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S.C. SUPREME COURT

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 NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA, AS *AMICUS*
CURIAE IN SUPPORT OF PETITIONERS**

JASON M. KNOTT
ZUCKERMAN SPAEDER LLP
2100 L Street, N.W.
Washington, D.C. 20037
(202) 778-1813
jknott@zuckerman.com

PATRICK HOFER
Counsel of Record
CLYDE & Co US LLP
1775 Pennsylvania Avenue,
N.W.
Washington, D.C. 20006
(202) 747-5100
patrick.hofer@clydeco.us

Counsel for Amicus Curiae

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**BRIEF OF NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA,
AS *AMICUS CURIAE* IN SUPPORT OF
PETITIONERS**

INTEREST OF *AMICUS CURIAE*¹

National Union Fire Insurance Company of Pittsburgh, PA (“National Union”) is an insurance underwriter. For the last half century, National Union has sought to resolve insurance coverage matters arising from asbestos-exposure bodily injury claims. Because to this day the number of asbestos claims remains so large, and the damages at issue remain so enormous, asbestos claims continue to test the bounds of the tort system. When plaintiffs’ lawyers have previously pushed the limits of statute, jurisdiction, and due process beyond the breaking point, this Court has appropriately granted certiorari to put an end to the abuse. National Union has a strong interest in ending the latest improper stratagem promoted by the plaintiffs’ bar, at issue here: state court receiverships that abuse jurisdictional boundaries.

National Union is a defendant in one such receivership in the South Carolina asbestos docket, involving Payne & Keller Company n/k/a Frentex

¹ Pursuant to this Court’s Rule 37.2, *amicus* gave at least 10 days’ notice to counsel for petitioners and respondents of its intent to file this brief. Pursuant to this Court’s Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the brief’s preparation or submission. No person other than *amicus* or its counsel made a monetary contribution to the brief’s preparation or submission.

Enterprises Company of Texas (“Payne & Keller”). Payne & Keller was a Texas corporation from 1961 until late 1986, when it sold its operating assets and dissolved. Payne & Keller purchased insurance from National Union and other insurers to cover its liabilities.

Under the Texas statute in effect at the time of its dissolution, once three years had passed, a dissolved company could not sue or be sued. Tex. Bus. Corp. Act art. 7.12 (1984). On December 3, 1989, Texas’s three-year survival period expired, and all claims against Payne & Keller were forever barred.

Nevertheless, almost 32 years later, in July 2021, Lenora Childers filed an asbestos personal-injury action in Richland County, South Carolina, naming Payne & Keller and nine other dissolved companies as defendants.² Childers voluntarily dismissed one defendant, but for the other nine, including Payne & Keller, she moved to appoint the same receiver, Peter D. Protopapas, to marshal their alleged remaining assets—*i.e.*, their alleged insurance policies.

Four days after Childers filed her appointment motion as to Payne & Keller, the Circuit Court of Richland County, which presides over the *Childers* case and all other asbestos litigation in South Carolina, appointed Mr. Protopapas as receiver.³

² Complaint, *Childers v. Davis Mech. Contractors, Inc.*, No. 2021-CP-40-03484 (S.C. Ct. C.P., filed July 14, 2021).

³ Order, *Childers*, No. 2021-CP-40-03484 (S.C. Ct. C.P. Aug. 27, 2021) (order appointing Receiver over Payne & Keller). The South Carolina trial court has appointed a receiver over the following non-South Carolina corporations: Asbestos Corporation Ltd. (Canada); Atlas Turner Inc. (Canada); Beaty Investments, Inc. (North Carolina); Cape Intermediate Holdings

The receiver then initiated lawsuits against National Union. Those suits were only the beginning of the receiver’s efforts to expand his authority over Payne & Keller at National Union’s expense. After National Union asserted that Payne & Keller could no longer sue or be sued under Texas law, Childers, with the receiver’s support, obtained an order from the *South Carolina* Circuit Court purporting to revoke Payne & Keller’s 1986 *Texas* dissolution as “fraudulent” under a *Texas* statute that did not exist when the company dissolved.⁴ The receiver directed Payne & Keller’s defense counsel not to oppose the motion to revoke.⁵

Next, the receiver filed the South Carolina order in a Texas state court, purporting to “domesticate” it, and he used that filing to obtain a Certificate of Revocation of Dissolution from the Texas Secretary of State, reviving Payne & Keller. All of this happened in one day.

Ltd. (England); Cape plc (Bailiwick of Jersey); Flame Refractories Inc. (Florida); General Boiler Casing Co., Inc. (North Carolina); Great Barrier Insulation Co. (Florida); Heat & Frost Insulation Co., Inc. (North Carolina); J&L Insulation, Inc. (North Carolina); Payne & Keller Co. (Texas); Piedmont Insulation, Inc. (North Carolina); Presnell Insulation Co., Inc. (North Carolina); Standard Insulation Co. of N.C., Inc. (North Carolina); Starr Davis Company, Inc. (North Carolina); United Construction Co. of Rome, Inc. (Florida); and Whittaker, Clark & Daniels, Inc. (New Jersey).

⁴ Findings of Fact and Conclusions of Law on Pls.’ Mot. to Revoke the Termination of Payne & Keller Co., *Childers*, No. 2021-CP-40-03484 (S.C. Ct. C.P. Oct. 5, 2023).

⁵ The receiver also sued Payne & Keller’s Texas defense counsel for asserting Payne & Keller’s dissolution as a defense in a Texas case. *Protopapas v. Baker*, No. 2023-CP-40-05203 (S.C. Ct. C.P.).

Within months, the receiver went further still: he purported to convert the reinstated *Texas* corporation into a *South Carolina* corporation—installing a South Carolina registered agent and authorizing 100,000 shares of stock in the reconstituted entity, all under his own exclusive control. He represented that the shareholders of Payne & Keller had authorized the conversion, even though there is no evidence that Payne & Keller’s sole shareholder at the time of its dissolution—now known as SKRLA, LLC—authorized the move. Based on this manufactured corporate history, Payne & Keller has since been named as a defendant in asbestos suits filed by at least 1,226 plaintiffs across the country, with National Union, as one of its insurers, having to fund much of its defense.

National Union contested these unprecedented maneuvers in the courts of Texas—the only sovereign with legitimate authority over Payne & Keller’s corporate existence. That effort has succeeded—up to a point. On February 3, 2026, the Fourteenth Court of Appeals held that the South Carolina order revoking Payne & Keller’s dissolution was not a final judgment and therefore was not entitled to full faith and credit in Texas. *National Union Fire Ins. Co. v. Payne & Keller Co.*, 731 S.W.3d 58, 65 n.3, 72 (Tex. App.—Houston [14th Dist.] 2026, no pet.). The court also held that the Texas statute that the South Carolina court used to revoke Payne & Keller’s dissolution could not be applied retroactively. The dissenting justice agreed with the majority on that latter point. On remand, the Harris County district court entered an agreed order vacating the receiver’s domestication filing, dismissing the proceeding and declaring that the underlying South Carolina order “is not subject to

enforcement in Texas because it is a facially non-final foreign order which the Receiver has not shown to be a final judgment.”⁶

Yet the receiver has refused to treat that Texas ruling as undoing the revocation of Payne & Keller’s dissolution or its purported redomestication to South Carolina. To the contrary, in a recent letter, he has told the Texas Secretary of State that Payne & Keller “has been a South Carolina corporation, now, for over two years,” and that only South Carolina—not Texas, and not any reviewing court—may say otherwise.

The Cape Intermediate Holdings Limited (“CIHL”) receivership and the Payne & Keller receivership are two examples of the same broader problem. Both involve the same South Carolina court purporting to exercise extraterritorial control over the assets, litigation decisions, and internal affairs of an entity organized under the law of a different sovereign. Neither sovereign—England or Texas—has ever recognized the receiver’s authority to do so. Rather, in both cases, courts in both jurisdictions have emphatically told the receiver he does not have that authority. Yet as to Payne & Keller, the receiver asserts that his unilateral action in purportedly reviving and relocating Payne & Keller to South Carolina has deprived Texas of authority to do anything about the problem.

The question presented in these petitions is whether the Due Process Clause, the Commerce Clause, and principles of federalism permit a state-court receiver to control the litigation decisions and

⁶ Agreed Order, *Childers v. Payne & Keller Co.*, No. 2023-70875 (Tex. Dist. Ct. Harris Cty. May 28, 2026).

other internal affairs of an out-of-state corporation. That question will directly bear on the lawfulness of the authority the receiver continues to assert over Payne & Keller notwithstanding the Texas Court of Appeals' decision. It will also bear on whether the attempts to manufacture newfound liability for a dissolved and nonexistent Texas corporation—and consequently, for its insurers—will be permitted to persist. National Union accordingly has a direct and continuing interest in this Court's resolution of that question.

SUMMARY OF ARGUMENT

Our federal form of government depends on state courts' respecting territorial limits on their own power. This constitutional mandate is enforced in part by limits on state court jurisdiction under the Due Process Clause of the Fourteenth Amendment and "limits imposed on [states] by their status as co-equal sovereigns in a federal system." *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 14 (2025).

On many occasions over the last 50-plus years, however, tort plaintiffs have sought to eviscerate these limits on court jurisdiction, as well as other legal limits, including repeatedly in the context of liability for asbestos bodily injury. Where appropriate, the Court has granted certiorari to call a halt when the litigation abuses violate the Constitution or federal law.

Although here the South Carolina Supreme Court has approved appointment of a receiver to make litigation decisions on behalf of an out-of-state (indeed, out-of-country) corporation, other states have rejected that gambit, acknowledging that constitutional restrictions on state court power bar such receiverships in closely analogous circumstances.

Yet some states are seeking to follow South Carolina's lead on abusive receiverships, claiming the power to appoint receivers for any corporation—no matter where it is incorporated—with exclusive power to control its property wherever located. The Court should grant certiorari to stop South Carolina and other states from exceeding constitutional limits on their own jurisdiction.

ARGUMENT

I. THE COURT HAS FREQUENTLY GRANTED CERTIORARI TO STOP TORT LITIGATION ABUSES THAT VIOLATE THE CONSTITUTION OR FEDERAL STATUTE, ESPECIALLY IN THE ASBESTOS CONTEXT

As made clear in the Petitions and as discussed above, South Carolina has adopted an unprecedented view on the territorial reach of its courts' jurisdiction, specifically, approving their jurisdiction to take control, through a receiver, of the corporate powers of foreign corporations. But this theory of unfettered jurisdiction should be seen for what it is: the latest effort by the tort plaintiffs' bar to disregard the bounds of jurisdiction, due process and statute to upend the tort system. As it has in the past, the Court should grant certiorari to stop this unconstitutional overreach.

A. *Rush v. Savchuk*: The Abuse of Quasi in Rem Jurisdiction

A prime example of the Court's willingness to step in to halt state court jurisdictional abuse is *Rush v. Savchuk*, 444 U.S. 320 (1980). Coming on the heels of the Court's decision in *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977), which made clear that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny," the Court rejected as unconstitutional an expansive theory of state-court jurisdiction over out-of-state tort defendants known as *quasi in rem* jurisdiction. That theory was first adopted in New York by *Seider v. Roth*, 17 N.Y.2d 111, 216 N.E.2d 312 (1966). Under that theory, a foreign tort defendant's insurance rights—the right to be

defended in suit, and the right to be indemnified for covered judgments—were treated as “assets” subject to attachment *in rem* in any state where the *insurer* (not the tort defendant) was subject to suit, allowing the court with *in rem* jurisdiction to hear the tort claim against the tort defendant *quasi in rem*, even though the defendant had no contacts with that state. *Rush*, 444 U.S. at 325-26.

In essence, *Seider*-type jurisdiction treated the inchoate contract obligation of the insurer as “property” located within the territory of the state and subject to its *in rem* jurisdiction in order to back into *in personam* jurisdiction of the actual defendant, wherever that defendant was located. This jurisdictional artifice was justified, courts adopting the theory said, because “[v]iewed realistically, the insurer in a case such as the present is in full control of the litigation” and “the real party in interest,” with the actual tort defendant “viewed simply as a conduit, who has to be named as a defendant in order to provide a conceptual basis for getting at the insurer.” *Id.* at 326 (citations omitted).

But the Court soundly rejected the *quasi in rem* theory’s short-circuiting of requirements of personal jurisdiction to allow plaintiffs to “get[] at the insurer.” *Id.* at 332. Plaintiffs argued that the tort defendant was a “nominal” party, with slight interest in the outcome, whereas *quasi in rem* jurisdiction allowed a “direct action” against the insurer. *Id.* at 330. The Court rebuffed this effort to evade territorial limits on state courts’ power:

Seider actions are not equivalent to direct actions, however. The State’s ability to exert its power over the

“nominal defendant” is ***analytically prerequisite*** to the insurer’s entry into the case as a garnishee. If the Constitution forbids the assertion of jurisdiction over the insured based on the policy, then there is no conceptual basis for bringing the “garnishee” [insurer] into the action. Because the party with forum contacts [the insurer] can only be reached through the out-of-state party, the question of jurisdiction over the nonresident cannot be ignored.

Id. at 330-31 (emphasis added). Creating personal jurisdiction over a foreign defendant because of the alleged contacts of its insurer, the Court said, “is forbidden by *International Shoe* and its progeny.” *Id.* at 332.

The parallels between *Rush* and this case are clear. Under *Seider* jurisdiction, courts treated a defendant’s potential insurance as an “asset” subject to *in rem* jurisdiction wherever the insurer was found, then used an *in rem* proceeding—attachment or garnishment—to assert the ancillary power to decide the associated tort claim *quasi in rem*. Here, South Carolina similarly treats foreign defendants’ potential insurance as an “asset” subject to its *in rem* power, but then uses the *in rem* remedy of receivership to go even further: to assert control over corporate powers of the insured—regardless of any *in personam* jurisdiction—for the avowed purpose of “getting at the insurer.”

South Carolina’s claim to receivership jurisdiction therefore goes far beyond the assertion of personal jurisdiction condemned in *Rush*. South Carolina’s

receivership rulings also defy its own precedent on whether liability insurance is an “asset”: South Carolina was among the first states to *reject Seider*-type jurisdiction on the ground that inchoate insurance rights of a foreign defendant were *not* assets or property subject to *in rem* attachment in South Carolina, because unless and until a covered tort judgment is entered against the insured, the insurance provides “nothing of economic value to which the insured may make claim, receive or assign.” *Howard v. Allen*, 254 S.C. 455, 461, 176 S.E.2d 127, 129 (1970). The California Supreme Court followed *Howard* on this point in rejecting *Seider*-type jurisdiction in *Javorek v. Superior Court*, 17 Cal. 3d 629, 637 n.7, 552 P.2d 728, 735 n.7 (1976). *Howard* completely rejects the premise of the asbestos defendant receiverships recently approved by the South Carolina Supreme Court—putatively to “marshal” insurance “assets”—because South Carolina recognizes it has no *in rem* jurisdiction over inchoate insurance rights. But its receivership rulings (such as the ruling challenged in this case) have not even addressed *Howard*.

**B. *Travelers Indemnity Co. v. Bailey*:
Affirming a Bankruptcy Bar on Direct
Actions Against an Asbestos Insurer**

Like the plaintiff in *Rush*, asbestos plaintiffs later sought to “get at the insurer” directly instead of proceeding against insureds in the tort system, asserting so-called “direct actions” against insurers on the claim that the insurers knew of the dangers of asbestos long ago and had a “duty to the world” to warn of them. Courts were skeptical of the theory—a duty to warn arises only as to third parties with whom one has a “special relationship,” not as to “the

world”—and the claims “met with almost universal failure in the state courts.” *In re Johns-Manville Corp.*, 517 F.3d 52, 68 (2d Cir. 2008).⁷ But in one case an insurer sought to enforce a bankruptcy injunction barring suits against it as insurer of Johns-Manville Corporation after it contributed millions of dollars to a trust for resolution of claims. *Travelers Indem. Co. v. Bailey*, 557 U.S. 137 (2009). The Court granted certiorari and reversed the Second Circuit’s ruling that the injunction went beyond the bankruptcy court’s jurisdiction, on the ground that the bankruptcy court’s jurisdiction could not be collaterally attacked. *Id.* at 152. The Court did not resolve whether a bankruptcy court could enjoin claims against nondebtor insurers that were “not derivative of the debtor’s wrongdoing.” *Id.* at 155. The Court later held, however, that, outside of the asbestos context, reorganization plans under Chapter 11 of the Bankruptcy Code may not release direct liabilities of nondebtor third parties to other nondebtors without the consent of the affected parties. *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024).

C. Truck Insurance Exch. v. Kaiser Gypsum Co.: Insurer Is a “Party in Interest” to Challenge Asbestos Reorganization Plan

Following the enactment of Section 524(g) of the Bankruptcy Code in 1994, asbestos defendants and plaintiffs’ attorneys often sought to enter into

⁷ See, e.g., *Bugg v. American Standard, Inc.*, 2005-Ohio-2613, 2005 WL 1245043, ¶ 10 (Ct. App.) (affirming trial court dismissal of direct actions against 47 insurers on ground of no “special relationship” with plaintiffs).

bankruptcy reorganization plans under which current and future asbestos claims were channeled to a “trust” for payment, under agreed “trust distribution plans,” and with the debtor’s insurance rights assigned to the trust—in many instances without any insurer involvement or agreement. Courts held that such reorganization plans could be sustained over insurer objection if they were “insurance neutral,” that is, if the plan purported not to affect the rights and defenses of insurers. *E.g.*, *In re Federal-Mogul Global Inc.*, 684 F.3d 355, 379 (3d Cir. 2012) (rejecting insurer challenge to asbestos reorganization plan that included “insurance neutrality language”). This led some courts, in turn, to hold that insurers were not even “parties in interest” to challenge an asbestos reorganization plan. *E.g.*, *In re Kaiser Gypsum Co., Inc.*, 60 F.4th 73, 87 (4th Cir. 2023) (“[T]he Plan is insurance neutral. Accordingly, we hold that Truck, in its capacity as an insurer, is not a party in interest.”).

The Court granted certiorari in *Kaiser Gypsum* and rejected the notion that insurers could not even be heard in a bankruptcy case to object to a plan that affected millions of dollars of their insurance, holding that alleged “insurance neutrality” could not be assumed *ex ante* to preclude insurers from having a say in the plan. *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268, 282 (2024) (“Where a proposed plan ‘allows a party to put its hands into other people’s pockets, the ones with the pockets are entitled to be fully heard and to have their legitimate objections addressed.’”) (citation omitted).

Thus, the Court has a history of appropriately granting certiorari to end abusive tort litigation tactics that violate the Constitution or federal statute,

particularly in the context of asbestos claims. *See also* Roger Parloff, *The Tort That Ate the Constitution*, *The American Lawyer*, July-Aug. 1994, at 74 (summarizing constitutional arguments raised by objectors to nationwide asbestos class action settlement based on lack of due process and Article III standing, a class action that was later rejected by this Court under Fed. R. Civ. P. 23 in *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 622-28 (1997)).

II. OTHER STATES HOLD THAT THE CONSTITUTION FORBIDS THEIR COURTS FROM APPOINTING A RECEIVER TO USURP THE CORPORATE POWERS OF CORPORATIONS FORMED IN OTHER STATES

South Carolina is not the first state where asbestos plaintiffs' lawyers have sought to have a state court appoint a receiver to litigate on behalf of a foreign corporation not subject to suit there. Asbestos plaintiffs attempted this maneuver in Ohio, obtaining an order appointing a receiver for a long-dissolved Illinois corporation that, under Illinois law, was no longer subject to suit. *In re All Cases Against Sager Corp.*, 132 Ohio St. 3d 5, 5, 967 N.E.2d 1203, 1204 (2012). The Ohio Supreme Court reversed, holding that such a receivership was unconstitutional, as it revived an Illinois corporation in violation of Illinois law, contrary to Ohio's obligation to give full faith and credit to Illinois law. *Id.* ("Fundamental to our analysis is the principle that we must afford full faith and credit to laws in our sister states and that a dissolved foreign corporation that is no longer amenable to suit in its state of incorporation is likewise not amenable to suit in Ohio."). The Ohio Supreme Court further ruled that Ohio could not end-run its obligation to give effect to Illinois law by

appointing an Ohio receiver to pursue “insurance assets” directly, because any unexhausted insurance of a dissolved corporation was not an “asset” at all, since the insurance applied to the insured’s liability and the insured itself no longer could be sued—the same “analytical prerequisite” recognized in *Rush. Id.* at 13-15, 967 N.E.2d at 1210-11.

The Mississippi Supreme Court followed *Sager* in rejecting appointment of a receiver for a dissolved Florida corporation, finding *Sager*’s analysis “persuasive” and comporting “with the requirements of the Full Faith and Credit Clause.” *Williams v. Clark Sand Co.*, 212 So. 3d 804, 811 (Miss. 2015). See also *Lilliquist v. Copes-Vulcan, Inc.*, 2011 PA Super 102, 21 A.3d 1233, 1237 (2011) (asbestos suit; “appointment of a receiver to manage SVI’s insurance funds for Lilliquist’s benefit would constitute a cause of action against SVI’s assets—which . . . is not permitted under Alabama law (as accorded full faith and credit by this Court)”).⁸

⁸ In a case involving yet another South Carolina asbestos receivership, the Third Circuit recently confirmed that if South Carolina’s appointment of a receiver for a New Jersey corporation purported to divest the foreign corporation of the power to declare bankruptcy—as the same receiver here contended—“it would be an unprecedented exertion of power over a foreign corporation whose internal affairs are governed by the laws of a sister state, as well as a radical intrusion into the province of a co-equal sovereign.” *In re Whittaker Clark & Daniels Inc.*, 176 F.4th 241, 258-59 (3d Cir. 2026) (citing “the very nature of the federal union of States” and due process, full faith and credit and dormant Commerce Clause principles). The receiver and claimants against the corporation have separately petitioned this Court for writs of certiorari. Nos. 26-159, 26-263.

III. SOME STATES SEEK TO FOLLOW SOUTH CAROLINA’S LEAD IN PERMITTING ABUSIVE RECEIVERSHIPS, AND SOUTH CAROLINA IS EXPANDING ITS RECEIVERSHIP PRACTICES BEYOND ASBESTOS SUITS

Although South Carolina’s unconstitutional receivership practices alone would warrant this Court’s review, the Court should be aware that some states are seeking to follow South Carolina’s lead, magnifying the problem.

Illinois’s new Receivership Act, effective January 1, 2026, grants Illinois courts power to appoint a receiver in an action against a corporation if the object of the suit is to dissolve the corporation, if the acts of the corporation “are illegal, oppressive, or fraudulent,” or if the corporation is “insolvent”—with no provision explicitly limiting that power to Illinois corporations. 765 Ill. Comp. Stat. Ann. 1090/6(a)(3); *id.* 1090/4(a) (in provision defining “Scope” of Act, stating that “the Act applies to a receivership for an interest in any . . . person that is not an individual [e.g., a corporation],” with no geographic limitation). The Act also purports to endow receivership courts with “exclusive jurisdiction and authority . . . over all receivership property wherever located.” *Id.* 1090/5(b). The scope of the Illinois Receivership Act is especially troublesome given Illinois has also recently passed a statute (805 Ill. Comp. Stat. Ann. 5/13.20(b)) and a court rule (735 Ill. Comp. Stat. Ann. 5/2-209(b)(5)) that together purport to grant Illinois courts “general personal jurisdiction” in toxic tort cases over all foreign corporations that register to do business in the state, on the theory of “consent” jurisdiction at issue in *Mallory v. Norfolk Southern Rwy. Co.*, 600 U.S. 122 (2023).

Some state courts have appointed receivers to preclude a corporation from declaring bankruptcy. *E.g.*, *In re Licores*, 2013 WL 6834609, at *7 (C.D. Cal. Dec. 20, 2013) (upholding state court receivership order as depriving corporation of “authority to file bankruptcy in view of the vesting in Receiver of the exclusive right to do so”). Other federal courts are at least skeptical of the power of state courts to do so, with some holding that state courts cannot pre-empt a federal right to declare bankruptcy by appointing a receiver. *E.g.*, *In re 530 Donelson, LLC*, 660 B.R. 887, 892 (Bankr. M.D. Tenn. 2024) (state court receivership order did not preclude bankruptcy filing explicitly, but even if it did, it likely would violate federal preemption); *In re Orchards Village Invs., LLC*, 405 B.R. 341, 349 (Bankr. D. Or. 2009) (“a state court receivership proceeding cannot be used to preclude a debtor from seeking federal bankruptcy protection”).

Finally, South Carolina’s receivership practices are not limited to the asbestos context and have been extended to reach other toxic tort contexts. *See* Order, *Mimms v. Burlington Indus.*, Case No. 2021-CP-4005873 (S.C. Ct. C.P. Richland Cty. May 13, 2022) (receiver appointed over Burlington Industries, Inc., an out-of-state defendant, in case alleging PCB contamination); *Burlington Indus., Inc. by and through its Receiver v. Continental Cas. Co.*, Case No. 2024-CP-42-04138 (S.C. Ct. C.P. Spartanburg Cty.) (action filed by Burlington Industries receiver seeking various declarations of coverage for lawsuits arising out of per- and polyfluoroalkyl substances (PFAS)).

IV. THE PAYNE & KELLER RECEIVERSHIP CONFIRMS THAT THE RECEIVER SEEKS TO WREST JURISDICTION FROM OTHER STATES

The Payne & Keller saga reveals that South Carolina's court-appointed receiver is exercising unbounded and unprecedented control over out-of-state defendants.

Start with timing. Texas law extinguished every claim against Payne & Keller—and, with it, the company's capacity to sue or be sued—on December 3, 1989. For more than three decades, no court, plaintiff, or creditor treated Payne & Keller as anything but extinct. Yet in 2023, the receiver and Childers persuaded a South Carolina court to retroactively erase that statutory extinguishment and revive the corporation, in plain violation of South Carolina's obligation to give Texas law full faith and credit. The receiver then filed the South Carolina order in Texas and obtained a Texas certificate of revocation all in a single day, before anyone could object (including on full faith and credit grounds). If a corporate dissolution that has been final for decades can be undone this easily by a foreign state and its court-appointed receiver, then no dissolution anywhere is secure from collateral attack whenever it becomes inconvenient to a plaintiff. The receiver's theory of his own power recognizes no temporal limit past which a corporation's legal dissolution is final.

The receiver did not stop at merely reviving Payne & Keller, later purporting to convert the company to a South Carolina corporation under his exclusive control. When a Texas appellate court later held that the underlying South Carolina order was not a final judgment entitled to enforcement in Texas,

the receiver's response was not to concede the point, but rather to tell the Texas Secretary of State his relocation of Payne & Keller could not be undone: that Payne & Keller "has been a South Carolina corporation, now, for over two years," and that only South Carolina may undo his acts. A receiver who revives and relocates a foreign corporation, and then disregards its home state court's rejection of the "domesticated" order that he used to initiate that process, transgresses critical boundaries on his power.

These wide-ranging abuses are not confined to Payne & Keller. The same receiver, invoking the same theory of unbounded receivership power, asserts absolute control over the litigation decisions and causes of action of CIHL—an active English company with no operations, assets, or presence in South Carolina. The story of Payne & Keller shows where that theory leads.

CONCLUSION

Charter's and Altrad's petitions for writs of certiorari should be granted.

Respectfully submitted.

JASON M. KNOTT
ZUCKERMAN SPAEDER LLP
2100 L Street, N.W.
Washington, D.C. 20037
(202) 778-1813
jknott@zuckerman.com

PATRICK HOFER
Counsel of Record
CLYDE & Co US LLP
1775 Pennsylvania Avenue,
N.W.
Washington, D.C. 20006
(202) 747-5100
patrick.hofer@clydeco.us

Counsel for Amicus Curiae

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S.C. SUPREME COURT

Nos. 26-328, 26-350

IN THE
Supreme Court of the United States

CHARTER CONSOLIDATED, LTD., *et al.*,
Petitioners,

v.

CAPE INTERMEDIATE HOLDINGS LIMITED, INDIVIDUALLY AND AS
SUCCESSOR IN INTEREST TO CAPE ASBESTOS COMPANY LIMITED,
BY AND THROUGH ITS RECEIVER PETER D. PROTOPAPAS, *et al.*,
Respondents.

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

v.

CAPE INTERMEDIATE HOLDINGS LIMITED, INDIVIDUALLY AND AS
SUCCESSOR IN INTEREST TO CAPE ASBESTOS COMPANY LIMITED,
BY AND THROUGH ITS RECEIVER PETER D. PROTOPAPAS, *et al.*,
Respondents.

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

**BRIEF OF ATLANTIC LEGAL FOUNDATION
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

LAWRENCE S. EBNER
Counsel of Record
ATLANTIC LEGAL FOUNDATION
1701 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 729-6337
lawrence.ebner@
atlanticlegal.org

SARAH ELIZABETH SPENCER
ATLANTIC LEGAL FOUNDATION
215 S. State Street,
Suite 700
Salt Lake City, UT 84111
(801) 346-8120
sarah.spencer@
atlanticlegal.org

Counsel for Amicus Curiae

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INTEREST OF THE *AMICUS CURIAE*¹

Established in 1977, the Atlantic Legal Foundation (ALF) is a national, nonprofit, nonpartisan, public interest law firm. ALF's mission for the past five decades has been to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and responsible government, sound science in judicial and regulatory proceedings, and effective education, including parental rights and school choice. With the benefit of guidance from the distinguished legal scholars, former government officials, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, ALF pursues its mission by participating as *amicus curiae* in carefully selected appeals before the Supreme Court, federal courts of appeals, and state supreme courts. See atlanticlegal.org.

* * *

ALF has a long-standing interest in the constitutional limits on state-court power over out-of-state corporate defendants. This is a civil-justice interest under the rule of law for injured claimants and out-of-state defendants alike. In petitions now

¹ Counsel of record for all parties were provided timely notice of this brief in accordance with Supreme Court Rule 37.2. No counsel for a party authored this brief in whole or in part, and no party, counsel for a party, or person other than the *amicus curiae* and its counsel made a monetary contribution intended to fund preparation or submission of this brief.

pending, ALF has urged the Court to enforce those limits against consent-by-registration jurisdiction, *Samsung Electronics America, Inc. v. Brewer*, No. 26-4, and against lax enforcement of this Court’s personal-jurisdiction precedents, *Mead Johnson & Co. v. Greear*, No. 26-29. The South Carolina Supreme Court decision below implicates the same fundamental concern in a different and troubling form: A state court that cannot reach a solvent, out-of-state corporation under this Court’s jurisdictional precedents installs its own pre-judgment appointee to do so by seizing control of the corporation’s internal affairs, including its litigation decision making.

ALF files this brief to explain why the South Carolina “asbestos court” model raises a question of interstate federalism that only this Court can resolve, and why the Court should resolve it now. This brief does not repeat the two captioned petitions, which challenge the same decision of the South Carolina Supreme Court.² Instead, it addresses four topics: (i) this Court’s corporate-governance decisions on who controls a corporation’s litigation; (ii) the “recognition doctrine” that has governed foreign receivers since 1854; (iii) the South Carolina Supreme Court’s own cited authorities, which acknowledge that the “internal-affairs doctrine” is derived from the Constitution; and (iv) *First National City Bank v. Banco Para el Comercio Exterior de Cuba*,

² ALF is filing this brief in both *Charter Consolidated, Ltd. v. Cape Intermediate Holdings Ltd.*, No. 26-328, and *Altrad Investment Authority S.A.S. v. Cape Intermediate Holdings Ltd.*, No. 26-350. “Charter Pet.” and “Pet. App.” refer to the petition and its appendix in No. 26-328.

462 U.S. 611 (1983) (*Bancec*), on which the lower court relied.

SUMMARY OF ARGUMENT

The South Carolina Supreme Court conceded that a receiver who has not been recognized in a corporation's place of incorporation cannot control the corporation's internal affairs. But it called that limit "a choice of law principle," defined internal affairs under its own precedent, and found that the receiver's control over the litigation decisions of Respondent Cape Intermediate Holdings Limited (Cape or CIHL) falls outside the definition. The Third Circuit, reviewing an order by the same trial court appointing the same receiver, held that he needed recognition in the chartering state to displace the company's board of directors, and doubted that the Constitution permits anything else. See *In re Whittaker Clark & Daniels Inc.*, 176 F.4th 241, 257–59 (3d Cir. 2026), *petitions for cert. filed*, No. 26-159 (U.S. July 24, 2026), and No. 26-263 (U.S. Aug. 25, 2026). This split of authority is not about the meaning of internal affairs; it is about what draws the boundaries of state-court jurisdiction.

The Constitution does. The states' co-equal sovereignty limits each state's power over its sisters, and no state may alter those limits on its own. South Carolina has done exactly that. Corporations are creatures of the sovereign that charters them. Who speaks for the corporation, including whether it will sue, defend, or submit to another sovereign's courts, is a matter for the chartering sovereign's law. The South Carolina Supreme Court's own cited authority treats that rule as constitutional. And *Bancec*, the case the court relied on, distinguishes third parties' rights

against a corporation from the corporation's own decisions. This case is about the latter.

Recognition by the chartering sovereign is the channel through which a foreign receiver's authority must pass. That is so whether the corporation was chartered by a sister state or, like Cape, by a foreign nation. For more than 170 years this Court has distinguished a receiver, whose power stops at the border of the appointing court, from a successor who takes under the law of incorporation and is recognized elsewhere. The South Carolina receivership order at issue is designed to skip that step. It bars suit against Cape in any other court, including the courts of England, where Cape is incorporated, unless the receiver or the South Carolina court consents. And for two and a half years it declared, wrongly, that Cape had dissolved and forfeited its charter.

The South Carolina receivership model is not confined to asbestos, South Carolina, or companies chartered abroad. It manufactures jurisdiction by having the forum's officer accept service and answer for an absent defendant. It has been applied 16 times to out-of-state corporations, including a Texas corporation whose 1986 dissolution a South Carolina court purported to revoke. It is part of a process that, in the trial court's own words, "exists to serve South Carolina claimants," and it has already been extended to a post-judgment receivership one week after rehearing was denied. And it collides with the federal bankruptcy power on a line the court below says each forum may define for itself.

The breadth of the receiver's claimed powers shows why only a bright-line rule works: The South Carolina

courts answered the board’s objection with a conflict-of-interest qualification and left in place a decision-maker whose mandate is adverse to Cape itself. Only this Court can say who draws the line.

REASONS FOR GRANTING THE PETITIONS

I. The Internal-Affairs Limit Is a Constitutional Allocation of Sovereign Authority, Not the Forum’s Choice-of-Law Preference

Describing the Third Circuit’s holding in *Whittaker* that a South Carolina receiver who had not been recognized in the corporation’s home state “could not control the internal affairs of a foreign corporation,” the South Carolina Supreme Court acknowledged that “[n]o one would quarrel with this general principle.” Pet. App. 46a. Two pages later, however, the court purported to explain why its decision did not conflict with that principle: “The ‘internal affairs’ doctrine is a choice of law principle.” Pet. App. 48a. That assertion is wrong, and it conflicts directly with *Whittaker*, where the Third Circuit described the limit as a feature of “[o]ur system of federalism” and a matter of “constitutional infirmities.” *Whittaker*, 176 F.4th at 258–59. South Carolina treats it as a rule of its own conflicts law, and therefore its own to narrow. Which court is right decides whether the limit exists at all.

A. The Constitution allocates authority among the states, and this Court enforces the allocation

Petitioners have set out the territorial-limits canon, and amicus will not repeat it. One feature of it decides this case. The limits the Constitution places on each state for the benefit of its sisters are federal

law, “implicit in its structure and supported by historical practice.” *Franchise Tax Bd. v. Hyatt*, 587 U.S. 230, 247 (2019). A state whose reach the Constitution limits does not define the limit for itself. *See id.* at 245–46. That is why “courts must sometimes referee disputes about where one State’s authority ends and another’s begins,” and why those disputes are resolved under “the Constitution’s horizontal separation of powers,” whatever clause the parties invoke. *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 375, 376–77 & n.1 (2023). The referee is this Court. It is not the state whose reach is in question.

B. Corporations are creatures of the sovereign that charters them

Start with who speaks for a corporation. That is a question of corporate governance, and this Court has said so. The rules governing when a shareholder must demand that the board act before suing on the corporation’s behalf “determine who has the power to control corporate litigation,” and for that reason “this aspect of state law relates to the allocation of governing powers within the corporation.” *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 101 (1991). They implement “the basic principle of corporate governance that the decisions of a corporation—including the decision to initiate litigation—should be made by the board of directors or the majority of shareholders.” *Daily Income Fund, Inc. v. Fox*, 464 U.S. 523, 530 (1984). And because “[c]orporations are creatures of state law,” it is state law “which is the font of corporate directors’ powers.” *Burks v. Lasker*, 441 U.S. 471, 478 (1979) (quoting *Cort v. Ash*,

422 U.S. 66, 84 (1975)). Whether a corporation will sue, defend, or submit is not a relation with third parties. It is the allocation of power inside the corporation, and the chartering sovereign's law governs it.

The Constitution treats that allocation as the chartering sovereign's. "No principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations." *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89 (1987). The system "depends at its core upon the fact that a corporation—except in the rarest situations—is organized under, and governed by, the law of a single jurisdiction, traditionally the corporate law of the State of its incorporation." *Id.* at 90. The corollary is that a sister state "has no interest in regulating the internal affairs of foreign corporations." *Edgar v. MITE Corp.*, 457 U.S. 624, 645–46 (1982). This sentence was the opinion of the Court. It rested on the reason the doctrine exists: "only one State should have the authority to regulate a corporation's internal affairs—matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders—because otherwise a corporation could be faced with conflicting demands." *Id.* at 645. The question is who speaks for the corporation, and outside "the rarest situations," *CTS*, 481 U.S. at 90, the answer comes from the sovereign that created it. And a corporation is "foreign" in this sense whether it was chartered by a sister state or, like Cape, by another nation. *See* Pet. App. 27a (describing Cape as "a foreign corporation").

C. The decision below allows the forum to define its own territorial limits

The court below denied none of this. It held that the receivership “does not impair Cape’s right as a foreign corporation to conduct its internal affairs free from interference by a foreign court,” because “[t]he internal affairs of Cape—its relations between its officers, directors, shareholders, and agents—are not affected.” Pet. App. 27a–28a (citing *Pertuis v. Front Roe Rests., Inc.*, 817 S.E.2d 273, 278 (S.C. 2018)). It then rejected petitioners’ argument that “litigation decisions, such as whether and how to sue, defend a lawsuit, or accept service are solely for Cape’s board of directors,” Pet. App. 28a, and left undisturbed, for this case, the trial court’s ruling that the receiver could accept service “through all the same mechanisms as service may be made on any corporation in South Carolina,” Pet. App. 124a. On this reasoning, whether a receiver has crossed into internal affairs depends on what South Carolina says those affairs are. The forum draws the line, and then finds that its own receiver has stayed on the permissible side.

A constitutional limit that the regulated sovereign defines for itself is not a limit. If “internal affairs” means whatever *Pertuis*, 817 S.E.2d at 278, says in South Carolina, it will mean something else in the next state, and a corporation will face exactly the “conflicting demands” the doctrine exists to prevent. *Edgar*, 457 U.S. at 645. The Third Circuit understood that. It said that a receivership order placing a foreign corporation’s corporate affairs in a sister-state receiver’s hands would be “an unprecedented exertion of power over a foreign corporation whose internal

affairs are governed by the laws of a sister state, as well as a radical intrusion into the province of a co-equal sovereign,” and it explained that “[t]he state of incorporation . . . enjoys exclusive authority to govern the internal affairs of its corporations.” *Whittaker*, 176 F.4th at 259. The court below called that dicta. Pet. App. 30a. Amicus will not overstate it: The Third Circuit reached the Constitution as an independent ground, and reached it with expressed doubt. *Whittaker*, 176 F.4th at 258–59. That is the point. The only federal court of appeals to face the question doubted South Carolina held the power it claimed, and the state court of last resort then answered it the other way. Neither can settle it. This Court can.

The lower court’s own authority says as much. It cited *VantagePoint Venture Partners 1996 v. Examen, Inc.*, 871 A.2d 1108, 1113 n.14 (Del. 2005), for the proposition that the internal-affairs doctrine does not govern third parties’ contract and tort claims. Pet. App. 50a. On that page of *VantagePoint*, the Delaware Supreme Court explained that “[t]he internal affairs doctrine is not, however, only a conflicts of law principle,” that under the Commerce Clause a state “has no interest in regulating the internal affairs of foreign corporations,” and that “application of the internal affairs doctrine is mandated by constitutional principles, except in the ‘rarest situations.’” 871 A.2d at 1113 (quoting *McDermott Inc. v. Lewis*, 531 A.2d 206, 216–17 (Del. 1987), in turn quoting *Edgar*, 457 U.S. at 645–46, and *CTS*, 481 U.S. at 90). *McDermott* was more direct still: The doctrine “is not merely a principle of conflicts law. It is also one of serious constitutional proportions” 531 A.2d at 216. Delaware decided *McDermott* on

that ground as well as on its own conflicts law: “due process and the commerce clause, in addition to principles of Delaware conflicts law, mandate reversal.” *Id.* at 218.

The court below says the same doctrine is “a choice of law principle.” Pet. App. 48a. Two state courts of last resort, South Carolina’s and Delaware’s, disagree on whether a federal limit exists. Each premise of the answer comes from this Court: litigation control is corporate governance, *Kamen*, 500 U.S. at 101; governance belongs to the chartering sovereign, *CTS*, 481 U.S. at 89–90; and a state does not define the limits on its own power, *see Hyatt*, 587 U.S. at 245–46. The court below refused to connect them.

D. *Bancec* does not move the line

The court below attempted to answer the constitutional argument with *Bancec*, 462 U.S. at 621–22. Pet. App. 49a–50a. *Bancec* reaffirms the rule. “As a general matter, the law of the state of incorporation normally determines issues relating to the internal affairs of a corporation.” 462 U.S. at 621.

“Different conflicts principles apply, however, where the rights of third parties external to the corporation are at issue.” *Id.* That distinction is the whole point. A tort plaintiff may sue the corporation, seek to pierce its veil, and ask the forum to apply forum law to her own claim. Amicus questions none of that. Nor does the settled constitutional principle that petitioners ask the Court to enforce touch the forum’s control of its own proceedings: default, sanctions, and discovery remain the forum’s. The question presented is different. It asks who decides, *in the corporation’s*

name, whether to accept service, Pet. App. 124a; whether to answer with a general denial, Pet. App. 68a–69a; and whether to initiate litigation in the corporation’s own name, Pet. App. 69a. Those are not third-party rights. They are the corporation’s decisions, and under *Bancec* the chartering sovereign’s law governs them. *Bancec* asked whether an instrumentality’s separate status shields it from liability for its sovereign’s acts. It never suggested that a court may seat its own appointee in the instrumentality’s chair.

The court below decided the federal question. It ruled that the receivership does not impair Cape’s right to conduct its internal affairs free of interference by a court outside its place of incorporation, Pet. App. 27a; called the Third Circuit’s constitutional reasoning dicta, Pet. App. 30a; and, on the stay motion, defined the doctrine as choice of law and distinguished *Whittaker* on that ground, Pet. App. 46a–48a. The court also questioned whether petitioners could raise due-process arguments at that stage and on Cape’s behalf, Pet. App. 49a. But it had already rejected the constitutional argument on the merits in its opinion, Pet. App. 27a–30a, and addressed it again, in the alternative, on the stay motion, Pet. App. 48a–50a. The state court of last resort therefore “actually considered and decided” the federal question. *Cohen v. Cowles Media Co.*, 501 U.S. 663, 667 (1991). And petitioners are not strangers to the limit. They are the defendants in the receiver’s third-party action, Pet. App. 69a, sued in the name of a corporation whose board opposes the suit. A structural limit on state power protects those

against whom the power is exercised. The question is squarely presented. Only this Court can answer it.

II. Recognition by the Chartering Sovereign Is the Constitutional Channel, and the South Carolina Model Is Built to Bypass It

The question presented incorporates a condition: the receiver “has not been recognized in the corporation’s place of incorporation.” That condition is not a technicality. It is where horizontal federalism lives. For more than 170 years this Court has distinguished between a receiver, whose authority stops at the geographical border of the court that appointed him, and a successor whose authority comes from the sovereign that created the corporation and travels with it. Recognition is how one becomes the other.

A. A receiver’s authority stops at the border

A receiver “*has no extra territorial power of official action; none which the court appointing him can confer*, with authority to enable him to go into a foreign jurisdiction to take possession of the debtor’s property; none which can give him, upon the principle of comity, a privilege to sue in a foreign court or another jurisdiction.” *Booth v. Clark*, 58 U.S. (17 How.) 322, 338 (1854) (emphasis added). This has been “the settled doctrine in federal jurisprudence” ever since: “The functions and authority of such receiver are confined to the jurisdiction in which he was appointed.” *Sterrett v. Second Nat’l Bank*, 248 U.S. 73, 76–77 (1918). The reason is structural. “[E]very jurisdiction, in which it is sought by means of a receiver to subject property to the control of the court,

has the right and power to determine for itself who the receiver shall be,” and to protect “the rights of local parties.” *Great W. Mining & Mfg. Co. v. Harris*, 198 U.S. 561, 576 (1905). If a receiver’s reach is to be enlarged, the enlargement “must come from legislation and not from judicial action.” *Sterrett*, 248 U.S. at 77.

The exception proves the rule. A liquidator who takes the corporation’s property under the law of the state that chartered it is different. He “is not an officer of the . . . State court, but the person designated by law,” and “[t]he law which clothed him with this trust was, in legal effect, part of the charter of the corporation.” *Relfe v. Rundle*, 103 U.S. 222, 225 (1881). “Every corporation necessarily carries its charter wherever it goes, for that is the law of its existence.” *Id.* at 226. So his title “is the consequence of a succession established for the corporation by the law of its creation,” and a sister state that treats him as a mere receiver “denie[s] full faith and credit to the statutes and judicial proceedings” of the chartering state. *Clark v. Williard*, 292 U.S. 112, 121 (1934). The pattern is the Constitution’s. Authority that comes from the chartering sovereign follows the corporation everywhere. Authority that comes from a forum court stops at the forum.

B. Recognition runs through the chartering sovereign’s own machinery

That is why the Third Circuit required recognition. Under New Jersey law “and settled choice-of-law principles, the South Carolina Receiver needed to move for—and be granted—recognition in New Jersey and the appointment of an ancillary receiver to

displace Whittaker’s board’s control over, *inter alia*, the company’s privileges, franchises and assets.” *Whittaker*, 176 F.4th at 257. Full faith and credit did not excuse the step, because “[e]nforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the evenhanded control of forum law.” *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 235 (1998). And the ancillary proceeding is not a formality. Its purpose is that “creditors in [New Jersey] and in the foreign jurisdiction shall fare alike,” *Whittaker*, 176 F.4th at 256 (quoting *Stone v. N.J. & Hudson River Ry. & Ferry Co.*, 66 A. 1072, 1073 (N.J. Sup. Ct. 1907)). The Restatement agrees: “only a receiver appointed by a court in the state where the corporation was incorporated can institute action to dissolve a corporation” Restatement (Second) of Conflict of Laws § 367 cmt. d (1971); see *Whittaker*, 176 F.4th at 256.

The court below agreed with all of this. It said “[n]o one would quarrel” with the rule that a receiver not recognized by the domicile cannot control a foreign corporation’s internal affairs. Pet. App. 46a. It even described the “traditional practice” that a receiver who needs to act in a new matter must “return to the appointing court and seek an expansion of his authority.” Pet. App. 10a. What it never required was recognition by England. It did not need to, because based on its definition the receiver’s activities are not internal affairs. Pet. App. 27a–28a, 48a. The channel the Constitution provides was closed by the state court’s own convenient definition.

C. The model does not bypass recognition by accident

The appointment order says so: “The Court further orders that, as the Receiver Court, that the Receiver or Cape may not be sued outside this Court without obtaining the Receiver’s consent or an order of this Court prior to doing so.” Pet. App. 129a. Leave-of-court protection for a receiver is old and legitimate; it protects the appointing court’s custody of the assets in its hands. *Barton v. Barbour*, 104 U.S. 126, 128–29, 132–33 (1881). The overreach is the phrase “or Cape.” A South Carolina trial court, whose receiver never sought recognition in England, declared that an English corporation may not be sued in any other court in the world without the receiver’s consent or that court’s leave. The trial court then invoked the clause against the courts of the corporation’s own place of incorporation, calling the English proceeding in which Cape sued the receiver a violation of “the Barton Doctrine and the explicit language in the receivership order.” Pet. App. 106a. The later order confirming the appointment (the Confirmation Order) clarified eight points, and the court below narrowed the receiver’s powers; neither touched the clause. Pet. App. 27a, 123a–125a. *Cf. Baker*, 522 U.S. at 238 (a state’s judgment “cannot reach beyond” the parties before it “to control proceedings . . . brought in other States”).

The state trial court also adjudicated the charter. The expedited appointment order mistakenly found that Cape had “dissolved” and “has forfeited its charter.” Pet. App. 127a. Two and a half years later the Confirmation Order conceded that the company “is

not dissolved and has not forfeited its charter.” Pet. App. 123a. Whether a corporation exists is the chartering sovereign’s question. *See Relfe*, 103 U.S. at 225–26. A court that answers it wrong for two and a half years, forbids suit against the company in the company’s home court, and never asks that court for anything is not applying a choice-of-law rule. It has taken the chartering sovereign’s place. That is what recognition exists to prevent, and it is why the condition in the question presented deserves this Court’s answer.

III. Nothing in the Decision Below Is Limited to Asbestos, to South Carolina, or to Companies Chartered Abroad

The state supreme court described petitioners’ concern as “some far-fetched international crisis.” Pet. App. 45a. It is not. The reasoning below is a template, and it works the same way for a Delaware corporation sued in Ohio as for an English one sued in South Carolina. Four features of that extraterritorial model show why the question deserves review now.

A. Consent by receivership is illusory

Start with how the forum gets its defendant. Cape did not appear. The court below treated that choice as the predicate for the receivership: Cape committed “moral fraud” by “refusing to participate at all in *Park* [an earlier asbestos case] and this case, or any other United States asbestos cases.” Pet. App. 25a. The trial court’s receiver “was permitted to accept service on behalf of Cape through all the same mechanisms as service may be made on any corporation in South Carolina,” Pet. App. 124a, and answered the

complaint “with a General Denial,” Pet. App. 68a–69a. The company’s absence supplied the ground for the appointment. The appointee then supplied the company’s presence.

That sequence matters to the question presented because jurisdictional limits are “a consequence of territorial limitations on the power of the respective States,” and the “federalism interest may be decisive.” *Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255, 263 (2017) (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)). The personal-jurisdiction requirement is waivable, but it is waivable because it “represents first of all an individual right,” and “it can, like other such rights, be waived.” *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982). The right belongs to the defendant. And when the defendant has not given it up, “the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.” *Bristol-Myers Squibb*, 582 U.S. at 263 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294 (1980)); *see also Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 154–56 (2023) (Alito, J., concurring in part and concurring in the judgment) (the limit is “expressed in the very nature of the federal system,” whatever clause houses it). No person waived anything here. A court appointee, installed because the company would not appear, appeared for it. Whether the corporation will submit is a litigation decision, and the question presented asks who gets to make it.

B. The domestic pattern is the larger story

The same trial court has imposed receiverships on 24 asbestos defendants and appointed the same attorney each time. Sixteen of them were incorporated outside South Carolina, including in Florida, New Jersey, North Carolina, and Texas, and in Canada and England. Charter Pet. 5, 30. Cape is English, but the model is not aimed at companies chartered abroad. It reaches corporations chartered by sister states as well.

Petitioners cite *National Union Fire Insurance Co. v. Payne & Keller Co.*, 731 S.W.3d 58 (Tex. App. 2026). Charter Pet. 31–32. ALF adds only what the episode means for Texas. A South Carolina court decided that a Texas corporation dissolved in 1986 exists again, and Texas’s own Secretary of State executed that decision the day the receiver filed the order in Texas, before any Texas court had looked at it. *Payne & Keller*, 731 S.W.3d at 62, 65. Whether a corporation exists, and for how long it may be sued after it stops existing, are questions the chartering state answers for itself. *See CTS*, 481 U.S. at 89–91. Under the rule below, Texas gets no answer. South Carolina’s definition of internal affairs governs, and Texas is a bystander to the revival of its own creature.

C. There is no stopping point among the states

The forum preference is explicit. The trial court “limits the authority of the Receiver” to administering “the assets of Cape responsive to asbestos personal injury claims properly brought in South Carolina.” Pet. App. 124a–125a. It described the receiver’s work as part of a “judicial process here in South Carolina that exists to serve South Carolina claimants.”

Pet. App. 106a. Compare the ancillary-receivership rule the Third Circuit applied, under which creditors in the home state and the foreign jurisdiction “shall fare alike.” *Whittaker*, 176 F.4th at 256 (quoting *Stone*, 66 A. at 1073). A receivership that exists to serve forum claimants is the opposite of that rule, and it is the reason the rule exists.

The model also multiplies. After the receiver appointed in *Park* accepted service in this case (*Tibbs*), the plaintiffs in a third asbestos case, *Ross*, added Cape as a defendant in October 2025 and obtained a default against it in December 2025. Pet. App. 156a. One week after rehearing was denied below, the trial court appointed the same receiver as a post-judgment receiver over Cape in *Ross*, with authority to “wholly administrate all the insurance assets and beneficial legal claims” of the company. Charter Pet. 30 (quoting Order at 3, *Ross v. Ascend Performance Materials Operations LLC*, No. 2024-CP-40-03710 (S.C. Ct. Com. Pl. Aug. 11, 2026)). And the court below has said that once a receiver is appointed after judgment, “the trial court has much more latitude in permitting the receiver to operate in other matters or lawsuits and in expanding the receiver’s authority.” Pet. App. 10a. The pre-judgment limits the court below adopted, Pet. App. 27a, do not reach that stage.

If South Carolina may do this, so may every other state. *Cf. Edgar*, 457 U.S. at 642 (plurality opinion) (“if Illinois may impose such regulations, so may other States”). Two receivers appointed by two states over the same corporation, each with authority to accept service, answer, and sue in its name, each serving its

own forum’s claimants, is not a hypothetical under the rule below. It is the rule below applied twice.

D. The model collides with the federal bankruptcy power

The trial judge who appointed the receiver in *Whittaker* explained what the appointment was for: Preventing bankruptcy “was the main factor in my signing the order so quickly.” *Whittaker*, 176 F.4th at 250–51 (quoting the South Carolina court). But bankruptcy “is an area of exclusive federal competence.” *Id.* at 256 n.6 (citing *Hanover Nat’l Bank v. Moyses*, 186 U.S. 181, 187 (1902)). Congress has “plenary power . . . over the whole subject of ‘bankruptcies.’” *Hanover*, 186 U.S. at 187. A state receivership that exists to keep a national debtor out of Title 11 is a state instrument aimed at a federal remedy.

The court below did not disagree. It accepted that “a receivership order can authorize a receiver to control the decision to file bankruptcy on behalf of a domestic corporation,” and read *Whittaker* as turning on the fact that the corporation there was foreign to the forum and the receiver unrecognized at home. Pet. App. 46a. So on the court’s own account, whether a state receiver may control a corporation’s access to federal bankruptcy turns entirely on domicile and recognition. That is the line the question presented asks about, and it is the line the court below then said was “a choice of law principle” for the forum to define. Pet. App. 48a. If the forum may define it, the first state to appoint a receiver decides whether a national debtor may ever file. Only this Court can say whether that is so.

IV. The Receiver's Role Shows Why Only a Bright-Line Rule Works

The receiver here is a private attorney, appointed on plaintiffs' motion, whose mandate is to generate recoveries for forum claimants from the corporation he nominally represents. The Confirmation Order limits his authority to "the assets of Cape responsive to asbestos personal injury claims properly brought in South Carolina." Pet. App. 124a–125a. The trial court described his work as part of a process that "exists to serve South Carolina claimants." Pet. App. 106a. In enjoining him from acting for Cape, the High Court of Justice of England and Wales, the court of Cape's place of incorporation, found that his third-party complaint advanced "a case on behalf of CIHL which is . . . directly contrary to CIHL's interests," and that he had "made admissions in relation to asbestos claims . . . which are positively damaging to the interests of CIHL." *Cape Intermediate Holdings Ltd. v. Protopapas* [2024] EWHC 2999 (Ch) [61(d)], [115(c)] (Eng.). The South Carolina Supreme Court has called that injunction "[s]hocking to American eyes." *Welch v. Advance Auto Parts, Inc.*, 916 S.E.2d 320, 334 (S.C. 2025), *cert. denied sub nom. Atlas Turner, Inc. v. Welch*, 146 S. Ct. 1497 (2026). But the English judgment is a finding by the chartering sovereign's own court about who is acting in its corporation's interest. Under the principle the question presented invokes, the chartering sovereign's judgment on that point is the one that counts.

The court below answered the board-control argument by invoking a conflict-of-interest qualification: the rule that litigation decisions belong

to the board “only applies when the board is disinterested and not burdened by a conflict of interest.” Pet. App. 29a (citing *Star v. TI Oldfield Dev., LLC*, 962 F.3d 117, 130–33 (4th Cir. 2020)). *Star* says that “the power to control corporate litigation presupposes that the directors have no interest in its exercise.” 962 F.3d at 131 (quoting *Clark v. Lomas & Nettleton Fin. Corp.*, 625 F.2d 49, 52 (5th Cir. 1980)). The court then left in place a decision-maker whose interest in the exercise is the whole point of his appointment. Whose interests the decision-maker serves is the core of internal affairs. Under the rule below, the forum answers that question too.

Case-by-case limits do not hold. The court below stressed the receiver’s “limited scope.” Pet. App. 27a. That scope governs only a pre-judgment receiver, and the court itself explained that after judgment “the trial court has much more latitude.” Pet. App. 10a. One week after rehearing was denied, the trial court appointed the same receiver, post-judgment, with authority to “wholly administrate” the company’s insurance assets and legal claims. Charter Pet. 30. A line policed by the person whose job is to cross it is not a line. The only rule that holds is the one the question presented states: A receiver not recognized by the chartering sovereign does not control the corporation’s litigation decisions.

CONCLUSION

The petitions for a writ of certiorari should be granted.

Respectfully submitted,

LAWRENCE S. EBNER
Counsel of Record

ATLANTIC LEGAL FOUNDATION
1701 Pennsylvania Ave., NW
Washington, DC 20006
(202) 729-6337
lawrence.ebner@atlanticlegal.org

SARAH ELIZABETH SPENCER
ATLANTIC LEGAL FOUNDATION
215 S. State Street, Suite 700
Salt Lake City, UT 84111
(801) 346-8120
sarah.spencer@atlanticlegal.org

Counsel for Amicus Curiae

October 2026

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S.C. SUPREME COURT

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.

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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

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