1   IN THE SUPREME COURT OF THE UNITED STATES

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3   THE HERTZ CORPORATION,   :

4   Petitioner   :

5   v.   :   No. 08-1107

6   MELINDA FRIEND, ET AL.   :

7   - - - - - - - - - - - - - - - - - x

8   Washington, D.C.

9   Tuesday, November 10, 2009

10

11   The above-entitled matter came on for oral

12   argument before the Supreme Court of the United States

13   at 11:07 a.m.

14   APPEARANCES:

15   SRI SRINIVASAN, ESQ., Washington, D.C.; on behalf of

16   the Petitioner.

17   TODD M. SCHNEIDER, ESQ., San Francisco, Cal.; on behalf

18   of the Respondents.

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1   C O N T E N T S

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1   P R O C E E D I N G S

2   (11:07 a.m.)

3   CHIEF JUSTICE ROBERTS: We will hear

4   argument next in Case 08-1107, the Hertz Corporation v.

5   Friend.

6   Mr. Srinivasan.

7   ORAL ARGUMENT OF MR. SRINIVASAN

8   ON BEHALF OF THE PETITIONER

9   MR. SRINIVASAN: Thank you,

10   Mr. Chief Justice, and may it please the Court:

11   The diversity statute deems a corporation a

12   citizen of, quote, "the State where it has its principal

13   place of business," closed quote. The Ninth Circuit

14   erred in holding that Petitioner Hertz is a citizen of

15   California, even though Hertz is headquartered in New

16   Jersey and conducts over 80 percent of its operations

17   outside the State of California, and even though, under

18   the court's approach, national corporations could

19   regularly be deemed California citizens if they conduct

20   operations in that State that are proportional to the

21   State's population.

22   The better reading of the statute, in our

23   view, is that it points to the location of the

24   corporation's headquarters, the site from which a

25   corporation directs and controls all the company's

1 operations throughout all of its locations. And that is

2 particularly the correct reading when the statutory

3 language is considered in light of two considerations.

4   First, the strong preference for simplicity

5 and ease of administration in jurisdictional rules; and

6 second, Congress's purposes in 1958 to preserve

7 diversity jurisdiction for corporations in 48 States and

8 to deny access to diversity jurisdiction only in one

9 State, the State where the corporation had its home or

10 principal place of business.

11   Now, with respect to the ordinary meaning of

12 the statutory text, the critical phrase is "principal

13 place of business." And dictionary definitions of that

14 term define the term "principal place of business" as

15 corporate headquarters, and that is fortified by Federal

16 and State laws, which also define the term as "company's

17 headquarters" --

18   JUSTICE SOTOMAYOR: Counsel, the problem

19 with every test is that you can find an exception that

20 makes the application ridiculous.

21   Let's assume that we accept that

22 headquarters or nerve center may have some applicability

23 to a corporation that has a business in a variety of

24 different States.

25   MR. SRINIVASAN: Sure.

4

1   JUSTICE SOTOMAYOR: All right. That's --

2   your situation is perhaps the most attractive --

3   MR. SRINIVASAN: Right.

4   JUSTICE SOTOMAYOR: -- because whether

5   California has 20 percent and Florida 14 or 15 percent,

6   to me the differences are not terribly substantial. I

7   can imagine McDonald's having 1 percent in every part of

8   the world, and how do you choose then? California would

9   say, then you -- you go back to headquarters. But I

10   don't know why you start there.

11   But let's posit the simpler situation.

12   Headquarters in New Jersey, but everything else is in

13   California. Your test would ignore completely that --

14   and it depends on how you define "headquarters." If

15   they have three corporate executives, that's the entire

16   extent -- or let's say one corporate executive who

17   started the company and who lives in New Jersey, and he

18   flies out to California half the time and runs the

19   business from there but happens to live in New Jersey.

20   Then you would say diversity is still New Jersey,

21   correct?

22   MR. SRINIVASAN: We would, Your Honor. But

23   let me -- let me start first with accepting Your Honor's

24   premise, that in the situation of a multistate

25   corporation with -- with diverse operations, the

5

1   principal place of business would be the headquarters.

2   Now, I take your point that there are

3   situations in which the test may not seem so

4   straightforward, but we think even in the -- the

5   hypothetical that Your Honor posits, the better

6   answer -- at least our first submission would be, the

7   better answer is the headquarters would control. And

8   that's for a couple of reasons.

9   Although, again, the one exception that we

10   would have to our rule is exactly Your Honor's

11   hypothetical, and let me just bracket that. Now, the

12   reason we think, first and foremost --

13   JUSTICE SOTOMAYOR: But you have not

14   articulated a -- at least to me, a meaningful principle

15   in which to set that exception. It has to be tied

16   somehow to the test and why the test in some situations

17   would have applicability and others may not.

18   MR. SRINIVASAN: Sure. And let me -- let

19   me --

20   JUSTICE SOTOMAYOR: Because I don't know the

21   difference between one headquarters and two places to do

22   business or three, but I can still see that some

23   factoring has to be done when the places of business are

24   more limited.

25   MR. SRINIVASAN: Well, I -- well, we think

 1   first and foremost that the headquarters' role would

 2   apply even in Your Honor's situation, and I will get to

 3   that to the exception -- fashioning the exception in

 4   just one second --

 5   JUSTICE GINSBURG: But your case doesn't

 6   call for that judgment, because you have a multistate

 7   corporation, and it -- I assume you would be satisfied

 8   with saying that when a corporation has dispersed

 9   operations, it doesn't have its business center or its

10   headquarters -- doesn't have its business center

11   dominant in any one State, that it's dispersed, then you

12   take the headquarters, because there's no way to pick

13   among -- choose all the others, and it certainly isn't

14   worth the labor to try to do that.

15   So you could have a rule that says,

16   dispersed across many States, you pick headquarters.

17   And that -- you don't have to urge anything further.

18   MR. SRINIVASAN: No, absolutely, Justice

19   Ginsburg. And we would certainly accept the resolution

20   of the case in -- in that light.

21   If the Court were to announce a rule that

22   says, multistate corporations with diverse operations,

23   the principal place of business in that situation is the

24   headquarters, I think Your Honor is correct that

25   certainly we would prevail under that and that would be

1   entirely acceptable to us. But --

2   JUSTICE SCALIA: Well, why would we say

3   that? Just because it wins your case and it solves your

4   problem? I mean, it seems to me, to do that, you

5   abandon your principal argument, which that -- which is

6   that "place" doesn't mean "State."

7   MR. SRINIVASAN: Right.

8   JUSTICE SCALIA: And to talk about the whole

9   State of California as the principal place of doing

10   business -- I mean, if Congress meant that, it would

11   have said, the principal State in which business is

12   done.

13   MR. SRINIVASAN: That's -- that's correct,

14   Justice Scalia.

15   JUSTICE SCALIA: You don't want to throw

16   away that good argument, do you?

17   (Laughter.)

18   MR. SRINIVASAN: We certainly don't want to

19   throw it away. We certainly don't want -- first and

20   foremost, we would like to prevail. And I think even

21   under the narrow approach --

22   JUSTICE GINSBURG: You would never get to

23   California's thing about State. If you say multistate,

24   you pick the place. The headquarters is the place, it's

25   within a State.

1   MR. SRINIVASAN: Yes. And -- and that's why

2   we would accept that result, Justice Ginsburg. We

3   certainly would. Let me just put that out there first

4   and foremost.

5   Now, with respect to --

6   CHIEF JUSTICE ROBERTS: Were you done with

7   your -- were you done with your answer to Justice

8   Sotomayor's hypothetical?

9   MR. SRINIVASAN: I don't know that I, in

10   fact, started the answer, Mr. Chief Justice --

11   (Laughter.)

12   MR. SRINIVASAN: -- with respect.

13   The answer is that even in that situation,

14   for the reasons that Justice Scalia highlights, we would

15   say that the headquarters controls. And let me give two

16   -- two principal reasons why.

17   The first is that even if the operations are

18   in one State and the headquarters are in a different

19   State, the headquarters still is where the direction and

20   control comes from. And I think the ordinary meaning of

21   the phrase "principal place of business" in that

22   situation would still direct attention to the

23   headquarters.

24   And the dictionary definitions that we

25   identified in -- in our brief and every Federal and

1   State law that defines the term "principal place of

2   business" defines it at headquarters -- as headquarters,

3   without any exception for the hypothetical situation

4   that Your Honor posits. But the other --

5   JUSTICE SOTOMAYOR: So what constitutes

6   headquarters?

7   MR. SRINIVASAN: I'm sorry?

8   JUSTICE SOTOMAYOR: How many executives have

9   to live there? What else has to exist there? And then

10   what is the default rule if those things don't exist?

11   MR. SRINIVASAN: Right. Your Honor, I think

12   -- and that -- that is the sort of different set of

13   questions which is other ambiguities with respect to the

14   definition of a headquarters in certain situations.

15   Now, by and large, the headquarters is

16   relatively straightforward. It's made in public filings

17   which are an easy place to look, and if you look at the

18   experience of the Seventh Circuit, which of course has

19   applied the headquarters approach across the board over

20   the course of several decades, I think we can see that

21   that test has been straightforward and it is simple in

22   application, in the main.

23   Now, that is not to say that there are not

24   issues about the definition of headquarters at the outer

25   perimeters. There are. And I think the place I would

1   look first and foremost is: Where does direction and

2   control for the corporation come from? That is the

3   situs at which the headquarters would be found.

4   And I would look also to what a corporation

5   itself identifies as headquarters in public filings. In

6   10-K filings and under the Model Business Corporations

7   Act, corporations have to report their headquarters in

8   annual reports. And of course they are doing those

9   reports for other reasons other than establishing

10   jurisdiction in a particular case, so I think they come

11   with an air of objectivity about them. That's where I

12   would look.

13   Now, I would make this other point, though,

14   about the ambiguity that Your Honor points to with

15   respect to the definition of a headquarters. That --

16   that is not at all an ambiguity that only applies to our

17   test, because under Respondent's test and under the test

18   of every court of appeals, they take into account the

19   headquarters.

20   Now, we would think that that is

21   dispositive. The other courts consider it at least

22   highly relevant, albeit not dispositive. But whatever

23   ambiguities --

24   JUSTICE GINSBURG: Why did the others all go

25   through some through total, totality of the factors

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 1   test? I mean, obviously, you could pick the

 2   headquarters. You'd say Congress wanted one place;

 3   headquarters is a logical choice, end of -- but most

 4   circuits have made it more complicated than that. The

 5   Seventh Circuit is the only one who said, keep it

 6   simple, as you urge -- headquarters.

 7   Why are the other circuits resistant to the

 8   solution that you are proposing.

 9   MR. SRINIVASAN: Well, first in a situation

10   with a multistate corporation with dispersed operations,

11   as we point out in footnote 2 of our reply brief, I

12   think the courts of appeal are generally in agreement

13   that the headquarters would control in that situation.

14   Now, with respect to whether you would have

15   an across-the-board headquarters rule, Justice Ginsburg,

16   I think what happened is, the first court to consider

17   this question was the Third Circuit in the Scott case,

18   pretty soon after the statute was enacted in 1958. And

19   that court, with respect, didn't wrestle with the

20   ordinary meaning of the statutory terms, and it didn't

21   wrestle with the strong premium on simple and

22   administrable jurisdictional rules. And then that

23   doctrine sort of took on a life of its own, I think.

24   JUSTICE GINSBURG: But is it -- they -- they

25   do it in different ways.

1   MR. SRINIVASAN: They do.

2   JUSTICE GINSBURG: Some say business

3   operations, some say headquarters.

4   MR. SRINIVASAN: There -- there is a variety

5   of different approaches. I think all of them share the

6   common feature that they consider, essentially, a

7   totality of the circumstances. And all of them, in our

8   view, share a common flaw, which is --

9   JUSTICE GINSBURG: How does -- how do the

10 bankruptcy courts do it? I mean, you brought out that

11 "principal place of business" was -- was a term that the

12 bankruptcy courts had been using before the amendment of

13 1332, 1958. But I -- I don't think that the -- that it

14 is inevitably headquarters for the bankruptcy courts. I

15 mean, there's -- sometimes it is in other places, isn't

16 it?

17   MR. SRINIVASAN: Well, the bankruptcy courts

18 -- I think the fairest assessment of the bankruptcy

19 courts as of 1958 was that it was a model.

20   Now, since then, the Collier's treatise, for

21 example, would tell you that the majority and

22 predominant rule is the headquarters rule, even in the

23 bankruptcy context. Pre-1958, I think there was a

24 conflict. That's what the treatises said and that's

25 what we explain in our brief. But there certainly were

1   some courts that adopted a headquarters approach, even

2   in the bankruptcy context.

3   But I think one thing I would caution the

4   Court about is assuming that just because some courts in

5   the bankruptcy context, because of bankruptcy-specific

6   considerations -- and a specific consideration was the

7   felt need to have the assets of the bankrupt estate

8   within the purview of the court so that the court could

9   administer the estate -- that Congress would have wanted

10   to import every judicial application down to every

11   nuanced detail in the bankruptcy context over to the

12   jurisdictional context, where we know that Congress

13   thought that simplicity was a real virtue.

14   And I think, as Your Honor's opinion in

15   Wachovia v. Schmidt a few terms ago points out, there is

16   no reason to assume that Congress would have taken one

17   word in the venue context and applied the exact same

18   meaning to that same word in the jurisdictional context.

19   And here, because of the strong preference -- excuse me

20   -- in favor of simplicity and administrability in

21   jurisdictional rules, that is a particularly poignant

22   reason why the headquarters approach, in our -- in our

23   point of view, should govern in all circumstances.

24   Now --

25   JUSTICE GINSBURG: In the case -- this is

1   purely hypothetical, but suppose Hertz were to be

2   bankrupt, file a petition in bankruptcy, where -- New

3   Jersey would be the place, on your -- or the assets are

4   dominantly someplace else, so it would be another place?

5   MR. SRINIVASAN: Well, I think, if -- if

6   what you are asking, Justice Ginsburg, is, where would

7   the principal place of business be under the bankruptcy

8   statute, the majority rule now, under the Fifth Circuit

9   case Commonwealth Oil Refining and the Seventh Circuit

10   case Peachtree, would show that the majority rule now is

11   that the principal place of business would be New

12   Jersey.

13   And one point I would like to get to in that

14   regard is the sort of oddity of saying that the -- the

15   principal place of business of a company like Hertz

16   would be somewhere other than New Jersey. The Ninth

17   Circuit has a view that the principal place of business

18   of Hertz is California, based on the fact that Hertz

19   conducts 20 percent of its business in California.

20   But it is important to bear in mind that

21   this statute is a zero-sum game. So that if Hertz is

22   deemed to have its principal place of business in

23   California, such that it is disabled from getting access

24   to diversity jurisdiction in California, the consequence

25   is that Hertz would be enabled to gain diversity

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1   jurisdiction in every other State -- and I'm putting to

2   one side Delaware, the State of incorporation -- but it

3   would be enabled to gain access to -- to diversity

4   jurisdiction in every other State.

5   So the consequence would be that if Hertz

6   were sued in a State court action in Park Ridge, New

7   Jersey, the site of its headquarters, Hertz could get

8   Federal court jurisdiction in that jurisdiction on the

9   theory that it's an out-of-State company, it's a

10   California company, because it performs 20 percent of

11   its business in California.

12   Now that -- the oddity of that, in our view,

13   is particularly poignant if one takes into account a

14   company like Wal-Mart. Wal-Mart is universally

15   recognized to be an Arkansas corporation because it is

16   headquartered in Bentonville, Arkansas, but Wal-Mart

17   also, it's undisputed, does substantially more business

18   by any of the measures that the Ninth Circuit considers

19   significant in Texas. It has more employees there; it

20   has more stores there; it generates more revenues there,

21   by a significant factor well in excess of 50 percent

22   over and above any other State.

23   But the consequence of deeming Wal-Mart a

24   Texas corporation based on the amount of business it

25   does in Texas would be not only that Wal-Mart would be

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1   disabled from getting Federal court jurisdiction in

2   Texas, but that Wal-Mart would be enabled to get Federal

3   court jurisdiction in Bentonville, Arkansas, on the

4   theory that even in Arkansas, Wal-Mart would be an

5   out-of-State corporation, a Texas corporation, because

6   of the level of business that it conducts in Texas.

7   And we don't think that is the result that

8   Congress would have envisioned in 1958 when it enacted

9   the Principal Place of Business provision. Instead,

10   what Congress presumably had in mind is that

11   corporations, as a general matter, are identified with

12   the location of their headquarters.

13   So in the Wal-Mart situation, Wal-Mart

14   rightly is universally acknowledged to be an Arkansas

15   corporation because of the presence in that State of its

16   headquarters.

17   JUSTICE SOTOMAYOR: Counsel, all you are

18   talking about is not necessarily nerve center, because

19   in reading the examples in your brief, what you are

20   talking about is: Where is the place where they have

21   the most important, significant, influential contact?

22   Now, the Ninth Circuit has defined that as

23   the place where business is done; you are suggesting

24   that it's the place where the nerve center is. But it

25   goes back to begging my question: Why -- just simply

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1 their declaring it on a tax form doesn't make it

2 important, influential, or significant contact. There

3 has to be something more to the test, and it can't be

4 just what I declare my headquarters to be. There has to

5 be some form of activity in that place.

6   MR. SRINIVASAN: There does, Your Honor, and

7 we think -- I guess the -- the comparison I would make

8 is to an individual, because an individual can't declare

9 that he or she is a domiciliary of a particular State

10 and have it be so for citizenship purposes. There has

11 to be something behind that, and so too with

12 corporations.

13   JUSTICE SOTOMAYOR: That's -- that's the

14 point.

15   MR. SRINIVASAN: Exactly, and we -- we share

16 that view. A corporation couldn't simply declare that

17 its headquarters are located in a -- in a location where

18 it has a mailbox, for example, and have that be

19 dispositive for citizenship purposes. What --

20   JUSTICE SOTOMAYOR: Is there -- is there

21 something to a rule that says headquarters is

22 presumptively the nerve center, but a challenged party,

23 whoever that is, can rebut it?

24   MR. SRINIVASAN: I think certainly it would

25 be a vast improvement over what the Ninth Circuit has.

18

1   So I would say that as a starting point, Your Honor. I

2   think -- in our view, of course, a principal submission

3   is the headquarters controls in all -- in all

4   situations, and the cost of having, you know, a

5   rebuttable presumption would be: What does it take to

6   rebut it? That would be question. And I think--

7   JUSTICE SOTOMAYOR: Well, that's the point

8   that I raised, which is that the headquarters is not an

9   important, consequential, or substantial. You can rebut

10   it if you can show that it is a shell headquarters.

11   MR. SRINIVASAN: Yes. And I think in that

12   situation, I guess -- I guess there is two different

13   ways that one could look at that. One is to say that

14   you could rebut it, but the other is to say that it is

15   not the headquarters.

16   And I guess that's the way that I would look

17   at it, is to say that if the corporation identifies a

18   location at which it in fact doesn't direct and control

19   the operations of the corporation throughout, it

20   wouldn't constitute the headquarters.

21   JUSTICE SOTOMAYOR: Well, but --

22   MR. SRINIVASAN: So I guess that's where I

23   would place the load-bearing weight. It may be

24   semantic, but --

25   JUSTICE SOTOMAYOR: That's the problem,

1   which is, the party comes in, alleges by summary

2   judgment that -- in a summary judgment motion: This is

3   my corporate headquarters. The other side's going to

4   have to come forth with evidence that shows something.

5   MR. SRINIVASAN: Right. And if -- and --

6   JUSTICE SOTOMAYOR: So that it's always a

7   rebuttable presumption.

8   MR. SRINIVASAN: There is, Your Honor, and

9   if the other side were able to show that the location

10   that the party identifies as -- as its headquarters does

11   not, in fact, function as a headquarters, in the sense

12   that suppose there is no executives there, or suppose

13   that the officials that are there in fact don't direct

14   and control the company's operations in other locations.

15   Well, then, that -- that would be a real issue.

16   But there are checks against that, because

17   corporations identify their headquarters in other public

18   filings, and in the main, those headquarters are the

19   locations in -- from which the chief executives direct

20   and control the companies' operations --

21   JUSTICE SOTOMAYOR: I actually do not know

22   whether public filings define what "headquarters" mean.

23   Is there a -- I know you have said it in your brief, but

24   what I didn't know is whether those public filings

25   define the activity necessary to designate a place as

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1   "headquarters."

2   MR. SRINIVASAN: Well, they -- they do in

3   the following sense, Your Honor. For example, with the

4   10-K report for publicly traded companies, I think the

5   question that is asked is not the location of the

6   headquarters but the location of the principal executive

7   offices. And so I think, by definition, in answering

8   that question the principal executives would be located

9   at that -- at that location. Now, if they weren't, we

10   would certainly take Your Honor's point that there could

11   be a back-and-forth about that, but that --

12   JUSTICE GINSBURG: I know, but didn't

13   Congress pick "a principal place of business"? And we

14   know that they looked at the bankruptcy courts. There

15   are lots of expressions in other statutes. Some say

16   "headquarters." Some say -- well, there are a variety

17   of things, but Congress picked this particular term,

18   "principal place of business."

19   And I was thinking, when you gave the

20   example of Texas, that the idea of diversity is you are

21   not going to get a Federal forum where you are at home.

22   And so one would think, well, if Wal-Mart is doing so

23   much in Texas, it's really no stranger in Texas. Why

24   shouldn't there be diversity in Texas?

25   MR. SRINIVASAN: Well, in -- in response to

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1   the latter point, Your Honor, I think the one thing we

2   do know from 1958 is that Congress didn't think that a

3   corporation should be disabled from getting diversity

4   jurisdiction anywhere where it does a substantial

5   business, because it had that proposal before it, and it

6   rejected it.

7   JUSTICE GINSBURG: It rejected it, yes.

8   MR. SRINIVASAN: It instead chose an

9   approach whereby a company is disabled from getting

10   diversity jurisdiction in one, and only one,

11   jurisdiction, the jurisdiction in which it has its

12   principal place of business.

13   And I think what Congress had in mind is

14   that corporations, as a general matter, are identified

15   with their headquarters. And that is why Wal-Mart, for

16   example, is universally recognized as an Arkansas

17   company. It may be that Wal-Mart does substantial

18   business in Texas, substantially in excess of other

19   States, but Wal-Mart also does substantial business in a

20   variety of jurisdictions. But Congress decidedly didn't

21   have the rule that says wherever Wal-Mart does a

22   substantial business and is a well recognized company,

23   it should be disabled from getting to Federal court. It

24   limited it to one jurisdiction.

25   And we think the best reading of the phrase

1   "principal place of business" is the situs of the

2   headquarters in that there were -- with -- with respect

3   to the bankruptcy decisions, Your Honor, there -- there

4   were bankruptcy courts that did have a "headquarters"

5   approach. And, in fact, the one bankruptcy court of

6   which I am aware that looked at the meaning of the

7   ordinary language -- we cite the -- the relevant -- the

8   portion of the court's opinion at page 50 of our opening

9   brief in footnote 5. It is the First Circuit's opinion

10   in the Burdick case.

11   And what the First Circuit said was that a

12   corporation's, quote, "principal office," rather than a

13   factory, mill or mine, according to ordinary

14   understanding and speech, constitutes the principal

15   place of business within the meaning of the Bankruptcy

16   Code."

17   And so even before 1958, I think there was

18   definitely a sense out there that the term "principal

19   place of business" does mean headquarters. And this

20   gets to Your Honor's other question which is: If

21   Congress really meant "headquarters," why wouldn't they

22   have used the term "headquarters" instead of "principal

23   place of business"?

24   And I think our answer to that, with respect

25   to Your Honor, is that "principal place of business" is

1   an alternative formulation for "headquarters." And so I

2   don't think one can glean too much from the fact that

3   Congress chose "principal place of business" rather than

4   "headquarters" when "principal place of business" in our

5   view is a reference to the headquarters.

6   And this Court's opinion last term in the

7   Oswell Harlow versus United States case is a good

8   example of that, because there the statute that was at

9   issue used the term "facilitate" rather than the term

10   "aid or abet." And one could have readily made the

11   argument that because the statute uses the term

12   "facilitate" rather than "aid or abet," that normal

13   principles that accompany aiding and abetting liability

14   shouldn't apply in the statute. But the Court rightly

15   in our view reached the contrary conclusion, and it was

16   based on the notion that the term "facilitate,"

17   according to Black's Law Dictionary, means the very same

18   thing as "aid or abet." And once you cross that bridge,

19   then you can apply aiding or abetting principles to the

20   term "facilitate."

21   And here, likewise, the term "principal

22   place of business," according to Black's Law Dictionary,

23   means "headquarters." That's how Black's Law Dictionary

24   defines the term. And so the fact that Congress chose

25   one alternate formulation versus another, I don't think

1   speaks too loudly to the question of --

2   JUSTICE GINSBURG: What about her argument

3   that -- that Hertz has this New Jersey headquarters, but

4   its reservation center is in Oklahoma?

5   MR. SRINIVASAN: Sure, and -- and, again, I

6   would look at the public filings.   In the public filings

7   in the 10-K, for example, Hertz universally identifies

8   its headquarters as Park Ridge, New Jersey.   And the

9   reason is that the chief executive officials are all

10   located in Park Ridge.

11   Now, there is a large administrative

12   apparatus in Oklahoma City, and, according to the

13   affidavit, its administrative activities are performed

14   in Oklahoma City to a lesser extent.   And that is at

15   paragraph 11 of the affidavit, which is at pages 29a to

16   30a of the appendix to the petition.

17   But I don't think there is any real dispute

18   that Hertz's main headquarters are located in Park Ridge

19   rather than Oklahoma City.   In point of fact, what you

20   have in Oklahoma City -- and -- and this isn't spelled

21   out in the -- in the affidavit, but what you have in

22   Oklahoma City is essentially the rental call center and

23   plus principal back-office duties like information

24   technology support.   But what you have in Park Ridge is

25   all of the company's chief executives.   So the decision-

25

1   making locus for the company's most important decisions

2   is absolutely in Park Ridge, New Jersey, rather than

3   Oklahoma City. And there is no dispute on the point

4   that is before the Court.

5   This Court comes -- this case comes to the

6   Court on the assumption that Hertz's headquarters are

7   located in Park Ridge. The question for the Court is

8   whether that headquarters location should be dispositive

9   for purposes of defining a company's principal place of

10   business.

11   Now, if I could -- if I could turn for one

12   moment to the cost in terms of simplicity and

13   demonstrability of an alternative formulation if the

14   Court were to accommodate a formulation that didn't look

15   to the headquarters, we see three potential categories

16   of costs that are brought about by the -- the proposed

17   approach of Respondents in what the Ninth Circuit has

18   established.

19   The first is the one that underlies the

20   strong preference in favor of simple, demonstrable,

21   jurisdictional rules. And that is just the time and

22   resources that would be invested at the threshold

23   jurisdictional stage in defining whether the case is --

24   is before the proper court. That in itself is reason

25   enough, in our view --

1   JUSTICE KENNEDY: Not all diversity suits

2   have major law firms in them and a lot of resources to

3   spend in -- in discovery to determine more complex

4   tests.

5   MR. SRINIVASAN: That's right. Yes, that's

6   our point, Justice Kennedy, and I think a "headquarters"

7   test is simple and straightforward in that respect, and

8   a "totality of circumstances" approach isn't. But there

9   is also two additional costs that I would point out

10   about a "totality of circumstances" approach.

11   One is that you can have the very real

12   possibility because of the indeterminacy in that

13   approach that different courts would reach divergent

14   conclusions about the citizenship of the very same

15   corporation. And as we point out on page 40 of our

16   brief, that has already happened. Two district courts

17   in the Ninth Circuit alone in two California courts

18   reached divergent conclusions on the citizenship of

19   United Airlines. One court concluded that United was an

20   Illinois citizen, and another court concluded that

21   United was a California citizen. And that is not

22   altogether surprising that you would have those sorts of

23   divergent conclusions given the open-ended nature of the

24   "totality of circumstances" approach.

25   The third cost that I would point to is the

27

1   possibility that because of the indeterminacy in the

2   approach you could have a situation in which a district

3   court finds there is jurisdiction, proceeds to have a

4   trial on the merits and renders -- renders judgment on

5   the merits, and then several years later the court of

6   appeals would reverse the judgment because the district

7   court had gotten the jurisdictional input wrong at the

8   outset. And, again, that also, as with the situation

9   with divergent conclusions on the citizenship of the

10   same corporation, is not just a problem of theory. It

11   has actually happened.

12   JUSTICE GINSBURG: Even -- even when the

13   direct -- the -- even subject-matter jurisdiction is

14   precluded after final -- final judgment after direct --

15   so that's nothing new. It is the same example you gave.

16   MR. SRINIVASAN: Well, I think -- I guess my

17   point is that precisely because subject-matter

18   jurisdiction can be raised at any point --

19   JUSTICE GINSBURG: Not any point in the

20   direct -- up to denial of cert on direct review. After

21   that it's precluded, even subject-matter jurisdiction.

22   You can't collaterally attack on that basis.

23   MR. SRINIVASAN: Sure, right. I guess what

24   my point is that you could have a situation where a

25   trial court has reached a resolution on the merits.

28

 1   Several years -- several years later the court of

 2   appeals on direct review would reach the conclusion that

 3   the district court got it wrong on subject-matter

 4   jurisdiction.

 5   JUSTICE GINSBURG: Yes.

 6   MR. SRINIVASAN: And there is a case that we

 7   cite in our brief, the Diaz -- Diaz versus Pep Boys

 8   case, that involve that situation.

 9   If the Court has no further questions, I

10   would like to reserve the balance of my time.

11   CHIEF JUSTICE ROBERTS: Thank you, counsel.

12   Mr. Schneider?

13   ORAL ARGUMENT OF TODD M. SCHNEIDER

14   ON BEHALF OF THE RESPONDENTS

15   MR. SCHNEIDER: Thank you. Mr. Chief

16   Justice, and may it please the Court:

17   For 50 years every circuit save the -- save

18   the Seventh had agreed -- has agreed on one overriding

19   principle: That courts must perform a balancing in

20   determining the principal place of business of a

21   corporation, and that balancing must include a

22   determination of where the corporation's people and

23   property are.

24   CHIEF JUSTICE ROBERTS: Is -- is that a fair

25   description of what the Ninth Circuit did here? Did

29

1   they perform a balancing, or did they look solely to

2   where most of the sales were?

3   MR. SCHNEIDER: The -- the Ninth Circuit

4   specifically in this case noted that 43 percent more

5   employees for Hertz are in California, 75 percent more

6   property, 60 percent more revenue, and --

7   JUSTICE SCALIA: More than -- more than

8   what, more than any other single State?

9   MR. SCHNEIDER: That's correct, Justice

10   Scalia.

11   JUSTICE SCALIA: But it doesn't say the --

12   the "principal State of business." It's the "principal

13   place of business." Is there a difference between the

14   two?

15   MR. SCHNEIDER: I think I have two answers

16   to that, Your Honor. The first answer is that Congress

17   was using a term of art that was imported from the

18   Bankruptcy Code.

19   In all of the Bankruptcy Code cases prior to

20   1958, the 11 USC 11 cases take an aggregation approach

21   when they look at it State-by-State, so, if we raise

22   principal place of business as a term of art that

23   Congress imported into this statute, then we have to

24   look at an aggregated State-by-State approach.

25   The other answer, I think, is more of a

1 semantic answer, which is how did Congress define the

2 word "place"? Certainly, the English language provides

3 that a place can be a building, as Hertz would have, or

4 a place could be a State, as we -- my place of birth,

5 for example, is New York State.

6   JUSTICE SOTOMAYOR: Why -- why didn't they

7 say place of doing business? That's not the terminology

8 that they used.

9   MR. SCHNEIDER: They didn't, and Congress

10 was --

11   JUSTICE SOTOMAYOR: That would be more

12 consistent with an aggregation of -- of all of the

13 factors the Ninth Circuit starts with.

14   MR. SCHNEIDER: Your Honor, Congress chose

15 the phrase "principal place of business" because, to

16 quote the legislative history, there were many cases on

17 the books, and it was an easily understood phrase.

18   I think what Congress intended to do was to

19 not have us end up here, to take a phrase which was

20 known in the case law and to import it --

21   JUSTICE SOTOMAYOR: Counsel, what's very

22 clear from all of the articles I have read in the lower

23 court decisions is that Congress may have thought it was

24 picking a well-defined phrase, but, in fact, it wasn't,

25 that the Courts below are confused about what they were

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 1   doing before the statute.

 2   So I don't know why importing the belief

 3   that something was clear into a reality that it's not

 4   helps us.

 5   MR. SCHNEIDER: Your Honor, in answer to

 6   Justice Scalia's question, I believe it was clear, from

 7   all of the case law, that we were talking about place

 8   equalling an aggregation of all of the activity in the

 9   State.

10   With regard to your question, we have cited

11   in our brief two district court opinions that performed

12   a scholarly review of all of the case law at the time

13   that Congress passed the 1958 amendments. Particularly

14   of import is the Inland Rubber case.

15   And what the court found in the Inland

16   Rubber case is, while there was two lines of thinking,

17   there was the -- what came to be known as the nerve

18   center line of thinking and what came to be known as the

19   business reality line of thinking.

20   The nerve center test could almost all be

21   explained by the fact that, in those cases, the

22   corporation only had one place of business, there were

23   some outliers, but for the most part, the two judges, in

24   the Gilardi case and in the Inland Rubber case --

25   JUSTICE SOTOMAYOR: So why do you -- why do

1   you think that the circuits courts -- the vast majority

2   of them, the third, the first, the second, the fifth,

3   they all start with the proposition that, if a place has

4   far-flung businesses, then the nerve center test should

5   start the inquiry and control it more than in a

6   situation where there are lesser places of business?

7   MR. SCHNEIDER: Yes. That's the total

8   activities test, Your Honor, and the total activities

9   test would put initial weight on the nerve center, but

10   if one -- and then, of course, weigh whether or not

11   there is a substantial predominance of all of -- of all

12   of the other factors somewhere in the country, which,

13   frankly, is not a lot different than the Ninth Circuit

14   case -- test.

15   The Ninth Circuit simply does it in the

16   other way. It asks --

17   JUSTICE SOTOMAYOR: Well, that's a big

18   difference.

19   MR. SCHNEIDER: It asks the same question,

20   whether or not there is a -- a substantial

21   predominance -- finds substantial predominance, not just

22   predominance, but substantial predominance.

23   JUSTICE SOTOMAYOR: I -- you know, to me,

24   the word "substantial" usually means closer to 50

25   percent. I'm having a hard time understanding what the

1   appreciable difference is between 20 percent and 14 and

2   the balance being spread over so many other places.

3   What -- that seems very arbitrary in terms

4   of the place that generates the most money. That's it.

5   That's the place you are at home.

6   MR. SCHNEIDER: I think, to understand it,

7   one must look at the purpose of diversity. The real

8   question is, is diversity to be used as a sword by a

9   corporation, such that a corporation can choose its

10   place of diversity jurisdiction, or is it a shield to

11   protect the corporation, a truly foreign corporation,

12   from local bias?

13   JUSTICE SOTOMAYOR: Well, but that's what --

14   but that goes back to the point, if we are talking about

15   shields or swords, Congress had before it a provision

16   that would say, anywhere you do business, you are not a

17   foreigner, because you are there. The people are going

18   to perceive you as a business -- the local business that

19   is doing business in that location, and Congress

20   rejected that.

21   So foreign has to have a meaning that was

22   somewhat different. And you don't think the corporate

23   headquarters where management is, where the direction

24   for the operation of the business is coming from, is the

25   place that needs the most protection in this system

1 because they are the ones making the decisions, and so

2 aren't they the ones who need to be protected from local

3 bias?

4   MR. SCHNEIDER: Courts have found that

5 corporations are best known where they have most of

6 their people and their property. That's because

7 employees go out in the community, property is bought

8 and sold in the community, so the local people will know

9 the corporation more where they have their people and

10 property than, necessarily, where they have the

11 headquarters.

12   Until this case began, I had no idea where

13 Hertz headquarters are. There is many corporations in

14 the State of California, that I have no idea are

15 headquartered in the State of California.

16   JUSTICE GINSBURG: The problem with your --

17 your approach -- and California is unique in this

18 respect, is -- California is a very large State, lots of

19 business, and you are comparing to the next State that

20 has the next number of employees -- you know, Florida.

21   If I were entertaining your approach, I

22 would think, well, you would compare California against

23 the whole rest of the nation and not pick for a

24 dispersed -- a corporation that is widely dispersed.

25   California is going to be the big winner in

1   this. It's going to be able to keep all those cases in

2   its State court because so many multi-State

3   corporations, I imagine, would come out, just the way

4   Hertz does.

5   Am I right, that, under your analysis, the

6   one place where, if you say, we don't want Federal

7   courts to be dealing with corporations that are at home

8   in the State, but in the State of New Jersey, under your

9   view of things, a New Jersey citizen could sue Hertz in

10   Federal court in New Jersey, right?

11   MR. SCHNEIDER: That is correct, Your Honor,

12   unless, of course, Hertz were to change its place of

13   incorporation to New Jersey.

14   JUSTICE GINSBURG: And why do you say,

15   well -- why is it that the Ninth Circuit's method,

16   California versus Florida, instead of California and

17   let's see what the rest of the business is -- is, in the

18   whole United States?

19   MR. SCHNEIDER: I think the answer, Justice

20   Ginsburg, to that question goes back to how the phrase

21   "principal place of business" was looked at under the

22   Bankruptcy Code, and in the Bankruptcy Code, it was, in

23   fact, a State-by-State analysis, rather than a State

24   versus country analysis.

25   Now, Justice Ginsburg, you asked me, did it

1   mean that all corporations were going to end up being

2   California corporations? California -- the Ninth

3   Circuit has been doing it this way for 50 years. Every

4   other circuit has had -- save the seventh -- has had

5   some balancing test for 50 years, and it has not come to

6   pass that all corporations are California corporations.

7   A matter of fact, if you think of a

8   corporation that sells skis, they are likely going to be

9   a Colorado corporation, or they are going to be a Utah

10 corporation. A -- a corporation that sells mining

11 equipment is likely to end up in West Virginia or one of

12 the mining States.

13   JUSTICE SCALIA: I don't understand why,

14 somehow, a Californian is more likely to identify with

15 Hertz, simply because there are more Californians and,

16 hence, more Hertz outlets, than a New Jerseyite is

17 likely to identify with Hertz.

18   Per capita, there are probably as many Hertz

19 outlets in New Jersey as there are in California. The

20 only reason that you come up with California is it's an

21 enormous State. It has 10 percent of the population.

22   But as far as the citizens of the State

23 identifying with that -- with that company and,

24 therefore, the unfairness of -- of letting that

25 company -- you know, remove to Federal court, New Jersey

1   and California are absolutely the same.

2   MR. SCHNEIDER: Congress made a decision in

3   rejecting the any place where you are doing business

4   test, that it would not prevent corporations from

5   removing cases in any State where they are doing

6   business.

7   The question in diversity jurisdiction is

8   not whether or not a corporation should be allowed to

9   use the Federal forum to decide if that's the best forum

10   for it, but the question is a different one. Will there

11   be bias in the -- in the State court?

12   And because Hertz does so much business in

13   California, it's hard to argue that we bias by being in

14   the State court in California. Remember, this case --

15   JUSTICE GINSBURG: But they cannot be

16   advised by the State court in New Jersey either. The --

17   you correctly pointed out that Congress said place of

18   business. It didn't even do as it did with -- it didn't

19   do as it did with -- with corporate citizenship, that is

20   you could be a citizenship of as many States as you

21   incorporate in. But if it's got to be one place, so why

22   not just keep it simple and say presumptively it's the

23   business headquarters, in a particular case you could

24   show otherwise.

25   MR. SCHNEIDER: Congress had two goals,

1   Justice Ginsburg. The first goal was to prevent gaming

2   of the system. The simplest test is also the most

3   easily --

4   JUSTICE GINSBURG: But that would be a phony

5   headquarters. But nobody is suggesting that -- that the

6   headquarters of Hertz in New Jersey, that that's a sham

7   set-up.

8   MR. SCHNEIDER: But even a -- even a real

9   headquarters wouldn't prevent gaming of the system.

10   If -- if a corporation truly wanted to stay out of State

11   court in a State where it was doing significant

12   business, even all of their business under Hertz' test,

13   they would only have to actually move their headquarters

14   out of that State.

15   There is a second reason that Congress

16   passed the '58 amendment --

17   JUSTICE GINSBURG: Is that phenomenon? I

18   mean, I can see that as a hypothetical, but does it

19   happen in the real world, that a corporation moves its

20   headquarters in order to escape the Federal courts in a

21   particular State?

22   MR. SCHNEIDER: Because the test is only a

23   Seventh Circuit test, it wouldn't do any good for a

24   corporation --

25   JUSTICE SCALIA: Well, it is one of the

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 1   factors in other -- in other states as well. It's part

 2   of the totality of the circumstances. You certainly

 3   increase your odds to move your headquarters.

 4   MR. SCHNEIDER: It would, but it wouldn't be

 5   dispositive. We do know that corporations move for all

 6   sorts of economic reasons. They move for tax reasons,

 7   they move because --

 8   JUSTICE GINSBURG: But why would they move

 9   simply to avoid a Federal court or to gain access to the

10   Federal court in a particular State?

11   MR. SCHNEIDER: There is -- as witnessed by

12   congressional findings in the Class Action Fairness Act,

13   there is a perception that State courts in certain

14   States are not good for corporations. Whether that --

15   that perception is a real perception or whether it's not

16   a real perception isn't before us today.

17   But if a corporation has all of its people

18   and all of its property and is doing all of its business

19   in one of those States, the corporation shouldn't be

20   allowed to game the system by simply moving its

21   headquarters, it's real headquarters out of that State.

22   JUSTICE GINSBURG: But we are not talking

23   about all. I mean, that would be -- that's why you make

24   it a presumption, the headquarters is a presumption

25   which could be rebutted. But you are not talking about

 1 all business. You are talking about California where

 2 there is a sizeable amount of business, simply because

 3 it's the size of the State, the population of the State.

 4   And I would understand your position better

 5 if you would say, well, we would measure against the

 6 entirety of the United States. But California is going

 7 to come out the winner much more often than any other

 8 State under this test simply because of its size.

 9   MR. SCHNEIDER: With respect, Justice

10 Ginsburg, I don't believe that the case law has borne

11 that out. Again, I have read no studies that say

12 corporations are more often California citizens simply

13 because of the population of California -- that doesn't

14 mean that the study hasn't exist -- doesn't exist. I

15 simply haven't read it.

16   JUSTICE SCALIA: We don't worry about

17 private individuals gaming the system, do we, by -- you

18 know, in -- in order to get into or out of Federal

19 court, establishing residence in a different State? We

20 don't worry about them gaming the system, do we?

21   MR. SCHNEIDER: We do, Justice Scalia.

22 There is a fact-intensive test for citizenship for

23 individuals based on their intent to stay in a place.

24   JUSTICE SCALIA: Sure. But -- but you can

25 have a genuine intent to go somewhere else, and I don't

41

1   know that people do it for foreign reasons because they

2   want to get in or out of Federal court. You really

3   don't worry about that, it seems to me.

4   MR. SCHNEIDER: I do believe it is less

5   likely that an individual would either have the

6   sophistication or, frankly, the litigation volume to

7   make such a decision? But a corporation may, in fact.

8   JUSTICE SCALIA: I know some rich

9   individuals that might have the incentive.

10   MR. SCHNEIDER: I would like to turn, if I

11   may, to the second reason that Congress passed the '58

12   amendment and that was because of the notion of

13   overcrowding of the Federal docket because too many

14   diversity cases -- because there were too many diversity

15   cases because most litigation was happening far away

16   from the facts.

17   Suits involving corporations generally arise

18   where they have a lot of contacts with the public, where

19   there people are and where their property are. If we

20   allow a corporation to move all of its litigation where

21   the bulk of its people and property are to Federal

22   court, Congress's second goal --

23   JUSTICE STEVENS: Mr. Schneider, can I just

24   inject this thought? It goes back to Justice Kennedy's

25   question. I don't think we are concerned about the

1   defendants gaming the system. I think one other very

2   important concern is plaintiffs sometimes in small

3   communities want to sue somebody, and sometimes they

4   would much rather be in Federal court, because sometimes

5   the judges are better than the local judges, and so

6   forth. So there are a lot of reasons why plaintiffs

7   want to get into Federal courts.

8   And it seems to me it's important to have a

9   rule that makes it easy for the plaintiff to decide what

10   is the citizenship of the defendant, can I get into

11   Federal court or not. And I see it as a great argument

12   in favor of a very simple rule to benefit plaintiffs.

13   MR. SCHNEIDER: The -- again, for 50 years,

14   Justice Stevens, plaintiffs and plaintiffs' lawyers have

15   been able to under the various tests figure out where

16   corporations are citizens.

17   JUSTICE STEVENS: But you must acknowledge

18   that it's a lot easier for a plaintiff -- there is some

19   place to get on the internet and say where is their

20   principal place and they get a simple answer. If you

21   get a question, well, I got to analyze their business

22   all over the country to decide, that's a formidable

23   obstacle for a -- for a plaintiff to overcome.

24   MR. SCHNEIDER: It may or may not be,

25   depending upon the corporation. The vast majority of

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 1 corporations are local corporations, so we are really

 2 just talking about --

 3   JUSTICE STEVENS: -- of an interstate

 4 business who are commonly defendants in a lot of

 5 lawsuits -- in a personal injury suit, and the question

 6 is, can I easily decide what the place of incorporation

 7 of that defendant is.

 8   MR. SCHNEIDER: That's correct, Justice

 9 Stevens. And because most of those entities are public

10 corporations, there is a lot of information available in

11 FCC filings, et cetera, as to where they are actually

12 doing business. You can also simply look out your door

13 and figure out whether have I seen a lot of Hertz

14 outlets where I am.

15   CHIEF JUSTICE ROBERTS: Where is -- under

16 the Ninth Circuit test, where is -- what is the

17 principal place of business of Starbucks?

18   MR. SCHNEIDER: Under the Ninth Circuit

19 test, the principal place of Starbucks, there is a case

20 that says Starbucks is in California. Let me give you,

21 Mr. Chief Justice --

22   JUSTICE SCALIA: That's a surprise.

23   (Laughter.)

24   MR. SCHNEIDER: I was -- I was surprised as

25 well. But -- but let me give you the numbers so that it

 1   makes sense, because I have read the case.

 2   JUSTICE GINSBURG: Where is -- where is its

 3   headquarters.

 4   MR. SCHNEIDER: Headquarters is in Seattle,

 5   Washington. But over -- that's correct, Your Honor.

 6   JUSTICE SOTOMAYOR: That's the very first

 7   little shop was there.

 8   MR. SCHNEIDER: That's my understanding,

 9   yes. However, over 100 percent more workers from

10   Starbucks are in California than Washington.

11   JUSTICE SOTOMAYOR: Can you tell me what

12   100 percent means? Are the number of workers in Seattle

13   inconsequential? Is there one worker there or are we

14   talking about 1,000 in --

15   MR. SCHNEIDER: I don't know the total

16   numbers of the workers.

17   JUSTICE SOTOMAYOR: Isn't that important?

18   As Justice Scalia said that per capita California is

19   going to dwarf anybody anywhere if you are going to have

20   a multi-location place of business. So don't you have

21   to know the raw numbers?

22   MR. SCHNEIDER: I -- I don't know the raw

23   numbers from Starbucks, I'm sorry. I just read the

24   opinion. And what the opinion tells us is that

25   Starbucks has 10 percent of its employees in Washington

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1   and 27 percent in California. Over 300 percent more of

2   its gross revenue comes from California than any other

3   State, 200 percent more of its retail stores are in

4   California than in any other State.

5   CHIEF JUSTICE ROBERTS: What about, I guess,

6   mail order houses? I mean, what's the principal place

7   of business of Eddie Bauer?

8   MR. SCHNEIDER: It would -- it would be,

9   Your Honor, wherever there is a substantial predominance

10   of its people and property. I would assume -- and I

11   don't know the facts of Eddie Bauer, but I would assume

12   Eddie Bauer has a central location from which it does

13   its sales, which it does its factory work, where it is

14   shipping things from.

15   CHIEF JUSTICE ROBERTS: Would -- would it

16   make a difference if, say -- it may well be the case, 30

17   percent of their business is in California?

18   MR. SCHNEIDER: No. But by business you

19   mean revenue, Your Honor?

20   CHIEF JUSTICE ROBERTS: Yes.

21   MR. SCHNEIDER: The test we posit, Your

22   Honor, focuses on people and property. The test would

23   look first to the location of employees, tangible

24   properties and production activities, and then second to

25   income earned, purchases made and where sales take

1   place.

2   Mr. Chief Justice, did the Court have

3   interest in the jurisdictional argument?

4   CHIEF JUSTICE ROBERTS: I don't know.

5   (Laughter.)

6   CHIEF JUSTICE ROBERTS: I can only speak for

7   one member of the Court, and that one doesn't.

8   MR. SCHNEIDER: Okay. Then if the Court has

9   any questions about the -- our jurisdictional argument,

10   I would be happy to answer them. And without further

11   questions --

12   CHIEF JUSTICE ROBERTS: Thank you, counsel.

13   Mr. Srinivasan, you have four minutes

14   remaining.

15   REBUTTAL ARGUMENT OF MR. SRI SRINIVASAN

16   ON BEHALF OF THE PETITIONER

17   MR. SRINIVASAN: Your Honor, just one point

18   and I will be brief.

19   The idea that corporations would switch

20   their -- location of their headquarters in order to

21   achieve jurisdictional results hasn't been borne out in

22   any example in which I'm aware. And there is a

23   fundamental reason why.

24   When a corporation decides to relocate its

25   headquarters, it's making a very important business

47

1   decision about what is the location from which its

2   direction and control is going to emanate. That is not

3   a gamesmanship decision. That's a bona fide decision

4   about where its headquarters are going to be located and

5   where its most important decision -- business decisions

6   are going to be made.

7   If the Court has no further questions --

8   JUSTICE SCALIA: That means that its

9   principal officers and their families have to move.

10   MR. SRINIVASAN: It does.

11   JUSTICE SCALIA: That's the biggest

12   disincentive it seems to me.

13   MR. SRINIVASAN: Absolutely, Justice Scalia.

14   If the Court has no further questions.

15   CHIEF JUSTICE ROBERTS: Thank you, counsel.

16   The case is submitted.

17   (Whereupon, at 11:56 a.m., the case in the

18   above-entitled matter was submitted.)

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