No. 24-724

IN THE

Supreme Court of the United States

THE HAIN CELESTIAL GROUP, INC., ET AL.,
Petitioners,

v.

SARAH PALMQUIST, INDIVIDUALLY AND AS NEXT FRIEND OF E.P., A MINOR, ET AL.,
Respondents.

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

BRIEF FOR THE NATIONAL ASSOCIATION OF MANUFACTURERS; CONSUMER BRANDS ASSOCIATION; FMI, THE FOOD INDUSTRY ASSOCIATION; AND NATIONAL RETAIL FEDERATION AS AMICI CURIAE SUPPORTING PETITIONERS

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INTEREST OF THE *AMICI CURIAE*[1]

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes $2.91 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The Consumer Brands Association (CBA) represents the world's leading consumer-packaged goods companies, as well as local and neighborhood businesses. The consumer-packaged goods industry is the largest U.S. manufacturing employment sector, delivering products vital to the wellbeing of people's lives everyday. The industry contributes $2 trillion to U.S. gross domestic product and supports more than 20 million American jobs. CBA's industry members are committed to empowering consumers to make informed decisions about the products they use and have long felt a unique responsibility to ensure their products align with the evolving expectations of consumers.

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[1] No counsel for a party authored any part of this brief. No party or counsel for a party, and no person other than *amici curiae*, their members, or their counsel, made a monetary contribution intended to fund its preparation or submission. All parties received timely notice of *amici*'s intent to file this brief.

FMI, the Food Industry Association works with and on behalf of the entire food industry to advance a safer, healthier, and more efficient consumer food supply. FMI brings together a wide range of members across the value chain—from retailers who sell to consumers, to producers who supply the food, as well as the wide variety of companies providing critical services—to amplify the collective work of the industry. FMI's membership includes nearly 1,000 supermarket member companies that collectively operate almost 33,000 food retail outlets and employ approximately 6 million workers. Those companies also operate approximately 12,000 pharmacies inside retail grocery stores throughout the United States.

The National Retail Federation (NRF) is the world's largest retail trade association and the voice of retail worldwide. The NRF's membership includes retailers of all sizes, formats, and channels of distribution, spanning all industries that sell goods and services to consumers.

Amici frequently file briefs in this Court and others where, as here, the case presents issues of critical importance to *amici*, their members, and industry as a whole. *Amici* submit this brief regarding the first question presented with two objectives: first, to assist the Court in understanding the perverse and far-reaching outcomes the Fifth Circuit's vacatur rule wreaks on both diverse defendants and the judicial system overall; and second, to demonstrate the gamesmanship the Fifth Circuit's decision invites from plaintiffs.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case is about an important jurisdictional question that implicates fundamental principles of finality and efficiency: whether a district court's final judgment as to completely diverse parties must be vacated when an appellate court later determines that the district court previously erred by dismissing a non-diverse party at the time of removal.[2] Jurisdictional rules are supposed to be clear, but currently, the answer to this important question differs dramatically based entirely on geographic happenstance. Worse yet, the problem here is not merely the uncertainty created by a circuit split. The decision below will invite gamesmanship and create tangible harms for litigants and courts alike.

Diverse defendants in the Fourth, Eighth, and Ninth Circuits may rest assured that as long as all defendants are diverse from the plaintiffs at the time of a final judgment and there is no procedural or substantive defect in the judgment itself, they can rely on that judgment as final. They know that the judgment will remain final *as to them*, even if a later court of appeals agrees with the plaintiffs that the district court erroneously dismissed a *different*, non-diverse party at the time of removal. Diverse defendants in the Fifth and Eleventh Circuits have no such assurance. In those circuits, diverse defendants may spend years and many millions of dollars defending against claims, obtaining a clean win at summary judgment or even trial, and be forced to relitigate the entire case before a different court

[2] *Amici* focus this brief on the first question presented.

because of an error the district court made as to the viability of the claims against a *different, non-diverse defendant*.

The Fifth Circuit's vacatur rule is broad by its own terms and so too are its consequences. The Fifth Circuit vacated and remanded irrespective of whether there were any reversible errors in the final judgment in Hain's favor—indeed, without even considering those issues. *See* Pet. App. 23a. That holding ensures that plaintiffs in removed cases can obtain a free redo in state court even if their federal court loss was completely error-free—and even if their loss was occasioned by sanctionable misconduct, like spoliation or the failure to comply with court orders.

This vacatur-regardless-of-the-merits approach ensures that diverse defendants must win (at least) twice to ultimately prevail in a removed case. Diverse defendants must first win in federal court and, if the case is remanded, win yet again in state court on the exact same claims and issues. This duplicative litigation is taxing not only for diverse defendants but also for the federal and state courts overseeing these cases. Federal and state courts are both overwhelmed and under-resourced, but the Fifth Circuit's decision ensures that overworked federal courts can see the years of judicial resources they spent resolving a case wiped away for an unrelated remand issue while similarly overworked state courts must then bear the brunt of adjudicating cases that a federal court has already cleanly resolved on the merits.

The effects of the Fifth Circuit's vacatur rule will not merely affect efficiency and finality; it will also encourage unseemly litigation gamesmanship and the filing of meritless claims against retailers. Now that

plaintiffs can wipe away federal losses based on unrelated remand errors, plaintiffs will have every incentive to add as many non-diverse retailers as they can to increase their chances of a later redo if they ultimately do not prevail on their claims against a manufacturing defendant. And even if their claims against retailers are particularly weak when filed, they can hope for favorable developments in state tort law during the intervening years before an appellate court finally examines whether non-diverse defendants were properly joined at the outset. In other words, the inevitable passage of time between filing and a later fraudulent-joinder appeal can further incentivize plaintiffs to assert weak, if not frivolous, claims against as many non-diverse defendants as possible.

Our judicial system was never intended to permit parties to relitigate the exact same claims in multiple courts. But that is precisely what the Fifth and Eleventh Circuits require. This Court's intervention is needed to halt the perverse outcomes dictated by the minority approach and ensure that federal and state judicial systems are not forced to oversee duplicative proceedings.

ARGUMENT

I. The Fifth Circuit's decision undermines principles of judicial efficiency and gives unsuccessful plaintiffs an undeserved do-over.

Under the Fifth Circuit's decision, a diverse defendant who prevails on the merits and obtains judgment in its favor after years of litigation (and even a trial) will be forced to start all over again in state court. This rule applies even if the only error the

district court made was to dismiss a *different, non-diverse defendant* as fraudulently joined and therefore deny a motion to remand. *See* Pet. App. 22a-23a. Plaintiffs need not even try to identify any reversible error in the proceedings against, or judgment in favor of, the diverse defendant that occurred after the remand decision. Indeed, the Fifth Circuit here explicitly declared that because "the district court erred in denying the Palmquists' motion to remand the case to the state court, we do not address whether the district court erred in granting judgment as a matter of law in favor of Hain." Pet. App. 23a. For the Fifth Circuit, the remand decision alone is sufficient to warrant vacatur and a redo in state court, even if the subsequent litigation was entirely error free. *Id.* That rule is breathtaking in its breadth, and extraordinarily problematic in its practical implications.

A. The lack of guardrails on the Fifth Circuit's decision will permit plaintiffs to benefit from this broad vacatur rule, regardless of the merits or conduct of the underlying litigation. For instance, a plaintiff whose case is dismissed as a sanction for violating a discovery order or due to egregious spoliation of evidence could have its case reinstated in its entirety based on a remand error pertaining to a different defendant entirely. But, as even the Fifth Circuit recognizes, dismissal as a sanction can be necessary to "achieve the desired deterrent effect" where a plaintiff refuses to comply with a discovery order out of "willfulness or bad faith" and where that "misconduct … substantially prejudice[s] the opposing party." *See FDIC v. Conner*, 20 F.3d 1376, 1381-1382 (5th Cir. 1994) (citation and quotation marks omitted); *see also Gratton v. Great Am. Commc'ns*, 178 F.3d 1373, 1375 (11th Cir. 1999) (affirming dismissal as sanction because of plaintiff's

"spoilation of evidence and misidentification of a witness"). Yet, under its vacatur rule, the Fifth Circuit will grant the plaintiff a do-over in state court without even considering the plaintiff's egregious misconduct. That would seriously undermine district courts' ability to manage both their dockets and effectively police litigation misconduct.

Even in less egregious scenarios, the Fifth Circuit's vacatur rule affords plaintiffs an undeserved mulligan. This case is a perfect example. The parties proceeded to trial, and the district court found the record completely devoid of credible evidence of general causation connecting trace amounts of heavy metals to autism and ADHD in children—it held that a reasonable jury could not find for the plaintiffs because "the scientific facts are simply not there." Pet. App. 30a-31a. The court even noted the Palmquists' "valiant effort to persuade the Court otherwise" but observed that the "failure to present any expert evidence on general causation was [not] a failure of lawyering, rather, such general causation is simply not supported by the science." Pet. App. 30a. Despite that determination, the Fifth Circuit's vacatur rule has given the plaintiffs a second try at the same factual question in state court. And given that "the scientific facts are simply not there," Pet. App. 30a, Hain (and Whole Foods) will potentially have to spend years and significant financial resources relitigating factually meritless claims.

The Fifth Circuit's all-encompassing rule prevents diverse defendants like Hain from being able to obtain finality. And this strategic detriment is a one-way ratchet. Under the Fifth Circuit's rule, a plaintiff who obtains a favorable judgment after full adjudication on

the merits in federal court will enjoy the finality of that judgment. But a plaintiff who loses can seek a second bite at the apple by appealing the denial of its motion to remand, irrespective of whether there were any procedural or substantive defects in the district court's resolution of the claims against the diverse defendant.

In contrast, a diverse defendant in a removed case must always win (at least) *twice* to ultimately prevail. The defendant must either win in federal court on both the merits and with respect to the remand decision. Or, if the federal appellate court disagrees with the district court's remand decision, the diverse defendant must win again in state court to prevail. Although defendants who obtain final judgments can generally gain the benefits of finality (so long as the district court did not err in resolving the claims against them), diverse defendants in removed cases cannot rest on their hard-fought judgment. Instead, if the district court erred in dismissing the claims asserted against *non-diverse defendants*, the diverse defendants will lose their final judgment on the merits and be sent back to state court to restart proceedings. *See* Pet. App. 23a. And in redoing these proceedings in state court, the diverse defendants will apparently not be able to deploy their earlier federal judgment as part of a preclusion argument, given the federal appellate court's decision to erase that judgment in its entirety.

The asymmetrical detriment extends beyond the finality and preclusion contexts. As demonstrated by this case, plaintiffs can appeal the denial of their motion to remand and argue that the non-diverse defendant *was not* fraudulently joined. But a defendant has no such right. Under 28 U.S.C. § 1447(d), a diverse defendant whose case was remanded to state court due

to an erroneous fraudulent-joinder decision has no ability to appeal that remand order and obtain a federal-court audience if it ultimately loses on the merits in state court. *See* 28 U.S.C. § 1447(d) (barring appeals from orders remanding cases to state court unless case relates to prosecution of federal officers or agencies or equal civil rights); *Osborn v. Haley*, 549 U.S. 225, 240 (2007) ("[R]emand orders issued under § 1447(c) and invoking the [mandatory] grounds specified therein—that removal was improvident and without jurisdiction—are immune from review." (citation omitted; alteration in original)). Accordingly, diverse defendants cannot take plaintiffs' approach by losing a remand decision, losing on the merits in state court, and ultimately obtaining a federal-court redo after appeal. This extreme unfairness and asymmetry underscore why the Fifth Circuit's rule cannot be right.

B. Giving plaintiffs an undeserved do-over against diverse defendants in a different court is costly not just for defendants but also for the judiciary itself. There can be no doubt that litigation is "cumbersome, time-consuming, and expensive." *See Barrentine v. Ark.-Best Freight Sys., Inc.*, 450 U.S. 728, 748 (1981) (Burger, C.J., dissenting). Given this time and financial cost, this Court has permitted, for instance, recalling a jury because "[c]ompared to the alternative of conducting a new trial, recall can save the parties, the court, and society the costly time and litigation expense of conducting a new trial." *Dietz v. Bouldin*, 579 U.S. 40, 47 (2016). But rather than let stand judgments rendered between completely diverse parties, the Fifth Circuit's vacatur rule forces "the parties, the court, and society" to bear the burden of relitigating claims that the defendants have already prevailed on.

This burden is not academic. The cost of tort litigation in the United States has ballooned in recent years. Between 2016 and 2022, "tort costs [the 'costs of litigating and the compensation paid to claimants together'] at the national level rose an average of 7.1 percent per year—far faster than average annual inflation … and average annual GDP growth." U.S. Chamber of Com. Inst. for Legal Reform, *Tort Costs in America* 2, 6 (3d ed. Nov. 2024), https://instituteforlegalreform.com/wp-content/uploads/2024/11/2024_ILR_USTorts-CostStudy-FINAL.pdf. But for businesses, "tort costs have risen faster, at 8.7 percent a year." *Id.* at 26. And these costs are not just compensation paid to injured tort claimants—instead, "a large portion of the total tort-related expenditures go toward litigating and defending claims and lawsuits rather than compensating claimants." *Id.* at 11.

These litigation burdens fall especially heavily on manufacturers. State law typically limits or even forecloses tort claims against retailers who merely sell the products at issue in the lawsuit. *See, e.g.*, Ky. Rev. Stat. § 411.340 (retailers "shall not be liable to the plaintiff for damages arising solely from the distribution or sale of such product" as long as retailer did not breach express warranty or know or should have known of defect); Idaho Code § 6-1407 (similar). Given these limitations, plaintiffs generally target manufacturers for their product-liability claims. Ordinarily, these targeted lawsuits would require manufacturers to bear the burden of litigating product-liability claims in just one court. That round of litigation is already costly for manufacturers both in terms of financial resources and time. Indeed, given federal courts' "crushing" caseload, "the average time between filing a civil case and trial is a little over two

years." U.S. Courts, *The Need for Additional Judgeships: Litigants Suffer When Cases Linger* (Nov. 18, 2024), https://www.uscourts.gov/data-news/judiciary-news/2024/11/18/need-additional-judgeships-litigants-suffer-when-cases-linger. But in "many of these overworked courts, the average time between filing and trial is much longer, often three to four years." *Id.* The end result? Parties, particularly defendants, spend years litigating claims "often with no clear end in sight." *Id.*

This arduous journey ends for diverse manufacturers that obtain a favorable final judgment within the Fourth, Eighth, or Ninth Circuits, even if the district court's decision regarding the joinder of a non-diverse defendant was erroneous. But manufacturers emerging from costly years-long proceedings within the Fifth and Eleventh Circuits will be forced to undergo a second round of costly litigation in similarly overworked state courts for the exact same claims the manufacturers already prevailed on in federal court. Indeed, given that the vacatur rule does not consider the merits of the now-vacated final judgment, *see* Pet. App. 23a, a plaintiff who loses once again on remand in state court will still have the opportunity to appeal that adverse judgment based on substantive or procedural errors in the state-court adjudication, opening the door to a third round of litigation.

C. The judicial system was never meant to entertain such wasteful, duplicative proceedings. Under our adversarial system, each party is supposed to present their best arguments and evidence to a court and have that dispute resolved once by that court. *Cf. United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020)

(discussing party-presentation principle); *cf. Will v. Hallock*, 546 U.S. 345, 354 (2006) (noting that "concern" behind res judicata is "avoiding duplicative litigation, 'multiple suits on identical entitlements or obligations between the same parties'" (citation omitted)). To be sure, if a procedural or substantive error was made in the resolution of a plaintiff's claims against a particular defendant, vacatur and retrial is warranted. But where that is not the case—where the district court's error was in dismissing the claims against *a different defendant*—the judicial system was not built to entertain repeat bids on the exact same claims that another court has already resolved on the merits. *Cf. Arizona v. San Carlos Apache Tribe of Ariz.*, 463 U.S. 545, 565 n.16 (1983) (recognizing that "[a] comprehensive federal adjudication going on at the same time as a comprehensive state adjudication" is "duplicative" and "wasteful").

Indeed, this antipathy toward duplicative litigation is the bedrock of doctrines like collateral estoppel that serve "the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation." *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979). This Court has recognized as much in materially similar circumstances. More specifically, in declining to vacate the judgment at issue in *Caterpillar Inc. v. Lewis*, 519 U.S. 61 (1996), this Court emphasized that "[t]o wipe out the adjudication postjudgment, and return to state court a case now satisfying all federal jurisdictional requirements, would impose an exorbitant cost on our dual court system, a cost incompatible with the fair and unprotracted administration of justice." *Id.* at 77.

The Fifth and Eleventh Circuits' vacatur rule, however, imposes the very "exorbitant cost on our dual court system" that *Caterpillar* sought to avoid. Just as federal courts are "overworked" with "crushing" caseloads, *see* pp. 10-11, *supra*, so too are state courts. For instance, as of May 2023, almost two thirds of counties in Texas—the state from which this case emanated—reported having civil backlogs. *See, e.g.*, Texas Judicial Branch, *District Dashboard*, https://www.txcourts.gov/programs-services/statewide-caseload-trends/district-dashboard/. And Texas is not alone. Its neighbor and the home of the Fifth Circuit, Louisiana, grew so concerned about "the possibility of an unprecedented backlog of pending cases in all jurisdictions" that the Louisiana Supreme Court developed guidance for addressing case backlogs. Louisiana Supreme Court, *Handling Case Backlog & Post-Pandemic Docket Management* 1 (Mar. 2021) (hereinafter, *Handling Case Backlog*), available at https://www.caddoclerk.com/pdfs/Handling%20Case%20Backlog%20&%20Post-Pandemic%20Docket%20Management.pdf; *see also* Supreme Court of Louisiana, *2021 Annual Report* 1, https://www.lasc.org/press_room/annual_reports/reports/2021_Annual_Report.pdf.

Meanwhile, states within the Eleventh Circuit have likewise struggled with case backlogs. To help tackle that backlog, Alabama state lawmakers have considered increasing the number of judgeships. *See* Gabriel Tynes, *Bills aim to alleviate backlog in Alabama courts*, Courthouse News Serv. (Mar. 30, 2023), https://www.courthousenews.com/bills-aim-to-alleviate-backlog-in-alabama-courts/. At the same time, Florida too has been grappling with an "enormous backlog," particularly after the pandemic, with one Florida jurist remarking, "we can't judge our way out of

this backlog." Mark D. Killian, *Chief Justice Canady Says the Courts Are Making a Dent in Case Backlogs*, The Florida Bar (Apr. 11, 2022), https://www.floridabar.org/the-florida-bar-news/chief-justice-canady-says-the-courts-are-making-a-dent-in-case-backlogs/; *Handling Case Backlog*, *supra*, at 4 (citation omitted).

Moreover, the sheer volume of tort cases within states like Texas and Louisiana can only exacerbate these state-court backlogs. From 2020 to 2022, "the highest number of torts cases was filed in the Southern District of Texas." Press Release, LexisNexis, *Lex Machina Releases 2023 Torts Litigation Report* (Nov. 9, 2023), https://www.lexisnexis.com/community/pressroom/b/news/posts/lex-machina-releases-2023-torts-litigation-report. Meanwhile, "the most active judge for torts cases" was located in the Eastern District of Louisiana. *Id.* In other words, the Fifth Circuit's vacatur rule will have disproportionately large impacts on both tort litigants and state courts falling within the Fifth Circuit's geographic limits, given the Fifth Circuit's predominance in tort cases.

D. The impacts of the Fifth and Eleventh Circuits' vacatur rule will be felt far beyond the product-liability context. Take, for example, actions related to climate change. In a series of similar cases, plaintiffs in Colorado, Hawaii, Maryland, and Rhode Island, including localities within those states, filed suit in state court against energy companies alleging, *inter alia*, that these companies "knew about climate change, understood the harms energy exploration and extraction inflicted on the environment, and concealed those harms from the public." *See, e.g.*, *City of Honolulu v. Sunoco LP*, 39 F.4th 1101, 1106 (9th Cir. 2022); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor*

Energy (U.S.A.) Inc., 25 F.4th 1238, 1247 (10th Cir. 2022); *Mayor of Balt. v. BP P.L.C.*, 31 F.4th 178, 195 (4th Cir. 2022); *Rhode Island v. Shell Oil Prods. Co.*, 35 F.4th 44, 49-50 (1st Cir. 2022). The defendant energy companies removed to federal court on various jurisdictional grounds, and the district courts in each of these cases remanded to state court. However, had the district courts concluded that removal was proper, allowed the cases to proceed to final resolution in federal court, and ruled in favor of the defendants on the merits, the losing plaintiffs would be able to retry all of their cases again in state court under the Fifth Circuit's vacatur rule. That would be so even if the plaintiffs' federal-court loss was based entirely on the complete lack of evidence that the defendants knowingly harmed the public, and even if that merits conclusion was completely unassailable both legally and factually.

***

Ultimately, having spent years toiling through litigation to obtain a favorable final judgment in federal court, diverse defendants in the Fifth and Eleventh Circuits will have nothing to show for their efforts if the plaintiffs can convince an appellate court that their claims against *other, non-diverse defendants* were not fraudulently meritless. This is precisely the type of wasteful outcome that this Court has expressed concerns about. *Cf. Wilkins v. United States*, 598 U.S. 152, 157-158 (2023) ("When such eleventh-hour jurisdictional objections prevail post-trial or on appeal, 'many months of work on the part of the attorneys and the court may be wasted.'" (citation omitted)). Worse yet, these diverse defendants will have to relitigate the claims against them in state courts that are equally if

not more overworked than their federal counterparts. This duplicative litigation goes against our dual judicial system and forces defendants to spend significant financial resources and potentially years on additional litigation to achieve the same finality that they earned in federal court—finality that they would have remained entitled to had they been in the Fourth, Eighth, or Ninth Circuits. Without this Court's intervention, these perverse outcomes will persist in large swaths of the country.

II. The Fifth Circuit's decision encourages the addition of frivolous claims against retailers.

The Fifth Circuit's vacatur rule will not only inflict significant costs on defendants as a whole, but it will also expand the number of defendants being haled into court in the first place. Because the Fifth Circuit's decision entitles plaintiffs to a mulligan in state court many years after an erroneous fraudulent-joinder ruling, it will incentivize plaintiffs to bring weak claims against non-diverse defendants to increase the odds of a do-over in the event the plaintiffs lose on the merits.

These incentives are particularly acute in the product-liability context. Because consumers frequently purchase food products and household goods repeatedly and from multiple retailers, product-liability plaintiffs have an ample supply of retailers they could add as defendants and against whom they can assert weak claims. *See* Emily Rodgers, *Grocery Store Statistics: Where, When, & How Much People Grocery Shop*, Drive Research (Apr. 25, 2024), https://www.driveresearch.com/market-research-company-blog/grocery-store-statistics-where-when-how-much-people-grocery-shop/ ("[T]he average American shops at two grocery stores for their weekly grocery needs.").

Incentivizing plaintiffs to add weak claims against multiple retailers will only exacerbate the already pervasive issue of fraudulent joinder—indeed, as the much-lauded Wright & Miller treatise has noted, "there has been a virtual epidemic of the invocation of these procedures [removals and remand motions] in the federal courts in the recent past, *most notably in the courts of the Fifth and Eleventh Circuits*." *See* Wright & Miller, Fed. Prac. & Proc. § 3641.1 (3d ed. 2024) (emphasis added).

Moreover, the delay in proceedings as federal courts wade through remand issues operates against defendants (both manufacturers and retailers) while offering inverse potential benefits for plaintiffs. Defendants must spend their time and financial resources battling weak claims in federal court with the possibility that their efforts will come to nought and they will have to begin again in state court. *See* pp. 6-11, *supra*. In contrast, the passage of time may help product-liability plaintiffs, who may assert particularly weak claims under then-governing state tort law in the hopes that the law may develop in their favor before an appeal many years down the road. The Supreme Court of Ohio, for example, has noted a "gradual evolution in the products-liability law [that] was aimed at making manufacturers more accessible to consumer-product lawsuits." *DiCenzo v. A-Best Prods. Co.*, 897 N.E.2d 132, 141 (Ohio 2008) (citations and emphasis omitted). It correctly described these changes as "the 'slow, orderly and evolutionary development' of Ohio products-liability law against manufacturers." *See id.* at 142. And even state laws that "alter[] the landscape of [that state's] product liability law" may not be subject to "judicial statutory interpretation" for years, meaning that the legal sands may continue to unexpectedly shift

during the course of duplicative proceedings. *See Murphy v. Columbus McKinnon Corp.*, 982 N.W.2d 898, 908 (Wis. 2022) (noting that "[t]his case presents the first opportunity for judicial statutory interpretation" of landmark product-liability law "since its creation" in 2011).

Given the delays in federal court proceedings, if state law develops more favorably for plaintiffs in the interim, those developments can provide plaintiffs with a newly viable argument that joinder was not fraudulent. These developments likewise provide even more opportunities for success on a do-over in state court years later. Indeed, if a defendant prevails in federal court only to spend years relitigating (under changed state law) on remand, that defendant could ultimately receive two completely contradictory rulings on the exact same facts in the exact same case—based on caselaw that developed after the federal court issued its final judgment. This possibility not only makes a mockery of our system's reliance on finality but also means that there is no real downside to including weak claims against non-diverse defendants in a product-liability case. Those perverse incentives should have no place in our dual-judicial system, and they strongly caution against the erroneous approach taken by the court of appeals in this case.

CONCLUSION

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

Respectfully submitted.

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