No. 24-512

In the Supreme Court of the United States

GHASSAN KORBAN, IN HIS OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE SEWERAGE AND WATER BOARD OF NEW ORLEANS,
PETITIONER,

v.

WATSON MEMORIAL SPIRITUAL TEMPLE OF CHRIST, DBA WATSON MEMORIAL TEACHING MINISTRIES, ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Supreme Court of Louisiana correctly held that the failure to raise a novel state-law mandamus claim seeking to enforce a state-court judgment in a prior federal-court proceeding did not preclude raising that claim in state court where the federal court made it clear that it would have declined to exercise jurisdiction over the claim.

CORPORATE DISCLOSURE

The petition's corporate disclosure is correct with respect to respondents.

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INTRODUCTION

This case does not warrant the Court's review for multiple reasons. Courts are not split on the petition's broadly framed question presented. What petitioner characterizes as a "split" is no more than different courts reaching different conclusions by applying the same rule to the unique facts and circumstances of individual cases. Further, the narrow disagreement that does exist is on an issue not implicated here. Resolving the purported "split"

in petitioner's favor would therefore not change the result reached below.

Even assuming this case presented a conflict warranting the Court's review, the petition would be a poor vehicle for resolving it. Petitioner forfeited his merits argument below. And adopting petitioner's sweeping rule here would erase an important, precedent-setting decision by the Louisiana Supreme Court on a novel issue of state constitutional law, which would undermine, rather than advance, the principles of comity that underlie the application of claim preclusion.

Further, the decision below does not warrant this Court's intervention because it is correct, and does not threaten any of the horribles petitioner conjures. The Louisiana Supreme Court applied the consensus rule, recognized by the Restatement (Second) of Judgments. And Louisiana applied that rule narrowly, allowing the claim to proceed only because "exceptional" circumstances "clearly and unmistakably required declination" of jurisdiction by the federal court. Pet.App.14a (citation omitted). The decision below therefore does not threaten finality interests, encourage claim splitting, or overburden state courts. Nor is it particularly difficult to apply. Indeed, the Louisiana Supreme Court easily found that this case presented such exceptional circumstances based on the federal courts' clear statements that the case, "involving a state court judgment, Louisiana Constitutional provisions, a state inverse condemnation judgment against a state political subdivision," and "a *res novo* issue of state law," "belonged in state court." Pet.App.14a-15a. Adopting petitioner's unprecedented rule would serve only to needlessly burden federal courts with make-work.

STATEMENT

A. Legal Background

1. "Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). The two founts of subject-matter jurisdiction are "independent" jurisdiction—such as diversity and federal question—and "supplemental" jurisdiction. 13 Fed. Prac. & Proc. (Wright & Miller) § 3523 (3d ed. June 2024 Update). Independent jurisdiction "refers to a form of federal subject matter jurisdiction by which a plaintiff may properly get a *case itself* into federal court," and supplemental jurisdiction is exercised over "a *claim* or an *incidental proceeding* … that does *not* satisfy an independent basis of subject matter jurisdiction." *Id.*

Congress passed 28 U.S.C. § 1367, codifying the federal courts' "power to exercise supplemental jurisdiction" as articulated in the "leading case" on the subject, *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966). *See* Wright & Miller, *supra*, § 3523.1. Plaintiffs invoking the courts' supplemental jurisdiction are not automatically entitled to it; assuming or declining supplemental jurisdiction is discretionary. *Id.* Depending on the facts of each case, courts weigh several factors, including "considerations of judicial economy, convenience, and fairness to the litigants," and federalism concerns—namely, that "needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law." *Gibbs*, 383 U.S. at 726. Federalism, efficiency, justice, convenience, and comity all play a roll.

Accordingly, Congress codified four separate bases to guide federal courts' decisions to decline supplemental jurisdiction over a state law claim:

> **(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.

28 U.S.C. § 1367(c).

2. This case concerns the intersection of federal courts' supplemental jurisdiction and the doctrine of claim preclusion. Claim preclusion, "or true *res judicata*," "treats a judgment, once rendered as the full measure of relief … between the same parties on the same 'claim' or 'cause of action.'" Wright & Miller, *supra*, § 4402 (quoting *Kaspar Wire Works, Inc. v. Leco Eng'g & Mach., Inc.*, 575 F.2d 530, 535-36 (5th Cir. 1978)). Though "no textual provision addresses the claim-preclusive effect of a federal-court judgment in a federal-question case, … States … must accord them the effect that this Court prescribes." *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 507 (2001) (collecting cases).

These "general principles of the doctrine of *res judicata* are well known and well accepted, if not always easy to apply." *Parks v. City of Madison*, 492 N.W.2d 365, 368 (Wis. Ct. App. 1992). For instance, determining the preclusive effect of a judgment rendered by a federal court exercising federal question jurisdiction on an omitted claim requires close parsing of the issuing court's potential jurisdiction over the omitted claim.

The same case-specific approach applies when courts consider the application of *res judicata* to claims finding

potential "support in theories or grounds arising from both state and federal law." Restatement (Second) of Judgments § 25, cmt. e (1982). In that circumstance, if a plaintiff brings an action on a claim presenting only one theory and judgment is entered on it, then *res judicata* may apply to omitted claims *if* (and only *if*) there were "no jurisdictional obstacle[s] to … advancing both theories." *Id.*

That jurisdictional caveat is crucial: If "the court in the first action would clearly not have had jurisdiction to entertain the omitted theory or ground (or, having jurisdiction, would clearly have declined to exercise it as a matter of discretion), then a second action in a competent court presenting the omitted theory or ground should be held not precluded." *Id.*

B. Factual and Procedural Background

1. *Obtaining the Inverse Condemnation Judgment.* Between 2013 and 2016, the Sewerage and Water Board of New Orleans engaged in the Southeast Louisiana Urban Drainage Project ("SELA Project"). Pet.App.5a. This massive project damaged respondents' property and "interfered with the[] use and enjoyment of" respondents' private property—their "homes and church." *Id.* Homeowners sued in January 2016, and the church joined in May 2018. *Lowenburg v. Sewerage & Water Bd. of New Orleans*, 387 So.3d 548, 557 (La. Ct. App. 4th Cir. 2020). After trial, respondents were awarded nearly $1 million in cumulative damages for inverse condemnation under the Louisiana and United States constitutions, and roughly a half-million dollars in attorneys' fees and costs. Pet.App.5a. The appellate court affirmed the judgment. Pet.App.6a.

2. *The federal takings claim.* The Sewerage Board refused to pay. Pet.App.6a. So, with state court judgments in hand, respondents sought relief in federal court under the theory that Sewerage Board's refusal to pay the just compensation awarded constituted a secondary taking. *Ariyan, Inc. v. Sewerage & Water Bd. of New Orleans*, 29 F.4th 226, 228 (5th Cir. 2022). Normally, a party might initiate an action to seize property and satisfy the judgment. But the "Louisiana Constitution bars the seizure of public funds or property to satisfy a judgment against the state or its political subdivisions." *Id.* (citing La. Const. art. XII, § 10(c)). Thus, as a general rule subject to the narrow exception recognized by the Louisiana Supreme Court in this matter, "the Legislature or the political subdivision must make a specific appropriation in order to satisfy the judgment." *Id.*

In turning to the federal courts, respondents asserted that petitioner's "refusal to pay their state-court judgments violates their Fifth Amendment 'right' 'to be actually paid just compensation for the taking of their property by inverse condemnation.'" *Ariyan, Inc. v. Sewerage & Water Bd. of New Orleans,* 543 F. Supp. 3d 373, 377 (E.D. La. 2021). The district court rejected that claim. *Id.* at 378.

In particular, the court emphasized what it viewed as the negative "implications" of permitting litigants to invoke federal question jurisdiction (via § 1983) "to collect a state-court judgment in federal court." *Id.* at 379. The district court reasoned that doing so "would likely run afoul of the full faith and credit statute," "encourage forum shopping," and "erode the comity federal courts are to diligently maintain with state courts." *Id.* The district court unequivocally rejected the idea of federal courts enforcing state judgments, explaining that "[u]nder no

constitutional guise should federal courts 'become embroiled in a party's attempt to enforce state court judgments … against states and municipalities.'" *Id.* (quoting *Williamson v. Chi. Transit Auth.*, 185 F.3d 792, 795 (7th Cir. 1999)).

The court declined discretionary jurisdiction over the only remaining claim, for declaratory relief. *Id.* at 380. Observing the "particularly local nature of this dispute" and the "abundant reason[s]" to avoid federal entanglement, the court dismissed the entire action "in favor of further state-court proceedings—with state-court judges, state-court judgments, state-resident plaintiffs, and a state-agency defendant." *Id.* at 381. The court instructed: "State courts can enforce their own judgments." *Id.*

The Fifth Circuit affirmed. 29 F.4th at 228, 232.

3. *The Louisiana mandamus proceedings.* Having been spurned by the federal courts on their federal action, respondents returned to state court, filing a petition for writs of mandamus and *fieri facias*. Pet.App.8a.[1] The petition presented a theory novel in the context of inverse condemnation: that under Louisiana law, "the constitutional duty to pay just compensation for the taking or damaging of property is a ministerial duty required by law, and the [Louisiana] district court had the power and authority to issue a writ of mandamus directing the immediate payment of the just compensation award." Pet.App.9a.

Petitioner raised two exceptions: that the federal judgment barred the state petition under *res judicata*,

[1] *Fieri facias* is a "writ of execution that directs a marshal or sheriff to seize and sell a judgment debtor's property to satisfy a money judgment." *Fieri Facias*, Black's Law Dictionary (12th ed. 2024); *accord* La. Code Civ. Proc. art. 2291.

and that "the Louisiana Constitution prohibits seizure of state assets to satisfy money judgments … [so] courts may not order appropriation of funds through mandamus, as that power is reserved to the legislature." Pet.App.9a. The state trial court disagreed with petitioner about *res judicata*, but agreed that the Louisiana courts did not have the "power" to "appropriate[e] … funds through mandamus." Pet.App.9a.

The intermediate appellate court likewise held that *res judicata* did not bar the suit, but disagreed about Louisiana courts' mandamus power in these circumstances. Pet.App.9a. The appellate court's decision on the merits turned on whether the duty to pay just compensation was "ministerial" or "discretionary" under Louisiana law. Pet.App.45a. Noting it was a "*res nova*" issue, the appellate court found that "payment of an inverse condemnation judgment against a political subdivision" was a "ministerial duty." Pet.App.46a. The appellate court accordingly reversed and remanded to the trial court. Pet.App.54a.

4. *Louisiana Supreme Court decision.* The Louisiana Supreme Court granted petitioner's application for a writ of certiorari and unanimously affirmed the judgment of the appellate court. Pet.App.10a. In a concurring opinion, Chief Justice Weimer noted that respondents "were able to convincingly demonstrate [petitioner's] conscious indifference to payment" of the Louisiana Constitution's mandate for "just compensation *paid* to the owner." Pet.App.34a.

In accord with both lower courts, the Supreme Court "found no merit to [the] contention" that "the doctrine of *res judicata* preclude[d] the [state court] action given the prior federal court litigation." Pet.App.10a. Applying *Reeder v. Succession of Palmer*, 623 So.2d 1268 (La.

1993), which adopted the principles articulated in Comment e of the Restatement (Second) of Judgements § 25 and *Gibbs*, the Louisiana Supreme Court held the federal courts' "language … in the instant matter ma[de] clear that it would have declined to exercise its jurisdiction." Pet.App.13a-14a. That language—"under no … guise" should federal courts "become embroiled" in efforts to enforce the state court judgment as they would "erode the comity" between federal and state courts, *see supra* pp. 6-7—was enough to show that, had respondents brought a state law claim to enforce the judgment, the federal court would have clearly declined to exercise jurisdiction over it.

The Supreme Court further emphasized that respondents' extraordinary state-court petition "presents a *res novo* issue of state law"—including whether the state courts had the power to issue the mandamus writ or whether Louisiana separation of powers barred it from doing so. *See* Pet.App.15a. The Louisiana Supreme Court also noted that the federal court dismissed the only claim over which it had original jurisdiction, and that the "Fifth Circuit also affirmed the district court's denial of [respondents'] request for leave to amend their complaint, finding that 'amendment would be futile.'" Pet.App.8a, 15a. But at bottom, the Court concluded that because respondents' petition "involve[ed] a state court judgment, Louisiana constitutional provisions, a state inverse condemnation judgment against a state political subdivision, and the issue of whether mandamus may lie to enforce that state judgment" this case presented "exceptional circumstances." Pet.App.15a.

REASONS FOR DENYING THE PETITION

I. This Case Implicates No Split

There is no meaningful split as to petitioner's question presented (at i): Whether "a prior federal judgment *res judicata* as to state-law claims in a subsequent state- or federal-court action that arise from a common core of facts and that could have been, but were not, raised in the prior federal action." Every court, save one intermediate state court, answers the same way: there is no preclusion if "it is clear that the federal court would have declined to exercise its pendent jurisdiction over the" state claim. *Gilles v. Ware*, 615 A.2d 533, 541 (D.C. 1992); *see also* Pet.12 & n.1 (citing the same).

Petitioner also asserts a conflict over whether "the mere fact that a federal court has dismissed the asserted federal claims … make[s] it sufficiently clear that the federal court would … have declined jurisdiction over unraised state-law claims." Pet.17. But any conflict on that question is not implicated in this case because the decision below did *not* rest on the fact that the federal court dismissed the federal claims. The court below instead pointed to the federal courts' unambiguous statements that the case belonged in state court given its uniquely local character. And, in any event, Louisiana is on *petitioner's* side of the asserted split. This case would have therefore come out the same way in every state court of last resort and federal court of appeals petitioner identifies.

1. Every court petitioner identifies, save one state intermediate court, follows the Restatement's rule that a prior federal judgement is not *res judicata* as to a claim if it is clear that the federal court would have declined to exercise jurisdiction over that claim.

a. Start with petitioner's exemplar case, cited in his question presented (at i) as illustrating petitioner's side of the purported split: *Anderson v. Phoenix Investment Counsel of Boston, Inc.*, 440 N.E.2d 1164 (Mass. 1982). *Anderson* expressly applied the same rule applied by the Louisiana Supreme Court below: that "if the Federal court in the first action would clearly not have had jurisdiction to hear the State claim or if, having jurisdiction, clearly would have declined to exercise it as a matter of discretion, then a second action in a State court should not be precluded." *Id.* at 1168. The Louisiana Supreme Court in fact cited *Anderson* in crafting its rule. *See* Pet.App.12a (citations omitted).

The only difference between the cases is the facts. The Massachusetts Supreme Court held that the state-law claim there was precluded because "there was a substantial possibility … that the Federal court would have exercised its jurisdiction" over the state claim, 440 N.E.2d at 1168-69, *i.e.*, "it [was] not clear if the Federal court … would have declined to hear the … claim," *id.* at 1169.

The same holds true for the other cases that petitioner claims (at 17-22) belong to the "refuse[s] to speculate" side of the purported "split."

In *Penn v. Iowa State Board of Regents*, 577 N.W.2d 393 (Iowa 1998), the Iowa Supreme Court also applied the same rule as the decision below: "[I]f 'the court in the first action … having jurisdiction, would *clearly* have declined to exercise it as a matter of discretion … the omitted theory or ground should be held not precluded," *id.* at 401 (emphasis in original) (citations omitted). The court concluded that the claim at issue was precluded because, on the facts of that case, it was "unknown whether the federal court would have exercised supplemental jurisdiction." *Id.*

River Park, Inc. v. City of Highland Park, 703 N.E.2d 883 (Ill. 1998), also applied the Restatement rule. There, the Illinois Supreme Court held that the state-law claims were precluded because it could not "agree with plaintiffs that, had they attempted to bring their state claims in federal court, the district court would have dismissed them for lack of subject matter jurisdiction after it dismissed." *Id.* at 896.[2]

Asarco LLC v. Atlantic Richfield Co., 369 P.3d 1019 (Mont. 2016) is similar. As petitioner acknowledges (at 19), the Montana Supreme Court held that "claim preclusion would not apply in the instant case if it could be shown that the federal district court would have clearly declined to maintain jurisdiction over [the] state-law claims," 369 P.3d at 1027. Because it was speculative, as opposed to clear, that the federal court would have declined to exercise jurisdiction over the claims, the court held the claims precluded. *Id.*

Gilles v. Ware, 615 A.2d 533 (D.C. 1992) is consistent with the preceding decisions. The D.C. Court of Appeals held that the claim at issue was not precluded because: "we cannot say it is clear that the federal court would have declined to exercise its pendent jurisdiction over the negligence claim." *Id.* at 541.

The federal cases petitioner cites apply the same rule. *Brown v. Federated Department Stores*, 653 F.2d 1266,

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[2] Unlike in this case, the plaintiffs in *River Park* filed no state claims in federal court, such that there was no indication of "whether the district court would have refused to exercise supplemental jurisdiction over these claims." *Id.* In other words, the claims were precluded because it was not clear that the federal court would have declined to exercise jurisdiction over them. In contrast, it *was* clear here. What is more, respondents *did* assert a state-law theory (contract) in their claim for declaratory judgment in federal court.

1267 (9th Cir. 1981) held that the claims at issue were precluded because it was "not clear that the district court … would have refused to exercise jurisdiction over [the] state law claims." The rule in *Nwosun v. General Mills Restaurants, Inc.*, is the same: "[W]here it is not clear the district court would have declined jurisdiction over the supplemental state claims, they are barred by res judicata." 124 F.3d 1255, 1258 (10th Cir. 1997) (citation omitted). So, in that case, the mere "uncertainty over whether a federal court would have exercised pend[e]nt jurisdiction" present in that case was not sufficient to defeat preclusion.

b. The only arguable counterexample petitioner identifies is *Jensen v. Champion Window of Omaha, LLC*, 900 N.W.2d 590 (Neb. App. 2017). That decision contains language suggesting that Nebraska has not yet adopted the Restatement's rule. *See id.* at 593-95. But a single outlier decision of a state intermediate court does not warrant this Court's review. State-court splits must generally involve "a state court of last resort" to justify granting certiorari, Sup. Ct. R. 10(b), and petitioner provides no reason why the Nebraska Supreme Court is incapable of aligning Nebraska with the otherwise uniform consensus in an appropriate case.[3]

c. Petitioner further claims a "recognized nationwide split" over whether, when federal claims are decided pretrial "on the merits, such as at summary judgment, it is clear … that the federal court would not have entertained

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[3] In any event, *Jensen* is distinguishable. *Jensen* "adopt[ed] the view that where a federal court dismisses the filed federal causes of action with prejudice *but reserves and dismisses the state law claims filed contemporaneously*, the only claims reserved are those expressly dismissed without prejudice." 900 N.W.2d at 595. That holding is inapt here; this case does not involve reserved claims.

pendent jurisdiction over the state claim." Pet.12 (cleaned up). To the extent it exists, however, that split is not implicated in this case. The Louisiana Supreme Court did not base its conclusion that it is "clear that" the federal court "would have declined to exercise its jurisdiction" over the state-law claim on the "mere fact" that the federal court dismissed the federal claims pretrial. Pet.App.14a-15a. Instead, the Louisiana Supreme Court based its conclusion on far more powerful evidence, specifically, the federal courts' express statements that respondents' case belonged in state court. *Id.*

As the Louisiana Supreme Court explained, the federal trial and appellate courts were "both decisive in ruling that this matter belonged in state court" given the "exceptional circumstances" of this case, which "presents a *res novo* issue of state law," and involves "a state court judgment, Louisiana constitutional provisions, a state inverse condemnation judgment against a state political subdivision, and the issue of whether mandamus may lie to enforce that state judgment." *Id.* No case in petitioner's asserted split holds that the facts of this case would fail to make it clear that the federal court would have declined to exercise jurisdiction over the state claims.

In any event, resolving petitioner's asserted split would not change the outcome of this case. Claim preclusion cannot be defeated in Louisiana based merely on the fact that the prior federal court dismissed the federal claims pretrial. The Louisiana Supreme Court thus has held state claims precluded despite the fact that the prior federal court disposed of the federal claims at the motion-to-dismiss stage. *Reeder v. Succession of Palmer*, 623 So.2d 1268, 1271, 1273-75 (La. 1993).

The court below similarly held that plaintiffs can avoid preclusion only if there have been "exceptional" circumstances which "clearly and unmistakably required declination" of jurisdiction by the federal court—as it found here. Pet.App.14a (quoting *Reeder*, 623 So.2d at 1273-74). Under that standard, simply pointing out that the prior federal court disposed of the federal claims pretrial is not enough. The Louisiana Supreme Court, like other courts that apply petitioner's preferred rule, requires clarity, not speculation: "In cases of doubt … it is appropriate for the rules of res judicata to compel the plaintiff to bring forward his state theories in the federal action." *Reeder*, 623 So.2d at 1273; *see* Pet.App.13a.

Not even petitioner appears to believe that this case turns on this asserted split. Petitioner does not advocate that this Court hold that the "mere fact that a federal court has dismissed the asserted federal claims" does not "make it sufficiently clear that the federal court would … have declined jurisdiction over unraised state-law claims." Pet.17. Instead, petitioner advocates an extreme holding that *all* claims unraised in the federal litigation are barred, no matter what. *See* Pet.2, 28-30. Only under that outlier rule would respondents' claim be precluded.

II. This Case Is an Unsuitable Vehicle for Considering the Claim Preclusive Effects of a Federal Judgment

Even if this case presented the conflict petitioner claims, this case would be a poor vehicle for resolving that issue.

1. As noted above, *supra* pp. 10-15, the decision below is part of the broad Restatement consensus: "cases following a federal court judgment and asserting previously unraised state-law claims may be brought in state court if, 'having jurisdiction, [the federal court] would clearly have

declined to exercise it as a matter of discretion[].'" Restatement (Second) of Judgments § 25, cmt. e. To prevail in this case, therefore, petitioner must persuade this Court to abandon the Restatement rule.

While petitioner now attacks the Restatement's well-accepted rule root and branch, petitioner forfeited, if not waived, any objection to the rule below. Petitioner argued below that the Restatement rule should apply in the Louisiana Supreme Court proceedings, not once, but twice. First, in his application for certiorari to the Louisiana Supreme Court, he argued that the court of appeal's decision should be reversed because it pointed to "nothing in the record that would support a 'clear' indication that the federal district court would have declined to hear any pendant state law claims." Pet.App.115a. In making this argument, petitioner endorsed the caveat from the Restatement. Pet.App.114a. Petitioner repeated that argument in his opening brief before the Louisiana Supreme Court too, arguing that Louisiana law established that *res judicata* does not apply if the federal court "**clearly** would have declined to exercise [jurisdiction] as a matter of discretion." Pet.App.126a. (quoting *Reeder*, 623 So.2d at 1273.) Then petitioner claimed respondents must "demonstrate that the federal court 'clearly' would not have entertained jurisdiction over State law claims." Pet.App.126a-127a. At its core, petitioner's argument was that "the court of appeal misread[] and misapplie[d]" the Restatement rule. Pet.App.112a. Petitioner never argued that Louisiana should abrogate its adoption of the Restatement rule.[4]

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[4] Petitioner also argues that § 4413 of Wright & Miller should apply to preclude respondents' claims because the federal court judgment did not "***expressly*** leave[] open the opportunity to bring a second

This Court should follow its ordinary practice of not deciding questions "'not raised or addressed' in the Court [below]," especially if the "petitioner … assert[s] new substantive grounds attacking … the judgment." *United States v. United Foods, Inc.*, 533 U.S. 405, 416-17 (2001).

2. To the extent petitioner is simply arguing that the Louisiana Supreme Court misapplied the Restatement's rule, that argument is too narrow and fact bound to warrant certiorari. Petitioner asks this Court to review the application of the Restatement rule to one narrow circumstance: where the *federal* court expressly made clear it would not have exercised jurisdiction over the respondents' subsequent mandamus petition. Pet.App.14a. According to the federal court, even a federal claim would "erode the comity federal courts are to diligently maintain with state courts," and "under no constitutional guise should federal courts 'become embroiled in a party's attempt to enforce state court judgments.'" Pet.App.7a (quotation omitted). *A fortiori* the federal court would not have exercised jurisdiction over a novel state claim seeking mandamus—especially one where the Louisiana courts themselves split over their power to issue the extraordinary writ. *Supra* pp. 7-8. None of petitioner's cases address this specific application of the general rule.

Indeed, the only case addressing a subsequent mandamus claim was an intermediate appellate decision that turned on other grounds. In *Parks v. City of Madison*,

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cause of action." Pet.App.135a; *accord* Pet.App.115a. Petitioner cannot contend that this argument preserved his new claim that the Restatement rule should be abrogated. That is because § 4413 deals with the scope of preclusion *on claims that were actually brought*. It has no bearing in this case, where the analysis concerns *omitted claims*.

492 N.W.2d 365, 369 (Wis. Ct. App. 1992), the court reasoned that Seventh Circuit precedent compelled the conclusion that "if the federal claim to which the state-law claim is pendant is dismissed before trial, the court will decline jurisdiction over the state-law claim and remit the claimant to the state courts." That reasoning was not outcome determinative here. Instead, the Louisiana Supreme Court reasoned that the nature of the state claim was so local and presented such novel issues of state law that "exceptional circumstances" were clearly present. That distinct scenario was not presented in *Parks*—nor in any other case cited by petitioner.

3. Finally, using this case to address petitioner's question presented would be particularly inappropriate, given that adopting petitioner's rule would have the effect of significantly impairing the Louisiana Supreme Court's ability to expound on a novel issue of Louisiana constitutional law. Should the Court consider the question presented worthy of its attention, the Court should grant review in a case where holding the state claim precluded would not wipe out a precedent-setting state supreme court decision on a meritorious, novel issue of state constitutional law that the state supreme court deemed worthy of its review.

That is particularly true here, where this "particularly local" litigation has been active in Louisiana for nearly a decade. *Supra* p. 5. The groundbreaking Louisiana Supreme Court holding finally brought sufficient certainty to guarantee Respondents' just compensation. To upset the apple cart now and throw those state proceedings back into disarray would destroy comity—not advance it. At bottom, both state and federal courts here played their roles in our federal system well. Granting the petition now would only serve to frustrate, delay, and

muddle the marathon state proceedings. There is no reason to do so—especially not in the name of comity.

III. The Decision Below Is Correct and Petitioner Greatly Exaggerates Its Effects

The Louisiana Supreme Court correctly held that Respondents' state-law mandamus claim was not precluded by the prior federal court decision because it is "clear that [the federal court] would have declined to exercise its jurisdiction" over the mandamus claim. Pet.App.14a. The petition does not dispute that it was clear in this case that the federal court would have declined to exercise jurisdiction over the state-law mandamus claim. The question is therefore whether the rule the Louisiana Supreme Court applied—that claims that the prior federal court would clearly not have exercised jurisdiction over are not precluded by the prior federal court judgment—is the correct rule.

It is. Courts and commentators have long recognized that when a state court "is convinced that the federal court would have refused to exercise supplemental jurisdiction if asked" there is "no preclusion in [the] subsequent state proceeding." Wright & Miller, *supra*, § 4412. That is the consensus rule. *See supra* pp. 10-13. And there is good reason for that consensus. This Court should not upend the status quo in favor of a rule that forces plaintiffs to raise obviously doomed state-law claims in federal court and forces federal courts to issue decisions declining to exercise jurisdiction over those claims before the plaintiff can bring state-law claims in state court.

1. In determining preclusion rules, this Court "regularly turns to the Restatement (Second) of Judgments." *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138,

148 (2015). Doing so here would result in affirmance. Louisiana's rule is the Restatement's rule: A claim is not precluded if "the court in the first action … having jurisdiction [over the claim,] would clearly have declined to exercise it as a matter of discretion." Restatement (Second) of Judgments § 25, cmt. e (1982).

2. That rule is a straightforward restatement of general *res judicata* principles. Claim preclusion precludes parties from raising claims "that they have had a full and fair opportunity to litigate," *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008), *i.e.*, claims "that could have been … *decided* in [the] prior action" had they been raised, *Lucky Brand Dungarees, Inc. v. Marcel Fashions Group*, 590 U.S. 405, 412 (2020) (emphasis added). When it is clear that the federal court would not have exercised jurisdiction over a claim, the plaintiff did not have "a full and fair opportunity to litigate [the] claim in federal court," because the federal court would not have decided the claim. *See Nwosun*, 124 F.3d at 1258. So, such claims are not precluded.

3. That rule makes good sense. All agree that if a plaintiff raises a state-law claim that is inappropriate to resolve in federal court, and the federal court declines to exercise jurisdiction over that claim, the claim may be brought in state court. "[I]t would be unfair to impose a harsher result for unappended state law claims than would have occurred had the claims been raised." *Beutz v. A.O. Smith Harvestore Prods., Inc.*, 431 N.W.2d 528, 532 (Minn. 1988). The reason why is obvious: It makes no sense to punish judicious plaintiffs who save the federal courts' time and resources by not raising claims that clearly belong in state court.

By punishing such plaintiffs, petitioner's rule would frustrate the efficiency goals of *res judicata* by giving federal courts needless make-work. In cases where the federal court will clearly decline to exercise jurisdiction over a claim (say because the claim "raises a novel or complex issue of State law" that plainly belongs in state court, *see* 28 U.S.C. § 1367(c)(1), or because an abstention doctrine clearly applies, *see, e.g.*, *R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 500-01 (1941)), plaintiffs will be forced to raise those federally futile claims just so the federal court can decline to exercise jurisdiction. And because district courts' decisions to decline to exercise supplemental jurisdiction are reviewable, *see, e.g.*, *Parker v. Scrap Metal Processors*, 468 F.3d 733, 738 (11th Cir. 2006), the district court will generally have to provide its reasoning for not exercising supplemental jurisdiction and an appellate court may then have to weigh in as well. All work that could have been avoided had the plaintiff simply not raised the futile claim. Petitioner's rule therefore serves only to waste federal courts' time and deny judicious plaintiffs the opportunity to have their claims adjudicated by the only court willing to adjudicate them.

4. Louisiana's rule avoids that result while protecting the goals of *res judicata* by targeting only those situations where it is obvious, as here, that the federal court would have declined to exercise jurisdiction over the claim.

Petitioner claims (at 30-33) that Louisiana's rule harms finality interests, encourages claim splitting, and wastes state-court resources. But all of those arguments incorrectly assume that Louisiana's rule will frequently fail to preclude claims that federal courts would have adjudicated. Louisiana's standard is strict. *See, e.g.*, *Reeder*, 623 So.2d at 1273-75 (holding claims precluded). Claims are precluded even if it is "probable that the federal court

would have declined to exercise its pendent jurisdiction." *Id.* Plaintiffs can avoid preclusion only if there have been "exceptional" circumstances which "clearly and unmistakably required declination" of jurisdiction by the federal court. Pet.App.14a (citation omitted). Every edge case under Louisiana's standard is, therefore, still a case where it is overwhelmingly likely that the federal court would have declined to exercise jurisdiction.

By targeting only those claims that clearly would not have been adjudicated in federal court, Louisiana's rule protects finality interests just as well as petitioner's rule. Petitioner's rule would require plaintiffs to raise federally-futile claims in federal court and have the federal court decline jurisdiction over the claims. Once that happens, the plaintiff is free to re-raise the claim in state court—*i.e.*, no finality. The same result obtains under Louisiana's rule—the federally-futile claim can be brought in state court. The only difference is that Louisiana's rule reaches that same result without wasting judicial resources in the process.

The decision below does not encourage inefficient claim splitting. Given Louisiana's strict requirements, no sensible plaintiff will risk holding back state claims in federal litigation unless it is truly obvious that that the federal court will not adjudicate the state claim. Unless the plaintiff can convince the state court that there were "exceptional" circumstances which "clearly and unmistakably required declination" of jurisdiction by the federal court, Pet.App.14a (citation omitted), plaintiff's unraised claims will be forever precluded.

The decision below will not result in the needless waste of state-court resources either. It is only the "exceptional" claim that can move forward in state court. Pet.App.14a-15a (citation omitted). And state courts have

an interest in adjudicating those claims, which are usually exceptional because they raise important, novel, and complex issues of state law, like the claim in this case. Petitioner's fear for state courts is particularly dubious given that state courts themselves have almost universally chosen to apply the Restatement's rule. And in any event, "[t]he goal of *res judicata* is to promote fairness, not lighten the loads of the state court by precluding suits whenever possible." *Pierson Sand & Gravel, Inc. v. Keeler Brass Co.*, 596 N.W.2d 153, 158 (Mich. 1999).

5. Finally, petitioner is wrong to claim (at 30-32) that it is "inherently impossible" for state courts to determine whether it is clear that the federal court would have declined to exercise jurisdiction over the claim. Determining whether it is clear that a federal court would have declined to exercise jurisdiction over a claim is no harder than determining whether declining to exercise jurisdiction over a claim would be an abuse of discretion. And that abuse of discretion standard is regularly applied by federal appellate courts reviewing district court decisions to decline to exercise jurisdiction. *See, e.g.*, *Parker*, 468 F.3d at 738.

Moreover, courts regularly make predictive judgments about what another court would do. Federal courts must do so when making an "*Erie* guess" in diversity cases. *E.g.*, *QBE Syndicate 1036 v. Compass Mins. La.*, 95 F.4th 984, 987 (5th Cir. 2024). The same is true for state courts, too, when they apply another jurisdiction's law, which often requires making a "reasoned prediction" about what courts in the other jurisdiction would do. *E.g.*, *In re Am. Int'l Grp.*, 965 A.2d 763, 822-23 (Del. Ch. 2009).

Applying Louisiana's rule is far easier. Louisiana courts do not have to predict what the federal court would do in close cases. Close calls result in preclusion. Again,

under Louisiana's rule, there will be preclusion even if it is "probable that the federal court would have declined to exercise its pendent jurisdiction." *Reeder*, 623 So.2d at 1273-75. Louisiana courts need only look to whether there were "exceptional" circumstances which "clearly and unmistakably required declination" of jurisdiction by the federal court. Pet.App.14a-15a (citation omitted). This case is a perfect example.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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