

No. 26-339

In the
Supreme Court of the United States

FS MEDICAL SUPPLIES, LLC,
Petitioner,

v.

TANNER PHARMA UK LIMITED, et al.,
Respondent.

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

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

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QUESTION PRESENTED

Whether the U.S. citizenship of a foreign/domestic limited liability company can be set aside under a 28 U.S.C. § 1332(a)(3) diversity analysis.

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INTEREST OF AMICUS CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. It defends free enterprise, individual rights, limited government, and the rule of law. To those ends, WLF often appears as amicus curiae to defend the proper allocation of jurisdiction between the state and federal courts. *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 608 U.S. 174 (2026); *BP P.L.C. v. Mayor & City Council of Balt.*, 593 U.S. 230 (2021).

INTRODUCTION AND SUMMARY OF ARGUMENT

Federal courts “have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given,” *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821). Section 1332(a)(3) is a straightforward statutory command to the district courts. They have jurisdiction over properly sized claims “between . . . citizens of different States and in which citizens or subjects of a foreign state are additional parties.” 28 U.S.C. § 1332(a)(3).

And two centuries of this Court’s caselaw tells those courts how to evaluate multi-member, unincorporated businesses for diversity purposes.

* 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 received timely notice of WLF’s intent to file this brief.

Determine each member's citizenship and then consider the firm as having all the citizenships from each of its members. *E.g.*, *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195–96 (1990). Here, an LLC with Texan and Californian members lodged a claim against two individuals from North Carolina and a North Carolina corporation and, as an “additional party,” a British corporation. Yet the Fourth Circuit bounced FS Medical's claim from the federal docket. Since the company has a third member with Chinese citizenship, the court reasoned, the LLC forfeited its U.S. citizenships and became “a foreign citizen plaintiff.” Pet. App. 3a.

The lower court had no authority to transmogrify the petitioner from a dual-national into a foreign entity. The Fourth Circuit did so only because it deeply misunderstood this Court's decision in *Grupo Dataflux v. Atlas Global Grp., L.P.*, 541 U.S. 567 (2004). Far from forcing reviewing courts to delete the contents of an association's U.S. citizenship at the jurisdictional weigh-station, *Grupo Dataflux* simply insists that *every* citizenship counts—the usual rule dating all the way to this Court's decision in *Bank of the United States v. Deveaux*, 9 U.S. (5 Cranch) 61 (1809). With FS Medical's U.S. citizenships back on the case caption, it plainly has brought a dispute “between . . . citizens of different States.” 28 U.S.C. § 1332(a)(3).

This abuse of recent and ancient precedent was no casual error. The lower court's decision decisively splits with the Seventh Circuit's opinion in *Tango Music, LLC v. DeadQuick Music, Inc.*, 348 F.3d 244 (7th Cir. 2003), and conflicts with the reasoning of other sister circuits. Pet. 14–16 (collecting cases).

Worse yet, the decision below risks chilling foreign investment and the international flow of capital to and from the United States. LLCs and partnerships are a rapidly growing method by which Americans do business. And if that weren't enough of a problem, the Fourth Circuit's reasoning applies to any dual-citizen corporation.

International investors and firms vastly prefer to send capital, goods, or services to the United States under conditions where they can litigate in the Article III system. See *JPMorgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd.*, 536 U.S. 88, 94 (2002) (noting historical “penchant of the state courts to disrupt international relations and discourage foreign investment”). Those actors prefer the federal courts since they offer uniform rules of evidence and procedure, cabined by this Court's caselaw, insulated from the vicissitudes of state-court practice. *Hertz Corp. v. Friend*, 559 U.S. 77, 94–95 (2010) (predictability valuable to “corporations making business and investment decisions”); see Kevin M. Clermont & Theodore Eisenberg, *Xenophilia or Xenophobia in American Courts? Before and After 9/11*, 4(2) J. of Empirical L. Studies 441, 464 (2007) (“The available data . . . indicate that foreigners do not fare poorly in the federal courts—indeed, they have outperformed their domestic counterparts.”). If Article III review is off the table, foreign capital will balk at flowing through dual-citizen entities.

The Founders wouldn't be surprised. The drafters and defenders of Article III knew that the perception or reality of state-court bias would chill desperately needed foreign investment into the United States. Kevin R. Johnson, *Why Alienage*

Jurisdiction? Historical Foundations and Modern Justifications for Federal Jurisdiction over Disputes Involving Noncitizens, 21 Yale J. Int'l L. 1, 6–9 (1996). As Madison aptly put it at the Virginia ratifying convention, “foreigners cannot get justice done them in [state] courts, and this has prevented many wealthy gentlemen from trading or residing among us.” 3 Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 583 (1836).

In short, the Fourth Circuit’s decision has mangled longstanding precedent, divided from its sisters, risks outsized consequences for foreign capital investment, and upsets the Nation’s constitutional design. The Court should grant the writ.

ARGUMENT

I. REVIEW IS NEEDED BECAUSE THE FOURTH CIRCUIT’S RULE TREATS CITIZENS AS ALIENS.

Two centuries of caselaw tells the lower courts how to determine the citizenships of entities like FS Medical. Pierce the veil and look to “the character of the members.” *Deveaux*, 5 Cranch at 91. “While humans and corporations can assert their own citizenship, other entities take the citizenship of their members.” *Americold Realty Trust v. Conagra Foods, Inc.*, 577 U.S. 378, 379 (2016). All of them. *Carden*, 494 U.S. at 195–96.

That’s what FS Medical asked for below. Its citizenships are Californian, Texan, and Chinese. It wants to sue a collection of North Carolina citizens

and a British company. Petitioner supplied 28 U.S.C. § 1332(a)(3) as its pass through the federal courthouse door. That statute vests the district courts with “original jurisdiction of all civil actions” valued at more than \$75,000 “between . . . citizens of different States and in which citizens or subjects of a foreign state are additional parties.” 28 U.S.C. § 1332(a)(3). FS Medical pointed to its California and Texas citizenships, then the North Carolinian defendants, waved to the “additional part[y]” from the United Kingdom, and waited to be let in. *Id.*

The Fourth Circuit kept the door locked. FS Medical, that court determined, is no “citizen” of any “State.” By virtue of its sole foreign member, for diversity purposes, it’s a Chinese entity. Pet. App. 3a. Since the court of appeals deemed the controversy before it “a dispute between a foreign citizen plaintiff and a mix of domestic and foreign citizen defendants,” not “a suit between ‘citizens of different States,’” it found “no diversity jurisdiction under Section 1332(a)(3).” *Id.*

The lower court looked to *Grupo Dataflux v. Atlas Global Group* to justify this move. As the petition notes, for many reasons, *Grupo Dataflux* hardly controls. Pet. 25–26. That case was about whether a conceded lack of diversity at time-of-filing could be cured when discovered after trial. The Court held that the universally admitted citizenship defect was inexcusably fatal. *Grupo Dataflux*, 541 U.S. at 582.

Most importantly, *Grupo Dataflux* supplies no rule that a U.S. citizenship can be ignored, discounted, or deleted at the jurisdictional weigh-

station. The diversity problem there stemmed from Atlas, a limited partnership. LPs are a kind of cousin to LLCs, and the same citizenship-counting rules apply. At the time it filed, Atlas held Delaware, Texas, and Mexican citizenships. *Id.* at 569. Since Atlas was suing a Mexican corporation, Grupo Dataflux, all parties ultimately admitted this line-up failed to meet the § 1332 standard. *Id.*

Why? Because Atlas was seeking the federal docket under §1332(a)(2), not (a)(3). That provision vests district courts with the authority to hear cases “between . . . citizens of a State and citizens or subjects of a foreign state.” Only citizens versus only foreigners. So Atlas’s Mexican citizenship mattered because it placed Mexican nationals on both sides of the case caption—with no diverse U.S. citizen on Grupo Dataflux’s side to trigger (a)(3). Not because Atlas’s Mexican citizenship somehow took over or swallowed its American citizenships.

Consider: if there was a § 1332(a)(2½), a kind of halfway house between (a)(2) and (a)(3), which ensured jurisdiction over cases “between citizens of a State (as well as citizens or subjects of a foreign state) and citizens or subjects of a foreign state,” Atlas’s multi-national character wouldn’t have destroyed jurisdiction. *Grupo Dataflux* itself said “the partnership was a Mexican citizen. (It was *also* a citizen of Delaware and Texas based on the citizenship of its other partners.) And because the defendant . . . was a Mexican corporation, aliens were on both sides of the case.” 541 U.S. at 569 (emphasis added). The Court treated Atlas as Mexican *and* Delaware/Texas simultaneously — the opposite of the Fourth Circuit’s reading.

Nor does the text of the statute itself support the lower court's understanding. Go back to (a)(3). Two conditions must be met for the federal forum to open. The dispute must involve "citizens of different States" and "additional parties" must include "citizens or subjects of a foreign state." 28 U.S.C. § 1332(a)(3). Unlike (a)(2), there's no insistence that one side of the caption remain undividedly American. In fact, "[t]he statute makes no distinction based upon which side of the controversy—plaintiff, defendant, or both—the aliens appear." *Dresser Indus., Inc. v. Underwriters at Lloyd's of London*, 106 F.3d 494, 497 (3d Cir. 1997).

Yet the Fourth Circuit's jurisdictional balance gave conclusive weight to petitioner's Chinese citizenship. This procedural deletion of two of FS Medical's U.S. members has no basis in the statute and can't be squared with two centuries of this Court's caselaw. The Court should grant the writ to undo it.

II. LEFT IN PLACE, THE DECISION BELOW WILL FRUSTRATE INTERNATIONAL CAPITAL INVESTMENT.

The Fourth Circuit's decision to delete FS's American citizenships did no favors for its alien member. As the Court well knows, international firms favor the federal courts and desperately try to structure their business activities to keep them in the Article III system. Indeed, this Court has gone so far as to hold that the Fourteenth Amendment's Due Process Clause ensures that a foreign national may "structure its primary contact' to lessen or avoid exposure to a given State's courts." *Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.*, 592 U.S. 351, 360

(2021) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)) (brackets deleted).

Those actors prefer the simplicity of our single federal court system, governed as it is by uniform rules of procedure and evidence, cabined by this Court’s precedents, and insulated from electioneering. By contrast, the fifty state court systems have widely varying rules and are often directly democratically accountable. Nino C. Monea, *The Political Roots of Judicial Elections*, 55 Creighton L. Rev. 427, 432 (2022) (“Today, ninety percent of state judges face some kind of popular election.”). That certainly won’t appeal to any foreign investor uncertain whether her nationality might suddenly become a source of political controversy. *Republican Party of Minn. v. White*, 536 U.S. 765, 782 (2002) (“[E]lected judges . . . *always* face the pressure of an electorate who might disagree with their rulings and therefore vote them off the bench.”) (emphasis in original).

Yet under the court of appeals’ rule, any effort to strike up a partnership with an American risks a no-questions-asked ticket to a state tribunal. “That is a matter of some concern in a world where foreign investment . . . increasingly matters.” *BG Grp., PLC v. Republic of Argentina*, 572 U.S. 25, 42 (2014). Nor is the Fourth Circuit’s misinterpretation solely cabined to (a)(3) jurisdictional disputes. By ensuring that an American/foreign LLC can never be treated as a citizen of a State, the lower court’s rule necessarily ensures that such entities can never obtain jurisdiction under § 1332(a)(1), which controls disputes between “citizens of different States.”

This would be bad enough (and still commend certiorari) if the Fourth Circuit's reasoning was limited only to LLCs and their partnership kin. That form of business organization has rapidly taken off in the twenty-first century, with "more than 4.5 million LLCs and other unincorporated businesses entities" on the books. Pet. 18. "Partnerships represented 37 percent of all business net income reported on U.S. tax returns in 2017, more than doubling their share from 1996." Michael Love, *Where in the World Does Partnership Income Go?, Evidence of a Growing Use of Tax Havens*, 79 Nat'l Tax J. 7, 12 (2026) (punctuation altered). This growing slice of American wealth shouldn't be barred from a preferred forum Congress entitled it to. *See Cohens*, 6 Wheat. at 404.

But the decision below doesn't stop at LLCs, LPs, or other associations. Standard corporations with dual nationality will find themselves in the same trap. And because the Fourth Circuit's logic extends to (a)(1) scenarios, it will seriously ensnare multinational firms incorporated abroad with a principal place of business here. The Fourth Circuit's rule precludes those firms from removing to federal court on § 1332 grounds whenever a, say, Californian plaintiff tries to hale them into a state forum.

Until the Fourth Circuit issued its decision, dual-national corporations and foreign partners or members could take solace in the fact that no appellate court had yet disagreed with the Seventh Circuit's 2003 ruling in a case precisely like this one. *Tango Music*, 348 F.3d at 245–46 (finding (a)(3) jurisdiction in case between a British-New Jersey LLC and a collection of defendants from Delaware, New York, Virginia, and the United Kingdom); Pet.

14–16 (also discussing *Windward Bora LLC v. Browne*, 110 F.4th 120 (2d Cir. 2024) and *Leland v. De Havilland Aircraft Co. of Canada*, 987 F.2d 771, 1993 WL 67203 (5th Cir. 1993)). Now, at best, those actors will have to decide whether it’s possible to trade the Fourth Circuit for the Seventh. Maybe swap a South Carolina partner for one from Wisconsin. Or assert a principal place of business in Indiana rather than Maryland. More likely, the rational play for many enterprises will be to forgo this risk altogether, structuring their sales or incorporation elsewhere. After all, capital flows where there’s the least resistance to its effective use.

This isn’t a one-way street either. As a rule, the United States wants its investors and firms to enter and open foreign markets as well. “To the extent that the United States takes steps to promote the perception that foreign businesses are entitled to procedural fairness in its court systems, other nations might be expected to reciprocate.” Johnson, *Why Alienage Jurisdiction*, 21 Yale J. Int’l L. at 49. The Fourth Circuit’s straight ticket to state court offers no incentive to other nations to streamline their own systems for American capital—and perhaps offers reason to retaliate.

That argument isn’t just normative, it’s of constitutional moment. It’s why we have Article III. As Chief Justice Marshall put it, our constitutional order was designed to shield the “fortunes of individuals” from undue mischief by State governments. *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 138 (1810). State courts, as arms of those governments, are no exception. Diversity (and alienage) jurisdiction exists because the Founders

knew “the prevalency of a local spirit,” The Federalist No. 81 (Hamilton), “whether real or perceived” would have a “crippling effect . . . on interstate [and international] commerce.” Charles J. Cooper & Howard C. Neilson, Jr., *Complete Diversity and the Closing of the Federal Courts*, 37 Harv. J.L. & Pub. Pol’y 295, 296 (2014). By contrast, federal courts “owing [their] official existence to the Union,” The Federalist No. 80 (Hamilton), could “enabl[e] investors and commercial enterprises to cross state [and national] lines with confidence that their legal disputes would be fairly adjudicated in new markets.” Cooper & Neilson, *supra*, at 304. And so “[m]any [Founders], particularly the Federalists, hoped that [federal court] jurisdiction would attract much needed foreign capital to the fledgling nation.” Johnson, *Why Alienage Jurisdiction*, 21 Yale J. Int’l L. at 6.

Defending Article III jurisdiction from George Mason’s sally at the Virginia ratifying convention, James Madison reached precisely for those themes. “Industry and economy are the only resources . . . The circulation of confidence is better than the circulation of money.” 3 Elliot, *Debates on the Federal Constitution* 538. And later in the day, Madison minced no words—“foreigners cannot get justice done them in these [state] courts, and this has prevented many wealthy gentlemen from trading or residing among us.” *Id.* at 583.

So proper “exercise of jurisdiction which is given” isn’t merely lawful, it fulfills an inherent promise of our constitutional design. *Cohens*, 6 Wheat. at 404. Chief Justice Marshall well understood that the Constitution was designed to impose a federal check on state-based friction on

wealth generation and investment. Paul Johnson, *A History of the American People* 238–39 (HarperCollins 1998). Perhaps it’s no coincidence, then, that in foreign/domestic partnership cases that trickled up to that era’s Court, challenges to diversity jurisdiction were swiftly turned aside. *E.g.*, *Breedlove v. Nicolet*, 32 U.S. (7 Pet.) 413, 432–33 (1833) (finding challenge untimely); *D’Wolf v. Raubaud*, 26 U.S. (1 Pet.) 476, 498 (1828) (same). This Court should live up to its predecessor, keep safe the Constitution’s charge, and grant review.

CONCLUSION

There’s now a circuit split on whether a dual-national firm’s foreign citizenship swallows its U.S. ones. The decision below is unmoored from both the text of 28 U.S.C. § 1332(a)(3) and the underlying rationale of our constitutional design. The Court should grant the writ.

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