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 OF AMICI CURIAE STATE CHAMBERS OF COMMERCE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Amici curiae are nine state chambers of commerce: the Missouri Chamber of Commerce and Industry, the Iowa Association of Business and Industry, the Kansas Chamber of Commerce, the Maryland Chamber of Commerce, the Minnesota Chamber of Commerce, the Nebraska Chamber of Commerce & Industry, Inc., the Business Council of New York State, Inc., the State Chamber of Oklahoma, and the Pennsylvania Chamber of Business and Industry.

The Amici represent thousands of businesses across the country and advocate on public policy issues that will expand private sector job creation, promote an improved and stable business climate, and promote economic development for the benefit of all citizens in each of the respective States. The Amici work to create a fair, balanced, and common-sense civil litigation system that provides predictability and certainty and achieves greater efficiencies and unbiased justice for all.

Amici and their members have strong interests in this case. Amici's members have come to rely on the removal statute to avoid litigation in state forums in "magnet jurisdictions," which plaintiffs often pick for their plaintiff-friendly and anti-corporation biases. The Eighth Circuit's restrictive interpretation of the removal statute, if endorsed by this Court, would

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[1] In accordance with Supreme Court Rule 37, the Amici affirm that no person or entity other than the Amici and their counsel authored this brief in whole or in part, and that no person or entity other than the Amici and their counsel contributed money intended to fund the preparation or submission of this brief.

harm businesses across the country. Under the Eighth Circuit's reading, plaintiffs can counteract a defendant's right to remove a case arising under federal law by simply amending the complaint. As a result, businesses will face unpredictability and increased costs of litigation.

Amici are uniquely able to provide the Court information and perspective on the implications of this case for the broader business community.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Eighth Circuit's interpretation of the removal statute would harm businesses of all sizes—including the Amici's members—in three main ways. First, it would undermine businesses' longstanding expectation that cases involving federal claims, once properly removed to federal court, will remain there. Second, it would enable plaintiffs to unilaterally return cases to state courts, where they may take advantage of certain plaintiff-friendly rules and standards. Lastly, it would burden businesses with increased legal and insurance costs, creating ripple effects across the U.S. economy.

I. Businesses have traditionally relied on removal and supplemental jurisdiction to govern their conduct. These simple jurisdictional rules promote greater predictability, which this Court has recognized as valuable to businesses in their decision-making.

Since the Founding, Congress has afforded defendants the statutory right to remove cases to federal court. That right, as embodied in the current

removal statute, counterbalanced plaintiffs' ability to choose the forum in which to sue by providing defendants with a corresponding opportunity to choose a federal forum in actions with federal claims.

Businesses have also relied on supplemental jurisdiction for stability and fairness. A district court may exercise its discretion to maintain supplemental jurisdiction over state-law claims even when a federal claim is dismissed. In deciding whether to exercise that discretion, the district court may consider whether the plaintiffs have engaged in any manipulative tactics—a particularly salient factor in removal cases, which, as this Court has recognized, raise forum-manipulation concerns.

II. Businesses generally view the right to remove as important and often exercise that right when available. They perceive the federal forum to be more predictable, less susceptible to anti-business biases, and more favorable overall.

Unlike in federal court, plaintiff-friendly rules and standards make litigating in certain state courts, including in the home States of some Amici, especially perilous for defendants. Four categories of plaintiff-friendly rules and standards may be particularly troublesome for defendants in state courts:

- Defendants face a higher bar to dismiss claims when litigating in state court. Unlike in federal court, plaintiffs in certain States need not meet the "plausibility" standard to defeat a motion to dismiss.
- Plaintiffs are more likely to achieve class certification in state courts—which tend to

have more lenient certification standards—than in federal court. State courts' liberal application of class-certification rules places defendants at an enormous strategic disadvantage.

- A group of highly populous States continues to follow the general-acceptance test for expert testimony established in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), instead of the more exacting standard set in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). As experts frequently testify about central issues, the consequences of allowing dubious expert testimony can be enormous.

- Proceeding to trial in state court is riskier. Less than half of States require civil juries to reach unanimous verdicts, a break from the federal unanimity requirement. And many States allow plaintiffs to request a specific damages amount for pain and suffering, contributing to increased damages awards.

III. Allowing plaintiffs to subvert defendants' exercise of removal will impose additional costs on businesses. Small businesses in particular will bear the brunt of protracted jurisdictional disputes. And businesses of all sizes will face the increased costs of corporate liability and insurance coverage. Consumers will also be harmed through higher prices and the decline in research and development, as cautious businesses choose to limit their spending. On a global scale, the higher litigation costs imposed by the Eighth Circuit's rule will heighten the wariness with which foreign investors view the U.S.

legal environment, which will hinder our economy's competitiveness.

This case is a prime example of why certain and predictable jurisdictional rules are important, especially for businesses like members of the Amici. The Court should therefore reverse the judgment of the Eighth Circuit and prohibit plaintiffs' ability to return to state court through amending their complaint post-removal.

ARGUMENT

I. Businesses rely on the longstanding rule that they can remove federal cases to federal court and have them remain there.

Businesses rely on simple jurisdictional rules to govern their conduct. "Simple jurisdictional rules," this Court has recognized, "promote greater predictability," which is "valuable to corporations making business and investment decisions." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). Businesses thus view "administrative simplicity [as] a major virtue in a jurisdictional statute." *Id.* Indeed, predictable jurisdictional rules reduce excessive litigation over "which court is the right court" and thereby increase "the likelihood that results and settlements will reflect a claim's legal and factual merits." *Id.*

A. Businesses expect to be able to remove cases with federal claims to federal court.

One jurisdictional rule on which businesses have traditionally relied is the rule that allows defendants to remove federal claims to federal court. The removal rule traces its roots to the Judiciary Act of

1789, ch. 20, § 12, 1 Stat. 73, 79. In that Act, the First Congress enshrined the defendant's statutory right to remove to federal court "any civil action brought in a State court" if the action "could have been brought, originally, in a federal district court." *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 83, 89 (2005).[2]

This removal rule corresponds to the principle that "the plaintiff [is] the master of the claim," choosing which state to bring a suit, which court of that state to start the action, and which defendants and claims to plead in the action. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). The removal rule's purpose is to protect defendants by providing the opportunity to access federal courts. As this Court long ago explained, the removal rule embodies the idea that the federal judicial power "was not to be

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[2] The Judiciary Act of 1789 allowed defendants to remove cases that could have been brought in federal court, which at the Founding consisted of those "against an alien, or by a citizen of the state in which the suit is brought against a citizen of another state." Ch. 20, § 12, 1 Stat. 73, 79. The removal right "has been in constant use ever since." *Tennessee v. Davis*, 100 U.S. 257, 265 (1880). The Jurisdiction and Removal Act of 1875, ch. 137, 18 Stat. 470, later extended removal to cases raising federal questions, in part to protect businesses from unfriendly state legislation and prejudices in the aftermath of the Civil War and to ensure a "federal haven at the trial level for burgeoning industrial, financial, and other 'entrepreneurial' interests." Michael G. Collins, *The Unhappy History of Federal Question Removal*, 71 Iowa L. Rev. 717, 727 (1986) (citing Felix Frankfurter & James Landis, *The Business of the Supreme Court* 64–65 & n.31, 91–93 (1928)). The right to remove based on federal-question jurisdiction has remained largely the same since 1887. *See* Act of Mar. 3, 1887, ch. 373, § 2, 24 Stat. 552, 553.

exercised exclusively for the benefit of parties who might be plaintiffs, [who] . . . elect the national forum, but also for the protection of defendants who might be entitled to try their rights, or assert their priviliges [sic], before the same forum." *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 348 (1816). The removal rule thus gives defendants the "equal right[]" to "the security which the constitution intended in aid of [the defendant's] rights." *Id.* at 349.

In short, the removal rule, as embodied in the current federal removal statute, 28 U.S.C. § 1441, gives defendants a "corresponding opportunity" to have federal claims heard in federal court, *Lincoln Prop.*, 546 U.S. at 89, and "an equal chance to choose a federal forum," *Home Depot U.S.A., Inc. v. Jackson*, 139 S. Ct. 1743, 1751 (2019) (Alito, J., dissenting).

B. Businesses expect that cases involving federal claims, once removed to federal court, will remain there.

Another jurisdictional rule that businesses have relied on for stability and fairness is supplemental jurisdiction, a longstanding common-law doctrine that Congress codified in 1990. *See* Federal Courts Study Committee Implementation Act of 1990, Pub. L. No. 101-650, § 310, 104 Stat. 5089, 5113–14 (current version at 28 U.S.C. § 1367). Under that rule, a district court has jurisdiction over not only claims that give the court "original jurisdiction," but also "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." 28 U.S.C. § 1367(a). Thus, if a case contains federal claims that give rise to federal jurisdiction, the district court has

supplemental jurisdiction over state-law claims that share a "common nucleus of operative fact" with the federal claims. *Osborn v. Haley*, 549 U.S. 225, 245 (2007) (quoting *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966)).

Supplemental jurisdiction persists even if the claims giving rise to original jurisdiction fall out of the case. This Court has endorsed the "commonsense policy of pendent jurisdiction," which enables "the conservation of judicial energy and the avoidance of multiplicity of litigation," and "shunned" a "conceptual approach that would require jurisdiction over the primary claim at all stages as a prerequisite to resolution of the pendent claim." *Rosado v. Wyman*, 397 U.S. 397, 405 (1970).

While a district court "*may* decline to exercise supplemental jurisdiction" when the court "has dismissed all claims over which it has original jurisdiction," § 1367(c)(3) (emphasis added), it need not do so. A district court may exercise its discretion to maintain jurisdiction over state-law claims even after a federal claim is dismissed. And in making that decision, the district court may consider "whether the plaintiff has engaged in any manipulative tactics," *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 357 (1988)—a particularly salient factor in removal cases, which "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," *Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 474 n.6 (2007).

II. Businesses view the right to remove as important because state forums are generally less favorable.

Businesses view the right to remove as important, and often exercise that right when available. Defendants generally perceive federal court as less biased against them than state court. *See* Kevin M. Clermont & Theodore Eisenberg, *Do Case Outcomes Really Reveal Anything About the Legal System? Win Rates and Removal Jurisdiction*, 83 Cornell L. Rev. 581, 593, 599–602 (1998). Defendants are understandably skeptical that they will get a fair shake when some state-court judges openly express their desire to "take business away from other courts." Ashby Jones, *Philly Regrets Flood of Cases*, Wall St. J. (Sept. 23, 2012), https://perma.cc/2LUW-TLPE (describing how mass-tort filings in the Philadelphia Court of Common Pleas skyrocketed after "an influential judge there invited plaintiffs to bring the court their cases—and their filing fees"); *see also* Daniel Klerman & Greg Reilly, *Forum Selling*, 89 S. Cal. L. Rev. 241, 289 (2016) (explaining how certain state court judges "use a variety of techniques to make their courts attractive to plaintiffs")[3] Indeed, one study found that defendants in federal-question cases removed to federal court fared more than twice as well as their counterparts in federal-question

[3] Apart from filing and court fees, scholars have pointed to the "cozy relations between bench and bar," "a desire to help the local economy," and judicial elections as possible reasons why certain state-court judges "twist[] the law to favor plaintiffs who have the power to choose their courts." Klerman & Reilly, *supra*, at 290–91.

cases that remained in state court. *See* Clermont & Eisenberg, *supra*, at 593–95 ("[F]ederal question cases, excluding prisoner litigation, show a[] . . . drop in win rate [for plaintiffs] from 52% to 25%."). And businesses specifically perceive the federal forum to be more predictable, less susceptible to anti-business biases, and more favorable overall—in no small part because the federal rules provide a stabilizing force to help guard against abusive tactics by plaintiffs. *See* Neal Miller, *An Empirical Study of Forum Choices in Removal Cases Under Diversity and Federal Question Jurisdiction*, 41 Am. U. L. Rev. 369, 382 (1992).

Unlike in federal court, plaintiff-friendly rules and standards make litigating in certain States, including States where some of the Amici are based, especially perilous for defendants. Four categories of plaintiff-friendly rules and standards may be particularly troublesome for defendants in state courts:

1. Pleadings standards. Defendants face a higher bar to dismiss claims filed against them when litigating in state court. In Iowa, for example, "a motion to dismiss may be properly granted only when there exists no conceivable set of facts entitling the non-moving party to relief." *Young v. HealthPort Techs., Inc.*, 877 N.W.2d 124, 127 (Iowa 2016) (quotation marks omitted). "Under [Iowa's] notice-pleading standards, nearly every case will survive a motion to dismiss for failure to state a claim upon which any relief may be granted." *Id.* Federal plaintiffs, by contrast, can defeat a motion to dismiss only under the higher "plausibility" standard, which this Court adopted in *Bell Atlantic Corp. v. Twombly*, rejecting the lenient notice pleading that persists in

Iowa. 550 U.S. 544, 559, 563–64 (2007); *see Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (holding that *Twombly* applies to all federal civil cases). And Iowa is not alone. "Courts in Delaware . . . , Kansas, Minnesota, Montana, New Mexico, New York, North Carolina, Oklahoma, Tennessee, Washington State, and West Virginia have disapproved of *Twombly* and/or *Iqbal*." Marcus Gadson, *Federal Pleading Standards in State Court*, 121 Mich. L. Rev. 409, 422 (2022).

2. Class certification. Plaintiffs are more likely to achieve class certification in state courts—which tend to have more lenient certification standards—than in federal court. Pennsylvania is a case in point. While Rule 1702 of the Pennsylvania Rules of Civil Procedure largely resembles Rule 23 of the Federal Rules of Civil Procedure, the standard of proof for class certification differs. In Pennsylvania, plaintiffs "need only make out a prima facie showing" that Rule 1702's requirements are satisfied, *Piper v. Elkhart Brass Mfg. Co.*, 2016 WL 1615703, at *2 (Pa. Super. Ct. Apr. 22, 2016), whereas federal plaintiffs must meet Rule 23's requirements "by a preponderance of the evidence," *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 307 (3d Cir. 2008), *as amended* (Jan. 16, 2009). The lower standard comports with Pennsylvania's "strong and oft-repeated policy . . . that, in applying the rules for class certification, decisions should be made liberally and in favor of maintaining a class action." *Liss & Marion, P.C. v. Recordex Acquisition Corp.*, 937 A.2d 503, 509 (Pa. Super. Ct. 2007).[4] That policy stands in contrast to

[4] Other state courts have also held that class certification rules should be construed liberally in favor of class certification. *See,*

the federal policy, which requires plaintiffs to prove that "the class action device is superior to other methods for resolving the claims." *Ferreras v. American Airlines, Inc.*, 946 F.3d 178, 183 (3d Cir. 2019).

Whether a class gets certified is pivotal to the trajectory of the case. One study of class actions proceeding in federal court found that 89% of certified cases concluded with court-approved settlements, while 97% of cases with noncertified cases resulted in court-ordered dismissal, individual (rather than class-wide) settlements, or voluntary dismissal. *See* Thomas E. Willging & Shannon R. Wheatman, *Attorney Choice of Forum in Class Action Litigation: What Difference Does It Make?*, 81 Notre Dame L. Rev. 591, 649–50 (2006). Class certification often results in "substantial settlement"—not because of the underlying merits of the case, but "because the costs and risks of litigating further are so high." *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 485 (2013) (Scalia, J., dissenting); *see also id.* at 495 n.9 (Thomas, J., dissenting) (referring to "in terrorem settlement pressures" following class certification). Class plaintiffs' leverage after gaining certification escalates even more in jurisdictions known for "nuclear" verdicts—jury verdicts exceeding $10 million. *See infra* p. 17.[5] Thus, state courts' liberal

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e.g., *Chicoine v. Wellmark, Inc.*, 2 N.W.3d 276, 283 (Iowa 2024); *Chernett v. Spruce 1209, LLC*, 161 N.Y.S. 3d 48, 51 (App. Div. 2021).

[5] Indeed, the legislative history of the Class Action Fairness Act recognized that, "[b]ecause class actions are such a powerful

application of class-certification rules places defendants at an enormous strategic disadvantage.

3. Admission of expert evidence. A significant gap exists between the evidentiary standards for expert testimony in federal and certain state courts. In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, this Court endorsed a "gatekeeping role for the judge." 509 U.S. 579, 597 (1993). Under *Daubert*, as codified in Rule 702 of the Federal Rules of Evidence, a court considers whether the expert's knowledge will help the trier of fact understand the evidence or determine a fact in issue, whether the proposed testimony is based on sufficient facts or data, and whether the testimony is the product of reliable principles and methods. The recent amendment to Rule 702, effective December 1, 2023, further tightened the admissibility standard by clarifying that (i) the expert's opinion ought to reflect a reliable application of the principles and methods to the facts of the case, and (ii) the party putting forth the expert must demonstrate all four elements of Rule 702 by a preponderance of the evidence.

While most States have adopted a *Daubert* or *Daubert*-like gatekeeping approach, six States (California, Illinois, Minnesota, New York, Pennsylvania, and Washington) representing roughly 30% of the country's population, continue to follow

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tool, they can give a class attorney unbounded leverage, particularly in jurisdictions that are considered plaintiff-friendly. Such leverage can essentially force corporate defendants to pay ransom to class attorneys by settling—rather than litigating—frivolous lawsuits." S. Rep. No. 109-14, at 20 (2005).

the less rigorous general-acceptance test established in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). *See* Cary Silverman, U.S. Chamber Inst. for Legal Reform, *Fact or Fiction: Ensuring the Integrity of Expert Testimony* 18 (2021), https://perma.cc/E2ZV-YAWP; U.S. Census Bureau, *Resident Population for the 50 States, the District of Columbia, and Puerto Rico: 2020 Census* (2020), https://perma.cc/PS5S-36YJ. Thus, so long as an expert follows methods generally accepted by the scientific community, the expert's testimony can be admitted despite having major limitations or "critical problems." Paul C. Giannelli, *The Admissibility of Novel Scientific Evidence:* Frye v. United States*, A Half-Century Later*, 80 Colum. L. Rev. 1197, 1226 (1980).

The consequences of allowing dubious expert testimony are often game-changing. Experts may testify about central issues in a case, such as whether a product is capable of causing a particular medical condition. *See, e.g.*, *Diaz v. United States*, 602 U.S. __, 2024 WL 3056012, at *6 (June 20, 2024) (noting that Federal Rule of Evidence 704(a) permits expert testimony that "embraces an ultimate issue"); Mo. Rev. Stat. § 490.065(2) (Missouri's analog to Federal Rule of Evidence 704(a)). In mass-tort litigation consolidated for pretrial purposes, a single ruling admitting unreliable yet generally accepted testimony from a plaintiffs' expert could enable thousands of cases to proceed to a jury. Similarly, in class actions, "experts may present novel theories of damages where class members have not experienced a true financial loss or as a means of presenting a common injury allowing class certification." Silverman, *supra*, at 6. Facing the potential cost of

prolonged litigation and risk of a large—or even nuclear—verdict, *see infra* p. 17, defendants may well feel compelled to enter a global settlement, even if they possess reliable and stronger evidence supporting their positions. The logical guardrails imposed by Rule 702 reduce the likelihood of this scenario occurring in federal court.

4. Trials. Proceeding to trial carries higher risk for defendants in state court than in federal court. Less than half of States require civil juries to reach unanimous verdicts. *See* Ron Malega & Thomas H. Cohen, Bureau of Just. Stat., *State Court Organization, 2011* 1, 10 (2013), https://bjs.ojp.gov/content/pub/pdf/sco11.pdf. Missouri plaintiffs, for instance, can win at trial if just three-fourths of the jury finds the defendant liable, *see* Mo. Const. art. I, § 22(a); Mo. Rev. Stat. § 494.490—a break from the federal unanimity requirement, *see* Fed. R. Civ. P. 48(b).

Many States also differ from federal practice on how attorneys may address noneconomic damages in closing argument. Requesting a specific damages amount for pain and suffering, known as "anchoring," is a "disfavored" practice in federal courts because it "anchor[s] the jurors' expectations of a fair award at a place set by counsel, rather than by the evidence." *Consorti v. Armstrong World Indus., Inc.*, 72 F.3d 1003, 1016 (2d Cir. 1995), *vacated on other grounds sub nom. Consorti v. Owens-Corning Fiberglass Corp.*, 518 U.S. 1031 (1996); *see also In re DePuy Orthopaedics, Inc.*, 888 F.3d 753, 787 n.71 (5th Cir. 2018) (noting that a proper award for pain and suffering is not a "matter of precise and accurate determination" and should "be left to the jury's

determination, uninfluenced by arguments and charts"). Yet 24 States allow plaintiffs to make a demand for a lump sum to the jury and to support that demand with a per diem calculation. *See* John Campbell et al., *Time Is Money: An Empirical Assessment of Non-Economic Damages Arguments*, 95 Wash. U. L. Rev. 1, 6–7 (2017) (*Time Is Money*); *see id.* at 7 (noting that 11 other States allow either lump-sum demands or per diem calculations in closing argument).

Through setting anchors for pain and suffering, plaintiffs' lawyers can seek windfall judgments by seizing on the uncertainty among jurors, who feel "deeply challenged by the task of arriving at damage awards." Valerie P. Hans & Valerie F. Reyna, *To Dollars from Sense: Qualitative to Quantitative Translation in Jury Damage Awards*, 8 J. Empirical Legal Stud. 120, 122 (2011). An anchor can therefore create an arbitrary but easy-to-understand baseline for jurors to accept or adjust upward or downward.[6] The data bears out the effectiveness of anchoring: the

[6] While defense attorneys are free to submit a counter-anchor, many "fear that juries will interpret . . . a response [of offering a counter-anchor] as conceding liability." John Campbell et al., *Countering the Plaintiff's Anchor: Jury Simulations to Evaluate Damages Arguments*, 101 Iowa L. Rev. 543, 551 (2016). Moreover, defense attorneys cannot provide the jury with a reasonable range of awards for comparable injuries based on case law, because case law is not evidence before a jury. And even if the defense provides a counter-anchor, a jury could split the difference between the plaintiff's excessively high anchor and defendant's counter-anchor, which would still result in a high damages award.

tactic "dramatically increases" noneconomic damage awards. *Time Is Money*, *supra*, at 28.

With noneconomic damages accounting, on average, for 50 to 80% of a total jury award, *see id.* at 3, it is hardly surprising that roughly nine out of every ten "nuclear" verdicts occur in state court. *See* Cary Silverman & Christopher E. Appel, U.S. Chamber of Com. Inst. for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* 12 (2022), https://perma.cc/6A2B-FVRA; *see also id.* at 11 (reporting that pain-and-suffering awards are "the biggest component of most nuclear verdicts"). All types of businesses, regardless of size and sector, face the risk of nuclear verdicts. *See, e.g.*, Greg Land, *Fretting Over High-Dollar Verdicts, Senate Panel Ponders Legislative Fixes*, Daily Rep. (Oct. 4, 2019), https://perma.cc/M5YA-PRFD (chronicling a series of nuclear verdicts in Georgia against an amusement park, a healthcare provider, a pharmacy, a supermarket, a trucking company, an apartment building, and a security company). The high pain-and-suffering awards triggering nuclear verdicts can, in turn, fuel punitive-damages awards that can be large despite due process safeguards and statutory caps. Evan Tager et al., U.S. Chamber of Com. Inst. for Legal Reform, *Unfinished Business: Curbing Excessive Punitive Damages Awards* 38 (2023), https://perma.cc/76RT-CFKD (describing "data show[ing] that in many cases in which the plaintiffs received significant awards of non-economic damages, they also were awarded significant punitive damages").

If the Eighth Circuit's decision becomes national law, and businesses thus have to litigate in state

court after amendment to the complaint in a properly removed case, more and more businesses will be dragged into litigations with high price tags and the already high number of nuclear verdicts will almost certainly increase.

III. The Eighth Circuit's rule would increase uncertainty and the costs of litigating jurisdiction for corporate defendants and harm businesses.

A. The Eighth Circuit's rule would give plaintiffs across the country even greater control over the forum.

In almost all other Circuits, businesses sued in state court on a federal claim have a straightforward way to ensure that their case is heard in federal court: remove it under the removal statute. Even if the plaintiff then amends the complaint, the simple rule is that jurisdiction was determined at the time of removal, regardless of later events. *See* Pet. Br. 43–46. Granted, the plaintiff could choose to altogether drop the federal claims that gave rise to original jurisdiction in order to defeat removal. *See* Fed. R. Civ. P. 15(a). But in such cases, the district court retains supplemental jurisdiction over the state-law claims and can still proceed to judgment on them. *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 640 (2009); *supra* pp. 7–8.

The Eighth Circuit's rule eliminates that possibility, giving the plaintiff alone the power to determine the forum in federal-question cases. If the plaintiff is content to stay in federal court, it need not do anything. If the plaintiff prefers state court, however, it can force a remand by amending its

complaint to carve out the federal claims and preclude the federal court from exercising supplemental jurisdiction. Contrary to the removal statute's design, *see Lincoln Prop.*, 546 U.S. at 89, the plaintiff would have outsize control over the forum of a removed case.

Plaintiffs can thus, through a ploy this Court has long thought improper, "defeat federal jurisdiction" by amending their complaints after removal. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 294 (1938). This case underscores the extent to which plaintiffs will game the rules to get their way: Respondents' counsel first filed a putative nationwide class action against Petitioners Purina and Royal Canin, among others, in federal court in California in December 2016. *Moore, et al. v. Mars Petcare US, Inc., et al.*, No. 16-CV-07001-MMC (N.D. Cal.). Although the plaintiffs in that suit twice amended the complaint, the district court dismissed the case for failure to state a claim. *Id.* ECF Nos. 64, 106, 116, 134. The same plaintiffs' counsel then brought this essentially duplicative action in Missouri state court, having carefully repackaged the allegations as state-law claims in an attempt to avoid federal court. J.A. 28a–29a. The defendants exercised their right to remove to the district court, J.A. 29a, which the Eighth Circuit held was proper, J.A. 29a–30a. Then, almost two years into this suit, plaintiffs amended their complaint solely to obtain a state forum. Because of these maneuvers, Petitioners have now been litigating the same case for more than seven years, across two federal courts and one state court. The Eighth Circuit's rule would encourage such tactics.

B. The resulting litigation environment will harm businesses, big and small.

Allowing plaintiffs to subvert defendants' exercise of removal will impose additional costs on businesses. Protracted jurisdictional disputes are costly because of legal fees. The "gamesmanship" spawned by "[c]omplex" jurisdictional rules will "eat[] up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims." *Hertz*, 559 U.S. at 94.

Small businesses in particular will bear the brunt of the increased costs of protracted jurisdictional disputes. One study of the cost of tort liability on small businesses concluded that small businesses bore 81% of business-tort liability costs. U.S. Chamber Inst. for Legal Reform, *Tort Liability Costs for Small Business* 1, 9 (2010), https://perma.cc/HJX3-75HT (*Tort Liability Costs*). Ten percent of small business owners reported paying more than $25,000 in legal fees. William J. Dennis, Jr., Nat'l Fed'n of Indep. Bus. Rsch. Found., *NFIB National Small Business Poll: The Use of Lawyers* 1 (2005), https://perma.cc/K54V-2AML (*The Use of Lawyers*). And because these small businesses typically do not have insurance, they must pay their legal fees and expenses out of pocket. *See Tort Liability Costs*, *supra*, at 1, 9. So even when small businesses are sued on meritless claims, they often struggle to afford the legal fees to defend themselves, not to mention the time and distraction that defending a lawsuit entails. *See* Gregory J. Myers, *When the Small Business Litigant Cannot Afford to Lose (Or Win): Litigation Consequences for Small Businesses,*

Strategies for Managing Costs, and Recommendations for Courts and Policymakers, 39 Wm. Mitchell L. Rev. 140, 142 (2012) (describing how the "financial consequences [of litigation] not only threaten a small business's health but also interfere with operations, and can force key people within the business to shift substantial time and energy to the dispute, rather than running and building the company").

Defending a lawsuit carries a hefty price tag: small businesses must typically spend about $5,000 to settle a legal dispute—about 10% of a small-business owner's average salary. *Tort Liability Costs*, *supra*, at 9 n.19 (citing *The Use of Lawyers*, *supra*, at 1). Money that the business could otherwise spend on opening new locations, hiring more employees, or offering new products is instead going to paying lawyers. Faced with the prospect of extensive legal maneuvering even before reaching the merits, small businesses may well be forced to settle or, at a minimum, to accede to a state tribunal even when Congress has afforded them a federal one.

C. Across the Nation, the Eighth Circuit's rule will harm entrepreneurship, job creation, and economies.

Businesses already expend significant resources on mitigating their litigation risk. A survey by the U.S. Chamber of Commerce found that 89% of senior in-house attorneys and executives at large U.S. companies have reported that a state's litigation environment "is likely to impact important business decisions at their companies, such as where to locate

or do business." U.S. Chamber Inst. for Legal Reform, *2019 Lawsuit Climate Survey: Ranking the States* 3–4 (2019), https://perma.cc/5CQE-G4RN.

Under the Eighth Circuit's rule, plaintiffs' bars will be more successful in keeping their lawsuits in strategically selected state courts with reputations for outsize jury awards, even if their original complaints plead federal claims. By allowing plaintiffs to return to the comfortable confines of state court systems, *see supra* Point II, the Eighth Circuit rule will further heighten the risk of prolonged litigation and high damages awards. This risk will likely translate into increased insurance premiums nationwide, potentially pricing many out of the insurance market altogether at great cost. Exorbitant jury awards make insurance "more expensive and harder to buy for businesses of all sizes." U.S. Chamber Inst. for Legal Reform, *New ILR Research Looks at Increase of Punitive Damages* (Oct. 18, 2023), https://perma.cc/DK2W-LAUR. The trucking industry is an instructive example. Research shows that an increase in the frequency and amount of nuclear verdicts between 2005 and 2019 contributed to skyrocketing motor-carrier-insurance costs, pushing several motor carriers out of business. U.S. Chamber Inst. for Legal Reform, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions* 47 (2024), https://perma.cc/CBZ3-DA75 (*Nuclear Verdicts*).

Increased costs of corporate liability and insurance coverage are passed down to and in turn hurt consumers in considerable ways. The higher costs faced by businesses are priced into the "costs of everyday items and services—including food,

housing, and medical care." *Id.* at 6; *see also SEC v. Tambone*, 597 F.3d 436, 452 (1st Cir. 2010) (en banc) (Boudin, J., concurring) ("No one sophisticated about markets believes that multiplying liability is free of cost."). Take the trucking industry again as an example: motor carriers must price increased insurance costs into the transportation rates charged to companies across the supply chain. *See Nuclear Verdicts*, *supra*, at 47. Those companies then factor their higher transportation costs into the prices charged to consumers for goods. *See id.* Those price increases will repel consumers, who are already wary of spending "in the face of . . . still high inflation." Anne D'Innocenzio, *Retail Sales Rise a Meager 0.1% in May from April as Still High Inflation Curbs Spending*, Associated Press (June 18, 2024), https://perma.cc/5MGG-VWF3.

Overly litigious environments also hurt consumers in less obvious, but still significant, ways. They discourage innovation, as businesses must dedicate more staff, time, and finite resources to safeguard against lawsuits. In the long run, this reallocation of resources will divert funds that could be spent on innovation and entrepreneurship. *See* Pac. Rsch. Inst., *Enriching Lawyers, Not Helping Victims: Why Tort Reform Will Help Grow the Economy and Address Injustice* 7 (2023), https://perma.cc/X389-BB89. Indeed, studies have shown that excessive liability is inversely correlated with investment in research and development. *See* Michael J. Moore & W. Kip Viscusi, *Product Liability Entering the Twenty-first Century: The U.S. Perspective* 25, 27 (2001) (collecting studies).

Particularly affected will be industries whose research-and-development efforts widely benefit society, but are more vulnerable to product liability lawsuits. For example, "liability concerns or inability to obtain adequate insurance" have long hindered the development of new medical technologies and their availability to the public. American Med. Ass'n, *Report of the Board of Trustees: Impact of Product Liability on the Development of New Medical Technologies* 1 (1988). This hesitance to pour money into research and development is understandable. As this Court has recognized, to be a "profitable business," a company "must have some degree of certainty beforehand as to when it may proceed to reach decisions without fear of later evaluations labeling its conduct" as unlawful. *First Nat'l Maint. Corp. v. NLRB*, 452 U.S. 666, 679 (1981). The higher litigation risks that the Eighth Circuit's rule create will reduce certainty for businesses in particularly litigious industries and will discourage them from developing products that could advance the public interest. *See* Joanna Shepherd, *Deterring Innovation:* New York v. Actavis *and the Duty to Subsidize Competitors' Market Entry*, 17 Minn. J.L. Sci. & Tech. 663, 706 (2016) (discussing how "actions that reduce brand innovation will have long-term negative effects on consumer health and health care spending").

On a global scale, the higher litigation costs imposed by the Eighth Circuit's rule will hinder the competitiveness of the U.S. economy. "Many foreign investors view the U.S. legal environment as a liability when investing in the United States." International Trade Admin., Dep't of Commerce, *Assessing Trends and Policies of Foreign Direct*

Investment in the United States 7 (2008), https://perma.cc/4LNR-DPYP (citing studies). For one, pain-and-suffering awards in the United States are often more than ten times those in the most generous of other nations. Stephen D. Sugarman, *A Comparative Look at Pain and Suffering Awards*, 55 DePaul L. Rev. 399, 399 (2006). Unsurprisingly, then, multinational companies have reported that U.S. litigation costs were between four and nine times higher than their foreign litigation costs as a percentage of revenue. U.S. Chamber Inst. for Legal Reform, *Litigation Cost Survey of Major Companies* 3 (2010), https://perma.cc/E9SM-YX6F. The Eighth Circuit's rule, if imposed nationally, will exacerbate these concerns for foreign businesses and deter future investment. *See supra* p. 24.

In sum, imposing the Eighth Circuit's rule nationwide will have profound and far-reaching consequences beyond merely clarifying the bounds of a defendant's removal right. Allowing plaintiffs to use the ploy of post-removal amendment to dictate the forum risks causing great harm to businesses, consumers, and the overall U.S. economy.

CONCLUSION

For these reasons and those stated in the petitioners' brief, the judgment of the Eighth Circuit should be reversed.

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APPENDIX

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APPENDIX

List of *Amici Curiae*

1. The **Missouri Chamber of Commerce and Industry** is the largest business association in the State of Missouri. Representing more than 40,000 employers in all industry sectors, the Chamber advocates for policies and laws that will enable Missouri businesses to thrive, promote economic growth, and improve the lives of all Missourians. The Chamber also advocates for legislative policy and judicial outcomes that make Missouri attractive to job creators and encourage existing investors and businesses to stay and grow within Missouri.

2. The **Iowa Association of Business and Industry** ("ABI") is the largest business network in the State of Iowa, representing over 1,500 business members that employ more than 330,000 Iowans. ABI's members come from all 99 counties and all industry sectors, including manufacturers, retailers, insurance companies, financial institutions, health care organizations, and educational institutions. ABI has served as the state's unified voice for business since 1903. ABI's mission is to nurture a favorable business, economic, governmental, and social climate within the State of Iowa so citizens can have the opportunity to enjoy the highest possible quality of life. Among other things, ABI represents the interests of its members by filing amicus curiae briefs in cases involving

issues of vital concern to the business community.

3. The mission of the **Kansas Chamber of Commerce** is to continually strive to improve the economic climate for the benefit of every business and citizen and to safeguard our system of free, competitive enterprise. Our vision is leading Kansas to be a preferred place, nationally and internationally, where dynamic business leaders choose to invest, innovate, and live, creating opportunities and prosperity for all Kansans. The Kansas Chamber serves as the leading business advocacy group in Topeka for pro-business policies which enable Kansas businesses to succeed.

4. Founded in 1968, the **Maryland Chamber of Commerce** is the leading voice for business in Maryland. It is a statewide coalition of more than 7,000 members and federated partners working to develop and promote strong public policy that ensures sustained economic health and growth for Maryland businesses, employees, and families. As such, the Chamber represents the interests of the state's business community before the General Assembly, Executive Branch, and the courts. In fulfilling that duty, the Chamber regularly files amicus briefs in cases that raise material concerns to Maryland's business community.

5. The **Minnesota Chamber of Commerce** is Minnesota's largest broad-based business advocacy organization representing more than 6,300 businesses and more than half a million employees. The Minnesota Chamber was founded in 1909 and represents businesses of all sizes throughout Minnesota from small businesses to Fortune 500 companies. The Chamber works to advance public policy to strengthen the state's business climate to help encourage innovation, private sector investment, and forward-thinking leadership that will help grow Minnesota's economy for future generations.

6. The **Nebraska Chamber of Commerce & Industry, Inc**. is a statewide organization comprised of 819 businesses, 48 local chambers of commerce, and 29 trade associations. The Nebraska Chamber is organized as a nonprofit corporation to promote the general welfare of the State of Nebraska; to advance the private free enterprise system; to support business activities of its constituents; to improve, develop and promote existing and new businesses or new business opportunities and the employment such businesses provide; to improve the general quality of life in the State of Nebraska; and, in general, to act in a nonpartisan and cooperative manner for the betterment of commerce and industry in Nebraska.

7. The **Business Council of New York State, Inc.**, serves as the statewide chamber of commerce and manufacturing association of New York State. The Business Council is the dominant voice of business and employers in New York, representing large corporations and small businesses across the state, which employ more than 1.2 million New Yorkers. The Business Council serves as an advocate for employers in the State policy-making arena to support a healthier business climate, strong economic growth, and good paying jobs.

8. The **State Chamber of Oklahoma** is the leading statewide advocate for business in Oklahoma. The State Chamber works on behalf of its members, the business community, to affect legislative change that facilitates a pro-growth economic climate in Oklahoma. The State Chamber leverages meaningful partnerships, resources, and coalitions to achieve legislative results that strengthen Oklahoma's economy, and where appropriate, advocates for the business community in litigation that will impact the ability of its member companies to grow prosperity for all Oklahomans.

9. The **Pennsylvania Chamber of Business and Industry** is the largest broad-based business association in Pennsylvania. It has close to 10,000 member businesses throughout Pennsylvania, which employ more than half of the Commonwealth's private workforce. Its

members range from small companies to mid-size and large business enterprises across all industry sectors in the Commonwealth. The Pennsylvania Chamber's mission is to advocate on public policy issues that will expand private sector job creation, to promote an improved and stable business climate, and to promote Pennsylvania's economic development for the benefit of all Pennsylvania citizens. The Chamber works to create a fair, balanced, and common-sense civil litigation system that gives predictability and certainty and achieves greater efficiencies and unbiased justice.