No. 04-79

IN THE

Supreme Court of the United States

MARIA DEL ROSARIO ORTEGA, ET AL.,

Petitioners,

v.

STAR-KIST FOODS, INC.

Respondent.

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

BRIEF FOR RESPONDENT

David C. Indiano
Indiano & Williams, P.S.C.
207 Del Parque St., 3rd Floor
San Juan, Puerto Rico 00912
(787) 641-4545

David J. Herman
National Food Processors
Association
1350 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 639-5950

Robert A. Long, Jr.
Counsel of Record
Jeremy D. Kernodle
Covington & Burling
1201 Pennsylvania Ave., NW
Washington, DC 20004
(202) 662-6000

Scott T. Rickman
Del Monte Foods
One Market @ The Landmark
San Francisco, CA 94105
(412) 247-3265

QUESTION PRESENTED

Whether the supplemental jurisdiction statute, 28 U.S.C. § 1367, altered the long-established requirements for original jurisdiction in a diversity action under 28 U.S.C. § 1332, including the requirement that each plaintiff must satisfy the $75,000 "matter-in-controversy" requirement.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to the proceeding are: Petitioners Maria Del Rosario Ortega, Sergio Blanco, and Patrizia Blanco-Ortega; Respondent Star-Kist Foods, Inc.; Plaintiff Beatriz-Blanco-Ortega; and Defendants "Insurance Companies XYZ."

At the time this action was commenced in the district court, Star-Kist Foods, Inc., was a wholly-owned subsidiary of the H.J. Heinz Company. During the course of this litigation, Star-Kist Foods, Inc., became a division of Del Monte Corporation, d/b/a Del Monte Foods. Del Monte Foods is a wholly-owned subsidiary of Del Monte Foods Company, a publicly-traded company.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTION AND STATUTES

RULES

LEGISLATIVE HISTORY MATERIALS

OTHER AUTHORITIES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-45a) is reported at 370 F.3d 124. The opinion of the district court (Pet. App. 46a-64a) is reported at 213 F. Supp. 2d 84. An earlier opinion of the district court (J.A. 17-31) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 2, 2004. Pet. App. 1a. The petition for a writ of certiorari was filed on July 16, 2004, and was granted on October 16, 2004. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

It appears, however, that original jurisdiction under 28 U.S.C. § 1332 may be lacking in this case, because the plaintiffs have failed to establish the citizenship of each defendant. The parties' prior submissions to this Court state that Respondent Star-Kist Foods, Inc., is the sole defendant in this case. *See* Pet. ii; Br. in Opp. i; Pet. Br. ii. In fact, plaintiffs named "Insurance Companies XYZ" as additional defendants in both their original and amended complaints. *See* J.A. 10, 32. The complaints allege:

> "Codefendants XYZ Insurance Companies are the fictitious names of the insurance companies, which had issued and maintained in full force and effect an insurance policy on behalf of Starkist under whose terms and conditions they are jointly and severally liable with its insured for the facts and damages herein, and assumes the citizenship of their insured. Once the identities of said insurance companies are known, the plaintiffs will request leave to amend the complaint to incorporate their correct names." J.A. 11-12 (Complaint ¶ 12); *id.* 33 (Amended Complaint ¶ 10).

Petitioners have not amended their complaint to incorporate the correct names of the insurance companies.[1]

"[T]he existence of diversity jurisdiction cannot be determined without knowledge of every defendant's place of citizenship," and therefore "'John Doe' defendants are not permitted in federal diversity suits." *Howell v. Tribune Entm't Co.*, 106 F.3d 215, 218 (7th Cir. 1997); *see also* 14 Charles Alan Wright, *et al.*, FEDERAL PRACTICE AND PROCEDURE § 3642 (1998 & 2004 Supp.) ("[T]he diverse citizenship of the fictitious defendants must be established by the plaintiff."). Because Respondent's insurers are not merely nominal parties, their citizenship must be established by Petitioners. *See Howell*, 106 F.3d at 218.[2]

Although this issue was not raised in the courts below or at the certiorari stage, this Court will consider jurisdictional issues, and raise them *sua sponte* when necessary, even if they were not raised earlier in the litigation. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93 (1998) (citation omitted).[3]

---

[1] The caption of the case in the district court indicates that there are multiple defendants. *See* Pet. App. 46a, 65a; J.A. 32. Although the caption of the court of appeals' opinion identifies only Star-Kist., Inc., as a defendant, the court's opinion states that Petitioners initially sued Star-Kist Foods, Star-Kist Caribe, Inc., "and their unnamed insurers," and subsequently "re-filed their complaint . . . this time only naming Star-Kist Foods, Inc. and its unnamed insurers as defendants." Pet. App. 2a.

[2] Congress amended 28 U.S.C. § 1441(a) in 1988 to provide that "[f]or purposes of removal the citizenship of defendants sued under fictitious names shall be disregarded." Although the issue is not free from doubt, *compare Howell*, 106 F.3d at 218 *with Macheras v. Center Art Galleries–Hawaii, Inc.*, 776 F. Supp. 1436, 1438 (D. Haw. 1991), the better view is that this amendment applies only to removed cases. *See* 14 Charles Alan Wright, *supra,* § 3642, at 204-05.

[3] In some circumstances, an appellate court may grant "a motion to dismiss a dispensable party whose presence spoils statutory diversity jurisdiction." *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 827 (continued...)

STATUTES AND RULES INVOLVED

Relevant portions of §§ 1331, 1332, 1367, and 1441 of Title 28, United States Code, and Rules 14, 19, 20, and 24 of the Federal Rules of Civil Procedure are reprinted in the appendix to this brief.

STATEMENT

1. Diversity Jurisdiction. This case requires the Court to consider the relationship between 28 U.S.C. § 1332, which confers original jurisdiction on federal district courts in civil diversity actions, and 28 U.S.C. § 1367, which confers supplemental jurisdiction of certain claims when the district court has original jurisdiction in a civil action. Section 1332 provides that "[t]he 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 interest and costs, and is between . . . citizens of different States." 28 U.S.C. § 1332.[4] This Court's decisions have

---

(1989). The Court has "emphasize[d]," however, that this power "should be exercised sparingly," *id.* at 837, and stated that "ordinarily, district courts are better positioned to make such judgments." *Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 76 (1996). In *Newman-Green*, a final judgment on the merits had been entered following "years of discovery." *Id.* at 828. Here, in contrast, the litigation has not progressed beyond threshold jurisdictional issues. Moreover, 28 U.S.C. § 1367(b) appears to preclude the exercise of supplemental jurisdiction where, as here, multiple defendants are joined under Fed. R. Civ. P. 20. *See* Richard H. Fallon, Jr., *et al.*, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 1491 & n.3 (5th ed. 2003) (citation omitted).

[4] More specifically, the second requirement is met if the action is between "citizens of different States," "citizens of a State and citizens or subjects of a foreign state," "citizens of different States and in which citizens or subjects of a foreign state are additional parties," or "a foreign state . . . as plaintiff and citizens of a State or of different States." 28 U.S.C. § 1332(a)(1)-(4).

determined the meaning of both the "matter-in-controversy" and the "diversity" requirements of § 1332.

a. "Complete Diversity." "In *Strawbridge v. Curtiss*, [7 U.S.] (3 Cranch) 267 (1806), this Court held that the diversity of citizenship statute required 'complete diversity': where co-citizens appeared on both sides of a dispute, jurisdiction was lost." *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 530-31 (1967). In *Tashire*, the Court held that "minimal" diversity is sufficient to bring a "Case[]" within the "judicial Power of the United States" under Article III of the Constitution. *See id.*; U.S. CONST. art. III, §§ 1, 2. Thus, the "'complete diversity' interpretation of the general-diversity provision is a matter of statutory construction." *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 n.3 (1996). By "repeatedly re-enact[ing] or amend[ing] the statute conferring diversity jurisdiction, leaving intact this rule of complete diversity," Congress has "clearly demonstrated a congressional mandate that diversity jurisdiction is not to be available when any plaintiff is a citizen of the same State as any defendant." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373-74 (1978).[5]

b. "Matter in Controversy." When Congress first conferred diversity jurisdiction on the federal courts in the Judiciary Act of 1789, it limited the grant of jurisdiction to cases in which the matter in controversy exceeded $500. *See* 1 Stat 79 (1789). Congress has maintained the "matter-in-controversy" requirement ever since, increasing it to $2,000 in 1887, 24 Stat. 552; $3,000 in 1911, 36 Stat. 1087, 1091;

[5] In the class action context, the Court has held that the complete diversity requirement is satisfied if each representative plaintiff is a citizen of a different State from each defendant, regardless of the citizenship of unnamed class members. *See Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356, 366-67 (1921).

$10,000 in 1958, 72 Stat. 415; $50,000 in 1988, 102 Stat. 4646; and $75,000 in 1996, 110 Stat. 3847, 3850.[6]

It has long been settled that, while a single plaintiff may aggregate his or her own claims in order to satisfy the matter-in-controversy requirement, separate claims of different plaintiffs cannot be aggregated. *See, e.g., Troy Bank v. G.A. Whitehead & Co.*, 222 U.S. 39, 40 (1911) ("When two or more plaintiffs, having separate and distinct demands, unite for convenience and economy in a single unit, it is essential that the demand of each be of the requisite jurisdictional amount."). This rule is "firmly rooted" in decisions of this Court "dating from 1832," *Zahn v. Int'l Paper Co.*, 414 U.S. 291, 294 (1973) (citing, *inter alia*, *Oliver v. Alexander*, 6 Pet. (31 U.S.) 143, 145 (1832)). And it has been reaffirmed many times. *See, e.g., Shields v. Thomas*, 58 U.S. (17 How.) 3 (1854); *Pinel v. Pinel*, 240 U.S. 594, 596 (1916); *Zahn*, 414 U.S. at 294 n.3 (rule confirmed by "innumerable cases").

In *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939), the Court reaffirmed the rule following the adoption of the Federal Rules of Civil Procedure.[7] Only a single plaintiff in *Clark* satisfied the matter-in-controversy requirement. *Id.* at 589. The Court held "that where each of several plaintiffs is bound to establish the jurisdictional amount with respect to his own claim, the suit should be dismissed as to those who fail to show that the requisite amount is involved." *Id.* at 590.

In *Snyder v. Harris*, 394 U.S. 332 (1969), the Court reaffirmed the non-aggregation principle in the context of

---

[6] Prior to 1980, Congress also imposed a matter-in-controversy requirement in federal question cases. *See* Pub. L. No. 96-486, § 2, 94 Stat. 2369 (1980) (eliminating matter-in-controversy requirement from 28 U.S.C. § 1331).

[7] *Clark* was a federal question case, decided before Congress abolished the matter-in-controversy requirement for such cases. *See* note 6 *supra*.

class actions. The Court said that the principle rests "upon this Court's interpretation of the statutory phrase 'matter in controversy.'" *Id.* at 336. "[B]eginning with the first Judiciary Act in 1789," Congress repeatedly has increased the "jurisdictional amount requirement" without altering the "matter in controversy" language. *Id.* at 338-39. The Court concluded that "[t]o overrule the aggregation doctrine at this late date would run counter to the congressional purpose in steadily increasing through the years the jurisdictional amount requirement," which "was to check, to some degree, the rising caseload of the federal courts, especially with regard to the federal courts' diversity of citizenship jurisdiction." *Id.* at 339-40. "The policy of the statute" – including "[d]ue regard for the rightful independence of state governments" – "calls for its strict construction." *Id.*, quoting *Healy v. Ratta*, 292 U.S. 263, 270 (1934).

Zahn was also a class action. Unlike *Snyder*, some but not all class members satisfied the matter-in-controversy requirement. Despite this difference, the Court had "no doubt that the rationale of [*Snyder*] controls," 414 U.S. at 300, and therefore held that "[e]ach plaintiff in a Rule 23(b)(3) class action must satisfy the jurisdictional amount." *Id.* at 301. The Court added that "the application of the jurisdictional amount requirement" is "so plainly etched in the federal courts . . . that had there been any thought of departing from these decisions . . . some express statement of that intention would surely have appeared, either in the amendments themselves or in the official commentaries." *Id.* at 302.

2. Pendent and Ancillary Jurisdiction. The supplemental jurisdiction statute, 28 U.S.C. § 1367, "codifie[s]" and "combines the doctrines of pendent and ancillary jurisdiction under a common heading" of "supplemental jurisdiction." *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 165 (1997). Consequently, this

Court's decisions on pendent and ancillary jurisdiction illuminate the meaning of § 1367.

a. "Pendent Claim" Jurisdiction. In *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966), a plaintiff sought to pursue claims against a nondiverse defendant under both federal law and state law. The Court concluded that "[p]endent jurisdiction, in the sense of judicial *power*, exists whenever there is a claim 'arising under the Constitution, the Laws of the United States, and Treaties made . . . under their [a]uthority . . .,' and the relationship between that claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional 'case.'" *Id.* at 725 (quoting U.S. CONST. art. III, § 2; emphasis in original). The Court held that when "[t]he state and federal claims . . . derive from a common nucleus of operative fact," and "are such that [the plaintiff] would ordinarily be expected to try them all in one judicial proceeding, then . . . there is *power* in the federal courts to hear the whole." *Id.* (emphasis in original). *See also id.* at 726-27.[8]

b. "Pendent Party" Jurisdiction. In *Aldinger v. Howard*, 427 U.S. 1 (1976), the Court considered "whether the doctrine of pendent jurisdiction extends to confer jurisdiction over a party as to whom no independent basis of federal jurisdiction exists." 427 U.S. at 2-3. The plaintiff in

---

[8] The "lineal ancestor" of *Gibbs* is *Osborn v. Bank of United States*, 22 U.S. (9 Wheat.) 738 (1824). *Aldinger v. Howard*, 427 U.S. 1, 13 (1976). In *Osborn*, Chief Justice Marshall's opinion for the Court held that "when a question to which the judicial power of the Union is extended by the constitution, forms an ingredient of the original cause, it is in the power of congress to give the Circuit Courts jurisdiction of that cause, although other questions of fact or of law may be involved in it." 22 U.S. at 823. *See Aldinger*, 427 U.S. at 7 (*Osborn* "rejected" the contention that "the presence in a federal lawsuit of questions which were not dependent on the construction of a law of the United States prevented the federal court from exercising Art. III jurisdiction.").

Aldinger brought federal constitutional claims against county officials under 42 U.S.C. § 1983, and also sought to pursue state-law claims against the county. *See id.* at 5. The Court concluded that "[t]he situation with respect to the joining of a new party" is "different from the situation facing the Court in *Gibbs*." *Id.* at 14. "[I]t is one thing to authorize two parties, already present in federal court by virtue of a case over which the court has jurisdiction, to litigate in addition to their federal claim a state-law claim." *Id.* In contrast, "the addition of a completely new party would run counter to the well-established principle that federal courts, as opposed to state trial courts of general jurisdiction, are courts of limited jurisdiction marked out by Congress." *Id.* at 15. The Court quoted Judge Sobeloff's observation that efficiency "is not the only consideration a federal court should take into account in assessing the presence or absence of jurisdiction . . . [e]specially . . . where, as here, the efficiency plaintiff seeks so avidly is available without question in the state courts." *Id.* (internal quotation and citation omitted).

Although the Court declined to "lay down any sweeping pronouncement" concerning pendent-party jurisdiction, it made two general observations. *Id.* at 18. *First*, "[i]f the new party sought to be joined is not otherwise subject to federal jurisdiction, there is a more serious obstacle to the exercise of pendent jurisdiction than if parties already before the court are required to litigate a state law claim." *Id.* *Second*, "[b]efore it can be concluded that such jurisdiction exists, a federal court must satisfy itself not only that Art. III permits it, but that Congress in the statutes conferring jurisdiction has not expressly or by implication negated its existence." *Id.*

c. Ancillary Jurisdiction. In *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978), the plaintiff commenced a diversity action, the defendant filed a third-party complaint against Owen Equipment Co. pursuant to Fed. R. Civ. P. 14(a), and the plaintiff then amended her

complaint to assert a claim against Owen Equipment. At trial it emerged that plaintiff and Owen Equipment both were citizens of the same State. The question presented thus was whether a plaintiff, "[i]n an action in which federal jurisdiction is based on diversity of citizenship," may "assert a claim against a third-party defendant when there is no independent basis for federal jurisdiction over that claim." 437 U.S. at 367. The Court observed that *Gibbs* "involved *pendent* jurisdiction, which concerns the resolution of a plaintiff's federal- and state- law claims against a single defendant in one action." *Id.* at 370 (emphasis added). *Owen Equipment*, in contrast, involved "the doctrine of ancillary jurisdiction," which the Court held does not extend "to a plaintiff's cause of action against a citizen of the same State in a diversity case." *Id.* at 377.[9]

The Court noted that the plaintiff could not have "originally brought suit" naming both the defendant and the third-party defendant, since then citizens of the same State would have been on both sides of the litigation. *Id.* at 374. The Court rejected, as inconsistent with § 1332, reasoning under which "a plaintiff could defeat the statutory requirement of complete diversity by the simple expedient of suing only those defendants who were of diverse citizenship and waiting for them to implead nondiverse defendants." *Id.* The Court recognized that "the exercise of ancillary jurisdiction over nonfederal claims has often been upheld . . . " "typically" in situations "involv[ing] claims by a defending party haled into court against his will, or by another person whose rights might be irretrievably lost unless

---

[9] Petitioners cite (Pet. Br. 6) post-*Gibbs* decisions of the lower courts invoking the doctrine of pendent-party jurisdiction in diversity cases. The Court questioned those decisions in *Moor v. County of Alameda*, 411 U.S. 693, 712-15 (1973), and the Court made clear in *Aldinger* and *Owen Equipment* that such decisions exceeded the bounds of pendent-party jurisdiction.

he could assert them in an ongoing action in a federal court." *Id.* at 375-76. The Court stated that "[a] plaintiff cannot complain if ancillary jurisdiction does not encompass all of his possible claims, . . . since it is he who has chosen the federal rather than the state forum." *Id.* at 376.

3. *Finley* and § 1367. In *Finley v. United States*, 490 U.S. 545 (1989), the plaintiff sued the United States under the Federal Tort Claims Act (FTCA), and sought to amend her complaint to add state-law claims against additional parties. The claims satisfied the *Gibbs* "common nucleus of operative fact" standard, and a federal court was the only forum in which the federal and state claims could be heard together. The Court nevertheless held that the federal court lacked jurisdiction over state-law claims against other parties arising out of the same transaction or occurrence absent an independent basis of federal jurisdiction. *Gibbs* was a different situation, the Court said, because of the "central distinction . . . between new parties and parties already before the court." 490 U.S. at 549 n.2. Citing *Zahn*, *Owen Equipment*, and *Aldinger*, the Court held that "with respect to the addition of parties, as opposed to the addition of only claims, we will not assume that the full constitutional power has been congressionally authorized, and will not read jurisdictional statutes broadly." *Id.* at 549. The Court added, however: "Whatever we say regarding the scope of jurisdiction conferred by a particular statute can of course be changed by Congress." *Id.* at 556.[10] Less than a year later,

---

[10] Three of the four dissenting Justices in *Finley* would have "distinguish[ed] between diversity and federal-question cases." *Finley*, 490 U.S. at 571 (Stevens, J., dissenting). The dissenting Justices concluded that "[t]he doctrine of pendent jurisdiction rests in part on a recognition that forcing a federal plaintiff to litigate his or her case in both federal and state courts impairs the ability of the federal court to grant full relief." *Id.* at 576 (Stevens, J., dissenting) (internal quotations and citations omitted). In contrast, "[n]o such special federal interest is present when federal jurisdiction is invoked on the basis of the diverse (continued...)

Congress enacted 28 U.S.C. § 1367 as part of the Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089.

4. This Case. The court of appeals observed that the facts of this case are "not normally the stuff of lawsuits in federal court." Pet. App. 1a. Beatriz Blanco-Ortega, then nine years old, "cut her pinky finger while opening a can of Star-Kist tuna." *Id.* at 5a, 46a. The cut was "about a quarter of an inch deep, and about three-quarters of an inch long." *Id.* at 47a. The next day, a surgeon "successfully repaired" the damaged finger. *Id.* at 5a. Medical expenses for the surgery were less than $5,000, some of which were covered by insurance. *Id.* at Pet. App. 48a. Afterwards, Beatriz "underwent a series of successful physical therapies." *Id.* at 47a. Today, the finger "bears a small scar and is slightly bent." *Id.* at 5a. Beatriz is able to participate in all activities in which she wants to participate, and her life is back to "normal." *Id.* at 48a.

5. The Lower Court Decisions. Beatriz, her mother, her father (who is divorced from Beatriz's mother and does not live with Beatriz, Pet. App. 10a), and her sister (who was a student in Washington D.C. at the time of the injury, *id.* at 9a), filed a diversity action in the U.S. District Court for the District of Puerto Rico against Star-Kist Foods, Inc., Star-Kist Caribe, Inc., and their unnamed insurers. *Id.* at 2a. The district court granted Respondent's motion to dismiss the complaint for lack of complete diversity, on the ground that Star-Kist Caribe is a citizen of Puerto Rico. *Id.*

Plaintiffs re-filed their complaint, naming only Star-Kist Foods, Inc., and its unnamed insurers as defendants. Pet. App. 2a. Respondent moved for summary judgment on the ground that none of the plaintiffs could satisfy the $75,000

---

citizenship of the parties and the state-law claims may be litigated in a state forum." *Id.* at 577 (citations omitted).

matter-in-controversy requirement of 28 U.S.C. § 1332. The district court agreed and again dismissed the complaint for lack of jurisdiction. *Id.* at 3a.

The court of appeals affirmed in part and reversed in part. It concluded that it appears to a legal certainty that only Beatriz can satisfy the $75,000 matter-in-controversy requirement. Pet. App. 3a - 10a, citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283 (1938). The court of appeals then addressed whether 28 U.S.C. § 1367 allows Beatriz's family members to proceed in federal court "on the basis of Beatriz's jurisdictionally sufficient claim." Pet. App. 10a.

The court considered two possible readings of § 1367. The first "turns on Congress's failure [in § 1367(b)] to include Rule 20 plaintiffs among those parties who cannot rely on supplemental jurisdiction where doing so would be inconsistent with § 1332." *Id.* at 15a. The second interpretation "emphasizes the requirement in § 1367(a) that the district court must first have 'original jurisdiction' over an action before supplemental jurisdiction can apply." *Id.* at 16a. The court of appeals concluded that "plausible textual arguments can be made in favor of either of these readings," but that the second is preferable for several reasons. *Id.*

First, § 1367(a) invokes the language of "[n]early every jurisdictional grant in Title 28" by specifying "that supplemental jurisdiction can only apply in a 'civil action of which the district courts have original jurisdiction.'" Pet. App. 17a. Under "well-settled law, joinder and aggregation have different implications for the existence of 'original jurisdiction' in federal question and diversity cases." *Id.* Under 28 U.S.C. § 1331, "[a]ll that is required is [a] federal question," and "[j]oinder questions arise only after 'original jurisdiction' is established." Pet. App. 18a. "Under § 1332, by contrast, joinder and aggregation questions can actually *determine* whether the district court has 'original

jurisdiction.'" *Id.* "*Strawbridge* and *Clark* . . . are binding interpretations of the diversity statute. . . . Unless both rules are satisfied, the statute does not confer original jurisdiction on the district court." *Id.* (citations omitted).

Second, the court's interpretation of § 1367 is consistent with the meaning of identical language in the removal statute, 28 U.S.C. § 1441. *Id.* at 21a-22a.

Third, this interpretation of § 1367 "aligns statutory supplemental jurisdiction with the judicially developed doctrines of pendent and ancillary jurisdiction as they existed prior to *Finley*." *Id.* at 22a.

Fourth, the alternative interpretation of § 1367 would have "surprising and far-reaching consequences," including overturning the complete diversity rule of *Strawbridge*. *Id.* at 27a. Congress surely did not intend to "overturn[] nearly 200 years of case law interpreting § 1332 and authorize[] a potentially huge expansion of the federal docket . . . by failing to mention Rule 20 plaintiffs in § 1367(b)." *Id.*

Finally, the legislative history of § 1367 strongly corroborates this interpretation of the statute. Pet. App. 30a-32a.[11]

Judge Torruella concurred in part and dissented in part. Pet. App. 33a-45a. He concluded that § 1367 confers supplemental jurisdiction when "a district court . . . ha[s] original jurisdiction over a claim." *Id.* at 38a. In this case, the district court has original jurisdiction over Beatriz's claim, and therefore it may assert supplemental jurisdiction over claims of the other family members because they arise

[11] The court of appeals concluded that "class actions raise unique problems." Pet App. 12a n.7. *See also id.* at 32a n.19 ("application of § 1367 to diversity-only class actions is a different problem for several reasons").

out of the same case or controversy and none of the exceptions of 1367(b) or (c) applies. *Id.*

SUMMARY OF ARGUMENT

1. Section 1367 confers supplemental jurisdiction only in a "civil action of which the district courts have original jurisdiction." 28 U.S.C. § 1367(a). The terms "civil action" and "original jurisdiction" are borrowed from other federal jurisdictional statutes, including 28 U.S.C. §§ 1331 and 1332. "[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word." *Morrissette v. United States*, 342 U.S. 246, 263 (1952).

A "civil action" may include more than one claim, and therefore the term "civil action" is not synonymous with the term "claim." There is unusually strong textual evidence that Congress did not intend the term "civil action" in § 1367(a) to mean "claim": Congress actually used the term "claims" three times in subsection (a). Courts are not free to rewrite statutory text by substituting one term for another – but that is precisely what Petitioners ask the Court to do. Certainly such an interpretation cannot be compelled by the plain language of the statute.

It is well-settled that the presence of a federal claim suffices to bring a civil action within the district court's original jurisdiction under the federal question statute, 28 U.S.C. § 1331. In contrast, it is equally clear that in diversity cases, the court lacks original jurisdiction of the civil action unless each plaintiff satisfies the jurisdictional requirements of the diversity statute, 28 U.S.C. § 1332.

When 28 U.S.C. § 1367(a) is understood according to its terms, § 1367(b) makes sense. Subsection (b) brings supplemental jurisdiction into close alignment with pendent and ancillary jurisdiction prior to *Finley*, and preserves the

rationale of *Owen Equipment* by ensuring that plaintiffs cannot defeat the jurisdictional requirements of § 1332 by omitting parties who do not meet those requirements from their complaints and then adding them later. Although this interpretation of the statutory text is not free from difficulty, it is far preferable to the alternative interpretation, which leads to absurd results.

There is no basis for distinguishing between the matter-in-controversy and complete diversity requirements, and therefore the alternative interpretation of § 1367 leads to the conclusion that "Congress overturned nearly 200 years of case law interpreting § 1332 and authorized a potentially huge expansion of the federal docket, . . . not by amending the diversity statute itself, but instead by failing to mention Rule 20 plaintiffs in § 1367(b)." Well-established principles of statutory interpretation argue strongly against any such interpretation of § 1367.

2. The legislative history of § 1367 strongly supports this interpretation of the statute. The House Report that accompanied the legislation, which was adopted by the Senate, states that § 1367 is a "noncontroversial" and "relatively modest" provision. The Report states that the purpose of § 1367 is to "authorize jurisdiction in a case like *Finley*, as well as essentially restore the pre-*Finley* understandings of the authorization for and limits on other forms of supplemental jurisdiction." The Report further states that a district court may not "exercise supplemental jurisdiction . . . when doing so would be inconsistent with the jurisdictional requirements of the diversity statute." And the Report specifically addresses the application of § 1367 to diversity-only class actions and states that it preserves the holdings of both *Zahn* and *Ben Hur*.

3. Policy considerations also support the court of appeals' interpretation of § 1367. In diversity cases, efficiency considerations are outweighed by the need to limit

the caseload of the federal courts as well as significant federalism concerns. Diversity actions currently account for more than 23 percent of all civil actions filed in district courts, nearly 30 percent of civil cases excluding prisoner petitioners, and about half of all civil trials in the district courts. Diversity filings have risen by more than 23 percent since 2001, and the Administrative Office of the Courts predicts continuing increases unless steps are taken to limit diversity jurisdiction. Diluting the jurisdictional requirements in diversity actions could cause this situation to become much worse. More than 16 *million* civil cases are filed in the state courts each year. If even a small percentage of these cases were to be litigated in federal court, the capacity of the federal judicial system would be overwhelmed. Consequently, weakening the complete diversity and matter-in-controversy requirements raises serious practical concerns.

ARGUMENT

This Court recently reaffirmed that "[s]tatutory construction is a 'holistic endeavor.'" *Koons Buick Pontiac GMC, Inc. v. Nigh*, 125 S. Ct. 460, 467 (2004) (quoting *United Sav. Ass'n. of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988)). That principle applies to the interpretive issue in this case. The courts of appeals have arrived at strikingly different interpretations of § 1367 based on their reading of the "plain" language.[12] In

[12] *Compare In re Abbott Labs.*, 51 F.3d 524, 528 (5th Cir. 1995) (plain language of § 1367 overrules *Zahn*); *Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928, 931 (7th Cir. 1996) (same); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 939 (9th Cir. 2001) (same); *Rosmer v. Pfizer, Inc.*, 263 F.3d 110, 118 (4th Cir. 2001) (same); *Allapattah Servs., Inc. v. Exxon Corp.*, 333 F.3d 1248, 1255 (11th Cir. 2003) (same), *cert. granted*, 125 S.Ct. 317 (2004), *with Leonhardt v. Western Sugar Co.*, 160 F.3d 631, 640 (10th Cir. 1998) (plain language of § 1367 preserves *Zahn*); *Trimble v. Asarco, Inc.*, 232 F.3d 946, 962 (8th Cir. 2000) (same); (continued...)

fact, any effort to interpret § 1367 based solely on the statutory text runs into difficulties, and some interpretations lead to irrational results. Accordingly, other indicia of congressional intent must be consulted. *See Koons*, 125 S. Ct. at 468; *id.* at 470 (Stevens, J. concurring) ("always appropriate to consider all available evidence of Congress' true intent."); *id.* at 471 (Kennedy, J., concurring) (appropriate to consider "other interpretive resources" where "text is not altogether clear"); *id.* (Thomas, J., concurring) (appropriate to look beyond current statutory text that "is susceptible of several plausible interpretations"); *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 527 (1989) (Scalia, J. concurring) ("entirely appropriate to consult all public materials" when confronted with a statute that "if interpreted literally, produces an absurd, and perhaps unconstitutional, result"). When all the available interpretive resources are considered – including prior decisions of this Court that established the legal context for § 1367, legislative history, and the consequences of various interpretations – the evidence points to the conclusion that § 1367 preserves the matter-in-controversy requirement of § 1332.

I. SECTION 1367 DOES NOT ALTER THE REQUIREMENTS FOR ORIGINAL JURISDICTION IN DIVERSITY CASES

A. Section 1367(a) Preserves The Jurisdictional Requirements Of § 1332

Subsection (a) of § 1367 provides:

Rosmer v. Pfizer, Inc., 272 F.3d 243, 253 (4th Cir. 2001) (Motz and Luttig, JJ., dissenting from the denial of rehearing en banc) (same); *Allapattah Servs., Inc. v. Exxon Corp.*, 362 F.3d 739 (11th Cir. 2004) (Tjoflat and Birch, JJ, dissenting from the denial of rehearing en banc) (same), *cert. granted*, 125 S.Ct. 317 (2004). *Cf. Meritcare Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 222 (3d Cir. 1999) (finding "much to be said for *Leonhardt's* view" of the plain language).

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

By its terms, subsection (a) provides that supplemental jurisdiction is available only in a "civil action of which the district courts have original jurisdiction." In requiring the district court to have "original jurisdiction" of a "civil action," Congress borrowed terms that it has used repeatedly in other jurisdictional statutes. *See, e.g.,* 28 U.S.C. § 1331 ("The district courts shall have *original jurisdiction* of all *civil actions* arising under the Constitution, laws, or treaties of the United States."); 28 U.S.C. § 1332 ("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 interest and costs, and is between . . . citizens of different States."); 28 U.S.C. § 1441(a) ("Except as otherwise expressly provided by Act of Congress, any *civil action* brought in a State court of which the district courts of the United States have *original jurisdiction*, may be removed by the defendant or the defendants, to the district court of the United States.") (emphasis added). It is well-settled that "where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word." *Morrissette v. United States*, 342 U.S. 246, 263 (1952). The terms "civil

action" and "original jurisdiction" unquestionably are "terms of art" with an "accumulated . . . legal tradition and meaning."

1. "Civil Action." A "civil action" is a non-criminal judicial proceeding. *See* BLACK'S LAW DICTIONARY 31 (8th ed. 2004) (an "action" is "a civil or criminal judicial proceeding"); Fed. R. Civ. P. 2 ("There shall be one form of action to be known as 'civil action.'"); Fed. R. Civ. P. 3 ("A civil action is commenced by filing a complaint with the court."). Under the Federal Rules of Civil Procedure, a "civil action" may include more than one "claim." *See, e.g.,* Fed. R. Civ. P. 8 ("A party may . . . state as many separate claims . . . as the party has . . . whether based on legal, equitable, or maritime grounds."); Fed. R. Civ. P. 13 (authorizing counterclaims and cross-claims). Accordingly the terms "civil action" and "claim" are not synonyms.

In this instance, there is unusually strong textual evidence that Congress did *not* intend "civil action" to have the same meaning as "claim": Congress actually used the term "claims" in subsection (a) – not once, but three times. If Congress had intended to confer supplemental jurisdiction whenever a district court has original jurisdiction of a "claim," it could have said so quite easily. A court should be wary of accepting any interpretation of § 1367 that requires it to substitute the term "claim" for "civil action." *See McNeil v. United States*, 503 U.S. 206, 111 (1993) (courts are "not free to rewrite the statutory text").

But substituting "claim" for "civil action" is exactly what Petitioners and their amicus ask the Court to do. They assert that a "civil action" is within the district court's "original jurisdiction" "if *at least one claim* in the case meets the jurisdictional requirements to maintain an action in federal court." Pet. Br. 23; *see also* U.S. Br. at 11 (supplemental jurisdiction available "as long as the district court possessed original jurisdiction over *some* of the claims

asserted in the case"); Pet. App. 38a (Torruella, J., dissenting) (§ 1367 authorizes a district court to exercise supplemental jurisdiction so long as it has "original jurisdiction over a *claim*") (emphasis added). Such judicial rewriting of the statutory text, if it can be justified at all, certainly is not compelled by plain statutory language.

Petitioners suggest (Pet. Br. 23) that Congress demonstrated that when it said "civil action" it meant "claim" by distinguishing between "claims in the action within such original jurisdiction" and "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III." § 1367(a). But this statutory language simply tracks the *Gibbs* test, which asks whether "[t]he state and federal *claims* must derive from a common nucleus of operative fact." *Gibbs*, 383 U.S. at 725 (emphasis added). Claims relate to other claims, and therefore the text of § 1367(a) makes an apples-to-apples comparison between "claims in the action within such original jurisdiction" and "other claims." [13]

Petitioners also rely on the final sentence of subsection (a), which states that "[s]uch supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties." This sentence, which directly addresses this Court's decision in *Finley*, does not modify the requirement that the district court must have original jurisdiction of the civil action before it can exercise supplemental jurisdiction. Nor does it modify the requirements for establishing original jurisdiction under §§ 1331, 1332, or other jurisdictional statutes — including the rules that each plaintiff in a diversity action must satisfy both the complete diversity and matter-in-controversy requirements.

---

[13] Moreover, the statutory text refers to "*claims* in the action within such original jurisdiction" rather than to a single claim in the action.

Ultimately, Petitioners do not take their own textual argument seriously. Less than one page after making the argument, Petitioners state that the matter "takes on added complexity" in diversity cases because a district court does not have original jurisdiction under § 1332 unless the plaintiff's "claims [are] brought in a suit in which all plaintiffs are diverse from all defendants." Pet. Br. 24. Petitioners are correct on this point – but it is completely inconsistent with their reading of § 1367(a). If § 1367(a) confers supplemental jurisdiction whenever the district court has original jurisdiction of a single claim, it is sufficient for one plaintiff to be diverse from one defendant. Petitioners would like to avoid this result, but they can do so only by repudiating their own reading of § 1367(a).

2. "Original Jurisdiction." By its terms, § 1367 does not confer "original jurisdiction" on the district courts. Instead, it confers only "supplemental jurisdiction," and then only if the district court has original jurisdiction of the civil action. The title of § 1367 ("Supplemental Jurisdiction") confirms the meaning of the statutory text. In order to determine whether it has original jurisdiction, a district court must look to a statute that confers original jurisdiction – such as 28 U.S.C. §§ 1331 or 1332.[14]

a. Federal Question Cases. In federal question cases, it has long been established that the presence of a federal question suffices to give the district court original jurisdiction over the civil action under 28 U.S.C. § 1331. In

[14] As the court of appeals explained, Pet. App. 24a, this reading of the statutory text does not give multiple meanings to the term "original jurisdiction" in § 1367. Instead, § 1367 simply provides that the district court must have original jurisdiction of the civil action, under any of the federal statutes that confer original jurisdiction, before it can exercise supplemental jurisdiction under § 1367. Congress knew and presumably meant to adopt the accumulated legal tradition and meaning of "original jurisdiction" in the various statutes conferring such jurisdiction.

Osborn, the Court held that when a federal question "forms an ingredient of the original cause, it is in the power of Congress to give the Circuit Courts jurisdiction of that cause, although other questions of fact or of law may be involved in it." 22 U.S. at 822-23. *Osborn* thus "rejected" the contention that "the presence in a federal lawsuit of questions which were not dependent on the construction of a law of the United States prevented the federal court from exercising Art. III jurisdiction." *Aldinger,* 427 U.S. at 6-7. In *Gibbs*, *Aldinger*, and *Finley* the Court considered the circumstances in which district courts that have original jurisdiction under § 1331, based on the presence of a federal question, may exercise pendent jurisdiction over additional state-law claims. None of those cases casts any doubt on the principle 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. In "a federal question case . . . [t]he District Court's original jurisdiction derives from [the presence of] federal claims. . . . Those federal claims suffice to make the actions 'civil actions' within the 'original jurisdiction' of the district courts. . . . Nothing in the jurisdictional statutes suggests that the presence of related state law claims somehow alters the fact that the [plaintiff's] complaints, by virtue of their federal claims, were 'civil actions' within the federal courts' 'original jurisdiction'" *Int'l Coll. of Surgeons*, 522 U.S. at 166 (citations omitted).

b. Diversity Cases. Diversity cases are different, because original jurisdiction in diversity cases is "party-based" rather than "claim-based." Section 1332 confers original jurisdiction if the matter in controversy (i) exceeds $75,000 and (ii) is between citizens of different States. Since *Strawbridge*, the diversity requirement has been interpreted to require *complete* diversity. *See Tashire*, 386 U.S. at 530-31. Because *every* plaintiff must be diverse from every defendant, the court cannot determine whether it has original

jurisdiction under § 1332 until it has considered the citizenship of *every* party. If any plaintiff is a citizen of the same State as any defendant, the requirement is not satisfied and the district court lacks original jurisdiction over the civil action. *See Wisconsin Dep't of Corr. v. Schacht*, 524 U.S. 381, 389 (1998) ("The presence of [a] nondiverse party automatically destroys original jurisdiction.").

The matter-in-controversy requirement, like the complete diversity requirement, has been interpreted to require that *every* plaintiff must have the requisite amount in controversy. *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939); *Zahn v. Int'l Paper Co.*, 414 U.S. 291, 294 (1973). Just as with the complete diversity requirement, the district court cannot determine whether it has original jurisdiction without considering *every* plaintiff in the case. And just as with the complete diversity requirement, if a single party fails to meet the matter-in-controversy requirement, the requirement is not met and the district court lacks "original jurisdiction of [the] civil action." 28 U.S.C. § 1332(a)." *Id.*

In *International College of Surgeons*, the complaint raised both federal claims and state-law claims. 522 U.S. at 160. This Court refused to consider the state-law claims in isolation, and to ask whether those claims "constitute[d] a 'civil action . . . of which the district courts . . . have original jurisdiction.'" *Id.* at 166. The Court stated: "*Because this is a federal question case* . . . [t]he District Court's original jurisdiction derives from [the plaintiff's] federal claims, not its state law claims. Those federal claims suffice to make the actions 'civil actions' within the 'original jurisdiction' of the district courts for purposes of removal . . . . Nothing in the jurisdictional statutes suggests that the presence of related state law claims somehow alters the fact that [the] complaints, *by virtue of their federal claims*, were 'civil actions' within the federal courts' 'original jurisdiction.'" *Id.* (emphasis added and citations omitted). It was in this context that the Court stated: "Having thus established

federal jurisdiction, the relevant inquiry respecting the accompanying state [law] claims is whether they fall within a district court's supplemental jurisdiction." *Id.* at 167. "And *that* inquiry" – *not* the original jurisdiction inquiry – "turns on whether the state law claims 'are so related to [the] federal claims . . . that they form part of the same case or controversy.' §1367(a)". *Id.*

B. The Text Of Subsection (b) Supports The Conclusion That § 1367 Preserves The Jurisdictional Requirements Of § 1332

Subsection (b) of § 1367 provides:

> In any civil action of which the district courts have original jurisdiction founded solely on § 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under [Federal Rules of Civil Procedure] 14, 19, 20, or 24 . . . or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

Although the text of subsection (b) is not a model of clarity, several points are clear from the text. *First*, subsection (b) applies to civil actions in which original jurisdiction is based solely on diversity of citizenship, and it provides that in such actions the district court shall not have supplemental jurisdiction over certain claims.

Second, subsection (b) refers to four Federal Rules of Civil Procedure – Rules 14, 19, 20, and 24 – dealing with joinder of additional parties to a civil action.[15]

Third, the claims expressly excluded from the district court's supplemental jurisdiction are claims "by *plaintiffs*" or persons "proposed to be joined as plaintiffs" or "seeking to intervene as plaintiffs." 28 U.S.C. § 1367(b). Subsection (b) does not expressly exclude claims by *defendants*, persons

---

[15] The text of the rules is reproduced in the Appendix. *See* App., *infra*, 7a-12a. Rule 14 (entitled "Third-Party Practice") authorizes a defendant to serve a complaint on a "third-party defendant" who may be liable to the defendant for all or part of the plaintiff's claim against the defendant. When a defendant asserts a counterclaim against a plaintiff, Rule 14(b) authorizes the *plaintiff* to bring in a third party in the same circumstances in which a defendant could do so.

Rule 19 ("Joinder of Persons Needed for Just Adjudication") provides that a person shall be joined if feasible when (1) "in the person's absence complete relief cannot be accorded" or (2) "disposition of the action in the person's absence may . . . impair or impede the person's ability to protect" an interest relating to the action or subject the other parties "to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations." Fed. R. Civ. P. 19(a). If such a person cannot be joined and is determined to be an "indispensable" party, the action must be dismissed. Fed. R. Civ. P. 19(b).

Rule 20 ("Permissive Joinder of Parties") provides that "[a]ll persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact in common to all of these persons will arise in the action." Fed. R. Civ. P. 20(a).

Rule 24 ("Intervention") authorizes both intervention of right (when a federal statute "confers an unconditional right to intervene" or "the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect [an] interest" relating to the action, Fed. R. Civ. P. 24(a)) and permissive intervention (when a federal statute confers a conditional right to intervene or "the applicant's claim or defense and the main action have a question of law or fact in common," Fed. R. Civ. P. 24(b)).

proposed to be joined as defendants, or seeking to intervene as defendants.

When subsection (a) is read according to its terms, as conferring supplemental jurisdiction only where the district court has original jurisdiction over the civil action, subsection (b) makes sense. As the court of appeals explained (Pet. App. 22a-23a) subsection (b) brings § 1367 into close alignment with the doctrines of pendent and ancillary jurisdiction as they had been developed by this Court prior to *Finley*, and prevents plaintiffs from using supplemental jurisdiction as a device to defeat the jurisdictional requirements of § 1332.

This Court addressed one such situation in *Owen Equipment*. The defendant filed a third-party complaint and the plaintiff then asserted a claim against the nondiverse third-party defendant under Rule 14(a). *See* 437 U.S. at 370. The Court declined to allow "a plaintiff [to] defeat the statutory requirement of complete diversity by the simple expedient of suing only those defendants who were of diverse citizenship and waiting for them to implead nondiverse defendants." *Id.* at 375. Section 1367(b) directly addresses the *Owen Equipment* situation by prohibiting the exercise of supplemental jurisdiction in diversity cases "over claims by plaintiffs against persons made parties under" Rule 14, where exercising such jurisdiction would be inconsistent with the jurisdictional requirements of § 1332. The other rules specified in subsection (b) present additional situations in which plaintiffs could potentially evade the complete diversity and matter-in-controversy requirements by leaving nondiverse parties out of their original complaint.[16]

[16] The report that accompanied § 1367 states that it "implement[s] the principal rationale of *Owen Equipment*." H.R. REP. NO. 101-734, at 29 n.16 (1990).

Subsection (b) does not expressly forbid a district court from exercising supplemental jurisdiction over claims by additional parties permissively joined as plaintiffs under Rule 20. But as explained above, *see* page 23 *supra*, the addition of a plaintiff who does not meet the jurisdictional requirements of § 1332 destroys original jurisdiction under that statute, and in the absence of original jurisdiction there is no basis for the court to exercise supplemental jurisdiction.

As the court of appeals noted (Pet. App. 25a) this interpretation of subsection (b) is not without its difficulties. For example, why would Congress omit a reference to "persons proposed to be joined as plaintiffs under Rule 20" but include a reference to "persons proposed to be joined as plaintiffs under Rule 19"? After all, joinder of a plaintiff under Rule 19 or Rule 20 destroys complete diversity. Here, an understanding of the doctrines of pendent and ancillary (and now supplemental) jurisdiction is instructive. Pre-1990 judicial decisions had allowed intervention of right under Rule 24(a) without regard to the intervenor's citizenship (so long as the intervenor was not an indispensable party), but had reached the opposite result when intervention of right was sought under Rule 19(a). *See Smith Petroleum Serv., Inc. v. Monsanto Chem. Co.*, 420 F.2d 1103, 1113-15 (5th Cir. 1970), *cited in Owen Equip.*, 437 U.S. at 376 n.18. Congress resolved this anomaly by prohibiting the exercise of supplemental jurisdiction in *both* situations, even though the denial of intervention may lead to dismissal of the entire action. This facet of subsection (b) demonstrates the strength of Congress's commitment to preserving the jurisdictional requirements of § 1332. It also provides an explanation for the reference to Rule 19: Congress wanted to make clear that

henceforth plaintiffs would be treated the same way under Rules 19 and 24.[17]

Similarly, why did Congress find it necessary to prohibit "claims by plaintiffs against persons made parties under Rule . . . 19 [or] 20"? If plaintiffs join a nondiverse defendant under Rule 19 or 20, the district court lacks original jurisdiction under § 1332. Significantly, the statutory text does not forbid joinder of nondiverse defendants; instead, it forbids "claims by plaintiffs against persons made parties under Rule 19 [or] 20." The text thus leaves room for the joinder of nondiverse defendants, so long as plaintiffs do not assert claims against them. This statutory language dovetails with pre-1990 judicial decisions, in which "the exercise of ancillary jurisdiction over nonfederal claims ha[d] often been upheld in situations involving impleader, cross-claims, or counterclaims . . . involving claims by a defending party haled into court against his will, or by another person whose rights might be irretrievably lost unless he could assert them in an ongoing action in federal court." *Owen Equip.*, 437 U.S. at 375-76 & n.18 (citing cases).

This reading of the statutory text also answers the contention that "if each and every plaintiff in a diversity case must satisfy § 1332's requirements of complete 'diversity' and 'matter in controversy,' . . . then there remains no supplemental jurisdiction in diversity actions for district courts to exercise." U.S. Br. 15, quoting *Rosmer v. Pfizer,*

[17] It is not clear that modifying the text of § 1367(b) to prohibit the exercise of supplemental jurisdiction over "persons proposed to be joined as plaintiffs under Rule 19 *or Rule 20*," would prohibit the naming of additional parties in the original complaint. The phrase "persons *proposed* to be joined as plaintiffs" (particularly when contrasted with the phrase "persons made parties" earlier in subsection (b)) refers to persons joined *after* the original complaint is filed. The language of subsection (b) thus suggests that Congress was relying on the requirements of original jurisdiction under § 1332 to bar the addition of nondiverse plaintiffs.

Inc., 263 F.3d 110, 120 (4th Cir. 2001). Section 1332 has not been interpreted to require "each and every" party to a diversity case to satisfy complete diversity and matter-in-controversy. In particular, those requirements were not applied to defendants haled into court against their will and persons whose rights might be irretrievably lost unless asserted in an ongoing action in federal court. *Owen Equip.*, 437 U.S. at 375-76.

This interpretation also dovetails with the final clause of § 1367(b), which prohibits the exercise of supplemental jurisdiction over the specified claims only "when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332." While this clause is not free of ambiguity – for example, it is not clear whether it applies to all or only part of subsection (b) – it clearly reflects congressional concern with preserving the jurisdictional requirements of § 1332. Moreover, "the jurisdictional requirements of section 1332" may be understood to include not only the complete diversity rule of *Strawbridge* and the matter in controversy rule of *Clark* and *Zahn*, but also the recognized exceptions to those rules. *See Gibson v. Chrysler Corp.*, 261 F.3d 927, 938 (9th Cir. 2001) (concluding that the final clause of subsection (b) "preserves ancillary (now supplemental) jurisdiction that existed under § 1332 prior to the passage of § 1367").[18]

---

[18] Remarkably, Petitioners urge the Court to interpret the phrase "jurisdictional requirements of section 1332" to mean "the complete diversity requirement of section 1332." Pet. Br. 27-28. Petitioners contend (*id.* at 28) that their reading is "supported" by the fact that the language they prefer appeared in an earlier draft of the bill. Petitioners suggest (*id.* at 28-29) that the change was made "at least in part" to assuage the concern of law professors over cases involving aliens. Whether or not that is so, Petitioners once again are asking the Court to rewrite the statutory text.

Finally, this interpretation is supported by the text of the removal statute, which authorizes removal of "any civil action brought in a State court of which the district courts of the United States have original jurisdiction." 28 U.S.C. § 1441(a). If the term "original jurisdiction" in § 1441(a) did not encompass the doctrines of pendent and ancillary (and now supplemental) jurisdiction, then many cases that could be filed in federal court could not be removed, contrary to the general rule that "[t]he propriety of removal . . . depends on whether the case originally could have been filed in federal court." *Int'l Coll. of Surgeons*, 522 U.S. at 163 (citations omitted).

C. Section 1367 Should Be Interpreted To Avoid Absurd Consequences

Statutes should be interpreted to avoid incoherent and absurd results. *See, e.g., Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 510 (1989) ("[n]o matter how plain the text," Court will reject an interpretation that results in an "unfathomable" distinction between the rights of civil plaintiffs and defendants); *Burns v. United States*, 501 U.S. 129, 136-38 (1991) (rejecting, as absurd, interpretation that would deny defendants right to notice when court departs from Sentencing Guidelines *sua sponte* but would require notice when a departure is recommended in the presentence report or by the government); *United States v. Brown*, 333 U.S. 18 (1948) (rejecting, as absurd, interpretation of Federal Escape Act that would allow prisoners serving consecutive sentences, but not other prisoners, to escape with impunity). Interpreting § 1367 to overrule *Clark* and *Zahn* leads to absurd results that no rational Congress could have intended.

First, § 1367(b) undeniably prohibits the exercise of supplemental jurisdiction in circumstances in which strong arguments can be made that it should be allowed. For example, "claims by parties joined under Rule 19 because they are essential to adjudication are forbidden (if that spoils

diversity), but claims by parties joined under Rule 20 for convenience are allowed." *Stromberg Metal Works, Inc. v. Press Mech., Inc.* 77 F.3d 928, 932 (7th Cir. 1996). As the court observed in *Stromberg*, "What sense can this make?" *Id.* More generally, why would Congress close off indirect routes to defeating the jurisdictional requirements of the diversity statute while allowing unlimited joinder for convenience of plaintiffs that do not meet those requirements? It would be irrational for Congress to "lock all of the windows to the federal courthouse" tightly "while leaving the front door wide open." Pet. Reply Br. 11 in *Free v. Abbott Labs.*, 529 U.S. 333 (2000) (affirmed by an equally divided Court).[19]

Second, as noted above, one of the undisputed changes to prior law made by subsection (b) actually *narrowed* the availability of supplemental jurisdiction in the case of persons with a right to intervene. It makes no sense to eliminate supplemental jurisdiction under Rule 24(a) while greatly expanding joinder of plaintiffs for convenience under Rule 20.

Third, the text of § 1367 does not distinguish between the jurisdictional requirements of § 1332. Consequently, "if § 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." Pet. App. 27a. The result is that "Congress overturned nearly 200 years of case law interpreting § 1332 and authorized a

---

[19] Petitioners note (Pet. Br. 42) that overruling *Zahn* and *Clark*, considered by itself, is not absurd. What *is* absurd, however, is to prohibit indirect means of avoiding the jurisdictional requirements of § 1332 (when there are strong arguments for making exceptions to those requirements), while simultaneously allowing plaintiffs to directly evade those requirements. *See West Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 101 (1991) (in interpreting statutes, Court must "make sense rather than nonsense out of the corpus juris").

potentially huge expansion of the federal docket," and "it did so not by amending the diversity statute itself, but instead by failing to mention Rule 20 plaintiffs in § 1367(b)." *Id.*

D. There Is No Basis For Distinguishing The Complete Diversity Requirement From The Matter-In-Controversy Requirement

As explained above, *see* page 21 *supra*, Petitioners agree with Respondent that the district court lacks jurisdiction over a civil action under § 1332 unless every plaintiff satisfies the diversity requirement. Having made this concession, Petitioners' only remaining argument is that, even though § 1332 has been interpreted to require *every* plaintiff to satisfy the matter-in-controversy requirement, the district court nevertheless has jurisdiction over a civil action under § 1332 so long as a single plaintiff satisfies the requirement. *See* Pet. Br. 25. There is no textual or other basis for driving a wedge between the twin jurisdictional requirements of § 1332. Section 1367 preserves both requirements or neither.

The text of § 1332 sets out two requirements for "original jurisdiction of . . . civil actions": "the matter in controversy" must "exceed[ ] the sum or value of $75,000 . . . and [be] between . . . citizens of different States." 28 U.S.C. § 1332. Both requirements must be met to confer original jurisdiction of a civil action, and the statutory text does not distinguish between them or place one on a higher footing than the other. The language of § 1332 thus affords no basis for treating the two requirements differently.

Both statutory requirements unquestionably are jurisdictional. "It remains rudimentary law that '[a]s regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and *an act of Congress must have supplied it* . . . .'" *Finley*, 490 U.S. at 547-48 (quoting *The Mayor v. Cooper*, 73 U.S. (6 Wall.) 247, 252 (1868)

(emphasis in original)). *See also Keene Corp. v. United States*, 508 U.S. 200, 207 (1993) ("Congress has the constitutional authority to define the jurisdiction of the lower federal courts.").

This Court's decisions holding that every plaintiff must meet the matter-in-controversy and diversity requirements are interpretations of the jurisdictional requirements of § 1332. *See, e.g., Snyder*, 394 U.S. at 336 (matter-in-controversy requirement is an interpretation of § 1332); *Tashire*, 386 U.S. at 530-31 (complete diversity requirement is an interpretation of § 1332). Perhaps the Court could have interpreted § 1332 to require only minimal diversity, or held that the "matter-in-controversy" requirement is satisfied if any plaintiff has the requisite amount in controversy. In fact, the Court has interpreted § 1332 to require *every* plaintiff to be of diverse citizenship, and *every* plaintiff to satisfy the amount in controversy requirement. This Court's decisions are an authoritative determination of the *meaning* of the language of § 1332 conferring "original jurisdiction of . . . civil actions." And Congress has amended § 1332 repeatedly without disturbing those interpretations.[20]

This Court's decisions allowing federal courts to cure jurisdictional defects in diversity cases by dismissing dispensable parties, rather than dismissing the entire civil action, do not undermine – and, in fact, confirm – that the defects are jurisdictional in nature, and if not cured would require dismissal of the civil action. In *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 836 (1989), for example, the Court held that a court of appeals, like a district court,

---

[20] The Court could not have imposed the rule of *Clark* and *Zahn* as a matter of judicial policy. *See Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821) ("It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should . . . . We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.").

"may grant a motion to dismiss a dispensable party whose presence spoils statutory diversity jurisdiction." *Id.* at 827. *See also Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 64, 67, 73 (1996) (a case that is removed to federal court at a time when complete diversity did not exist need not be remanded if the "jurisdictional defect is cured" before judgment is entered). *Newman-Green* and *Caterpillar* permit the federal courts to cure jurisdictional defects; they do not hold or suggest that federal courts have original jurisdiction over civil actions under § 1332 absent a "cure."

Similarly, the Court has allowed jurisdictional defects caused by the failure of all plaintiffs to meet the matter-in-controversy requirement to be cured by dismissing the plaintiffs who fail to meet the requirement, rather than by dismissing the entire action. Thus, in *Clark v. Paul Gray*, "where only one of several plaintiffs had a sufficiently large claim[,] . . . all other plaintiffs were dismissed from the suit." *Zahn*, 414 U.S. at 300.[21] The Court applied the same curative approach in *Zahn*, holding that "[e]ach plaintiff in a Rule 23(b)(3) class action must satisfy the jurisdictional amount, and any plaintiff who does not must be dismissed from the case. . . ." *Id.* at 301. As with the dismissal of nondiverse parties, these dismissals are a way of *curing* the jurisdictional defect. They do not suggest that a district court

[21] In *Clark*, the Court decided the jurisdictional issue before reaching the merits. *See* 306 U.S. at 588-90. Rather than breaking off in the middle of its opinion to issue an order dismissing all but one of the plaintiffs, the Court instructed the district court to dismiss Paul Gray, Inc., on the merits and the other plaintiffs for want of jurisdiction. *See id.* at 600. This procedure hardly constitutes a holding that a federal court could retain jurisdiction over the civil action without curing the jurisdictional defect. *Cf. Newman-Green*, 490 U.S. at 832 (recognizing that district courts have "authority to allow a dispensable nondiverse party to be dropped at any time, even after judgment has been rendered," and holding that a court of appeals may choose between dismissing such parties itself or remanding to the district court).

can exercise original jurisdiction over a civil action under § 1332 without curing the defect.[22]

E. Principles Of Statutory Interpretation Support The Court Of Appeals' Interpretation

Other principles of statutory interpretation support the court of appeals' interpretation of § 1367. For example, "common sense suggests, by analogy to Sir Arthur Conan Doyle's 'dog that didn't bark,' that an amendment having the effect petitioner[s] ascribe to it would have been differently described by its sponsor, and not nearly as readily accepted." *Koons*, 125 S. Ct. at 468 (quoting *Church of Scientology of Cal. v. IRS*, 484 U.S. 9, 17-18 (1987)).[23] A closely related principle is that "Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions – it does not, one might say, hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 467-68 (2001). As the court of appeals noted, if Congress had intended to overrule "nearly 200 years of case law interpreting § 1332" and to authorize "a potentially huge expansion of the federal docket," it is likely that it would have accomplished this result by amending § 1332 – and

---

[22] In *Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356 (1921), the Court held that the complete diversity requirement does not apply to members of the class other than the representative parties, at least where jurisdiction over nondiverse class members is necessary to dispose of trust assets. *See id.* at 366-67. Class actions may be distinguished from other civil actions on the ground that members of a class, other than the representative plaintiffs, are not parties in the usual sense. *See Hansberry v. Lee,* 311 U.S. 32, 41 (1940) ("To the[] general rule[] [that a person is not bound by a judgment in litigation in which he is not a party] there is a recognized exception that . . . the judgment in a 'class' or 'representative' suit, to which some members of the class are parties, may bind members of the class or those represented who were not made parties to it.").

[23] *See also Department of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 342-43 (1999); *Chisom v. Roemer*, 501 U.S. 380, 396 & n.23 (1991); *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 266-67 (1979).

highly unlikely that it would have done so by failing to mention in § 1367 plaintiffs joined under Rule 20. Pet. App. 27a.[24]

In addition, statutes conferring diversity jurisdiction on the federal courts are subject to "strict construction," in order to accord "[d]ue regard for the rightful independence of state governments." *Snyder*, 394 U.S. at 340, quoting *Healy v. Ratta*, 292 U.S. 263, 270 (1934).

Finally, "[t]here is no canon against using common sense in construing laws as saying what they obviously mean." *Koons*, 125 S. Ct. at 469, quoting *Roschen v. Ward*, 279 U.S. 337, 339 (1929) (Holmes, J.). Indeed, "[c]ommon sense is often more reliable than rote repetition of canons of statutory construction." *Id.* at 470 (Stevens, J., concurring). As Judge Pollak observed, to adopt Petitioners' position "is to say to Congress: 'We know what you meant to say, but you didn't quite say it. So the message from us in the judicial branch to you in the legislative branch is: 'Gotcha! And better luck next time.'" *Russ v. State Farm Mut. Auto. Ins. Co.*, 961 F. Supp. 808, 820 (E.D. Pa. 1997), quoted in *Meritcare*, 166 F.3d at 221.

II. THE LEGISLATIVE HISTORY STRONGLY SUPPORTS THE CONCLUSION THAT § §1367 PRESERVES THE COMPLETE DIVERSITY AND MATTER-IN-CONTROVERSY REQUIRE-MENTS

While the courts of appeals have arrived at different conclusions concerning the "plain meaning" of § 1367, there is widespread agreement that its legislative history shows that Congress intended to preserve the matter-in-controversy

---

[24] *See* David L. Shapiro, *Continuity and Change in Statutory Interpretation*, 67 N.Y.U. L. REV. 921, 925 (1992) ("the dominant theme running through most interpretive [canons] . . . is that close questions of construction should be resolved in favor of continuity and against change").

and complete diversity requirements in diversity cases.[25] The House Report (which was adopted by the Senate) describes § 1367 as "noncontroversial" and "relatively modest." H.R. REP. NO. 101-734, at 15 (1990). It states that the purpose of § 1367 is to "authorize jurisdiction in a case like *Finley*, as well as essentially restore the pre-*Finley* understandings of the authorization for and limits on other forms of supplemental jurisdiction." *Id.* at 28. And it states that district courts may not "exercise supplemental jurisdiction . . . when doing so would be inconsistent with the jurisdictional requirements of the diversity statute." *Id.*

The origins of § 1367 can be traced to the Federal Courts Study Committee ("Study Committee" or "Committee"), a 15-member committee established by Congress in 1988 to study the federal courts and make recommendations for improvements. *See* 28 U.S.C. § 331 (1988). The Study Committee concluded that the federal courts faced an "impending crisis" because of their growing caseload. *Report of the Federal Courts Study Committee*, Part I, 4-10 (1990) ("Study Committee Report"). The Committee recommended measures to reduce the federal caseload, including "abolishing federal diversity jurisdiction," with limited exceptions. Study Committee Report, Part I, at 14. Among the Study Committee's other recommendations was that Congress respond to "[r]ecent decisions of the Supreme Court [that] raise doubts about the scope of pendent party and

---

[25] *See* Pet. App. 30a (legislative history "strongly corroborates" conclusion that § 1367 preserves *Zahn*); *Meritcare*, 166 F.3d at 222 (legislative history "leaves no doubt that Congress intended *Zahn*'s restrictions to remain in effect"); *Leonhardt*, 160 F.3d at 640 ("legislative history . . . supports . . .interpretation" that *Zahn* is preserved). The courts of appeals that have reached the opposite conclusion generally have dealt with the legislative history by refusing to consider it. *See Abbott Labs.*, 51 F.3d at 528; *Stromberg Metal Works*, 77 F.3d at 931; *Gibson*, 261 F.3d at 939.

ancillary jurisdiction under existing federal statutes." Study Committee Report, Part II, at 47.[26]

Following the release of the Study Committee Report, the four congressional members of the Committee drafted a bill incorporating many of the Report's recommendations, including a provision on supplemental jurisdiction. *See* H.R. 5381, 101st Cong., § 120 (July 26, 1990). This draft provision expressly applied both to federal question and diversity cases, and would also have allowed federal courts to exercise supplemental jurisdiction over a plaintiff's claims against a nondiverse, third-party defendant, thereby overruling *Owen Equip. See id.*, § 120(a)(2).[27]

---

[26] A subcommittee of the Study Committee initially proposed a draft supplemental jurisdiction provision that would have applied in diversity cases as well as federal question cases and, the subcommittee believed, would have "overrule[d] *Zahn.*" *Report to the Federal Courts Study Committee of the Subcommittee on the Role of the Federal Courts and Their Relationship to the States,* 561 n.33 (1990), *reprinted in* 1 Federal Courts Study Comm., *Working Papers and Subcommittee Reports* (1990) ("Subcommittee Report"). However, the subcommittee's proposal was not accepted by the full Committee. *See* Study Committee Report, Part II, at 47-48; *see also Federal Courts Study Comm. Implementation Act & Civil Justice Reform Act: Hearing on H.R. 5381 & H.R. 3898 Before the Subcomm. on Courts, Intellectual Property & the Admin. of Justice of the House Comm. on the Judiciary*, 101st Cong., 94 (1990) (statement of Judge Joseph F. Weis, Jr., Chairman, Federal Courts Study Committee) ("[t]he Study Committee did not intend to encourage additional diversity litigation" where "complete diversity does not exist" or where "[the] other requirements of 28 U.S.C. § 1332 have not been met").

[27] The draft provision, § 120(a)(2), stated:

> If the original Federal claim in a civil action is founded solely on diversity of citizenship under section 1332, the original plaintiff may assert a non-Federal claim under paragraph (1) only against the original defendant or against a party or person who has been brought into the action by a party or person other than the plaintiff, unless the action was removed from a State court.

In a hearing on the bill before the House Subcommittee on Courts, Judge Joseph Weis, Jr., the Chairman of the Study Committee, objected to the supplemental jurisdiction provision because, "[a]s presently drafted, that section would enlarge the jurisdiction of the federal courts." *Federal Courts Study Comm. Implementation Act & Civil Justice Reform Act: Hearing on H.R. 5381 & H.R. 3898 Before the Subcomm. on Courts, Intellectual Property & the Admin. of Justice of the House Comm. on the Judiciary,* 101st Cong., 28 (1990) (hereinafter "Hearing"). (Statement of Judge Joseph F. Weis, Jr.). Judge Weis explained that the draft provision did not require that additional claims must first meet the jurisdictional requirements of § 1332: "Thus," he observed, "the statute would change the doctrine of complete diversity articulated in *Strawbridge v. Curtiss,* 3 Cranch 267 [(1806),] and *Owen Equipment & Erection Co. v. Kroger,* 437 U.S. 365 (1978). The Study Committee did not intend to encourage additional diversity litigation in that fashion." *Id.* at 94. Judge Weis proposed a new provision that would allow federal courts to exercise supplemental jurisdiction over related claims "in any civil action on a claim for which the district courts have original jurisdiction," and that would prohibit courts from exercising jurisdiction in diversity cases over claims by plaintiffs against persons added under Rules 14 and 19, or over claims by persons added under Rule 24 when doing so "would be inconsistent with the complete diversity requirement of section 1332." *Id.* at 98.

The subcommittee accordingly revised the provision on supplemental jurisdiction and reported the bill to the full Judiciary Committee. *See* H.R 5381, 101st Cong., § 114 (Sept. 27, 1990). Importantly, the revised provision, which ultimately became § 1367, was even more restrictive than Judge Weis's version in two respects. *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." *Id.* Omission of the phrase "on a claim" made clear that the district court must have original jurisdiction over a "civil action," not just a single "claim" within the action, before it can exercise supplemental jurisdiction. *Id. 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 *jurisdictional* requirements" – not just the "*complete diversity* requirement" – of § 1332. *Id.* (emphasis added). This change preserved both the matter-in-controversy requirement and the complete diversity requirement of § 1332.

Section § 1367(b) "is cast in a form – references by number to various Federal Rules of Civil Procedure – that makes the text, read in isolation, almost impenetrable to any audience other than specialists in civil procedure in the federal courts." *Russ*, 961 F. Supp. at 819 (Pollak, J.). Consequently, virtually all the members of Congress would have needed an "extrinsic aid to understanding" the text of § 1367. *Id.* Precisely such an aid to understanding was provided in the form of a House Subcommittee Report on the draft bill.[28] The Report explains that the bill's purpose "is to implement several of the more noncontroversial recommendations of the Federal Courts Study Committee," and it describes these recommendations as "relatively modest proposals." H.R. REP. NO. 101-734, at 15. In the section-by-section analysis of the bill, the Report states that the purpose of the supplemental jurisdiction provision, now § 1367, is to "authorize jurisdiction in a case like *Finley*, as well as essentially restore the pre-*Finley* understandings of the authorization for and limits on other forms of supplemental jurisdiction." *Id.* at 28. "In federal question cases," the Report explains, the statute "broadly authorizes the district

[28] The Senate Judiciary Committee adopted the House Report. *See* 136 Cong. Rec. S17580-81 (daily ed. Oct. 27, 1990).

courts to exercise supplemental jurisdiction over additional claims, including claims involving the joinder of additional parties." *Id.* "In diversity cases," in contrast, "the district courts may exercise supplemental jurisdiction, except when doing so would be inconsistent with the jurisdictional requirements of the diversity statute." *Id.* The Report explains that "[t]he net effect of subsection (b) is to implement the principal rationale of *Owen Equipment*." *Id.* at 29 n.16. The Report goes on to state:

> In diversity-only actions the district courts may not hear plaintiffs' supplemental claims when exercising supplemental jurisdiction would encourage plaintiffs to evade the jurisdictional requirement of 28 U.S.C. § 1332 by the simple expedient of naming initially only those defendants whose joinder satisfies section 1332's requirements and later adding claims not within original federal jurisdiction against other defendants who have intervened or been joined on a supplemental basis. In accord with case law, the subsection also prohibits the joinder or intervention of persons [or] plaintiffs if adding them is inconsistent with section 1332's requirements. The section is not intended to affect the jurisdictional requirements of 28 U.S.C. § 1332 in diversity-only class actions, as those requirements were interpreted prior to Finley." *Id.* at 29. (citing *Supreme Tribe of Ben Hur v. Cable*, 255 U.S. 356 (1921); and *Zahn v. Int'l Paper Co.*, 414 US. 291 (1973)).[29]

[29] The Report refers specifically to diversity-only class actions in order to make clear that Congress intended to preserve not only *Zahn* but also *Ben* (continued...)

This legislative history strongly reinforces the textual interpretation set forth above. If § 1367 alters the long-settled rules of *Strawbridge*, *Clark*, and *Zahn*, it is hardly a "noncontroversial" and "relatively modest" provision. Any such change goes well beyond "essentially restor[ing] the pre-*Finley* understandings of . . . supplemental jurisdiction." And overruling *Zahn* is quite different from having no effect on *Zahn*.[30]

III. THE JURISDICTIONAL REQUIREMENTS OF § 1332 REGULATE THE CASELOAD OF THE FEDERAL COURTS AND FURTHER IMPORTANT PRINCIPLES OF FEDERALISM

Petitioners contend (Br. 42-46) that reading § 1367 expansively will promote judicial efficiency. But "efficiency . . . is not the only consideration a federal court should take into account in assessing the presence or absence of jurisdiction." *Aldinger*, 427 U.S. at 15 (internal quotation and citation omitted). "Especially is this true where, as here, the efficiency plaintiff seeks so avidly is available without question in the state courts." *Id.* Accordingly, "neither the convenience of litigants nor considerations of judicial economy can suffice . . . [t]o allow the requirement of complete diversity to be circumvented." *Owen Equip.*, 437

Hur, a case that is limited to the class-action context. The Report leaves no doubt that Congress intended to preserve the jurisdictional requirements of § 1332 in *all* diversity actions, not merely in class actions.

[30] Petitioners cite statements of law professors who played a role in drafting § 1367 as evidence that the reference to *Zahn* was inserted into the legislative history in order to change, rather than explain, the meaning of the statutory text. Pet. Br. 49; *see also Rosmer*, 263 F.3d at 121. The professors are not legislators, and in any event they said only that the text *could* be read to overrule *Zahn*, not that it *should* or *must* be read that way. *See* Thomas D. Rowe, et al., *Compounding or Creating Confusion about Supplemental Jurisdiction? A Reply to Professor Freer*, 40 EMORY L.J. 943, 960 n.90 (1991).

U.S. at 377 (internal citations omitted). Petitioners agree that efficiency considerations do not justify departures from complete diversity. *See* Pet. Br. 44-45. The same considerations apply to the matter-in-controversy requirement.

The complete diversity and matter-in-controversy requirements play a critical role in limiting the caseload of the federal courts. Weakening the matter-in-controversy rule would "add to the burdens of an already overloaded federal court system" and "seriously undercut the purpose of the jurisdictional amount requirement," which was "to check, to some degree, the rising caseload of the federal courts, especially with regard to . . . diversity of citizenship jurisdiction" *Snyder*, 394 U.S. at 340. Similarly, weakening the complete diversity requirement "could transfer into the federal courts numerous local controversies involving exclusively questions of state law." *Id.*

In fiscal year 2004, 60,334 diversity actions were filed in the federal courts, representing more than 23 percent of all civil actions filed in federal court and nearly 30 percent of civil filings excluding prisoner petitions.[31] Since 2001, diversity actions have increased by more than 23 percent, from 48,998 filings in the 12 months ending in September 2001 to the 60,334 cases filed in the 12 months ending in March 2004.[32] These statistics actually understate the burden

---

[31] In the 12-month period ending March 31, 2004, a total of 255,851 civil cases were filed in federal district courts, of which 60,334 were based on diversity jurisdiction and 53,138 were prisoner petitions. *See* Admin. Office of the U.S. Courts, *Federal Judicial Caseload Statistics*, Table C-2 (2004), *available at* www.uscourts.gov/caseload2004/ tables/CO2Mar04 .pdf (last visited Jan. 17, 2005).

[32] *See* Admin. Office of the U.S. Courts, *Judicial Facts and Figures,* Table 2.1 (2003), *available at* www.uscourts.gov/judicialfactsfigures/ table2.01.pdf (last visited January 17, 2005); *see also*, note 31 *supra.* For Fiscal Year 2004, both total civil filings and diversity filings rose 11 percent from Fiscal Year 2003. *See 2004 Year-End Report on the* (continued...)

that diversity cases place on the federal courts. The Federal Courts Study Committee concluded that "[d]iversity cases account for about half the civil trials in federal court, and they frequently generate complex procedural and jurisdictional problems, making them more time-consuming and expensive to process than similar claims in the state courts." Study Committee Report, Parts I, II, at 3, 41. A 1988 study estimated that the burden of adjudicating diversity cases was equal to the workload of 193 district judges and 22 court of appeals judges. Federal Judicial Center, *The Budgetary Impact of Possible Changes in Diversity Jurisdiction* 8 (1988).

While roughly 60,000 diversity cases represents a large percentage of the federal courts' total caseload, this number is dwarfed by the number of civil actions filed in state courts. In 2002 (the most recent year for which statistics are available), "over *16 million* civil cases were filed in state courts," including *7.7 million* cases filed in state courts of general jurisdiction.[33] If watering down the jurisdictional requirements of § 1332 were to divert even a small percentage of these millions of state court civil actions into the federal courts, the federal judicial system could easily be overwhelmed.[34]

Federal Judiciary 9 & n.1. The Administrative Office estimates that, unless actions are taken to limit further diversity jurisdiction, annual diversity filings will increase to 113,200 by 2010 and 214,500 by 2020. *Long Range Plan for the Federal Courts*, 166 F.R.D. 49, 75 (1995) (Table 3).

[33] National Center for State Courts, *Examining the Work of State Courts* 18 (2003) (emphasis added), *available at* www.ncsconline.org/D_Research/csp/2003-Files/2003_civil.pdf (last visited Jan. 17, 2005); *id.* at 11. Civil filings in state courts "have risen steadily" in recent years, *id.* at 18, so the totals for 2003 and 2004 are likely even higher.

[34] Although the lower court decisions holding that § 1367 abrogates the requirement that each plaintiff must satisfy the matter-in-controversy rule do not appear to have been followed by huge increases in diversity (continued...)

Weakening the jurisdictional requirements of § 1332 would also raise serious federalism concerns. This Court has recognized that "[d]ue regard for the rightful independence of state governments" requires "strict construction" of § 1332. *Snyder*, 394 U.S. at 340, quoting *Healy v. Ratta*, 292 U.S. at 270. *See also City of Indianapolis v. Chase Nat'l Bank*, 314 U.S. 63, 76 (1941) (Congress has "jealous[ly] restrict[ed]" diversity jurisdiction to "avoid[] offense to state sensitiveness" and to "reliev[e] the federal courts of the overwhelming burden of business that intrinsically belongs to the state courts in order to keep them free for their distinctive federal business.") (internal citations omitted). Expanding diversity jurisdiction "would be destructive of the dignity and prestige of state courts, harmful to the federal courts, and disruptive of federal-state relationships." American Law Institute, STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS, 103 (1969). State courts would suffer because "[t]he diversion of state law litigation to federal tribunals . . . retards the formation and development of state law." *Id.* at 99. *See also* Henry J. Friendly, FEDERAL JURISDICTION: A GENERAL VIEW, 143 (1970) (exercise of diversity jurisdiction "postpones an authoritative decision by the state courts"). Federal courts would also be harmed. Under *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 79 (1938), federal courts sitting in diversity are required to predict the decision of the highest state court, and thus must "exhaustively dissect each piece of evidence thought to cast light on what the highest state court would ultimately decide." Friendly, *supra,* at 142. Moreover, when federal courts decide cases arising under state law without the possibility of state review, "the state's judicial power is

---

filings, it is important to recognize that: (i) all but one of these decisions (*Stromberg*) apply only to class actions; (ii) no court of appeals has clearly announced that § 1367 abrogates the complete diversity rule for plaintiffs; and (iii) diversity filings are affected by other factors, including the increase in the matter-in-controversy requirement in 1996.

less extensive than its legislative power," resulting in "an undesirable interference with state autonomy" ALI Study, *supra,* at 99.[35]

Petitioners acknowledge the "danger" that plaintiffs will "boot-strap into federal court controversies that lack diversity of citizenship." Pet. Br. 44. The United States, in contrast, assures the Court that there is "no cause for concern" if § 1367 is held to "erode the rule of *Strawbridge*." U.S. Br. 24. But there most certainly is cause for concern if the number of diversity cases in the federal courts is substantially increased. As noted above, diversity cases currently represent about 30 percent of non-prisoner civil actions filed in the federal courts, but this is *less than one percent* of the civil actions filed in state courts of general jurisdiction. Thus, for each one percent of state court civil actions that are diverted to federal court, the current diversity caseload of the federal courts will more than double.

The government's reasons for assuring the Court that there is no cause for concern are unconvincing. *First*, the government notes (U.S. Br. 24) that § 1367(b) would preserve *Strawbridge* in some circumstances. For example, it would not allow the joinder of a nondiverse defendant under Rule 20. This does not eliminate any cause for concern, however, because *Strawbridge* would not be preserved in

---

[35] The Federal Courts Study Committee has not been alone in calling for the abolition or substantial reduction of diversity jurisdiction. *See, e.g., Long Range Plan for the Federal Courts*, 166 F.R.D. 49, 89-92 (1995) (recommending that Congress act to reduce the number of diversity cases because they require a "massive diversion" of federal judges from their "principal function" of adjudicating federal question cases); ALI, *supra,* at 99-100 (1969); Felix Frankfurter, *Distribution of Judicial Power Between United States and State Courts*, 13 CORNELL L.Q. 499, 521 (1928); Friendly, *supra*, at 149; David P. Currie, *The Federal Courts and the American Law Institute*, 36 U. CHI. L. REV. 1 (1968); Charles A. Wright, *Restructuring Federal Jurisdiction: The American Law Institute Proposals*, 26 WASH. & LEE L. REV. 185, 194 (1969).

other circumstances, *e.g.*, on the plaintiff's side it would substitute minimal for complete diversity.

Second, the government asserts (*id.*) that minimal rather than complete diversity is already permitted "on a much broader scale" in the class action context. It is hard to see how this can be so. It is true that class actions typically include many plaintiffs in a single action, but there are literally millions of nonclass actions in state court. In addition, diversity jurisdiction in class actions is limited by the rule of *Zahn*, which the government argues was also swept away by § 1367.

Third, the government notes (*id.* at 25) that the district court has discretion under § 1367(c) to decline to exercise supplemental jurisdiction in certain cases. But discretion under subsection (c) is limited, and frequently would not provide a basis for refusing to exercise supplemental jurisdiction in diversity actions. *See, e.g., Abbott Labs.*, 51 F.3d at 529 (holding that district court abused its discretion in declining to exercise supplemental jurisdiction). In short, if § 1367 is interpreted to loosen the jurisdictional requirements for diversity actions in federal court, there is substantial cause for concern.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

Robert A. Long, Jr.
Counsel of Record
Jeremy D. Kernodle
Covington & Burling
1201 Pennsylvania Ave., NW
Washington, DC 20004
(202) 662-6000

David C. Indiano
Indiano & Williams, P.S.C.
207 Del Parque St., 3rd Floor
San Juan, Puerto Rico 00912
(787) 641-4545

David J. Herman
National Food Processors Association
1350 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 639-5950

Scott T. Rickman
Del Monte Foods
One Market @ The Landmark
San Francisco, CA 94105
(412) 247-3265

APPENDIX

STATUTES AND RULES INVOLVED

1. Title 28, United States Code, provides in part:

§ 1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
(3) the district court has dismissed all claims over which it has original jurisdiction, or
(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

§ 1332. Diversity of citizenship; amount in controversy; costs

(a) 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 interest and costs, and is between--
(1) citizens of different States;
(2) citizens of a State and citizens or subjects of a foreign state;
(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title--

(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be

a citizen only of the same State as the infant or incompetent.

(d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division

embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e)(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if--

(A) the action could have been brought in a United States district court under section 1369 of this title; or

(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.

The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.

(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(j) has made a liability determination requiring further

proceedings as to damages, the district court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.

(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination shall not be subject to further review by appeal or otherwise.

(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1369 of this title for purposes of this section and sections 1407, 1697, and 1785 of this title.

(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.

(f) The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in such civil action because the State court

from which such civil action is removed did not have jurisdiction over that claim.

2. The Federal Rules of Civil Procedure provide in part:

Rule 14. Third-Party Practice

(a) **When Defendant May Bring in Third Party.** At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move

to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant. The third-party complaint, if within the admiralty and maritime jurisdiction, may be in rem against a vessel, cargo, or other property subject to admiralty or maritime process in rem, in which case references in this rule to the summons include the warrant of arrest, and references to the third-party plaintiff or defendant include, where appropriate, a person who asserts a right under Supplemental Rule C(6)(b)(i) in the property arrested.

(b) **When Plaintiff May Bring in Third Party.** When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) **Admiralty and Maritime Claims.** When a plaintiff asserts an admiralty or maritime claim within the meaning of Rule 9(h), the defendant or person who asserts a right under Supplemental Rule C(6)(b)(i), as a third-party plaintiff, may bring in a third-party defendant who may be wholly or partly liable, either to the plaintiff or to the third-party plaintiff, by way of remedy over, contribution, or otherwise on account of the same transaction, occurrence, or series of transactions or occurrences. In such a case the third-party plaintiff may also demand judgment against the third-party defendant in favor of the plaintiff, in which event the third-party defendant shall make any defenses to the claim of the plaintiff as well as to that of the third-party plaintiff in the manner provided in Rule 12 and the action shall proceed as if the plaintiff

had commenced it against the third-party defendant as well as the third-party plaintiff.

Rule 19. Joinder of Persons Needed for Just Adjudication

(a) **Persons to be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) **Determination by Court Whenever Joinder not Feasible.** If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by

protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) **Pleading Reasons for Nonjoinder.** A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as prescribed in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) **Exception of Class Actions.** This rule is subject to the provisions of Rule 23.

Rule 20. Permissive Joinder of Parties

(a) **Permissive Joinder.** All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons (and any vessel, cargo or other property subject to admiralty process in rem) may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) **Separate Trials.** The court may make such orders as will prevent a party from being embarrassed, delayed,

or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

Rule 24. Intervention

(a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) **Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) **Procedure.** A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor

and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action in which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C. § 2403. When the constitutionality of any statute of a State affecting the public interest is drawn in question in any action in which that State or any agency, officer, or employee thereof is not a party, the court shall notify the attorney general of the State as provided in Title 28, U.S.C. § 2403. A party challenging the constitutionality of legislation should call the attention of the court to its consequential duty, but failure to do so is not a waiver of any constitutional right otherwise timely asserted.