No. 04-79

IN THE

Supreme Court of the United States

MARIA DEL ROSARIO ORTEGA, SERGIO BLANCO, by themselves and representing minors BEATRIZ BLANCO-ORTEGA AND PATRIZIA BLANCO-ORTEGA,

Petitioners,

v.

STAR-KIST FOODS, INC.,

Respondent.

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

REPLY BRIEF

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REPLY BRIEF

Respondent has failed to seriously contest Petitioners' showing that the district court's supplemental jurisdiction over their claims follows necessarily from the words of 28 U.S.C. § 1367.[1]

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[1] Respondent raises (Br. at 1-2) for the first time in this case the suggestion that the federal courts may be without diversity jurisdiction over this entire action because the complaint names fictitious insurance-company defendants, J.A. 10, 32, who have been neither identified to the district court nor served with process.

But there is no reason to expect that the identity of these parties should have been resolved by now. The trial-court proceedings to date have been largely confined to motions to dismiss on other jurisdictional grounds and some limited discovery, and Respondent never raised the issue of the court's jurisdiction over the fictitious parties. *See* 14 Charles A. Wright et al., *Federal Practice and Procedure* § 3642 at 192 (3d ed. 1998) (jurisdiction over fictitious defendants must be established "on challenge"); *Ward v. Connor*, 495 F. Supp. 434, 438-39 (E.D. Va. 1980) (postponing determination of jurisdiction until citizenship of served Doe defendants could be determined), *rev'd on other grounds*, 657 F.2d 45 (4th Cir. 1981); 28 U.S.C. § 1441 (citizenship of fictitious-name defendants "shall be disregarded" for purposes of removal jurisdiction). Having not been raised previously, this issue should not now occupy the attention of this Court.

Should the Court nonetheless wish to consider this issue, it is clear that none of Respondent's insurance carriers are citizens of Puerto Rico under 28 U.S.C. § 1332(c)(1), which provides that corporate citizenship exists at both the corporation's place of incorporation and its principal place of business. Based on information provided by Respondent in response to an interrogatory, the insurers and their places of incorporation are as follows: Liberty Mutual Insurance Co. - Massachusetts; Federal Insurance Co. - Indiana; National Union Fire Insurance Co. - Pennsylvania; Allianz Global Risks U.S. Insurance Co. - California (parent company Allianz Aktiengesellschaft incorporated in Germany); American Guarantee & Liability Insurance Co. - New York (ultimate parent company Zurich Insurance Co. incorporated in Switzerland). Public records establish that none of these companies has Puerto Rico as its principal place of business. *See* 13B Wright, *supra*, § 3625 at 637-39, 642.

Finally, should the Court have any remaining doubts arising from the presence of the fictitious defendants, those doubts can be resolved by dismissing the insurers from the case at this time. *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 827 (1989). Such a course would plainly be proper, since the insurers certainly are not "indispensable to the suit," and their presence does not

Section 1367(a)'s affirmative grant of supplemental jurisdiction is triggered by the existence of a "civil action of which the district courts have original jurisdiction." Clearly, the district court had jurisdiction under § 1332 over the claims of Beatriz Blanco-Ortega. Section 1367(a) thus confers jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." The claims of Beatriz's family members arise from the same incident as Beatriz's claims, and thus come within § 1367(a)'s grant of supplemental jurisdiction.

The language of § 1367(b), which creates specific exceptions, applicable in diversity cases, to § 1367(a)'s affirmative grant of jurisdiction, on its face has no application to this case. Indeed, neither Star-Kist nor Exxon, the petitioner in Case No. 04-70, even advances an argument that, if the affirmative grant of § 1367(a) is triggered, the limiting provisions of § 1367(b) render that jurisdiction inapplicable to the claims at issue in either of the consolidated cases. It is therefore clear from the statute and the arguments advanced by the parties that the outcome in No. 04-79 turns upon the meaning given to the first sentence of § 1367(a).[2]

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provide any party "with a tactical advantage." *Id.* at 838; *see also Howell ex rel. Goerdt v. Tribune Entm't Co.*, 106 F.3d 215, 218 (7th Cir. 1997). If the Court deems it necessary in order to retain jurisdiction, Petitioners, for themselves and as representatives of Beatriz, hereby ask the Court to enter such an order.

[2] Exxon's first submission of grounds for reversal in No. 04-70 includes a number of contentions resting peculiarly on the class-action nature of that action. Exxon Br. at 17-20. Those contentions are wholly inapplicable in No. 04-79. Similarly, the likely impending enactment of the Class Action Fairness Act of 2005 would have no effect upon the proper analysis of § 1367 and § 1332 in the context of this case. That legislation would create additional federal-court jurisdiction under § 1332 only over large class actions (and mass actions) defined in terms of aggregated amount in controversy and number of plaintiffs. It does not purport to amend § 1367,

A. Respondent and Exxon's Interpretation of § 1367 Depends Upon An Impossible Reading of The First Sentence of § 1367(a)

The central question in this case is whether "original jurisdiction" over a "civil action" exists based on a complaint where the parties are completely diverse and some plaintiffs but not others satisfy § 1332's amount-in-controversy requirement. If it does, then § 1367(a)'s grant of supplemental jurisdiction over related claims, like those at issue here, is triggered. The essential—and incorrect—assertion of both Star-Kist (Br. at 14, 26) and Exxon (Br. at 22-23) is that such original jurisdiction over the case as a whole is destroyed where all plaintiffs and defendants are diverse but only some of the plaintiffs bring claims meeting the amount-in-controversy requirement.

This Court has recently rejected the contention that there is no "original jurisdiction" over a "civil action," within the meaning of § 1367(a), whenever a case includes some claims over which original jurisdiction is lacking. As the Court noted in *City of Chicago v. International College of Surgeons*, 522 U.S. 156, 167 (1997), "[t]he whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking." Presented with a complaint that raised both federal-question claims and claims arising under state law, the Court thus found "original jurisdiction" over the "action," as required in § 1367(a), even absent "original jurisdiction" over the state-law claims. *Id.*

Unable to dispute the holding of *City of Chicago*, Respondent and Exxon draw a sharp but indefensible distinction between federal-question and diversity cases.

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and there is no incongruity between its provisions and the interpretation of § 1367 advocated here.

Star-Kist Br. at 21-23; Exxon Br. at 23. They admit "that a district court has original jurisdiction in a civil action under 28 U.S.C. § 1331 if the action presents at least one claim that arises under the Constitution or laws of the United States," even if the suit contains other claims for which there is no jurisdictional basis. Star-Kist Br. at 22; *accord* Exxon Br. at 22. Yet, they argue that original jurisdiction in a diversity case is destroyed if even a single plaintiff fails to satisfy the full requirements—including the amount-in-controversy requirement—of § 1332. As Exxon puts it, "at the moment those noncompliant plaintiffs are added, the court's 'original jurisdiction' ceases, which deprives the court of the jurisdictional predicate for the exercise of supplemental jurisdiction." Exxon Br. at 23.

This is the central fallacy of Star-Kist and Exxon's position. While it is true, under the complete diversity requirement of *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806), that the presence of a single non-diverse plaintiff will destroy § 1332 jurisdiction over the case as a whole, *see* Petr. Br. at 24-25; Star-Kist Br. at 22-23; Exxon Br. at 23, no similar result follows just because the claims of some diverse plaintiffs fall below the required amount in controversy. Indeed, while numerous cases clearly hold that jurisdiction is destroyed if any non-diverse plaintiff or defendant is joined, not one case remotely suggests that the same result follows from the presence of one plaintiff's undersized claim if there is complete diversity and at least one plaintiff satisfies the jurisdictional amount.

This Court's decisions are legion which reiterate the complete-diversity requirement, and spell out the consequence that, in the absence of complete diversity between plaintiffs and defendants, the district court has no jurisdiction over any part of the case. *See, e.g., Wisc. Dep't of Corrections v. Schacht*, 524 U.S. 381, 389 (1998) (in a diversity case, "one claim against one nondiverse defendant destroys [the] original jurisdiction"); *Peninsular Iron Co. v.*

Stone, 121 U.S. 631, 632-33 (1887); *Corp. of New Orleans v. Winter*, 14 U.S. (1 Wheat.) 91, 94-95 (1816).[3]

This outcome follows from the reasons behind Congress's decision to confer federal-court jurisdiction in the first place. As contrasted with federal question jurisdiction, in a diversity case, the justification for federal-court jurisdiction rests not on the character of the issues in the case, but on the particular array of parties. Diversity jurisdiction "had its origin in fears of local hostilities" and a resulting concern about the possibility of unfair treatment of out-of-state parties at the hands of state courts. Henry J. Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 Harv. L. Rev. 483, 510 (1928). As best one can tell, the complete-diversity requirement embodies a judgment that the concerns that justify jurisdiction are markedly diminished when citizens of the host state appear on both sides of a dispute. S*ee* David P. Currie, *The Federal Courts and the American Law Institute*, 36 U. Chi. L. Rev. 1, 18 (1968).

The amount-in-controversy requirement, by contrast, does not reflect any affirmative rationale directing § 1332 cases to the federal courts, but rather merely reflects a judgment about the minimum size of disputes that should command the courts' attention. *See* 15 James Wm. Moore, *Moore's Federal Practice* § 102.100, at 102-165 (3d ed. 2004); Friendly, *supra*, 41 Harv. L. Rev. at 499-504. Indeed, this statutory limitation appeared, until 1980, in the federal-question statute as well. As a result, there is no authority for the essential proposition of Respondent, Exxon, and the court below that, "just as with the complete diversity requirement, if a single party fails to meet the matter-in-controversy requirement, . . . the district court lacks 'original

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[3] Clearly the complete diversity requirement remains a limitation upon original jurisdiction under § 1332, since § 1367, in creating supplemental jurisdiction, did not amend § 1332 in any way.

jurisdiction of [the] civil action.'" Star-Kist Br. at 23. While plaintiffs with separate and distinct claims must, to satisfy § 1332, each satisfy the jurisdictional-amount requirement, and may not do so by aggregating their claims with those of other plaintiffs, *Snyder v. Harris*, 394 U.S. 332, 336 (1969); *Troy Bank v. G.A. Whitehead & Co.*, 222 U.S. 39, 40-41 (1911), the consequence of joining a plaintiff who fails to do so is simply (absent supplemental jurisdiction) his dismissal from the case, not dismissal of the entire civil action.

This was made explicit at several points in this Court's opinion in *Zahn v. International Paper*, 414 U.S. 291 (1973). After reiterating the established rule against aggregation of different parties' claims to satisfy the jurisdictional amount, the Court stated the consequences that flow from the failure of any one plaintiff to meet the jurisdictional amount:

> This rule plainly mandates not only that there may be no aggregation and that the entire case must be dismissed where none of the plaintiffs claims more than $10,000 but also requires that *any plaintiff without the jurisdictional amount must be dismissed from the case*, even though others allege jurisdictionally sufficient claims.

Id. at 300 (emphasis added); *see also id.* at 295, 301. In support of this action, the Court in *Zahn* cited several other decisions of this Court which similarly treated amount-in-controversy requirements in a variety of jurisdictional statutes as grounds for dismissing the claims of those who failed to meet them, but not for dismissing the action as a whole. *See Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939) (federal-question statute); *Stewart v. Dunham*, 115 U.S. 61 (1885) (appellate-jurisdiction statute); *Snyder v. Harris*, 394 U.S. 332 (1969) (diversity statute).

Respondent's glib response to this consistent practice of dismissing only those parties whose claims fall below the required amount-in-controversy is to assert that this practice is indistinguishable from what occurs where parties who destroy complete diversity are present. Resp. Br. at 33-34;

see Newman-Green, 490 U.S. at 827. But there are two reasons why this is not true. First, while numerous cases over two centuries hold that diversity jurisdiction over the entire case is destroyed by the presence of a single non-diverse party, not one decision reaches the same conclusion because some diverse plaintiffs have claims falling below the jurisdictional amount. Second, this Court's decisions make clear that, while the power to restore diversity jurisdiction by dismissal of non-diverse parties is carefully cabined by considerations of timing and discretion, dismissal of parties who lack the amount-in-controversy is utterly routine.

Thus, while the Court has held that a district court may establish jurisdiction by dismissing non-diverse parties from a removed case prior to entry of judgment, *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 70-78 (1996), it has also held that such a dismissal of the non-diverse party is ineffective to restore jurisdiction after entry of judgment, *Am. Fire & Cas. Co. v. Finn*, 341 U.S. 6, 17-18 (1951). And it has ruled that the courts of appeals have the power to restore jurisdiction by dismissing a dispensable non-diverse party, but emphasized that "such authority should be exercised sparingly," based on careful consideration of "whether the dismissal of a nondiverse party will prejudice any of the parties in the litigation." *Newman-Green*, 490 U.S. at 837-38.

By contrast, not one case involving dismissal of individual parties who fail to meet the jurisdictional amount includes conditions like these or suggests that jurisdiction over the case as a whole is in any way implicated by the presence of such parties. *See, e.g.*, *Zahn*, 414 U.S. at 295, 300; *Clark*, 306 U.S. at 590. Because claims of diverse plaintiffs failing the amount-in-controversy requirement of § 1332 do not undermine the court's diversity jurisdiction over the rest of the case, they may fall within the supplemental jurisdiction created by § 1367(a), unless excepted by § 1367(b).

B. Respondent's Tortured Reading of § 1367(a) Cannot Be Justified As Necessary In Order For § 1367(b) To "Make Sense"

Respondent rests its claim to prevail in this case entirely upon its purported reading of the first sentence of § 1367(a). If that is rejected, and this Court finds that the first requirement of § 1367(a) is satisfied here by the existence of a "civil action" within the district court's jurisdiction under § 1332, Respondent has no other argument that could defeat the application of supplemental jurisdiction over Petitioners' claims in this case. In particular, Respondent makes no claim (nor does Exxon) that the exercise of supplemental jurisdiction is in any event foreclosed by the provisions of § 1367(b), whose specific exceptions to the exercise of supplemental jurisdiction in diversity cases do not include claims by plaintiffs joined under Rule 20.

While Respondent thus does not rely directly on § 1367(b)'s exceptions as a ground upon which it can prevail, it does assert a more oblique relevance of that provision to this case. In essence, Respondent claims that the Court should adopt its unsupportable reading of § 1367(a) because under that reading, "subsection (b) makes sense," Resp. Br. at 26, and failing to adopt that reading leads to three particular "absurd results," *id.* at 30.

In fact, Respondent does not really appear to believe that subsection (b) makes much sense, noting as it does that the section is "not a model of clarity," *id.* at 24, and acknowledging that under its own interpretation of section 1367(a), "subsection (b) is not without its difficulties," *id.* at 27. Beyond that, Respondent's discussion ostensibly showing that subsection (b) "makes sense" when subsection (a) is read as Respondent advocates, Resp. Br. at 24-30, is really nothing more than a six-page summary of some of the provisions of § 1367(b) that does nothing to show that Respondent's reading of § 1367(a) is correct. Respondent's account of subsection (b) is accurate in all but a few critical

respects, and in fact is similar—except in those respects—to a parallel discussion that appears in Petitioners' opening brief, at 29-34.[4] Respondent's discussion, like Petitioners', shows that Congress in § 1367 codified, and at times modified, pre-existing principles of pendent and ancillary jurisdiction. *See* Petr. Br. at 5-9, 43-45. That fact is simply no help in resolving the issue before this Court—whether the jurisdiction conferred in § 1367 reaches the claims which this Court found in *Clark* and *Zahn* to be outside the federal court's jurisdiction as it existed previously.

In a separate and much shorter section, Respondent argues that its reading of § 1367(a) is necessary to prevent

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[4] Thus, for example, Petitioners have no dispute with Respondent's description of the Court's ruling in *Owen Equipment & Erection Co. v. Kroger,* 437 U.S. 365 (1978), and both parties agree that it is preserved under § 1367. Resp. Br. at 26; Petr. Br. at 30-32. Respondent also accurately observes that the enumerated exceptions in subsection (b) make no reference to claims by plaintiffs joined under Rule 20, and correctly suggests that any resulting incongruity should be avoided by requiring dismissal of those cases where the permissive joinder of additional plaintiffs under Rule 20 destroys the district court's jurisdiction over the civil action, such that the threshold requirement of § 1367(a) is not satisfied. Resp. Br. at 27; Petr. Br. at 31-33 & n.15. Respondent also notes correctly that § 1367(b)'s enumerated exceptions include claims by plaintiffs seeking to intervene under Rule 24 (as well as Rule 19), even though before the statute's enactment the claims of plaintiffs intervening under Rule 24(a) had been allowed. Resp. Br. at 27; Petr. Br. at 32. Finally, Respondent correctly asserts that subsection (b) in no way limits supplemental jurisdiction over claims of defendants "haled into court against their will," even as it does expressly limit claims by plaintiffs against these parties. Resp. Br. at 28-29; Petr. Br. at 29-30.

Of course the parties do not agree upon the central question at issue in this case—whether original jurisdiction under § 1332 exists and § 1367(a) is therefore triggered—where there is complete diversity between plaintiffs and defendants and some but not all plaintiffs satisfy the amount-in-controversy requirement. Nor do they agree as to the proper interpretation of the final clause of § 1367(b), which denies supplemental jurisdiction over the excepted claims enumerated there "when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332." Resp. Br. at 29 & n.18; Petr. Br. at 26-29; *see also infra* pp. 11-13.

subsection (b) from producing certain "absurd results." Resp. Br. at 30-32. Specifically, Star-Kist asserts that "§ 1367(b) undeniably prohibits the exercise of supplemental jurisdiction in circumstances in which strong arguments can be made that it should be allowed," and notes that subsection (b)'s exclusions from supplemental jurisdiction apply to proposed claimants under Rules 19 and 24, who may at times be indispensable parties, but not to plaintiffs who are joined permissively under Rule 20. *Id.* at 30-31. Respondent seems to suggest here that subsection (b) makes so little sense in these certain respects that § 1367(a) must be read very narrowly to minimize the occasions on which these incongruous provisions come into play. Respondent also argues that its construction of § 1367(a) is critical, because "if section 1367 permits the permissive joinder of plaintiffs who cannot meet the amount-in-controversy requirement, then it also permits the joinder of non-diverse plaintiffs," with the effect of overturning the complete diversity requirement and "authoriz[ing] a potentially huge expansion of the federal docket." *Id.* at 31-32 (quoting Pet. App. 27a); *see also* Resp. Br. at 32-35.

None of these supposedly absurd consequences follow from Petitioners' reading of the statute. Taking the last argument first, Petitioner has demonstrated that the natural reading of § 1367 does not undermine the requirement of complete diversity as it has existed previously. First, where non-diverse plaintiffs or defendants are present in a case as filed, there is no original jurisdiction over any part of the case, and supplemental jurisdiction is not triggered at all. Petr. Br. at 24-25. Second, where complete diversity is present in the complaint as filed, that fact need not create a "gaping hole" by which existing plaintiffs are allowed to amend their complaint to add non-diverse plaintiffs pursuant to Rule 20. Petr. Br. at 32-33 n.15. Rather, any complaint permissively amended and filed by the original plaintiffs in the case must satisfy the threshold requirements of § 1367(a), just as the first complaint was. *See id.* Thus if the original,

diverse plaintiffs in a case sought to file an amended complaint naming an additional plaintiff who is non-diverse, that amended complaint would fail the test of original jurisdiction, and supplemental jurisdiction would thus not be triggered. [5]

Any remaining perceived incongruities arising from the fact that subsection (b) makes no reference to claims by plaintiffs joined under Rule 20, while excepting a broad range of other claims, disappear when the final clause of subsection (b) is correctly understood. Placed at the end of that enumerated list of exceptions, that clause defines when supplemental jurisdiction over the enumerated claims is foreclosed—"when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332."

As discussed in Petitioners' opening brief, at 26-29, this clause is susceptible to two alternative readings. Under the reading that is assumed by Respondent, Br. at 29 & n.18, the reference to the exercise of supplemental jurisdiction being "inconsistent with" the jurisdictional requirements of § 1332 is just another way of saying there can only be supplemental jurisdiction over the enumerated claims if all of the requirements of § 1332 are already satisfied as to those claims. Thus, in essence, supplemental jurisdiction exists over these claims in precisely those cases—and only those cases—where it is completely pointless because original jurisdiction already exists over them under § 1332.

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[5] Ironically, it appears that Respondent is in basic agreement with Petitioners concerning how this supposed "gaping hole" problem should be addressed, in that "additional parties permissibly joined as plaintiffs under Rule 20" should, if non-diverse, be found to destroy original jurisdiction and, therefore, any basis for supplemental jurisdiction. Resp. Br. at 27. Of course, Respondent also erroneously claims that such original jurisdiction is also destroyed by the addition of a new, diverse Rule 20 plaintiff whose claim falls short of the jurisdictional amount.

There are strong reasons to reject this interpretation. In a statute whose entire purpose is to codify a grant of jurisdiction supplemental to—that is going beyond—the pre-existing legislative grants of original jurisdiction, it would be strange in the extreme for the statute to talk about that supplemental jurisdiction existing only where original jurisdiction already exists. Moreover, this reading renders the entire last clause of § 1367(b) superfluous, since a statement that supplemental jurisdiction only exists over certain claims where § 1332 jurisdiction already exists, is no different in its effect from a statement that there is no supplemental jurisdiction over those claims. The resulting categorical denial of supplemental jurisdiction over the enumerated claims is entirely responsible for the specific incongruities alleged by Respondent between the treatment of Rule 20 plaintiffs, who can invoke the supplemental jurisdiction, and of other plaintiffs who cannot because their claims are referenced in subsection (b).

The statute makes a great deal more sense, and all of the objections to the preceding interpretation are overcome, when supplemental jurisdiction over the enumerated claims is foreclosed as "inconsistent with the jurisdictional requirements of section 1332" only where their joinder would actually destroy the jurisdictional basis on which the case found its way to federal court in the first place. Since § 1367(b) only applies to cases where original jurisdiction rests solely on § 1332, the only way for that basis of jurisdiction to be entirely defeated is by the addition of a party who destroys complete diversity. Thus adding a non-diverse plaintiff or defendant is "inconsistent with the jurisdictional requirements of section 1332," because it destroys the complete diversity that is essential to *any* jurisdiction under § 1332. At the same time, allowing supplemental jurisdiction over a plaintiff whose claims fall below the jurisdictional amount does not undermine the diversity basis for the court's original jurisdiction. Thus the

grant of supplemental jurisdiction remains applicable in the latter instance but not in the former.

When read in this way, subsection (b) becomes a limit upon—but not a complete abnegation of—the grant of supplemental jurisdiction over the enumerated classes of claims in diversity cases. It also loses its strange character as a statement that supplemental jurisdiction exists over the enumerated claims only where that jurisdiction is unnecessary because original jurisdiction under § 1332 already exists over those claims. Thus, subsection (b) ceases to be an incredibly indirect way of making a very simple point—that there is simply no supplemental jurisdiction over the claims enumerated there. Also, the final "inconsistent with" clause ceases to be entirely superfluous.

Last but not least, the correct reading of § 1367(b)'s final clause resolves any perceived incongruities between claims by plaintiffs added under Rule 20, which are omitted from the list of excepted claims, and other plaintiffs' claims, which appear on that list. That is because, for claims within the enumerated exceptions, supplemental jurisdiction is foreclosed not in all cases, but only where the addition of such claims would destroy complete diversity and thus foreclose § 1332 jurisdiction over any part of the case. Where claims enumerated in subsection (b) are merely below the jurisdictional amount, and thus are not inconsistent with the federal-court jurisdiction over the case as a whole, subsection (a)'s grant of supplemental jurisdiction remains available. Section 1367(b) thus does not simply deny the existence of any supplemental jurisdiction over the listed claims, but rather says only that such claims may not be brought if they destroy complete diversity—the *sine qua non* of any federal jurisdiction under § 1332. As a result, the perceived discrepancy between the treatment of claims by plaintiffs joined under Rule 20, and claims by other plaintiffs included in the enumerated exceptions, simply disappears.

C. The Legislative History of § 1367 Offers No Basis for Reading The Statute In A Manner Contrary To Its Words

The lengthy discussions of legislative history offered by Respondent (Br. at 36-42) and Exxon (Br. at 34-40) should be rejected, both because the language of the first sentence of § 1367(a) is quite clear, *see Dep't of Hous. & Urban Dev. v. Rucker*, 535 U.S. 125, 132 (2002); *BedRoc Ltd. v. United States*, 124 S. Ct 1587, 1595 n.8 (2004), and because the legislative history does not support any reasonable inference that the statute as enacted was intended to confine the grant of supplemental jurisdiction as Respondent contends. To the contrary, when one tracks the evolution of proposed statutory language through the legislative process, there is no reason to question the meaning that is clear on the statute's face.

The Subcommittee to the Federal Courts Study Committee proposed the first draft of what was to become §1367(a) in the following language:

> (a) Except as provided in subsections (b) and (c) or in another provision of this Title, in any civil action on a claim for which jurisdiction is provided, the district court shall have jurisdiction over all other claims arising out of the same transaction or occurrence, including claims that require joinder of additional parties

Report to the Federal Courts Study Comm. of the Subcomm. on the Role of the Federal Courts and Their Relation to the States 567 (1990), *reprinted in* 1 Federal Courts Study Comm., *Working Papers and Subcommittee Reports* (1990). At the same time, the Subcommittee recommended that the complete-diversity requirement "should be preserved," *id.* at 566, and proposed in subsection (b) specific exceptions to the availability of supplemental jurisdiction in diversity

cases.[6] It also stated its unequivocal intention to overrule the Supreme Court's decision in *Zahn*, which it said, "[f]rom a policy standpoint, . . . makes little sense." *Id.* at 561 n.33.

The full Study Committee proposed no specific language and did not expressly incorporate the Subcommittee's recommendations into its final Report. But it did recommend, in the event that its proposal to abolish diversity jurisdiction were not followed, that Congress enact a version of supplemental jurisdiction similar to what the Subcommittee had in mind. Fed. Courts Study Comm., *Report of the Federal Courts Study Committee* 47 (1990).

In the initial draft of the legislation considered in the House, H.R. 5381, 101st Cong. (1990), the section addressing supplemental jurisdiction, § 120, looked far different from the Subcommittee's proposal. *See* Addendum at 1a-2a. But while presented in different words and format, § 120 was not greatly dissimilar to the Subcommittee proposal in its consequences. In particular, it also effectively overturned *Zahn* and *Clark*, and generally preserved the complete-diversity requirement in most contexts in which it had applied in the decisions of this Court. Section 120 did not, however, preserve the complete-diversity requirement in the context of this Court's *Kroger* decision, because it allowed supplemental jurisdiction over claims by an "original plaintiff" against a non-diverse party brought into the action "by a party or person other than the plaintiff." Add. at 1a.

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[6] As proposed by the Subcommittee subsection (b) provided:

> **(b)** In civil actions under § 1332 of this Title, jurisdiction shall not extend to claims by the plaintiff against parties joined under Rules 14 and 19 of the Federal Rules of Civil Procedure, or to claims by parties who intervene under Rule 24(b) of the Federal Rules of Civil Procedure, *provided*, that the court may hear such claims if necessary to prevent substantial prejudice to a party or third party.

Judge Weis, Chairman of the Study Committee, objected in testimony to § 120's abrogation of the rule in *Kroger*. *Hearings on H.R. 5381 and H.R. 3898 Before the Subcomm. on Courts, Intellectual Property, and the Administration of Justice of the House Comm. on the Judiciary*, 101st Cong. 94-95 (1990) [hereinafter *Hearings*]. He did not refer to or question the proposal's treatment of the amount-in-controversy requirement—*i.e.*, its abrogation of *Zahn* and *Clark*. To the contrary, Judge Weis submitted to Congress proposed language to be used in place of § 120, which was substantively indistinguishable from the original subcommittee language of subsection (a) on the question at issue here:

> (a) Except as provided in subsections (b) and (c) or in another section of this title, in any civil action on a claim for which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims arising out of the same transaction or occurrence, or series of transactions or occurrences, including claims that require joinder or intervention of additional parties.

Id. at 98. It is clear—and must likewise have been clear to Judge Weis at the time—that this proposed language, like the version proposed by the Subcommittee, created an affirmative grant of supplemental jurisdiction over claims falling below the jurisdictional amount. At the same time, Judge Weis submitted a proposed revision of subsection (b)[7]

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[7] Judge Weis's proposed subsection (b) reads as follows:

> **(b)** In any civil action of which the district courts have original jurisdiction under section 1332 of this title, the district courts shall not have supplemental jurisdiction over claims by the plaintiff against persons joined under Rules 14 and 19 of the Federal Rules of Civil Procedure, or over claims by persons seeking to intervene under Rule 24 of the Federal Rules of Civil Procedure, when exercising supplemental jurisdiction over such claims would be inconsistent with the complete diversity requirement

that preserved *Kroger* and addressed in specific terms the preservation of the complete-diversity requirement. The House Subcommittee adopted this proposed language as its working draft. With relatively limited further revisions, the language proposed by Judge Weis became the text of §1367(a) and (b) as enacted. *See* Petr. Br. at 1-2.

Respondent correctly summarizes but wrongly draws inferences from two particular modifications that Congress made to the version offered by Judge Weis:

> *First,* the subcommittee changed the phrase "in any civil action *on a claim* for which the district courts have original jurisdiction" to "in any civil action of which the district courts have original jurisdiction." . . . *Second,* the new provision expanded the exceptions to exercising supplemental jurisdiction in diversity cases by prohibiting its use in cases where it would be inconsistent with the "the *jurisdictional* requirements"—not just the "*complete diversity* requirement"—of §1332.

Resp. Br. at 39-40. Respondent suggests that the first revision—of subsection (a)—establishes that each and every claim must satisfy the requirements for original jurisdiction before supplemental jurisdiction can attach. *Id.* at 40. But nothing in the Hearings, Study Committee or House Report supports this supposition, and the House Report is directly contrary. It states that subsection (a) "authorizes the district court to exercise jurisdiction over a supplemental claim whenever it forms part of the same constitutional case or controversy as the claim or claims that provide the basis of the district court's original jurisdiction." H.R. Rep. No. 101-734, at 28-29 (1990). Of course, Respondent's reading is also at odds with this Court's decision in *City of Chicago*, 522 U.S. at 167. *See supra* p. 3.

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of section 1332.

Respondent also argues that the second change—to the last clause of subsection (b)—had the effect of "preserv[ing] both the matter-in-controversy requirement and the complete diversity requirement of § 1332." Resp. Br. at 40. But Respondent makes no effort to explain, as it must, how words in subsection (b) can alter the clear meaning of subsection (a). In any event, Respondent's reading of the last clause of § 1367(b) is unsound, *supra* pp.11-13, and nothing in the legislative history suggests that it should be followed.[8] To the contrary, there is evidence of an entirely different explanation for the change in the last clause of subsection (b)—to avoid "lock[ing] in the complete diversity requirement for alienage cases"—an issue that in 1990 had not, and has yet to be, resolved by this Court. Petr. Brief at 28-29 & n.13.

Ultimately, the legislative history arguments offered by Respondent and Exxon are efforts to avoid what is apparent from the face of the statute as well as from its legislative history—that Congress's clear intent was to provide a "practical arena for the resolution of an entire controversy," H.R. Rep. No. 101-734, at 28, at least where "Congress ha[s] a legitimate concern with seeing that the litigation in all its phases is resolved at one point." *Hearings*, *supra*, at 87. The joinder of diverse plaintiffs with injuries from the same constitutional case or controversy, regardless of the amount of their supplemental claims, falls well within this purpose as well as the statute's language.

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[8] Neither the Reports nor the Hearings contain reference to the amount-in-controversy requirement for supplemental claims outside the class-action context. The fragment of legislative history referring to *Zahn* should be ignored in both consolidated cases for reasons set forth previously. Petr. Br. at 49; *see also* Richard D. Freer, *The Cauldron Boils: Supplemental Jurisdiction, Amount in Controversy, and Diversity of Citizenship Class Actions*, 53 Emory L.J. 55, 56-58 (2004).

D. Respondent's "Floodgates" Argument Is Factually Wrong And Legally Irrelevant

Finally, Respondent argues (Br. at 42-47) that its reading of § 1367 is needed to prevent the federal docket from being overwhelmed by diversity cases. But Respondent makes no showing that Petitioners' reading would lead to any significant increase in federal diversity filings.

Respondent's statistical discussion (Br. at 43-44), estimating the number and proportion of federal diversity cases, and then contrasting those numbers with the much larger number of civil cases filed in state courts, shows no risk of significant increase in the number of diversity filings. The vast majority of civil actions in state court do not involve any parties of diverse citizenship and thus cannot be brought in federal court under any reading of § 1367. Moreover, Respondent makes no effort to explain how Petitioners' reading of the statute would noticeably expand the federal diversity docket, but merely speculates that "*[i]f*" Petitioners' reading "divert[ed] even a small percentage" of state civil actions into federal courts, "the federal judicial system could easily be overwhelmed." Br. at 44 (emphasis added).

In fact, § 1367 does not, on Petitioners' reading, grant federal jurisdiction over *any* diversity cases that could not have been brought in federal court in the absence of § 1367. Jurisdiction under § 1367 involves the mere addition of *claims* in cases that are already properly within the federal jurisdiction. Thus, its effect is not to increase the number of cases but only to expand the number of related claims that may be heard.

Respondent admits that the appellate decisions contrary to its position "do not appear to have been followed by huge increases in diversity filings." Resp. Br. at 44-45 n.34. As explanation, it notes that only *Stromberg* squarely adopted Petitioners' reading in the non-class context. *Id.* But Respondent also finds no surge in federal diversity filings in

the Seventh Circuit after *Stromberg*, or in *any* of the nine regional circuits where the issue remains open and litigants remain free to assert jurisdiction under the more expansive reading of § 1367.

In reality, considerations of judicial efficiency and avoidance of burdens on the courts argue strongly for Petitioners' position and against Respondent's. In addition to the obvious multiplication of suits that results from litigating small, related claims of diverse parties in state court separate from a pending diversity case, such a course often produces a host of pesky procedural issues related to the interaction of the two suits. *See, e.g.*, *Acevedo-Garcia v. Monroig*, 351 F.3d 547, 573 (1st Cir. 2003) (noting that offensive, non-mutual collateral estoppel has "historically spawned the greatest misgivings among jurists").

Finally, Petitioners' reading does not "raise serious federalism concerns." Resp. Br. at 45. The concern about federal courts deciding cases "that intrinsically belong[] to the state courts," *City of Indianapolis v. Chase Nat'l Bank*, 314 U.S. 63, 76 (1941), is not implicated by allowing smaller diverse claims arising from the same controversy to be resolved with claims that have a clear federal jurisdictional basis under § 1332. Such actions involve one of the core areas of federal judicial concern, cases "between Citizens of different States." U.S. Const. art. III, § 2.

In short, there is no basis for Respondent's concerns about the effects of § 1367 upon the federal dockets. The United States itself has expressed its agreement with Petitioners' reading of the statute, and agreed that the reading does not threaten to overrun its courts with state-law cases. United States Br. in No. 04-79, at 24-26.

CONCLUSION

For these reasons, and for the reasons stated in Petitioners' opening brief, the decision below should be reversed.

Respectfully submitted,

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