No. 14-1382

IN THE

Supreme Court of the United States

AMERICOLD LOGISTICS, LLC, ET AL.,

Petitioners,

v.

CONAGRA FOODS, INC., ET AL.,

Respondents

On Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF FOR THE PETITIONERS

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QUESTION PRESENTED

Is the citizenship of a trust for purposes of federal diversity jurisdiction based on the citizenship of the controlling trustees, the trust beneficiaries, or some combination of both?

RULE 29.6 DISCLOSURE STATEMENT

Petitioner Americold Realty Trust is a Maryland real estate investment trust. Americold Realty Trust has no parent corporation, and no publicly held company owns 10% or more of its stock. Petitioner Americold Logistics, LLC is 100% owned by Art Al Holding LLC, which in turn is 100% owned by Americold Realty Operating Partnership LP. Americold Realty Operating Partnership LP is 99% owned by Americold Realty Trust and 1% owned by Americold Realty Operations Inc. Americold Realty Operations Inc. is 100% owned by Americold Realty Trust.

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OPINIONS BELOW

The Tenth Circuit's decision is reported at 776 F.3d 1175 (10th Cir. 2015) and is reprinted at Petitioners' Appendix ("Pet. App.") 1-16. The Tenth Circuit's order denying Petitioner's request for rehearing *en banc* (Pet. App. 41-42) is unreported. The Tenth Circuit's order staying the mandate pending this Court's review (Pet. App. 19-20) is unreported. The underlying opinion of the District of Kansas (Pet. App. 23-40) is unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on January 27, 2015. That court denied a timely petition for rehearing *en banc* on February 23, 2015. The petition for writ of certiorari was filed on May 15, 2015, and was granted on October 1, 2015. The jurisdiction of this Court rests upon 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

This case involves 28 U.S.C. § 1332(a), which provides in relevant part:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—
>
> (1) citizens of different States;
>
> (2) citizens of a State and citizens or subjects of a foreign state . . . ;
>
> (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
>
> (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

STATEMENT

A. The Structure of Americold Realty Trust and the Powers of its Board of Trustees

Petitioner Americold Realty Trust ("Americold Trust" or "the Trust") is a real estate investment trust organized under the law of Maryland. It is the indirect owner of Petitioner Americold Logistics, LLC ("Americold Logistics").[1] The Trust is controlled by a Board of Trustees. Pet. App. 56. The trustees control virtually all aspects of the Trust. The Articles of Amendment and Restatement of the Trust provide the trustees with

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[1] Concurrent with the filing of this brief, the Parties are filing a Joint Motion to Dismiss Non-Diverse Party Americold Logistics LLC as a party to this proceeding pursuant to Rule 21 of the Federal Rules of Civil Procedure.

"full, exclusive and absolute power, control and authority over any and all property of the Trust." Pet. App. 60.

B. The Earlier State Court Proceedings

This action stems from a 1991 fire in an underground storage facility owned and operated by Americold Corporation, the predecessor to Petitioner Americold Trust. In April 1992, several resulting lawsuits were filed in Kansas state court against Americold Corporation by, among others, Respondents ConAgra Foods, Inc. and its wholly owned subsidiary, Swift-Eckrich, Inc. (collectively, "ConAgra"). These actions were consolidated (the "Kansas Action").

The Kansas Action was settled in March 1994. The settlement gave ConAgra the right to seek recovery from Americold Corporation's insurance carriers, including Northwestern Pacific Indemnity Company ("NPIC"). The settlement also provided for the entry of consent judgments against Americold Corporation. Pet. App. 25-27.

ConAgra commenced state court garnishment proceedings against Americold Corporation's insurers, including NPIC. Pet. App. 28. That litigation lasted eighteen years, from 1994 to 2012, including three trips to the Kansas Supreme Court. *Associated Wholesale Grocers, Inc. v. Americold Corp.,* 934 P.2d 65 (1997) ("*Americold I*"); *Associated Wholesale Grocers, Inc. v. Americold Corp.,* 975 P.2d 231 (1999) ("*Americold II*"); *Associated Wholesale Grocers, Inc. v. Americold Corp.,* 270 P.3d 1074 (2011) ("*Americold III*").

The garnishment action proceeded to a ten-week bench trial in state court in late 2005. NPIC sought dismissal of the garnishment proceedings on the ground that the consent judgments had become

dormant and extinct under Kansas law. That motion was denied and judgment was entered against NPIC. Pet. App. 28.

The Kansas Supreme Court reversed. It held that, because "Americold [Corporation] was not legally obligated to pay an unenforceable judgment, NPIC was no longer indebted to Americold." Pet. App. 29. As a result, the court held, plaintiffs' underlying judgments were extinguished and the state court lacked jurisdiction to proceed with the garnishment action. The Kansas Supreme Court remanded the matter to the state district court with instructions to dismiss the garnishment proceedings. *Ibid.* The district court dismissed the garnishment action and vacated the judgments. *Ibid.*

C. The Proceedings Below

ConAgra then filed this action in Kansas state court against Petitioners Americold Trust and Americold Logistics, asserting claims for breach of contract arising out of their refusal to execute documents that would allow Plaintiffs to execute on the 1994 consent judgments against Americold Corporation. Pet. App. 31-32. Rather than naming the individual trustees of Americold Trust, ConAgra named the Trust itself as a defendant.

Petitioners removed the case to the United States District Court for the District of Kansas based upon diversity of citizenship. No party challenged the removal, and the district court did not question the existence of subject-matter jurisdiction. The parties submitted a stipulation of facts and filed cross-motions for summary judgment. The district court granted Petitioners' motion in October 2013, holding that the consent judgments were extinguished as a matter of law

and could not be revived under Kansas law. Pet. App. 40.

Respondents appealed. The only parties to the appeal were the ConAgra entities, the Americold Trust, and Americold Logistics.[2]

After the parties had filed their merits briefs in the Court of Appeals for the Tenth Circuit, the panel assigned to the appeal *sua sponte* raised the issue of subject-matter jurisdiction. Specifically, the panel ordered supplemental briefing to address whether the notice of removal was insufficient to establish diversity of citizenship because it did not specify the citizenship of all of the beneficiaries of Americold Trust. Pet. App. 21-22.

Both parties submitted supplemental briefs in response to the court's order, and Petitioners also submitted a declaration setting out, among other things, the structure of the Trust and the citizenship of each of its trustees. The record further established that both ConAgra entities are incorporated in Delaware and that their principal places of business are in Nebraska and Illinois, respectively. The declaration submitted by Petitioners established that none of the trustees of the Trust was domiciled in, or was a resident of, Delaware, Nebraska, or Illinois. Pet. App. 57.

In its supplemental brief to the Tenth Circuit, Petitioners argued that, under *Navarro Savings Association v. Lee*, 446 U.S. 458, 464 (1980), the citizenship of a real estate investment trust such as Americold Trust

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[2] See note 1, *supra*. In addition to the ConAgra entities and the Americold entities, other parties were named in the Kansas Action and the later action in federal district court. Those other parties did not appeal the district court's judgment in Americold's favor and are no longer parties to this action.

is to be determined "solely by the citizenship of its trustees." Pet. App. 47. ConAgra concurred with Americold's position. J.A. 104-15.

D. The Court of Appeals' Decision

The Tenth Circuit found subject-matter jurisdiction lacking and remanded the matter to the district court with instructions to vacate the judgment and remand the case to state court. The Court of Appeals read *Carden v. Arkoma Associates*, 494 U.S. 185 (1990), to require "that the citizenship of any non-corporate artificial entity [be] determined by considering all of the entity's members," Pet. App. 11, and concluded that diversity of citizenship was lacking because the record did not establish the citizenship of all of the beneficiaries of the Americold Trust. The court rejected the parties' argument that *Navarro* required reference only to the citizenship of the trustees, instead reading *Navarro* for "the far more limited proposition" that in a case where only the trustee is named as a party and the trustee is "a proper party to bring a suit on behalf of a trust, it is the trustee's citizenship that is relevant, rather than the trust's beneficiaries." Pet. App. 7 (citation omitted). The court disagreed with the decisions of other courts of appeals that have held—even after *Carden*—that where the trust itself is a party, *Navarro* requires reference to citizenship of the trustees of the trust, not its beneficiaries. *Ibid.* The court held, based on *Carden*, that "[w]hen the trust itself is party to the litigation, the citizenship of the trust is derived from all the trust's 'members,'" Pet. App. 13-14, and that, in this context, the trust's "members" include, at a minimum, all of its beneficiaries.

The court concluded that jurisdiction was lacking because there was no evidence supporting diversity of

citizenship when Americold Trust's beneficiaries were considered. Pet. App. 15. The Tenth Circuit denied Petitioners' request for rehearing *en banc*, but granted its request for a stay of mandate pending review by this Court. Pet. App. 19-20.

SUMMARY OF ARGUMENT

This case presents the important question of how federal courts should treat the citizenship of trusts, including real estate trusts, for purposes of diversity jurisdiction. The answer is that the Court should adhere to its longstanding practice of looking to the citizenship of trustees, who—both at common law and in modern practice—hold legal title to the property of the trust and accordingly are tasked with managing the trust's assets, including through the conduct of litigation.

This Court's most recent case addressing diversity jurisdiction in a case involving a trust was *Navarro*. In that case, the Court reviewed the features and operations of a business trust, concluding the trustees were the "real parties to the controversy" and that the various citizenships of the trust's thousands of beneficiaries were irrelevant to the diversity analysis. 446 U.S. at 465. *Navarro* was predicated upon what was then over 150 years (and what is now more than 200 years) of Supreme Court case law governing trusts. The Court found prior cases inquiring into diversity jurisdiction for corporations and unincorporated entities inapplicable because a trust is "neither an association nor a corporation." *Id.* at 462.

In *Navarro*, as in the Court's prior cases involving trusts and trustees, the Court concluded that "a trustee is a real party to the controversy for purposes of diversity jurisdiction," and thus the trustee's citizen-

ship is controlling, when the trustee "possesses certain customary powers to hold, manage, and dispose of assets for the benefit of others." 446 U.S. 458 at 464 (citing *Bullard v. City of Cisco*, 290 U.S. 179, 189 (1933)). This is the test the Tenth Circuit should have applied here, where the trustees of Americold Trust possess virtually the same powers and authority over the Americold Trust as did the trustees in *Navarro*. At common law, as reflected in this Court's jurisprudence, such powers are held by the trustees, not the beneficiaries, and the trustees rather than beneficiaries are the parties authorized to sue, to be sued, and to conduct litigation where trust assets and liabilities are at issue. That principle suffices to resolve this case.

The Court of Appeals chose instead to rely on a case involving no trust, no trust property, no trustees, and no trust beneficiaries: *Carden v. Arkoma Associates*, 494 U.S. 185, 186 (1990). That was error. *Carden* presented two questions: first, whether a limited partnership can be treated like a corporation, with its own citizenship for purposes of diversity jurisdiction; and second, alternatively, whether a court may instead consult the citizenship of only a subset of the partners in the partnership for purposes of diversity jurisdiction. See *id.* at 187. Following a long line of cases governing the citizenship of unincorporated associations for diversity purposes, *Carden* unremarkably held that the partnership itself has no citizenship, and that instead the citizenship of all the partnership's "members" must be examined. *Id.* at 189-90, 195-96.

Carden does not control here because this case presents neither of the questions before the Court in *Carden*. No party contends that a trust should be afforded citizenship in its own right for purposes of

diversity jurisdiction, and likewise no party contends that a federal court should consult the citizenship of only a subset of any group of persons. The question, rather, is whether the court should consult the citizenship of all of the trust's *trustees* or all of its *beneficiaries*. *Carden* simply has nothing to say about that issue.

To the extent *Carden* is instructive at all, it confirms that the citizenship of trustees should control. *Carden* and the cases it cites hold that the citizenship of a non-corporate artificial entity is to be determined by reference to the entity's "members." 494 U.S. at 185-86. The reason for that approach is that, at common law, partnerships and associations could not sue or be sued in their own name. The "members" of such an entity consisted of those persons who, at common law, would have been individually liable for the entity's obligations and in a position to sue or be sued on its behalf. In a series of cases, this Court held that, although the law had changed in certain states to permit partnerships and associations to sue and be sued in their own names, for purposes of diversity jurisdiction federal courts would continue to consult the citizenship of those individuals who would themselves have been the litigants in such cases at common law.

In the trust context, the analogue of a "member" of such an entity is the trustee. At common law, as with partnerships and associations, trusts could not sue or be sued in their own name. It was—and remains—the trustee, and not the beneficiaries, who held legal title to trust property and was individually liable for a trust's obligations. That key fact places the trustee, and not the beneficiaries, in the position akin to the partners of a partnership or the members of an association for purposes of diversity jurisdiction.

It is immaterial that, as the Tenth Circuit posited, the functional realities of modern business may place the beneficiaries of a business trust in a position akin to the limited partners of a partnership. This Court, including in both *Carden* and *Navarro*, consistently has resisted the argument that the changing realities of modern business justify a departure from its longstanding approach of looking to the citizenship of those who would have been liable at common law for the obligations of a non-corporate artificial entity. The need for a bright line rule, firmly grounded in the common law and applicable to all of the many different kinds of trusts that exist under state law, counsels strongly against an approach that hinges on an analysis of how particular types of trusts operate. To the extent any change in the diversity statute is warranted to reflect the functioning of modern business trusts, Congress is fully capable of amending the diversity statute accordingly, as it has done on multiple prior occasions to address other specific circumstances.

In addition to departing from the common law and this Court's precedents, the Tenth Circuit's approach would raise a number of significant practical and policy concerns. Because trustees (unlike beneficiaries) may sue and be sued in their own names where trust assets and liabilities are at issue, the Tenth Circuit's rule would create a vehicle for gamesmanship and forum shopping: the outcome of the citizenship inquiry would hinge on the (otherwise meaningless) distinction of whether the plaintiff names as defendants the trustees (triggering an inquiry into the citizenship of the trustees) or the trust itself (triggering an inquiry into the citizenship of the beneficiaries).

The Tenth Circuit's approach also would prove complicated and unworkable in practice. Not all trusts have identifiable or easily ascertainable beneficiaries, and many trusts have hundreds or thousands of beneficiaries. See *Navarro*, 446 U.S. at 464 (9,500 beneficiaries). In sharp contrast, *all* trusts have trustees, and they are, generally speaking, relatively few in number and easily identifiable. Looking to the citizenship of trustees rather than beneficiaries is in keeping with the Court's admonition that jurisdictional inquiries should be "as simple as possible." *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010).

The issue before the Court is not novel and, despite the Court of Appeals' ruling, should not end in a complicated result. The common law of trusts and this Court's longstanding approach of looking to the citizenship of trustees require reversal.

ARGUMENT

A. The Court Should Adhere to Its Longstanding Practice, in Accordance With the Common Law, of Consulting the Citizenship of Trustees for Purposes of Evaluating Diversity of Citizenship in a Case Involving a Trust

Diversity jurisdiction is based upon Article III of the Constitution. U.S. Const. art. III, § 2, cl. 1 ("The judicial Power shall extend to … Controversies … between Citizens of different states."). The Judiciary Act of 1789, enacted by the First Congress, vested lower federal courts with jurisdiction where a "suit is between a citizen of the State where the suit is brought and a citizen of another State." Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 73. The diversity statute has been

amended over time, but remains substantively unchanged at its core—requiring a threshold amount in controversy and diverse citizenship. In its present form, the diversity statute is codified at 28 U.S.C. § 1332.

In an unbroken line of cases involving trusts, the Court has held that where a trustee "possesses certain customary powers to hold, manage, and dispose of trust assets for the benefit of others," the trustee is "a real party to the controversy" in litigation involving trust assets and liabilities, and the trustee's citizenship, rather than that of the beneficiaries, is controlling for purposes of determining whether diversity jurisdiction exists. *Navarro*, 446 U.S. at 464; see also, e.g., *Bullard*, 290 U.S. at189-90 (citizenship of trustees, not beneficiaries, governs; "[t]he beneficiaries were not necessary parties and their citizenship was immaterial"); *Thomas v. Bd. of Trustees of Ohio State Univ.*, 195 U.S. 207, 218 (1904) (citizenship of trustees governed even though state university's board of trustees was the named party, rather than individual trustees); *Dodge v. Tulleys*, 144 U.S. 451, 455-56 (1892) (trustee was "the proper party in whose name to bring suit"; beneficiaries' citizenship was irrelevant because "the trustee represents … all [beneficiaries], and in his name the litigation is generally and properly carried on"); *Coal Co. v. Blatchford*, 78 U.S. (11 Wall.) 172, 175, 178 (1870) (the rule governing trustees "suing for others' benefit" is that "[i]f they are personally qualified by their citizenship to bring suit in the Federal courts, the jurisdiction is not defeated by the fact that the parties whom they represent may be disqualified"); *Bonnafee v. Williams*, 44 U.S. (3 How.) 574, 577 (1845) ("A person having the legal right may sue, at law, in

the federal courts, without reference to the citizenship of those who may have the equitable interest."); *Chappedelaine v. Dechenaux*, 8 U.S. (4 Cranch) 306, 308 (1808) (citizenship of trustees, not testators, controlled: "although [the plaintiffs] sue[d] as trustees, [ ] they were entitled to sue in the circuit court"); accord 13E C. Wright & A. Miller, Federal Practice & Procedure Jurisdiction § 3606 (3d ed. West 2015) ("The citizenship of an active trustee, rather than that of the beneficiaries or of the grantor, is decisive.").

In *Navarro*, this Court applied these longstanding rules to a business trust. The issue was "whether the trustees of a business trust may invoke the diversity jurisdiction of the federal courts on the basis of their own citizenship, rather than that of the trust's beneficial shareholders." 446 U.S. at 458. Following its long line of trust cases, the Court noted that the trustees (1) held title to the trust's real estate investments for the benefit of the trust shareholders; (2) had exclusive authority over the trust property; (3) had the power to transact business on behalf of the trust; and (4) were authorized to initiate or compromise lawsuits relating to the trust. *Id.* at 459. They were, in short, "active trustees whose control over the assets held in their names is real and substantial." *Id.* at 465. As a result, the Court had no trouble resolving the case based squarely upon the Court's longstanding rule that the citizenship of a trustee controls for purposes of diversity jurisdiction.

The Court in *Navarro* expressly rejected the petitioner's argument that the practical realities of a business trust's operations meant that the Court should consult the citizenship of the beneficiaries rather than the trustees. The critical fact remained that the *Na-*

varro trustees had the customary powers and duties of trustees, and the beneficiaries, as is ordinarily true, "can neither control the disposition of this action nor intervene in the affairs of the trust except in the most extraordinary situations." *Navarro*, 446 U.S. at 464-65. As the Court explained, "[t]hat the trust may depart from conventional forms in other respects has no bearing upon" the outcome of the case. *Id.* at 465. "Nor does [the trust's] resemblance to a business enterprise alter the distinctive rights and duties of the trustees." *Ibid.* The entity at issue was "neither an association nor a corporation," but rather an "express trust," *id.* at 462, and it made no difference that the trust was organized for business purposes rather than personal or charitable ones. Under this Court's precedents, so long as the trustees' "control over the assets held in their names" was "real and substantial," the citizenship of the trustees controlled for purposes of diversity jurisdiction. *Id.* at 465.

Navarro and the trust cases upon which it relied are part of a larger body of this Court's jurisprudence holding that where a bona fide personal representative is authorized by law to conduct litigation on behalf of another, it is the personal representative's citizenship that controls, unless Congress provides otherwise by statute. See, e.g., *Mexican Cent. Ry. Co. v. Eckman*, 187 U.S. 429, 434 (1903) (citizenship of guardian rather than ward controls); *Indiana ex rel. Stanton v. Glover*, 155 U.S. 513, 517 (1895) (citizenship of relator rather than governmental entity in whose name suit is brought controls); *Venner v. Great N. Ry. Co.*, 209 U.S. 24, 32 (1908) (citizenship of plaintiff in shareholder derivative suit rather than corporation controls); *Mecom v. Fitzsimmons Drilling Co.*, 284 U.S. 183, 186-

87 (1931) (citizenship of administrator of estate rather than decedent controls), *superseded by statute*, see 28 U.S.C. 1332(c)(2); *Chappedelaine*, 8 U.S. (4 Cranch) at 307 (citizenship of representatives, not testators, controls). In all of these cases, as in litigation involving trusts and trustees, this Court has recognized that the duly appointed representative or fiduciary of another party is the proper real party in interest for citizenship and diversity purposes.[3]

There is a simple reason why the Court's jurisprudence always has looked to the citizenship of trustees in cases involving trust assets and liabilities: at common law, all trust litigation, both affirmative and defensive, was the responsibility of the trustees and was conducted in their name. This was because the trustees held legal title to all trust property. See, e.g., Restatement of Trusts § 280 (1935) ("The trustee can maintain such actions at law or suits in equity or other proceedings against a third person as he could maintain if he held the property free of trust."); *id.* § 261 ("The trustee is subject to personal liability to third persons on obligations incurred in the administration of the trust to the same extent he would be liable if he held the property free of trust."); A.M. Hess, et al., Bogert's Trusts & Trustees §§ 712, 720, 731 (West 2015) (at common law, trustees are personally liable in

[3] Where a nominal litigant is added solely to create or destroy the court's jurisdiction purposes—such as in the case of a sham appointment of a representative or a fraudulent assignment—the Court ignores the nominal litigant's citizenship. See 28 U.S.C. § 1359; see also, e.g., *Lumbermen's Mut. Cas. Co. v. Elbert*, 348 U.S. 48, 51 (1954); *McNutt v. Bland*, 43 U.S. (2 How.) 9, 14 (1844). But that is not the case here—there is no dispute that the trustees here, as in *Navarro*, are bona fide trustees and not mere nominal parties.

tort and contract for trust liabilities); 4 A.W. Scott et al., Scott & Ascher on Trusts § 26.1 (5th ed. 2007) (at common law, "the general rule was that all obligations incurred during the course of trust administration were personal obligations of the trustee"); 5 Scott & Ascher on Trusts § 28.1 ("it is the trustee who is the proper party to maintain [an] action" on behalf of the trust, "whether at law or in equity").

This rule has been applied consistently by federal and state courts dating back to the founding of our nation. See, e.g., *Lazenby v. Codman*, 116 F.2d 607, 609 (2d Cir. 1940) (a "trust is not a juristic person and the trustee is the only party entitled to bring suit to enforce" trust's claims); *Larson v. Sylvester*, 185 N.E. 44, 45-46 (Mass. 1933) ("[A] trust is not a legal personality" and generally "cannot be sued. It is represented by the trustee. He embodies it. He holds title. He deals with the property in which trust rights exist. Contracts with regard to the rights and property affected by trusts are the contracts of the trustee. He, in person, is liable upon them."). Accord *Bryan v. Stevens*, 4 F. Cas. 510, 510 (C.C.S.D.N.Y. 1841) (*per curiam*); *Bank Acres Pure Trust v. Fahnlander*, 443 N.W.2d 604, 605 (Neb. 1989); *Greenspan v. LADT, LLC*, 191 Cal. App. 4th 486, 522 (2010).

Indeed, the core principle of these precedents—that legal title to trust property is vested in the trustee alone—is deeply rooted in centuries-old English common law dating back to the ecclesiastical courts. See 4 J. Kent, Commentaries on American Law 304 (Da Capo Press ed. 1971) (trust is an obligation arising out of confidence reposed in the trustee, who has legal title to property conveyed to him and the power to manage that property consistent with the terms of the trust); 2

W. Blackstone, Commentaries on the Laws of England 335-36 (Univ. of Chicago Press ed. 1979) (describing the recognition by the courts of equity of trusts, in which "the land must remain in the trustee to enable him to perform the trust"); F.W. Maitland, Equity 26-27 (Cambridge Univ. Press ed. 1920) (feoffees in the "use" structure "are to be the legal owners," with beneficiaries holding the right to enjoy and profit from the property); 4 W. Holdsworth, A History of English Law 417 (Methuen & Co. Ltd. & Sweet & Maxwell, 3d ed. 1945) (under the "use" arrangement, the legal owner of property was separate from the beneficiary, the former being vested with legal title and the latter being given "all the advantages of property, and yet … subject to none of the legal liabilities which property entails"); R.H. Helmholz, The Early Enforcement of Uses, 79 Colum. L. Rev. 1503, 1503 & n.2, 1505 (1979) (noting that the "essence of the 'use'," which was the "ancestor of the modern trust," was "the separation of legal title to land from its beneficial enjoyment").

It is equally well established at common law that beneficiaries, with narrow and well defined exceptions, *cannot* sue or be sued based on the assets or liabilities of the trust. Such litigation is the sole province of the trustee. As one learned treatise explains:

> The trustee is in many respects a buffer between the beneficiaries and the outer world. It is the trustee's duty to take and keep control of the trust property, to preserve it, and to enforce claims held in trust. It is the trustee rather than the beneficiary who is entitled to maintain actions against third parties who commit torts with respect to the trust property or fail to pay debts held in trust. … It is through the trustee rather

> than directly that the beneficiaries ordinarily pursue to the third party.

5 Scott & Ascher on Trusts § 28.1; see also, e.g., *id.*, § 27.1 ("[Third parties] certainly ha[ve] no direct claim against the beneficiaries. Trust beneficiaries are not subject to personal liability to third persons on account of obligations incurred by the trustee."); Restatement of Trusts § 274 ("The beneficiary as such is not personally subject to liabilities to third persons incurred in the administration of the trust."); *id.* §§ 281, 282 ("Where the trustee could maintain an action at law or suit in equity or other proceeding against a third person," beneficiary generally cannot maintain suit, with narrow exceptions); Restatement (Third) of Trusts § 107, cmt. c(2) (2003) ("It bears repeating that the trustee, and not a beneficiary, is ordinarily the proper person to bring (and to decide whether to bring) an action on behalf of the trust against a third party."); *In re Sharif*, 457 B.R. 702, 718 (Bankr. N.D. Ill. 2011) ("[A] trust beneficiary cannot sue or be sued regarding the trust."); *Slaughter v. Swicegood*, 591 S.E.2d 577, 584 (N.C. Ct. App. 2004) (noting "common law rule barring individual claims by beneficiaries"); *Koelliker v. Denkinger*, 83 P.2d 703, 707 (Kan. 1938); *Fitzgerald v. Doggett's Ex'r*, 155 S.E. 129, 134 (Va. 1930).

Only in "limited circumstances," Restatement (Third) of Trusts § 107, cmt. c, may a beneficiary bring an action. Such limited circumstances generally involve situations where the trustee is unable or improperly unwilling to bring suit, or where the beneficiary is in immediate possession of the trust property at issue. See, e.g., *id.* § 107; Bogert's Trusts & Trustees § 869; 5 Scott & Ascher on Trusts § 8.1; *Slaughter*, 591 S.E.2d at 584; *Schofield v. Cleveland Trust Co.*, 78 N.E.2d

167, 171 (Ohio 1948); *Farmers' Loan & Trust Co. v. Lake St. Elevated R.R. Co.*, 122 F. 914, 921 (7th Cir. 1903).

In short, the common law always and unmistakably has placed trustees, rather than beneficiaries, in control of litigation involving trust assets and liabilities. This Court's consistent approach of looking to the citizenship of trustees, not that of the beneficiaries, for purposes of diversity jurisdiction in trust-related litigation is a logical and necessary application of that common law rule. The trustee, rather than the beneficiary, holds legal title to trust property and is the "real part[y] to the controversy" in such litigation. *Navarro*, 446 U.S. at 461. And because the trustee is responsible for the conduct of the litigation and will be publicly identified with the litigation, it is the citizenship of the trustee, rather than that of the beneficiaries, that is relevant for the purposes of ensuring a "neutral forum" in federal court—the main purpose of diversity jurisdiction. See *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005).

The Americold Trust falls squarely within the *Navarro* principle. Like the trustees in *Navarro*, Americold's trustees hold legal title to, and have broad and virtually complete power over, the assets of the trust. Americold's Articles of Amendment and Restatement provide that "the business and affairs of the Trust shall be managed under the direction of the Board of Trustees and … the Board shall have full, exclusive and absolute power, control and authority over any and all property of the Trust." Pet. App. 56, 60. The trustees even have the authority to terminate the trust itself. *Id.* at 61. That suffices to resolve this case.

B. *Carden* and the Cases Involving Unincorporated Associations Do Not Warrant a Departure from the Court's Practice of Consulting the Citizenship of Trustees

Rather than follow the *Navarro* line of cases, the Tenth Circuit believed that this Court's decision in *Carden* required it to consult the citizenship of the *beneficiaries* of the Americold Trust. Pet. App. 11. That was error. *Carden* is among the most recent in a line of cases addressing the citizenship, for purposes of diversity jurisdiction, of unincorporated artificial entities such as partnerships and associations. These cases have little to say about the separate and distinct question whether the citizenship of trustees or the citizenship of beneficiaries should control in litigation involving trusts. To the extent the *Carden* line of cases sheds any light on the question, it confirms that federal courts should look to the citizenship of trustees, and not that of beneficiaries, in cases involving express trusts, including business trusts.

In *Louisville, Cincinnati & Charleston R.R. Co. v. Letson*, 43 U.S. (2 How.) 497 (1844), the Court first held that, for jurisdictional purposes, a corporation is to be treated as an artificial entity with the citizenship of its state of incorporation. *Id.* at 558. Congress altered that rule slightly in 1958, when it amended the diversity statute to provide that a corporation shall be deemed a citizen of both its state of incorporation and the state in which it maintains its principal place of business. See *Carden*, 494 U.S. at 196; 28 U.S.C. § 1332(c)(1); Act of July 25, 1958, Pub. L. No. 85-554, 72 Stat. 415.

In cases involving unincorporated business associations, by contrast, the Court has held (with one excep-

tion) that such entities are not to be treated as citizens in their own right for purposes of diversity jurisdiction. Rather, as the Court reaffirmed in *Carden*, a federal court must consult the citizenship of "all of the entity's members." 494 U.S. at 196 (addressing a limited partnership); accord *United Steelworkers v. R.H. Bouligny, Inc.*, 382 U.S. 145, 151 (1965) (union); *Great Southern Fire Proof Hotel Co. v. Jones*, 177 U.S. 449, 456-57 (1900) (limited partnership); *Chapman v. Barney*, 129 U.S. 677, 682 (1889) (joint-stock company). But cf. *Puerto Rico v. Russell & Co.*, 288 U.S. 476, 482 (1933) (treating Puerto Rican *sociedad en comandita* as an entity akin to a corporation, with its own citizenship). In so holding, the Court has erected a "'doctrinal wall'" between corporations and other artificial entities, with only the former being deemed to have citizenship in their own right for purposes of diversity jurisdiction. *Carden*, 494 U.S. at 190 (quoting *Bouligny*, 382 U.S. at 151).[4] That question is not implicated in this case, as no party contends that a trust should be treated as a citizen in its own right.

Carden also resolved a second question. The Court rejected the argument, advanced by the respondent,

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[4] In reaching this result, the Court rejected an argument by the respondent (and the dissent) that *Navarro* provided support for affording the limited partnership citizenship in its own right. The Court noted that the plaintiffs in *Navarro* were trustees suing in their own name, rather than that of the trust, so the Court had no occasion to discuss "whether the trust had attributes making it a 'citizen.'" *Carden*, 494 U.S. at 191; *see also id.* at 192-93 (noting that *Navarro* had "nothing to do with the citizenship of the 'trust,' since it was a suit by the trustees in their own names"). Because no party here contends that a trust should be afforded citizenship in its own right, this discussion of *Navarro* in *Carden* has no bearing on this case.

that in cases involving limited partnerships, courts should consult the citizenship of the general partners only, and not the limited partners. 494 U.S. at 192. The Court instead "adhere[d] to [its] oft-repeated rule that diversity jurisdiction in a suit by or against [an artificial] entity depends on the citizenship of 'all the members'" of the entity. *Id.* at 195 (quoting *Chapman*, 129 U.S. at 682). The Court dismissed the respondent's contention that such a rule was overly "technical, precedent-bound, and unresponsive to policy concerns raised by the changing realities of business organization," in which limited partners did not play an active role in the entity's management. *Id.* at 196. The Court recognized that "limited partnerships are functionally similar" to corporations, but nonetheless made clear that formalism, rather than pragmatism, "has been the character of our jurisprudence in this field after *Letson*." *Id.* The Court deemed it the province of Congress, rather than the judiciary, to make any "further adjustments" to the law in this area. *Id.*

This second holding of *Carden* has limited relevance here. No party contends that the citizenship of only some trustees, or of only some beneficiaries, should be consulted in determining the citizenship of a trust. The question, rather, is whether a court should consult the citizenship of *all* of the trustees, *all* of the beneficiaries, or both. Neither *Carden*, nor any of the other artificial entity cases upon which it relied, addressed that issue. And for good reason: the structure and nature of a trust are fundamentally different from the structure and nature of a partnership, association, or other artificial entity. Unlike partnerships or associations, which at common law have only a single tier of partners or members who presumptively share essen-

tially the same legal status, including normally sharing legal title to the trust property, a trust involves two distinct and very different tiers: that of the trustee and that of the beneficiaries—with legal title being placed in the former, and only (at most) beneficial or equitable title being held by the latter. See *supra* at 15.

Carden itself recognized this crucial point. The Court noted that trustees constitute a "distinctive common-law institution," and that their function within a trust provides limited guidance in cases involving "juridical person[s]." 494 U.S. at 194. That was why *Navarro* did not control the outcome in *Carden*, and so too is it why *Carden* does not control the outcome here. *Carden*'s refusal to distinguish between general and limited partners—a distinction unknown to the common law—provides no support for the conclusion that trustees and beneficiaries, which the common law has long viewed as separate, may be lumped together as "members" of a trust.

C. Trustees, Rather that Beneficiaries, Are the Analogues of the "Members" of a Partnership or Association

Even assuming, *arguendo*, that the Court's direction in *Carden* to consult the citizenship of an entity's "members" pertains here, that inquiry leads to the same outcome as the Court's cases involving trusts: a court should look to the citizenship of trustees rather than of beneficiaries. The "members" of an unincorporated association are those persons who would have been liable at common law for the artificial entity's obligations. In the case of a trust, that is the trustee, not the beneficiary.

At common law, like trusts, unincorporated business associations such as partnerships "were not recognized as legal entities capable of being sued by their creditors." 14 J. Callison & M. Sullivan, Partnership Law & Practice § 14:3 (West 2015); accord, e.g., *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 385 (1922); *Johnston v. Albritton*, 134 So. 563, 565 (Fla. 1931). Rather, such an entity "could only sue or be sued in the names of its members." *United Mine Workers*, 259 U.S. at 385. That fact was the underpinning for the Court's consistent refusal to afford unincorporated associations any citizenship other than that of its members. The Court determined that, although some states had amended their laws to permit suits by or against unincorporated associations in their own name, for purposes of diversity jurisdiction, the Court would adhere to its longstanding rule of looking to the citizenship of the members of the entity. See *Jones*, 177 U.S. at 455-56 (although "plaintiffs are entitled to sue, and may be sued, by their association name … [w]hen the question relates to the jurisdiction of a circuit court of the United States as resting on the diverse citizenship of the parties we must look in the case of a suit by or against a partnership association to the citizenship of the several persons composing such association"); *Chapman*, 129 U.S. at 682. The "members" of an unincorporated business association, therefore, remain what they were at common law: those persons who would have been liable individually at common law for the entity's obligations.

That principle points unmistakably toward the conclusion that, to the extent *Carden* suggests that a court must identify the "members" of a trust, it is the trustees, not the beneficiaries, who fit that description. As

set out above, at common law, trusts, like partnerships and associations, could not sue or be sued in their own name. Trustees, not beneficiaries, were personally liable for the trust's obligations, held legal title to trust property, including choses in action, and were tasked with bringing litigation against third parties to enforce the trust's affirmative claims. In this sense, trustees occupied the position for a trust that partners or members occupied for a partnership or association.

Indeed, several nineteenth century cases draw this exact parallel between trustees and members of unincorporated associations:

> This is a feature which clearly distinguishes corporations from voluntary associations. No such association can sue or be sued in its assumed name; but the *parties who compose it must appear before the court, or those in whom their property is vested in trust for them*. The distinction is between the collective existence appearing by its name, and individuals appearing by their names. In the former case, the court recognizes the body corporate as a legal existence, having a right to be heard; and in the latter, it recognizes individuals, who claim to be heard *in their own right, or as trustees for others*.

Thomas v. Dakin, 22 Wend. 9, 34-35 (N.Y. Sup. Ct. 1839) (emphases added). Numerous other cases are to the same effect. See, e.g., *Laughlin v. Greene & Weare*, 14 Iowa 92, 94 (1862) ("[A] voluntary association[ ] possess[es] no corporate powers" and may not "sue and be sued in [its own] name. This action must be maintained, therefore, if at all, for the benefit of the compa-

ny, in the name of the trustee. … Plaintiff is the trustee of an express trust, within the meaning of the statute."); *Bryan*, 4 F. Cas. 510 (representatives of voluntary association were akin to trustees and could sue for the association without naming the association or its members); *Weaver v. Trustees of Wabash & Erie Canal*, 28 Ind. 112, 120 (1867) (trustees of unincorporated canal company could sue without making the company or its shareholders a party because the company was in effect an "express trust"); *Trustees of the Methodist Episcopal Protestant Church v. Adams*, 4 Or. 76, 88 (1870) (trustees of religious association may sue on behalf of association without naming association or its constituents); *Kuhl v. Meyer*, 35 Mo. App. 206, 211 (1889) (officers of unincorporated benevolent association, by virtue of terms of note, became trustees of an express trust and could sue in their own name in that capacity); *Hecker v. Cook*, 78 P. 311, 312 (Colo. App. 1904) (trustees of unincorporated council, under the terms of the bond at issue, were named as trustees on the obligation and "thereby made [themselves] trustees of an express trust" such that they could sue in their own name "without joining … the person or persons for whose benefit the action is prosecuted").

By contrast, there appears to be no authority for the proposition that the beneficiary of a trust occupied at common law a position similar to that of a partner in a partnership or a member of an association. On the contrary, as noted above, beneficiaries generally may *not* sue or be sued where trust assets and liabilities are at issue. See *supra* at 17-18.

D. The Evolving Nature of Trust Law in Certain States, Permitting Some Trusts to Sue and Be Sued in Their Own Name, Does Not Warrant a Departure from the Court's Longstanding Practice of Consulting the Citizenship of Trustees

The only potentially meaningful difference between this case and *Navarro* is that, in this case, a trust is a party to litigation in its own name. See *Carden*, 494 U.S. at 192-193. That fact alone—which is the product of a relatively recent doctrinal innovation in certain states—does not warrant a departure from the Court's longstanding approach in cases involving trusts and trustees.

During the twentieth century, a number of states began to enact statutes allowing for the creation of a so-called "business trust"— also sometimes referred to as a "common law trust" or "Massachusetts trust"—which is a type of trust used for commercial purposes. See generally Bogert's Trusts & Trustees § 247. In some states (including Maryland, under whose law the real estate investment trust in this case was created) business trusts, but generally not traditional trusts, may sue and be sued in their own name. See, e.g., Md. Code Ann., Corps. & Ass'ns, § 8-301(2) (2013); Miss. Code Ann. § 79-15-23(1) (1962); Minn. Stat. Ann. § 318.02, subd. 3(2) (2011); Ariz. Rev. Stat. Ann. § 10-1879 (1996); *Morrison v. Lennett*, 616 N.E.2d 92, 94, n.7 (Mass. 1993). This relatively recent development helps explain why this Court has not yet addressed the question whose citizenship controls for diversity pur-

poses when a business trust is named as a party to the litigation.[5]

For several reasons, the fact that some litigation involving trusts now is being conducted in the name of the trust, rather than that of the trustee, does not warrant a departure from this Court's longstanding approach to trust-related litigation.

First, the ability of some trusts, in some states, to sue and be sued in their own name does not alter the fact that the trustee holds legal title to trust property and that trust-related litigation is controlled and conducted by the trustee. Even when a case involves a business trust with the ability to sue and be sued in its own name, it is the trustees, not the beneficiaries, who remain liable for the trust's obligations. See, e.g., Bogert's Trusts & Trustees § 247(K) ("According to the rule applicable to trusts generally, the trustees of a business trust would be liable personally for torts committed in the course of business, and also upon contractual obligations."); *First E. Bank, N.A. v. Jones*, 602 N.E.2d 211, 216 (Mass. 1992) (trustees of business trust remain liable for trust obligations); *Taylor v. Richmond's New Approach Ass'n*, 351 So. 2d 1094, 1096 (Fla. Dist. Ct. App. 1977) (same); *Review Printing*

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[5] In other states, business trusts (like traditional trusts) lack the ability to sue or be sued in their own name. See, e.g., Bogert's Trusts and Trustees § 247(N); *Coverdell v. Mid-S. Farm Equip. Ass'n*, 335 F.2d 9, 13 (6th Cir. 1964) (under Tennessee law, business trust could not be sued in its own name; "the trustees would have been the proper parties defendant in the instant case rather than the trust"); *Booker v. Cappozziello*, No. CV054010211S, 2006 WL 2194653, at *2-3 (Conn. Super. Ct. July 21, 2006) (unpublished) (Connecticut law does not recognize a business trust as a separate legal entity capable of suing or being sued in its own name).

& Stationery Co. v. McCoy, 276 Ill. App. 580, 587-89 (1934) (noting "broad personal liability of trustees" for debts of business trust).

Likewise, actions on behalf of business trusts are prosecuted by trustees, not beneficiaries, even where the trustees have the option of bringing suit in either the trust's name or their own. See, e.g. Bogert's Trusts & Trustees § 247(M); *Stevens v. Sharpe*, 82 P.2d 672, 674 (Okla. 1938) (where state "statutes authorize the maintenance of an action by an express or common law trust in its adopted name," action is properly prosecuted by the trustee, who is the "real party in interest"); *Brickell Constr. Corp. v. Pujol*, 329 So. 2d 340, 340-41 (Fla. Dist. Ct. App. 1976) (trustees of business trust "are entitled to maintain this action on its behalf"); *Morriss v. Finkelstein*, 127 S.W.2d 46, 49-50 (Mo. Ct. App. 1939); *Hull v. Newhall*, 138 N.E. 249, 250 (Mass. 1923). Indeed, even where a business trust is party to litigation in its own name, that litigation generally is conducted by the trustees, not the beneficiaries. See, e.g., *Ittleson v. Anderson*, 2 F. Supp. 716, 720-21 (S.D.N.Y. 1933) ("The trustees can do business in the name of the trust; they can sue or be sued as an entity under Massachusetts law[.]"); *Limpia Royalties v. Cowden*, 94 S.W.2d 481, 482 (Tex. App. 1936) (business trust was properly sued in its own name, and trustees were proper parties to be served with process).

The trustee-centric nature of litigation, even in cases in which a business trust may sue or be sued in its own name, confirms the application of this Court's longstanding approach of looking to the citizenship of the trustees when a trust is involved.

Second, this Court has declined to alter its approach to diversity jurisdiction simply because certain states

enact laws that treat artificial entities as persons in their own right, with the capacity to sue or be sued. Since *Letson*, the Court consistently has rejected the argument that either the "changing realities of business organization," or changes in state laws responding to such realities, warrant a departure from the historical approach to diversity jurisdiction. *Carden*, 494 U.S. at 196; accord *id.* (formalism "has been the character of our jurisprudence in this field after *Letson*"); *Jones*, 177 U.S. at 455-56; *Chapman*, 129 U.S. at 682. On this point, *Navarro* is fully in accord with *Carden*. *Navarro* could not have been more explicit: for purposes of diversity jurisdiction, a business trust is to be treated no differently than a traditional trust. *Navarro,* 446 U.S. at 465 ("That the trust may depart from conventional forms in other respects has no bearing upon this determination. Nor does [the trust]'s resemblance to a business enterprise alter the distinctive rights and duties of trustees."); accord *id.* at 463, n.10 ("The Court never has analogized express trusts to business entities for purposes of diversity jurisdiction.").

The Court would be breaking new ground by altering its approach to trust-related litigation in response to state law developments regarding the ability of some trusts to sue and be sued in their own name. Just as the evolution of state law permitting partnerships and unincorporated associations to sue and be sued in their own name did not warrant a departure from the Court's customary approach to those entities, neither should such developments change the rules for trusts.

Third, because a third party seeking to assert a claim against a business trust generally may sue either the trustees or the trust, it would invite gamesmanship

and forum-shopping to require that courts look to the citizenship of beneficiaries simply because, in a particular case, the trust is included as a party in its own name. There is little, if any, functional difference between suing a trust and suing the trustees, and this Court should not draw a jurisdictional line based on such a meaningless distinction.

The Tenth Circuit's rule would allow parties to decide whether federal jurisdiction exists simply through the expediency of choosing to sue in the name of the trust (thus invoking the beneficiaries' citizenship) or in the name of the trustee (thus invoking the trustees' citizenship alone). As such, that rule would contravene this Court's strong preference for jurisdictional rules that do not create opportunities for forum shopping. See *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004). By contrast, adherence to the traditional approach of looking to the trustees' citizenship creates no such opportunity for gamesmanship: regardless of the name of the party on the caption, the court would consult the citizenship of the trustees, so long as they meet the "real party to the controversy" test employed by *Navarro* and the cases upon which it relied. Cf. *City of Indianapolis v. Chase Nat'l Bank*, 314 U.S. 63, 69 (1941) ("Diversity jurisdiction cannot be conferred upon the federal courts by the parties' own determination of who are plaintiffs and who [are] defendants. … Litigation is the pursuit of practical ends, not a game of chess.").

Fourth, as *Carden* also noted, 494 U.S. at 196, to the extent there may be some need to alter the Court's long-settled jurisdictional rules to reflect changing business realities, Congress is fully capable of doing so. It amended the diversity statute in 1958 to provide

that corporations shall be deemed citizens both of the state of their incorporation and the state of their principal place of business. See 28 U.S.C. § 1332(c)(1); Act of July 25, 1958, Pub. L. No. 85-554, 72 Stat. 415. Congress acted again in 1988, when it amended the diversity statute to provide that legal representatives of estates should be deemed to have the same citizenship as the decedent. 28 U.S.C. § 1332(c)(1); Judicial Improvements and Access to Justice Act, Pub. L. No. 100-702, 102 Stat. 4642. As it did in *Carden*, this Court should leave to Congress the task of determining what changes, if any, should be made to the diversity statute in light of contemporary circumstances surrounding business trusts.

Fifth, the Court's precedents include at least one instance in which the Court has looked to the citizenship of trustees even though they were not named as parties to the lawsuit. In *Thomas*, 195 U.S. 207, the respondent (and defendant below) was the Board of Trustees of the Ohio State University, an artificial entity created by state law with the power to sue and be sued in its own name. *Id.* at 213. The trustees themselves were not parties. *Id.* at 208. The Court nonetheless held that the citizenship of the trustees was determinative of the Board's citizenship for purposes of diversity jurisdiction. *Id.* at 218. The Court did not ask whether the Board had beneficiaries, or whether the real party in interest might be deemed to be the citizens of Ohio collectively rather than the trustees. *Thomas* cannot be reconciled with the argument that a federal court should consult the citizenship of trustees for purposes of diversity jurisdiction only when the trustees are parties to litigation in their own names.

E. Important Practical Considerations Confirm the Correctness of Looking to the Citizenship of Trustees Rather than Beneficiaries

For the reasons discussed, the Court's cases and the common law tradition upon which they rely compel the conclusion that the citizenship of trustees rather than beneficiaries controls for purposes of diversity jurisdiction. The significant practical difficulties the Tenth Circuit's contrary approach would entail, compared with the relative simplicity and clarity of the approach outlined here, confirm that reversal is warranted.

This Court repeatedly has emphasized that jurisdictional tests, and specifically those pertaining to the determination of the citizenship of litigants, should be "as simple as possible." *Hertz*, 559 U.S. at 80; see also *First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 621 (1983) (recognizing the "need for certainty and predictability" in citizenship inquiries); *Sisson v. Ruby*, 497 U.S. 358, 375 (1990) (Scalia, J., concurring in the judgment) (noting that "vague boundar[ies]" are "to be avoided in the area of subject-matter jurisdiction wherever possible"). "Complex tests produce appeals and reversals, encourage gamesmanship, and, again, diminish the likelihood that results and settlements will reflect a claim's legal and factual merits." *Hertz*, 559 U.S. at 94.

The Tenth Circuit's rule, if adopted, would be the opposite of simple. Trusts often have hundreds if not thousands of beneficiaries: the business trust at issue in *Navarro* had 9,500. 446 U.S. at 464; see also *Bullard*, 290 U.S. at 189 (noting that trust beneficiaries were "numerous and widely scattered"). It would be an extraordinarily complex, if not impossible, task

in these cases to determine the citizenship of each and every one of the many beneficiaries—many of whose identities are not public information and whose places of residence also are unlikely to be publicly available and are susceptible to frequent change. See *Wilsey v. Eddingfield*, 475 U.S. 1130, 1131 (1986) (White, J., dissenting from denial of certiorari) ("[D]efining diversity jurisdiction by the citizenship of the statutory beneficiaries … could make for a difficult and time-consuming determination in ascertaining diversity for jurisdictional purposes.").

Similarly, trust beneficiaries often are not precisely defined. Some trusts, such as charitable trusts or public trusts, may not have ascertainable beneficiaries at all, or the beneficiaries may be all members of the public or a very large subset thereof. See Restatement (Third) of Trusts § 28, cmt. c (noting that charitable trusts need not have any "definite or definitely ascertainable beneficiary"); *id.* § 4, cmt. g (noting that trusts such as "public land trusts, school land trusts, or trusts for benefit of native populations[ ] are administered as express trusts"). Even for traditional trusts, the identity of the beneficiaries need not "be known at the time of the creation of the trust" or even exist at that time; the identity must simply become known "within the period and terms of the rule against perpetuities." *Id.* § 44, cmt. a; accord, e.g., *In re Estate of Kessler*, 74 N.W.2d 146, 147 (Wis. 1956). In many cases, that will make it difficult if not impossible to look to the citizenship of the beneficiaries. In other cases, there may be disputes about whether a particular beneficiary's interest has vested or not. Any rule that this Court adopts should be one of general application, despite the many kinds of trusts that exist and the differences in

the nature of their beneficiaries. For a substantial number of trusts, the Tenth Circuit's approach is simply unworkable.

By contrast, as *Navarro* recognized, the "relative simplicity" of the "established principle" of looking to the citizenship of trustees "is one of its virtues." 446 U.S. at 464 n.13. As compared to beneficiaries, trustees generally are few in number and readily identifiable. The Americold Trust has seven trustees. Pet. App. 57. The business trust at issue in *Navarro* had eight. 446 U.S. at 459. The trust at issue in *Bullard* had four. 290 U.S. at 189. Inquiring into the citizenship of that number of individuals is a much more manageable endeavor for the parties and the court in a civil action.

CONCLUSION

The judgment of the Court of Appeals should be vacated and the case remanded for a decision on the merits of the ConAgra entities' appeal.

Respectfully submitted,

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