No. 13-___

IN THE

Supreme Court of the United States

CTS CORPORATION,

Petitioner,

v.

PETER WALDBURGER, ET AL.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

For certain state-law tort actions involving environmental harms, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) preempts the state statute of limitations' commencement date and replaces it with a delayed commencement date provided by federal law. Specifically, 42 U.S.C. § 9658 provides that if "the applicable limitations period for such an action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the date specified in such State statute." *Id.* § 9658(a)(1). Section 9658, in turn, defines "applicable limitations period"—i.e., the state laws to which § 9658 applies—to "mean[] the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) of this section may be brought." *Id.* § 9658(b)(2).

In this case, the United States Court of Appeals for the Fourth Circuit deepened a split in the state and federal appellate courts by interpreting § 9658 to preempt not just state *statutes of limitations* but also state *statutes of repose*. A statute of limitations extinguishes a claimant's right to pursue a cause of action after a certain period of time following accrual, whereas a statute of repose abolishes a cause of action as to a particular defendant after a period of time, regardless of whether the claim has accrued.

The question presented is: Did the Fourth Circuit correctly interpret 42 U.S.C. § 9658 to apply to state statutes of repose in addition to state statutes of limitations?

PARTIES TO THE PROCEEDING

The plaintiffs in this case are Respondents Peter Waldburger, Sandra Ratcliffe, Lee Ann Smith, Tom Pinner, IV, a/k/a Bud Pinner, IV, Hans Momkes, Wilma Momkes, Walter Dockins, Jr., Autumn Dockins, William Clark Lisenbee, Dan Murphy, Lori Murphy, Robert Aversano, Daniel L. Murphy, Laura A. Carson, Glen Horecky, Gina Horecky, Renee Richardson, David Bradley, Byron Hovey, Ramona Hovey, Peter Tatum MacQueen, IV, Bethan MacQueen, Patricia Pinner, Tom Pinner, III, a/k/a Buddy Pinner, III, and Madeline Pinner.

The defendant is Petitioner CTS Corporation.

CORPORATE DISCLOSURE STATEMENT

Petitioner CTS Corporation is a publicly held corporation. It does not have any parent corporations. GAMCO Asset Management, Inc., a wholly owned subsidiary of GAMCO Investors, Inc., owns 10% or more of CTS Corporation's stock.

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The decision of the United States Court of Appeals for the Fourth Circuit (Pet. App. 1a-36a) is reported at ___ F.3d ___. The unreported decision of the United States District Court for the Western District of North Carolina (Pet. App. 37a-39a) is available at 2012 WL 380053. The unreported memorandum and recommendation of the magistrate judge (Pet. App. 40a-47a) is available at 2011 WL 7153937.

JURISDICTION

The Fourth Circuit issued its opinion reversing the district court's final judgment on July 10, 2013. Pet. App. 1a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The provision of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) at issue in this case provides in full:

(a) State statutes of limitations for hazardous substance cases

> (1) Exception to State statutes — In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the date specified in such State statute.

(2) State law generally applicable — Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

(3) Actions under section 9607 — Nothing in this section shall apply with respect to any cause of action brought under section 9607 of this title.

(b) Definitions — As used in this section—

(1) Subchapter I terms — The terms used in this section shall have the same meaning as when used in subchapter I of this chapter.

(2) Applicable limitations period — The term "applicable limitations period" means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) of this section may be brought.

(3) Commencement date — The term "commencement date" means the date specified in a statute of limitations as the beginning of the applicable limitations period.

(4) Federally required commencement date

(A) In general — Except as provided in subparagraph (B), the term "federally required commencement date" means the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages referred to in subsection (a)(1) of this section were caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

> (B) Special rules — In the case of a minor or incompetent plaintiff, the term "federally required commencement date" means the later of the date referred to in subparagraph (A) or the following:
>
> (i) In the case of a minor, the date on which the minor reaches the age of majority, as determined by State law, or has a legal representative appointed.
>
> (ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.

42 U.S.C. § 9658.

STATEMENT OF THE CASE

A. This case concerns 42 U.S.C. § 9658, a unique federal provision that engrafts a special *federal* commencement date onto the running of *state* statutes of limitations governing *state* causes of action. This federal intrusion into state procedural law applies to any state action for "personal injury, or property damages" that arises from a "hazardous substance, or pollutant or contaminant, released into the environment from a facility." *Id.* § 9658(a)(1). For these qualifying state-law actions, § 9658 preempts the state commencement dates that would have otherwise applied under the state statutes of limitations, and provides a federal commencement date. Specifically, if the "applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the

date specified in such State statute." *Id.* And § 9658 defines the "applicable limitations period" that it covers as the "period specified in a statute of limitations during which" the qualifying state claims may be brought. *Id.* § 9658(b)(2).

The federal commencement date that § 9658 provides for these state-law claims is an "enhanced discovery rule." Pet. App. 34a. Like North Carolina, most states have statutes of limitations that begin to run when the plaintiff's "bodily harm" or "physical damage" "becomes apparent or ought reasonably to have become apparent to the" plaintiff. N.C. Gen. Stat. § 1-52(16). In place of these triggering events, § 9658 delays the commencement of the state statutes of limitations until "the plaintiff knew (or reasonably should have known) that the personal injury or property damages . . . were caused or contributed to by the hazardous substance or pollutant or contaminant concerned." 42 U.S.C. 9658(b)(4)(A). Accordingly, this federal discovery rule does not trigger the state statute of limitations until the plaintiff knows of (or reasonably should have known of) *both* the injury *and* the causal connection between the injury and the alleged hazardous substance at issue.

B. According to the complaint's allegations, over several decades, CTS of Asheville, Inc., operated a plant in Asheville, North Carolina, that manufactured electronic components. Pet. App. 51a. As part of the manufacturing process, CTS of Asheville used and stored various toxic solvents at the plant. *Id.* In 1983, CTS of Asheville was dissolved, and Petitioner CTS Corporation took over the plant's operations under its Asheville Division. *Id.* at 52a. CTS Corporation operated the plant for two years, and eventually

sold the property in 1987. The buyer then sold the unimproved portion of the property to a developer that built houses on the mountainside overlooking the former plant site. Pet. App. 53a-54a. Respondents—a group of individuals that purchased houses on or near the former CTS property—"contend that their land and ground water is contaminated by the toxic chemicals . . . that CTS Corporation left at the Facility when it sold the property." *Id.* at 41a.

In February 2011, Respondents brought a one-count complaint against CTS Corporation alleging that it had violated North Carolina's nuisance law. *Id.* at 55a-57a. Respondents sought monetary damages and a judgment requiring CTS Corporation to engage in reclamation of the toxic solvents and remediation of the environment around the former plant site. *Id.* at 57a. CTS Corporation moved to dismiss the complaint on the ground that North Carolina's 10-year statute of repose had eliminated Respondents' nuisance claim long before they brought this suit.

A magistrate judge recommended that the district court grant CTS Corporation's motion to dismiss. Pet. App. 40a. The magistrate initially noted that a 3-year statute of limitations governs North Carolina nuisance claims, and begins to run once "'bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant.'" Pet. App. 43a (quoting N.C. Gen. Stat. § 1-52(16)). A 10-year statute of repose also applied to these claims, however, which indicates that "no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action." Pet. App.

44a (quoting N.C. Gen. Stat. § 1-52(16)). Because "[t]he last possible act or omission by Defendant CTS Corporation that could give rise to a cause of action occurred in 1987 when it sold the property," the magistrate reasoned, Respondents' nuisance claim was "barred by the statute of repose contained in N.C. Gen. Stat. § 1-52(16)." *Id.*

The magistrate rejected Respondents' two arguments for avoiding this statute of repose. The magistrate disagreed with Respondents' contention that the 10-year statute of repose violated the North Carolina Constitution's "open courts provision." Pet. App. 44a. "North Carolina courts have upheld shorter statute[s] of repose[] for other causes of action," the magistrate explained, and the 10-year limit is "not so short as to effectively abolish all potential claims." Pet. App. 45a (citing *Lamb v. Wedgewood S. Corp.*, 302 S.E.2d 868 (N.C. 1983)).

More relevant here, the magistrate also rejected Respondents' position that § 9658 engrafts its federally mandated commencement date not simply onto North Carolina's 3-year statute of limitations but also onto its 10-year statute of repose. Pet. App. 46a. Relying on the Fifth Circuit's decision in *Burlington Northern & Santa Fe Railway Co. v. Poole Chemical Co.*, 419 F.3d 355, 362-63 (5th Cir. 2005), the magistrate reasoned that "[t]he clear language of the statute . . . is limited to a state's statute of limitations," not a state's statute of repose. Pet. App. 46a.

The magistrate noted the well-known substantive differences between the two types of statutes. On the one hand, "'[a] statute of repose is a substantive limitation, and is a condition precedent to a party's right to maintain a lawsuit.'" Pet. App. 47a (quoting *Tip-*

ton & Young Constr. Co. v. Blue Ridge Structure Co., 446 S.E.2d 603, 605 (N.C. Ct. App. 1994)). On the other, a statute of limitations is a "'procedural device that operates as a defense to limit the remedy available from an existing cause of action.'" *Id.* (quoting *First United Methodist Church of Hyattsville v. U.S. Gypsum Co.*, 882 F.2d 862, 865 (4th Cir. 1989)).

The district court subsequently adopted the magistrate's recommendation and entered final judgment for CTS Corporation. Pet. App. 39a. The court described the "magistrate judge's analysis of CERCLA's preemption of state statutes of limitations, as opposed to statutes of repose" as "accurate and well-reasoned." Pet. App. 39a. And the court found the Ninth Circuit's contrary holding—that CERCLA preempted both statutes of limitation and statutes of repose—to be "flawed." *Id.* (disagreeing with *McDonald v. Sun Oil Co.*, 548 F.3d 774, 778 (9th Cir. 2008)). Section 9658's plain language applies only to state statutes of limitations, the court explained, so the "*McDonald* court created an ambiguity where none existed." *Id.*

C. A divided panel of the Fourth Circuit reversed. Pet. App. 1a. The majority held that "the discovery rule articulated in § 9658 . . . preempts North Carolina's ten-year limitation" in N.C. Gen. Stat. § 1-52(16). Pet. App. 2a. It began with a historical summary of how § 9658 came to be. Congress passed CERCLA in 1980 against the backdrop of well-publicized environmental disasters. Pet. App. 2a-3a. The majority thus described CERCLA as "a remedial statute" designed to abate hazardous-waste sites and to shift the costs of cleanup to responsible parties. Pet. App. 3a-4a. After CERCLA's enactment, Congress "estab-

lished a study group to examine the 'adequacy of existing common law and statutory remedies in providing legal redress for harm . . . caused by the release of hazardous substances into the environment.'" *Id.* at 4a (quoting 42 U.S.C. § 9651(e)(1)). The study group determined that environmental claims have long latency periods not suited for statutes of limitations running from the time of the defendant's last act or from the plaintiff's exposure to harm. Pet. App. 4a-5a. So, the study group recommended to the states that they "'adopt the rule that an action accrues when the plaintiff discovers or should have discovered the injury or disease and its cause,'" and "'repeal . . . statutes of repose which, in a number of states have the same effect as some statutes of limitation in barring [a] plaintiff's claim before he knows that he has one.'" Pet. App. 5a (quoting Superfund Section 301(e) Study Group, 97th Cong., Injuries and Damages from Hazardous Wastes-Analysis and Improvement of Legal Remedies pt. 1, at 241 (Comm. Print 1982)). In 1986, the majority explained, Congress intervened by passing § 9658 instead of waiting for the states to amend their state laws. *Id.*

The majority next "review[ed] the concepts of limitations and repose." Pet. App. 9a. It noted that both limit the amount of time that a plaintiff has to bring suit. A statute of limitations "'bars claims after a specified period . . . based on the date when the claim accrued (*as when the injury occurred or was discovered*),'" and is designed to discourage plaintiffs from sitting on their rights while evidence is lost. Pet. App. 10a (quoting Black's Law Dictionary 1546 (9th ed. 2009) (emphasis added)). A statute of repose, by contrast, "'bar[s] any suit that is brought after a specified time *since the defendant acted* . . . even if this

period ends before the plaintiff has suffered a resulting injury'" and before the claim accrues. *Id.* (quoting Black's Law Dictionary at 1546 (emphasis added)). A statute of repose's grant of substantive immunity is designed to balance the interests of plaintiffs and defendants by setting a time limit beyond which no liability exists. *Id.* The majority concluded that the 10-year period at issue in this case was a statute of repose under these general definitions, as the North Carolina courts themselves had repeatedly held. Pet. App. 10a-11a.

The majority then turned to § 9658's language. It conceded that the district court could reasonably interpret § 9658 not to reach statutes of repose because it mentioned the phrase "statute of limitations" five times and the phrase "statute of repose" zero times. Pet. App. 11a-12a. Yet the majority ultimately concluded that the provision was ambiguous as to whether Congress meant the phrase "statute of limitations" to encompass statutes of repose. Pet. App. 11a. The majority reasoned that the statute of repose at issue here appears in a section of the North Carolina Code entitled "Limitations, Other than Real Property," so it could be interpreted to fall within § 9658(a) because it was "'specified in the State statute of limitations or under common law.'" Pet. App. 12a. The majority next noted that the statute of repose could be interpreted to qualify under § 9658(b)'s definition of "applicable limitations period" because it was a "period," "specified in a statute of limitations," "during which a civil action . . . may be brought." *Id.* Finally, because the statute of repose began to run at the time of the defendant's last action, its "commencement period" was earlier than the federal

commencement date and could be interpreted to trigger that delayed date. Pet. App. 12a-13a.

To avoid the appearance that it was "stretching to find ambiguity in the text," the majority provided two additional rationales to support its interpretation that the phrase "statute of limitations" could include "statute of repose." Pet. App. 13a. It noted that "a historical analysis reveals that both scholars and courts have often used the terms interchangeably." *Id.* Given this confusion, the majority found it probable that Congress intended for statute of limitations to cover statutes of repose. *Id.* Additionally, the majority opined that there is a "lack of internal consistency" between § 9658's substantive provision (§ 9658(a)(1)) and its definitional provision (§ 9658(b)(2)). The substantive provision indicates that it applies to an "applicable limitations period" "as specified in the State statute of limitations or under common law." The definition of "applicable limitations period," by contrast, defines the phrase as "the period specified in a statute of limitations" without reference to the common law. Pet. App. 13a-14a. The majority thus noted that § 9658 failed to manifest a plain meaning when state common law (rather than state statutory law) establishes the relevant limitations period. *Id.*

The majority resolved this perceived ambiguity by holding that § 9658 preempts the commencement dates in state statutes of repose. It relied on three factors. First, it cited the study group's recommendations—which were "equally concerned with statutes of repose and limitations, and with their effect of barring plaintiffs' claims before they are aware of them." Pet. App. 14a. Second, it cited CERCLA's "remedial"

nature, opting for a "broad interpretation" of "statute of limitations" to further the statute's remedial goals. *Id.* at 15a. Third, it cited the Ninth Circuit's *McDonald* decision, noting that it was "unpersuaded" by the Fifth Circuit's contrary analysis regarding the plain meaning of § 9658's text. *Id.* at 16a.

The majority concluded by suggesting that its holding may "raise the ire" of "corporations and other entities" that rely on statutes of repose, but explained that it had not turned a "blind eye" to the policies that these statutes vindicate. *Id.* After all, the majority noted, a plaintiff still must meet its burden of proof on the merits, which will prove more difficult as time passes. *Id.* at 17a. And, while its holding effectively eliminated the statute of repose by starting it and the statute of limitations at the exact same time, the 3-year period still applied so "defendants will not necessarily be endlessly subjected to the possibility of litigation." *Id.* Finally, the majority expressed again that its holding comported with the study group's recommendations. *Id.*

Judge Davis, in a short concurrence, noted that § 9658's "plain language" need not establish an ambiguity if other tools of statutory interpretation proved that an ambiguity existed. Pet. App. 18a.

Judge Thacker dissented. Pet. App. 19a-37a. Beginning with § 9658's plain language, the dissent rejected the majority's argument that the phrase "statute of limitations" was ambiguous in 1986 when Congress adopted § 9658. The dissent recognized the "modern vintage" of the differences between "statutes of limitations" and "statutes of repose." Pet. App. 24a. But this did not help the majority. Historically, statutes of limitations were "considered, along with

other statutory time-bars, to provide repose to litigants and were thus, generally, statutes of repose." Pet. App. 24a. In 1986, therefore, "the only possible ambiguity may have been the meaning of 'statute of repose' and whether that term had fully matured into its modern definition." Pet. App. 26a. There had, by contrast, never been any ambiguity on the narrower scope of the phrase "statute of limitations"—the phrase actually used by § 9658.

In addition, the dissent noted that the majority's holding made § 9658 unworkable. "Importantly, the commencement date is defined as the *beginning* of the period in which a civil action may be brought." Pet. App. 29a (citing 42 U.S.C. § 9658(b)(2)-(3)). But statutes of repose like North Carolina's do not create a beginning point when a claim may be brought; they create an outer limit *whether or not* the claim could have been brought before that limit runs. *Id.* As such, "[b]ecause North Carolina's statute of repose does not create the beginning of the applicable limitations period, § 9658 cannot graft neatly—or at all—onto the North Carolina statute of repose so as to preempt its enforcement." *Id.*

While recognizing that the court need not look to legislative history because the plain language must control, the dissent also asserted that the relevant legislative history supported its "conclusion that Congress was aware that statutes of limitations were a distinct category of time-bar statutes and specifically chose only to preempt those statutes and not other statutory time bars such as statutes of repose." *Id.* at 29a. Specifically, the study group's report on which the majority had relied expressly distinguished between statutes of limitations and statutes of repose,

recommending changes to *both* types of statutes. *Id.* at 31a. That the very recommendations underlying § 9658 distinguished these two kinds of statutes illustrates that Congress could not have been confused about their separate meanings. *Id.* at 32a.

The dissent bolstered this interpretation with two canons of statutory interpretation. For one, the dissent explained that "the role of legislative compromise" should play a part in § 9658's interpretation. *Id.* at 32a. The study group recommended a host of procedural reforms to state tort claims, but Congress, through § 9658, adopted only the recommendation concerning statutes of limitations. *Id.* at 34a. By doing so, Congress struck "a balance between harmonizing certain procedural matters in toxic tort cases and allowing states to continue to regulate their own substantive areas of law." *Id.* at 34a-35a. The majority frustrated this compromise (and the legislative intent) by departing from the plain language and expanding the reach of the statute.

For another, this case "arises in the context of federal preemption," so the long-standing presumption against preemption should apply. *Id.* at 35a "Just as [courts] presume 'Congress does not cavalierly preempt state-law causes of action[,]' [the courts] should also presume that Congress does not cavalierly preempt state substantive rights to be free from those state-law causes of action." *Id.* (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). This general presumption weighed against giving § 9658 an overly broad preemptive effect. Pet. App. 35a-36a.

Since issuing its decision, the Fourth Circuit has stayed its mandate pending this Court's disposition of this petition for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

The Court should grant CTS Corporation's petition for a writ of certiorari. *First*, the Fourth Circuit's decision deepens a split in the federal and state appellate courts over whether 42 U.S.C. § 9658 applies only to state statutes of limitations or also to state statutes of repose. *Second*, the Fourth Circuit's decision raises a legal issue of great practical and intrinsic importance. The question presented arises with great frequency, often in cases where millions of dollars are at stake. And the question presented is also of intrinsic importance because it affects the federal-state balance of power in an area of traditional state regulation. *Third*, the Fourth Circuit's decision runs contrary to the plain statutory text and so conflicts with this Court's settled principles of statutory interpretation. The decision below also defies this Court's long-standing presumption against preemption by construing a supposedly ambiguous federal statute to invade a traditional area of state regulation. *Fourth*, and finally, this case provides an ideal vehicle for reviewing this pure question of law, as it was decided on a motion to dismiss, and there is no dispute that the Respondents' state claim would be eliminated under North Carolina's statute of repose unless § 9658 preempts that state statute.

I. THE FOURTH CIRCUIT'S DECISION DEEPENS A CONFLICT IN THE STATE AND FEDERAL APPELLATE COURTS

The Court should grant CTS Corporation's petition for a writ of certiorari initially because several federal and state appellate decisions have reached different conclusions on the question whether 42 U.S.C. § 9658 preempts state statutes of repose.

A. On the one hand, the Fifth Circuit has held that "the plain language of § 9658 does not extend to statutes of repose." *Burlington N. & Santa Fe Ry. v. Poole Chem. Co.*, 419 F.3d 355, 362 (5th Cir. 2005). In that case, the plaintiff sued the defendant for cleanup costs resulting from the 2003 rupture of a chemical storage tank that had been previously installed in 1988. *See id.* at 358. Because the plaintiff's state claims were barred by Texas's 15-year statute of repose, the plaintiff argued that § 9658 preempted that statute. *See id.* at 361. The Fifth Circuit rejected this argument, and affirmed the dismissal of the suit. *Id.* at 362-65.

The court began with § 9658's plain language, noting that the text covered only statutes of limitations and nowhere mentioned statutes of repose. *Id.* at 362. The "differences between statutes of limitations and statutes of repose," the court reasoned, "are substantive, not merely semantic." *Id.* A statute of limitations "extinguishes the right to prosecute an accrued cause of action after a period of time," whereas a statute of repose "abolishes the cause of action after the passage of time even though the cause of action may not have yet accrued." *Id.* at 363. Thus, statutes of limitations generally run from the date of the plaintiff's injury and, as they are triggered by an injury, generally toll this period until the plaintiff reasonably should have learned of that injury. *Id.* "In contrast, awareness of injury is not a factor in determining when the time period of a statute of repose starts to run," as it is triggered by the defendant's underlying conduct, whether or not the plaintiff's claim has accrued. *Id.*

The Fifth Circuit next concluded that § 9658's plain language must control because no other factors illustrated an "express congressional intent to the contrary." *Id.* at 364. According to the court, "CERCLA's legislative history indicates Congress intended for § 9658 to preempt a state statute of limitations that deprives a plaintiff who suffers a long-latency disease caused by the release of a hazardous substance of his cause of action, but not to preempt a state statute of repose" that is not at all tied to the plaintiff's injury. *Id.* & nn.44-45 (citing H.R. Conf.. Rep. No. 99-962, 2d Sess. 262, *reprinted in* 1986 U.S.C.C.A.N. 3276, 3354). In light of this legislative history, reading § 9658's reference to "statutes of limitations" according to its terms "comports with a fundamental principle of statutory construction—common sense." *Burlington*, 419 F.3d at 364.

The Supreme Court of South Dakota later adopted the Fifth Circuit's interpretation of § 9658. *See Clark Cnty. v. Sioux Equip. Corp.*, 753 N.W.2d 406, 417 (S.D. 2008). In *Clark*, the defendant installed a fuel-storage system on the plaintiff's property. The defendant completed the work in 1992, and the plaintiff brought suit in 2006 to recover the cleanup costs of a fuel leak several years earlier. *See id.* at 408-09. In response to the defendant's argument that the state statute of repose had run, the plaintiff asserted that CERCLA preempted it. Relying on *Burlington*, *see id.* at 414-17, the South Dakota Supreme Court held that "the plain text controls." *Id.* at 417. "[T]he plain language of CERCLA only preempts state law when the applicable 'state statute of limitations' provides a commencement date that is earlier than the federally required commencement date," the court noted, and "Congress failed to include substantively different

statutes of repose within this preemptive rule." *Id.* at 417.

B. The Ninth Circuit subsequently departed from the Fifth Circuit over whether § 9658 applies to state statutes of repose. *See McDonald v. Sun Oil Co.*, 548 F.3d 774, 779 (9th Cir. 2008). In *McDonald*, the defendant sold property to the plaintiffs in 1976, and the plaintiffs learned in 2001 that the property might be contaminated with mercury. *Id.* at 778. The district court granted the defendant's motion for summary judgment on plaintiffs' negligence claim, relying on the Fifth Circuit's *Burlington* decision to hold that § 9658 does not apply to Oregon's statute of repose. *See McDonald v. Sun Oil Co.*, 423 F. Supp. 2d 1114, 1127 (D. Or. 2006). The Ninth Circuit reversed, holding that "the term 'statute of limitations' in [§ 9658] is ambiguous and the legislative history of the section indicates that its meaning includes statutes of repose[.]" 548 F.3d at 797.

The Ninth Circuit found § 9658 ambiguous as to whether the phrase "statute of limitations" includes "statutes of repose" because "a number of cases confused the terms or used them interchangeably" when Congress adopted the provision in 1986. *Id.* at 781. As such, the Ninth Circuit criticized the Fifth Circuit's plain-meaning approach because it "failed to analyze the meaning of 'statute of limitations' at the time [§ 9658] was adopted." *Id.* at 782. The court then turned to the legislative history, which "show[ed] that Congress's primary concern in enacting [§ 9658] was to adopt the discovery rule in situations where a plaintiff may lose a cause of action before becoming aware of it[.]" *Id.* at 783. Because this predicament was "most likely to occur where statutes

of repose operate," the court held that such statutes should be included within § 9658 to further the section's underlying purpose. *Id.*

The Fourth Circuit's fractured decision in this case has deepened this split of appellate authority—with the majority joining the Ninth Circuit's side of the debate and the dissent joining the side of the Fifth Circuit and the Supreme Court of South Dakota. As explained above, *supra* at 11, in addition to the Ninth Circuit's textual analysis and reliance on legislative history, the Fourth Circuit also chose a liberal construction of § 9658 because "Congress's purpose in enacting CERCLA was remedial." Pet. App. 14a.

* * * *

The Court need not take CTS Corporation's word for this substantial conflict in the appellate courts. District judges have repeatedly recognized it as well. As the District of Kansas recently noted, "[t]he circuits . . . are split on the issue of whether § 9658 preempts state statutes of repose." *Mechler v. United States*, No. 12-1183, 2013 BL 205882, at *8 (D. Kan. Aug. 2, 2013). Likewise, the Southern District of Alabama has noted that "the Fifth Circuit in *Burlington* and the Ninth Circuit in *McDonald*" "disagreed on the application of § 9658 to statutes of repose." *Abrams v. Ciba Specialty Chems. Corp.*, 659 F. Supp. 2d 1225, 1238 (S.D. Ala. 2009). Only this Court can now resolve this clear split of authority in the lower courts.

II. THE FOURTH CIRCUIT'S DECISION RAISES AN IMPORTANT AND RECURRING LEGAL ISSUE

The Court should also grant CTS Corporation's petition because it raises an important and recurring

legal issue. To begin with, the stakes are often high in environmental tort cases, with millions of dollars routinely at issue. *See, e.g.*, *Burlington*, 419 F.3d at 358 (noting that the alleged cleanup cost was $2.1 million); *see also United States v. Charter Int'l Oil Co.*, 83 F.3d 510, 512 (1st Cir. 1996) ("Multiples of millions of dollars are involved in [CERCLA] settlements and the stakes are high, both for the public and for the parties involved"); Andrew P. Morriss & Roger E. Meiners, *The Destructive Role of Land Use Planning*, 14 Tulane Envtl. L. J. 95, 124-25 & n.108 (2000) (citing cases for the proposition that "each year some of the largest tort judgments in the nation are against invaders of private property" in environmental suits). And because governments can be CERCLA defendants, the question presented also impacts the public fisc. *See Anderson v. United States*, 669 F.3d 161, 165 (4th Cir. 2011); *Simmons v. United States*, 421 F.3d 1199, 1202 (11th Cir. 2005) (per curiam); *see also* Br. of United States as *Amicus Curiae* in Support of Appellee at 2, *Waldburger v. CTS Corp.*, 2013 WL 3455775 (4th Cir. July 10, 2013) (No. 12-1290). Thus, many millions of dollars turn on the pure question of law presented here.

The question presented also implicates the balance of power between the federal government and the states. The "federalist structure of joint sovereigns preserves to the people numerous advantages." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991); *see Bond v. United States*, 131 S. Ct. 2355, 2364-65 (2011). But, given the Supremacy Clause, "Congress may legislate in areas traditionally regulated by the States," which is "an extraordinary power in a federalist system," one that this Court "must assume Congress does not exercise lightly." *Gregory*, 501 U.S. at

460. As such, the Court has repeatedly granted certiorari to determine whether federal laws were unambiguously meant to intrude on state prerogatives. *See, e.g.*, *Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533, 544-45 (2002) (deciding whether 28 U.S.C. § 1367(d) should be interpreted to toll state statute of limitations against state actors); *Gregory*, 501 U.S. at 464-70 (deciding whether ADEA covers state judges); *cf. Wyoming v. Oklahoma*, 502 U.S. 437, 451 (1992) (exercising discretion to accept original jurisdiction because case "'implicates serious and important concerns of federalism'" (citation omitted)).

This case raises similar federalism concerns. Section 9658 undoubtedly invades the states' traditional authority to establish the limits that govern their *own* tort actions. *Cf. Raygor*, 534 U.S. at 544 ("allowing federal law to extend the time period in which a state sovereign is amenable to suit in its own courts at least affects the federal balance in an area that has been a historic power of the States"). The Fifth Circuit's interpretation of § 9658 amounts to a minor encroachment by only delaying the beginning of the state statutes of limitations. The Fourth Circuit's "liberal construction" of § 9658, by contrast, dramatically increases the scope of this intrusion by effectively eviscerating state statutes of repose. *See* N.C. Gen. Stat. § 1-52. If § 9658 applies to start both the statute of limitations and the statute of repose *at the same time* (as the Fourth Circuit held), then the statute of limitations always will have run well before the statute of repose, thereby making the latter a nullity. Whether right or wrong, the decision's impact on traditional state prerogatives cannot be doubted and justifies the Court's review.

Finally, the question presented arises frequently. The district courts, for example, consider this issue often and are even more divided than the appellate courts. In addition to the district court and magistrate below, *see* Pet. App. 38a, 47a, several courts have adopted the Fifth Circuit's view that § 9658 simply does not reach statutes of repose. *See Clark*, 753 N.W.2d at 415 (noting at the time that "[a]ll recent federal district courts agree[d]" with the Fifth Circuit); *see, e.g.*, *Coleman v. H.C. Price Co.*, No. 11-2937, 2013 WL 64613, at *2-3 & n.3 (E.D. La. Jan. 4, 2013) (finding that § 9658 does not preempt statute of repose); *McDonald*, 423 F. Supp. at 1127 (same). Others have taken the Ninth Circuit's approach. *See Mechler*, 2013 BL 205882, at *8-9; *A.S.I., Inc. v. Sanders*, 835 F. Supp. 1349, 1358 (D. Kan. 1993).

Indeed, district courts in Alabama have repeatedly disagreed over whether § 9658 applies to the *very same* statute of repose. *Compare Evans v. Walter Indus., Inc.*, 579 F. Supp. 2d 1349, 1358-64 (N.D. Ala. 2008) (holding that § 9658 does not preempt Alabama's statute of repose); *German ex rel. Grace v. CSX Transp., Inc.*, 510 F. Supp. 2d 630, 633-34 (S.D. Ala. 2007) (same); *with Moore v. Walter Coke, Inc.*, No. 2:11-cv-1391-SLB, 2012 WL 4731255, at *9-13 (N.D. Ala. Sept. 28, 2012) (holding that § 9658 preempts Alabama's statute of repose); *Abrams*, 659 F. Supp. 2d at 1231-39 (same); *Fisher v. Ciba Specialty Chem. Corp.*, No. 03-0566, 2007 WL 2995525, at *15 (S.D. Ala. Oct. 11, 2007) (same). Despite the frequency with which this legal issue arises, the typically massive financial stakes involved often force settlement, thereby preventing many cases from reaching the courts of appeals.

In sum, both the importance of the question presented and the frequency with which it arises confirm that certiorari should be granted in this case.

III. THE FOURTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S CASE LAW

The Court should also grant certiorari because the Fourth Circuit's decision conflicts with numerous principles that this Court has directed lower courts to follow when interpreting federal statutes.

First, the Fourth Circuit's holding that the phrase "statute of limitations" is ambiguous conflicts with the "cardinal rule of statutory construction" that plain statutory terms should carry their plain meanings. *Molzof v. United States*, 502 U.S. 301, 307 (1992); *see, e.g.*, *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 58 (2007) (interpreting the term "willful"); *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 342 (1991) (interpreting the term "seaman"). This bedrock principle has special force when the statutory term at issue is a legal term of art with a well-settled definition. *See, e.g.*, *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 199 (1976). "In the absence of contrary indication, [the Court] assume[s] that when a statute uses . . . a term [of art], Congress intended it to have its established meaning." *McDermott Int'l*, 498 U.S. at 342.

Yet the Fourth Circuit identified no legal authority indicating that the phrase "statute of limitations" had a legal meaning encompassing a statute of repose when Congress enacted § 9658 in 1986. Rather, the phrases "statute of limitations" and "statute of repose" were distinct terms of art that distinguished distinct types of provisions. Indeed, the case law repeatedly used the phrase "statute of repose" to dis-

tinguish statutes of limitations from statutes "that begin 'to run at a time unrelated to the traditional accrual of the cause of action.'" *Bolick v. Am. Barmag Corp.*, 293 S.E.2d 415, 418 (N.C. 1982); *see J.H. Westerman Co. v. Fireman's Fund Ins. Co.*, 499 A.2d 116, 119 (D.C. 1985) ("A statute of repose differs from an ordinary statute of limitations in that the specified time period begins to run not from the date on which a right of action accrues, but from another ascertainable date."); *James Ferrera & Sons, Inc. v. Samuels*, 486 N.E.2d 58, 60 (Mass. App. Ct. 1985) ("There is a marked difference between a statute of limitations and a statute of repose."); *Univ. Eng'g Corp. v. Perez*, 451 So.2d 463, 465 (Fla. 1984) (per curiam) ("A statute of repose should be distinguished from a statute of limitations."); *Cheswold Volunteer Fire Co. v. Lambertson Constr. Co.*, 489 A.2d 413, 421 (Del. 1985) ("As a statute of repose is not a statute of limitations within the meaning of Superior Court Civil Rule 8(c), it need not be pleaded affirmatively."). The consensus view established by these cases was reflected in a well-known treatise: "Unlike an ordinary *statute of limitations* which begins running upon accrual of the claim, the period specified in a *statute of repose* begins when a specific event occurs, regardless of whether a cause of action has accrued or whether any injury has resulted." 54 C.J.S. *Limitations of Actions* § 4, at 20-21 (1987) (emphases added). Even the study group whose recommendations formed the basis for § 9658 recognized the distinctions between the two types of statutes. Pet. App. 31a. Notably, however, § 9658 repeatedly identifies *only* statutes of limitations, *not* statutes of repose, as falling within its reach. The statute should have

been interpreted accordingly. *See McDermott*, 498 U.S. at 342.

To reach its contrary conclusion that the phrases statute of limitations and statute of repose are fungible, the Fourth Circuit suggested that "a historical analysis reveals that both scholars and courts have often used the terms interchangeably." Pet. App. 13a. That is not so. As the dissent noted, Pet. App. 24a, courts had historically viewed "statute of repose" as the catch-all phrase covering different types of time bars, including statutes of limitations. *See Bolick*, 293 S.E.2d at 417 (noting that "the term 'statute of repose' has traditionally been used to encompass statutes of limitation"); *see, e.g.*, *United States v. Kubrick*, 444 U.S. 111, 117 (1979) (referring to a statute of limitations as a statute of repose). But simply because the phrase statute of repose could be interpreted to cover statutes of limitations does not justify the Fourth Circuit's converse holding that the phrase statute of limitations could be interpreted to cover statutes of repose.

In all events, in the decade immediately preceding § 9658's enactment, courts had repeatedly used the phrase "statute of repose" in its *narrower* sense to define the flurry of state laws that tied the running of the applicable time limit to the defendant's actions rather than the claim's accrual. *See Lamb v. Wedgewood South Corp.*, 302 S.E.2d 868, 872 (N.C. 1983) ("This statute, like many others enacted throughout the nation, is a 'statute of repose,' which this Court has recognized constitutes a substantive definition of, rather than a procedural limitation on, rights."); *see also* Restatement (Second) of Torts § 899 cmt. g (1979) ("In recent years special 'statutes of re-

pose' have been adopted in some states covering particular kinds of activity. . . ."). Thus, far from considering this background context in which Congress enacted § 9658, the Fourth Circuit ignored it.

Second, after improperly finding an ambiguity in the phrase "statute of limitations," the Fourth Circuit improperly resolved that ambiguity by relying on CERCLA's general purposes. As this Court has repeatedly indicated, however, "'no law pursues its purpose at all costs, and . . . the textual limitations upon a law's scope are no less a part of its 'purpose' than its substantive authorizations." *Kucana v. Holder*, 558 U.S. 233, 252 (2010) (citing *Rapanos v. United States*, 547 U.S. 715, 752 (2006) (plurality opinion)). In other words, "[d]eciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law." *Rodriguez v. United States*, 480 U.S. 522, 526 (1987) (per curiam); *cf. In re Erickson*, 815 F.2d 1090, 1094 (7th Cir. 1987) (Easterbrook, J.) ("Finding the meaning of a statute is more like calculating a vector (with direction and length) than it is like identifying which way the underlying 'values' or 'purposes' point (which has direction alone).").

As the dissent explained, Pet. App. 35a, the Fourth Circuit made exactly this mistake. The majority adopted the interpretation that allegedly furthered CERCLA's "remedial" purpose, noting that the Fifth Circuit's reading of statute of limitations "offers too narrow an approach and one that thwarts Congress's unmistakable goal of removing barriers to relief from

toxic wreckage." Pet. App. 15a. But it is unmistakably clear that Congress did *not* seek to remove all of the state procedural barriers that the study group suggested should be removed, because it did not adopt most of them. *See* Pet. App. 32a. For example, the study group recommended modified evidentiary presumptions and liberal joinder rules—yet those proposals were not adopted. *See ibid.* So the Fourth Circuit was wrong to suggest that "*whatever* furthers [§ 9658's] primary objective must be the law." *Rodriguez*, 480 U.S. at 526. Indeed, as the Fifth Circuit explained, *see Burlington*, 419 F.3d at 364 nn.44-45, the legislative history suggests that Congress was concerned *only* with some state statutes of limitations that begin to run on the plaintiff's injury rather than the plaintiff's discovery of the injury: "In the case of a long-latency disease, such as cancer, a party may be barred from bringing his lawsuit if the statute of limitations begins to run at the time of the first injury—rather than from the time when the party 'discovers' that his injury was caused by the hazardous substance or pollutant or contaminant concerned." H.R. Conf. Rep. No. 99-962, 2d Sess. 262, *reprinted in* 1986 U.S.C.C.A.N. 3276, 3354.

Third, even if the phrase "statute of limitations" were ambiguous, the Fourth Circuit erred by ignoring the "presumption against preemption" when resolving that ambiguity. *See, e.g.*, *Hillsborough Cnty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 715 (1985); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). That presumption against preemption "is consistent with both federalism concerns and the historic primacy of state regulation of matters of health and safety." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). Under the presumption, "when the text

of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily 'accept the reading that disfavors pre-emption.'" *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008) (quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005)).

Here, as the dissent observed, the "ability of a state to create a substantive right to be free from liability under its own state tort law is unquestionably a traditional field of state regulation." Pet. App. 35a; *see, e.g.*, *Raygor*, 534 U.S. at 544; *Hillsborough Cnty.*, 471 U.S. at 715. Section 9658 thus triggers the presumption against preemption, and the Fourth Circuit should have construed any ambiguity to *avoid* preemption. *See Altria*, 555 U.S. at 77. But the majority did exactly the opposite. It relied on CERCLA's remedial purpose to interpret all ambiguities in *favor* of preemption. When doing so, moreover, the Fourth Circuit did not even mention the presumption against preemption or offer an explanation why that presumption somehow does not apply here. Pet. App. 7a-16a. By flipping the presumption on its head, the Fourth Circuit again departed from this Court's precedents on interpreting federal statutes.

IV. THIS CASE PRESENTS AN IDEAL VEHICLE TO RESOLVE THE QUESTION PRESENTED

Finally, this case presents an ideal vehicle for resolving the question presented. As an initial matter, there is no dispute that the question presented is outcome dispositive on the facts alleged in the complaint. While disagreeing on whether § 9658 reaches state statutes of repose, the lower courts have universally agreed that N.C. Gen. Stat. § 1-52(16) would bar Respondents' nuisance claim if § 9658 did not otherwise preempt that statute. Pet. App. 9a, 19a,

38a, 44a. That statute of repose runs from "the last act or omission of the defendant giving rise to the cause of action." N.C. Gen. Stat. § 1-52(16). And the complaint makes clear that CTS Corporation's last conceivable act occurred in 1987—when it sold the relevant property—well over two decades before Respondents filed this suit in 2011. Pet. App. 53a-55a. Accordingly, Respondents suit may proceed *only if* the Fourth Circuit correctly interpreted § 9658 to preempt N.C. Gen. Stat. § 1-52(16).

There is also no dispute that N.C. Gen. Stat. § 1-52(16) is a statute of repose rather than a statute of limitations. Every judge to have considered this question in this case has reached that conclusion. Pet. App. 10a, 19a, 38a, 44a. The North Carolina courts also agree. *See, e.g.*, *Wilson v. McLeod Oil Co.*, 398 S.E.2d 586, 597 (N.C. 1990) (finding claims to be barred "by the *statute of repose* found in § 1-52(16)" (emphasis added)); *Neblett v. Hanover Inspection Serv., Inc.*, No. COA06-1676, 2007 WL 2701349, at *4 (N.C. Ct. App. Sept. 18, 2007) (same). So the Court need not worry about preliminary questions over whether the state statute under review falls on the "statute of repose" or "statute of limitations" side of the line. Rather, the Court can concern itself solely with the question whether § 9658 covers both kinds of statutes or reaches only statutes of limitation.

Additionally, the procedural posture of this case—a final judgment after the grant of a motion to dismiss—allows the Court to resolve the question in an efficient manner without having to confront any disputed issues of fact or side legal issues. Respondents' complaint runs only nine pages. And their appeal in

the Fourth Circuit addressed only the legal question presented in this case.

For these reasons, the Court could not ask for a better vehicle to resolve the important legal question presented on which the federal and state appellate courts have split. The question is outcome determinative on the facts alleged, it arises at a stage with a small record, and it is the sole issue presented.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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