismissed defendant affected the outcome of the
17 case or materially --

18 JUSTICE GORSUCH: Apportioning
19 liability, things like that?

20 MS. HARRINGTON: I mean, it could --
21 it could be with apportioning liability, but,
22 here, there was no liability to apportion.

23 JUSTICE GORSUCH: No, I -- no, I
24 understand that.

25 MS. HARRINGTON: Yes.

1 JUSTICE GORSUCH: So you're saying
2 your rule is really case-specific.

3 MS. HARRINGTON: So, as with any
4 prejudice determination, it will depend on what
5 actually happened in the case. My friends on
6 the other side want you to think about
7 prejudice sort of in the abstract with
8 hypothetical parties, but you really have to
9 look at whether there was prejudice to the
10 parties in this case in these circumstances,
11 and there was none.

12 JUSTICE GORSUCH: So there usually
13 will be prejudice or often prejudice but just
14 not here?

15 MS. HARRINGTON: There could be
16 prejudice. I mean, that would depend on the
17 circumstances, you know.

18 JUSTICE GORSUCH: Okay.

19 JUSTICE BARRETT: But then it's not
20 really about jurisdiction, is it?

21 MS. HARRINGTON: No. I would --

22 JUSTICE BARRETT: I mean, if it's
23 turning on prejudice, I mean, the court --
24 normally, we don't think of whether the court
25 had jurisdiction or not as dependent on whether

1 there is prejudice to a party.

2 MS. HARRINGTON: Right. I'm talking
3 about -- that's -- the question is, like, what
4 is the remedy for the fact that you should have
5 been able to have these two defendants
6 together, right? The automatic remedy when you
7 should have been able to sue two defendants
8 together, one was improperly dismissed, and you
9 didn't, is not automatically to vacate the
10 judgment for the other defendant.

11 You would only do that if the absence
12 of the dismissed defendant affected the
13 outcome, affected that judgment. But where it
14 didn't, there's no reason to -- to vacate that
15 final judgment.

16 JUSTICE GORSUCH: I mean, it is a
17 pretty awkward rule to say that a
18 jurisdictional defect, the remedy for it
19 depends upon prejudice and -- and a particular
20 showing. And, again, we didn't do that in
21 Lexecon.

22 MS. HARRINGTON: Well, I'll try one
23 more time. There's -- there's no
24 jurisdictional defect here once you get rid
25 of --

1 JUSTICE GORSUCH: I understand your
2 point.

3 MS. HARRINGTON: -- the dismissed
4 defendant. Right.

5 JUSTICE GORSUCH: I understand your
6 point.

7 MS. HARRINGTON: Right.

8 JUSTICE GORSUCH: Okay.

9 MS. HARRINGTON: And so the question
10 is, if you -- basically, if the error was
11 separating these claims against the two
12 different defendants, what is the remedy for
13 that error? That's really what the error was
14 here.

15 JUSTICE KAGAN: But -- but you're
16 treating it as, oh, we separated two defendants
17 improperly. But, in fact, from the plaintiffs'
18 point of view, what was -- what -- the thing
19 that went wrong is that the plaintiff is the
20 master of her complaint. She clearly
21 structured a suit in order to bring it in state
22 court. That was why she joined these two
23 parties perfectly legitimately, in order to
24 have the suit in state court, rather than in
25 federal court, where it was.

1 And the effect of this district court
2 misjudgment was -- was not that two parties
3 were separated; it's that the suit was tried in
4 the wrong place from the plaintiffs' point of
5 view. And the plaintiffs' point of view is the
6 thing that should matter because the plaintiff
7 is the master of her complaint.

8 MS. HARRINGTON: So I'll say a couple
9 things. It is true that the plaintiff is the
10 master of her complaint, but that isn't a
11 jurisdictional principle. That's sort of an
12 overarching principle that guides federal --

13 JUSTICE KAGAN: It's an overarching
14 principle of how litigation should work, and it
15 also has a kind of equitable dimension, that
16 you've deprived the plaintiff of an opportunity
17 to do what our civil procedure system generally
18 allows.

19 MS. HARRINGTON: Yes, and exactly that
20 argument was made in Caterpillar. And this
21 Court said that's an important principle,
22 this -- the plaintiff is the master of her
23 complaint, but when you litigate a case to
24 final judgment, it can be overridden by other
25 principles of finality, efficiency, and

1 economy.

2 JUSTICE KAGAN: Right. Now that was a
3 case where the Court was absolutely certain
4 that there was jurisdiction at the -- at the
5 time of final judgment. And, here, there
6 remains a question about whether there was
7 jurisdiction at the time of final judgment --

8 MS. HARRINGTON: No question in my
9 mind.

10 JUSTICE KAGAN: -- given the fact that
11 the -- that Whole Foods is lurking out there,
12 ready to come back into the case if the
13 district court got it wrong as it did.

14 MS. HARRINGTON: Well, again, I'd say,
15 to be a party in a case, you have to be under
16 the exercise -- the -- the district court has
17 to exercise jurisdiction against you. And that
18 never happened here. The district court made a
19 prediction about what it thought state courts
20 would do with the claims against Whole Foods
21 and said I don't think there's a valid claim
22 and dismissed, right?

23 The -- the plaintiffs can -- in most
24 cases, can then go pursue those claims in the
25 state court if they wish. There's never any

1 exercise of federal jurisdiction over that
2 non-diverse defendant. And so then the whole
3 case proceeds between completely diverse
4 parties, including the entry of final judgment.

5 So I don't think there's a real
6 question about whether -- the way this Court
7 has phrased it is whether the district court
8 would have had jurisdiction over the case in
9 the form it took at the time of final judgment.
10 And there's really no question that that
11 certainly was -- was true here, that the
12 district court had jurisdiction over the case
13 in the form it took at final judgment.

14 And, again, if you view Cat -- view
15 Whole Foods as having lurked through the case
16 the whole time, then you really couldn't ever
17 have fraudulent joinder removal because there
18 would never be jurisdiction to enter final
19 judgment until the dismissal of that
20 non-diverse defendant was later affirmed on
21 appeal.

22 JUSTICE JACKSON: Couldn't it be
23 affirmed interlocutorily? Those kinds of
24 judgments can be appealed in the middle of the
25 case, correct?

1 MS. HARRINGTON: So they could, and
2 you could -- you know, if a plaintiff were
3 worried that the dismissed defendant was
4 somehow indispensable, they could seek a Rule
5 54(b) judgment or 1292(b). But -- but, for
6 this --

7 JUSTICE JACKSON: And in that case, we
8 wouldn't have to wait until the final judgment.
9 We would get the answer as to whether or not
10 the party should be -- should have been in
11 there, and then the case would go forward.

12 MS. HARRINGTON: Yes, but you
13 shouldn't -- but requiring that in every
14 fraudulent joinder case should not be the rule,
15 in the same way that this Court in Caterpillar
16 said we shouldn't require 1292(b) --

17 JUSTICE JACKSON: I mean, we're not
18 requiring it. It's just the parties are taking
19 risks. Everybody's strategic here and making
20 determinations about what is worth pursuing.
21 You can have an interlocutory appeal; you
22 cannot. You can wait; you cannot. But you're
23 taking a risk that when you get to the end of
24 the case, this jurisdictional defect will be
25 realized and not cured and you might suffer.

1 MS. HARRINGTON: If you adopt that
2 approach, it would slow down every fraudulent
3 joinder removal, and it might not actually
4 solve the problem for the reasons given in our
5 brief. But I see the red light's on.

6 CHIEF JUSTICE ROBERTS: Thank you,
7 counsel.

8 Anything further? No?

9 Thank you.

10 MS. HARRINGTON: Thank you.

11 CHIEF JUSTICE ROBERTS: Mr. Post.

12 ORAL ARGUMENT OF RUSSELL S. POST

13 ON BEHALF OF THE RESPONDENTS

14 MR. POST: Mr. Chief Justice, and may
15 it please the Court:

16 The question in this case is whether a
17 federal court can acquire jurisdiction through
18 error. If the case is decided according to the
19 first principles of federal jurisdiction and
20 the rationale of Royal Canin, to which the
21 Court has referred this morning, the answer
22 must be no. Federal courts are courts of
23 limited jurisdiction, and the obligation to
24 respect those limits is inflexible and without
25 exception.

1 The Court should not make an exception
2 to the party-neutral rules that Congress has
3 established for a case where a plaintiff
4 maintained a valid state law claim against a
5 non-diverse defendant through final judgment.

6 Appeals to judicial efficiency have
7 never been a reason to ignore the limited
8 jurisdiction of the federal courts, and
9 Caterpillar confirms that conclusion. It held
10 that vacatur was not required only because the
11 lack of complete diversity in that case was
12 cured by the voluntary dismissal of the
13 non-diverse defendant prior to final judgment.
14 And that cure was reinforced by a Rule 54(b)
15 partial final judgment that eliminated any
16 jurisdictional uncertainty.

17 Here, unlike in Caterpillar, the
18 defect was never cured. That's the crux of
19 this case. The Court should hold that an
20 erroneous and involuntary dismissal of a
21 non-diverse defendant does not create complete
22 diversity because jurisdiction cannot be
23 created through error.

24 Finally, contrary to the argument that
25 you've heard this morning, that proposition is

1 perfectly consistent with the Court's
2 fraudulent joinder jurisprudence. An
3 interlocutory ruling that a party was
4 fraudulently joined is effective while it
5 remains in force, and the citizenship of that
6 party is disregarded.

7 But the party remains in the case, and
8 the ruling, like any other pretrial ruling,
9 remains subject to appellate review. If the
10 ruling is upheld, then complete diversity is
11 intact. But, if it is reversed, then complete
12 diversity is lacking and the judgment must be
13 vacated. That's exactly the same as the core
14 rationale of Royal Canin earlier this year, and
15 it should control this case.

16 I welcome the Court's questions.

17 JUSTICE THOMAS: This would be a lot
18 cleaner case if you had appealed the dismissal.
19 Why didn't you?

20 MR. POST: Your Honor, because the
21 Court held in Caterpillar that there's no
22 obligation to seek immediate review to preserve
23 the right to an ultimate appeal on this issue.
24 This is no different than any other threshold
25 jurisdictional issue that arises and is

1 preserved.

2 This most frequently arises when a
3 defendant wants to preserve an objection, for
4 example, to Article III jurisdiction based on a
5 standing objection. Those types of issues are
6 frequently preserved early in litigation and
7 are not ultimately vindicated until the end of
8 the appeal at -- for a final judgment. That's
9 sort of inherent in the doctrine that appellate
10 review is ordinarily deferred until after final
11 judgment under this Court's merger rule.

12 JUSTICE BARRETT: It seems --

13 JUSTICE SOTOMAYOR: District courts
14 still retain --

15 MR. POST: I'm sorry, Your Honor?

16 JUSTICE SOTOMAYOR: District courts
17 still retain the power to certify without the
18 request of either party.

19 MR. POST: Of course. Absolutely.

20 JUSTICE SOTOMAYOR: So if any court is
21 worried, they could enter a 54(b) --

22 MR. POST: That's --

23 JUSTICE SOTOMAYOR: -- certification?

24 MR. POST: -- absolutely -- that's
25 absolutely right, Your Honor. And in fact I

1 would point out that in 1980 in the
2 Curtiss-Wright decision, this Court held that
3 one of the guiding principles for district
4 courts is the consideration of judicial
5 administrative interest. That's what should
6 guide a court in making that determination.

7 And so if there is concerns about
8 uncertainty about jurisdiction and potential
9 waste, Rule 54(b) is the resolution for that
10 sort of concern. District court could have
11 pursued it here. The defendants could have
12 requested it to resolve the uncertainty but
13 they --

14 JUSTICE BARRETT: But you could --

15 MR. POST: -- elected not to do so.

16 JUSTICE BARRETT: -- too and -- and
17 your position was you were standing on
18 Caterpillar. I mean Caterpillar does not
19 answer this question clearly one way or
20 another. So, I mean, that makes it seem like
21 your choice was to take a wait and see approach
22 and then decide whether you liked the result or
23 not before you --

24 MR. POST: No.

25 JUSTICE SOTOMAYOR: -- chose to fight

1 it.

2 MR. POST: That's not correct, Your
3 Honor. I do want to to confirm the principal
4 point the Court made. Caterpillar does not
5 resolve this question as the Petitioners
6 acknowledge in their reply brief because it
7 recognizes that if the jurisdictional defect
8 remains uncured at final judgment, vacatur is
9 required.

10 JUSTICE BARRETT: It doesn't -- it
11 doesn't -- I mean, let's see, there are
12 different ways to --

13 MR. POST: Correct.

14 JUSTICE BARRETT: -- but it doesn't
15 resolve the question. So my point for the
16 purposes of this question is solely you're --
17 you're saying, that you were standing on a case
18 that doesn't squarely resolve the question and
19 that's why you didn't try to seek an
20 interlocutory appeal?

21 MR. POST: Not, Your Honor, with
22 respect to the preservation holding.
23 Caterpillar does squarely resolve the question
24 of preservation that a party --

25 JUSTICE BARRETT: Right.

1 MR. POST: -- raises the objection to
2 jurisdiction, has done all that is necessary to
3 preserve the right to an ultimate appeal.
4 Again, that's a party neutral rule that flows
5 from the final judgment rule. It's just the
6 same principle that applies when a defendant
7 objects to jurisdiction at the outset of the
8 case. There's not an obligation to take an
9 immediate appeal in order to vindicate that.

10 JUSTICE JACKSON: But I guess Justice
11 Barrett --

12 JUSTICE BARRETT: What do you think
13 your -- oh.

14 JUSTICE JACKSON: I was just going to
15 say, your question is why didn't you appeal.

16 JUSTICE BARRETT: Right. But that --
17 I mean, whatever. We'll just let -- we'll just
18 let that go.

19 What is your answer to the questions
20 about preclusion that Justice Jackson was
21 asking you earlier. What would happen in state
22 court? Do you think you would be, you know,
23 barred by non-mutual issue preclusion from
24 relitigating some of these issues?

25 MR. POST: That is a controversial

1 question. We certainly would not concede that
2 preclusion would lie here. I would argue that
3 there may be exceptions under state law both
4 because of the nature of the jurisdictional
5 ruling in the first instance and because there
6 could be differences in sufficiency evaluation
7 under state law as opposed to federal law, but
8 all of that presupposes that the jurisdictional
9 problem could be cured and that that judgment
10 could actually have any substance on the
11 merits, which I think is incorrect.

12 I do want to speak directly to the
13 Court's question. The reason that there was
14 not an immediate appeal taken was not only that
15 the plaintiffs were relying on their right to
16 seek review after final judgment.

17 But as a practical matter in
18 litigation, litigants make their best
19 arguments, they preserve their positions, they
20 respect the rulings and they move forward. And
21 our clients moved forward to litigate the case
22 on the merits as best they could with respect
23 for the district court's ruling. Your Honor --

24 JUSTICE JACKSON: What about prejudice
25 though? You know, one of the reasons why I

1 brought up preclusion was because there was an
2 argument that given that Whole Foods was not
3 actually part of this litigation, that you're
4 not prejudiced by having to sue them in state
5 court separately.

6 MR. POST: Well, Your Honor, of course
7 prejudice is not a material consideration when
8 we're dealing with the first principles of
9 limited federal jurisdiction. And so I think
10 principally the plaintiffs do not have to
11 demonstrate prejudice to satisfy the Court that
12 there's a lack of jurisdiction in this
13 instance.

14 But it certainly is the case that the
15 plaintiff, as the Court has indicated, is the
16 master of the complaint. And that is a
17 jurisdictional principle, contrary to what
18 counsel said.

19 The right of the plaintiff to
20 configure the case for purposes of litigation
21 is a function of the congressional scheme that
22 makes jurisdiction turn on the claims and the
23 parties. And so --

24 JUSTICE BARRETT: I don't think you're
25 answering Justice Jackson's question, though.

1 I have the same one, right?

2 Aren't you asking whether the judgment
3 was -- yeah, I mean, how did it hurt your
4 client that Whole Foods wasn't in the case
5 when, you know, your friend on the other side
6 is pointing out that nothing in the case turned
7 on Whole Foods or its evidence.

8 Put aside the jurisdictional point for
9 now.

10 MR. POST: And I appreciate the point.
11 My point was simply to be that the lack of the
12 state forum in a single proceeding in which
13 both defendants could be brought within the
14 same proceeding is itself prejudicial.

15 JUSTICE BARRETT: So I take it it's a
16 very abstract prejudice in --

17 MR. POST: That --

18 JUSTICE BARRETT: -- the same way that
19 your friend on the other side said it's
20 abstract, it didn't really affect the outcome.
21 You're not saying the outcome would have been
22 different. You can't point to anything like
23 that.

24 MR. POST: That's the jurisdictional
25 principle, that's right, Your Honor. With

1 respect to practical prejudice, as a practical
2 matter, the way this case was litigated with
3 Whole Foods out of the case, there was no
4 opportunity for the plaintiffs to develop the
5 evidence that they would have developed about
6 the role of Whole Foods in actually making
7 express misrepresentations about the quality of
8 the baby food at issue.

9 And so it is true that as the case was
10 tried, it was tried solely based on the quality
11 of the product, but that was an artifact of the
12 erroneous ruling, an erroneous Erie guess made
13 by the district court about the content of
14 state law that should have been a determination
15 made by the state courts consistent with the
16 congressional scheme.

17 JUSTICE SOTOMAYOR: I'm sorry. You
18 lost on causation, meaning I thought you lost
19 on first principle which is that even if there
20 was toxic substances, they didn't cause this
21 condition.

22 MR. POST: Your Honor, there was a
23 dispute about the accuracy of that ruling.
24 That's correct. The district court found that
25 there was a failure of proof of causation.

1 JUSTICE SOTOMAYOR: Well, you lost on
2 an appeal. So it's gone.

3 MR. POST: We did -- we did not, Your
4 Honor. That question was never decided by the
5 Fifth Circuit. It would remain to be decided.

6 JUSTICE SOTOMAYOR: I see. Thank you.

7 MR. POST: And our position is that
8 the proof that was put forward at trial is
9 sufficient --

10 JUSTICE SOTOMAYOR: Okay, counsel, you
11 answered.

12 MR. POST: Thank you, Your Honor.

13 JUSTICE ALITO: Well, you made a
14 reference to the possibility that the standard
15 for -- for judgment as a matter of law might be
16 different in -- in Texas, in the Texas courts
17 than in the federal courts or did I
18 misunderstand what you said?

19 MR. POST: Your Honor, I think that's
20 a possibility. I think if it were necessary to
21 litigate the preclusion question in a state
22 court proceeding, then it would be necessary to
23 determine whether the legal role that was
24 applied in the federal courts, if, in fact, one
25 assumed the Fifth Circuit upheld judgment as a

1 matter of law, was applying the same standard
2 for sufficiency that the state courts would
3 apply.

4 That's not a question that the parties
5 have developed because to this point we've
6 clashed on the merits only under the Fifth
7 Circuit's precedent.

8 I want to pick up the point that
9 Justice Kagan made regarding Royal Canin and
10 Section 1367(c)(3) because it's not a point
11 that was explored in the briefing but I do
12 think it is powerful because the holding of
13 Royal Canin, of course, is that a plaintiff's
14 voluntary amendment that abandons a federal
15 question claim completely deprives the court of
16 original jurisdiction and therefore deprives it
17 of discretion to entertain a supplemental
18 jurisdiction claim under state law claims.

19 The necessary premise of that is that
20 where 1367(3) states that otherwise a federal
21 court that dismisses the original jurisdiction
22 claim may retain jurisdiction over the state
23 law claims, is that if the federal court has
24 involuntarily dismissed the claim, it doesn't
25 lose jurisdictional significance. That claim,

1 although dismissed in an interlocutory posture,
2 retains its jurisdictional significance for
3 purposes of original jurisdiction.

4 JUSTICE KAGAN: So I heard
5 Ms. Harrington make two points with respect to
6 that point. One was that it's different when
7 the district court does it on the merits and
8 has asserted jurisdiction over the suit, when
9 that decision happens.

10 And the second is that if the -- if we
11 applied the same rule here, we would have a
12 real problem with any fraudulent joinder case
13 because you could never say that at the time of
14 judgment there was, in fact, jurisdiction.

15 MR. POST: Your Honor, if I may, I'll
16 speak to the second point first, and I think
17 that that's just a false understanding of
18 fraudulent joinder doctrine. And there's no
19 principal way to draw the distinction that the
20 Petitioners are trying to draw.

21 And I would call the Court's attention
22 to two of your decisions that I think
23 illustrate the point that I've made, which is
24 that when a party is found to have been
25 fraudulently joined by a district court, its

1 citizenship is disregarded but it doesn't cease
2 to be a party to the litigation. That remains
3 subject to appellate review. So two cases the
4 Court should consider. The first is the
5 Kettelhake case, which is discussed in our
6 brief. That's one of the cases from the
7 voluntary/involuntary line of authority.

8 And in that case, the state court not
9 only found that there was no viable claim
10 against the non-diverse defendant but under
11 state procedure ordered an involuntary non-suit
12 and so separated formally that party from the
13 litigation.

14 And this Court held when the question
15 reached this Court that that involuntary
16 non-suit did not so terminate the party's
17 significance from the case, that it resolved at
18 jurisdictional issue.

19 The second case that I would call to
20 the Court's attention, which isn't discussed in
21 the briefing, is Mecom versus Fitzsimmons.
22 It's 284 U.S. 183, a 1931 decision by this
23 Court in which this Court reversed a fraudulent
24 joinder ruling and the necessary premise of
25 that is that that party remained in the case

1 until it arrived here for this Court to reverse
2 the ruling. The party didn't disappear
3 immediately. As a practical matter, Whole
4 Foods has been in this case from day one. They
5 are here today. Their counsel is sitting here
6 at counsel table because they are a party to
7 this litigation. You can't pretend otherwise.

8 JUSTICE JACKSON: That was -- that was
9 one of Justice Kagan's points. Was there
10 another one?

11 MR. POST: Your --

12 JUSTICE JACKSON: The second -- the
13 first.

14 MR. POST: Your Honor, I think the
15 first point was that there's a distinction to
16 be drawn between a merits-based disposition and
17 a jurisdictional disposition. I don't know
18 that that's a stable distinction in principle.

19 But, certainly, when you're dealing
20 with fraudulent joinder, for which the question
21 is whether there's a reasonable basis for the
22 claim, the substance of the analysis merges.
23 And so a federal district court's interlocutory
24 determination to dismiss a federal question
25 claim has the same consequent as its

1 interlocutory determination that there's
2 fraudulent joinder. The party still remains in
3 the litigation subject to appellant review.
4 And, therefore, the jurisdictional issue is not
5 cured.

6 CHIEF JUSTICE ROBERTS: Thank you,
7 counsel.

8 MR. POST: Thank you, Your Honor.

9 CHIEF JUSTICE ROBERTS: Rebuttal,
10 Ms. Harrington?

11 REBUTTAL ARGUMENT OF SARAH E. HARRINGTON
12 ON BEHALF OF THE PETITIONERS

13 MS. HARRINGTON: Thank you, Mr. Chief
14 Justice. Just five quick points.

15 First, on the point that we know that
16 Whole Foods is still a party because they're
17 sitting here with us at counsel table, as they
18 are, there are other circumstances in which a
19 person or a company can be a party to an appeal
20 without having been a party at the trial.

21 So, for example, if a plaintiff asked
22 for permission to add another defendant under
23 Rule 20 and the district court says no, the
24 plaintiff can appeal that denial on appeal from
25 final judgment, and the person who was never

1 added, the defendant, would be a party to the
2 appeal but never having been a party to the
3 district court. And there are other examples.

4 So I would ask you to reject that
5 argument.

6 To circle back to Justice Gorsuch --
7 Gorsuch's question about including prejudice in
8 a jurisdictional inquiry, I just want to try to
9 clarify, it's not that you would think about
10 prejudice in deciding whether there was or
11 wasn't jurisdiction. It's more that you would
12 say there was jurisdiction and then you ask,
13 did the absence of the dismissed party affect
14 the outcome? And there's where the prejudice
15 comes in.

16 The third point is just on whether the
17 absence of Whole Foods affected the outcome.
18 My friend said, well, we would have developed
19 all this evidence about what Whole Foods said.
20 As Justice Sotomayor said, they lost on
21 causation. It doesn't matter what Whole Foods
22 said or didn't say. If you can't prove
23 causation, you can't prove any of your claims
24 in this case.

25 On the "master of the complaint"

1 principle being jurisdictional, this Court
2 rejected that view implicitly in Caterpillar.
3 They said, you know, it's an important
4 principle, but it gives way to principles of
5 finality and economy.

6 And on the final point, I want to say
7 it's not just me saying that things change
8 after final judgment is entered. That's also
9 written into Section 28 U.S.C. 1447(c), where
10 Congress says that if you realize, District
11 Court, before you enter final judgment that you
12 lack jurisdiction, you should send it back.
13 But, implicitly, then things change after final
14 judgment.

15 And also this Court's case in
16 Newman-Green recognized that courts of appeals
17 can dismiss a lingering non-diverse party after
18 final judgment in order to preserve final
19 judgment. The court of appeals -- appeals
20 clearly at least had that authority here, and
21 its ruling that it was required to vacate the
22 final judgment was plainly incorrect. And so
23 we would ask the Court to reverse.

24 Thank you.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 The case is submitted.

3 (Whereupon, at 11:23 a.m., the case
4 was submitted.)

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