No. 08-1107

IN THE
Supreme Court of the United States

THE HERTZ CORPORATION,
Petitioner,

v.

MELINDA FRIEND, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Petitioner Hertz's national headquarters is located at 225 Brae Boulevard, Park Ridge, New Jersey. From that location, Hertz's executive officers direct and control the company's operations in 44 States, including California. Under the ordinary meaning of the terms of the diversity statute, Hertz's "principal place of business" is its national headquarters, and "the State where it has its principal place of business" thus is New Jersey, not California. 28 U.S.C. § 1332(c)(1).

The terms of the diversity statute dictate that a corporation's "principal place of business" is its headquarters. That site is the corporation's most important, consequential, influential, and highest-ranking place of business—its "principal" place of business—because, from there, its chief executive officers direct and control the company's activities at all of its locations. While the statutory terms therefore call for an across-the-board headquarters rule for corporate citizenship, it is especially clear that a corporation's "principal place of business" is its headquarters where, as here, the company conducts business operations dispersed across multiple States.

In arguing otherwise, respondents endorse a highly amorphous, multi-stage, multi-factor balancing test under which, as respondents describe (Br. 4):

> a court must first determine whether there is a substantial predominance of a corporation's business activities in any one state, by comparing factors including [but not limited to] the location of employees, tangible property, production activities, sources of income, and where sales take place. If the court finds a

> substantial predominance, then that state is the principal place of business. If not, the court relies upon the state in which the corporation's nerve center is located.

Respondents' own description of their approach lays bare its complexity and uncertainty. That approach also assumes erroneously that a corporation's "principal place of business" is an entire "state" rather than a particular business situs within a State. And it fully ignores the site of—and significance of—the corporate headquarters unless the non-exhaustive list of other factors fails to demonstrate a "substantial predominance" of business activities in one State.

Respondents' approach cannot be reconciled with the ordinary meaning of the phrase "principal place of business"; it is needlessly complicated to administer; it contradicts ordinary tests of State citizenship; and it fails to promote the statutory purpose of protecting corporations from prejudice in places remote from their headquarters. While respondents suggest that tests applied by circuits other than the Ninth Circuit would support deeming Hertz a citizen of California rather than New Jersey, virtually all other circuits to address the issue would consider the principal place of business of a multistate corporation with dispersed operations to be its headquarters.

Respondents likewise err in relying on judicial experience under the bankruptcy venue statute from which Congress drew the phrase "principal place of business." The courts disagreed on the proper interpretation of that language in the bankruptcy venue statute, rendering that experience of limited or no

utility in construing the diversity statute. And in any event, the predominant view under the bankruptcy venue statute held that, in the case of a multistate corporation with dispersed operations, the principal place of business was the headquarters.

This case illustrates the flaws in respondents' approach. Respondents' test leads to the implausible conclusion that a corporation headquartered in New Jersey and conducting operations in 44 States, and deriving more than 80% of its revenue outside California, is nonetheless a California citizen because its aggregate business activity in California exceeds its quantum of activity in any other single State. Under that analysis, virtually any national corporation doing business in California at a level roughly proportional to that State's share of the population could be deemed a California corporation—depriving such corporations of access to federal court in that State. Congress did not intend that result, and no circuit other than the Ninth sanctions it.

I. THIS COURT POSSESSES CERTIORARI JURISDICTION UNDER 28 U.S.C. § 1254

Respondents contend as a threshold matter (Br. 1-2) that the general bar on appellate review of district court remand orders in 28 U.S.C. § 1447(d) precludes this Court from exercising certiorari jurisdiction in this case under 28 U.S.C. § 1254. That contention is incorrect. Section 1254 gives this Court jurisdiction to "review[] … by writ of certiorari" any "case[]" that is "in the court of appeals." Because this "case" plainly was "in the court of appeals," this Court possesses certiorari jurisdiction to review it.

Contrary to respondents' argument, § 1447(d) creates no exception to § 1254's unqualified grant of

authority to this Court to review cases "in" the courts of appeals. As this Court held in *Aetna Casualty & Surety Co. v. Flowers*, 330 U.S. 464, 466-67 (1947), § 1447(d) does not "affect[] [this Court's] authority to review an action of the Circuit Court of Appeals directing a remand to a state court."

Respondents nonetheless argue (Br. 2) that Congress impliedly limited the period in which this Court could exercise certiorari jurisdiction with respect to a remand order under the Class Action Fairness Act (CAFA) when it required the denial of a CAFA appeal in that context if "a final judgment on appeal … is not issued" within 70 days. 28 U.S.C. § 1453(c). Respondents are mistaken. By its terms, the CAFA provision limits the period in which "the *court of appeals* … [must] complete all action" in an appeal from an order granting or denying a remand. 28 U.S.C. § 1453(c)(2), (4) (emphasis added). CAFA does not purport to address or limit *this Court's* unqualified authority under § 1254 to review any case "in the court of appeals." And this Court has repeatedly rejected arguments that its jurisdiction has been repealed or limited by implication. *See Felker v. Turpin*, 518 U.S. 651, 660-61 (1996). The Court therefore possesses certiorari jurisdiction under § 1254 to review the court of appeals' decision.

II. A CORPORATION'S PRINCIPAL PLACE OF BUSINESS UNDER THE DIVERSITY STATUTE IS ITS HEADQUARTERS

A. The Statutory Terms And Structure Support A Headquarters Test

1. Respondents contend that the diversity statute requires a court to aggregate all of a corporation's individual places of business throughout a

State to determine which *State* is the corporation's principal place of business. The text of the diversity statute, however, does not ask which *State* is a corporation's principal place of business. Instead, it requires identifying the single "place of business" within a State that constitutes a corporation's "principal" place of business. 28 U.S.C. § 1332(c)(1).

a. Absent some indiction to the contrary, phrases in statutes bear their "ordinary meaning." *Burlington N. & Santa Fe Ry. Co. v. United States*, 129 S. Ct. 1870, 1879 (2009). The ordinary meaning of "place of business" is a single business situs, such as "an office, a retail store, or a manufacturing plant," not an entire State. *American Heritage Dictionary of Business Terms* 394 (David L. Scott, ed. 2009). Consistent with the ordinary understanding of the phrase, numerous federal and state statutes use "place of business" to refer to a single business location. Pet. Br. 18-20. Respondents do not dispute that "place of business," in every one of the referenced federal and state statutes, refers to a particular business situs; and respondents conversely identify *no* statute in which the phrase refers to a State as a whole.

The structure of the diversity statute confirms that "place of business" refers to a single business location within a State, not the State as a whole. Had Congress intended to establish an approach calling for an amalgamation of all of a corporation's business activity throughout a State, Congress could have easily done so. Congress, however, did not make a corporation a citizen of "the State *that is* its principal place of business." Nor did Congress deem a corporation a citizen of its "principal *State* of business." Congress instead rendered a corporation a

citizen of "the State where it has its principal place of business," a formulation that distinguishes between "the State" as a whole, on one hand, and the specific site within the State that constitutes the corporation's "principal place of business," on the other.

b. Respondents contend (Br. 18-19) that the term "principal" transforms the meaning of "place of business" from a single business location to the State as a whole. As respondents recognize, however, the term "principal" simply means "the most important, consequential, or influential," or the "highest in rank" or "authority." Resp. Br. 15 (quoting *Comm'r v. Soliman*, 506 U.S. 168, 174 (1993)); *Black's Law Dictionary* 1355 (4th ed. 1951); *Webster's New International Dictionary* 1966 (2d ed. 1955). Thus, the term "principal" requires identifying the most important, consequential, influential, or highest-ranking individual business site; it does not transform the meaning of "place of business" from a single business location within a State to an amalgamation of places of business throughout a State.

This Court's decision in *Commissioner of Internal Revenue v. Soliman*, upon which respondents otherwise rely, makes the point clear. There, the Court held that the phrase "principal place of business" requires a court to assess whether "any one business location is the 'most important, consequential, or influential.'" 506 U.S. at 174; *see id.* at 176 (referring to particular hospitals and a home office as competing locations). The Court manifested the same understanding in *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 317 n.9 (2006), expressly equating the "main office" of a national bank with its "principal place of business" under the diversity statute.

2. a. Once it is accepted that the diversity statute requires identifying a corporation's most important, influential, or highest-ranking single business situs, the statutory inquiry becomes straightforward. A corporation's "principal place of business" is necessarily its headquarters. Because that site directs and controls *all* of the company's operations, it is more "important, consequential, and influential," and is "higher in rank or authority," than any other individual business location.

Reflecting that understanding, dictionaries consistently define a corporation's principal place of business as its headquarters site or its head office. *E.g., Black's Law Dictionary* 1187 (8th ed. 2004); *American Heritage Dictionary of Business Terms, supra*, at 408. To the same effect, a multitude of federal and state laws equate a corporation's principal place of business with its headquarters. Pet. Br. 23-25.[1]

b. Respondents raise various arguments, none of which have merit, against the conclusion that the ordinary meaning of the phrase "principal place of

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[1] Respondents observe (Br. 19 n.6) that the *second* definition of "principal place of business" in the *American Heritage Dictionary of Business Terms*, *supra*, at 408 is "the location where the majority of activities relative to a business take place." But Congress expressly rejected a variant of that "majority-of-business-activities" approach when it enacted the "principal place of business" test, choosing the latter over a proposal that would have deemed a corporation a citizen of a State in which it derives a majority of its income. *See* Pet. Br. 41. The secondary definition noted by respondents thus cannot constitute the meaning of "principal place of business" in the diversity statute. In any event, Hertz conducts far less than a majority—at most roughly 20%, *see* Pet. Br. 8—of its business in California.

business" favors a headquarters test. Respondents contend (Br. 15) that the term "principal" requires a comparison between business locations, and that equating the headquarters with the principal place of business fails to allow for such a comparison. That contention is incorrect. A corporation's headquarters constitutes its principal place of business precisely because, "[w]hen *compared with* any other single business location, the headquarters is the most 'important, consequential, and influential' … and its 'highest in rank' and 'authority.'" Pet. Br. 21 (emphasis added).

Respondents similarly err in arguing (Br. 17) that, if Congress had wished to establish a headquarters test, it would have used the term "headquarters" or "principal executive office," as it did in certain other statutes. As dictionary definitions and numerous federal and state laws confirm, the terms "principal place of business," "headquarters," and "principal executive office" generally carry the same meaning. When the ordinary meaning of a term equals that of an alternative term, Congress's election to use the former rather than the latter affords no basis for departing from the former's ordinary meaning. *See Abuelhawa v. United States,* 129 S. Ct. 2102, 2106 (2009) (invoking principle applicable to aiding-and-abetting statutes even though statute at issue uses term "facilitate" rather than "aid and abet," on ground that "facilitate" carries the same meaning as "aid and abet" according to *Black's Law Dictionary*); *Schmidt*, 546 U.S. at 313-14 (concluding that the words "located" and "established" carry the same meaning in 28 U.S.C. § 1348); *Vt. Agency of Natural Res. v. Stevens,* 529 U.S. 765, 784 (2000) (interpreting "person" to include corporation per ordi-

nary meaning, even though Congress defined person in related provision to include a corporation but failed to do so in the provision at issue); *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187-90 (1995) (construing phrase "as a step in marketing" to be synonymous with "for the purpose of selling," even though Congress used word "sell" elsewhere in the same subsection). That principle applies even when the alternative formulations appear in the same statute. *See Schmidt*, 546 U.S. at 313-14; *Asgrow Seed Co.*, 513 U.S. at 187-90. It should apply with even greater force when, as here, the different terms appear in different statutes, addressing different subjects, drafted at different times.

Contrary to respondents' argument (Br. 17-18), this Court's decision in *Soliman* poses no obstacle to applying a headquarters test for corporate citizenship. In that case, the Court was required to decide the principal place of business of an individual doctor for tax purposes, rather than the principal place of business of a corporation. The Court held that the doctor's home office failed to constitute his principal place of business when he engaged in preparatory tasks and bookkeeping at his home but serviced his clients primarily at hospitals. 506 U.S. at 178. The Court did not purport to address whether a home office would constitute a taxpayer's principal place of business when he manages and directs his various business operations from that location. Moreover, Congress subsequently amended the statute to clarify that a taxpayer's home is his principal place of business when he conducts his managerial activities there. 26 U.S.C. § 280A(c)(1)(A).

Finally, in an effort to show that a corporation's headquarters is not invariably its principal place of

business, respondents posit (Br. 20) a hypothetical situation in which the Venetian Resort's headquarters would be located in Arizona while its sole casino site would remain in Las Vegas, Nevada. Even in that situation, however, the headquarters location would remain the company's most important, consequential, influential, and highest-ranking site because the headquarters would direct and determine the scope of the activities at the casino. On any given day, the headquarters could direct any change it desired in the operations at the casino in Las Vegas. Accordingly, the headquarters would constitute the corporation's "principal place of business" under the ordinary meaning of the term.

3. Even if a corporation's headquarters were not invariably a corporation's principal place of business, that would not affect the result in this case. At the very least, a corporation's headquarters constitutes its "principal place of business" in the case of a multistate corporation with dispersed operations.

This case is illustrative. Hertz operates numerous rental locations spread across 44 States. All of those business operations are directed and controlled from the company's corporate headquarters in Park Ridge, New Jersey. In those circumstances, the headquarters plainly constitutes the company's most important, consequential, influential, and highest-ranking location.

In particular, that site exceeds in importance, influence, and rank, any of the 273 individual rental locations in California. Respondents do not suggest otherwise. But the headquarters is also more important, consequential, influential, and higher in rank than the combination of the rental locations in Cali-

fornia, which together account for less than 20% of Hertz's business activity. The company's combined activities in California could not be considered to exceed its headquarters in importance, consequence, influence, and rank, when the headquarters bears responsibility for directing and controlling *all* of the corporation's operations in *all* 44 States in which it conducts business.

Indeed, while respondents generally attempt to equate the Ninth Circuit's test with that of other circuits (Br. 4-5), the Ninth Circuit stands alone in ignoring the significance of a corporation's headquarters in the circumstances of a multistate corporation with dispersed operations. The Seventh Circuit applies a headquarters test in all situations. *Metro. Life Ins. Co. v. Estate of Cammon*, 929 F.2d 1220, 1223 (7th Cir. 1991). Every other court of appeals to consider the issue generally concludes that the "nerve center" or "headquarters" constitutes the principal place of business in the case of a corporation with operations that are "far flung" or "dispersed over several states."[2] The ordinary meaning

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[2] *See, e.g.*, *Diaz-Rodriguez v. Pep Boys Corp.*, 410 F.3d 56, 61 (1st Cir. 2005) ("[T]he nerve center test governs in the context of a corporation with 'complex and farflung activities.'"); *R.G. Barry Corp. v. Mushroom Makers, Inc.*, 612 F.2d 651, 655 (2d Cir. 1979) ("[T]he principal place of a business of a far-flung corporate enterprise is 'the nerve center from which it radiates out to its constituent parts and from which its officers direct, control and coordinate all activities.'"); *Kelly v. U.S. Steel Corp.*, 284 F.2d 850, 852-54 (3d Cir. 1960) (principal place of business was where "the Operation Policy Committee" was located); *Teal Energy USA, Inc. v. GT, Inc.*, 369 F.3d 873, 876 (5th Cir. 2004) ("Generally, when considering a corporation whose operations are far flung, the sole nerve center of that corporation is more significant." (internal quotation marks omitted)); *Gafford v. Gen. Elec. Co.*, 997 F.2d 150, 162 (6th Cir. 1993) ("Where the

of "principal place of business" could countenance no other conclusion.

B. The Headquarters Test, Unlike Respondents' Amorphous, Multi-Factor Approach, Is Easily Administered

Because the statutory context concerns the threshold matter of a court's jurisdiction, it triggers the strong preference for jurisdictional rules that are clear and easily administered. *E.g., Lapides v. Bd. of Regents*, 535 U.S. 613, 621 (2002). While the headquarters test is easily administered, respondents' amorphous, multi-factor balancing test is not.

1. The headquarters test requires determination of only one fact—the site from which the corporation's chief executives direct and control the company's operations—and that fact ordinarily can be readily ascertained, including from the company's public filings. Pet. Br. 28-30. While respondents challenge the headquarters test's ease of administration (Br. 53), the experience in the Seventh Circuit demonstrates otherwise. That Circuit has applied

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'bulk' of a corporation's business is dispersed over several states, the corporation's headquarters assumes more significance as the compelling factor." (internal quotation marks omitted)); *United Nuclear Corp. v. Moki Oil & Rare Metals Co.*, 364 F.2d 568, 570 (10th Cir. 1966) ("Where a corporation carries on its business in a number of states, no one of which is clearly the state in which its business is principally conducted, the state where a substantial part of its business is transacted and from which centralized general supervision of all of its business is exercised, is the state in which it has its principal place of business."); *MacGinnitie v. Hobbs Group, LLC*, 420 F.3d 1234, 1239 (11th Cir. 2005) ("Where a company's activities are not concentrated in one place, a district court is entitled to give these nerve-center-related facts greater significance." (internal quotation marks omitted)).

the headquarters tests for years, and has praised the test for its simplicity. *See Wis. Knife Works v. Nat'l Metal Crafters*, 781 F.2d 1280, 1282-83 (7th Cir. 1986). Respondents identify no basis in the Seventh Circuit's experience for challenging that court's characterization of its test as "simpler" than any competing approach. *Id*.

Respondents instead suggest (Br. 53-54) that, if this Court adopts the headquarters test, several questions would "immediately arise" about the location of a company's headquarters. Those questions, however, are readily answered by precedent, common sense, or both. In particular:

- The headquarters is where a corporation's chief executive officers are located, *R.G. Barry Corp. v. Mushroom Makers, Inc.*, 612 F.2d 651, 655 (2d Cir. 1979), not where its Board of Directors may meet, *Kelly v. U.S. Steel Corp.*, 284 F.2d 850, 852 (3d Cir. 1960).

- In an unusual situation in which a company's chief executive officer maintains his or her office in one State while all the remaining officers work in separate location designated as the headquarters, the latter site would constitute the headquarters. *See Kanzelberger v. Kanzelberger,* 782 F.2d 774, 777-78 (7th Cir. 1986).

- The headquarters is the location from which the corporation's officers direct and control the company's business operations, *see Diaz-Rodriguez*, 410 F.3d at 59, not the location at which the corporation stores its books and records, if different.

- The headquarters is ordinarily, but not invariably, the site identified as such in public filings. *Cf. O'Toole v. Arlington Trust Co.*, 681 F.2d 94, 98 (1st Cir. 1982) (similar rule for individual domicile). A corporation could not, for example, designate a mail-drop as its headquarters and have that declared its principal place of business.
- The principal place of business is the ultimate headquarters, not a division or product headquarters. *Int'l Bhd. of Elec. Workers v. Interstate Commerce Comm'n*, 832 F.2d 91, 92 (7th Cir. 1987).

In the latter regard, none of the sample corporations with multiple headquarters proffered by respondents (Br. 54-55) poses any difficulty. Boeing's principal place of business is its "World Headquarters" in Chicago; Bank of America's headquarters is its "principal executive offices" in Charlotte, North Carolina; Tosco Corporation's principal place of business is "its 'principal corporate headquarters'"; and Hertz's principal place of business is its national headquarters at "225 Brae Boulevard, Park Ridge, New Jersey" (Pet. App. 26a), not its reservations center in Oklahoma City, where executive and administrative functions are performed "to a lesser extent" (*id.* at 30a).

2. Unlike the headquarters test, respondents' highly amorphous, multi-factor, multi-stage balancing test is needlessly complicated and difficult to administer. Hertz's opening brief (at 31-34, 36-38) identified numerous complexities and uncertainties about the most rudimentary elements of respon-

dents' proposed approach. Respondents fail to address—much less dispute—any of those ambiguities.

Among the questions to which respondents suggest no answer are whether a court should consider (i) the number of hours employees work, the amount of wages paid, or both; (ii) the total number of facilities, the size of the facilities, or both; (iii) the volume of sales, the value of sales, or both. Respondents likewise fail to address (iv) how to determine whether the degree by which business activity in one State exceeds other States across the various measures amounts to a "substantial predominance," (v) how to balance the various factors against one another, and (vi) how to define the relevant time frame for assessing the factors. Numerous additional other complexities identified in petitioner's opening brief remain unaddressed.

Respondents' failure to engage those ambiguities is unsurprising. The Ninth Circuit has not attempted to answer any of those questions, and no answer readily appears. Respondents' highly amorphous, multi-factor, multi-stage balancing test thus is the antithesis of a clear and easily administered jurisdictional rule. Respondents make no attempt to demonstrate otherwise.

3. Respondents instead argue (Br. 44-45) that the complexity and uncertainty inherent in their test affords no basis for declining to adopt it. As this Court's decisions make clear, however, where the statutory terms permit it, statutes should be construed to avoid complex and wasteful litigation on threshold questions of jurisdiction. *See Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 460-61, 464 n.13 (1980); *Grupo Dataflux v. Atlas Global Group, L.P.*,

541 U.S. 567, 582 (2004); *United Steelworkers of Am. v. R.H. Bouligny, Inc.*, 382 U.S. 145, 152 (1965).

a. In arguing that the complexity of their approach should not counsel against its adoption, respondents identify (Br. 44-52) certain other jurisdictional inquiries that they regard as substantially complex. But none of the inquiries identified by respondents compares to respondents' multi-factor and highly amorphous balancing test. *See* pp. 19-23, *infra*. More fundamentally, respondents' argument misperceives the nature of the strong preference in favor of clear and easily administered jurisdictional rules. That preference would not control when the terms of a jurisdictional statute unambiguously dictate a particular, fact-based jurisdictional test. Instead, the preference for clear jurisdictional rules assumes significance when it reinforces the ordinary meaning of a statute or when the statutory terms bear more than one construction. *See Navarro*, 446 U.S. at 460-61, 464 n.13; *Grupo Dataflux*, 541 U.S. at 582; *United Steelworkers*, 382 U.S. at 152.

Here, the ordinary meaning of the diversity statute strongly favors a headquarters test. But even assuming that the terms of the statute were ambiguous on the matter, the substantial preference for clear and easily administered jurisdictional rules would resolve any ambiguity in favor of a headquarters test.

That preference has particular salience here in light of the circumstances surrounding Congress's enactment of the "principal place of business" formulation. Congress selected that formulation over an alternative approach that would have deemed a corporation a citizen of a State in which it received

more than half of its gross income. Pet. Br. 41. Congress was advised that the latter approach would be unduly complex to administer. Respondents' contrary view (Br. 24) is erroneous. While the Judicial Conference initially described the gross-income test as easy to administer, *see* S. Rep. No. 1830, 85th Cong. (1958), *reprinted in* 2 U.S.C.C.A.N. 3099, 3120, it revised that view after conferring with the circuit conferences, ultimately concluding that the gross-income test "would be difficult to apply" and instead recommending enactment of the principal place of business test because it afforded a "simpler and more practical formula." *Hearings on H.R. 2516 and H.R. 4497 Before Subcommittee No. 3 of the House Committee on the Judiciary*, 85th Cong. 36 (1957); S. Rep. No. 1830, 2 U.S.C.C.A.N. at 3132 (Judicial Conference Committee letter); *accord id.* at 3107 (Administrative Office of the Courts letter). Adopting respondents' approach—which entails far more complexity and uncertainty than even the gross-income test rejected by Congress—would conflict with Congress's evident desire for a "simpler and more practical formula."

b. The various jurisdictional inquiries highlighted by respondents do not counsel in favor of adopting respondents' amorphous and uncertain test for corporate citizenship. Respondents initially argue that the prevailing test for determining an individual's citizenship "is at least as fact-intensive" as their proposed multi-factor, multi-stage test for corporate citizenship. Br. 45-46. That is incorrect. For individual citizenship, a court need only determine whether a person resides in a State and intends to remain there indefinitely. *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989). That

test is "familiar, well-settled, and easy to apply." *Gaudin v. Remis*, 379 F.3d 631, 637 (9th Cir. 2004).

Respondents likewise err in relying on (Br. 46-48) the constitutional tests for personal jurisdiction and standing. Even assuming that the jurisdictional inquiries prescribed by the Constitution shed light on the choice among competing interpretations of a jurisdictional statute, the constitutional inquiries emphasized by respondents do not approach the level of complexity and uncertainty surrounding their test for corporate citizenship. For personal jurisdiction, a court need only decide whether the defendant has "minimum contacts" with the relevant State. *Quill Corp. v. North Dakota ex rel. Heitkamp*, 504 U.S. 298, 307-09 (1992). And for standing, a court must find that the plaintiff has experienced an injury in fact, caused by the defendant's conduct, and likely to be redressed by a favorable decision. *Horne v. Flores*, 129 S. Ct. 2579, 2592 (2009). While neither inquiry involves a bright-line test and each can present difficult issues on occasion, the inquiries are relatively straightforward in the mine run of cases.

By comparison, respondents' test requires examining—in every case—multiple factors including, but not limited to, the location of employees, tangible property, production activities, sources of income, and sales. Resp. Br. 4. A court must then decide, without any definition of the key terms and without any guidance on how to balance the various factors, whether a "substantial predominance" of those activities takes place in one State. Then, if no one State contains a substantial predominance of business activities, the corporation's principal place of business is its headquarters. That approach is sub-

stantially more indefinite and open-ended than the tests for personal jurisdiction and standing.

Finally, respondents contend (Br. 49-52) that CAFA establishes a "remarkably complex" jurisdictional inquiry and therefore supports a complicated test for corporate citizenship. But the threshold jurisdictional inquiry under CAFA (assuming a headquarters test for corporate citizenship) is straightforward. Contrary to respondents' suggestion (Br. 49), CAFA does not require determining the citizenship of all putative class members and every defendant. Because CAFA confers federal jurisdiction based on minimal diversity—*i.e.*, whenever "any member of a class of plaintiffs is a citizen of a State different from any defendant," 28 U.S.C. § 1332(d)(2)(A)—a court need only establish diversity between one plaintiff and one defendant.

To be sure, the CAFA exceptions cited by respondents can invite more detailed factual inquiries. But because those exceptions were intended to be narrow (Pet. Br. 52-53) and only arise if invoked by a party, they do not raise the same concerns about wasteful litigation presented here. While every CAFA case involving a corporate party requires determining the corporation's citizenship, questions surrounding the exceptions arise far less frequently. Indeed, in cases with one defendant, once CAFA jurisdiction is determined to exist, the exceptions necessarily become inapplicable. *See* 28 U.S.C. § 1332(d)(4); *id.* § 1332(d)(3).

C. The Headquarters Test Conforms To The Traditional Rules For Determining Individual Citizenship

The statutory context favors a headquarters test in another respect as well: the statute involves the determination of citizenship for purposes of diversity jurisdiction, and the traditional rules for determining an individual's citizenship support a headquarters test for corporate citizenship. An individual's citizenship depends on a person's conscious choice to reside in a State and to remain there indefinitely. *See Miss. Band of Choctaw Indians*, 490 U.S. at 48. Those factors of a conscious and durable choice of residence favor a headquarters test for corporate citizenship. A corporation makes a conscious choice about where to locate its headquarters, and that choice reflects an intention to make that site its permanent home.

Respondents, relying on a study of the movement of corporate headquarters, question the durability of a corporation's selection of its headquarters. Br. 39-41. But that study greatly overstates the movement of corporate headquarters for purposes of diversity jurisdiction because, as respondents acknowledge (Br. 39 n.11), "[t]he definition of 'headquarters' used by th[e] study is significantly broader than that contemplated by the parties to this case and the case law interpreting 'principal place of business.'" The study's definition of a "move" also overstates the relevant movement because it includes headquarters relocations *within* a State, which would have no bearing on State citizenship. *See* Vanessa Strauss-Khan & Xavier Vives, *Why and Where Do Headquarters Move?*, 39 Regional Sci. & Urb. Econ. 168, 182, tbl. A7 (2009) (listing moves from Harrisburg to

Pittsburgh and Pittsburgh to Philadelphia); Resp. Br. 39 n.11.

In any event, the existence of some degree of movement in no way undermines the analogy to an individual's citizenship. A significant number of individuals may shift their State of citizenship. The critical point is that they make a conscious choice to do so, and they have a fixed intention to remain at their new home. Nothing in the study cited by respondents suggests that is not also true of corporations that may shift their headquarters.

Indeed, the study cited by respondents demonstrates the care with which a corporation selects its headquarters site. The study concludes that corporations opting to move their headquarters do so for critical, business-related reasons, such as "good airport facilities," "high levels of business services," and "agglomeration of headquarters in the same sector of activity." Strauss-Khan, *supra*, at 169. And the study also notes the "moving and set up" costs associated with a change. *Id*. at 176. Those considerations reinforce that, as with an individual's selection of his State of citizenship, a corporation's selection of its headquarters site is a matter of considered choice. Nothing in the study suggests that corporations change their headquarters for jurisdictional purposes.

In contrast, respondents' approach to corporate citizenship bears no resemblance to the traditional manner of determining citizenship. Under their approach, a corporation's citizenship could vary from year to year based on factors having nothing to do with corporate choice, such as a change in a State's regulations, an adjustment of a State's tax rates, or a

shift in a State's economic health. In short, while the headquarters test coheres with the basic conception of citizenship, respondents' approach does not.

D. The Headquarters Test Is Consistent With The Background And Purposes Of § 1332

Respondents contend that their approach accords with the background and purposes of the diversity statute, and that the headquarters test does not. In fact, the opposite is true.

1. According to respondents (Br. 34-35), the legislative history shows an intent by Congress that "principal place of business" in the diversity statute carry the same meaning the phrase had acquired in judicial decisions interpreting a bankruptcy venue statute. As respondents recognize (Br. 35), however, courts had adopted varying approaches in construing the bankruptcy venue statute. As explained by one of the cases on which respondents rely, there existed a "substantial conflict" on whether "the principal place of business is located at the general executive offices where the business affairs of the corporation are managed, or in the district of the factories, mills, or mines, of the corporation." *Inland Rubber Corp. v. Triple A Tire Serv. Inc.*, 220 F. Supp. 490, 495 (S.D.N.Y. 1963). In light of the "substantial conflict," the experience of courts construing the bankruptcy statute is of limited, if any, value in interpreting the diversity statute. That is particularly true because where, as here, the statutory text and context favor the headquarters test, "murky, ambiguous, and contradictory" legislative history can afford no justification for adopting a contrary interpretation. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005).

In any event, while courts may have been in substantial conflict on whether the bankruptcy venue statute supported an across-the-board headquarters test, courts generally agreed that the headquarters constituted the principal place of business for a multistate corporation like Hertz with dispersed operations. As Judge Maris informed Congress, "[w]here a corporation's interests are rather widespread," bankruptcy courts had "generally taken the view" that the "principal place of business" was the corporation's headquarters, *i.e.*, the "place where its business operations are coordinated, directed, and carried out, which would ordinarily be the place where its officers carry on its day-to-day business, where its accounts are kept, where its payments are made." House Judiciary Hearings at 37. The cases bear out Judge Maris's testimony.[3]

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[3] *Burdick v. Dillon*, 144 F. 737, 738 (1st Cir. 1906) ("[W]hen a corporation operating factories, mills, or mines in various states, has a principal office where business is transacted of the character of that conducted at [the principal office of the bankrupt company], such principal office, rather than a factory, mill, or mine, according to ordinary understanding and speech, as well as according to the intent of Congress, constitutes the 'principal place of business,' within the meaning of the bankruptcy act."); *In re Hudson River Nav. Corp.*, 59 F.2d 971, 974 (2d Cir. 1932) (explaining that "[n]o satisfactory solution can be reached by trying to balance one [place of business] against another" and holding principal place of business to be in district housing offices from which corporation's officers exercised "supreme direction and control" of "all of [corporation's] business"); *In re Pusey & Jones Co.*, 286 F. 88, 94 (2d Cir. 1922) (quoting Special Master report "accept[ing] it as the rule that, where a corporation has plants in two different states and an office in a third state, from which its operations are directly managed and controlled, such office will constitute the principal place of business of the corporation within the meaning of the bankruptcy statute"); *Dryden v. Ranger Refining & Pipe Line Co.*,

Indeed, the bankruptcy case most featured by respondents (Br. 27) in arguing against a headquarters test, *In re Monarch Oil Corp.*, 272 F. 524, 526 (S.D. Ohio 1920), failed to involve a multistate corporation with dispersed operations. *See id.* at 524. That case also relied on reasons unique to the bankruptcy context: the interest in adjudicating a corporation's bankruptcy where the corporation's assets and creditors are located. *Id.* at 526. Congress should not be assumed to have intended to import cases that turn on bankruptcy-specific venue concerns into a diversity statute serving entirely distinct purposes. *See Schmidt,* 546 U.S. at 316 ("[V]enue and subject-matter jurisdiction are not concepts of the same order.")

Respondents' reliance on cases construing the bankruptcy venue statute is particularly unwarranted because none of the cases they cite supports their proposed "substantial predominance" test. No bankruptcy case cited by respondents suggests that a corporation headquartered in a different State could be a citizen of a State in which it conducts only 20% of its business simply because its business activ-

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280 F. 257, 262-63 (5th Cir. 1922) ("Where a corporation conducts its business at a number of places, no one of which is plainly the place where its business is principally conducted, one of such places, where a substantial business is transacted, and from which general supervision of all of its business is exercised, may be properly held to be the principal place of business of such corporation."); *Cont'l Coal Corp. v. Roszelle Bros.*, 242 F. 243, 246 (6th Cir. 1917) ("Where a corporation has more than one mine, quarry, or manufacturing plant, situated in different districts, its office from which supreme direction and control of the business generally is had, including the operations of the several plants, may, and perhaps must, be deemed the principal place of business.").

ity in that State substantially exceeds that in any other single State. Judicial experience with the bankruptcy venue statute thus ultimately undermines respondents' argument.

2. Respondents assert (Br. 38) that a headquarters test would fail to address the evil Congress sought to eliminate when enacting the "principal place of business" provision. That contention is incorrect.

The sole evil that Congress sought to correct was the "fiction" by which "a local institution, engaged in a local business and in many cases locally owned, is enabled to bring its litigation into the Federal courts simply because it has obtained a corporate charter from another State." S. Rep. No. 1830, 2 U.S.C.C.A.N. at 3101-02. Treating a corporation's principal place of business as its headquarters does not perpetuate that "fiction." What made a local institution obtaining access to federal court through an out-of-state charter a "fiction" was that the local corporation did not "intend[] to do business in the [chartering] State." House Judiciary Hearings at 39. A corporation's decision to locate its *headquarters* in a State, by contrast, necessarily involves a decision to "do[] business" there. Indeed, it involves a decision to do the corporation's most important, consequential, and influential business in that State. There is therefore nothing at all "fictional" about enabling a corporation to become a citizen of the State in which it elects to locate its headquarters site.

At any rate, the concern identified by Congress applied solely to the ability of a "local institution, engaged in a local business" to obtain access to a federal court. S. Rep. No. 1830, 2 U.S.C.C.A.N. at 3102.

That concern did not extend to corporations like Hertz, "which do business over a large number of States." *Id.* Accordingly, even assuming, *arguendo*, that it would constitute a fiction to treat a "local institution, engaged in a local business" in one State as a citizen of a different State in which it maintains its headquarters, there could be no conceivable claim that it would constitute a fiction to treat a multistate corporation with dispersed operations (like Hertz) as a citizen of the State where it maintains its national headquarters.

3. Finally, respondents largely ignore Congress's aim to preserve a corporation's ability to obtain a federal forum in every State except the State of incorporation and the State where the corporation has its principal place of business. Congress rejected proposals that would have denied corporations access to diversity jurisdiction altogether or would have deemed a corporation a citizen of any State in which it engaged in business. Pet. Br. 44-45. Congress's rejection of proposals to more broadly restrict corporations' access to federal court reflected its understanding that corporations still faced potential bias "in States remote from their headquarters." House Judiciary Hearings at 35-36.

In particular, Congress disagreed with respondents' assertion (Br. 31) that a corporation confronts no risk of bias in any State in which it has a substantial presence. Had Congress shared that belief, it would have denied corporations access to federal court in any State in which the corporation had such a presence. Congress instead preserved a corporation's access to federal court in at least 48 out of 50 States, necessarily reflecting a view that substantial presence alone fails to eliminate the risk of bias.

Congress's judgment is entirely understandable. Corporations are normally identified with the State in which they maintain their headquarters, not the States in which they have a substantial presence. Even when a corporation does substantial business in a State, persons in that State are likely to regard the corporation as an out-of-State corporation if its headquarters is located elsewhere—*i.e.*, the identification of Coke with Georgia, Microsoft with Washington, and Wal-Mart with Arkansas, notwithstanding that those companies conduct substantial business in numerous States. Respondents identify no counterexample of a corporation identified with a State in which it conducts 20% of its business, even though it maintains its headquarters in a different State.

That is precisely why an attorney would attempt to elicit jury bias against a corporation doing substantial business in a State by pointing out that the decisions causing the plaintiffs' injuries emanated from the company's out-of-state headquarters. *See Whitehead v. Food Max of Miss., Inc.*, 163 F.3d 265, 276 (5th Cir. 1998) (attorney arguing to jury that decisions were made at Kmart's corporate headquarters "way up there in Troy, Michigan"). Conversely, it would be highly surprising if an attorney trying a case in a corporation's headquarters State attempted to tarnish the company as an out-of State corporation on the basis that it does 20% of its business in a different State. The headquarters test thus best promotes Congress's goal of ensuring that a corporation has access to federal court where there remains a danger that it will be regarded as an out-of-State corporation.

E. HERTZ IS A CITIZEN OF NEW JERSEY, NOT CALIFORNIA

For the reasons discussed, the text, context, and background of the diversity statute uniformly point to a corporation's headquarters as its principal place of business. At the very least, those factors establish that, for multistate corporations with dispersed operations, the headquarters is the principal place of business. In either event, because Hertz is a multistate corporation with dispersed operations, the company's principal place of business is its headquarters. Hertz therefore is a citizen of New Jersey, not California.

Even if other tests for determining a corporation's principal place of business could be imagined, respondents' substantial predominance test cannot be squared with the language, context, or background of the diversity statute. The Ninth Circuit's application of that test to Hertz demonstrates the extent to which it departs from a plausible interpretation of the statute. The Ninth Circuit deemed Hertz a citizen of California, even though it derives no more than 20% of its overall business there, simply because that amount was considered to exceed substantially the amount of business it conducted in any other single State. Under that approach, virtually any national corporation doing business in California at levels roughly proportional to California's share of the population could be deemed a California corporation. No plausible understanding of the phrase "principal place of business" could justify that outcome. The Ninth Circuit itself appears to have recognized as much, suggesting that its test could be modified to account for the size of a State's population. *Davis v. HSBC Bank Nev. N.A.*, 557 F.3d 1026,

1028-30 & n.4 (2009). Under that per capita approach, California would not be Hertz's principal place of business.

Under other tests, Hertz's principal place of business would be its headquarters. That would include a test looking to the headquarters unless all, substantially all, or even a majority of the company's operations were in a different State (the last of which respondents appear to endorse at certain points, *see* Br. 10, 14). In short, under the correct approach, as well as any other approach except that of the Ninth Circuit, Hertz's principal place of business is its headquarters at 225 Brae Boulevard, Park Ridge, New Jersey.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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Dated: October 29, 2009