

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 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.

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

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

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

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

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

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.

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

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

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-

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

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.

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

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

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

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

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

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

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

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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