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

REPLY BRIEF FOR PETITIONERS

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RULE 29.6 DISCLOSURE STATEMENT

The disclosure statement made in Petitioners' opening brief remains accurate.

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INTRODUCTION

Respondents mount only a halfhearted defense of the Eighth Circuit's outlier approach to supplemental jurisdiction. Instead of addressing the questions presented, the first 30 pages of their brief ask the Court to overturn *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Manufacturing*, 545 U.S. 308 (2005). This Court should reject Respondents' gambit. The Court granted review to address the Eighth Circuit's anomalous approach to supplemental jurisdiction. What little Respondents eventually say on the questions presented only further confirms that the Eighth Circuit went astray.

Respondents profess to be textualists, but contort Section 1367's text. They contend (at 33) that the

words "in the action" are present tense, which they say means the District Court lost supplemental jurisdiction once Respondents amended their complaint to eliminate references to federal law. But "in the action" contains no verb and has no tense. The verbs actually in Section 1367—including "shall have"—reinforce that once a federal district court *has* supplemental jurisdiction, it *will continue* to have supplemental jurisdiction (unless the court declines to exercise it), even if plaintiffs amend the complaint.

Respondents have no response for the remainder of Section 1367's text, which "codified" decades of precedent. *City of Chicago* v. *Int'l Coll. of Surgeons*, 522 U.S. 156, 165, 173 (1997). Section 1367 grants broad supplemental jurisdiction over "*all* other claims" within the case or controversy, *unless* Congress "expressly provided otherwise by Federal statute." 28 U.S.C. § 1367(a) (emphasis added). Respondents can point to no express exception for situations where plaintiffs amend a complaint to delete references to federal law. Section 1367(c)(3), moreover, demonstrates that district courts may retain supplemental jurisdiction even where there is no longer a federal claim.

Respondents nevertheless assert that a federal claim must be in the operative complaint—and remain an issue for appeal—to anchor supplemental jurisdiction. But a federal court need not retain "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). Respondents' theory makes little sense: If the federal claim becomes moot or the parties stipulate to its dismissal, there is no longer a federal claim, just like when the plaintiff amends a

complaint to remove the federal claim. And just as plaintiffs may appeal the dismissal of a claim, defendants may appeal the amendment of a complaint—which means the original complaint is not "truly gone," as Respondents suggest. Resp. Br. 11.

Respondents' policy arguments are similarly misplaced. "[F]orum manipulation concerns are legitimate and serious." *Carnegie-Mellon Univ.* v. *Cohill*, 484 U.S. 343, 356 n.12 (1988). To combat gamesmanship—and promote "judicial economy, convenience, fairness, and comity"—Section 1367 affords district courts discretion, not an obligation, to exercise supplemental jurisdiction. *Int'l Coll. of Surgeons*, 522 U.S. at 173 (quotation marks omitted). Respondents, in contrast, would require remand in every case, undercutting federal courts' ability to police their dockets.

As for Respondents' attempt to reformulate the questions presented, *see* Resp. Br. i, the Court should not reconsider *Grable*. Respondents' brief in opposition never signaled they would make this extraordinary ask. *See* BIO i. Their sandbagging prevented Petitioners' opening brief from addressing this question and prevented *amici* from participating (including the Solicitor General, who would have an obvious interest). And it is difficult to take Respondents seriously: Respondents previously described the Court's jurisprudence as "careful" and "coherent." Petition for Writ of Certiorari at i, 16, 17, 22, 29, *Wullschleger* v. *Royal Canin U.S.A., Inc.*, No. 20-152 (U.S.). They can hardly argue the opposite now. The Court should similarly decline to review the Eighth Circuit's application of *Grable*. The Court did

not grant certiorari on that question, which the Eighth Circuit correctly resolved. *See* Pet. App. 32a-33a.

In a final jab, Respondents assert (at 43-45) that Petitioners seek only to delay proceedings. To the contrary, Petitioners seek their conclusion. Respondents' counsel initially filed similar claims in federal court. *See* Opening Br. 4. Respondents then brought a copycat lawsuit in state court, which was dismissed on the merits after removal. *See id.* at 7. The Court should reverse the decision below and allow this case to come to an end.

ARGUMENT

I. RESPONDENTS CANNOT DEFEND THE EIGHTH CIRCUIT'S OUTLIER DECISION.

A. Section 1367's Text Refutes Respondents' Position.

1. Section 1367(a) grants broad supplemental jurisdiction. It states:

> *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 * * * .

28 U.S.C. § 1367(a) (emphases added). This text establishes a baseline rule: Federal courts "shall have" supplemental jurisdiction over "all" state-law claims forming "part of the same case or controversy," except as "expressly provided."

Section 1367 does *not* state that federal courts lack supplemental jurisdiction whenever plaintiffs amend their complaint and delete references to federal law. It instead makes clear that once the district court has jurisdiction over an action, supplemental jurisdiction "shall" extend to all claims within "the same case or controversy." To succeed before this Court, Respondents must identify an *express* exception to supplemental jurisdiction—which they cannot do. *Id.*

Section 1367's broad grant of jurisdiction was no accident. Congress drafted subsection (a) using the approach articulated in *United Mine Workers of America* v. *Gibbs*, 383 U.S. 715, 726 (1966), and subsection (c) borrows language from precedent regarding when courts may decline pendent jurisdiction. By incorporating specific text drawn from caselaw, Congress signaled its intent to codify that precedent. Opening Br. 25-27.

2. Respondents focus (at 33-34) on three isolated words: "in the action." 28 U.S.C. § 1367(a). Respondents assert that because those words are present tense, federal claims eliminated by an amended complaint are *not* "in the action" and cannot provide the basis for supplemental jurisdiction. But the words "in the action" contain no verb. Nor are they "present tense." Resp. Br. 33. Respondents instead seek to impose an atextual requirement that the federal claim must be "pleaded in the operative complaint." *Id.*

The tense of the verb Congress actually selected supports Petitioners' interpretation. Section 1367(a) states that district courts "*shall have* supplemental jurisdiction." 28 U.S.C. 1367(a) (emphasis added). According to the Dictionary Act, "the present tense

include[s] the future." 1 U.S.C. § 1. And while that settles the matter, the verb "shall" can be both a present-tense *and* "a future-tense verb." *Shall*, Black's Law Dictionary (12th ed. 2024). The verb "shall have" thus undoubtedly includes the future tense and makes clear that once a federal court *has* supplemental jurisdiction, it *will continue* to have supplemental jurisdiction—unless a statute expressly provides otherwise. 28 U.S.C. § 1367(a).

Respondents read "in the action" to mean "in the operative complaint." Resp. Br. 33-34. But the term "action" is broader than "complaint," which is one pleading within an action. *See* Fed. Rs. Civ. P. 3, 7(a)(1). Amending a complaint does not initiate a new action. To the contrary, claims are pled in the same "action" regardless of whether they are pled in the original or an amended complaint.

As the Ninth Circuit has explained, the words "in the action" have meaning—just not the one Respondents ascribe. They "require that supplemental jurisdiction be exercised *in the same case*, not a separate or subsequent case." *Ortolf* v. *Silver Bar Mines, Inc.*, 111 F.3d 85, 87 (9th Cir. 1997) (emphasis added) (claims filed in subsequent action to enforce settlement agreement not "in the same case").

Respondents assert (at 34) that "Section 1331 confirms" their interpretation of Section 1367, because the word "arising" in that latter provision "is phrased in the present tense." According to Respondents, "[i]t is not enough that the action *arose* * * * under federal law. Rather, the action must be 'arising' under federal law *now*" to provide federal question jurisdiction. *Id.* But this Court has explained that so long as "a significant federal question" was "raised at the outset,

the case would 'aris[e] under' federal law." *Osborn* v. *Haley*, 549 U.S. 225, 244-245 (2007); *see Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 493 (1983).

If Respondents were correct about the meaning of the phrase "arising under"—which is also used in Article III of the Constitution—it could mean that a federal court would lose Article III jurisdiction every time a federal question drops out of a case, a conclusion at odds with a century of precedent. *See* Opening Br. 20-21 n.2; *cf. Rosado*, 397 U.S. at 405.[1]

Respondents cite (at 34) the diversity jurisdiction statute, 28 U.S.C. § 1332(a), which refers to "civil actions where the matter * * * is between * * * citizens of different States." 28 U.S.C. § 1332(a)(1). According to Respondents, the present-tense verb "is" requires courts to look to the amended complaint to determine jurisdiction. But this Court has explained that under "hornbook law (quite literally)," diversity jurisdiction is measured "*at the time of filing*." *Grupo Dataflux* v. *Atlas Glob. Grp., L.P.*, 541 U.S. 567, 570-571 (2004) (emphasis added and footnote omitted). Respondents cite (at 34) *Grupo Dataflux* for the notion that amending a party's alleged citizenship destroys diversity jurisdiction, but *Grupo Dataflux* says no such thing. This Court's cases make clear that diversity jurisdiction as a general rule is evaluated based on the original complaint, *not* the amended complaint—including where plaintiffs "amend their complaint" to add non-diverse successors in interest, *Freeport-McMoRan, Inc.* v. *K N Energy, Inc.*, 498 U.S. 426, 427

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[1] Respondents' *amici* similarly fail to grapple with longstanding practice. *See* Tennessee et al. Amicus Br. 3-10.

(1991) (per curiam), or change the amount in controversy, *St. Paul Mercury Indem. Co.* v. *Red Cab Co.*, 303 U.S. 283, 292 (1938); *see* U.S. Chamber of Commerce Amicus Br. 5-9.[2] The Court's cases thus refute Respondents' "present tense" argument.

Respondents contend (at 38-40) that Congress's reference to *dismissed claims* in Section 1367(c)(3) indicates that Congress authorized supplemental jurisdiction where the court "has dismissed all claims over which it has original jurisdiction," but not when plaintiffs *amend* their complaint. 28 U.S.C. § 1367(c)(3). That argument ignores the statute's structure. Section 1367 instructs that courts have supplemental jurisdiction *unless* Congress states otherwise. That Congress did not mention amended complaints in Section 1367(c) supports Petitioners—not Respondents.

Respondents argue (at 38) that dismissed claims are different from amended complaints because dismissed claims "remain[], *presently*, 'in the action,'" but neither the words "remain" nor "presently" appear in Section 1367. And Respondents' theory that Congress wanted to sharply distinguish between dismissed and amended claims makes little sense. If a plaintiff declines to contest dismissal, settles a claim, or stipulates to dismissal—or if the Court loses jurisdiction over a federal claim, such as when the claim becomes moot—the claim falls out of the case,

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[2] To prevent "easy circumvention of" complete diversity requirements, joining non-diverse parties other than successors in interest destroys diversity jurisdiction. *Am. Fiber & Finishing, Inc.* v. *Tyco Healthcare Grp., LP*, 362 F.3d 136, 140 (1st Cir. 2004); *cf.* 28 U.S.C. §§ 1367(b), 1447(e).

just as if a complaint is amended to eliminate the claim. Whether a complaint was properly amended, moreover, "can be appealed," just as a plaintiff can appeal whether a claim was properly dismissed. Resp. Br. 39; *see, e.g.*, *Lucente* v. *Int'l Bus. Machines Corp.*, 310 F.3d 243, 258 (2d Cir. 2002) (holding district court improperly permitted amendment and the "Original Complaint will govern the resolution of this action").

Respondents suggest (at 34-37) that an amended complaint is a special circumstance, because an amended complaint relates back to and supersedes an earlier one. But the Federal Rules "do not create or withdraw federal jurisdiction," *Owen Equip. & Erection Co.* v. *Kroger*, 437 U.S. 365, 370 (1978), and relation back is not ironclad. It does not apply to amendments to the amount in controversy, *St. Paul Mercury*, 303 U.S. at 292, when amendments add non-diverse successors-in-interest, *Freeport*, 498 U.S. at 427, or in cases removed under the Class Action Fairness Act, *Broadway Grill, Inc.* v. *Visa Inc.*, 856 F.3d 1274, 1277 (9th Cir. 2017). Even the Eighth Circuit admitted it does not apply to "involuntary" amendments, a broad category that includes a plaintiff's amendment of the complaint to avoid dismissal on the merits. Opening Br. 45. And Respondents fail to grapple with the longstanding principle that jurisdiction attaches "at the time of filing and is not divested by later events." U.S. Chamber of Commerce Amicus Br. 4.

Respondents characterize Petitioners' argument that Congress codified existing law as atextualist. But this Court does not interpret statutes in a vacuum. In *Taggart* v. *Lorenzen*, 587 U.S. 554 (2019), for example, the Court held that when Congress specified in the

Bankruptcy Code "that a discharge order 'operates as an injunction,' " it incorporated the traditional rules for enforcing injunctions. *Id.* at 560-561 (quoting 11 U.S.C. § 524(a)(2)). That included the rules for civil contempt, even though the statute did not use the words "civil contempt." *Id.*; *see George* v. *McDonough*, 596 U.S. 740, 753 (2022) ("[S]tatutory 'silence' " " 'leave[s] the matter where it was pre-codification' " (quoting *Kucana* v. *Holder*, 558 U.S. 233, 250 (2010)) (brackets omitted)).

So too, here. That Section 1367's text draws directly from pre-1990 precedent indicates Congress's intent to "codif[y]" that precedent—including the rules for post-removal amendments. *Int'l Coll. of Surgeons*, 522 U.S. at 173. That conclusion is particularly strong because Congress indicated in subsection (c)(3) that district courts may retain supplemental jurisdiction even after federal claims drop out. Nothing suggests Congress enacted language governing "dismissed" claims as a way of silently departing from the established pre-1990 rule that an amendment to remove the federal question does not automatically divest jurisdiction. *See Cohill*, 484 U.S. at 357; Opening Br. 20-21 & n.2. Respondents' cramped reading of Section 1367 would perversely penalize Congress for accepting this Court's invitation to codify precedent. Opening Br. 27.

Respondents argue that the words "other claims" in the phrase "the district courts shall have supplemental jurisdiction over all other claims," 28 U.S.C. § 1367(a), refer to state-law claims in "the operative complaint, since a court would never consider exercising supplemental jurisdiction to decide dropped claims." Resp. Br. 33. Notice how many words Respondents add to the statute. Section

1367(a) does not grant supplemental jurisdiction over "other claims in the operative complaint." It grants jurisdiction over "*all* other claims" that form part of the same case or controversy, except those expressly exempted by statute.

Respondents note (at 33) that another statute—Section 1446(c)(2)—states that courts should look to the "initial pleading" to determine the amount in controversy. 28 U.S.C. § 1446(c)(2). Respondents infer from the absence of the words "initial pleading" in Section 1367 that courts should look to the amended complaint when assessing supplemental jurisdiction.

But Respondents' reasoning from silence is directly contrary to the text of Section 1367(a), which states that any limitations on supplemental jurisdiction must be "express[]." 28 U.S.C. § 1367(a). Regardless, Section 1446(c)(2) was enacted in 2011—two decades after Section 1367—to explain when to look *outside* the "initial pleading" to determine the amount in controversy. 28 U.S.C. § 1446(c)(2); *see* H.R. Rep. No. 112-10, at 15-17 (2011). If anything, Section 1446(c)(2) shows that Congress knew courts normally evaluate jurisdiction based on the initial complaint in removal cases, and wanted to specify exceptions to that rule. Respondents' argument ignores that Congress *also* used the words "amended pleading" in Section 1446—but Section 1367 does not use the words "initial pleading" or "amended pleading." It instead sets a default rule that federal courts have supplemental jurisdiction unless otherwise specified.

Finally, Respondents' maxim that "the plaintiff is master of the suit" goes only so far. Resp. Br. 36. Respondents were masters of this suit. They chose to craft their legal theory around federal law and request

an injunction ordering compliance with federal law. Once Respondents pleaded a federal question, Petitioners properly exercised their "statutory right of removal," which is not "subject to the plaintiff's caprice." *St. Paul Mercury*, 303 U.S. at 294; *see* DRI-Center for Law and Public Policy Amicus Br. 20-23; State Chambers of Commerce Amicus Br. 6-7.

B. Respondents Offer No Response To The Legislative History.

Text alone resolves this case. Respondents do not dispute, however, that legislative history confirms Section 1367 codified existing precedent. Opening Br. 27-29. Nor is this case like *Allapattah*, where the House Report diverged from the Study Committee on the precise issue before the Court. *See Exxon Mobil Corp.* v. *Allapattah Servs., Inc.*, 545 U.S. 546, 569-570 (2005). Here, both sources support Petitioners' interpretation. Opening Br. 28 n.3.

C. Precedent Overwhelmingly Supports Petitioners.

Respondents nowhere acknowledge the dozens of decisions and treatises refuting their position. *See* Opening Br. 20-21 n.2, 34 & n.4; 14C Charles Alan Wright, et al., *Federal Practice and Procedure* § 3722 (4th ed. June 2024 update); 16 *Moore's Federal Practice* § 107.72[2] (2024). Respondents' silence is extraordinary: They do not deny that their position would overturn decades of precedent and call into question the interpretation of other federal statutes, such as the Class Action Fairness Act. *See* Opening Br. 35 n.5.

Respondents cannot explain away this Court's precedents directly refuting their position, so they

label those decisions dicta. In *Cohill*, however, the Court held that a plaintiff may not divest a federal court of jurisdiction "simply by deleting all federal-law claims from the complaint." 484 U.S. at 357. That statement is a holding, central to the decision and directly refuting the losing side's argument about forum manipulation. *Id.*

Respondents ask (at 41) the Court to ignore *Cohill* because neither party there articulated the arguments Respondents make here. That has it backwards. No one in *Cohill* made the arguments raised by Respondents because they run afoul of settled precedent. At a minimum, *Cohill* shows that—two years before Section 1367 codified longstanding precedent—everyone understood that federal courts retained jurisdiction in this circumstance. *See, e.g.*, *Boelens* v. *Redman Homes, Inc.*, 759 F.2d 504, 507-508 (5th Cir. 1985) (explaining why removal cases pose unique concerns).

Nor can Respondents skirt *Rockwell International Corp.* v. *United States*, 549 U.S. 457 (2007). Respondents (at 36) rely on *Rockwell*'s explanation that, when a plaintiff files in federal court in the first instance, an amended complaint may divest the court of jurisdiction. They cannot ignore what Justice Scalia wrote next: The opposite rule applies in removal cases because "removal cases raise forum-manipulation concerns." *Rockwell*, 549 U.S. at 474 n.6 (citing *Cohill*, 484 U.S. at 346, 357, and *St. Paul Mercury*, 303 U.S. at 293). Justice Scalia cited *Cohill* as settled law—not dicta.

Respondents (at 39) wish away *Rosado*, 397 U.S. 397, because it did not involve an amended complaint, and the lower court dismissed the primary claim as

moot. But Respondents ignore what *Rosado* said: A federal court need not have "*jurisdiction over the primary claim* at all stages as a prerequisite to resolution of the pendent claim." *Id.* at 405 (emphasis added). That refutes Respondents' position that a federal question *must* be present "at all stages" for the federal court to maintain supplemental jurisdiction. *Id.*; *cf. Carlsbad Tech., Inc.* v. *HIF Bio, Inc.*, 556 U.S. 635, 640 (2009).

Respondents assert (at 39-40) that *Rosado* supports their position, because "[t]he plaintiff could have challenged the mootness determination on appeal, so of course the federal claims were still part of the case." But that argument is divorced from *Rosado*'s reasoning, which analogized to "the well-settled rule that a federal court does not lose jurisdiction over a diversity action which was *well founded at the outset*," citing *St. Paul Mercury*. 397 U.S. at 405 n.6 (emphasis added). Whether the federal court had jurisdiction "at the outset" was the relevant factor in *Rosado*, not whether the moot claim was subject to appeal. Regardless, a defendant may appeal whether a plaintiff properly amended the complaint. Thus, the initial complaint remains an appealable "part of the case," just like a dismissed claim. *See supra* p. 9.

D. Congress Had Good Reason To Codify The Federal Courts' Longstanding Discretion To Exercise Supplemental Jurisdiction.

That federal courts may exercise supplemental jurisdiction "does not mean" it "must be exercised." *Int'l Coll. of Surgeons*, 522 U.S. at 172-173 (citing *Gibbs*, *Cohill*, and Section 1367(c)(1)-(4)). For decades, federal courts have carefully wielded their discretion

by evaluating "judicial economy, convenience and fairness to litigants." *Gibbs*, 383 U.S. at 726. Respondents' contrary rule would *require* remand, undermining judicial efficiency and facilitating gamesmanship. None of Respondents' policy arguments to the contrary passes muster.

First, Respondents suggest (at 42) that Section 1367 forbids the Court from considering "policy" "concerns." Not so. Section 1367(c)(4) expressly authorizes courts to consider whether there are "compelling reasons" to decline jurisdiction "in exceptional circumstances." 28 U.S.C. § 1367(c)(4). This language "codifies" the longstanding practice of determining whether pendent jurisdiction was warranted under the circumstances of each case. *Int'l Coll. of Surgeons*, 522 U.S. at 173.

Second, a federal court's discretion to retain supplemental jurisdiction helps combat judge shopping. Opening Br. 35-36.

Respondents suggest (at 43) that plaintiffs may still judge shop by first filing in federal court, voluntarily dismissing the case if they dislike the federal judge, and filing anew in state court. The fact that the longstanding interpretation of Section 1367 eliminates *some* forum shopping, but not all, is hardly reason to jettison it. And Respondents miss a key point: When plaintiffs file first in state court and defendants remove, plaintiffs know which judge they are assigned in *both* state and federal court. Allowing plaintiffs to amend their way back to state court would permit them to pick between the state and federal judges. When a case is first filed in federal court and later refiled in state court, in contrast, the plaintiff will not know in advance which state judge will handle it.

Third, Respondents (at 45) attempt to brush away concerns about other kinds of forum manipulation by arguing that courts may deny leave to amend under Federal Rule of Civil Procedure 15. But as the opening brief explained (at 47-48), and as Respondents nowhere dispute, Rule 15's liberal amendment standard is a poor fit for policing against forum manipulation.

Fourth, contrary to Respondents' contentions (at 42-45), "forum manipulation concerns are legitimate and serious"—as numerous cases (including this case) show. *Cohill*, 484 U.S. at 356 n.12; *see, e.g.*, *Williams* v. *Newark Beth Israel Med. Ctr.*, 322 F. App'x 111, 113 (3d Cir. 2009) (plaintiff sought to skirt "imminent threat of" loss); *Mendoza* v. *Murphy*, 532 F.3d 342, 347 & n.3 (5th Cir. 2008) (plaintiffs filed in state and federal courts, received favorable state decision, and argued federal court should decline jurisdiction); *New Mexico* v. *Gen. Elec. Co.*, 467 F.3d 1223, 1242 n.29 (10th Cir. 2006) (plaintiff engaged in "manipulative tactic" to achieve remand).

Fifth, Petitioners are not asking for "a good-for-defendants only" rule. Resp. Br. 37. Petitioners are asking the Court to apply settled law that promotes "judicial economy, convenience and fairness." *Gibbs*, 383 U.S. at 726. Justice Marshall (in *Cohill*) and Justice Scalia (in *Rockwell*) explained why courts base jurisdiction on the complaint at the time of removal, and lower federal courts have likewise explained why different rules apply in other circumstances. *See* Opening Br. 44-45. Respondents offer no meaningful reply.

Sixth, Respondents are wrong (at 44) that courts "always remand" if plaintiffs amend the complaint

early in the proceedings. *See, e.g.*, *Grispino* v. *New England Mut. Life Ins. Co.*, 358 F.3d 16, 19 (1st Cir. 2004); *Jones* v. *Houston Indep. Sch. Dist.*, 979 F.2d 1004, 1007 (5th Cir. 1992); *see also Cohill*, 484 U.S. at 350 n.7 (rejecting "mandatory rule to be applied inflexibly in all cases"). And Petitioners have particularly strong arguments against remand. By the time Respondents amended their complaint, the case had proceeded in federal court for almost two years, and Respondents openly bragged about forum shopping. Opening Br. 6. After Respondents amended, the District Court dismissed for failure to state a claim. Pet. App. 46a-57a. And Respondents never argued on appeal that the District Court would have abused its discretion by exercising supplemental jurisdiction. Opening Br. 38 n.6. "[J]udicial economy, convenience and fairness" counsel against a remand at this late hour. *Gibbs*, 383 U.S. at 726.

II. THE COURT SHOULD REJECT RESPONDENTS' ATTEMPTS TO EVADE REVIEW OF THE QUESTIONS PRESENTED.

This Court should not address Respondents' tardy attempt to overturn *Grable*—a question which was not fully briefed by the parties or *amici*. Nor should this Court weigh in on the case-specific application of *Grable*, a question the Court declined to address when presented four years ago.

A. This Court Should Not Overturn *Grable*, And Certainly Not In This Case.

For over "100 years," federal courts have exercised jurisdiction in cases presenting a substantial federal question based on a state-law cause of action. *Grable*, 545 U.S. at 312. This Court should reject

Respondents' late-breaking invitation to overturn established precedent. Their brief in opposition nowhere mentioned overturning *Grable*, waiving that extraordinary request, and Respondents' sandbagging prevented those "likely affected" from participating, including the Solicitor General. *S. Cent. Bell Tel. Co.* v. *Alabama*, 526 U.S. 160, 171 (1999); *accord id.* (Thomas, J., concurring).

Nor have Respondents met the high burden for reconsidering precedent. Respondents have not marshalled evidence of Section 1331's "original meaning." *Grable*, 545 U.S. at 320 (Thomas, J., concurring). For good reason: The historical evidence is contrary to Respondents' position. As Justice Thomas noted, Section 1331's grant of "arising under" jurisdiction echoes Article III. *Id.* at 320 n.*. When Congress enacted Section 1331 in 1875, this Court had long "construed" Article III "as permitting Congress to extend federal jurisdiction to any case of which federal law potentially 'forms an ingredient.' " *Franchise Tax Bd. of California* v. *Constr. Laborers Vacation Tr. for S. California*, 463 U.S. 1, 8 n.8 (1983) (quoting *Osborn* v. *Bank of U.S.*, 22 U.S. (9 Wheat.) 738, 823 (1824)). Through the phrase "arising under" in Section 1331, Congress thus invoked a broad grant of jurisdiction, not a narrow one.

Research into Section 1331's original meaning confirms that disputes brought under state causes of action but implicating federal law—like this one—"were perhaps the paradigm 'arising under' cases" that contemporaries understood belonged in federal court in 1875. Ann Woolhandler & Michael G. Collins, *Federal Question Jurisdiction and Justice Holmes*, 84 Notre Dame L. Rev. 2151, 2153 (2009). Congress has

repeatedly reenacted Section 1331 without overturning this Court's interpretation, *see Lorillard* v. *Pons*, 434 U.S. 575, 580 (1978) (reenactment implies ratification), and "*stare decisis* carries enhanced force" in the statutory context, *Kimble* v. *Marvel Ent., LLC*, 576 U.S. 446, 456 (2015).

Respondents ask the Court to adopt Justice Holmes's view that federal question jurisdiction should extend only to federal causes of action. But Justice Holmes's rule is "more useful for inclusion than for the exclusion for which it was intended." *T. B. Harms Co.* v. *Eliscu*, 339 F.2d 823, 827 (2d Cir. 1964) (Friendly, J.); *see Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Manning*, 578 U.S. 374, 382-383 (2016); *Gunn* v. *Minton*, 568 U.S. 251, 258 (2013). This case shows why: Respondents sought an injunction policing ongoing compliance with federal law. Petitioners should be allowed to litigate that issue in federal court.

Contrary to Respondents' suggestion (at 30), reliance interests are at stake: Overruling *Grable* would limit the "right of removal," which is "particularly important for business defendants." U.S. Chamber of Commerce Amicus Br. 20-21; *see* State Chambers of Commerce Amicus Br. 21-22 (companies evaluate "a state's litigation environment" when deciding "where to locate or do business") (quotation marks omitted).

Finally, *Grable* is workable. Respondents' supposed contrary evidence (at 20 nn. 4-5) consists primarily of two articles surveying cases predating *Grable*, which brought "considerable clarity" to this area of law. 13D Charles Alan Wright, et al., *Federal Practice and Procedure* § 3562 (3d ed. June 2024 update). And Respondents have previously acknowledged that the Court's post-*Grable* jurisprudence is "careful" and

"coherent." *See supra* p. 3. Moreover, contrary to Respondents' contentions (at 18), the Court has offered guidance on how to evaluate *Grable*'s factors. *See, e.g.*, *Gunn*, 568 U.S. at 260. Respondents just decline to engage with it.

B. In the First Appeal, The Eighth Circuit Correctly Exercised Federal Question Jurisdiction.

After asking to overrule *Grable*, Respondents retreat to asking this Court to hold that the Eighth Circuit misapplied *Grable* in Petitioners' 2020 appeal. The Court did not grant certiorari on that case-specific question, nor should the Court address it.

Because the Eighth Circuit's decision in the first appeal—which is not the decision under review—merely applied a "settled principle to the facts of this case," the Court is not required to revisit it. *Federated Dep't Stores, Inc.* v. *Moitie*, 452 U.S. 394, 397 n.2 (1981) (declining to disturb conclusion that a case was properly removed to federal court). This Court should reverse the Eighth Circuit's decision on supplemental jurisdiction and remand, without opining on the application of *Grable* to this case.[3]

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[3] The Court may remand so the case can be dismissed for failure to state a claim. *See Federated Dep't Stores*, 452 U.S. at 397 n.2. Alternatively, the Court may direct the Eighth Circuit to address any outstanding jurisdictional questions. *See* Opening Br. 38 n.6; *BP P.L.C.* v. *Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1543 (2021) (remanding to address jurisdictional questions); *Sinochem Int'l Co.* v. *Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007) (courts may address jurisdictional issues in any order).

If the Court reaches the question, however, it should hold that the Eighth Circuit properly applied *Grable*. This case presents a paradigmatic example of where a federal forum was critical. Respondents asked Missouri courts to *determine and oversee Petitioners' ongoing compliance* with federal law. *See Merrill Lynch*, 578 U.S. at 383 (action "brought to enforce a duty created by" federal law arises under federal law) (quotation marks omitted).

As the first Eighth Circuit panel explained, Respondents brought Missouri antitrust and unjust enrichment claims premised "on violations and interpretations of federal law." Pet. App. 31a. Respondents repeatedly alleged Petitioners "violated the FDCA, were non-compliant with FDA guidance, and that their refusal to submit the prescription pet food to FDA review was improper." Pet. App. 32a. Those federal allegations so "permeate[d]" the complaint that Respondents' "claims [could not] be adjudicated without reliance on and explication of federal law." *Id.* Indeed, even now, Respondents repeatedly accuse Petitioners of violating federal law. *See* Resp. Br. 4-5. And if that were somehow not enough, Respondents expressly asked for a declaration that Petitioners "violated federal law" and an order "enjoining" "further violations of federal law." Pet. App. 32a. Respondents accordingly sought "injunctive and declaratory relief that necessarily require[d] the interpretation and application of federal law." *Id.*

Respondents' complaint readily met *Grable*'s test for "arising under" jurisdiction.

First, the complaint "necessarily raise[d]" "federal issue[s]." *Grable*, 545 U.S. at 314. It would be impossible for Respondents to "prevail on" their state

law claims—let alone secure relief ordering *ongoing compliance with federal law*—without the state court first deciding federal issues. *Gunn*, 568 U.S. at 259.

Second, those federal issues were "actually disputed." *Grable*, 545 U.S. at 314; *see Gunn*, 568 U.S. at 259. Petitioners have consistently rejected Respondents' allegations that they violated federal law and the sweeping relief Respondents sought. *See, e.g.*, Appellants' Br. 8, *Wullschleger* v. *Royal Canin U.S.A., Inc.*, No. 19-2645 (8th Cir.).

Third, the federal issues raised were "substantial" and important "to the federal system as a whole." *Gunn*, 568 U.S. at 260, 262. Respondents asked a state court to police Petitioners' compliance with the FDCA—infringing on the FDA's enforcement priorities, and raising the specter of Petitioners (and other manufacturers) being subject to conflicting obligations. Respondents' putative class action, moreover, sought relief on behalf of "numerous" consumers, and the legal determinations in this case could "control[]" claims against other companies as well. *Id.* at 262 (quotation marks omitted).

Fourth, the District Court's exercise of jurisdiction did not disturb the "congressionally approved balance of federal and state judicial responsibilities." *Grable*, 545 U.S. at 314. Quite the opposite. Congress afforded the federal government the exclusive right to enforce ongoing compliance with the FDCA, including "to restrain violations." 21 U.S.C. § 337(a) ("[A]ll such proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name

of the United States.").[4] Moving this case to federal court preserved that balance by ensuring that a federal court enforces the FDCA's uniquely federal scheme for injunctive relief.

In addition to stating a federal question under *Grable*, the complaint fulfilled the criteria for removal under the "complete preemption" doctrine, which permits removal where federal law supplies "an exclusive federal cause of action." *Beneficial Nat'l Bank* v. *Anderson*, 539 U.S. 1, 10 (2003). Section 337(a) creates an exclusive federal cause of action for pursuing injunctive relief. As a result, there is "no such thing as a state-law claim" to enjoin Petitioners and mandate compliance with the FDCA. *Id.* at 11. Instead, Respondents' request for injunctive relief necessarily invoked a federal cause of action. *See id.* at 8; *Metro. Life Ins. Co.* v. *Taylor*, 481 U.S. 58, 63-64 (1987). In this circumstance, the Court should not permit a plaintiff to "defeat removal by omitting" the federal cause of action from the complaint. *Franchise Tax Bd.*, 463 U.S. at 22.[5]

Respondents downplay (at 25) the extraordinary equitable relief they sought from the state court and suggest that it was merely an alternative remedy appearing only in paragraph 138 of their complaint. Paragraphs 136 and 137, however, *also* sought

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[4] 21 U.S.C. § 337(b) permits state enforcement in limited circumstances.

[5] Respondents cannot *win* on their request for an injunction, because only the government may obtain injunctive relief. That defect goes to the merits of Respondents' claim, not the federal court's removal jurisdiction. *See Caterpillar Inc.* v. *Williams*, 482 U.S. 386, 391 n.4 (1987); *Bell* v. *Hood*, 327 U.S. 678, 682 (1946).

sweeping injunctive and declaratory relief—without seeking alternative relief. *See* JA 114-115. And Respondents' complaint mentions injunctive and declaratory relief *twenty-one* other times. *See* JA 64, 99-115.

Respondents suggest that asking "for an injunction makes no difference," Resp. Br. 25, because under Rule 54(c), federal courts "should grant the relief to which each party is entitled, even if the party has not demanded that relief." Fed. R. Civ. P. 54(c). But courts are not in the business of providing sweeping equitable relief unless a plaintiff requests it, and Respondents vigorously sought such relief in their complaint. Moreover, plaintiffs must specify the relief sought, *see* Fed. R. Civ. P. 8(a)(3); Mo. Sup. Ct. R. 55.05, and defendants may remove when the "face of" the pleadings raises a federal question. *Caterpillar Inc.* v. *Williams*, 482 U.S. 386, 392 (1987).

Finally, the Eighth Circuit correctly rejected Respondents' argument that their complaint was "*Merrell Dow* but for pets." Resp. Br. 22. In *Merrell Dow*, plaintiffs brought a products liability claim seeking damages. *See Merrell Dow Pharms. Inc.* v. *Thompson*, 478 U.S. 804, 805 (1986). In two paragraphs, plaintiffs alleged that defendants' FDCA violations gave rise to a presumption of negligence under state law. *Id.* at 805-806. This Court held that the products liability claim did not present a *significant* federal question because the "violation of federal statutes and regulations is commonly given negligence per se effect in state tort proceedings." *Grable*, 545 U.S. at 318 (quotation marks omitted). Permitting removal in *Merrell Dow* would "have

heralded a potentially enormous shift of traditionally state cases into federal courts." *Id.* at 319.

Here, in contrast, Respondents' complaint was predicated on federal law, and Respondents asked a state court to police ongoing compliance with federal law. Those significant federal issues necessitated a federal forum.

CONCLUSION

For the foregoing reasons, and those in the opening brief, the Eighth Circuit's decision should be reversed.

Respectfully submitted,

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