

Nos. 26-328 & 26-350

In the
Supreme Court of the United States

CHARTER CONSOLIDATED LTD., et al.,
Petitioners,

v.

CAPE INTERMEDIATE HOLDINGS LIMITED, et al.,
Respondents.

ALTRAD INVESTMENT AUTHORITY S.A.S., et al.,
Petitioners,

v.

CAPE INTERMEDIATE HOLDINGS LIMITED, et al.,
Respondents.

**On Petitions for Writs of Certiorari to
the Supreme Court of South Carolina**

**BRIEF OF WASHINGTON LEGAL FOUNDATION AS
AMICUS CURIAE SUPPORTING PETITIONERS**

Cory L. Andrews
Jerome P. DeSanto, Jr.
Counsel of Record
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Ave., NW
Washington, DC 20036
(202) 588-0302
jdesanto@wlf.org

October 13, 2026

QUESTION PRESENTED

Whether the territorial limits on state courts' power embodied in the Due Process Clause, the Commerce Clause, and principles of federalism prohibit a state-court receiver from controlling the litigation decisions and other internal affairs of an out-of-state corporation when the receiver has not been recognized in the corporation's place of incorporation.

TABLE OF CONTENTS

QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
INTEREST OF AMICUS CURIAE	1
INTRODUCTION AND SUMMARY OF ARGUMENT	1
ARGUMENT	5
I. THE QUESTION PRESENTED IS ESPECIALLY CONSEQUENTIAL BECAUSE STATE-COURT RECEIVERSHIPS BURDEN FOREIGN COMMERCE AND IMPLICATE FOREIGN RELATIONS	5
A. South Carolina’s receiverships have produced sustained conflict with the courts of three allied nations	8
B. The decision below disregards international comity and invites retaliation	11
C. If replicated by other States, the burden on foreign commerce will spread	13
II. REVIEW IS NEEDED BECAUSE THE DECISION BELOW UNDERMINES FEDERAL FOREIGN POLICY AND THE HAGUE SERVICE CONVENTION	14

TABLE OF CONTENTS

(continued)

A. The receivership frustrates federal efforts to promote investment between the United States and the United Kingdom.....	15
B. Receiver-accepted service makes the Hague Convention's channels optional	17
CONCLUSION.....	18

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Altrad Inv. Auth. S.A.S. v. Protopapas</i> , [2025] EWHC 2470 (Ch.)	9
<i>Am. Ins. Ass'n v. Garamendi</i> , 539 U.S. 396 (2003)	7, 17
<i>Asahi Metal Indus. Co., Ltd. v. Superior Ct.</i> , 480 U.S. 102 (1987)	2
<i>Booth v. Clark</i> , 58 U.S. (17 How.) 322 (1854)	4
<i>Cape Intermediate Holdings Ltd. v. Protopapas</i> , [2024] EWHC 2999 (Ch).....	3, 9
<i>Cape Intermediate Holdings Ltd. v. Protopapas</i> , [2025] EWHC 2706 (Ch).....	9
<i>Cape plc v. Protopapas</i> , No. DBYB-W-B71 PM3N (Montpellier Ct. App. Apr. 8, 2025)	10
<i>Chy Lung v. Freeman</i> , 92 U.S. 275 (1875)	6, 7
<i>Edgar v. MITE Corp.</i> , 457 U.S. 624 (1982)	4, 8
<i>Empagran S.A. v. F. Hoffmann-LaRoche, Ltd.</i> , 417 F.3d 1267 (D.C. Cir. 2005)	11

TABLE OF AUTHORITIES

(continued)

	Page(s)
<i>Fuld v. Palestine Liberation Org.</i> , 606 U.S. 1 (2025)	4
<i>Healy v. Beer Inst., Inc.</i> , 491 U.S. 324 (1989)	13
<i>In re Plan Arrangement or Compromise of Asbestos Corp. Ltd.</i> , No. 235-11-000008-259 (Can. Super. Ct. July 30, 2025).....	10
<i>In re Whittaker Clark & Daniels Inc.</i> , 176 F.4th 241 (3d Cir. 2026)	2, 4
<i>Japan Line, Ltd. v. County of Los Angeles</i> , 441 U.S. 434 (1979)	6-8, 10-11, 13
<i>Nat’l Foreign Trade Council v. Natsios</i> , 181 F.3d 38 (1st Cir. 1999).....	12
<i>Nat’l Union Fire Ins. Co. v. Payne & Keller Co.</i> , 731 S.W.3d 58 (Tex. Ct. App. 2026)	14
<i>N.Y. Cent. R.R. Co. v. Chisholm</i> , 268 U.S. 29 (1925)	11
<i>Philip Morris USA v. Williams</i> , 549 U.S. 346 (2007)	1
<i>Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren</i> , 361 F.3d 11 (1st Cir. 2004).....	12

TABLE OF AUTHORITIES

(continued)

	Page(s)
<i>Rogers v. Guaranty Trust Co.</i> , 288 U.S. 123 (1933)	4
<i>Ross v. Ascend Performance Materials Operations LLC</i> , No. 2024-CP-40-03710 (S.C. Ct. Common Pleas, 5th Cir. Aug. 11, 2026)	13
<i>State Farm Mut. Auto. Ins. Co. v. Campbell</i> , 538 U.S. 408 (2003)	1
<i>Sterrett v. Second Nat'l Bank of Cincinnati</i> , 248 U.S. 73 (1918)	4
<i>United States v. Belmont</i> , 301 U.S. 324 (1937)	5
<i>Volkswagenwerk Aktiengesellschaft v. Schlunk</i> , 486 U.S. 694 (1988)	17, 18
<i>Water Splash, Inc. v. Menon</i> , 581 U.S. 271 (2017)	17
<i>Welch v. Advance Auto Parts, Inc.</i> , 916 S.E.2d 320 (S.C. 2025)	9, 10
<i>Zschernig v. Miller</i> , 389 U.S. 429 (1968)	5, 7, 12

TABLE OF AUTHORITIES
(continued)

	Page(s)
 Constitutional Provisions	
U.S. Const. art. I, § 8, cls. 3, 11	6
U.S. Const. art. I, § 10.....	6
U.S. Const. art. II, § 2, cl. 2	6
 Treaty	
Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638	17
 Statute	
S.C. Code Ann. § 15-65-10	2
 Other Authorities	
1 William Blackstone, <i>Commentaries on the Laws of England</i>	5
Alan Greenspan & Adrian Wooldridge, <i>Capitalism in America: A History</i> (2018) ...	16

TABLE OF AUTHORITIES

(continued)

	Page(s)
Brief for Amicus Curiae Washington Legal Foundation, <i>Suncor Energy v. Comm’rs of Boulder County</i> , No. 25-170 (filed May 21, 2026)	1
Charles J. Cooper & Howard C. Nielson, <i>Complete Diversity and the Closing of the Federal Courts</i> , 37 Harv. J.L. & Pub. Pol’y 295 (2014)	16
Daniel Fisher & John O’Brien, <i>Zombies are on the loose in a Carolina courtroom. Can anyone stop them?</i> , Legal Newslne (Sept. 23, 2024)	2-3, 16
Judicial Hellholes, <i>Cracks Showing in Judicial Hellhole Judge’s Asbestos Receivership Scheme</i> (Aug. 11, 2025)	3
Michael O. Eshleman, et al., <i>Using the Mail to Avoid the Hague Service Convention’s Central Authorities</i> , 12 Or. Rev. Int’l L. 283 (2010)	18
Michael Klarman, <i>The Framers’ Coup</i> (2016)	6

TABLE OF AUTHORITIES

(continued)

	Page(s)
Remarks of Ambassador Warren Stephens, <i>We Are Committed to This Partnership and We Are Here to Stay</i> (Feb. 12, 2026)	15
Stefano Della Vigna & Woojin Kim, <i>Policy Diffusion and Polarization across U.S. States</i> , UC Berkeley (Nov. 2024)	14
The American Presidency Project, <i>Joint Statement by President Biden and Prime Minister Boris Johnson of the United Kingdom</i> (June 10, 2021).....	15
The Federalist, No. 42 (James Madison) (Robert Scigliano ed., 2001)	6
The Federalist, No. 80 (Alexander Hamilton) (Robert Scigliano ed., 2001)	11, 12
The White House, <i>General Terms for the United States of America and the United Kingdom of Great Britain and Northern Ireland Economic Prosperity Deal</i> (May 8, 2025)....	16

INTEREST OF AMICUS CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, government accountability, and the rule of law. To that end, it often appears as amicus curiae to defend the Constitution's limits against state-court overreach affecting the business community. *See, e.g., Suncor Energy v. Comm'rs of Boulder County*, No. 25-170 (filed May 21, 2026); *Philip Morris USA v. Williams*, 549 U.S. 346 (2007); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

This case presents an extraordinary instance of that phenomenon. It asks whether a state court can displace the internal decision-making of an active corporation incorporated and headquartered in the United Kingdom even though English law reserves that authority exclusively to the company's board of directors. Because the Constitution doesn't permit such State interference with foreign commerce, the Court should grant review.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case asks whether a State may appoint a local lawyer to exercise powers that foreign law

* No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief's preparation or submission. Counsel for all parties were timely noticed of WLF's intent to file this brief.

reserves exclusively to the directors of an active foreign corporation. That question is immensely important because it bears on the Nation's foreign commerce, foreign relations, and ability to speak with one voice abroad.

The States must practice “[g]reat care” when exerting power over foreign corporations. *Asahi Metal Indus. Co. v. Superior Ct.*, 480 U.S. 102, 115 (1987) (internal citation and quotation marks omitted). But heedless of that mandated caution, South Carolina has displaced the board of directors of an active British corporation and substituted a local lawyer as the corporation's litigation decisionmaker. Its actions have prompted disapproval from the courts of the United Kingdom, France, and Canada. They've also obstructed U.S. foreign policy and undermined a treaty on international service of process. This Court should grant review before similar assertions of state power deepen this international imbroglio or yield new ones.

Over the past seven years, South Carolina's former Chief Justice has invoked the State's receivership law, S.C. Code Ann. § 15-65-10, to appoint Peter Protopapas as receiver 24 times for corporate defendants in asbestos cases. *See* 26-328 Pet. 5; Daniel Fisher & John O'Brien, *Zombies are on the loose in a Carolina courtroom. Can anyone stop them?*, LEGAL NEWSLINE (Sept. 23, 2024), <https://perma.cc/Q4P5-UG9Y>. Protopapas has used that authority to seize control of companies, many outside of South Carolina, suing in their name to recover assets for satisfying claimed asbestos liabilities. *Id.*; *see also In re Whittaker Clark & Daniels Inc.*, 176 F.4th 241, 250 (3d Cir. 2026). A sort-

of judicial privateer, he is paid on contingency tied to the amounts that he recovers. *See* Fisher, *Zombies are on the loose in a Carolina courtroom; see also* Judicial Hellholes, *Cracks Showing in Judicial Hellhole Judge’s Asbestos Receivership Scheme* (Aug. 11, 2025), <https://perma.cc/3VTR-4DPD>.

The decision below permits application of this unsettling practice to a company based overseas. In 2023, a South Carolina trial court appointed Protopapas as pre-judgment receiver over “Cape PLC” in a different asbestos case and authorized him to accept service on the company’s behalf. 26-328 Pet. App. 127a-128a. Acting under that order, he accepted service in *Tibbs v. 3M Co.*, a second asbestos suit. *Id.* at 68a-69a. The trial court later confirmed that the appointment extends to *Tibbs* and that the company in receivership is Cape Intermediate Holdings Limited—an active company, incorporated and headquartered in the U.K. *Id.* at 123a-125a. The decision below affirms that order with modification, leaving Protopapas free to pursue—in CIHL’s name—“legal and equitable claims” that may lead to assets for satisfying the *Tibbs* demands. *Id.* at 27a.

Protopapas has used this authority to accept service of the *Tibbs* complaint; to answer it on CIHL’s behalf (indeed, without preserving its affirmative defenses); and to initiate third-party claims against Charter Petitioners and Altrad Petitioners. *See* 26-328 Pet. App. 7a-8a. He’s done all this without obtaining any consent from CIHL’s board, which under English law has sole discretion to make such litigation decisions. *See Cape Intermediate Holdings Ltd. v. Protopapas*, [2024] EWHC 2999 (Ch) at ¶¶ 112, 115, 135 (explaining the same).

As CIHL is an English company, South Carolina’s actions disregard the “territorial limitations on the power of the respective States”—not just domestically, but abroad. *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 14 (2025) (internal citation and quotation marks omitted). Matters of corporate governance belong to the sovereign that created the corporation. *See Rogers v. Guar. Tr. Co.*, 288 U.S. 123, 130 (1933). And American States have no legitimate “interest in regulating the internal affairs of foreign corporations.” *Edgar v. MITE Corp.*, 457 U.S. 624, 645–46 (1982). These principles don’t change just because a receiver is appointed. A receiver is merely “an officer of the [appointing] court” and so possesses “no extra territorial power of official action.” *Booth v. Clark*, 58 U.S. (17 How.) 322, 327, 338 (1854). His “functions and authority . . . are confined to the jurisdiction in which he was appointed.” *Sterrett v. Second Nat’l Bank of Cincinnati*, 248 U.S. 73, 76–77 (1918).

The Third Circuit has already refused to give effect to a materially identical South Carolina receivership order, explaining that divesting an out-of-state corporation’s board of control over its internal affairs “would be an unprecedented exertion of power over a foreign corporation” and “a radical intrusion into the province of a co-equal sovereign.” *Whittaker*, 176 F.4th at 259. But South Carolina, here, takes its peculiar practice a step further by extending it to the international arena—a realm committed to the federal government’s “exclusive authority.” *Fuld*, 606 U.S. at 15. As the petitions ably recount, this case throws up a wild thicket of constitutional issues. WLF writes separately to press why the one on “foreign

commerce and foreign affairs” (*see, e.g.*, 26-328 Pet. 16) warrants the Court’s review.

South Carolina’s claim to override the litigation decisions of an active English corporation is an unusual exercise of state power that violates the Foreign Commerce Clause. The action has caused sustained conflict with the courts of three allied nations, disregards international comity, and invites retaliation against American companies. *And its expansion and spread are ongoing.* The receiverships also frustrate ongoing efforts to promote investment between the U.S. and the U.K. and severely undermine the Hague Service Convention. The threat of diplomatic “embarrassment” to the Nation—especially if the practice is replicated by other States—is significant. *Zschernig v. Miller*, 389 U.S. 429, 435 (1968). The Court should grant review.

ARGUMENT

I. THE QUESTION PRESENTED IS ESPECIALLY CONSEQUENTIAL BECAUSE STATE-COURT RECEIVERSHIPS BURDEN FOREIGN COMMERCE AND IMPLICATE FOREIGN RELATIONS.

The Constitution assigns authority over foreign affairs to the federal government alone. *United States v. Belmont*, 301 U.S. 324, 331 (1937) (“[C]omplete power over international affairs is in the national government . . . and cannot be subject to . . . interference on the part of the several states.”).

That local governments have no writ to steer the ship of state is an ancient principle of law. *See* 1 William Blackstone, *Commentaries* *249. The

Framers brought it to Philadelphia, where they voiced concern about States provoking tensions with foreign nations. See Michael Klarman, *The Framers' Coup* 129 (Oxford Univ. Press 2016). If the United States was to be “one nation in any respect,” Madison wrote, it needed to be one “in respect to other nations.” The Federalist No. 42 (Madison). The Constitution thus grants the federal government, not the States, the power to declare war, make treaties, appoint ambassadors, and regulate foreign commerce. U.S. Const. art. I, § 8, cls. 3, 11; art. II, § 2, cl. 2; art. I, § 10. The last of those is of central importance here.

The Commerce Clause expressly assigns to Congress the power to “regulate Commerce with foreign nations.” U.S. Const. art. I, § 8, cl. 3. And just as that assignment positively grants power to Congress, it also limits state authority. The “need for federal uniformity” in the Nation’s dealings abroad restricts the actions that States may take against foreign concerns. *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 449 (1979). Indeed, if it were otherwise, “a single State [could], at her pleasure, embroil us in disastrous quarrels with other nations.” *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1875).

But the court below brushed aside the Commerce Clause, stating that it did “not understand how [it] applies to a state court order regarding a company incorporated and existing under the laws of another country.” 26-328 Pet. App. 48a-49a. With that, the court effectively placed South Carolina’s receivership over foreign corporations beyond Foreign Commerce Clause scrutiny. That was error under this Court’s longstanding precedents.

In *Japan Line, Ltd. v. County of Los Angeles*, this Court rejected the “premise” that “Commerce Clause analysis” is the same in both the foreign and domestic realms. *Japan Line*, 441 U.S. at 446. Instead, the Court explained that when a State burdens *foreign* commerce “a more extensive constitutional inquiry” is required. *Id.* at 446. The Court reasoned that “[f]oreign commerce is pre-eminently a matter of national concern,” *id.* at 448, and the Framers’ “overriding” conviction was that “the Federal Government must speak with one voice when regulating commercial relations with foreign governments,” *id.* at 449 (quotation omitted). A problem “that might be deemed *de minimis* in a domestic context . . . assumes importance when sensitive matters of foreign relations and national sovereignty are concerned.” *Id.* at 456.

This Court has long applied these principles to invalidate State actions likely to cause “persistent” friction with foreign nations. *Zschernig v. Miller*, 389 U.S. 429, 440 (1968); *see also Chy Lung v. Freeman*, 92 U.S. 275, 276 (1875) (invalidating State-imposed bond on arriving foreign nationals as “invad[ing] the right of Congress to regulate commerce with foreign nations”). This case presents exactly that problem.

“Sensitive matters of foreign relations and national sovereignty are concerned” here. *Japan Line*, 441 U.S. at 456. South Carolina is attempting to regulate foreign commerce in a way that is well beyond “traditional [state] competence.” *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 420 (2003) (internal citation and quotation marks omitted). Even as narrowed by the South Carolina Supreme Court, the receivership order authorizes a state-appointed

lawyer to accept service for an *English* company, admit or deny liability in its name, and sue others in its name—all this, despite the objection of the company’s board and faced with an English injunction. 26-328 Pet. App. 27a.

That assertion of State power is unprecedented and makes this case exceptionally important. This Court has already held that the Commerce Clause bars a State from regulating the internal affairs of corporations chartered in a Sister State because a State “has no interest in regulating the internal affairs of foreign corporations.” *Edgar*, 457 U.S. at 645-46. *Japan Line* instructs that this limit applies with more force—not less—when the corporation’s home is another country. *See Japan Line*, 441 U.S. at 446. Three reasons underpinning *Japan Line* warrant this Court’s review.

A. South Carolina’s receiverships have produced sustained conflict with the courts of three allied nations.

First, *Japan Line* emphasized that no “authoritative tribunal” exists that can reconcile a State’s power claim with that of a foreign sovereign. *Japan Line*, 441 U.S. at 447-48. And without a supranational authority to reconcile competing claims of power, state measures affecting foreign commerce pose a heightened risk of international conflict. *Id.* at 450. That risk is on full display here.

After learning of the receivership, CIHL sued Protopapas in the High Court of Justice, seeking to bar him from acting on CIHL’s behalf. The U.K. court agreed, explaining that the receivership rested on

jurisdictional premises that were inconsistent with English law. *See Cape Intermediate Holdings Ltd. v. Protopapas*, [2024] EWHC 2999 (Ch) at ¶¶ 136-37. It explained that, because CIHL is an English corporation, its governance must be dictated by English law. *Id.* at ¶ 115. The court found that the receivership could cause “unjustified disruption to the affairs of CIHL” and that Protopapas “damag[ed]” CIHL. *Id.* It issued a worldwide injunction to stop the “threats posed by the receiver.” *Id.* at ¶¶ 118-19, 135–36.

Rather than defuse the conflict, the South Carolina Supreme Court dismissed the U.K. injunction as “[s]hocking to American eyes” and “empty noise.” *Welch v. Advance Auto Parts, Inc.*, 916 S.E.2d 320, 334 (S.C. 2025). It then went on to reaffirm the receivership. 26-328 Pet. App. 27a.

This friction has mushroomed elsewhere. In 2025, Altrad Petitioners and CIHL executed a mutual release covering third-party claims asserted by Protopapas as receiver. When Protopapas disregarded that release and continued pressing the claims anyway, the U.K. court again intervened, holding that the release was valid and enforceable. *See Altrad Inv. Auth. S.A.S. v. Protopapas*, [2025] EWHC 2470 (Ch.) at 29-33. Later that same year, the U.K. court declined to enjoin a settlement agreement between the receiver and other third-party defendants, but in doing so it reinforced its determination that Protopapas has no authority to bind CIHL. “Mr. Protopapas’s claims ha[ve] no validity. That still stands.” *Cape Intermediate Holdings Ltd v. Protopapas* [2025] EWHC 2706 (Ch) at 17.

The French judiciary has also refused to accept South Carolina's assertion of authority. After the U.K. injunction issued, CIHL and Altrad Petitioners sought recognition of it in France. The French court agreed to enforce the U.K. injunction, stating that the order is "fully compliant with international public policy." *See Cape plc v. Protopapas*, No. DBYB-W-B71 PM3N (Montpellier Ct. App. Apr. 8, 2025), S.C. App. Vol. 10, at 2935. It made clear that it won't enforce South Carolina's receivership.

Canada, too, has expressed concerns. In *Welch v. Advance Auto Parts, Inc.*, South Carolina authorized a receiver to control insurance assets of a Canadian asbestos company. *Welch*, 916 S.E.2d at 335. And in *In re Plan Arrangement or Compromise of Asbestos Corp. Ltd.*, No. 235-11-000008-259 (Canada Super. Ct. July 30, 2025), a Canadian court confronted another South Carolina receivership order, calling it "astonishing in the eyes of a court rooted in Canadian (or British) judicial culture." *Id.* ¶ 23.

These international clashes are exactly what concerned the Court in *Japan Line*. Three allied nations have disapproved of South Carolina's asserted control over foreign corporations. The friction is neither theoretical nor speculative. It's ongoing.

B. The decision below disregards international comity and invites retaliation.

Japan Line identified a second concern: state interference with foreign commerce may provoke foreign retaliation directed at “American [interests] in general, not just [those] of the [offending] State.” *Japan Line*, 441 U.S. at 450. By interfering “with the authority of another sovereign,” a State risks fostering resentment toward American law and American companies. See *N.Y. Cent. R.R. Co. v. Chisholm*, 268 U.S. 29, 32 (1925). And the Nation as a whole will bear the consequences. As Hamilton put it, “[t]he union will undoubtedly be answerable to foreign powers for the conduct of its members.” The Federalist No. 80 (Alexander Hamilton).

That concern is especially acute here. South Carolina has empowered a state-appointed lawyer to make litigation decisions for an active English company even though English law vests that authority exclusively in CIHL’s board. In unparalleled fashion, South Carolina has displaced the judgment of the United Kingdom—the sovereign that chartered and continues to govern CIHL—with its own.

International comity exists to prevent this type of conduct. Sovereigns limit the reach of their laws because they expect others to do the same. See *Empagran S.A. v. F. Hoffmann-LaRoche, Ltd.*, 417 F.3d 1267, 1271 (D.C. Cir. 2005) (explaining that comity reflects “the respect sovereign nations afford each other by limiting the reach of their laws”) (internal citation and quotation marks omitted).

Respect for those reciprocal limits promotes stable commercial relations and minimizes conflict among nations. See *Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren*, 361 F.3d 11, 19 (1st Cir. 2004) (“[W]orld economic interdependence has highlighted the importance of comity.”).

But South Carolina courts have done the opposite. Faced with repeated objections from foreign courts, they have responded with more clash, not comity. They have critiqued the U.K. court’s contrary judgment, reaffirmed the receivership, and issued more just like it. That response is concerning and risks sparking the very diplomatic “embarrassment” and international friction that this Court and others have warned against. *Zschernig*, 389 U.S. at 435; see also *Nat’l Foreign Trade Council v. Natsios*, 181 F.3d 38, 54 (1st Cir. 1999) (“[T]he protests of America’s trading partners are evidence of the great potential for disruption or embarrassment caused by [State] law.”), *aff’d sub nom. Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363 (2000).

The issue, here, isn’t about holding a foreign company liable for conduct committed in a State. Nor is it a case in which the state action is tangential to the Nation’s overseas relations. Quite the opposite. South Carolina has seized the internal decision-making of a foreign corporation and has overridden its corporate authority, which is the product of another sovereign’s law. If South Carolina is allowed to do this, foreign countries may respond in kind against American companies. “[T]he peace of the [Nation] ought not be left at the disposal of a [State].” *The Federalist*, No. 80 (Alexander Hamilton).

C. If replicated by other States, the burden on foreign commerce will spread.

Japan Line identified a third concern: the consequences “[i]f other States followed” the challenged State’s approach. *Japan Line*, 441 U.S. at 450-51. Commerce Clause analysis considers not only the immediate burden imposed by one State, but also the cumulative burden if others follow suit. *See Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989) (explaining that courts should consider “what effect would arise if not one, but many or every, State adopted similar legislation”). The international discord would be substantial if other States emulated South Carolina.

And yet, that concern isn’t strictly hypothetical; the seeds are planted for it to materialize. South Carolina’s trial court has already imposed 24 receiverships, 16 involving out-of-state companies. Those receiverships have reached corporations in Florida, North Carolina, Texas, Canada, and England. *See* 26-328 Pet. 30. And the practice continues to expand.

After the decision below, the same South Carolina trial court appointed Protopapas as post-judgment receiver over CIHL in a second asbestos case, authorizing him to “wholly administrate all the insurance assets and beneficial legal claims” of CIHL. 26-328 Pet. 30 (citing Order at 3, *Ross v. Ascend Performance Materials Operations LLC*, No. 2024-CP-40-03710 (S.C. Ct. Common Pleas, 5th Cir. Aug. 11, 2026)). And in another case, the same court purported to revoke a Texas corporation’s dissolution that occurred decades earlier, after which the receiver

tried to convert the entity into a South Carolina corporation under his control. *See* 26-328 Pet. 31-32 (discussing *Nat’l Union Fire Ins. Co. v. Payne & Keller Co.*, 731 S.W.3d 58 (Tex. Ct. App. 2026)).

This is all to say that several States have already experienced South Carolina’s receivership practice, and “States are more likely to adopt a policy if nearby states have already done so.” Stefano Della Vigna & Woojin Kim, *Policy Diffusion and Polarization Across U.S. States* at 3, UC Berkeley (Nov. 2024), <https://perma.cc/Z4YD-KX7R>. If the decision below stands, nothing would prevent other States from trying similar receiverships themselves. Far from “one voice” in foreign commerce, permitting fifty State regimes to commandeer the internal litigation decisions of foreign corporations could spawn international chaos.

Whether the Foreign Commerce Clause permits a State to displace the litigation decision-making of an active foreign corporation is not only an important question, but a recurring one. It warrants the Court’s review.

II. REVIEW IS NEEDED BECAUSE THE DECISION BELOW UNDERMINES FEDERAL FOREIGN POLICY AND THE HAGUE SERVICE CONVENTION.

The question presented also has substantial importance because South Carolina’s receiverships impede an ongoing federal effort to promote cross-border investment between the United States and the United Kingdom. The receiverships also undermine the Hague Service Convention.

A. The receivership frustrates federal efforts to promote investment between the United States and the United Kingdom.

For years, the Executive Branch has pursued a policy of strengthening the Nation’s trading relationship with the United Kingdom. President Biden emphasized this commitment to “deepening and strengthening” the countries’ “vital economic and trading partnership.” See The American Presidency Project, *Joint Statement by President Biden and Prime Minister Boris Johnson of the United Kingdom* (June 10, 2021), <https://perma.cc/8W3Y-6D73>. And President Trump has followed suit, aiming to help the U.K. “grow and strengthen as our closest ally on the world stage.” See Remarks of Ambassador Warren Stephens, *We Are Committed to This Partnership and We Are Here to Stay* (Feb. 12, 2026), <https://perma.cc/YGN3-9XHX>.

Those efforts culminated in the 2025 Economic Prosperity Deal, which seeks:

- (1) to “grow” and enhance “mutually beneficial trade” between the two countries;
- (2) to “make it easier” for American and British companies “to operate, invest and trade in both countries;” and
- (3) to ensure “fair [and] reciprocal” economic relations.

See The White House, *General Terms for the United States of America and the United Kingdom of Great Britain and Northern Ireland Economic Prosperity Deal* (“EPD”) (May 8, 2025), <https://perma.cc/A8W9-QWLY>.

South Carolina’s attempt to control the internal decision-making of a U.K. corporation undercuts those objectives. The EPD’s success depends on predictability. British companies must be able to operate in the United States without fear that a state court will seize control of their litigation decisions through unprecedented local authority. Businesses “crave certainty as much as almost anything” because certainty enables “long-term plans and long-term investments.” Alan Greenspan & Adrian Wooldridge, *Capitalism in America: A History* 258 (2018). The Founders recognized the same truth: foreign investment dries up when companies must submit to “state court bias favoring local interests.” See Charles J. Cooper & Howard C. Nielson, *Complete Diversity and the Closing of the Federal Courts*, 37 Harv. J.L. & Pub. Pol’y 295, 308 (2014).

But South Carolina’s practice produces the opposite of certainty for foreign corporations. Described as unheard of “in the annals of judicial history,” it is unpredictable, unconventional, and unfair. See Fisher & O’Brien, *Zombies are on the loose in a Carolina courtroom*. And if allowed to stand—and especially if replicated elsewhere—British companies will have to treat investment in U.S. markets as risking the takeover of their internal litigation decisions. That presents a significant “obstacle” to the federal government’s policy of promoting cross-border investment and commercial integration with the U.K.

Garamendi, 539 U.S. at 425. The Court should grant review to prevent this obstacle from materializing further.

B. Receiver-accepted service makes the Hague Convention’s channels optional.

The decision below also has consequences for the Hague Service Convention.

The Hague Convention was adopted to “simplify, standardize, and generally improve the process of serving documents abroad.” *Water Splash, Inc. v. Menon*, 581 U.S. 271, 273 (2017) (citing 20 U.S.T. 361, T.I.A.S. No. 6638 (Nov. 15, 1965)). It establishes internationally approved service methods, including service through a designated central authority in the defendant’s home country. *Id.* at 284.

In *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694 (1988), the majority held that a forum’s law determines whether service must be made abroad and that the Convention doesn’t apply when service is completed on a valid domestic agent under state law. *Id.* at 700, 707-08. But that conclusion rested on two premises: first, that the service method satisfies due process by providing notice “reasonably calculated” to reach the defendant; and second, that states wouldn’t structure their laws “so as to circumvent the Convention.” *Id.* at 705 (internal citation and quotation marks omitted).

Schlunk also emphasized that the Hague Convention’s drafters wanted to “eliminate” the ill-reputed service practice known as “*notification au parquet*.” *Id.* at 703. That formerly widespread

practice allowed “service of process on a foreign defendant” by simply depositing “documents with a designated local official” in the forum nation, which would then deem service complete without ensuring that the documents ever reached the foreign party. *Id.* *Notification au parquet* is described as the “most notorious” of international service practices because it often failed to provide a defendant with reliable notice. Michael O. Eshleman et al., *Using the Mail to Avoid the Hague Service Convention’s Central Authorities*, 12 Or. Rev. Int’l L. 283, 293 (2010).

This case raises concerns similar to those that motivated the Convention. Unlike *Schlunk*, where the domestic agent was the defendant’s own subsidiary, the agent accepting service here is a court-appointed receiver who has no relation to the company. If States are permitted to create domestic service agents by receivership order, the Hague Convention’s internationally agreed service channels become optional whenever a state court appoints a receiver. That circumvention erodes the treaty’s aim to promote more predictable and cooperative international service.

CONCLUSION

The decision below is part of a broader receivership practice that has already been deployed against numerous domestic and foreign corporations and has generated friction with courts in multiple nations. The Court should grant both petitions before state-court receiverships become a recurring source of interference with the Nation’s foreign commerce and commitments.

Respectfully submitted,

Cory L. Andrews
Jerome P. DeSanto, Jr.
Counsel of Record
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Ave., NW
Washington, DC 20036
(202) 588-0302
jdesanto@wlf.org

October 13, 2026