No. 01-896

IN THE
Supreme Court of the United States

FORD MOTOR COMPANY AND
CITIBANK (SOUTH DAKOTA), N.A.,
Petitioners,

v.

JOHN B. MCCAULEY *et al.*,
Respondents.

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

BRIEF FOR PETITIONERS

SETH P. WAXMAN
CHRISTOPHER R. LIPSETT
BRUCE M. BERMAN
TREVOR W. MORRISON
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

Counsel for Petitioner
Citibank (South Dakota), N.A.

WALTER E. DELLINGER
Counsel of Record
JOHN H. BEISNER
BRIAN P. BROOKS
JONATHAN D. HACKER
O'MELVENY & MYERS LLP
555 13th Street, N.W.
Washington, D.C. 20004
(202) 383-5300

Counsel for Petitioner Ford
Motor Company

QUESTION PRESENTED

Whether the amount-in-controversy requirement of the diversity statute is satisfied where a class representative seeks an injunction that would cost the defendant more than $75,000 to implement whether the injunction applies to one plaintiff or all class members.

PARTIES TO THE PROCEEDING

In addition to the parties identified in the caption and to the unidentified class members, Ricky A. Copeland, Gerald Essig, Howard S. & Lynette M. Hornreich, John La Grou, Jeffrey Scott Merrick, and Thomas Walters are parties to the case.

CORPORATE DISCLOSURE STATEMENT

Ford Motor Company has no parent corporation, and no publicly held company owns ten percent or more of its stock. Citibank (South Dakota), N.A., is a wholly-owned subsidiary of Citibank, N.A., and is indirectly wholly-owned by Citigroup Inc. Citigroup Inc. is a publicly held company.

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

STATUTES AND RULES

LEGISLATIVE MATERIALS

TABLE OF AUTHORITIES—Continued

LAW REVIEWS AND BOOKS

TREATISES AND REFERENCE MATERIALS

TABLE OF AUTHORITIES—Continued

IN THE

Supreme Court of the United States

No. 01-896

FORD MOTOR COMPANY AND
CITIBANK (SOUTH DAKOTA), N.A.,
Petitioners,

v.

JOHN B. MCCAULEY *et al.*,
Respondents.

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

BRIEF FOR PETITIONERS

OPINIONS AND JUDGMENTS BELOW

The opinion of the Ninth Circuit (J.A. 107-26) is reported at 264 F.3d 952. The opinion of the district court (J.A. 91-101) is not reported.

JURISDICTION

The opinion of the Court of Appeals was issued on September 6, 2001. The Court of Appeals denied the petition for rehearing and rehearing en banc on October 22, 2001. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Section 1332(a)(1) of Title 28, United States Code, provides in pertinent part: "The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interests and costs, and is between . . . citizens of different States . . . ."

STATEMENT OF THE CASE

1. This case arises out of the termination of a credit card rebate program operated by petitioners Ford Motor Company and Citibank (South Dakota), N.A. (the "Rebate Program" or "Program"). In 1993 petitioners inaugurated a credit card benefit that enabled cardholders to accrue and redeem rebates towards the purchase of a new Ford vehicle. J.A. 108-09. Petitioners canceled the rebate accrual component of the Program effective January 1, 1998. In response, cardholders filed six nationwide class actions in the state courts of Washington, Oregon, California, Illinois, Alabama, and New York. *Id.* at 109. The actions alleged generally that one or both petitioners had made misrepresentations concerning the Rebate Program, and that the Program had been wrongfully terminated. *Id.*

Petitioners removed the cases to federal court on the basis of diversity jurisdiction, and then petitioned the Judicial Panel on Multidistrict Litigation to transfer the actions to one district court for pretrial proceedings. The Panel granted the petition and transferred the actions to the Western District of Washington. The named plaintiffs in the various actions then jointly filed a Consolidated Complaint, which, as the district court observed, was "meant to supersede the six original actions." *Id.* at 91-92. The Consolidated Complaint states that the action is within the district court's diversity jurisdiction, asserts claims on behalf of a purported nationwide class of over six million persons, and alleges that petitioners' liability to the class extends into the billions of dollars. *Id.* at 110,

119. The stated purpose of the action is "to hold Ford and Citibank to their end of the bargain." *Id.* at 50. Accordingly, and as is especially pertinent here, the Consolidated Complaint seeks an injunction "[a]warding specific performance of the Rebate Program to plaintiffs and Class members." *Id.* at 62. The requested "specific performance" would require petitioners to reinstitute the Rebate Program so as to provide class members the opportunity to accrue rebates again.

Following completion of discovery on the question of class certification, the district court *sua sponte* issued an order to show cause why the Consolidated Complaint should not be dismissed for lack of jurisdiction for failure to satisfy the $75,000 amount-in-controversy requirement. J.A. 110.[1] In response, petitioners demonstrated that the plaintiffs have a common and undivided interest in their claim for an injunction compelling specific performance of the now-terminated Rebate Program. Petitioners also introduced undisputed evidence demonstrating that the fixed costs of reinstituting and maintaining the Rebate Program—*i.e.*, restoring the opportunity to accrue rebates and re-establishing the business apparatus for identifying eligible purchases and tracking the accumulation of rebates—would far exceed $75,000, even if the relief were awarded only to one plaintiff. On the basis of that uncontroverted record, the district court acknowledged that "the fixed costs in operating a rebate program . . . exceed $75,000" and do "not depend on the extent of cardholder usage." *Id.* at 96 (internal quotation marks omitted). Respondents did not challenge that finding below.

While acknowledging that the fixed costs of re-establishing the Rebate Program would exceed $75,000, the district court concluded that those costs are irrelevant to the amount-in-controversy analysis. *Id.* at 96-97. In the court's view, because no individual cardholder could accrue more

---

[1] It is undisputed that the Consolidated Complaint satisfies the requirement of complete diversity among the parties. J.A. 112.

than $3,500 in rebates under the Rebate Program, the "value of the [requested] injunction" with respect to any one class member could not exceed $3,500, irrespective of petitioners' cost of complying with the injunction as to one plaintiff. *Id.* The district court rejected petitioners' remaining amount-in-controversy arguments and dismissed the Consolidated Complaint for lack of jurisdiction. *Id.* at 100.

2. The Ninth Circuit affirmed in part and dismissed in part. After confirming that it had jurisdiction to review the district court's order,[2] the court addressed whether petitioners' costs of complying with the requested injunction satisfied the amount-in-controversy requirement. The court began by observing that its prior decisions adopt the "either viewpoint" rule—instead of the "plaintiff's viewpoint" rule—as the governing standard. *Id.* at 113. Under that rule, "the test for determining the amount in controversy is the pecuniary result to either party which the judgment would directly produce," *id.*, not just the amount at stake for the plaintiff. "In other words," the court explained, "where the value of a plaintiff's potential recovery (in this case, a maximum of $3,500) is below the jurisdictional amount, but the potential cost to the defendant of complying with the injunction exceeds that amount, it is the latter that represents the amount in controversy for jurisdictional purposes." *Id.*

After describing the application of the "either viewpoint" rule to claims for injunctive relief, the court held that the rule applies to class actions (and other actions involving multiple plaintiffs) where the plaintiffs have a "common and undi-

---

[2] As the court of appeals observed, the original complaints filed in various state courts and then removed to federal court were replaced by a Consolidated Complaint filed in the district court, J.A. 109-10, and the district court's order dismissed, rather than remanded, the action as defined in the Consolidated Complaint, *id.* at 112 ("[T]he record clearly indicates that the district court intended to dispose of the consolidated action."). Accordingly, the court concluded that it had jurisdiction to review the dismissal order under 28 U.S.C. § 1291. *Id.*

vided interest" in the requested injunction. *Id.* at 115. But where the requested injunction reflects a collection of "separate claims" made by each individual plaintiff, the court concluded, the "either viewpoint" rule is in tension with the settled rule barring aggregation of separate and distinct claims to satisfy the jurisdictional minimum. *Id.* at 114-15. The court did not hold, however, that the defendant's costs of complying with an injunction are wholly irrelevant in cases involving separate and distinct claims. Rather, "the test" in those circumstances "is the cost to the defendants of an injunction running in favor of one plaintiff." *Id.* at 115-16 (citing *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 610 (7th Cir. 1997)).

Applying those standards here, the court first determined that the plaintiffs do not possess a "common and undivided" interest in their request for an injunction compelling reinstatement of the Rebate Program. *Id.* at 116-18. The court held that its prior precedents foreclosed the argument that the "the injunctive relief requested—reinstating the rebate accrual program—necessarily would benefit the putative class as a whole." *Id.* at 117. In the court's view, the plaintiffs' claimed right to accrue rebates under the Rebate Program "is distinct to each plaintiff, is based on his or her individual contractual relationship with Ford and Citibank, and is worth no more than $3,500." *Id.* Accordingly, the court held that the class did not possess a common and undivided interest in obtaining specific performance of the Rebate Program.

Having determined that each class member asserts a separate and distinct claim for an injunction requiring reestablishment of the Rebate Program, the court then addressed petitioners' evidence that "the cost of [the] injunction running in favor of one plaintiff would exceed $75,000." *Id.* at 118. The court accepted the district court's finding that "the fixed costs to [petitioners] of reinstating and maintaining the program would be the same whether it is done for one plaintiff or for six million." *Id.* In the court's view, how-

ever, premising jurisdiction on the cost of complying with an injunction in favor of a single plaintiff would conflict with "the principle underlying the jurisdictional amount requirement—to keep small diversity suits out of federal court." *Id.* According to the court, if "the administrative costs of complying with an injunction were permitted to count," "then every case, however trivial, against a large company would cross the threshold." *Id.* (internal quotation marks and citation omitted). The court held for those reasons that "the amount in controversy requirement cannot be satisfied by showing that the fixed administrative costs of compliance exceed $75,000." *Id.* at 118-19.

SUMMARY OF ARGUMENT

The diversity statute grants the federal district courts original jurisdiction of all "civil actions" involving diverse parties where "the matter in controversy exceeds the sum or value of $75,000." 28 U.S.C. § 1332(a)(1). The class claim at issue here seeks reinstatement of the credit card Rebate Program previously offered to cardholders nationwide. Uncontested record evidence establishes that reinstating the Program would cause petitioners to incur fixed costs far exceeding the statute's $75,000 amount-in-controversy requirement, whether the award were for the benefit of the entire class or for just a single plaintiff.

There are only two potential arguments for why this undisputed evidence does not establish that the "matter in controversy exceeds the sum or value of $75,000": first, that the matter in controversy can never be evaluated from the defendant's perspective; and second, that costs such as those at issue here must be excluded from the amount-in-controversy analysis in class action and other multi-plaintiff cases. Both of those arguments are without merit.

I. The text of the diversity statute and this Court's treatment of it both confirm that the amount-in-controversy requirement is satisfied if the case meets the jurisdictional

minimum from either party's perspective (the "either viewpoint" rule). Nothing in the ordinary meaning of the controlling statutory terms "sum," "value," or "matter in controversy" suggests that they pertain only to the amount at stake for the plaintiff. Indeed, by referring to the "matter *in controversy*," the statute naturally evokes the perspectives of both sides to the "controversy." Accordingly, for over a century the Court has described the matter in controversy as the "pecuniary result" not just to the plaintiff, but to "one of the parties" to the case. *Smith v. Adams*, 130 U.S. 167, 175 (1889). And as early as *Market Company v. Hoffman*, 101 U.S. (11 Otto) 112 (1879), the Court held that the "matter in dispute" exceeded the jurisdictional amount based *solely* on the cost to the defendant of an injunction entered against it.

Permitting claims to be evaluated from either party's perspective also best promotes the basic purposes of the diversity statute in general, and the amount-in-controversy requirement in particular. Especially when considered in tandem with the removal statute, the diversity statute has always operated to protect out-of-state parties—especially defendants—from the vicissitudes of state court litigation. It would be incongruous, in light of this general attentiveness to the position of defendants in diversity actions, to conclude that the statute forecloses all consideration of the defendant's perspective when determining the amount in controversy. More specifically, permitting consideration of the defendant's costs is entirely consistent with the fundamental purpose of limiting diversity jurisdiction only to cases of a prescribed financial magnitude. That purpose is satisfied in any case with large sums at stake for either party.

This case fits that description. The class claim for injunctive relief seeks reinstatement of a nationwide credit card Rebate Program, the fixed costs of which would far exceed $75,000 *per month*. There is simply no reason in the text or purpose of the statute, or in this Court's cases, to exclude such costs from the amount-in-controversy calculus.

II. The Ninth Circuit's conclusion that petitioners' fixed costs of complying with the requested injunction could not satisfy the amount-in-controversy requirement is based on a fundamental misunderstanding of the "non-aggregation" principle as applied to class actions. *See Snyder v. Harris*, 394 U.S. 332 (1969); *Zahn v. International Paper Co.*, 414 U.S. 291 (1973). Under that principle, where multiple plaintiffs with "separate and distinct" claims join in one action, each plaintiff's claim must separately satisfy the jurisdictional minimum. But if the plaintiffs jointly seek to enforce a "common and undivided" right or interest, the amount-in-controversy requirement is satisfied if their collective interest crosses the jurisdictional threshold. The purpose of the principle is to ensure that the procedural device of joinder (whether as a class or otherwise) is not used to aggregate separate and distinct, jurisdictionally insufficient claims as a means of manufacturing federal jurisdiction where it would not otherwise exist. Here, whether the plaintiffs' request for an injunction is viewed as asserting the separate and distinct claims of multiple plaintiffs or as a claim for common and indivisible relief, the non-aggregation principle presents no obstacle to jurisdiction.

a. If the plaintiffs in this case are deemed to assert separate and distinct claims for injunctive relief, the amount in controversy is the cost to petitioners of reinstating the Rebate Program for a single plaintiff. Here, the fixed component of those costs substantially exceeds $75,000 whether the claim is considered on a class-wide or single-plaintiff basis. Recognizing jurisdiction in this case is thus entirely consistent with the "non-aggregation" principle: Jurisdiction results not from the combination of individual, jurisdictionally insufficient claims, but from the fact that petitioners would incur large fixed costs even if the injunction were awarded to only one plaintiff. To prevent jurisdiction from being premised on those costs would be to exclude them entirely from the jurisdictional analysis. Such exclusion finds no support in the text or purposes of the diversity statute.

b. The same result naturally obtains if plaintiffs' request for reinstatement of the entire Rebate Program is viewed as asserting a common and undivided interest. One typical characteristic of such claims is that the defendant has no stake in the number of plaintiffs seeking the relief at issue or in the ultimate apportionment of that relief. That is the case here: The relief at issue is reinstatement of the entire Rebate Program, and the act of reinstating that Program would impose the same substantial fixed costs on petitioners regardless of the number of plaintiffs in this case. Indeed, the fixed costs of reinstating the Rebate Program are not even susceptible to "apportionment" among plaintiffs. Another typical characteristic of common and undivided claims is that the plaintiffs are collectively interested in the same relief, in that an award of that relief, even to a single plaintiff, would benefit the entire class. That is also true here: Reinstatement of the rebate program, if awarded to even one plaintiff, would benefit the entire class of cardholders. For these reasons, the claim reflects the plaintiffs' common and undivided interest in reinstatement of the Program.

ARGUMENT

I. THE AMOUNT-IN-CONTROVERSY REQUIREMENT IS SATISFIED WHEN THE COST TO THE DEFENDANT OF COMPLYING WITH THE REQUESTED INJUNCTION WOULD EXCEED THE JURISDICTIONAL MINIMUM.

The diversity statute grants the federal district courts original jurisdiction of "all civil actions" involving diverse parties where "the matter in controversy exceeds the sum or value of $75,000." 28 U.S.C. § 1332(a)(1). The threshold question in this case is whether the "sum or value" of "the matter in controversy" is only the "sum or value" at stake for the plaintiffs (the "plaintiff's viewpoint" rule), or instead also encompasses the "sum or value" at stake for the defendants (the "either viewpoint" rule).

The distinction is often immaterial—particularly where the claim is one for damages—as the recovery sought by the plaintiff usually equals the liability faced by the defendant. *See* 14B Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, *Federal Practice and Procedure* ("Wright & Miller") § 3703, at 113 (1998); 15 James Wm. Moore *et al.*, *Moore's Federal Practice* ("*Moore's*") § 102.109[1], at 102-196.8 (3d ed. 2001). But where the "matter in controversy" involves a claim for injunctive relief, awarding the relief can impose costs on the defendant that exceed the benefits to the plaintiff. *See* Wright & Miller, *supra*, § 3703, at 113; *Moore's*, *supra*, § 102.109[1], at 102-196.8. Here, for instance, while an injunction re-establishing the Rebate Program would enable each plaintiff ultimately to accrue no more than $3,500 in rebates, the fixed costs of reinstituting the Rebate Program for one (or more) plaintiffs are well in excess of $75,000. In such circumstances, the choice between the "either viewpoint" and "plaintiff's viewpoint" rule can be determinative. As we explain here, only the "either viewpoint" rule squares with the text and purposes of the statute and with this Court's decisions.

First, the plain text of the diversity statute, which is necessarily the starting point of the analysis, *see Williams v. Taylor*, 529 U.S. 420, 431 (2000), is dispositive.[3] Nothing in

---

[3] Apart from increases in the jurisdictional amount on five occasions, *see* Judiciary Act of 1789, § 11, 1 Stat. 73, 78 (setting the original amount at $500); Act of Mar. 3, 1887, 24 Stat. 552, 552 ($2,000); Act of Mar. 3, 1911, Pub. L. No. 61-475, 36 Stat. 1087, 1091 ($3,000); Act of Jul. 25, 1958, Pub. L. No. 85-554, 72 Stat. 415 ($10,000); Judicial Improvements and Access to Justice Act, Pub. L. No. 100-702, 102 Stat. 4642 (1988) ($50,000); Federal Court Improvement Act, Pub. L. No. 104-317, 110 Stat. 3847 (1996) ($75,000), the pertinent text of the diversity statute has remained essentially unchanged since its inception in the Judiciary Act of 1789. The only modification is that, whereas the statute originally employed the phrase "matter in dispute," *see* Act of Mar. 3, 1887, 24 Stat. 552; Judiciary Act of 1789, § 11, 1 Stat. 78, that language was replaced in 1911 by the phrase "matter in controversy," *see* Act of Mar. 3, 1911, § 24, 36 Stat. 1091. There is no suggestion in the legisla-

the ordinary meaning of the controlling statutory terms "sum," "value," or "matter in controversy" suggests that they pertain only to the amount at stake for the plaintiff. "Matter" in this context refers generally to "something that is a subject of disagreement, strife, or litigation," or to "a source or topic of contention." *Webster's Third New International Dictionary* 1394 (1993). Similarly, "matter in controversy" is the "[s]ubject of litigation; [the] matter on which action is brought and issue is joined." *Black's Law Dictionary* 978 (6th ed. 1990). The terms "sum or value" likewise contain no indication of a limitation solely to the plaintiff's viewpoint. *See id.* at 1435 (defining "sum" as "a quantity of money or currency; any amount indefinitely"); *id.* at 1551 (defining "value" as "the estimated or appraised worth of any object or property, calculated in money"). Indeed, the statutory text not only admits of no plaintiff-specific interpretation, but the operative phrase "matter *in controversy*" naturally evokes the perspective of both parties to the "controversy."[4] *Cf. Northbrook Nat'l Ins. Co. v. Brewer*, 493 U.S. 6,

---

tive history (or in any decision of this Court) that the change was a material one, and the terms "matter in dispute" and "matter in controversy" are generally considered interchangeable. *See Black's Law Dictionary* 978 (6th ed. 1990) (defining "matter in controversy" and "matter in dispute" together). Accordingly, this Court routinely relies on decisions interpreting the pre-existing language when construing the current language. *See, e.g., Snyder v. Harris*, 394 U.S. 332, 338-39 (1969).

[4] The absence of any plaintiff-specific limitation in the text of § 1332(a) is especially revealing when compared with the immediately succeeding provision, § 1332(b). Congress added the latter provision in 1958 to address plaintiffs' efforts to evade the amount-in-controversy requirement by overstating the relief prayed for in the complaint. *See* S. Rep. No. 85-1830 (1958), *reprinted in* 1958 U.S.C.C.A.N. 3099, 3099-3100. The provision authorizes district courts to deny costs to (or impose costs on) the plaintiff "where the *plaintiff* . . . is finally adjudged to be entitled to recover less than the *sum or value* of $75,000." 28 U.S.C. § 1332(b) (emphases added). (The Judiciary Act of 1789 contained a parallel provision complementing the original statutory grant of diversity jurisdiction. *See* Judiciary Act of 1789, § 20, 1 Stat. 83.) Section 1332(b) thereby specifically refers to the "sum or value" that is "recov-

12-13 (1989) (Court disfavors imposing limitations on statutory grants of jurisdiction where the limitation is not contained in the plain language of the statute itself); *Horton v. Liberty Mut. Ins. Co.*, 367 U.S. 348, 352 (1961) (same).

Second, this Court has construed the statutory language to encompass the "value" of the "matter" from the perspective of the defendant. In *Market Company v. Hoffman*, 101 U.S. (11 Otto) 112 (1879), over two hundred plaintiffs joined in an action seeking to enjoin the proposed sale of their rights to occupy stalls in a marketplace. The court below enjoined the proposed sale, and the defendant-owner appealed to this Court. "The first question to be determined" was "whether the amount in controversy [was] sufficient to give [the Court] jurisdiction of the appeal."[5] *Id.* at 113. "Upon this," the Court explained, "we have no doubt." *Id.* That was because "the right claimed by" the defendant—i.e., the right to sell the plaintiffs' occupancy rights in the market stalls—was "of

---

ered" by "the plaintiff," in marked contrast to the lack of any comparable party-specific qualification in § 1332(a), the general grant of diversity jurisdiction. *Cf. Bates v. United States*, 522 U.S. 23, 29-30 (1997) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (internal quotation marks and citation omitted).

[5] At various times in the past, this Court's appellate jurisdiction has been subject to certain amount-in-controversy requirements. *See, e.g.*, Judiciary Act of 1789, § 22, 1 Stat. 84 (conferring jurisdiction to review circuit courts' final judgments and decrees in civil actions "where the matter in dispute exceeds the sum or value of two thousand dollars, exclusive of costs"). The amount-in-controversy requirement in those statutes mirrored the corresponding terms of the diversity statute in every relevant respect. *See, e.g., Zahn v. International Paper Co.*, 414 U.S. 291, 294 n.3 (1973) (explaining that Court's construction of "matter in dispute" in statutes formerly defining its appellate jurisdiction has been applied to "matter in controversy" in statutes currently defining district courts' original jurisdiction). The particular provision at issue in *Hoffman*, for instance, granted the Court appellate jurisdiction where "the matter in dispute, exclusive of costs, exceed[ed] the value of twenty-five hundred dollars." Act of Feb. 25, 1879, § 4, 20 Stat. 320, 321.

far greater value than the sum which, by the Act of Congress, is the limit below which an appeal is not allowable." *Id.* Citing evidence showing that the enjoined sale would have garnered the defendant more than $60,000, the Court found it "very plain" that "the appeal is one within [its] jurisdiction." *Id.* at 114. *Hoffman* thus found that the "matter in dispute" exceeded the requisite "value" based solely on the cost to the defendant of an injunction entered against it.

Subsequent decisions recognize that the diversity statute permits the amount in controversy to be measured from the defendant's viewpoint. In *Thomson v. Gaskill*, 315 U.S. 442 (1942), for instance, the Court explained that "[i]n a diversity litigation the value of the 'matter in controversy' is measured . . . by its pecuniary consequence to *those involved* . . . ." *Id.* at 447 (emphasis added). And in *Smith v. Adams*, 130 U.S. 167 (1889), the Court stated that "the pecuniary value of the matter in dispute may be determined . . . in some cases by the increased or diminished value of the property directly affected by the relief prayed, or by the pecuniary result to *one of the parties* immediately from the judgment." *Id.* at 175 (emphasis added). *Cf. Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 347 (1977) ("In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation."); *Mississippi & Missouri R.R. Co. v. Ward*, 67 U.S. (2 Black) 485, 492 (1862) ("[T]he removal of the obstruction [of which the plaintiff complains] is the matter of controversy, and the value of the object must govern.").[6]

---

[6] In *Illinois v. City of Milwaukee*, 406 U.S. 91, 98 (1972), the Court provided additional support for the "either viewpoint" approach by citing favorably *Ronzio v. Denver & R.G.W.R. Co.*, 116 F.2d 604, 606 (10th Cir. 1940), the Wright & Miller treatise, and a Note published in the *Harvard Law Review*, each of which adopts or advocates the "either viewpoint" rule. *See* Wright & Miller § 3703, at 126-27 (discussing *Illinois* on this point). And in *Flast v. Cohen*, 392 U.S. 83 (1968)—which arose when the federal question statute still contained an amount-in-controversy requirement—the Court entertained an appeal in a federal taxpayer suit

Third, the "either viewpoint" rule best promotes the statutory purposes. As this Court has long recognized, a basic purpose of diversity jurisdiction is to protect out-of-state parties from the potential biases of in-state proceedings. *See Guaranty Trust Co. v. York*, 326 U.S. 99, 111-12 (1945) ("Diversity jurisdiction is founded on assurance to nonresident litigants of courts free from susceptibility to potential local bias."); *Pease v. Peck*, 59 U.S. (18 How.) 595, 599 (1856) ("The theory upon which jurisdiction is conferred on the courts of the United States, in controversies between citizens of different States, has its foundation in the supposition that, possibly the state tribunal might not be impartial between their own citizens and foreigners."). That purpose is reflected in the fact that when Congress first granted diversity jurisdiction in the Judiciary Act of 1789, § 11, 1 Stat. 78, it also granted a corresponding removal jurisdiction enabling out-of-state defendants to remove suits against them filed by in-state plaintiffs, *id.* § 12, 1 Stat. 79. Indeed, because the plaintiff generally can protect itself by choosing where to commence an action, cases involving removal by the defendant most squarely implicate the core concerns of diversity jurisdiction. By permitting the amount in controversy to be evaluated from the defendant's perspective, the "either viewpoint" rule accords with Congress's attentiveness to the posi-

---

seeking to enjoin operation of portions of the federal Elementary and Secondary Education Act of 1965, noting that "the challenged program involves a substantial expenditure of federal tax funds," *id.* at 103, while nowhere mentioning the value of the case from the plaintiff's perspective.

Glenwood Light & Water Co. v. Mutual Light, Heat, & Power Co., 239 U.S. 121 (1915), does not suggest otherwise. There, the Court held that the district court had erred by evaluating the amount in controversy *only* in terms of the costs to the defendant of complying with the requested injunction. *See id.* at 125-26. The district court's error was not in examining the defendant's costs, but in limiting its analysis only to the defendant's perspective, without considering the benefit to the plaintiff. *See* Wright & Miller § 3703, at 118-20. Under the "either viewpoint" rule, the amount-in-controversy requirement is satisfied whenever the amount at stake for *either* party meets the jurisdictional minimum.

tion of the defendant in diversity cases. It would be incongruous, in light of that attentiveness, to foreclose all consideration of the amount at stake from the defendant's perspective when determining the availability of a federal forum.

The "either viewpoint" rule also best promotes the purpose of the amount-in-controversy requirement itself. By increasing the jurisdictional minimum over time, *see* n. 3 *supra*, Congress has sought to limit the availability of diversity jurisdiction to cases of substantial financial magnitude.[7] Congress, however, has never suggested an intention to provide a federal forum only where substantial sums are at stake from the *plaintiff*'s perspective. Curbing the analysis in that fashion would contradict the central aim of the jurisdictional amount requirement, by "blind[ing] federal courts to the realities of the magnitude of the controversy." *McCarty v. Amoco Pipeline Co.*, 595 F.2d 389, 393 (7th Cir. 1979) (internal quotation marks and citation omitted).

This case illustrates the point. Exercising federal jurisdiction here is entirely consistent with Congress's intent to ensure that the federal courts do not "fritter away their time in the trial of petty controversies." S. Rep. No. 85-1830 (1958), *reprinted at* 1958 U.S.C.C.A.N. 3099, 3101; *see also Moore's* § 102.100, at 102-165; Wright & Miller § 3705, at 181 (quoting S. Rep. No. 85-1830). The named plaintiffs purport to assert claims on behalf of six million cardholders, and their claim for reinstatement of the Rebate Program could impose costs on petitioners greatly exceeding the jurisdictional minimum. *See* J.A. 118 (court of appeals opinion),

---

[7] *See* S. Rep. No. 104-366, at 29-30 (1996) ("The adjustment of the jurisdictional amount provides claims with substantial amounts at issue access to a Federal forum, if diversity of citizenship among the parties exists."); H.R. Rep. No. 100-889, pt. 1, at 44-45 (1988); S. Rep. No. 85-1830 (1958), *reprinted at* 1958 U.S.C.C.A.N. 3099, 3101 (Congress sought to establish a jurisdictional minimum "not so high as to convert the Federal courts into courts of big business nor so [low] as to fritter away their time in the trial of petty controversies.").

96 (district court opinion), 62 (Consolidated Complaint at 13), 88 (Behar Decl. ¶¶ 6-7). The record establishes, for example, that the cost of simply operating the Rebate Program's redemption center—leaving aside the costs of recreating an entire administrative apparatus—"would exceed $75,000 for each additional *month* that the [Rebate Program] was required to be continued." *Id.* at 88 (Behar Decl. ¶ 7). There is no basis for construing the diversity statute not to apply to a nationwide claim of such substantial magnitude.

For precisely that reason, the leading authorities in the field agree that the "either viewpoint" rule best serves the purposes of the amount-in-controversy requirement. *See Moore's* § 102.109[4], at 102-199 ("[T]he jurisdictional-amount requirement reflects a congressional judgment that federal judicial resources should be devoted only to those diversity cases in which the financial stakes rise to a predetermined level. It is difficult to understand why those financial stakes are not implicated when *either* party stands to gain or lose the statutorily determined amount or its equivalent."); Wright & Miller § 3703, at 124 ("the purpose of a jurisdictional amount in controversy requirement—to keep trivial cases away from the federal court system—is satisfied when the case is worth a large sum of money to either party"); Richard H. Fallon, Jr., et al., *Hart and Wechsler's The Federal Courts and the Federal System* 1550 (4th ed. 1996) ("*Hart & Wechsler*") (describing the value of a case to the defendant as a "critical" expression of the amount at stake); Erwin Chemerinsky, *Federal Jurisdiction* § 5.3.4 (3d ed. 1999) (concluding that "either viewpoint" rule "makes the most sense, because the amount in controversy in a lawsuit exceeds $75,000.00 if either the plaintiff or the defendant will have to pay that amount").[8]

---

[8] The weight of academic commentary is in accord. *See* Brittain Shaw McInnis, Comment, *The $75,000.01 Question: What is the Value of Injunctive Relief?*, 6 Geo. Mason L. Rev. 1013, 1023 (1998); John E. Kennedy, *Valuing Federal Matters in Controversy: Hohfeldian Analysis*

Thus, the court of appeals in this case was correct in stating that, "where the value of a plaintiff's potential recovery . . . is below the jurisdictional amount, but the potential cost to the defendant of complying with the injunction exceeds that amount, it is the latter that represents the amount in controversy for jurisdictional purposes." J.A. 113-14.[9]

II. PETITIONERS' FIXED COSTS OF COMPLYING WITH THE CLASS CLAIM FOR INJUNCTIVE RELIEF SATISFY THE JURISDICTIONAL AMOUNT REQUIREMENT.

While correctly holding that the "value" of the "matter in controversy" can be measured by the prospective costs to the defendant, the court of appeals erred in concluding that petitioners' costs of complying with the class claim for injunc-

---

in Symbolic Logic, 35 Tenn. L. Rev. 423, 429-34 (1968); Note, *The Jurisdictional Amount Requirement—Valuation from the Defendant's Perspective*, 11 Loy. L.A. L. Rev. 637, 652 (1978); Note, *Federal Jurisdictional Amount: Determination of the Matter in Controversy*, 73 Harv. L. Rev. 1369, 1374 (1960). *But see* Armistead M. Dobie, *Jurisdictional Amount in the United States District Court*, 38 Harv. L. Rev. 733 (1925).

[9] The principal argument in favor of the "plaintiff's viewpoint" approach asserts that it is easier for district courts to assess the amount in controversy if they limit their analysis to the plaintiff's perspective. *See generally* Dobie, *supra*, 38 Harv. L. Rev. 733. Not only is that policy-based argument wholly inadequate to overcome the text and purpose of the statute, it also is deeply flawed on its own terms. As even the leading proponent of the "plaintiff's viewpoint" approach acknowledges, claims for injunctive relief are sometimes difficult to evaluate from *any* perspective. *See id.* at 739 ("Very frequently, in suits for injunction, there is lacking any definite sum of money to which the court can point as the amount in controversy."). Yet precisely because determining the amount in controversy can be so difficult in such cases, there is no reason to exclude at the outset all consideration of the amount at stake from one party's perspective. Here, for example, there is considerably more certainty and simplicity in calculating the amount in controversy from the defendants' perspective. Thus, to the extent the correct approach should "lighten the labors of the courts" in determining the amount in controversy, *id.* at 752, the "either viewpoint" rule provides courts with more sources of potential analytical certainty.

tive relief—even though substantially in excess of $75,000—could not establish the jurisdictional amount. In reaching that conclusion, the court's principal concern was with avoiding infringement of the "non-aggregation" principle. *See* J.A. 118-19. That concern was misplaced in the circumstances of this case.

The non-aggregation rule holds that, where multiple plaintiffs with "separate and distinct" claims join in one action, each plaintiff's claim must separately satisfy the jurisdictional minimum; but if the plaintiffs jointly seek to enforce a "common and undivided" right or interest, "it is enough if their interests collectively equal the jurisdictional amount." *Troy Bank v. G.A. Whitehead & Co.*, 222 U.S. 39, 40-41 (1911). While the principle originally developed over 150 years ago in cases involving joinder of multiple plaintiffs, *see Oliver v. Alexander*, 31 U.S. (6 Pet.) 143 (1832), it has been extended to class actions, *see Clark v. Paul Gray, Inc.*, 306 U.S. 583, 588-89 (1939). In *Snyder v. Harris*, 394 U.S. 332 (1969), and *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), the Court held that the substantial revisions to Rule 23 in 1966 had no effect on the applicability of the non-aggregation rule in the modern class action. Thus, it is now well settled that in class actions—and in all cases involving multiple plaintiffs—"the separate and distinct claims of two or more plaintiffs cannot be aggregated to satisfy the jurisdictional amount." *Snyder*, 394 U.S. at 335.

The courts below treated the class claim for injunctive relief as containing the separate and distinct claims of individual plaintiffs, as to which aggregation is impermissible. For two reasons, however, the non-aggregation rule does not bar jurisdiction here. First, if the plaintiffs are regarded as asserting separate and distinct claims for injunctive relief, the question is whether the cost to petitioners of the particular injunction at issue—reinstatement of the Rebate Program—would exceed $75,000 if sought by only one plaintiff. The answer to that question is yes, as the uncontroverted evidence

establishes. Second, the class claim for injunctive relief can also be treated as an effort to enforce the class members' "common and undivided" interest in obtaining reinstatement of the Rebate Program, in which case the non-aggregation rule simply does not apply.

A. The Cost to Petitioners of Complying With the Injunction in Favor of One Plaintiff Meets the Jurisdictional Minimum.

The courts below concluded that the plaintiffs in this case are asserting "separate and distinct" claims for injunctive relief. If a single plaintiff filed an action seeking the very same injunction at issue here, petitioners' fixed cost of complying with that injunction would satisfy the jurisdictional amount requirement. The claim at issue in this case seeks not simply to reinstate individual plaintiffs' opportunities to accrue rebates, but to reinstitute a particular programmatic method of providing that opportunity—*viz.*, "specific performance of the Rebate Program." J.A. 62. And the uncontroverted record evidence is that "the fixed costs to [petitioners] of reinstating and maintaining the program would be the same whether it is done for one plaintiff or for six million" and that "the cost of an injunction running in favor of one plaintiff would exceed $75,000." J.A. 118. Inasmuch as jurisdiction would lie if just one plaintiff had sought that injunction, the question is whether the non-aggregation principle operates to undo that jurisdiction simply because one plaintiff joins with others to seek the same relief. It plainly does not.

1. In cases involving "separate and distinct" claims, the non-aggregation principle prevents federal jurisdiction from being manufactured by adding together claims that by themselves do not meet the jurisdictional minimum. *See Zahn*, 414 U.S. at 295 (non-aggregation rule "forbid[s] aggregation of claims where none of the claimants satisfies the jurisdictional amount"). But if each separate and distinct claim would itself impose on the defendant a cost in excess of the

jurisdictional minimum, application of the "either viewpoint" rule yields federal jurisdiction. Nothing in the text or logic of the diversity statute suggests a different rule applies when the "separate and distinct" claim at issue happens to be one for injunctive relief.

Some authorities have misunderstood this point and have concluded that the non-aggregation principle bars courts from evaluating separate and distinct claims for injunctive relief from the defendant's perspective. *See, e.g.*, *Packard v. Provident Nat'l Bank*, 994 F.2d 1039, 1050 (3d Cir. 1993); *see also Moore's* § 102-109[6], at 102-202. But as the Seventh Circuit explained in *In re Brand Name Prescription Drugs Antitrust Litigation*, evaluating a claim for injunctive relief from the defendant's viewpoint does not mean examining the *aggregated* cost to the defendant of complying with the injunction for the *entire* plaintiff class. 123 F.3d 599, 610 (1997) (Posner, J.). Instead, where each plaintiff asserts a separate and distinct claim for injunctive relief, the "either viewpoint" rule looks to "the cost to [the] defendant of an injunction running in favor of *one* plaintiff." *Id.* (emphasis added).

That approach fulfills the purpose of the non-aggregation rule: ensuring that the joinder of separate claims in one action as a procedural matter does not create federal jurisdiction where it would otherwise be lacking. *See Zahn*, 414 U.S. at 295 (non-aggregation rule "forbid[s] aggregation of claims where none of the claimants satisfies the jurisdictional amount"); *Snyder*, 394 U.S. at 339-40; *Gibson v. Shufeldt*, 122 U.S. 27, 30 (1887) ("joinder . . . does not enlarge [federal] jurisdiction"). The principle is also reflected in Rule 82, which provides that the Federal Rules—including the rules governing joinder and class actions—"shall not be construed to extend or limit the jurisdiction of the United States district courts." Fed. R. Civ. P. 82; *see* 1937 Advisory Committee's Notes on Fed. R. Civ. P. 82 (Rule 82 confirms that the Rules' broad allowance of claim joinder "does not extend federal

jurisdiction."); *Henderson v. United States*, 517 U.S. 654, 664 (1996).

But just as joinder of separate and distinct claims in one action may not expand federal jurisdiction, such joinder also must not *eliminate* federal jurisdiction over claims that, if considered individually, *would* meet the jurisdictional threshold. *See Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 370 (1978) ("[I]t is axiomatic that the Federal Rules of Civil Procedure do not create *or withdraw* federal jurisdiction.") (emphasis added); *Snyder*, 394 U.S. at 341 ("[T]he Congress that permitted the Federal Rules to go into effect was assured before doing so that none of the Rules would either expand *or contract* the jurisdiction of the federal courts.") (emphasis added); Fed. R. Civ. P. 82 (Federal Rules "shall not be construed to extend *or limit* the jurisdiction of the United States district courts") (emphasis added). After all, a claim that satisfies the amount-in-controversy requirement if brought alone does not cease to satisfy that requirement when asserted with others. To conclude otherwise would turn the non-aggregation principle on its head. In contrast, an analysis that considers the defendant's cost of providing the requested relief to one plaintiff honors that principle by ensuring that the joinder of that plaintiff's claim with others neither enhances nor diminishes the amount in controversy. *See In re Brand Name*, 123 F.3d at 610.

Here, the large fixed costs associated with providing the requested injunction are clearly *not* derived by aggregating individual, jurisdictionally insufficient claims. It is undisputed that reinstating and maintaining the Rebate Program would entail fixed costs greatly exceeding $75,000, whether the injunction ordering reinstatement were granted in favor of one plaintiff or the entire class. *See* J.A. 118 ("[T]he fixed costs to [petitioners] of reinstating and maintaining the program would be the same whether it is done for one plaintiff or for six million."). Because those costs are not the product of aggregation, they necessarily satisfy the statute's jurisdic-

tional minimum without running afoul of the non-aggregation principle. *See Zahn*, 414 U.S. at 295 (describing the non-aggregation rule as focusing on whether multiple jurisdictionally insufficient claims have been added together); *Snyder*, 394 U.S. at 338 (describing the non-aggregation rule as prohibiting jurisdiction "where the required amount in controversy can be reached only by aggregating separate and distinct claims"); *In re Brand Name*, 123 F.3d at 610 (describing the approach advocated here as a means of ensuring fidelity to the non-aggregation rule).[10]

2. Although the Ninth Circuit recognized that the cost of providing the requested injunction to a single plaintiff would far exceed $75,000, *see* J.A. 118, it refused to premise jurisdiction on that ground because it believed doing so would be "fundamentally violative of the principle underlying the jurisdictional amount requirement—to keep small diversity suits out of federal court." *Id.* In the court's view, if "the administrative costs of complying with an injunction were permitted to count as the amount in controversy, then every case, however trivial, against a large company would cross the threshold." *Id.* (internal quotation marks omitted). The court thus held categorically that "the amount in controversy requirement cannot be satisfied by showing that the fixed administrative costs of compliance exceed $75,000." *Id.* at 118-19. That holding is in error.

First, recognizing jurisdiction where the defendant's cost of providing relief to one plaintiff exceeds $75,000 is fully consistent with the objective of "keep[ing] small diversity suits out of federal court" and would not result in the exercise of jurisdiction over "trivial" cases. *Id.* The approach advo-

---

[10] *See In re Microsoft Corp. Antitrust Litig.*, 127 F. Supp. 2d 702, 719 n.16 (D. Md. 2001) ("[I]n a case such as this where an injunction in favor of a single plaintiff—compliance with which would cost the defendant in excess of the jurisdictional amount—would provide the same benefit to all other plaintiffs, [finding jurisdiction] yields a result consonant with the purpose of the common and undivided interest exception.").

cated here focuses on *one* claim, and determines whether the defendant has more than $75,000 at stake in respect to that claim alone. As a result, there would be no federal jurisdiction where the defendant's cost of providing relief to one plaintiff is nominal, even though the aggregated cost of providing relief to the class as a whole is substantial. *See, e.g.*, *Snow v. Ford Motor Co.*, 561 F.2d 787 (9th Cir. 1977) (amount-in-controversy requirement not met where class sought injunction requiring manufacturer to include wiring kit costing $11.00 with each trailer package). But where, as here, the defendant's costs of complying with an injunction exceed $75,000 even as to a single plaintiff, that claim is neither "small" nor "trivial," and the joinder of it with others in a class action cannot defeat federal jurisdiction.

Second, nothing in the text or purpose of the diversity statute supports the Ninth Circuit's suggestion that "administrative costs" are irrelevant to the jurisdictional amount. The "either viewpoint" approach recognizes that a claim's potential cost to the defendant is a "critical" expression of the amount at stake in the case. *Hart & Wechsler* at 1550; *see supra* at 15-17. That stake is not diminished by labeling some of those costs as "administrative." Indeed, such labeling is tantamount to ignoring altogether the amount at stake from the defendant's perspective. Moreover, a new rule that would exclude so-called administrative costs from the amount-in-controversy analysis would breed substantial confusion and protracted litigation over how to determine whether a cost is "administrative," thus impeding the development of "clear, bright-line" jurisdictional rules and causing "judges and litigants [to] waste their resources in determining the extent of federal subject-matter jurisdiction." *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 549 (1995) (Thomas, J., concurring in the judgment).

Third, even if a category of "administrative" costs is properly excluded from the jurisdictional analysis, the costs of complying with the requested injunction in this case are in

the nature of "restructur[ing] [petitioners'] business or giv[ing] up a lucrative lawful business opportunity," which plainly constitute an important measure of the amount at stake in the case. *In re Brand Name*, 123 F.3d at 610. To reinstate the Rebate Program, petitioners would be required, at a minimum, to re-establish and maintain the business apparatus for verifying purchases and tracking the accrual of rebates, and to employ people to operate that apparatus. *See* J.A. 88-89 (Behar Decl.). These costs are real and substantial, and they certainly differ in nature and magnitude from "ministerial costs of compliance," to the extent such costs do not count towards the amount in controversy. *In re Brand Name*, 123 F.3d at 610. In particular, the costs are categorically different from "the cost of duplicating an injunction . . . and distributing the copies to all the relevant personnel" that the Seventh Circuit has characterized as ministerial. *Id.*

3. It is no answer to suggest, as respondents may, that an individual plaintiff suing by himself would be unlikely actually to obtain broad relief like the reinstitution of the entire Rebate Program. In fact, many states have statutes that purport to authorize broad injunctive relief in individual consumer fraud actions. *See, e.g.*, Cal. Bus. & Prof. Code § 17203; *see generally* CCH, *State Unfair Trade Practices Law* ¶ 1860, at 1509 (2000) ("The overwhelming majority of jurisdictions permit an individual consumer to act as a private attorney general and seek injunctive relief from deceptive conduct."). To be sure, petitioners and other defendants might have strong arguments against the propriety of broad injunctive relief in this or other cases, but such arguments are largely irrelevant to the amount-in-controversy determination. *See St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938) (existence of valid defense to claim does not deprive court of jurisdiction over claim).

In any event, the exercise of evaluating a class claim for injunctive relief as if it were asserted by one plaintiff is not undertaken for the purpose of calibrating an individual plain-

tiff's *likelihood* of obtaining the requested relief. Rather, the purpose is to ensure that the cost of complying with the particular injunction the plaintiffs have chosen to seek is not simply an aggregation of jurisdictionally insufficient individualized claims—as it would be, for example, if the injunction sought were for individual awards to each plaintiff (e.g., of money or replacement products). *See Snyder*, 394 U.S. at 338 (explaining that the statute does "not confer[] jurisdiction where the required amount in controversy can be reached *only by aggregating separate and distinct claims*") (emphasis added). If, as here, the injunction would impose essentially equal fixed costs regardless of the number of its beneficiaries, and if those costs would exceed $75,000, then those costs do not come from aggregation of individual claims and thus may be considered in the jurisdictional analysis.

Finally, the argument that a plaintiff could not obtain such a broad injunction if suing individually would, if accepted, simply establish that the class claim for reinstatement of the Rebate Program is really best understood as asserting a "common and undivided" interest in that relief. Plainly, the claim for reinstatement of the Rebate Program is at the core of this case: The plaintiffs are not seeking individual damages awards, and in any event they would not be entitled to individual awards because they have been denied, if anything, only the right to accrue rebates under the Rebate Program. Were plaintiffs to prevail, it is entirely conceivable that a court would grant the requested injunction and order that the Rebate Program be reinstated. To the extent a suit brought by an individual plaintiff could not plausibly yield an injunction ordering that action, that fact simply confirms that the claim asserted here is one that only the plaintiffs acting together could assert. That is, the point underscores that the claim is based on a *collective* interest in reinstatement of the Program, in which case the non-aggregation rule does not apply and the full cost of complying with the injunction can establish the jurisdictional amount. As we develop below,

this may well be the best way to view the plaintiff's claim for relief in this case.

B. The Class Members Have a "Common and Undivided Interest" in Obtaining Injunctive Relief, and the Cost of Providing That Relief to the Class Satisfies the Jurisdictional Amount.

The stated objective of this class action, as noted, is to "to hold Ford and Citibank to their end of the bargain," J.A. 50, and the principal means of doing so is the requested injunction compelling "specific performance of the Rebate Program." *Id.* at 62. Each plaintiff shares an identical and mutual interest in restoring his or her opportunity to accrue rebates through the Rebate Program, and re-establishment of the Rebate Program necessarily would benefit the entire class. Accordingly, that claim can be viewed as exhibiting the central characteristics of a "common and undivided" interest as elaborated in this Court's decisions.

1. The Court's precedents have generally steered clear of adopting rigid and formal rules for determining when a claim is common and undivided. *See Ex Parte Baltimore & Ohio R.R.*, 106 U.S. (16 Otto) 5, 6 (1882) ("It may not always be easy to determine the class to which a particular case belongs, but the rule recognizing the existence of the two classes has long been established."). Instead, in order to retain sufficient flexibility to accommodate the wide variety of factual circumstances that may arise in this area, the Court's decisions develop general standards and guideposts to be applied to the particular claim at issue. *See Snyder*, 394 U.S. at 341 (observing that "courts have developed largely workable standards for determining when claims are joint and common"); *Gibson*, 122 U.S. at 30-39 (canvassing decisions and describing general principles).[11] Here, the claim for rein-

[11] The court below thus erred, for instance, in regarding as "common and undivided" only those claims "involv[ing] a single indivisible res." J.A. 116. This Court's decisions suggest no such formal restriction, and have found claims to be "common and undivided" where there was

statement of the entire Rebate Program has at least two characteristics this Court has identified as sufficient to mark a claim as "common and undivided."

a. One characteristic typical of such claims is that the plaintiffs seek relief "under one common right, the adverse party having no interest in its apportionment or distribution among them." *Gibson*, 122 U.S. at 30. This approach dates at least to *Shields v. Thomas*, 58 U.S. (17 How.) 3 (1855), where the Court held that an estate's beneficiaries had a common and undivided interest in a claim seeking to recover funds misappropriated from the estate. *Id.* at 5. Although each plaintiff sought to obtain his or her individual share of those funds as a beneficiary, "the matter in controversy . . . was the sum due to the representatives of the deceased collectively; and not the particular sum to which each was entitled, when the amount due was distributed among them." *Id.* at 4-5. Concluding that the plaintiffs thus had a common and undivided interest in the claim for the total sum, the Court emphasized that "it was perfectly immaterial to the [defendant], how [the total sum] was to be shared among them." *Id.* at 5. The Court has found a "common and undivided" interest based on those same considerations in a number of subsequent cases. *See Illinois Cent. R.R. Co. v. Adams*, 180 U.S. 28, 39-40 (1901); *Texas & Pac. Ry. Co. v. Gentry*, 163 U.S. 353, 361 (1896); *Handley v. Stutz*, 137 U.S. 366, 369 (1890); *Gibson*, 122 U.S. at 30; *Estes v. Gunter*, 121 U.S. 183, 185 (1887); *Davies v. Corbin*, 112 U.S. 36, 41 (1884); *The Connemara*, 103 U.S. (13 Otto) 754 (1881).

The same factors aptly describe the class claim for injunctive relief at issue here. As in *Shields* and the subsequent decisions, petitioners have no stake in how the relief requested here—reinstatement of the Rebate Program—is distributed among the plaintiffs. Indeed, it is not even coherent

no "indivisible res." *See, e.g.*, *Gibbs v. Buck*, 307 U.S. 66, 71-76 (1939) (determining that plaintiffs' class held common and undivided interest in enjoining enforcement of statute barring blanket licensing of copyrights).

to consider "distributing" the fixed costs of reinstating the Program among individual plaintiffs. And, as in *Shields* and other cases, petitioners' interest in opposing the relief at issue does not vary with the number of plaintiffs seeking it, for the undisputed fact is that the costs of reinstating the injunction "would be the same whether [the Program reinstatement] is done for one plaintiff or for six million," J.A. 118, and "would not depend on the extent of cardholder usage," *id.* at 96 (internal quotation marks omitted).

While it may be true that an increase in the number of plaintiffs may increase the *marginal* costs to petitioners of the incremental redemption of accrued rebates, the "matter" put "in controversy" by plaintiffs' request for an injunction is the *existence* of the Rebate Program, not its subsequent *use*. The claim does not seek payments of particular rebates to particular plaintiffs—nor could it, since the amount of an individual's accrued rebates depends on purchases yet to occur, and, even then, would have value only if used in the purchase of a Ford vehicle. As a result, no class member has a liquidated claim in any amount at present; instead each class member has only an interest in re-establishing the Rebate Program. The undisputed evidence establishes that petitioners will incur fixed start-up costs of more than $75,000 if required to reinstate that Program, no matter how many plaintiffs seek to benefit from reinstatement of the Program. Award of the requested injunction therefore mirrors in effect the award of a lump sum, *see Adams*, 180 U.S. at 40 ("an action may be maintained for a lump sum, though such sum when collected may be subsequently distributed among various parties, each receiving less than the jurisdictional amount"), and should receive comparable treatment for purposes of measuring the jurisdictional amount.[12]

---

[12] *See In re Cardizem Antitrust Litig.*, 90 F. Supp. 2d 819, 836 (E.D. Mich. 1999) (where injunction seeks "relief that will benefit the class as a whole," and defendant's "costs of compliance do not depend upon the size of the class or the identity of its members," "it is based

b. A related characteristic typical of "common and undivided" claims under this Court's decisions is that the plaintiffs are collectively interested in the same relief, and that the relief, even if obtained by only one plaintiff, would inure to the benefit of the entire class. *See Gentry*, 180 U.S. at 360-61 (finding that survivors had common and undivided interest in claim which, whether brought by all survivors or just one, would result in a common recovery "for the benefit of all"); *New Orleans Pac. Ry. v. Parker*, 143 U.S. 42, 51 (1892) (stressing that claim "was filed practically for the benefit of the entire number of bondholders"); *Handley,* 137 U.S. at 369-70 (finding that creditors had common and undivided interest in compelling insolvent corporation's stockholders to pay into fund to resolve corporation's debts); *Davies*, 112 U.S. at 41 ("As the matter stands, each relator has the right to have the whole tax collected for the purpose of distribution among all the creditors," and tax collector "cannot act upon separate instructions from the several creditors," but must "collect the tax for the benefit of all alike.").

The claim for injunctive relief at issue here also displays this characteristic. Just as the survivors in *Gentry* brought a claim that, if granted, would necessarily inure to "the benefit of all," 180 U.S. at 361, the plaintiffs in this case have a collective interest in reinstatement of the Rebate Program, from which they all stand to benefit. Moreover, by seeking reinstitution of "the Rebate Program," the claim seeks reinstitution of a program that was structured to serve the nationwide class of cardholders. Awarding that relief would therefore necessarily benefit the entire class of plaintiffs.[13] In fact, the scale

---

upon a common and undivided interest and constitutes an integrated claim"); *Hoffman v. Vulcan Materials Co.*, 19 F. Supp. 2d 475, 483 (M.D.N.C. 1998) ("[B]ecause the defendant will sustain this loss even if only one plaintiff were to obtain the injunction, this is a case where plaintiffs have an undivided interest.").

[13] The fact that plaintiffs' claim for injunctive relief is common and undivided does not establish the propriety of class certification for

of the Rebate Program is inherent to the Program itself: The substantial fixed costs of establishing the Rebate Program require that it be offered on a large scale in order to be economically viable. In short, because the nationwide class of cardholders requests reinstatement of a program designed to serve all subscribing cardholders, awarding the requested injunction necessarily would benefit the entire class.[14]

2. Despite all of this, the court below held that plaintiffs' injunction claim is not "common and undivided," on the ground that each plaintiff "accrue[s] rebates individually, not as a group," J.A. 116, and can accrue "no more than $3,500" in total rebates, *id.* at 117. Relying on that point, the court concluded that a claim "which will provide marginal benefits" to individual plaintiffs of less than $75,000 could not satisfy the amount in controversy requirement without violating the non-aggregation principle. *Id.* at 11a (internal quotation marks omitted).

---

the entire action. Plaintiffs' action still implicates such necessarily individuated issues as reliance, causation, and damages.

[14] *See Crawford v. American Bankers Ins. Co.*, 987 F. Supp. 1408, 1413 (M.D. Ala. 1997) ("An injunction which would prevent the Defendant from engaging in a certain form of business in the future has no separable value to each member of the prospective class. Rather, it is prospective injunctive relief to enforce a single 'common right,' not to satisfy 'individual and discrete' claims. Such prospective injunctive relief must be valued as an aggregated whole.") (internal citation and footnote omitted); *Earnest v. General Motors Corp.*, 923 F. Supp. 1469, 1472-73 (N.D. Ala. 1996) (class claims seeking replacement of allegedly defective automobile engines and advertising campaign warning consumers of the defect "would benefit the putative class as a whole and not just any individual plaintiff. As such, each plaintiff has a common interest in the injunctive and declaratory relief."); *In re Ford Motor Co. Bronco II Prods. Liability Litig.*, No. MDL-991, 1996 WL 257570 at *5-6 (E.D. La. May 16, 1996) (claim requesting that defendant notify all plaintiff class members of alleged defect in its product was a claim requesting relief that, by definition, could be satisfied only if entire class was afforded notice).

The court's analysis simply misapprehends the nature of the requested injunction. As we have already shown, *see supra* at 19, 28, the relief at issue is *not* rebate payments themselves, it is reinstatement of the Rebate Program so that plaintiffs may have the *opportunity* to accrue rebates through the use of their credit cards. Viewed from petitioners' perspective, that claim has a fixed-cost value of more than $75,000, no matter how many plaintiffs ultimately avail themselves of the opportunity to accrue rebates under the Program.

* * * * *

The plaintiffs in this case seek to compel full reinstatement of the Rebate Program. If respondent John McCauley himself had filed an individual action seeking the same relief, it is undisputed that the cost to petitioners of providing that relief would exceed $75,000, thereby satisfying the diversity statute's amount-in-controversy requirement. The mere fact that other plaintiffs seek to join with him to obtain the same relief changes nothing, as Rule 82 makes clear. And even if it were both true and relevant that reinstatement of the Rebate Program was available only to plaintiffs bringing an action as a class, that would merely confirm that the claim for reinstatement is in its nature a claim asserted by the plaintiffs collectively, based on their common and undivided interest in the Program. In short, no matter how the claim for injunctive relief in this case is characterized, the inescapable fact is that the amount put in controversy by plaintiffs' claim far exceeds the jurisdictional minimum. Accordingly, the claim is properly adjudicated in federal court.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

SETH P. WAXMAN
CHRISTOPHER R. LIPSETT
BRUCE M. BERMAN
TREVOR W. MORRISON
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

Counsel for Petitioner Citibank (South Dakota), N.A.

WALTER E. DELLINGER
Counsel of Record
JOHN H. BEISNER
BRIAN P. BROOKS
JONATHAN D. HACKER
O'MELVENY & MYERS LLP
555 13th Street, N.W.
Washington, D.C. 20004
(202) 383-5300

Counsel for Petitioner Ford Motor Company

MAY 2002