No. 23-677

IN THE
Supreme Court of the United States

ROYAL CANIN U.S.A., INC. AND NESTLÉ PURINA PETCARE COMPANY,
Petitioners,

v.

ANASTASIA WULLSCHLEGER AND GERALDINE BREWER,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF FOR PETITIONERS

STEPHEN D. RABER
JOSEPH S. BUSHUR
WILLIAMS & CONNOLLY LLP
680 Maine Avenue S.W.
Washington, D.C. 20024

Counsel for Petitioner Royal Canin U.S.A., Inc.

BRYAN A. MERRYMAN
ASHLEY BEAN
WHITE & CASE LLP
555 South Flower Street
Suite 2700
Los Angeles, CA 90071

MATTHEW S. DORRITIE
HOGAN LOVELLS US LLP
125 High Street, Suite 2010
Boston, MA 02110

Counsel for Petitioner Nestlé Purina PetCare Company

NEAL KUMAR KATYAL
KATHERINE B. WELLINGTON
NATHANIEL A.G. ZELINSKY
ERIC S. ROYTMAN
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004

CHRISTOPHER M. CURRAN
Counsel of Record
J. FRANK HOGUE
WHITE & CASE LLP
701 Thirteenth Street, N.W.
Washington, D.C. 20005
(202) 626-3600
ccurran@whitecase.com

Counsel for Petitioner Nestlé Purina PetCare Company

QUESTIONS PRESENTED

This case presents two separate but related questions concerning the ability of a plaintiff, in an action properly removed to federal court pursuant to 28 U.S.C. § 1441(a) on the basis of federal question jurisdiction under 28 U.S.C. § 1331, to compel a remand to state court by amending the complaint to omit federal questions:

1. Whether such a post-removal amendment of the complaint defeats federal question subject matter jurisdiction.

2. Whether such a post-removal amendment of the complaint precludes a district court from exercising supplemental jurisdiction over the plaintiff's remaining state-law claims pursuant to 28 U.S.C. § 1367.

PARTIES TO THE PROCEEDING

Royal Canin U.S.A., Inc. and Nestlé Purina PetCare Company are Petitioners here and were the Defendants-Appellees below.

Anastasia Wullschleger and Geraldine Brewer are Respondents here and were the Plaintiffs-Appellants below.

RULE 29.6 DISCLOSURE STATEMENT

Royal Canin U.S.A., Inc. is a wholly owned subsidiary of Mars, Incorporated, a privately held corporate entity. No publicly held company owns 10% or more of the stock of Mars, Incorporated or Royal Canin.

Nestlé Purina PetCare Company is indirectly a wholly owned subsidiary of Nestlé S.A., a Swiss corporation traded publicly on the SIX Swiss Exchange and in the United States in the form of American Depository Receipts. No publicly held company owns 10% or more of Nestlé S.A.'s stock.

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BRIEF FOR PETITIONERS

INTRODUCTION

This case asks whether plaintiffs in a civil action properly removed to federal court on the basis of a federal question may divest the court of jurisdiction by amending the complaint to eliminate the federal question. For almost a century, this Court—and nearly every lower court—has rejected that gambit. In *Carnegie-Mellon University* v. *Cohill*, this Court confronted facts analogous to those presented here and confirmed that a plaintiff's post-removal amendment of the pleadings does not strip a federal court of jurisdiction over remaining state-law claims. 484 U.S. 343, 357 (1988). Otherwise, plaintiffs in removal cases could engage in "forum manipulation" and defeat defendants' statutory right to remove. *Id.* The Court's

opinion in *Cohill* reflects the venerable principle that a plaintiff cannot "deprive the district court of jurisdiction" "after removal" "by amendment of his pleadings." *St. Paul Mercury Indem. Co.* v. *Red Cab Co.*, 303 U.S. 283, 292 (1938).

Just two years after *Cohill*, Congress passed the supplemental-jurisdiction statute, 28 U.S.C. § 1367, which codified the judge-made rules regarding pendent-claim jurisdiction. Section 1367(a) states that "the district courts shall have supplemental jurisdiction over *all other claims* that are so related to claims in the action within [their] original jurisdiction that they form part of the same case or controversy." 28 U.S.C. § 1367(a) (emphasis added). And Section 1367(c) provides that courts "may decline to exercise supplemental jurisdiction" in specific circumstances, including when "the district court has dismissed all claims over which it has original jurisdiction"—demonstrating that federal courts retain supplemental jurisdiction over state-law claims even when there is no longer a federal question before the court.

Section 1367's "statutory term[s]" were "obviously transplanted from" earlier precedent. *Taggart* v. *Lorenzen*, 587 U.S. 554, 560 (2019) (quotation marks omitted). Section 1367 thus "brings the old soil with it," including the pre-1990 rule that post-removal amendments eliminating a federal question do not divest a court of jurisdiction. *Id.* (quotation marks omitted).

Ever since the passage of Section 1367, this Court and the courts of appeals—including the Eighth Circuit prior to this case—have consistently recognized that "when a defendant removes a case to federal court

based on the presence of a federal claim, an amendment eliminating the original basis for federal jurisdiction generally does not defeat jurisdiction." *Rockwell Int'l Corp.* v. *United States*, 549 U.S. 457, 474 n.6 (2007). The decision below radically breaks from the statutory text and this longstanding consensus, without citing or discussing this Court's key precedents on this issue, and permits plaintiffs to engage in aggressive judge and forum shopping. This Court should reject the sea-change in the law embraced by the Eighth Circuit and reverse.

OPINIONS BELOW

The Eighth Circuit's opinion, Pet. App. 3a-12a, is reported at 75 F.4th 918. The District Court's opinion, Pet. App. 38a-44a, is unreported.

JURISDICTION

The Eighth Circuit entered judgment on July 31, 2023, and denied Petitioners' timely petition for rehearing on September 20, 2023. The petition for a writ of certiorari was timely filed on December 19, 2023, and granted on April 29, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. §§ 1331, 1332, 1367, 1441, 1446, and 1447 are reproduced in the appendix to this brief. App. 1a-22a.

STATEMENT OF THE CASE

A. Respondents Sue Petitioners In State Court.

Petitioners Royal Canin and Nestlé Purina manufacture pet food, including food sold to pet owners (such as Respondents) who have a prescription from their veterinarian. JA 65. In this putative class action, Respondents alleged that Petitioners violated federal food and drug law and misrepresented that pet owners were legally required to obtain a prescription before purchasing Petitioners' products.

This particular case is the second round in a series of class actions targeting Petitioners. The same plaintiffs' counsel filed a nearly identical case in the Northern District of California in 2016, including federal claims as well as claims under the Missouri Merchandising Practices Act. *See Moore* v. *Mars Petcare US, Inc., et al.,* No. 3:16-CV-7001 (N.D. Cal.). The district court dismissed that case, and the Ninth Circuit affirmed in part on appeal in 2020. *See Moore* v. *Mars Petcare US, Inc.*, 966 F.3d 1007 (9th Cir. 2020); *Moore* v. *Mars Petcare US, Inc.*, 820 F. App'x 573 (9th Cir. 2020).

After the district court's dismissal in *Moore*, counsel filed this copycat lawsuit in Missouri state court on behalf of Respondents. The initial complaint alleged claims under the Missouri Merchandising Practices Act, as well as state antitrust law and common-law unjust enrichment. JA 105-114. Central to Respondents' claims was their theory that Petitioners violated the Food, Drug, and Cosmetic Act (FDCA) and Food and Drug Administration (FDA) regulations. Re-

spondents requested, among other things, an injunction requiring Petitioners to comply with applicable federal laws. JA 115.

B. Petitioners Remove To Federal Court, And The Eighth Circuit Finds Federal Question Jurisdiction.

Petitioners promptly removed the case to federal court, citing federal question jurisdiction as well as diversity jurisdiction under the Class Action Fairness Act. Respondents moved to remand for lack of jurisdiction, and the District Court granted the motion. Pet. App. 25a-26a. Petitioners then filed a petition for interlocutory review under the Class Action Fairness Act.

The Eighth Circuit granted the petition and reversed, holding that the District Court had federal question jurisdiction under *Gunn* v. *Minton*, 568 U.S. 251 (2013), because Respondents had "explicitly" argued that Petitioners "violated the FDCA, were noncompliant with FDA guidance, and that their refusal to submit the prescription pet food to FDA review was improper." Pet. App. 32a. As the Eighth Circuit explained, Respondents' "dependence on federal law permeates the allegations such that the antitrust and unjust enrichment claims cannot be adjudicated without reliance on and explication of federal law." *Id.* Moreover, Respondents' "prayer for relief invokes federal jurisdiction because it seeks injunctive and declaratory relief that necessarily requires the interpretation and application of federal law." *Id.*

Respondents filed a petition for certiorari, which this Court denied. Pet. App. 59a.

C. Respondents Amend Their Complaint In An Attempt To Divest The Federal Court Of Jurisdiction.

On remand, nearly two years after removal, Respondents amended their complaint without leave of court, as permitted under Federal Rule of Civil Procedure 15(a). JA 118-154. The amended complaint deleted references to federal law and omitted the request for an injunction requiring compliance with federal law. Respondents relabeled their Missouri antitrust conspiracy claims as a civil conspiracy claim and dropped their unjust enrichment claims. The amended complaint retained the claim under the Missouri Merchandising Practices Act.

Respondents simultaneously filed a "motion for declination of supplemental jurisdiction and remand to state court." JA 3 (capitalizations omitted). Respondents acknowledged that the "basis for the retention of this action in federal court is supplemental jurisdiction under 28 U.S.C. § 1367," and argued that "[t]his is an appropriate situation for the Court's exercise of its discretion to decline supplemental jurisdiction and remand this case to Missouri state court." JA 5-6. Respondents candidly stated that their motivation to amend the complaint was to precipitate a return to state court. JA 49, 57.

Petitioners opposed the motion, arguing that Respondents' claims necessarily relied on the same theories that gave rise to federal question jurisdiction over the original complaint. JA 33-38. Petitioners also urged the District Court to exercise supplemental jurisdiction over Respondents' remaining state-law claims to prevent gamesmanship. JA 38-45.

The District Court denied the motion to remand and subsequently dismissed the amended complaint for failure to state a claim. Pet. App. 38a-57a.

D. The Eighth Circuit Holds That Respondents' Post-Removal Amendment Divested The District Court Of Jurisdiction.

1. Respondents appealed to the Eighth Circuit, contesting only the District Court's decision on the merits. At oral argument, however, the panel *sua sponte* questioned whether the District Court retained subject matter jurisdiction over Respondents' state-law claims.

Following argument, the parties submitted letter briefing on that issue. Petitioners argued that the federal court retained jurisdiction, citing the consistent practice of the courts of appeals, as well as this Court's decision in *Cohill*. *See* Petitioners' COA Letter Br. at 1-2, 4-10. As Petitioners explained, this rule prevents plaintiffs from manipulating "federal jurisdiction by artfully amending complaints in properly removed cases." *Id.* at 1. Petitioners urged the Eighth Circuit not to reward "transparent forum shopping." *Id.* at 10. Respondents disagreed. In a change of position from the District Court, Respondents contended that the District Court did not have any authority to decide their state-law claims, and the case must return to state court. Respondents' COA Letter Br. at 2 n.1.

2. The Eighth Circuit broke with every court of appeals to have addressed this issue—as well as the longstanding precedent of this Court—and held that Respondents' post-removal amendment divested the District Court of jurisdiction over Respondents' state-law claims.

The Eighth Circuit concluded that the amended complaint did not raise a federal question. Pet. App. 6a-7a. The Eighth Circuit then held that the amended complaint "supersede[d]" the "original complaint and render[ed] the original complaint without legal effect." Pet. App. 7a (brackets and quotation marks omitted). The Eighth Circuit emphasized that, in removal cases, an amended complaint can *cure* an initial lack of jurisdiction. Pet. App. 9a. The panel saw "little difference, from a jurisdictional perspective, between adding a federal claim in the absence of federal-question jurisdiction, and subtracting a claim or two, as happened here, to eliminate federal-question jurisdiction." *Id.* (citations omitted).

The Eighth Circuit acknowledged, however, that a court would need to look "at the original complaint" to determine jurisdiction in some circumstances—such as if "the district court had ordered" Respondents "to amend" "or if the decision to amend was otherwise involuntary." Pet. App. 7a-8a n.1 (brackets and quotation marks omitted). In those circumstances, the Eighth Circuit recognized, a court must ignore the amended complaint, and instead evaluate jurisdiction based on the complaint at the time of removal.

The Eighth Circuit also acknowledged prior circuit precedent holding that an amended complaint deleting the federal question does *not* divest a district court of jurisdiction in removal cases. Pet. App. 11a n.3 (citing *McLain* v. *Andersen Corp.*, 567 F.3d 956, 965 (8th Cir. 2009)). But the panel determined it was not bound by that precedent because it was "inconsistent" with the circuit's century-old decision in *Highway Construction Co.* v. *McClelland*, 15 F.2d 187 (8th Cir. 1926) (per curiam). Pet. App. 11a n.3.

The Eighth Circuit noted that its decision broke from its sister circuits, which "have come out differently." Pet. App. 10a. According to the Eighth Circuit, those other circuits incorrectly "emphasized forum-manipulation concerns over jurisdictional rigor." *Id.* (footnote omitted). The Eighth Circuit dismissed such concerns as inconsistent with jurisdictional "first principles," including the rule that "all doubts about federal jurisdiction must be resolved in favor of remand." *Id.* (quotation marks omitted). The panel stated that district courts could prevent forum manipulation by withholding leave to amend a complaint "if the only reason for the changes is to destroy federal jurisdiction," without explaining how a federal court could assess the "reason" for a plaintiff's decision to amend. Pet. App. 10a n.2.

Finally, in a brief paragraph, the panel held "the possibility of supplemental jurisdiction vanished right alongside the once-present federal questions." Pet. App. 12a. At no point did the panel's decision analyze the text of Section 1367. Nor did the panel discuss this Court's decision in *Cohill*—which Petitioners cited to the court, which involved identical circumstances, and which confirmed that a plaintiff's post-removal amendment does not divest the federal court of jurisdiction.

3. The Eighth Circuit denied rehearing en banc, with Judges Colloton and Shepherd dissenting. Pet. App. 58a.

This Court granted the Petition.

SUMMARY OF ARGUMENT

I. The amended complaint did not divest the District Court of subject matter jurisdiction. Instead, according to the text of Section 1367, as well as precedent

predating and postdating the statute's enactment, the District Court retained jurisdiction over state-law claims after Respondents amended the complaint to delete the federal questions.

A. This case presents a paradigmatic instance in which Congress legislated against the backdrop of a wealth of precedent and transplanted the "old soil" into the statute. Before the enactment of Section 1367 in 1990, this Court and lower federal courts had consistently held that a plaintiff's post-removal amendment of a complaint does not "deprive the district court of jurisdiction." *St. Paul Mercury*, 303 U.S. at 292.

In this Court's landmark decision in *United Mine Workers of America* v. *Gibbs*, 383 U.S. 715 (1966), the Court held that a federal court could exercise pendent jurisdiction over state-law claims deriving from the same "common nucleus of operative fact" as a federal claim, *id.* at 725. Shortly thereafter, in *Rosado* v. *Wyman*, 397 U.S. 397 (1970), the Court confirmed that a district court need not possess "jurisdiction over the primary claim at all stages as a prerequisite to resolution of the pendent claim," *id.* at 405. Thus, when a federal claim becomes moot, the district court can nevertheless exercise jurisdiction over remaining state-law claims. *See id.* at 404-405.

Building on those precedents, this Court's decision in *Carnegie-Mellon University* v. *Cohill*, 484 U.S. 343 (1988), decided the question presented here. In *Cohill*, as in this case, plaintiffs filed a complaint in state court presenting a federal question, defendants removed, and plaintiffs then attempted to divest the federal court of jurisdiction by deleting the federal question from the complaint. This Court held that in those circumstances, the federal court may "*choose* not to

continue to exercise jurisdiction"—but is not required to do so. *Id.* at 351 (emphasis added). The Court emphasized that a "district court can consider whether the plaintiff has engaged in any manipulative tactics when it decides whether to remand a case." *Id.* at 357.

The next year, this Court decided *Finley* v. *United States*, 490 U.S. 545 (1989), which addressed a separate question: whether a federal court could exercise pendent jurisdiction over additional parties. The Court described its approach to pendent claim jurisdiction as "well established," *id.* at 548, but concluded that federal courts could *not* exercise pendent jurisdiction over additional parties. *Id.* at 556.

In response to *Finley*, Congress enacted Section 1367, which granted federal courts expansive supplemental jurisdiction. Section 1367's text, which closely mirrors the language of, and codifies, *Gibbs*, *Cohill*, and their progeny, confirms that the post-removal amendment of a complaint to delete federal claims does not deprive a court of supplemental jurisdiction.

Section 1367(a) authorizes supplemental jurisdiction over "all other claims that are so related to claims in the action within" the court's "original jurisdiction that they form part of the same case or controversy." 28 U.S.C. § 1367(a). That broad grant of supplemental jurisdiction is subject to exception only "as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute." *Id.* Under ordinary principles of statutory interpretation, this statutory language is a powerful indicator that Congress did not intend to include other, unenumerated exceptions to supplemental jurisdiction.

Section 1367(b) provides limited carveouts for certain diversity cases where exercising jurisdiction

would defeat complete diversity requirements, none of which apply here. *See id.* § 1367(b). Section 1367(c) specifies circumstances in which federal courts may decline to exercise supplemental jurisdiction, including if "the district court has dismissed all claims over which it has original jurisdiction." *Id.* § 1367(c)(3). This statutory text directly refutes the Eighth Circuit's theory that federal courts immediately lose jurisdiction over supplemental state-law claims the moment there is no longer a federal question.

B. The text of Section 1367 is unambiguous, but the legislative history reinforces Petitioners' reading. Congress passed Section 1367 based on the recommendation of a subcommittee of the Federal Courts Study Committee, which designed Section 1367 to "overrule *Finley* by codifying the doctrines of pendent and ancillary jurisdiction," and "basically restore[] the law as it existed prior to *Finley*." *Report to the Federal Courts Study Committee of the Subcommittee on the Role of the Federal Courts and Their Relation to the States* 547, 561 (Mar. 12, 1990) ("*Subcommittee Report*");[1] *see also* H.R. Rep. No. 101-734, at 28 (1990) (House Report explaining same).

C. Since 1990, this Court and the circuit courts have consistently rejected the notion that post-removal amendment divests a district court of its subject matter jurisdiction.

In *Rockwell International Corp.* v. *United States*, 549 U.S. 457 (2007), the Court explained that there are two different rules, one for cases filed in federal court in the first instance and another for cases removed to

[1] *Available at* https://tinyurl.com/4ebwykme.

federal court. If "a plaintiff files a complaint in federal court and then voluntarily amends the complaint, courts look to the amended complaint to determine jurisdiction." *Id.* at 473-474. The Court then explained that the opposite rule applies in removal cases. When "a defendant removes a case to federal court based on the presence of a federal claim, an amendment eliminating the original basis for federal jurisdiction generally does not defeat jurisdiction." *Id.* at 474 n.6 (citing *Cohill* and *St. Paul Mercury*). That is because "removal cases raise forum-manipulation concerns that simply do not exist when it is the *plaintiff* who chooses a federal forum and then pleads away jurisdiction through amendment." *Id.*; *see also Carlsbad Tech., Inc.* v. *HIF Bio, Inc.*, 556 U.S. 635, 640 (2009) ("Upon dismissal of the federal claim, the District Court retained its statutory supplemental jurisdiction over the state-law claims."). Until the decision below, the federal courts of appeals consistently agreed.

D. The rule that post-removal amendments do not divest a district court of jurisdiction safeguards against judge and forum shopping. Were it otherwise, a plaintiff could always file in state court and wait for defendants to remove. If the plaintiff dislikes the federal judge assigned to the case, the plaintiff could then amend the complaint to remove the federal question and force a remand. This Court should not catalyze litigants to so easily manipulate the judiciary.

More fundamentally, Congress provided defendants a right to remove cases presenting federal questions. Allowing a plaintiff to force a remand could risk defeating that right in practice. Where plaintiffs already indicated their desire to litigate federal questions by raising them in a complaint at the outset of a case,

plaintiffs are likely to smuggle the federal question back into the litigation on remand. That is particularly true here, where Respondents already attempted to artfully plead around the federal question.

II. This Court should reject the Eighth Circuit's outlier decision, which broke from every other appellate court to have confronted this issue.

A. The Eighth Circuit concluded that once "there is no longer a federal claim on which the district court could exercise supplemental jurisdiction, the source of the district court's subject-matter jurisdiction ceases to exist." Pet. App. 12a (brackets and quotation marks omitted). But this ignores the text and structure of Section 1367. Section 1367(c) expressly contemplates that district courts may exercise supplemental jurisdiction even when a "district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3).

Nor does 28 U.S.C. § 1447 require a remand, as Respondents suggested in their brief in opposition. *See* BIO at 28. Section 1447 provides that "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). Here, the District Court had subject matter jurisdiction under Section 1367 over the supplemental state-law claims.

B. The Eighth Circuit was wrong to conclude that "all doubts about federal jurisdiction must be resolved in favor of remand." Pet. App. 10a (quotation marks omitted). Before the enactment of Section 1367, this Court emphasized that "in cases involving supplemental jurisdiction over additional claims between parties properly in federal court, the jurisdictional

statutes should be read broadly." *Exxon Mobil Corp.* v. *Allapattah Servs., Inc.*, 545 U.S. 546, 553 (2005) (citing *Finley*, 490 U.S. at 549). Congress codified that principle through Section 1367(a)'s broad grant of supplemental jurisdiction, and this Court has warned against adopting "an artificial construction that is narrower than what the text provides." *Id.* at 558.

C. The Eighth Circuit ignored and misconstrued nearly a century's worth of federal court precedent. It did not even mention *Cohill*. And while it cited *St. Paul Mercury* and *Rockwell*, the Eighth Circuit inexplicably ignored what this Court actually said: A plaintiff's "amendment of his pleadings" "after removal" "does not deprive the district court of jurisdiction," *St. Paul Mercury*, 303 U.S. at 292, and "an amendment eliminating the original basis for federal jurisdiction generally does *not* defeat jurisdiction," *Rockwell*, 549 U.S. at 474 n.6 (emphasis added).

D. Finally, the Eighth Circuit is incorrect that district courts can prevent judge and forum shopping through aggressive application of Rule 15. Rule 15(a) provides plaintiffs one free amendment as of right. That means, in every case, a plaintiff can amend a complaint and return to state court to judge-shop. Rule 15 establishes a generous standard for amending complaints that is a poor fit for determining whether a plaintiff is amending the complaint to engage in forum manipulation.

The appropriate course is to do what federal courts have always done: Permit amendment but allow the district court to retain supplemental jurisdiction.

ARGUMENT

I. A PLAINTIFF'S POST-REMOVAL AMENDMENT OF A COMPLAINT DOES NOT DIVEST A DISTRICT COURT OF JURISDICTION.

The two questions presented boil down to one inquiry: May a plaintiff in a case removed to federal court based on a federal question strip that court of jurisdiction by amending the complaint to eliminate the federal question? In a long line of precedent, this Court and lower federal courts have consistently answered "no." As this Court explained in *Cohill*, a federal court may continue to hear a removal case even if the plaintiff "delet[es] all federal-law claims from the complaint." 484 U.S. at 357.

Two years after *Cohill*, Congress enacted Section 1367, which provides a broad grant of supplemental jurisdiction "over *all other* claims that are so related to claims in the action within" the court's "original jurisdiction that they form part of the same case or controversy under Article III." 28 U.S.C. § 1367(a) (emphasis added). The text of Section 1367 codified this Court's longstanding rules regarding pendent jurisdiction—including the rule that post-removal amendments do not defeat the federal court's jurisdiction over remaining state law claims. Section 1367(c) confirms in particular that federal courts retain supplemental jurisdiction over state-law claims *even after* there is no longer a federal question. *See id.* § 1367(c).

Following Section 1367's enactment, this Court and every federal court of appeals to have addressed the question—including the Eighth Circuit before the outlier decision below—have consistently held that plaintiffs cannot evade federal jurisdiction by creatively

amending their pleadings in removal cases. Congress has never touched Section 1367 in the wake of these decisions. This Court should affirm that long-settled consensus.

A. Section 1367 Permits A District Court To Exercise Supplemental Jurisdiction.

1. Congress enacted Section 1367 against the backdrop of Gibbs*,* Cohill*, and their progeny.*

When Congress legislates against the backdrop of longstanding precedent, the text Congress enacts "brings the old soil with it." *George* v. *McDonough*, 596 U.S. 740, 746 (2022) (quotation marks omitted). Prior to the passage of Section 1367, a long line of cases consistently held that post-removal amendments do not divest a federal court of federal question jurisdiction. Congress was aware of and codified this precedent when it adopted Section 1367.

a. In 1966, this Court's landmark decision in *Gibbs* "clarif[ied]" and "broaden[ed]" "the scope of federal pendent jurisdiction." *Cohill*, 484 U.S. at 349. Before *Gibbs*, the Court had recognized the existence of pendent jurisdiction, but the precise contours of the doctrine were somewhat "murky." *Id.* *Gibbs* "responded to this confusion," *id.*, by adopting a straightforward standard: Federal courts may exercise pendent jurisdiction over state-law claims that "derive from a common nucleus of operative fact" and are such "that the entire action before the court comprises but one constitutional 'case.' " *Gibbs*, 383 U.S. at 725.

Gibbs explained that "pendent jurisdiction is a doctrine of discretion, not of plaintiff's right." *Id.* at 726. "Its justification lies in considerations of judicial economy, convenience and fairness to litigants * * * ." *Id.*

Several factors guide federal courts' exercise of this discretion, including whether "the state issues substantially predominate." *Id.* at 726-727. *Gibbs* stated that "if the federal claims are dismissed before trial," even though the district court does *not* lack federal question jurisdiction over the case, "the state claims should be dismissed as well." *Id.* at 726.

b. Four years after *Gibbs*, *Rosado* v. *Wyman*, 397 U.S. 397 (1970), clarified that interests of "judicial economy, convenience, fairness, and comity" permit a federal court to exercise pendent jurisdiction even if "all federal-law claims are eliminated before trial," *Cohill*, 484 U.S. at 350 n.7.

In *Rosado*, a three-judge district court was convened to hear a constitutional claim that was later "declared moot." *Rosado*, 397 U.S. at 402. This Court held that—even after the claim providing the three-judge court with original jurisdiction dropped out of the case—the court continued to possess pendent jurisdiction over another claim.

Rosado directly addressed and rejected the theory of jurisdiction the Eighth Circuit adopted below in this case. As *Rosado* explained, "jurisdiction over the primary claim at all stages" is not "a prerequisite to resolution of the pendent claim." *Id.* at 405. Instead, this Court found a "persuasive analogy" "in the well-settled rule that a federal court does not lose jurisdiction over a diversity action which was well founded at the outset even though one of the parties may later change domicile or the amount recovered falls short of" the amount in controversy. *Id.* at 405 n.6.

c. In 1988, this Court in *Cohill* confronted the precise factual pattern presented here and confirmed that

a federal court is not divested of jurisdiction over remaining state-law claims after a complaint is amended to remove all federal claims.

In *Cohill,* the plaintiffs' complaint raised a federal question, and the defendants properly removed to federal court. Just as in this case, the plaintiffs "moved to amend their complaint to delete the allegations" giving rise to federal question jurisdiction and "filed a motion * * * to remand the suit to state court." *Cohill*, 484 U.S. at 346. This Court recognized that "when all federal-law claims have dropped out of the action and only pendent state-law claims remain," the federal court *may continue to exercise pendent jurisdiction*. *Id.* at 348. "When the single-federal law claim in the action was eliminated at an early stage of the litigation," this Court explained, the district court has "a powerful reason to *choose* not to continue to exercise jurisdiction." *Id.* at 351 (emphasis added). But remand is not required. Instead, federal courts should "consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity" in deciding whether to remand. *Id.* at 350.

In *Cohill*, this Court expressed particular concern with forum shopping. If a plaintiff seeks to "regain a state forum simply by deleting all federal-law claims from the complaint and requesting that the district court remand the case," the federal court may "guard against forum manipulation" and decline to remand. *Id.* at 357.

d. The Court's holding in *Cohill*—just two years before Congress enacted Section 1367—reflected the overwhelming consensus view, as demonstrated by decades of precedent.

In 1938, this Court had held in *St. Paul Mercury* that a plaintiff cannot "deprive the district court of jurisdiction" "after removal" "by amendment of his pleadings," such as by amending the complaint to decrease the amount in controversy. 303 U.S. at 292; *see also, e.g.*, *Kirby* v. *Am. Soda Fountain Co.*, 194 U.S. 141, 146 (1904); *Cooke* v. *United States*, 69 U.S. (2 Wall.) 218, 218 (1864). Meanwhile, dozens of circuit and district courts had held that a post-removal amendment to eliminate a federal question did not divest a district court of subject matter jurisdiction.[2]

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[2] *See, e.g.*, *Rodriguez* v. *Comas*, 888 F.2d 899, 904 n.20 (1st Cir. 1989) (citing precedent holding that a "plaintiff's voluntary dismissal of federal causes of action does not deprive federal court of jurisdiction over state law claims"); *Hammond* v. *Terminal R.R. Ass'n of St. Louis*, 848 F.2d 95, 97 (7th Cir. 1988) ("If that complaint states a claim that is removable * * * removal is not defeated by the fact that, after the case is removed, the plaintiff files a new complaint, deleting the federal claim or stating a claim that is not removable."); *Henry* v. *Indep. Am. Sav. Ass'n*, 857 F.2d 995, 998 (5th Cir. 1988) ("We note however that a plaintiff's voluntary amendment to a complaint after removal to eliminate the federal claim upon which removal was based will not defeat federal jurisdiction.") (quotation marks omitted); *Boelens* v. *Redman Homes, Inc.*, 759 F.2d 504, 507 (5th Cir. 1985) ("The rule that a plaintiff cannot oust removal jurisdiction by voluntarily amending the complaint to drop all federal questions serves the salutary purpose of preventing the plaintiff from being able to destroy the jurisdictional choice that Congress intended to afford a defendant in the removal statute."); *see also, e.g.*, *In re Romulus Cmty. Schs.*, 729 F.2d 431, 434 (6th Cir. 1984); *In re Carter*, 618 F.2d 1093, 1101 (5th Cir. 1980); *Anderson* v. *Allstate Ins. Co.*, 630 F.2d 677, 681 (9th Cir. 1980); *In re Greyhound Lines*, 598 F.2d 883, 884 &

This consensus was reflected in Wright and Miller's *Federal Practice and Procedure*, which stated in its 1985 edition that once "a case has been properly removed * * * plaintiff[s] cannot successfully do anything to defeat federal jurisdiction and force a remand." 14A Charles Alan Wright, et al., *Federal Practice and Procedure* § 3721, at 213 (2d ed. 1985); *see also, e.g.*, 29 *Federal Procedure: Lawyers Edition* § 69:116, at 590 (1984) ("[T]he generally accepted view appears to be that a plaintiff cannot precipitate a remand by amending the complaint so as to eliminate the federal question * * * ."); Charles Alan Wright, *Handbook of the Law of Federal Courts* § 38, at 114 (1963) ("The plaintiff cannot * * * take action to defeat federal jurisdiction and force remand after the case has been properly removed.").

e. *Gibbs*, *Rosado*, and *Cohill* involved pendent jurisdiction over additional *claims* against defendants who

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n.1 (5th Cir. 1979); *Westmoreland Hosp. Ass'n* v. *Blue Cross of W. Pa.*, 605 F.2d 119, 123 (3d Cir. 1979); *Koufakis* v. *Carvel*, 425 F.2d 892, 900 (2d Cir. 1970); *Hazel Bishop, Inc.* v. *Perfemme, Inc.*, 314 F.2d 399, 403-404 (2d Cir. 1963); *Direct Transit Lines, Inc.* v. *Local Union No. 406, Int'l Brotherhood of Teamsters,* 199 F.2d 89, 90 (6th Cir. 1952) (per curiam); *Brown* v. *E. States Corp.*, 181 F.2d 26, 28 (4th Cir. 1950); *S. Pac. Co.* v. *Haight*, 126 F.2d 900, 903 (9th Cir. 1942); *Price* v. *Highland Cmty. Bank*, 722 F. Supp. 454, 456 (N.D. Ill. 1989) (Posner, J.); *Xactron Mgmt. Ltd.* v. *Kreepy Krauly U.S.A., Inc.*, 696 F. Supp. 1465, 1466 (S.D. Fla. 1988); *Ellis* v. *Colonial Gas Co.*, No. 83-2885-C, 1983 WL 30335, at *1 (D. Mass. Nov. 21, 1983); *Jacks* v. *Torrington Co.*, 256 F. Supp. 282, 287 (D.S.C. 1966); *Johnson* v. *First Fed. Sav. & Loan Ass'n of Detroit*, 418 F. Supp. 1106, 1108 (E.D. Mich. 1976); *Armstrong* v. *Monex Int'l, Ltd.*, 413 F. Supp. 567, 569 (N.D. Ill. 1976); *Comstock* v. *Morgan*, 165 F. Supp. 798, 801 (W.D. Mo. 1958). *But see Solanics* v. *Republic Steel Corp.*, 34 F. Supp. 951, 954-955 (N.D. Ohio 1940); *Fischer* v. *Star Co.*, 227 F. 955, 956 (S.D.N.Y. 1915).

were already facing a parallel federal claim. The year after *Cohill*, the Court confronted the question whether a federal court could exercise pendent jurisdiction over state-law claims against *additional defendants* in *Finley* v. *United States*, 490 U.S. 545 (1989). The Court's answer was "no."

Three aspects of *Finley* are instructive for interpreting Section 1367, which Congress subsequently enacted to provide for pendent party jurisdiction and to codify this Court's pendent claim precedent. *First*, the Court in *Finley* declared its pendent claim precedent—*Gibbs*, its predecessors, and its progeny—to be "well established," and declined "to limit or impair" that precedent. *Id.* at 548-556. *Second*, this Court understood pendent claim jurisdiction to extend "to the full extent permitted by the Constitution." *Id.* (citing *Gibbs*). *Third*, the Court invited Congress to weigh in, stating that "[w]hatever we say regarding the scope of jurisdiction conferred by a particular statute can of course be changed by Congress," and that "[w]hat is of paramount importance is that Congress be able to legislate against a background of clear interpretive rules, so that it may know the effect of the language it adopts." *Id.* at 556.

2. Section 1367 codified Gibbs*,* Cohill*, and their progeny.*

a. The text and structure of Section 1367 make clear that Congress enacted it to overrule *Finley* and to "codif[y]" this Court's pendent claim precedent—including the rule that a federal court may continue to exercise supplemental jurisdiction even after a plaintiff amends a complaint to remove the federal question. *City of Chicago* v. *Int'l Coll. of Surgeons*, 522 U.S. 156, 164, 172-173 (1997). Congress accomplished this

result by authorizing the widest possible grant of supplemental jurisdiction in the text of Section 1367, while carving out specific exceptions for certain diversity cases and codifying the pre-1990 precedent regarding a court's authority to decline to exercise supplemental jurisdiction with language taken directly from *Gibbs* and its progeny.

First, Congress conferred extremely broad supplemental jurisdiction in the text of Section 1367(a).

Subsection (a) states that, "[e]xcept as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over *all other claims* that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III." 28 U.S.C. § 1367(a) (emphasis added). In response to *Finley*, the statute provides that "supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties." *Id.*

Under Section 1367(a), there must be a "civil action" over which a district court has "original jurisdiction." *Id.* Once that requirement has been met, however, federal courts have "supplemental jurisdiction over *all other claims*" that are "so related to claims in the action" that they form part of the "same case or controversy." *Id.* (emphasis added). This broad grant of jurisdiction demonstrates Congress's intent to preserve and expand—rather than diminish—the scope of federal courts' authority to hear supplemental state-law

claims. *See also* 28 U.S.C. § 1441(a) (permitting removal whenever courts "have original jurisdiction").

Second, Congress specified limited exceptions to subsection (a)'s broad grant of jurisdiction in diversity cases (none of which are at issue here). Subsection 1367(b) prohibits district courts from exercising supplemental jurisdiction over claims "against persons made parties under Rule 14, 19, 20, or 24," and over "claims by persons proposed to be joined as plaintiffs under Rule 19," and persons "seeking to intervene as plaintiffs under Rule 24," when "exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of" diversity jurisdiction. 28 U.S.C. § 1367(b).

Congress's decision to include these specific, detailed exceptions to Section 1367(a) shows that Congress did not intend for courts to impose additional, unenumerated exceptions. *See Allapattah*, 545 U.S. at 560. It also demonstrates that Congress intended Section 1367(a)'s text to have an extremely broad sweep—so broad that it *would* grant federal courts authority to exercise supplemental jurisdiction over non-diverse parties in a diversity action (contrary to longstanding precedent), if Congress did not cabin that power. Congress thus enacted Section 1367(b) to limit the authority of the federal courts with respect to non-diverse parties, but Congress did *not* place any other similar limitations on the supplemental jurisdiction of the federal courts authorized by Section 1367(a).

Third, Congress made clear that the federal courts may decline supplemental jurisdiction in certain circumstances. Section 1367(c) states that federal courts "may decline to exercise supplemental jurisdiction" in situations including (1) when "the claim raises a novel

or complex issue of State law," (2) "the claim substantially predominates over the claim or claims over which the district court has original jurisdiction," (3) "the district court has dismissed all claims over which it has original jurisdiction," and (4) in "exceptional circumstances" where "there are other compelling reasons for declining jurisdiction." 28 U.S.C. § 1367(c). The text of Section 1367 thus codifies pre-1990 precedent investing district courts with substantial leeway to determine when to exercise supplemental jurisdiction over state-law claims.

The text of Section 1367(c)(3) is particularly significant: It demonstrates Congress's intent that district courts may continue to exercise supplemental jurisdiction over state-law claims *even after all federal claims have dropped out of the case*. This text reflects Congress's agreement that a federal court need not possess "jurisdiction over the primary claim at all stages as a prerequisite to resolution of the pendent claim." *Rosado*, 397 U.S. at 405. Instead, Congress granted federal courts authority under Section 1367 to continue to exercise supplemental jurisdiction even if the court is no longer adjudicating the primary federal claim. The text of Section 1367(c) thus directly refutes the Eighth Circuit's position below that federal courts lose jurisdiction the moment there ceases to be a federal question in the case. *See* Pet. App. 11a-12a.

b. When Congress enacted Section 1367, it drew its language directly from pre-1990 pendent jurisdiction caselaw, further demonstrating Congress's intent to codify longstanding precedent.

Subsection (a)'s broad grant of jurisdiction extends the federal courts' authority to hear state-law claims

comprising part of "the same case or controversy under Article III," 28 U.S.C. § 1367(a), echoing *Gibbs*'s rule that a federal court may exercise jurisdiction over state-law claims where the "entire action before the court comprises but one constitutional 'case.' " *Gibbs*, 383 U.S. at 726.

Subsection (c) permits a court to "decline to exercise supplemental jurisdiction," mirroring language the Court used just two years before in *Cohill*. 28 U.S.C. § 1367(c); *see Cohill*, 484 U.S. at 356 ("[T]he district court may decline jurisdiction * * * ."). Meanwhile, Subsections (c)(2) and (c)(3) employ language taken directly from *Gibbs*. *Compare* 28 U.S.C. § 1367(c)(2), (c)(3) (court should assess whether state law claim "substantially predominates," and "whether the district court has dismissed all claims over which it has original jurisdiction"), *with Gibbs*, 383 U.S. at 726-727 (instructing district courts to consider whether "the state issues substantially predominate" and whether "the federal claims [were] dismissed before trial"); *see also, e.g.*, *Cohill*, 484 U.S. at 350 n.7. And Section 1367(c)(1)—directing courts to evaluate whether "the claim raises a novel or complex issue of State law"—draws from pre-1990 lower court pendent jurisdiction precedent. *See, e.g.*, *United States* v. *Zima*, 766 F.2d 1153, 1158 (7th Cir. 1985); *L.A. Draper & Son* v. *Wheelabrator-Frye, Inc.*, 735 F.2d 414, 428 (11th Cir. 1984).

"When a statutory term is obviously transplanted from another legal source, it brings the old soil with it." *Taggart*, 587 U.S. at 560 (quotation marks omitted). That is because, "absent other indication, Congress intends to incorporate the well-settled meaning of" the legal terminology "it uses." *Sekhar* v. *United States*, 570 U.S. 729, 732 (2013) (quotation marks

omitted); *see George*, 596 U.S. at 753 ("[W]hen Congress employs a term of art, that usage itself suffices to adopt the cluster of ideas that were attached to each borrowed word in the absence of indication to the contrary.") (brackets and quotation marks omitted). By invoking *Gibbs* and its progeny, Congress incorporated the well-developed jurisprudence regarding when a court may exercise jurisdiction after the federal claim has dropped out of a case—including the specific rule at issue here, that a federal court may "guard against forum manipulation" and decline to remand state-law claims when a plaintiff amends a complaint in an effort to strip a federal court of jurisdiction. *Cohill*, 484 U.S. at 357.

The Court should honor Congress's intent to codify established precedent, especially where the Court in *Finley* expressly invited Congress to act, and Congress did so the very next year. Adopting any other interpretative approach would perversely penalize Congress for responding to this Court's invitation.

B. Legislative History Confirms That Congress Codified *Gibbs*, *Cohill*, And Their Progeny.

The text of Section 1367 is unambiguous and decides this case. *Cf. Allapattah*, 545 U.S. at 567 (declining to consider legislative history with respect to a different question involving Section 1367 after concluding text was clear). The legislative history of Section 1367 also confirms, however, that Congress codified the existing rules into Section 1367.

Congress enacted Section 1367 at the recommendation of a subcommittee of the Federal Courts Study Committee. The text of Section 1367 "is based sub-

stantially" on the subcommittee's proposal. *Allapattah*, 545 U.S. at 569. The subcommittee's report explained that Section 1367 was designed to "overrule *Finley* by codifying the doctrines of pendent and ancillary jurisdiction," and "basically restores the law as it existed prior to *Finley*." *Subcommittee Report*, *supra*, at 547, 561; *see id.* at 557-558 n.26 (citing *Cohill* in describing this Court's precedent); *id.* at 560 ("We recommend that Congress codify this case law * * * ."). To accomplish this goal, the subcommittee proposed a statute that "supplies a general background rule favoring supplemental jurisdiction." *Id.* at 560. That broad grant of jurisdiction ceases to apply only "if Congress specifie[s] a contrary rule." *Id.* at 560-561.

The House Report states that "the Supreme Court has virtually invited Congress to codify supplemental jurisdiction * * * in *Finley*." H.R. Rep. No. 101-734, at 28. The report describes Section 1367 as authorizing "jurisdiction in a case like *Finley*, as well as essentially restor[ing] the pre-*Finley* understandings of the authorization for and limits on other forms of supplemental jurisdiction." *Id.* It notes that Section 1367(c) "codifies the factors that the Supreme Court has recognized as providing legitimate bases upon which a district court may decline jurisdiction over a supplemental claim." *Id.* at 29.[3]

If there were any doubt, the drafting history of Subsection (c)(3) shows that it was meant to codify the rule

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[3] In *Allapattah*, this Court declined to rely on a footnote in the House Report that contradicted Section 1367's plain text and the subcommittee's report. *See Allapattah*, 545 U.S. at 569. The opposite is true here: The text of Section 1367, the subcommittee's analysis, and the House Report are in accord, and confirm that Congress intended to codify longstanding precedent.

that the post-removal amendment of a complaint does not deprive the federal court of jurisdiction.

The subcommittee of the Federal Courts Study Committee had originally proposed slightly different language for Subsection (c). *See Subcommittee Report*, *supra*, at 568. Professors Arthur Wolf and John Egnal then recommended adding language similar to what now appears in Subsection (c)(3), which requires a federal court to consider whether it "has dismissed all claims over which it has original jurisdiction" when determining whether to exercise supplemental jurisdiction. *See Federal Courts Study Committee Implementation Act and Civil Justice Reform Act: Hearing on H.R. 5381 and H.R. 3898 Before the Subcomm. on Cts., Intell. Prop. & the Admin. of Just. of the H. Comm. on the Judiciary*, 101st Cong. 688 (1990) ("House Hearing"); *see* H.R. Rep. No. 101-734, at 63 n.13 (thanking Wolf and Egnal). Wolf and Egnal explained to the committee that dismissal "may be for a variety of reasons including lack of personal jurisdiction, failure to state a claim upon which relief can be granted, and *a voluntary withdrawal of the claim*." House Hearing, *supra*, at 694 (emphasis added).

In sum, the legislative history explains that Congress intended to codify this Court's pre-1990 precedent, reinforcing the conclusion that the District Court retained jurisdiction over Respondents' state-law claims even after Respondents amended their complaint.

C. Following Enactment Of Section 1367, This Court And Every Circuit Court Has Understood Federal Courts To Retain Supplemental Jurisdiction After Amendment Of A Complaint.

Following the enactment of Section 1367, this Court and the courts of appeals—including the Eighth Circuit before this case—have consistently concluded that post-removal amendments do not divest a federal court of jurisdiction. The Court should affirm this widespread consensus.

1. In *Rockwell International Corp*. v. *United States*, 549 U.S. 457 (2007), the Court confirmed that if a plaintiff attempts to manufacture a remand by amending a complaint in a removal case, the district court may continue to exercise supplemental jurisdiction over the non-federal claims.

Justice Scalia's opinion for the Court in *Rockwell* interpreted the False Claims Act's statutory bar on a federal court exercising "jurisdiction" in a *qui tam* action based on publicly disclosed information, unless the relator was the original source "of the information on which the allegations are based," 549 U.S. at 467 (quotation marks omitted). In *Rockwell*, the relator initially pleaded allegations for which he was the original source, but subsequently "prevailed" "based upon publicly disclosed allegations." *Id.* The Court confronted the question whether only the "original complaint" needed to meet the original source requirement, or whether an amended complaint also needed to be based on original source information. *Id.* at 473. After analyzing the statute's text, the Court held that the False Claims Act's original source requirement ap-

plied to an amended complaint, too. Otherwise, a relator could "plead a trivial theory of fraud for which he had some direct and independent knowledge and later amend the complaint to include theories copied from the public domain." *Id.*

The Court explained that its interpretation of the False Claims Act paralleled a rule for federal question cases filed directly in federal court. "[W]hen a plaintiff files a complaint in federal court and then voluntarily amends the complaint, courts look to the amended complaint to determine jurisdiction." *Id.* at 473-474 (citing *Wellness Cmty.-Nat'l* v. *Wellness House*, 70 F.3d 46, 49 (7th Cir. 1995), and *Boelens* v. *Redman Homes, Inc.*, 759 F.2d 504, 508 (5th Cir. 1985)). But *Rockwell* emphasized that *the opposite rule applies to removal cases* like this one, citing *Cohill* and *St. Paul Mercury*. "[W]hen a defendant removes a case to federal court based on the presence of a federal claim, an amendment eliminating the original basis for federal jurisdiction generally *does not defeat jurisdiction*." *Id.* at 474 n.6 (emphasis added) (citing *Cohill*, 484 U.S. at 346, 357, and *St. Paul Mercury*, 303 U.S. at 293). "[R]emoval cases raise forum-manipulation concerns that simply do not exist when it is the *plaintiff* who chooses a federal forum and then pleads away jurisdiction through amendment." *Id.*

2. In addition, in two other cases, this Court reaffirmed that a federal court may exercise supplemental jurisdiction when the federal claim has dropped out of the case in some fashion. These cases further refute the Eighth Circuit's notion that a federal court's supplemental jurisdiction must be continually sustained by a live federal question.

a. In *Osborn* v. *Haley*, 549 U.S. 225 (2007), the Court confirmed that, so long as a case involves a federal question at the time of removal, the court may continue to exercise supplemental jurisdiction throughout the litigation.

Osborn involved the Westfall Act, which permits the federal government to remove state-law tort cases against federal employees and substitute the United States as a defendant. The Attorney General must first certify that the federal employee acted in the scope of his or her employment. *Id.* at 229-230. The district court then reviews the certification, may disagree with the Attorney General, and can decline to substitute the United States. *Id.* at 230. Even in cases where a district court declines to substitute the United States as a party, however, the Westfall Act's text does not permit a remand to state court. *Id.* at 243.

The Court held that the Westfall Act's rule precluding remand complied with Article III's limits on federal question jurisdiction. "Because a significant federal question (whether [the employee] has Westfall Act immunity) would have been raised at the outset, the case would 'arise under' federal law, as that term is used in Article III." *Id.* at 244-245 (brackets omitted). The Court cited *Cohill*, *Gibbs*, and Section 1367 as "precedent that guides us," and explained that "[e]ven if only state-law claims remained after resolution of the federal question, the District Court would have discretion, consistent with Article III, to retain jurisdiction." *Id.* at 245. In the context of the Westfall Act, "[c]onsiderations of judicial economy, convenience and fairness to litigants * * * make it reasonable and proper for a federal court to proceed to final judgment,

once it has invested time and resources." *Id.* (quotation marks omitted).

b. In *Carlsbad Technology, Inc.* v. *HIF Bio, Inc.*, 556 U.S. 635 (2009), the Court again reiterated that a federal court may exercise supplemental jurisdiction after the federal claims have dropped out of a case—in that case, due to dismissal.

There, the plaintiffs' complaint alleged violations of both state and federal law, and defendants removed to federal district court. *Id.* at 636. After the district court dismissed the only federal claim, it remanded to state court. *Id.* at 637. The question before this Court was whether the court of appeals could review the district court's remand order, which turned on whether the remand was "based on lack of subject matter jurisdiction" or was instead discretionary. *Id.* at 637. To answer that question, the Court explained that "[u]pon dismissal of the federal claim, the District Court retained its statutory supplemental jurisdiction over the state law-claims." *Id.* at 640. As a result, the district court's "decision declining to exercise that statutory authority was not based on a jurisdictional defect but on its discretionary choice not to hear the claims despite its subject-matter jurisdiction over them," which meant that the circuit court could review the remand order on appeal. *Id.* at 640-641.

3. Finally, since 1990, the courts of appeals—including the Eighth Circuit before the outlier decision below—have consistently held that a plaintiff may not strip a federal court of jurisdiction by strategically

amending a complaint after removal.[4] To the contrary, in that situation federal courts retain subject matter jurisdiction over supplemental claims. Under Section 1367, courts may either "permit the amendment, but * * * retain jurisdiction," or may choose to "exercise their discretion to remand." 14C Charles Alan Wright, et al., *Federal Practice and Procedure* § 3722 (4th ed. June 2024 update); *see* 16 *Moore's Federal Practice* § 107.72[2] (2024) ("Remand is not required * * * .").

This law is so well-established that Respondents did not challenge it in the District Court. After amending their complaint, Respondents argued that the District Court *should* decline to exercise supplemental jurisdiction. JA 5-6, 55. But Respondents never doubted that the federal court *could* adjudicate their state-law claims. In short, a long string of precedent supports Petitioners' position. Ruling for Respondents would

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[4] *See Ortiz-Bonilla* v. *Federación de Ajedrez de P.R., Inc.*, 734 F.3d 28, 36 (1st Cir. 2013); *Ching* v. *Mitre Corp.*, 921 F.2d 11, 13-14 (1st Cir. 1990); *Gale* v. *Chicago Title Ins. Co.*, 929 F.3d 74, 78 n.2 (2d Cir. 2019); *Collura* v. *City of Philadelphia*, 590 F. App'x 180, 184 (3d Cir. 2014) (per curiam); *Harless* v. *CSX Hotels, Inc.*, 389 F.3d 444, 448 (4th Cir. 2004); *Clewis* v. *Medco Health Sols., Inc.*, 578 F. App'x 469, 471 (5th Cir. 2014) (per curiam); *Harper* v. *AutoAlliance Int'l, Inc.*, 392 F.3d 195, 210-211 (6th Cir. 2004); *Taylor* v. *First of Am. Bank-Wayne*, 973 F.2d 1284, 1287-88 (6th Cir. 1992); *Prince* v. *Rescorp Realty*, 940 F.2d 1104, 1105 n.2 (7th Cir. 1991); *McLain* v. *Andersen Corp.*, 567 F.3d 956, 965 (8th Cir. 2009); *Sparta Surgical Corp.* v. *Nat'l Ass'n of Sec. Dealers, Inc.*, 159 F.3d 1209, 1213 (9th Cir. 1998), *abrogated on other grounds by Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Manning*, 578 U.S. 374, 379 & n.1 (2016); *Behlen* v. *Merrill Lynch*, 311 F.3d 1087, 1095 (11th Cir. 2002).

cause a sea change in the law.[5] This Court should reject that result and reverse the Eighth Circuit. *See Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U.S. 826, 833 (1989) ("[W]e are reluctant to disturb this well-settled judicial construction, particularly when there is no evidence that this authority has been abused * * * .").

D. Section 1367's Broad Grant Of Supplemental Jurisdiction Prevents Gamesmanship.

As this Court explained in *Cohill*, the longstanding rule that a plaintiff's amendment does not defeat supplemental jurisdiction in removal cases—a rule now codified in Section 1367—is critical to preventing gamesmanship. *See Cohill*, 484 U.S. at 357. A contrary rule would facilitate both judge and forum shopping.

Start with the concerning specter of judge shopping, which would be present in every case. If Respondents prevail, a plaintiff could plead a federal claim in state court, wait for defendants to remove, and if the plaintiff dislikes the federal judge to whom the case is assigned, amend the complaint to return to state court. This tactic would be extremely troubling. Plaintiffs should not be able to game who decides their case. Indeed, if a plaintiff files a case in federal court in the

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[5] Ruling for Respondents would destabilize related precedent too, such as cases holding that amending a complaint to remove class allegations does not defeat removal jurisdiction under the Class Action Fairness Act. *See, e.g.*, *In Touch Concepts, Inc.* v. *Cellco P'ship*, 788 F.3d 98, 101-102 (2d Cir. 2015); *In re Burlington N. Santa Fe Ry. Co.*, 606 F.3d 379, 380-381 (7th Cir. 2010) (per curiam).

first instance, dismisses it, and refiles in an attempt to draw a new judge, federal courts assign the dismissed case to the original judge to prevent this unseemly gambit. *See, e.g.*, C.D. Cal. Loc. Rule 83-1.2.2; E.D Cal. Loc. Rule 123(d); D.D.C. Loc. Civ. Rule 40.5(a)(4), (c)(1)-(2); E.D. Wis. Civ. Loc. Rule 3(b)(4). Plaintiffs should not be free to judge-shop in removal cases.

Other possibilities for "forum manipulation" are equally concerning. *Cohill*, 484 U.S. at 357. For example, if a plaintiff anticipates receiving an imminent adverse ruling from a federal court, the plaintiff could seek to amend a complaint and force a snap remand. Or a plaintiff could seek to amend a complaint and return to state court to evade recent, adverse federal precedent.

More fundamentally, permitting a plaintiff to divest a federal court of removal jurisdiction would, in many circumstances, frustrate the right to remove that Congress afforded defendants. *See* 28 U.S.C. § 1441(a). Where a plaintiff has pleaded a federal question at the outset of a case, there is good reason to doubt the plaintiff will truly abandon it. Instead, even if the plaintiff amends her complaint supposedly to excise the federal question, the plaintiff may attempt to smuggle the federal question back into the case on remand—especially because the plaintiff continues litigating the same nucleus of operative facts. At that point, the defendant can remove again—raising the concerning specter of the same case ping-ponging between state and federal court. *See id.* § 1446(b)(3).

The risk of a plaintiff reraising federal issues is particularly salient in a lawsuit such as this one, where

at the case's inception Respondents attempted to artfully plead around federal question jurisdiction by pleading only state-law causes of action, despite repeatedly referencing federal law and seeking an injunction that would have required Petitioners to comply with federal law. After Petitioners removed to federal court, Respondents *again* attempted to plead around federal question jurisdiction by excising references to federal law in the complaint, despite complaining about the same alleged actions by Petitioners. All the while, Respondents have not been shy that they seek to forum shop and evade federal court. *See* JA 49, 57. If and when Respondents do reraise the federal question in some fashion on remand, for instance by seeking discovery on it, Petitioners will be forced to seek removal yet again—and will have lost their right to be in federal court during the time the case proceeded in state court. *See* 28 U.S.C. § 1441(a).

* * *

The Court may thus resolve this case by ruling for Petitioners on either question presented. In a removal case, a federal court should evaluate whether it has federal question jurisdiction at the time of removal, and if the answer is yes, it may continue to "exercise supplemental jurisdiction over the accompanying state law claims" even if the complaint is later amended. *Int'l Coll. of Surgeons*, 522 U.S. at 165. To be clear, Petitioners are not arguing that a district court *must* retain the case in these circumstances. *See id.* at 172. Rather, Petitioners are arguing that—consistent with the text and structure of Section 1367, in

addition to copious precedent—a district court may exercise supplemental jurisdiction to prevent precisely the gambit Respondents attempted here.[6]

II. THE EIGHTH CIRCUIT'S APPROACH IS FUNDAMENTALLY WRONG.

The decision below is an extreme outlier that fundamentally misinterprets the text and structure of Section 1367, while ignoring decades of precedent and the important policy justifications underpinning that precedent.

A. The Eighth Circuit's Approach Ignores Statutory Text And Structure.

The Eighth Circuit concluded that "when there is no longer a federal claim on which the district court could exercise supplemental jurisdiction, the source of the district court's subject-matter jurisdiction ceases to exist" and the "only option now is state court." Pet. App. 12a (brackets and quotation marks omitted); *see id.* ("[T]he possibility of supplemental jurisdiction vanished right alongside the once-present federal questions."). The Eighth Circuit reached that conclusion by supposedly relying on "[j]urisdictional first principles." *Id.* at 10a. The court's analysis, however, ignores both the text and structure of Section 1367.

Strikingly, the Eighth Circuit's opinion does not even quote any of the text of Section 1367, much less

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[6] In the District Court, Respondents agreed the court *could* exercise supplemental jurisdiction and chose not to challenge jurisdiction until the Eighth Circuit raised the issue *sua sponte*. Respondents have never advanced—and therefore forfeited—any argument that the exercise of supplemental jurisdiction would have been an abuse of discretion.

analyze how that provision's text and structure answer the questions presented. As Petitioners have explained, *see supra* pp. 23-24, Section 1367(a)'s grant of supplemental jurisdiction is expansive. Meanwhile, Section 1367(b) delineated exceptions to supplemental jurisdiction for diversity cases confirm Congress intended the statute to sweep broadly—and did not intend for courts to apply new, unwritten rules *restricting* supplemental jurisdiction in removal cases. *See supra* p. 24.

Section 1367(c)(3), moreover, expressly rebuts the Eighth Circuit's conclusion that once "there is no longer a federal claim," the "only option" is state court. Pet. App. 12a (brackets and quotation marks omitted). If that were true, federal courts would also *lack* jurisdiction over supplemental state-law claims after dismissing a plaintiff's federal claims, including based on Article III concerns, as in *Rosado*. But Congress concluded otherwise, providing that district courts "*may* decline to exercise supplemental jurisdiction" where "the district court has dismissed all claims over which it has original jurisdiction"—but are not required to do so. 28 U.S.C. § 1367(c)(3) (emphasis added).

In their brief in opposition (at 28), Respondents attempted to fill in the gap in the Eighth Circuit's analysis by focusing on 28 U.S.C. § 1447. But nothing in that provision conflicts with the conclusion that the District Court retained supplemental jurisdiction over Respondents' state-law claims. Section 1447 states that a "motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal." 28 U.S.C. § 1447(c). By contrast, "[i]f at any time before final judgment it appears that the

district court lacks subject matter jurisdiction, the case shall be remanded." *Id.*

But the District Court did not ever *lack* subject matter jurisdiction over this removal case. It possessed federal question jurisdiction based on the original complaint at the time of removal. Supplemental jurisdiction additionally provided continued "subject-matter jurisdiction over" the "state-law claims." *Carlsbad*, 556 U.S. at 639. "[P]ostremoval events" thus "d[id] not deprive" the "federal court[] of subject-matter jurisdiction." *Powerex Corp.* v. *Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 n.1 (2007); *see Wis. Dep't of Corr.* v. *Schacht*, 524 U.S. 381, 390 (1998). Indeed, in *St. Paul Mercury*, this Court rejected the notion that a similarly worded statute required remand when a plaintiff amends his complaint to alter the allegations that originally provided the court with jurisdiction, and instead held that a court retains its subject matter jurisdiction post-amendment. 303 U.S. at 287, 293.

At the certiorari stage, Respondents (at 28) also advanced an argument based on the statutory evolution of Section 1447(c). Prior to November 1988, Section 1447(c) stated that a court "shall remand the case" if "it appears that the case was removed improvidently and without jurisdiction." 28 U.S.C. 1447(c) (1982). Respondents argued that this prior language required federal courts to remand only if they lacked jurisdiction at the time of removal, and that under the prior language courts could thus continue to exercise supplemental jurisdiction after removal even if there ceased to be a federal question. According to Respondents, because Congress later changed the language of Section 1447(c), which no longer uses the phrase "was removed," the current version of Section 1447(c) no

longer authorizes federal courts to continue to exercise supplemental jurisdiction when there is no longer a federal question in the case.

That logic does not hold up. Section 1447(c) specifies the *procedures* courts follow after removal. It is not, and never was, a *grant or withdrawal* of jurisdiction. In *Cohill*, this Court explained that the prior version of Section 1447 had no bearing on whether and when a court should retain jurisdiction post-amendment. *See Cohill*, 484 U.S. at 354 ("[T]he removal statute does not address specifically *any* aspect of a district court's power to dispose of pendent state-law claims after removal * * * ."); *id.* at 355 n.11 ("[T]he remand authority conferred by the removal statute and the remand authority conferred by the doctrine of pendent jurisdiction overlap not at all."). Respondents thus read too much into the change between the pre- and post-1988 text of Section 1447(c). *See Spear Mktg., Inc.* v. *BancorpSouth Bank*, 791 F.3d 586, 592 (5th Cir. 2015) (concluding in a 2015 decision that "[w]hen § 1447(c) is read in its entirety, it is clear that this rule does nothing more than specify the time in which remands for jurisdictional or procedural defects may be instituted; it contains no substantive provisions whatsoever").

Indeed, since the 1988 amendment to Section 1447(c), courts have continued to exercise jurisdiction in this context. *See supra* p. 34 n.4. Congress has repeatedly amended other aspects of Section 1447 without modifying that widespread practice—confirming Congress's acceptance of a rule that federal courts have followed for decades. *See* Removal Clarification Act of 2011, Pub. L. No. 112-51, § 2, 125 Stat. 545, 546; United States District Court: Removal Procedure,

Pub. L. No. 104-219, § 1, 110 Stat. 3022, 3022 (1996); Judicial Improvements, Pub. L. No. 102-198, § 10, 105 Stat. 1623, 1626 (1991); *Lorillard* v. *Pons*, 434 U.S. 575, 580 (1978).[7]

B. The Eighth Circuit's Approach Is Inconsistent With The Interpretive Principles That Apply To Supplemental Jurisdiction Statutes.

After ignoring the text and structure of Section 1367, the Eighth Circuit proclaimed that its position was justified because "all doubts about federal jurisdiction must be resolved in favor of remand." Pet. App. 10a (quotation marks omitted). But that is *not the rule* that applies when cases are removed to federal court. Both before and after the enactment of Section 1367, this Court has emphasized that federal courts have expansive jurisdiction over supplemental claims in cases removed to federal court. Resolving "all doubts" in favor of a remand is fundamentally inconsistent with that broad authority.

In *Gibbs*, this Court rejected an "unnecessarily grudging" approach to supplemental jurisdiction, explaining that "the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged." 383 U.S. at 724-725. Congress codified this Court's expansive approach into

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[7] The limited legislative history on this provision confirms that Congress did not intend the 1988 amendment to Section 1447(c) to modify the rules that apply "after disposition of all federal questions leaves only State law questions that might be decided as a matter of ancillary or pendent jurisdiction or that instead might be remanded." H.R. Rep. No. 100-889, at 72 (1988).

Section 1367, and this Court has continued to cite *Gibbs* for "the interpretive principle that, in cases involving supplemental jurisdiction over additional claims between parties properly in federal court, the jurisdictional statutes should be read broadly." *Allapattah*, 545 U.S. at 553.

In *Allapattah*, the Court stated it would "not give jurisdictional statutes a more expansive interpretation than their text warrants," but emphasized that "it is just as important not to adopt an artificial construction that is narrower than what the text provides." *Id.* at 558. The Eighth Circuit failed to apply that interpretive principle. Instead, it incorrectly put a thumb on the scale *against* federal-court jurisdiction over supplemental claims, something this Court has repeatedly instructed the lower courts not to do.

C. The Eighth Circuit's Approach Both Ignores And Misinterprets Relevant Precedent.

The Eighth Circuit's approach is also flatly inconsistent with longstanding federal precedent.

The Eighth Circuit completely ignored *Cohill*. The court cited *St. Paul Mercury* for the proposition that changes "to the actual facts on the ground" do not defeat jurisdiction. Pet. App. 8a. But the Eighth Circuit never engaged with what this Court actually said in that case: "*amendment of* [*the*] *pleadings*" "after removal" does "not deprive the district court of jurisdiction." *St. Paul Mercury*, 303 U.S. at 292 (emphasis added). Meanwhile, the Eighth Circuit cited *Rockwell* for the distinction between "the state of things" and the "alleged state of things." Pet. App. 8a-11a (quoting *Gale* v. *Chi. Title Ins. Co.*, 929 F.3d 74, 77-78 (2d Cir. 2019), in turn quoting *Rockwell*, 549 U.S. at 473). But

a crucial footnote in Justice Scalia's decision for the Court explains that this distinction does not apply when a plaintiff amends a federal complaint post-removal. *See Rockwell*, 549 U.S. at 474 n.6. The Eighth Circuit's opinion nowhere addresses, much less explains, why it failed to follow that clear prescription.

The Eighth Circuit's analysis of circuit precedent fares no better. For example, the decision below cites the Eleventh Circuit's ruling in *Pintando* v. *Miami-Dade Housing Agency*, 501 F.3d 1241 (11th Cir. 2007) (per curiam), for the proposition that when a plaintiff amends a complaint, courts look to the allegations in the "amended complaint" to determine the court's jurisdiction. *Id.* at 1243. Yet the Eighth Circuit overlooked the key footnote in *Pintando*, which—citing the key footnote in *Rockwell*—explains that "[c]ases removed from state to federal court * * * are treated differently," and "[i]n those cases, the district court must look at the case at the time of removal to determine whether it has subject-matter jurisdiction." *Id.* at 1243 n.2. Under Eleventh Circuit precedent, later "changes to the pleadings do not impact the court's exercise of supplemental jurisdiction." *Id.* (citing *Rockwell*, 549 U.S. at 474 n.6). The same is true of the Second Circuit's decision in *Gale*, which the Eighth Circuit quoted but which contains a similar footnote explaining its inapplicability in this context. 929 F.3d at 78 n.2.

The Eighth Circuit also cited *Bernstein* v. *Lind-Waldock & Co.*, 738 F.2d 179 (7th Cir. 1984) (Posner, J.), for the proposition that a plaintiff's voluntary amendment can *cure* a lack of jurisdiction in a case improperly removed by a defendant. According to the

Eighth Circuit, this means voluntary amendment necessarily *strips* jurisdiction in a properly removed case. Pet. App. 9a; *see* BIO at 27.

But *Bernstein* explains why courts treat these discrete circumstances differently. In that case, after losing a motion to remand, the plaintiff amended his complaint to clearly state a federal question. *Bernstein*, 738 F.2d at 182. Judge Posner explained that a plaintiff who files an amended complaint *invoking* federal question jurisdiction is "bound to remain there." *Id.* at 185. "Otherwise * * * if he won his case on the merits in federal court he could claim to have raised the federal question in his amended complaint voluntarily, and if he lost he could claim to have raised it involuntarily and to be entitled to start over in state court." *Id.*; *see Akin* v. *Ashland Chem. Co.*, 156 F.3d 1030, 1036 (10th Cir. 1998); *Brough* v. *United Steelworkers of Am., AFL-CIO*, 437 F.2d 748, 750 (1st Cir. 1971). As *Bernstein* demonstrates, the settled rules that govern this area of the law are tailored to specific concerns. This Court should not disrupt them.

Indeed, even the Eighth Circuit agreed that in at least some removal cases, a court must assess jurisdiction solely on the basis of the original complaint at the time of removal: "if the district court had ordered" amendment "or if the decision to amend [was] otherwise involuntary." Pet. App. 7a-8a n.1 (brackets and quotation marks omitted); *see In re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8th Cir. 2000) (explaining an amendment is involuntary if the complaint would otherwise be dismissed). The Eighth Circuit offered no rationale for accepting that procedural rule, but rejecting the long-established rule that a post-removal

amendment does not divest a federal court of jurisdiction.

Finally, the Eighth Circuit's decision mangled *its own* precedent. According to the decision below, the panel was required to follow the 1926 decision in *Highway Construction Co.* v. *McClelland*, 15 F.2d 187, 188 (8th Cir. 1926) (per curiam). But that decision involved a case removed to federal court under diversity jurisdiction, where the complaint was amended to add two non-diverse defendants. *See id.* This Court explained in *Finley* that "pendent-*party* jurisdiction" involves a "fundamentally different" question than pendent claim jurisdiction. 490 U.S. at 549. Congress recognized that fact by carving out exceptions from the broad grant of supplemental jurisdiction in Section 1367(a) for situations where non-diverse parties are added to cases heard under a court's diversity jurisdiction. *See* 28 U.S.C. § 1367(b); *see also id.* § 1447(e).

The Eighth Circuit was thus wrong to conclude it was bound by the century-old ruling in *Highway Construction*, which involved a completely different legal question that was *expressly addressed* in the text of Section 1367(b). Instead, the Eighth Circuit should have followed its precedent holding that—when a plaintiff amends his complaint to remove a federal question—jurisdiction "is determined at the time of removal," and the court has "discretion to exercise supplemental jurisdiction over remaining state-law claims." *McLain*, 567 F.3d at 965 (quotation marks omitted).

D. The Eighth Circuit's Approach Vastly Underestimates The Potential For Gamesmanship.

The Eighth Circuit mistakenly concluded that district courts could police against "forum manipulation"—the concern that animated *St. Paul Mercury*, *Cohill*, and *Rockwell*—by declining "leave to amend" under Federal Rule of Civil Procedure 15 "if the only reason for the changes is to destroy federal jurisdiction." Pet. App. 10a n.2.

Rule 15 does not solve the problem. For starters, Rule 15(a) permits a plaintiff to amend "once as a matter of course." Fed. R. Civ. P. 15(a). At a minimum, that means every plaintiff can engage in judge shopping by amending the complaint and returning to state court. *See supra* pp. 35-36. That alone is deeply concerning. Moreover, because Rule 15(a) allows one free amendment, in every removed federal question case, the district court would now be forced to analyze the complaint to assess jurisdiction at least two times—once when the defendant removes and once more when the plaintiff amends. In a case where the plaintiff has attempted to artfully plead to avoid federal question jurisdiction under *Gunn*, that may be no easy task. And if the plaintiff attempts to smuggle the federal issues back into the case on remand, it may effectively defeat the defendant's right of removal. *See supra* pp. 36-37.

This case provides a cautionary tale of how ruling for Respondents will waste resources and needlessly prolong proceedings. This case went on for nearly two years—and included an interlocutory trip to the court of appeals—before Respondents exercised their right

to amend. Should Respondents' gambit succeed, all that threshold litigation will have been wasted.

The problems do not end there: Rule 15 requires courts to "freely" permit an amendment. Fed. R. Civ. P. 15(a)(2). This generous standard is a poor fit for a searching inquiry into a plaintiff's motivations for amendment, and raises numerous questions: What if a plaintiff has mixed motives? Can a plaintiff whose amendment is denied then challenge the denial on appeal? If so, how does a court police against a plaintiff who wants to have it both ways and only challenges the denial if he loses on the merits? *See Bernstein*, 738 F.2d at 185-186. How would an order declining to provide leave to amend interact with the rule—which the Eighth Circuit recognized, *see* Pet. App. 7a-8a n.1—that involuntary amendments do not modify jurisdiction?

The judiciary will not benefit from district courts wrestling with new procedural issues—many of which would be unreviewable by appellate courts. *See* 28 U.S.C. § 1447(d). It is better to leave this developed area of the law intact and avoid disturbing the overwhelming practice that has guided federal courts for decades. The Eighth Circuit's decision is a monumental outlier, and it should be reversed.

CONCLUSION

For the foregoing reasons, the Eighth Circuit's decision should be reversed and the case remanded for a decision on the merits of Respondents' appeal.

Respectfully submitted,

STEPHEN D. RABER
JOSEPH S. BUSHUR
WILLIAMS & CONNOLLY LLP
680 Maine Avenue S.W.
Washington, D.C. 20024

Counsel for Petitioner Royal Canin U.S.A., Inc.

BRYAN A. MERRYMAN
ASHLEY BEAN
WHITE & CASE LLP
555 South Flower Street
Suite 2700
Los Angeles, CA 90071

MATTHEW S. DORRITIE
HOGAN LOVELLS US LLP
125 High Street, Suite 2010
Boston, MA 02110

Counsel for Petitioner Nestlé Purina PetCare Company

NEAL KUMAR KATYAL
KATHERINE B. WELLINGTON
NATHANIEL A.G. ZELINSKY
ERIC S. ROYTMAN
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004

CHRISTOPHER M. CURRAN
Counsel of Record
J. FRANK HOGUE
WHITE & CASE LLP
701 Thirteenth Street, N.W.
Washington, D.C. 20005
(202) 626-3600
ccurran@whitecase.com

Counsel for Petitioner Nestlé Purina PetCare Company

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APPENDIX

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28 U.S.C. § 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title—

(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of—

(A) every State and foreign state of which the insured is a citizen;

(B) every State and foreign state by which the insurer has been incorporated; and

(C) the State or foreign state where the insurer has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(d)(1) In this subsection—

(A) the term "class" means all of the class members in a class action;

(B) the term "class action" means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1

or more representative persons as a class action;

(C) the term "class certification order" means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and

(D) the term "class members" means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which—

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

(3) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants

are citizens of the State in which the action was originally filed based on consideration of—

(A) whether the claims asserted involve matters of national or interstate interest;

(B) whether the claims asserted will be governed by laws of the State in which the action was originally filed or by the laws of other States;

(C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;

(D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

(E) whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and

(F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

(4) A district court shall decline to exercise jurisdiction under paragraph (2)—

(A)(i) over a class action in which—

(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

(II) at least 1 defendant is a defendant—

(aa) from whom significant relief is sought by members of the plaintiff class;

(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

(cc) who is a citizen of the State in which the action was originally filed; and

(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and

(ii) during the 3-year period preceding the filing of that class action, no other class action has

been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

(5) Paragraphs (2) through (4) shall not apply to any class action in which—

(A) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

(B) the number of members of all proposed plaintiff classes in the aggregate is less than 100.

(6) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.

(7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.

(8) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

(9) Paragraph (2) shall not apply to any class action that solely involves a claim—

> **(A)** concerning a covered security as defined under [section] 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));
>
> **(B)** that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or
>
> **(C)** that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

(10) For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

(11)(A) For purposes of this subsection and section 1453, a mass action shall be deemed

to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

(B)(i) As used in subparagraph (A), the term "mass action" means any civil action (except a civil action within the scope of section 1711(2)) in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

(ii) As used in subparagraph (A), the term "mass action" shall not include any civil action in which—

(I) all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;

(II) the claims are joined upon motion of a defendant;

(III) all of the claims in the action are asserted on behalf of the general public

(and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

(IV) the claims have been consolidated or coordinated solely for pretrial proceedings.

(C)(i) Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407, or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407.

(ii) This subparagraph will not apply—

(I) to cases certified pursuant to rule 23 of the Federal Rules of Civil Procedure; or

(II) if plaintiffs propose that the action proceed as a class action pursuant to rule 23 of the Federal Rules of Civil Procedure.

(D) The limitations periods on any claims asserted in a mass action that is removed to Federal court pursuant to this subsection shall be deemed tolled

during the period that the action is pending in Federal court.

(e) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

28 U.S.C. § 1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

> **(1)** the claim raises a novel or complex issue of State law,
>
> **(2)** the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

28 U.S.C. § 1441. Removal of civil actions

(a) Generally. Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) Removal based on diversity of citizenship.

(1) In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.

(2) A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Joinder of Federal law claims and State law claims.

(1) If a civil action includes—

(A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and

(B) a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made nonremovable by statute,

the entire action may be removed if the action would be removable without the inclusion of the claim described in subparagraph (B).

(2) Upon removal of an action described in paragraph (1), the district court shall sever from the action all claims described in paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1).

(d) Actions against foreign states. Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e) Multiparty, multiforum jurisdiction.

(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if—

(A) the action could have been brought in a United States district court under section 1369 of this title; or

> **(B)** the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.

The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.

(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(j) has made a liability determination requiring further proceedings as to damages, the district court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.

(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages.

An appeal with respect to the liability determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination shall not be subject to further review by appeal or otherwise.

(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1369 of this title for purposes of this section and sections 1407, 1697, and 1785 of this title.

(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.

(f) Derivative removal jurisdiction. The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

28 U.S.C. § 1446. Procedure for removal of civil actions

(a) Generally. A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) Requirements; generally.

(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

(2)(A) When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.

(B) Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.

(C) If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

(3) Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

(c) Requirements; removal based on diversity of citizenship.

(1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that—

(A) the notice of removal may assert the amount in controversy if the initial pleading seeks—

(i) nonmonetary relief; or

(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

(3)(A) If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an "other paper" under subsection (b)(3).

(B) If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).

(d) Notice to adverse parties and State court. Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such

State court, which shall effect removal and the State court shall proceed no further unless and until the case is remanded.

(e) Counterclaim in 337 proceeding. With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.

(f) [Redesignated (e)]

(g) Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order for testimony or documents is sought or issued or sought to be enforced, the 30-day requirement of subsection (b) of this section and paragraph (1) of section 1455(b) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.

28 U.S.C. § 1447. Procedure after removal generally

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.