# Civil Procedure
# Fall 2016
# Professor Lonny Hoffman

# Section 6
# (CM Pages 415 – 494)

**Subject Matter Jurisdiction**
**Questions to Discuss**
**(Note: these questions cover several classes)**

Subject Matter Jurisdiction, Generally

1. Personal jurisdiction concerns the power of a court to enter judgment against a particular defendant. By contrast, can you articulate what fundamental question subject matter jurisdiction entails?

2. In this course, we will (mostly) not cover the subject matter jurisdiction of state courts, but you should be able to understand the difference between how subject matter jurisdiction is divided in state court as compared with federal court.

3. What do we mean by exclusive federal subject matter jurisdiction? And what do we mean by concurrent subject matter jurisdiction?

4. Just as there are constitutional and statutory on personal jurisdiction, so too are the sources of federal subject matter jurisdiction both constitutional and statutory. Be sure you can identify all of these sources. (Another way to ask this: When we say that federal courts are courts of limited jurisdiction, what does this mean?)

5. A related question: when we say that subject matter jurisdiction cannot be waived, what do we mean? And why is it that we treat subject matter jurisdiction differently than personal jurisdiction, which can be waived?

6. For litigants, what are the practical implications of guessing wrong about the existence of federal subject matter jurisdiction?

Diversity Jurisdiction

1. What is the complete diversity requirement and where does it come from? If Congress wanted to allow the federal courts to hear a case with less than complete diversity, could it?

2. How do we determine the citizenship of parties for diversity jurisdiction purposes?

3. For individual, natural persons, how is domicile different from residence?

4. How do we determine the citizenship of a corporation for diversity purposes? (Related question: can you distinguish between a corporation's "principal place of business" for subject matter jurisdiction purposes and the inquiry into whether a corporation is subject to general personal jurisdiction in a forum because it has its principal place of business there?)

5. Scenario: P (alleges citizenship of Texas) files suit in state court against D1 (P alleges citizenship of New York) and D2 (P alleges citizenship of Texas).

   a. If D removes the case to federal court, who has the burden of proving federal subject matter jurisdiction exists?

   b. How would D establish that subject matter jurisdiction exists in this case? (Related question: what is the fraudulent joinder doctrine?)

6. Scenario: P (alleges citizenship of Texas) files suit in state court against D (P alleges citizenship of New York).

   a. May D remove the case to federal court?

   b. If D does remove the case, who has the burden of proving federal subject matter jurisdiction exists?

   c. If D removes the case, and P wants it remanded to state court, what options does P have?

7. Scenario: P (alleges citizenship of Texas) files suit in federal court against D (P alleges citizenship of New York).

   a. Who has the burden of proving federal subject matter jurisdiction exists?

   b. May D ask the court to remand the case to state court?

8. If a plaintiff sues in federal court for more than $75,000, but ultimately recovers less than $75,000, is the judgment subject to being set aside for lack of subject matter jurisdiction?

Federal Question Jurisdiction

1. With one short-lived exception, there was no general grant of federal subject matter jurisdiction over federal question cases until 1875. Where did someone who had a private right of action to assert under a federal statute go to seek relief?

2. What do we mean by saying that federal jurisdiction exists only when "a federal question is presented on the face of the plaintiff's properly pleaded complaint" (i.e., a "well-pleaded complaint")?

3. A federal statute might or might not provide an express grant of original jurisdiction to the federal courts. A federal statute might or might not provide a private right of action. What is the strongest case for finding section 1331 has been satisfied? What is the weakest?

4. Scenario: P files suit in federal court alleging federal question jurisdiction under section 1331.

   a. Who has the burden of proving the existence of federal subject matter jurisdiction?

   b. If D seeks dismissal, D really only has two options. What are they? (Hint: one concerns the WPCR; the other concerns the Court's decision in Bell v. Hood.)

5. Scenario: P files suit in state court alleging a cause of action under a federal statute. D removes the case to federal court.

   a. Who has the burden of proving the existence of subject matter jurisdiction?

   b. If P seeks remand on the ground that state courts possess concurrent jurisdiction over claims arising under this law, what result?

6. Scenario: P files suit in state court alleging a cause of action under state law. D removes the case to federal court.

   a. Who has the burden of proving the existence of subject matter jurisdiction?

   b. In this scenario, what is our starting presumption as to federal question jurisdiction? What is the primary common law test used in applying this starting presumption?

   c. If D wants the case to remain in federal court, what must D show? (Hint: D really has only two options here, and both concern the "artful pleading" doctrine)

      1. What is the difference between "ordinary" preemption and "complete" preemption?

      2. What is the *Grable* test for substantial federal question jurisdiction?

489 F.2d 1396 (1974)

**Jean Paul MAS and Judy Mas, Plaintiffs-Appellees,**

**v.**

**Oliver H. PERRY, Defendant-Appellant.**

No. 73-3008 Summary Calendar.[*]

**United States Court of Appeals, Fifth Circuit.**

February 22, 1974.
Rehearing and Rehearing Denied April 3, 1974.

1398 *1397 *1398 Sylvia Roberts, John L. Avant, Baton Rouge, La., for defendant-appellant.

Dennis R. Whalen, Baton Rouge, La., for plaintiffs-appellees.

Before WISDOM, AINSWORTH and CLARK, Circuit Judges.

Rehearing and Rehearing En Banc Denied April 3, 1974.

AINSWORTH, Circuit Judge:

This case presents questions pertaining to federal diversity jurisdiction under 28 U.S.C. § 1332, which, pursuant to article III, section II of the Constitution, provides for original jurisdiction in federal district courts of all civil actions that are between, *inter alia,* citizens of different States or citizens of a State and citizens of foreign states and in which the amount in controversy is more than $10,000.

Appellees Jean Paul Mas, a citizen of France, and Judy Mas were married at her home in Jackson, Mississippi. Prior to their marriage, Mr. and Mrs. Mas were graduate assistants, pursuing coursework as well as performing teaching duties, for approximately nine months and one year, respectively, at Louisiana State University in Baton Rouge, Louisiana. Shortly after their marriage, they returned to Baton Rouge to resume their duties as graduate assistants at LSU. They remained in Baton Rouge for approximately two more years, after which they moved to Park Ridge, Illinois. At the time of the trial in this case, it was their intention to return to Baton Rouge while Mr. Mas finished his studies for the degree of Doctor of Philosophy. Mr. and Mrs. Mas were undecided as to where they would reside after that.

Upon their return to Baton Rouge after their marriage, appellees rented an apartment from appellant Oliver H. Perry, a citizen of Louisiana. This appeal arises from a final judgment entered on a jury verdict awarding $5,000 to Mr. Mas and $15,000 to Mrs. Mas for damages incurred by them as a result of the discovery that their bedroom and bathroom contained "two-way" mirrors and that they had been watched through them by the appellant during three of the first four months of their marriage.

At the close of the appellees' case at trial, appellant made an oral motion to dismiss for lack of jurisdiction.[1] The motion was denied by the district court. Before this Court, appellant challenges the final judgment below solely on jurisdictional grounds, contending that appellees failed to prove diversity of citizenship among the parties and that the requisite jurisdictional amount is lacking with respect to Mr. Mas. Finding no merit to these contentions, we affirm. Under section 1332(a) (2), the federal judicial power extends to the claim of Mr. Mas, a citizen of France, against the appellant, a citizen of Louisiana. Since we conclude that Mrs. Mas is a citizen of Mississippi for diversity purposes, the district court also properly had jurisdiction under section 1332(a)(1) of her claim.

1399 It has long been the general rule that complete diversity of parties is *1399 required in order that diversity jurisdiction obtain; that is, no party on one side may be a citizen of the same State as any party on the other side. Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267, 2 L.Ed. 435 (1806); *see* cases cited in 1 W. Barron & A. Holtzoff, Federal Practice and

Procedure § 26, at 145 n. 95 (Wright ed. 1960). This determination of one's State citizenship for diversity purposes is controlled by federal law, not by the law of any State. 1 J. Moore, Moore's Federal Practice ¶ 0.74 [1], at 707.1 (1972). As is the case in other areas of federal jurisdiction, the diverse citizenship among adverse parties must be present at the time the complaint is filed. Mullen v. Torrance, 22 U.S. (9 Wheat.) 537, 539, 6 L.Ed. 154, 155 (1824); Slaughter v. Toye Bros. Yellow Cab Co., 5 Cir., 1966, 359 F.2d 954, 956. Jurisdiction is unaffected by subsequent changes in the citizenship of the parties. Morgan's Heirs v. Morgan, 15 U.S. (2 Wheat.) 290, 297, 4 L.Ed. 242, 244 (1817); Clarke v. Mathewson, 37 U.S. (12 Pet.) 164, 171, 9 L.Ed. 1041, 1044 (1838); Smith v. Sperling, 354 U.S. 91, 93 n. 1, 77 S.Ct. 1112, 1113 n. 1, 1 L.Ed. 2d 1205 (1957). The burden of pleading the diverse citizenship is upon the party invoking federal jurisdiction, *see* Cameron v. Hodges, 127 U.S. 322, 8 S.Ct. 1154, 32 L.Ed. 132 (1888); and if the diversity jurisdiction is properly challenged, that party also bears the burden of proof, McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 56 S.Ct. 780, 80 L.Ed. 1135 (1936); Welsh v. American Surety Co. of New York, 5 Cir., 1951, 186 F.2d 16, 17.

To be a citizen of a State within the meaning of section 1332, a natural person must be both a citizen of the United States, *see* Sun Printing & Publishing Association v. Edwards, 194 U.S. 377, 383, 24 S.Ct. 696, 698, 48 L.Ed. 1027 (1904); U.S.Const. Amend. XIV, § 1; and a domiciliary of that State. *See* Williamson v. Osenton, 232 U.S. 619, 624, 34 S.Ct. 442, 58 L.Ed. 758 (1914); Stine v. Moore, 5 Cir., 1954, 213 F.2d 446, 448. For diversity purposes, citizenship means domicile; mere residence in the State is not sufficient. *See* Wolfe v. Hartford Life & Annuity Ins. Co., 148 U.S. 389, 13 S.Ct. 602, 37 L.Ed. 493 (1893); Stine v. Moore, 5 Cir., 1954, 213 F.2d 446, 448.

A person's domicile is the place of "his true, fixed, and permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom . . . ." Stine v. Moore, 5 Cir., 1954, 213 F.2d 446, 448. A change of domicile may be effected only by a combination of two elements: (a) taking up residence in a different domicile with (b) the intention to remain there. Mitchell v. United States, 88 U.S. (21 Wall.) 350, 22 L.Ed. 584 (1875); Sun Printing & Publishing Association v. Edwards, 194 U.S. 377, 24 S.Ct. 696, 48 L.Ed. 1027 (1904).

It is clear that at the time of her marriage, Mrs. Mas was a domiciliary of the State of Mississippi. While it is generally the case that the domicile of the wife—and, consequently, her State citizenship for purposes of diversity jurisdiction—is deemed to be that of her husband, 1 J. Moore, Moore's Federal Practice ¶ 0.74 [6.-1], at 708.51 (1972), we find no precedent for extending this concept to the situation here, in which the husband is a citizen of a foreign state but resides in the United States. Indeed, such a fiction would work absurd results on the facts before us. If Mr. Mas were considered a domiciliary of France—as he would be since he had lived in Louisiana as a student-teaching assistant prior to filing this suit, *see* Chicago & Northwestern Railway Co. v. Ohle, 117 U.S. 123, 6 S.Ct. 632, 29 L.Ed. 837 (1886); Bell v. Milsak, W.D.La., 1952, 106 F.Supp. 219—then Mrs. Mas would also be deemed a domiciliary, and thus,
1400 fictionally at least, a citizen of France. She would not be a citizen of any State and could *1400 not sue in a federal court on that basis; nor could she invoke the alienage jurisdiction to bring her claim in federal court, since she is not an alien. *See* C. Wright, Federal Courts 80 (1970). On the other hand, if Mrs. Mas's domicile were Louisiana, she would become a Louisiana citizen for diversity purposes and could not bring suit with her husband against appellant, also a Louisiana citizen, on the basis of diversity jurisdiction. These are curious results under a rule arising from the theoretical identity of person and interest of the married couple. *See* Linscott v. Linscott, S. D.Iowa, 1951, 98 F.Supp. 802, 804; Juneau v. Juneau, 227 La. 921, 80 So.2d 864, 867 (1954).

Mrs. Mas's Mississippi domicile was disturbed neither by her year in Louisiana prior to her marriage nor as a result of the time she and her husband spent at LSU after their marriage, since for both periods she was a graduate assistant at LSU. *See* Chicago & Northwestern Railway Co. v. Ohle, 117 U.S. 123, 6 S.Ct. 632, 29 L.Ed. 837 (1886). Though she testified that after her marriage she had no intention of returning to her parents' home in Mississippi, Mrs. Mas did not effect a change of domicile since she and Mr. Mas were in Louisiana only as students and lacked the requisite intention to remain there. *See* Hendry v. Masonite Corp., 5 Cir., 1972, 455 F.2d 955, cert. denied, 409 U. S. 1023, 93 S.Ct. 464,

34 L.Ed.2d 315. Until she acquires a new domicile, she remains a domiciliary, and thus a citizen, of Mississippi. *See* Mitchell v. United States, 88 U.S. (21 Wall.) 350, 352, 22 L.Ed. 584, 587-588 (1875); Sun Printing & Publishing Association v. Edwards, 194 U.S. 377, 383, 24 S.Ct. 696, 698, 48 L.Ed. 1027 (1904); Welsh v. American Security Co. of New York, 5 Cir., 1951, 186 F.2d 16, 17.[2]

Appellant also contends that Mr. Mas's claim should have been dismissed for failure to establish the requisite jurisdictional amount for diversity cases of more than $10,000. In their complaint Mr. and Mrs. Mas alleged that they had each been damaged in the amount of $100,000. As we have noted, Mr. Mas ultimately recovered $5,000.

It is well settled that the amount in controversy is determined by the amount claimed by the plaintiff in good faith. KVOS, Inc. v. Associated Press, 299 U.S. 269, 57 S.Ct. 197, 81 L.Ed. 183 (1936); 1 J. Moore, Moore's Federal Practice ¶ 0.92 [1] (1972). Federal jurisdiction is not lost because a judgment of less than the jurisdictional amount is awarded. Jones v. Landry, 5 Cir., 1967, 387 F.2d 102; C. Wright, Federal Courts 111 (1970). That Mr. Mas recovered only $5,000 is, therefore, not compelling. As the Supreme Court stated in St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 288-290, 58 S.Ct. 586, 590-591, 82 L.Ed. 845:

> [T]he sum claimed by the plaintiff controls if the claim is apparently made in good faith.
>
> It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify
> 1401 dismissal. The inability of the plaintiff *1401 to recover an amount adequate to give the court jurisdiction does not show his bad faith or oust the jurisdiction. . . .
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> . . . His good faith in choosing the federal forum is open to challenge not only by resort to the face of his complaint, but by the facts disclosed at trial, and if from either source it is clear that his claim never could have amounted to the sum necessary to give jurisdiction there is no injustice in dismissing the suit.

Having heard the evidence presented at the trial, the district court concluded that the appellees properly met the requirements of section 1332 with respect to jurisdictional amount. Upon examination of the record in this case, we are also satisfied that the requisite amount was in controversy. *See* Jones v. Landry, 5 Cir., 1967, 387 F.2d 102.

Thus the power of the federal district court to entertain the claims of appellees in this case stands on two separate legs of diversity jurisdiction: a claim by an alien against a State citizen; and an action between citizens of different States. We also note, however, the propriety of having the federal district court entertain a spouse's action against a defendant, where the district court already has jurisdiction over a claim, arising from the same transaction, by the other spouse against the same defendant. *See* ALI Study of the Division of Jurisdiction Between State and Federal Courts, pt. I, at 9-10. (Official Draft 1965.) In the case before us, such a result is particularly desirable. The claims of Mr. and Mrs. Mas arise from the same operative facts, and there was almost complete interdependence between their claims with respect to the proof required and the issues raised at trial. Thus, since the district court had jurisdiction of Mr. Mas's action, sound judicial administration militates strongly in favor of federal jurisdiction of Mrs. Mas's claim.

Affirmed.

[*] Rule 18, 5 Cir.; see Isbell Enterprises, Inc. v. Citizens Casualty Company of New York et al., 5 Cir., 1970, 431 F.2d 409, Part I.

[1] The motion was actually made just prior to the testimony of appellees' last witness, but for purposes of the record counsel stipulated and the court approved that the motion would be considered to have been made at the close of appellees' case.

[2] The original complaint in this case was filed within several days of Mr. and Mrs. Mas's realization that they had been watched through the mirrors, quite some time before they moved to Park Ridge, Illinois. Because the district court's jurisdiction is not affected by actions of the parties subsequent to the commencement of the suit, *see* C. Wright, Federal Courts 93 (1970), page 1400 *supra,* the testimony concerning Mr. and Mrs. Mas's moves after that time is not determinative of the issue of diverse citizenship, though it is of interest insofar as it supports their lack of intent to remain permanently in Louisiana.

# SUPREME COURT OF THE UNITED STATES

No. 08–1107

THE HERTZ CORPORATION, PETITIONER *v.*
MELINDA FRIEND ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[February 23, 2010]

JUSTICE BREYER delivered the opinion of the Court.

The federal diversity jurisdiction statute provides that "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.*" 28 U. S. C. §1332(c)(1) (emphasis added). We seek here to resolve different interpretations that the Circuits have given this phrase. In doing so, we place primary weight upon the need for judicial administration of a jurisdictional statute to remain as simple as possible. And we conclude that the phrase "principal place of business" refers to the place where the corporation's high level officers direct, control, and coordinate the corporation's activities. Lower federal courts have often metaphorically called that place the corporation's "nerve center." See, *e.g.*, *Wisconsin Knife Works* v. *National Metal Crafters*, 781 F. 2d 1280, 1282 (CA7 1986); *Scot Typewriter Co.* v. *Underwood Corp.*, 170 F. Supp. 862, 865 (SDNY 1959) (Weinfeld, J.). We believe that the "nerve center" will typically be found at a corporation's headquarters.

I

In September 2007, respondents Melinda Friend and John Nhieu, two California citizens, sued petitioner, the Hertz Corporation, in a California state court. They sought damages for what they claimed were violations of California's wage and hour laws. App. to Pet. for Cert. 20a. And they requested relief on behalf of a potential class composed of California citizens who had allegedly suffered similar harms.

Hertz filed a notice seeking removal to a federal court. 28 U. S. C. §§1332(d)(2), 1441(a). Hertz claimed that the plaintiffs and the defendant were citizens of different States. §§1332(a)(1), (c)(1). Hence, the federal court possessed diversity-of-citizenship jurisdiction. Friend and Nhieu, however, claimed that the Hertz Corporation was a California citizen, like themselves, and that, hence, diversity jurisdiction was lacking.

To support its position, Hertz submitted a declaration by an employee relations manager that sought to show that Hertz's "principal place of business" was in New Jersey, not in California. The declaration stated, among other things, that Hertz operated facilities in 44 States; and that California—which had about 12% of the Nation's population, Pet. for Cert. 8—accounted for 273 of Hertz's 1,606 car rental locations; about 2,300 of its 11,230 full-time employees; about $811 million of its $4.371 billion in annual revenue; and about 3.8 million of its approximately 21 million annual transactions, *i.e.*, rentals. The declaration also stated that the "leadership of Hertz and its domestic subsidiaries" is located at Hertz's "corporate headquarters" in Park Ridge, New Jersey; that its "core executive and administrative functions . . . are carried out" there and "to a lesser extent" in Oklahoma City, Oklahoma; and that its "major administrative operations . . . are found" at those two locations. App. to Pet. for Cert. 26a–30a.

The District Court of the Northern District of California accepted Hertz's statement of the facts as undisputed. But it concluded that, given those facts, Hertz was a citizen of California. In reaching this conclusion, the court applied Ninth Circuit precedent, which instructs courts to identify a corporation's "principal place of business" by first determining the amount of a corporation's business activity State by State. If the amount of activity is "significantly larger" or "substantially predominates" in one State, then that State is the corporation's "principal place of business." If there is no such State, then the "principal place of business" is the corporation's "'nerve center,'" *i.e.*, the place where "'the majority of its executive and administrative functions are performed.'" *Friend* v. *Hertz*, No. C–07–5222 MMC (ND Cal., Jan. 15, 2008), p. 3 (hereinafter Order); *Tosco Corp.* v. *Communities for a Better Environment*, 236 F. 3d 495, 500–502 (CA9 2001) *(per curiam)*.

Applying this test, the District Court found that the "plurality of each of the relevant business activities" was in California, and that "the differential between the amount of those activities" in California and the amount in "the next closest state" was "significant." Order 4. Hence, Hertz's "principal place of business" was California, and diversity jurisdiction was thus lacking. The District Court consequently remanded the case to the state courts.

III

We begin our "principal place of business" discussion with a brief review of relevant history. The Constitution provides that the "judicial Power shall extend" to "Controversies . . . between Citizens of different States." Art. III, §2. This language, however, does not automatically confer diversity jurisdiction upon the federal courts. Rather, it authorizes Congress to do so and, in doing so, to determine the scope of the federal courts' jurisdiction within constitutional limits. *Kline* v. *Burke Constr. Co.*, 260 U. S. 226, 233–234 (1922); *Mayor* v. *Cooper*, 6 Wall. 247, 252 (1868).

Congress first authorized federal courts to exercise diversity jurisdiction in 1789 when, in the First Judiciary Act, Congress granted federal courts authority to hear suits "between a citizen of the State where the suit is brought, and a citizen of another State." §11, 1 Stat. 78. The statute said nothing about corporations. In 1809, Chief Justice Marshall, writing for a unanimous Court, described a corporation as an "invisible, intangible, and artificial being" which was "certainly not a citizen." *Bank of United States* v. *Deveaux*, 5 Cranch 61, 86 (1809). But the Court held that a corporation could invoke the federal courts' diversity jurisdiction based on a pleading that the corporation's shareholders were all citizens of a different State from the defendants, as "the term citizen ought to be understood as it is used in the constitution, and as it is used in other laws. That is, to describe the real persons who come into court, in this case, under their corporate name." *Id.*, at 91–92.

In *Louisville, C. & C. R. Co.* v. *Letson*, 2 How. 497

(1844), the Court modified this initial approach. It held that a corporation was to be deemed an artificial person of the State by which it had been created, and its citizenship for jurisdictional purposes determined accordingly. *Id.*, at 558–559. Ten years later, the Court in *Marshall* v. *Baltimore & Ohio R. Co.*, 16 How. 314 (1854), held that the reason a corporation was a citizen of its State of incorporation was that, for the limited purpose of determining corporate citizenship, courts could conclusively (and artificially) presume that a corporation's *shareholders* were citizens of the State of incorporation. *Id.*, at 327–328. And it reaffirmed *Letson*. 16 How., at 325–326. Whatever the rationale, the practical upshot was that, for diversity purposes, the federal courts considered a corporation to be a citizen of the State of its incorporation. 13F C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure §3623, pp. 1–7 (3d ed. 2009) (hereinafter Wright & Miller).

In 1928 this Court made clear that the "state of incorporation" rule was virtually absolute. It held that a corporation closely identified with State A could proceed in a federal court located in that State as long as the corporation had filed its incorporation papers in State B, perhaps a State where the corporation did no business at all. See *Black and White Taxicab & Transfer Co.* v. *Brown and Yellow Taxicab & Transfer Co.*, 276 U. S. 518, 522–525 (refusing to question corporation's reincorporation motives and finding diversity jurisdiction). Subsequently, many in Congress and those who testified before it pointed out that this interpretation was at odds with diversity jurisdiction's basic rationale, namely, opening the federal courts' doors to those who might otherwise suffer from local prejudice against out-of-state parties. See, *e.g.*, S. Rep. No. 530, 72d Cong., 1st Sess., 2, 4–7 (1932). Through its choice of the State of incorporation, a corporation could manipulate federal-court jurisdiction, for example, opening the federal courts' doors in a State where it conducted nearly all its

business by filing incorporation papers elsewhere. *Id.*, at 4 ("Since the Supreme Court has decided that a corporation is a citizen . . . it has become a common practice for corporations to be incorporated in one State while they do business in another. And there is no doubt but that it often occurs simply for the purpose of being able to have the advantage of choosing between two tribunals in case of litigation"). See also Hearings on S. 937 et al. before a Subcommittee of the Senate Committee on the Judiciary, 72d Cong., 1st Sess., 4–5 (1932) (Letter from Sen. George W. Norris to Attorney General William D. Mitchell (May 24, 1930)) (citing a "common practice for individuals to incorporate in a foreign State simply for the purpose of taking litigation which may arise into the Federal courts"). Although various legislative proposals to curtail the corporate use of diversity jurisdiction were made, see, *e.g.*, S. 937, S. 939, H. R. 11508, 72d Cong., 1st Sess. (1932), none of these proposals were enacted into law.

At the same time as federal dockets increased in size, many judges began to believe those dockets contained too many diversity cases. A committee of the Judicial Conference of the United States studied the matter. See Reports of the Proceedings of the Regular Annual Meeting and Special Meeting (Sept. 24–26 & Mar. 19–20, 1951), in H. R. Doc. No. 365, 82d Cong., 2d Sess., pp. 26–27 (1952). And on March 12, 1951, that committee, the Committee on Jurisdiction and Venue, issued a report (hereinafter Mar. Committee Rept.).

Among its observations, the committee found a general need "to prevent frauds and abuses" with respect to jurisdiction. *Id.*, at 14. The committee recommended against eliminating diversity cases altogether. *Id.*, at 28. Instead it recommended, along with other proposals, a statutory amendment that would make a corporation a citizen both of the State of its incorporation and any State from which it received more than half of its gross income. *Id.*, at 14–

15 (requiring corporation to show that "less than fifty per cent of its gross income was derived from business transacted within the state where the Federal court is held"). If, for example, a citizen of California sued (under state law in state court) a corporation that received half or more of its gross income from California, that corporation would not be able to remove the case to federal court, even if Delaware was its State of incorporation.

During the spring and summer of 1951 committee members circulated their report and attended circuit conferences at which federal judges discussed the report's recommendations. Reflecting those criticisms, the committee filed a new report in September, in which it revised its corporate citizenship recommendation. It now proposed that "'a corporation shall be deemed a citizen of the state of its original creation . . . [and] shall also be deemed a citizen of a state where it has its principal place of business.'" Judicial Conference of the United States, Report of the Committee on Jurisdiction and Venue 4 (Sept. 24, 1951) (hereinafter Sept. Committee Rept.)—the source of the present-day statutory language. See Hearings on H. R. 2516 et al. before Subcommittee No. 3 of the House Committee on the Judiciary, 85th Cong., 1st Sess., 9 (1957) (hereinafter House Hearings). The committee wrote that this new language would provide a "simpler and more practical formula" than the "gross income" test. Sept. Committee Rept. 2. It added that the language "ha[d] a precedent in the jurisdictional provisions of the Bankruptcy Act." *Id.*, at 2–3.

In mid-1957 the committee presented its reports to the House of Representatives Committee on the Judiciary. House Hearings 9–27; see also H. Rep. No. 1706, 85th Cong., 2d Sess., 27–28 (1958) (hereinafter H. R. Rep. 1706) (reprinting Mar. and Sept. Committee Repts.); S. Rep. No. 1830, 85th Cong., 2d Sess., 15–31 (1958) (hereinafter S. Rep. 1830) (same). Judge Albert Maris, representing

Judge John Parker (who had chaired the Judicial Conference Committee), discussed various proposals that the Judicial Conference had made to restrict the scope of diversity jurisdiction. In respect to the "principal place of business" proposal, he said that the relevant language "ha[d] been defined in the Bankruptcy Act." House Hearings 37. He added:

> "All of those problems have arisen in bankruptcy cases, and as I recall the cases—and I wouldn't want to be bound by this statement because I haven't them before me—I think the courts have generally taken the view that where a corporation's interests are rather widespread, the principal place of business is an actual rather than a theoretical or legal one. It is the actual place where its business operations are coordinated, directed, and carried out, which would ordinarily be the place where its officers carry on its day-to-day business, where its accounts are kept, where its payments are made, and not necessarily a State in which it may have a plant, if it is a big corporation, or something of that sort.
>
> "But that has been pretty well worked out in the bankruptcy cases, and that law would all be available, you see, to be applied here without having to go over it again from the beginning." *Ibid.*

The House Committee reprinted the Judicial Conference Committee Reports along with other reports and relevant testimony and circulated it to the general public "for the purpose of inviting further suggestions and comments." *Id.*, at III. Subsequently, in 1958, Congress both codified the courts' traditional place of incorporation test and also enacted into law a slightly modified version of the Conference Committee's proposed "principal place of business" language. A corporation was to "be deemed a citizen of any State by which it has been incorporated and of the

State where it has its principal place of business." §2, 72 Stat. 415.

V

A

In an effort to find a single, more uniform interpretation of the statutory phrase, we have reviewed the Courts of Appeals' divergent and increasingly complex interpretations. Having done so, we now return to, and expand, Judge Weinfeld's approach, as applied in the Seventh Circuit. See, *e.g.*, *Scot Typewriter Co.*, 170 F. Supp., at 865; *Wisconsin Knife Works*, 781 F. 2d, at 1282. We conclude that "principal place of business" is best read as referring to the place where a corporation's officers direct, control, and coordinate the corporation's activities. It is the place that Courts of Appeals have called the corporation's "nerve center." And in practice it should normally be the place where the corporation maintains its headquarters—provided that the headquarters is the actual center of direction, control, and coordination, *i.e.*, the "nerve center," and not simply an office where the corporation holds its board meetings (for example, attended by directors and officers who have traveled there for the occasion).

Three sets of considerations, taken together, convince us that this approach, while imperfect, is superior to other possibilities. First, the statute's language supports the approach. The statute's text deems a corporation a citizen of the "State where it has its principal place of business." 28 U. S. C. §1332(c)(1). The word "place" is in the singular, not the plural. The word "principal" requires us to pick out the "main, prominent" or "leading" place. 12 Oxford English Dictionary 495 (2d ed. 1989) (def. (A)(1)(2)). Cf. *Commissioner* v. *Soliman*, 506 U. S. 168, 174 (1993) (interpreting "principal place of business" for tax purposes to require an assessment of "whether any one business location is the 'most important, consequential, or influential' one"). And the fact that the word "place" follows the words "State where" means that the "place" is a place *within* a State. It is not the State itself.

A corporation's "nerve center," usually its main headquarters, is a single place. The public often (though not always) considers it the corporation's main place of business. And it is a place within a State. By contrast, the

application of a more general business activities test has led some courts, as in the present case, to look, not at a particular place within a State, but incorrectly at the State itself, measuring the total amount of business activities that the corporation conducts there and determining whether they are "significantly larger" than in the next-ranking State. 297 Fed. Appx. 690.

This approach invites greater litigation and can lead to strange results, as the Ninth Circuit has since recognized. Namely, if a "corporation may be deemed a citizen of California on th[e] basis" of "activities [that] roughly reflect California's larger population . . . nearly every national retailer—no matter how far flung its operations—will be deemed a citizen of California for diversity purposes." *Davis* v. *HSBC Bank Nev., N. A.*, 557 F. 3d 1026, 1029–1030 (2009). But why award or decline diversity jurisdiction on the basis of a State's population, whether measured directly, indirectly (say proportionately), or with modifications?

Second, administrative simplicity is a major virtue in a jurisdictional statute. *Sisson* v. *Ruby*, 497 U. S. 358, 375 (1990) (SCALIA, J., concurring in judgment) (eschewing "the sort of vague boundary that is to be avoided in the area of subject-matter jurisdiction wherever possible"). Complex jurisdictional tests complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims. Cf. *Navarro Savings Assn.* v. *Lee*, 446 U. S. 458, 464, n. 13 (1980). Complex tests produce appeals and reversals, encourage gamesmanship, and, again, diminish the likelihood that results and settlements will reflect a claim's legal and factual merits. Judicial resources too are at stake. Courts have an independent obligation to determine whether subject-matter jurisdiction exists, even when no party challenges it. *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, 514 (2006) (citing *Ruhrgas AG* v. *Marathon Oil*

*Co.*, 526 U. S. 574, 583 (1999)). So courts benefit from straightforward rules under which they can readily assure themselves of their power to hear a case. *Arbaugh*, *supra*, at 514.

Simple jurisdictional rules also promote greater predictability. Predictability is valuable to corporations making business and investment decisions. Cf. *First Nat. City Bank* v. *Banco Para el Comercio Exterior de Cuba*, 462 U. S. 611, 621 (1983) (recognizing the "need for certainty and predictability of result while generally protecting the justified expectations of parties with interests in the corporation"). Predictability also benefits plaintiffs deciding whether to file suit in a state or federal court.

A "nerve center" approach, which ordinarily equates that "center" with a corporation's headquarters, is simple to apply *comparatively speaking*. The metaphor of a corporate "brain," while not precise, suggests a single location. By contrast, a corporation's general business activities more often lack a single principal place where they take place. That is to say, the corporation may have several plants, many sales locations, and employees located in many different places. If so, it will not be as easy to determine which of these different business locales is the "principal" or most important "place."

Third, the statute's legislative history, for those who accept it, offers a simplicity-related interpretive benchmark. The Judicial Conference provided an initial version of its proposal that suggested a numerical test. A corporation would be deemed a citizen of the State that accounted for more than half of its gross income. Mar. Committee Rept. 14–15; see *supra*, at 8. The Conference changed its mind in light of criticism that such a test would prove too complex and impractical to apply. Sept. Committee Rept. 2; see also H. Rep. 1706, at 28; S. Rep. 1830, at 31. That history suggests that the words "principal place of business" should be interpreted to be no more complex than

the initial "half of gross income" test. A "nerve center" test offers such a possibility. A general business activities test does not.

B

We recognize that there may be no perfect test that satisfies all administrative and purposive criteria. We recognize as well that, under the "nerve center" test we adopt today, there will be hard cases. For example, in this era of telecommuting, some corporations may divide their command and coordinating functions among officers who work at several different locations, perhaps communicating over the Internet. That said, our test nonetheless points courts in a single direction, towards the center of overall direction, control, and coordination. Courts do not have to try to weigh corporate functions, assets, or revenues different in kind, one from the other. Our approach provides a sensible test that is relatively easier to apply, not a test that will, in all instances, automatically generate a result.

We also recognize that the use of a "nerve center" test may in some cases produce results that seem to cut against the basic rationale for 28 U. S. C. §1332, see *supra*, at 6. For example, if the bulk of a company's business activities visible to the public take place in New Jersey, while its top officers direct those activities just across the river in New York, the "principal place of business" is New York. One could argue that members of the public in New Jersey would be *less* likely to be prejudiced against the corporation than persons in New York—yet the corporation will still be entitled to remove a New Jersey state case to federal court. And note too that the same corporation would be unable to remove a New York state case to federal court, despite the New York public's presumed prejudice against the corporation.

We understand that such seeming anomalies will arise.

However, in view of the necessity of having a clearer rule, we must accept them. Accepting occasionally counterintuitive results is the price the legal system must pay to avoid overly complex jurisdictional administration while producing the benefits that accompany a more uniform legal system.

The burden of persuasion for establishing diversity jurisdiction, of course, remains on the party asserting it. *Kokkonen* v. *Guardian Life Ins. Co. of America*, 511 U. S. 375, 377 (1994); *McNutt* v. *General Motors Acceptance Corp.*, 298 U. S. 178, 189 (1936); see also 13E Wright & Miller §3602.1, at 119. When challenged on allegations of jurisdictional facts, the parties must support their allegations by competent proof. *McNutt*, *supra*, at 189; 15 Moore's §102.14, at 102–32 to 102–32.1. And when faced with such a challenge, we reject suggestions such as, for example, the one made by petitioner that the mere filing of a form like the Securities and Exchange Commission's Form 10–K listing a corporation's "principal executive offices" would, without more, be sufficient proof to establish a corporation's "nerve center." See, *e.g.*, SEC Form 10–K, online at http://www.sec.gov/about/forms/form10-k.pdf. (as visited Feb. 19, 2010, and available in Clerk of Court's case file). Cf. *Dimmitt & Owens Financial, Inc.* v. *United States*, 787 F. 2d 1186, 1190–1192 (CA7 1986) (distinguishing "principal executive office" in the tax lien context, see 26 U. S. C. §6323(f)(2), from "principal place of business" under 28 U. S. C. §1332(c)). Such possibilities would readily permit jurisdictional manipulation, thereby subverting a major reason for the insertion of the "principal place of business" language in the diversity statute. Indeed, if the record reveals attempts at manipulation—for example, that the alleged "nerve center" is nothing more than a mail drop box, a bare office with a computer, or the location of an annual executive retreat—the courts should instead take as the "nerve center" the

place of actual direction, control, and coordination, in the absence of such manipulation.

VI

Petitioner's unchallenged declaration suggests that Hertz's center of direction, control, and coordination, its "nerve center," and its corporate headquarters are one and the same, and they are located in New Jersey, not in California. Because respondents should have a fair opportunity to litigate their case in light of our holding, however, we vacate the Ninth Circuit's judgment and remand the case for further proceedings consistent with this opinion.

*It is so ordered.*

211 U.S. 149 (1908)

# LOUISVILLE AND NASHVILLE RAILROAD COMPANY
v.
# MOTTLEY.

No. 37.

**Supreme Court of United States.**

Argued October 13, 1908.
Decided November 16, 1908.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

151 *151 *Mr. Henry Lane Stone* for appellant.

*Mr. Lewis McQuown* and *Mr. Clarence U. McElroy* for appellees.

By leave of court, *Mr. L.A. Shaver,* in behalf of The Interstate Commerce Commission, submitted a brief as *amicus curioe.*

MR. JUSTICE MOODY, after making the foregoing statement, delivered the opinion of the court.

Two questions of law were raised by the demurrer to the bill, were brought here by appeal, and have been argued before us. They are, first, whether that part of the act of Congress of June 29, 1906 (34 Stat. 584), which forbids the giving of free passes or the collection of any different compensation for transportation of passengers than that specified in the tariff filed, makes it unlawful to perform a contract for transportation of persons, who in good faith, before the passage of the act, had accepted such contract in satisfaction of a valid cause of action against the railroad; and,
152 second, whether the statute, if it should be construed to render such a contract unlawful, is in *152 violation of the Fifth Amendment of the Constitution of the United States. We do not deem it necessary, however, to consider either of these questions, because, in our opinion, the court below was without jurisdiction of the cause. Neither party has questioned that jurisdiction, but it is the duty of this court to see to it that the jurisdiction of the Circuit Court, which is defined and limited by statute, is not exceeded. This duty we have frequently performed of our own motion. *Mansfield, &c. Railway Company* v. *Swan,* 111 U.S. 379, 382; *King Bridge Company* v. *Otoe County,* 120 U.S. 225; *Blacklock* v. *Small,* 127 U.S. 96, 105; *Cameron* v. *Hodges,* 127 U.S. 322, 326; *Metcalf* v. *Watertown,* 128 U.S. 586, 587; *Continental National Bank* v. *Buford,* 191 U.S. 119.

There was no diversity of citizenship and it is not and cannot be suggested that there was any ground of jurisdiction, except that the case was a "suit . . . arising under the Constitution and laws of the United States." Act of August 13, 1888, c. 866, 25 Stat. 433, 434. It is the settled interpretation of these words, as used in this statute, conferring jurisdiction, that a suit arises under the Constitution and laws of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or that Constitution. It is not enough that the plaintiff alleges some anticipated defense to his cause of action and asserts that the defense is invalidated by some provision of the Constitution of the United States. Although such allegations show that very likely, in the course of the litigation, a question under the Constitution would arise, they do not show that the suit, that is, the plaintiff's original cause of action, arises under the Constitution. In *Tennessee* v. *Union & Planters' Bank,* 152 U.S. 454, the plaintiff, the State of Tennessee, brought suit in the Circuit Court of the United States to recover from the defendant certain taxes alleged to be due under the laws of the State. The plaintiff alleged that the defendant claimed an immunity from the taxation by virtue of its charter, and that therefore the tax was void, because in violation of the provision of the Constitution of the
153 United *153 States, which forbids any State from passing a law impairing the obligation of contracts. The cause was held to be beyond the jurisdiction of the Circuit Court, the court saying, by Mr. Justice Gray (p. 464), "a suggestion of one party, that the other will or may set up a claim under the Constitution or laws of the United States, does not make

the suit one arising under that Constitution or those laws." Again, in *Boston & Montana Consolidated Copper & Silver Mining Company* v. *Montana Ore Purchasing Company*, 188 U.S. 632, the plaintiff brought suit in the Circuit Court of the United States for the conversion of copper ore and for an injunction against its continuance. The plaintiff then alleged, for the purpose of showing jurisdiction, in substance, that the defendant would set up in defense certain laws of the United States. The cause was held to be beyond the jurisdiction of the Circuit Court, the court saying, by Mr. Justice Peckham (pp. 638, 639).

"It would be wholly unnecessary and improper in order to prove complainant's cause of action to go into any matters of defence which the defendants might possibly set up and then attempt to reply to such defence, and thus, if possible, to show that a Federal question might or probably would arise in the course of the trial of the case. To allege such defence and then make an answer to it before the defendant has the opportunity to itself plead or prove its own defence is inconsistent with any known rule of pleading so far as we are aware, and is improper.

"The rule is a reasonable and just one that the complainant in the first instance shall be confined to a statement of its cause of action, leaving to the defendant to set up in his answer what his defence is and, if anything more than a denial of complainant's cause of action, imposing upon the defendant the burden of proving such defence.

"Conforming itself to that rule the complainant would not, in the assertion or proof of its cause of action, bring up a single Federal question. The presentation of its cause of action would not show that it was one arising under the Constitution or laws of the United States.

154 *154 "The only way in which it might be claimed that a Federal question was presented would be in the complainant's statement of what the defence of defendants would be and complainant's answer to such defence. Under these circumstances the case is brought within the rule laid down in *Tennessee* v. *Union & Planters' Bank*, 152 U.S. 454. That case has been cited and approved many times since, . . ."

The interpretation of the act which we have stated was first announced in *Metcalf* v. *Watertown*, 128 U.S. 586, and has since been repeated and applied in *Colorado Central Consolidated Mining Company* v. *Turck*, 150 U.S. 138, 142; *Tennessee* v. *Union & Planters' Bank*, 152 U.S. 454, 459; *Chappell* v. *Waterworth*, 155 U.S. 102, 107; *Postal Telegraph Cable Company* v. *Alabama*, 155 U.S. 482, 487; *Oregon Short Line & Utah Northern Railway Company* v. *Skottowe*, 162 U.S. 490, 494; *Walker* v. *Collins*, 167 U.S. 57, 59; *Muse* v. *Arlington Hotel Company*, 168 U.S. 430, 436; *Galveston &c. Railway* v. *Texas*, 170 U.S. 226, 236; *Third Street & Suburban Railway Company* v. *Lewis*, 173 U.S. 457, 460; *Florida Central & Peninsular Railroad Company* v. *Bell*, 176 U.S. 321, 327; *Houston & Texas Central Railroad Company* v. *Texas*, 177 U.S. 66, 78; *Arkansas* v. *Kansas & Texas Coal Company & San Francisco Railroad*, 183 U.S. 185, 188; *Vicksburg Waterworks Company* v. *Vicksburg*, 185 U.S. 65, 68; *Boston & Montana Consolidated Copper & Silver Mining Company* v. *Montana Ore Purchasing Company*, 188 U.S. 632, 639; *Minnesota* v. *Northern Securities Company*, 194 U.S. 48, 63; *Joy* v. *City of St. Louis*, 201 U.S. 332, 340; *Devine* v. *Los Angeles*, 202 U.S. 313, 334. The application of this rule to the case at bar is decisive against the jurisdiction of the Circuit Court.

It is ordered that the

*Judgment be reversed and the case remitted to the Circuit Court with instructions to dismiss the suit for want of jurisdiction.*

# SUPREME COURT OF THE UNITED STATES

No. 04–603

## GRABLE & SONS METAL PRODUCTS, INC., PETITIONER *v.* DARUE ENGINEERING & MANUFACTURING

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June 13, 2005]

JUSTICE SOUTER delivered the opinion of the Court.

The question is whether want of a federal cause of action to try claims of title to land obtained at a federal tax sale precludes removal to federal court of a state action with non-diverse parties raising a disputed issue of federal title law. We answer no, and hold that the national interest in providing a federal forum for federal tax litigation is sufficiently substantial to support the exercise of federal question jurisdiction over the disputed issue on removal, which would not distort any division of labor between the state and federal courts, provided or assumed by Congress.

I

In 1994, the Internal Revenue Service seized Michigan real property belonging to petitioner Grable & Sons Metal Products, Inc., to satisfy Grable's federal tax delinquency. Title 26 U. S. C. §6335 required the IRS to give notice of the seizure, and there is no dispute that Grable received actual notice by certified mail before the IRS sold the property to respondent Darue Engineering & Manufactur-

ing. Although Grable also received notice of the sale itself, it did not exercise its statutory right to redeem the property within 180 days of the sale, §6337(b)(1), and after that period had passed, the Government gave Darue a quitclaim deed. §6339.

Five years later, Grable brought a quiet title action in state court, claiming that Darue's record title was invalid because the IRS had failed to notify Grable of its seizure of the property in the exact manner required by §6335(a), which provides that written notice must be "given by the Secretary to the owner of the property [or] left at his usual place of abode or business." Grable said that the statute required personal service, not service by certified mail.

Darue removed the case to Federal District Court as presenting a federal question, because the claim of title depended on the interpretation of the notice statute in the federal tax law. The District Court declined to remand the case at Grable's behest after finding that the "claim does pose a significant question of federal law," Tr. 17 (Apr. 2, 2001), and ruling that Grable's lack of a federal right of action to enforce its claim against Darue did not bar the exercise of federal jurisdiction. On the merits, the court granted summary judgment to Darue, holding that although §6335 by its terms required personal service, substantial compliance with the statute was enough. 207 F. Supp. 2d 694 (WD Mich. 2002).

The Court of Appeals for the Sixth Circuit affirmed. 377 F. 3d 592 (2004). On the jurisdictional question, the panel thought it sufficed that the title claim raised an issue of federal law that had to be resolved, and implicated a substantial federal interest (in construing federal tax law). The court went on to affirm the District Court's judgment on the merits. We granted certiorari on the jurisdictional question alone,[1] 543 U. S. ___ (2005) to resolve a split

[1] Accordingly, we have no occasion to pass upon the proper interpre-

within the Courts of Appeals on whether *Merrell Dow Pharmaceuticals Inc.* v. *Thompson*, 478 U. S. 804 (1986), always requires a federal cause of action as a condition for exercising federal-question jurisdiction.[2] We now affirm.

II

Darue was entitled to remove the quiet title action if Grable could have brought it in federal district court originally, 28 U. S. C. §1441(a), as a civil action "arising under the Constitution, laws, or treaties of the United States," §1331. This provision for federal-question jurisdiction is invoked by and large by plaintiffs pleading a cause of action created by federal law (*e.g.*, claims under 42 U. S. C. §1983). There is, however, another longstanding, if less frequently encountered, variety of federal "arising under" jurisdiction, this Court having recognized for nearly 100 years that in certain cases federal question jurisdiction will lie over state-law claims that implicate significant federal issues. *E.g.*, *Hopkins* v. *Walker*, 244 U. S. 486, 490–491 (1917). The doctrine captures the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues. see ALI, Study of the Division of Jurisdiction Between State and Federal Courts 164–166 (1968).

The classic example is *Smith* v. *Kansas City Title & Trust Co.*, 255 U. S. 180 (1921), a suit by a shareholder claiming that the defendant corporation could not lawfully

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tation of the federal tax provision at issue here.

[2] Compare *Seinfeld* v. *Austen*, 39 F. 3d 761, 764 (CA7 1994) (finding that federal-question jurisdiction over a state-law claim requires a parallel federal private right of action), with *Ormet Corp.* v. *Ohio Power Co.*, 98 F. 3d 799, 806 (CA4 1996) (finding that a federal private action is not required).

buy certain bonds of the National Government because their issuance was unconstitutional. Although Missouri law provided the cause of action, the Court recognized federal-question jurisdiction because the principal issue in the case was the federal constitutionality of the bond issue. *Smith* thus held, in a somewhat generous statement of the scope of the doctrine, that a state-law claim could give rise to federal-question jurisdiction so long as it "appears from the [complaint] that the right to relief depends upon the construction or application of [federal law]." *Id.*, at 199.

The *Smith* statement has been subject to some trimming to fit earlier and later cases recognizing the vitality of the basic doctrine, but shying away from the expansive view that mere need to apply federal law in a state-law claim will suffice to open the "arising under" door. As early as 1912, this Court had confined federal-question jurisdiction over state-law claims to those that "really and substantially involv[e] a dispute or controversy respecting the validity, construction or effect of [federal] law." *Shulthis v. McDougal*, 225 U. S. 561, 569 (1912). This limitation was the ancestor of Justice Cardozo's later explanation that a request to exercise federal-question jurisdiction over a state action calls for a "common-sense accommodation of judgment to [the] kaleidoscopic situations" that present a federal issue, in "a selective process which picks the substantial causes out of the web and lays the other ones aside." *Gully v. First Nat. Bank in Meridian*, 299 U. S. 109, 117–118 (1936). It has in fact become a constant refrain in such cases that federal jurisdiction demands not only a contested federal issue, but a substantial one, indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum. *E.g.*, *Chicago v. International College of Surgeons*, 522 U. S. 156, 164 (1997); *Merrell Dow*, *supra*, at 814, and n. 12; *Franchise Tax Bd. of Cal. v. Construction Laborers*

*Vacation Trust for Southern Cal.*, 463 U. S. 1, 28 (1983).

But even when the state action discloses a contested and substantial federal question, the exercise of federal jurisdiction is subject to a possible veto. For the federal issue will ultimately qualify for a federal forum only if federal jurisdiction is consistent with congressional judgment about the sound division of labor between state and federal courts governing the application of §1331. Thus, *Franchise Tax Bd.* explained that the appropriateness of a federal forum to hear an embedded issue could be evaluated only after considering the "welter of issues regarding the interrelation of federal and state authority and the proper management of the federal judicial system." *Id.*, at 8. Because arising-under jurisdiction to hear a state-law claim always raises the possibility of upsetting the state-federal line drawn (or at least assumed) by Congress, the presence of a disputed federal issue and the ostensible importance of a federal forum are never necessarily dispositive; there must always be an assessment of any disruptive portent in exercising federal jurisdiction. See also *Merrell Dow*, *supra*, at 810.

These considerations have kept us from stating a "single, precise, all-embracing" test for jurisdiction over federal issues embedded in state-law claims between non-diverse parties. *Christianson* v. *Colt Industries Operating Corp.*, 486 U. S. 800, 821 (1988) (STEVENS, J., concurring). We have not kept them out simply because they appeared in state raiment, as Justice Holmes would have done, see *Smith*, *supra*, at 214 (dissenting opinion), but neither have we treated "federal issue" as a password opening federal courts to any state action embracing a point of federal law. Instead, the question is, does a state-law claim necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.

III

A

This case warrants federal jurisdiction. Grable's state complaint must specify "the facts establishing the superiority of [its] claim," Mich. Ct. Rule 3.411(B)(2)(c) (West 2005), and Grable has premised its superior title claim on a failure by the IRS to give it adequate notice, as defined by federal law. Whether Grable was given notice within the meaning of the federal statute is thus an essential element of its quiet title claim, and the meaning of the federal statute is actually in dispute; it appears to be the only legal or factual issue contested in the case. The meaning of the federal tax provision is an important issue of federal law that sensibly belongs in a federal court. The Government has a strong interest in the "prompt and certain collection of delinquent taxes," *United States* v. *Rodgers*, 461 U. S. 677, 709 (1983), and the ability of the IRS to satisfy its claims from the property of delinquents requires clear terms of notice to allow buyers like Darue to satisfy themselves that the Service has touched the bases necessary for good title. The Government thus has a direct interest in the availability of a federal forum to vindicate its own administrative action, and buyers (as well as tax delinquents) may find it valuable to come before judges used to federal tax matters. Finally, because it will be the rare state title case that raises a contested matter of federal law, federal jurisdiction to resolve genuine disagreement over federal tax title provisions will portend only a microscopic effect on the federal-state division of labor. See n. 3, *infra*.

This conclusion puts us in venerable company, quiet title actions having been the subject of some of the earliest exercises of federal-question jurisdiction over state-law claims. In *Hopkins*, 244 U. S., 490–491, the question was federal jurisdiction over a quiet title action based on the plaintiffs' allegation that federal mining law gave them

the superior claim. Just as in this case, "the facts showing the plaintiffs' title and the existence and invalidity of the instrument or record sought to be eliminated as a cloud upon the title are essential parts of the plaintiffs' cause of action."[4] *Id.*, at 490. As in this case again, "it is plain that a controversy respecting the construction and effect of the [federal] laws is involved and is sufficiently real and substantial." *Id.*, at 489. This Court therefore upheld federal jurisdiction in *Hopkins*, as well as in the similar quiet title matters of *Northern Pacific R. Co.* v. *Soderberg*, 188 U. S. 526, 528 (1903), and *Wilson Cypress Co.* v. *Del Pozo y Marcos*, 236 U. S. 635, 643–644 (1915). Consistent with those cases, the recognition of federal jurisdiction is in order here.

B

*Merrell Dow Pharmaceuticals Inc.* v. *Thompson*, 478 U. S. 804 (1986), on which Grable rests its position, is not to the contrary. *Merrell Dow* considered a state tort claim resting in part on the allegation that the defendant drug company had violated a federal misbranding prohibition, and was thus presumptively negligent under Ohio law. *Id.*, at 806. The Court assumed that federal law would have to be applied to resolve the claim, but after closely

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[4]The quiet title cases also show the limiting effect of the requirement that the federal issue in a state-law claim must actually be in dispute to justify federal-question jurisdiction. In *Shulthis* v. *McDougal*, 225 U. S. 561 (1912), this Court found that there was no federal question jurisdiction to hear a plaintiff's quiet title claim in part because the federal statutes on which title depended were not subject to "any controversy respecting their validity, construction, or effect." *Id.*, at 570. As the Court put it, the requirement of an actual dispute about federal law was "especially" important in "suit[s] involving rights to land acquired under a law of the United States," because otherwise "every suit to establish title to land in the central and western states would so arise [under federal law], as all titles in those States are traceable back to those laws." *Id.*, at 569–570.

examining the strength of the federal interest at stake and the implications of opening the federal forum, held federal jurisdiction unavailable. Congress had not provided a private federal cause of action for violation of the federal branding requirement, and the Court found "it would . . . flout, or at least undermine, congressional intent to conclude that federal courts might nevertheless exercise federal-question jurisdiction and provide remedies for violations of that federal statute solely because the violation . . . is said to be a . . . 'proximate cause' under state law." *Id.*, at 812.

Because federal law provides for no quiet title action that could be brought against Darue,[4] Grable argues that there can be no federal jurisdiction here, stressing some broad language in *Merrell Dow* (including the passage just quoted) that on its face supports Grable's position. see Note, Mr. *Smith* Goes to Federal Court: Federal Question Jurisdiction over State Law Claims Post-*Merrell Dow*, 115 Harv. L. Rev. 2272, 2280–2282 (2002) (discussing split in Circuit Courts over private right of action requirement after *Merrell Dow*). But an opinion is to be read as a whole, and *Merrell Dow* cannot be read whole as overturning decades of precedent, as it would have done by effectively adopting the Holmes dissent in *Smith*, see *supra*, at 5, and converting a federal cause of action from a sufficient condition for federal-question jurisdiction[5] into a necessary one.

In the first place, *Merrell Dow* disclaimed the adoption of any bright-line rule, as when the Court reiterated that

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[4] Federal law does provide a quiet title cause of action against the Federal Government. 28 U. S. C. §2410. That right of action is not relevant here, however, because the federal government no longer has any interest in the property, having transferred its interest to Darue through the quitclaim deed.

[5] For an extremely rare exception to the sufficiency of a federal right of action, see *Shoshone Mining Co. v. Rutter*, 177 U. S. 505, 507 (1900).

"in exploring the outer reaches of §1331, determinations about federal jurisdiction require sensitive judgments about congressional intent, judicial power, and the federal system." 478 U. S., at 810. The opinion included a lengthy footnote explaining that questions of jurisdiction over state-law claims require "careful judgments," *id.*, at 814, about the "nature of the federal interest at stake," *id.*, at 814, n. 12 (emphasis deleted). And as a final indication that it did not mean to make a federal right of action mandatory, it expressly approved the exercise of jurisdiction sustained in *Smith*, despite the want of any federal cause of action available to *Smith*'s shareholder plaintiff. 478 U. S., at 814, n. 12. *Merrell Dow* then, did not toss out, but specifically retained the contextual enquiry that had been *Smith*'s hallmark for over 60 years. At the end of *Merrell Dow*, Justice Holmes was still dissenting.

Accordingly, *Merrell Dow* should be read in its entirety as treating the absence of a federal private right of action as evidence relevant to, but not dispositive of, the "sensitive judgments about congressional intent" that §1331 requires. The absence of any federal cause of action affected *Merrell Dow*'s result two ways. The Court saw the fact as worth some consideration in the assessment of substantiality. But its primary importance emerged when the Court treated the combination of no federal cause of action and no preemption of state remedies for misbranding as an important clue to Congress's conception of the scope of jurisdiction to be exercised under §1331. The Court saw the missing cause of action not as a missing federal door key, always required, but as a missing welcome mat, required in the circumstances, when exercising federal jurisdiction over a state misbranding action would have attracted a horde of original filings and removal cases raising other state claims with embedded federal issues. For if the federal labeling standard without a federal cause of action could get a state claim into federal

court, so could any other federal standard without a federal cause of action. And that would have meant a tremendous number of cases.

One only needed to consider the treatment of federal violations generally in garden variety state tort law. "The violation of federal statutes and regulations is commonly given negligence per se effect in state tort proceedings."[6] Restatement (Third) of Torts (proposed final draft) §14, Comment *a*. See also W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Torts, §36, p. 221, n. 9 (5th ed. 1984) ("[T]he breach of a federal statute may support a negligence per se claim as a matter of state law" (collecting authority)). A general rule of exercising federal jurisdiction over state claims resting on federal mislabeling and other statutory violations would thus have heralded a potentially enormous shift of traditionally state cases into federal courts. Expressing concern over the "increased volume of federal litigation," and noting the importance of adhering to "legislative intent," *Merrell Dow* thought it improbable that the Congress, having made no provision for a federal cause of action, would have meant to welcome any state-law tort case implicating federal law "solely because the violation of the federal statute is said to [create] a rebuttable presumption [of negligence] ... under state law." 478 U. S., at 811–812 (internal quotation marks omitted). In this situation, no welcome mat meant keep out. *Merrell Dow*'s analysis thus fits within the framework of examining the importance of having a federal forum for the issue, and the consistency of such a forum with Congress's intended division of labor between state and federal courts.

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[6] Other jurisdictions treat a violation of a federal statute as evidence of negligence or, like Ohio itself in *Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U. S. 804 (1986), as creating a rebuttable presumption of negligence. Restatement (Third) of Torts (proposed final draft) §14 Comment c. Either approach could still implicate issues of federal law.

As already indicated, however, a comparable analysis yields a different jurisdictional conclusion in this case. Although Congress also indicated ambivalence in this case by providing no private right of action to Grable, it is the rare state quiet title action that involves contested issues of federal law, see n. 3, *supra*. Consequently, jurisdiction over actions like Grable's would not materially affect, or threaten to affect, the normal currents of litigation. Given the absence of threatening structural consequences and the clear interest the Government, its buyers, and its delinquents have in the availability of a federal forum, there is no good reason to shirk from federal jurisdiction over the dispositive and contested federal issue at the heart of the state-law title claim.[7]

IV

The judgment of the Court of Appeals, upholding federal jurisdiction over Grable's quiet title action, is affirmed.

*It is so ordered.*

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[7] At oral argument Grable's counsel espoused the position that after *Merrell Dow*, federal-question jurisdiction over state-law claims absent a federal right of action, could be recognized only where a constitutional issue was at stake. There is, however, no reason in text or otherwise to draw such a rough line. As *Merrell Dow* itself suggested, constitutional questions may be the more likely ones to reach the level of substantiality that can justify federal jurisdiction. 478 U. S., at 814, n. 12. But a flat ban on statutory questions would mechanically exclude significant questions of federal law like the one this case presents.

UNITED MINE WORKERS OF AMERICA, Petitioner,
v.
Paul GIBBS.

Argued Jan. 20, 1966.

Decided March 28, 1966.

Mr. Justice BRENNAN delivered the opinion of the Court.

Respondent Paul Gibbs was awarded compensatory and punitive damages in this action against petitioner United Mine Workers of America (NMW) for alleged violations of § 303 of the Labor Management Relations Act, 1947, 61 Stat. 158, as amended, [1] and of the common law of Tennessee. The case grew out of the rivalry between the United Mine Workers and the Southern Labor Union over representation of workers in the southern Appalachian coal fields. Tennessee Consolidated Coal Company, not a party here, laid off 100 miners of the UMW's Local 5881 when it closed one of its mines in southern Tennessee during the spring of 1960. Late that summer, Grundy Company, a wholly owned subsidiary of Consolidated, hired respondent as mine superintendent to attempt to open a new mine on Consolidated's property at nearby Gray's Creek through use of members of the Southern Labor Union. As part of the arrangement, Grundy also gave respondent a contract to haul the mine's coal to the nearest railroad loading point.

On August 15 and 16, 1960, armed members of Local 5881 forcibly prevented the opening of the mine, threatening respondent and beating an organizer for the rival union. [2] The members of the local believed Consolidated had promised them the jobs at the new mine; they insisted that if anyone would do the work, they would. At this time, no representative of the UMW, their international union, was present. George Gilbert, the UMW's field representative for the area including Local 5881, was away at Middlesboro, Kentucky, attending an Executive Board meeting when the members of the local discovered Grundy's plan; [3] he did not return to the area until late in the day of August 16. There was uncontradicted testimony that he first learned of the violence while at the meeting, and returned with explicit instructions from his international union superiors to establish a limited picket line, to prevent any further violence, and to see to it that the strike did not spread to neighboring mines. There was no further violence at the mine site; a picket line was maintained there for nine months; and no further attempts were made to open the mine during that period. [4]

Respondent lost his job as superintendent, and never entered into performance of his haulage contract. He testified that he soon began to lose other trucking contracts and mine leases he held in nearby areas. Claiming these effects to be the result of a concerted union plan against him, he sought recovery not against Local 5881 or its members, but only against petitioner, the international union. The suit was brought in the United States District Court for the Eastern District of Tennessee, see, and jurisdiction was premised on allegations of secondary boycotts under s 303. The state law claim, for which jurisdiction was based upon the doctrine of pendent jurisdiction, asserted 'an unlawful conspiracy and an unlawful boycott aimed at him and (Grundy) to maliciously, wantonly and willfully interfere with his contract of employment and with his contract of haulage.' [5]

The trial judge refused to submit to the jury the claims of pressure intended to cause mining firms other than Grundy to cease doing business with Gibbs; he found those claims unsupported by the evidence. The jury's verdict was that the UMW had violated both § 303 and state law. Gibbs was awarded $60,000 as damages under the employment contract and $14,500 under the haulage contract; he was also awarded $100,000 punitive damages. On motion, the trial court set aside the award of damages with respect to the haulage contract on the ground that damage was unproved. It also held that union pressure on Grundy to discharge respondent as supervisor would constitute only a primary dispute with Grundy, as respondent's employer, and hence was not cognizable as a claim under § 303. Interference with the employment relationship was cognizable as a state claim, however, and a remitted award was sustained on the state law claim. [6] 220 F.Supp. 871. The Court of Appeals for the Sixth Circuit affirmed, 343 F.2d 609. We granted certiorari. 382 U.S. 809, 86 S.Ct. 59, 15 L.Ed.2d 58. We reverse.

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With the adoption of the Federal Rules of Civil Procedure and the unified form of action, Fed.Rule Civ.Proc. 2, much of the controversy over 'cause of action' abated. The phrase remained as the keystone of the Hurn test, however, and, as commentators have noted, [9] has been the source of considerable confusion. Under the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged. [10] Yet because the Hurn question involves issues of jurisdiction as well as convenience, there has been some tendency to limit its application to cases in which the state and federal claims are, as in Hurn, 'little more than the equivalent of different epithets to characterize the same group of circumstances.' 289 U.S., at 246, 53 S.Ct. at 590. [11]

This limited approach is unnecessarily grudging. Pendent 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, or which shall be made, under their Authority * * *,' U.S.Const., Art. III, § 2, 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.' [12] The federal claim must have substance sufficient to confer subject matter jurisdiction on the court. Levering & Garriques Co. v. Morrin,289 U.S. 103, 53 S.Ct. 549, 77 L.Ed. 1062. The state and federal claims must derive from a common nucleus of operative fact. But if, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is power in federal courts to hear the whole. [13]

That power need not be exercised in every case in which it is found to exist. It has consistently been recognized that pendent jurisdiction is a doctrine of discretion, not of plaintiff's right. [14] Its justification lies in considerations of judicial economy, convenience and fairness to litigants; if these are not present a federal court should hesitate to exercise jurisdiction over state claims, even though bound to apply state law to them, Erie R. Co. v. Tompkins,304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188. Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. [15] Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well. [16] Similarly, if it appears that the state issues substantially predominate, whether in terms of proof, of the scope of the issues raised, or of the comprehensiveness of the remedy sought, the state claims may be dismissed without prejudice and left for resolution to state tribunals. There may, on the other hand, be situations in which the state claim is so closely tied to questions of federal policy that the argument for exercise of pendent jurisdiction is particularly strong. In the present case, for example, the allowable scope of the state claim implicates the federal doctrine of pre-emption; while this interrelationship does not create statutory federal question jurisdiction, Louisville & N.R. Co. v. Mottley,211 U.S. 149, 29 S.Ct. 42, 53 L.Ed. 126, its existence is relevant to the exercise of discretion. Finally, there may be reasons independent of jurisdictional considerations, such as the likelihood of jury confusion in treating divergent legal theories of relief, that would justify separating state and federal claims for trial, Fed.Rule Civ.Proc. 42(b). If so, jurisdiction should ordinarily be refused.

The question of power will ordinarily be resolved on the pleadings. But the issue whether pendent jurisdiction has been properly assumed is one which remains open throughout the litigation. Pretrial procedures or even the trial itself may reveal a substantial hegemony of state law claims, or likelihood of jury confusion, which could not have been anticipated at the pleading stage. Although it will of course be appropriate to take account in this circumstance of the already

completedcourse of the litigation, dismissal of the state claim might even then be merited. For example, it may appear that the plaintiff was well aware of the nature of his proofs and the relative importance of his claims; recognition of a federal court's wide latitude to decide ancillary questions of state law does not imply that it must tolerate a litigant's effort to impose upon it what is in effect only a state law case. Once it appears that a state claim constitutes the real body of a case, to which the federal claim is only an appendage, the state claim may fairly be dismissed.

We are not prepared to say that in the present case the District Court exceeded its discretion in proceeding to judgment on the state claim. We may assume for purposes of decision that the District Court was correct in its holding that the claim of pressure on Grundy to terminate the employment contract was outside the purview of § 303. Even so, the § 303 claims based on secondary pressures on Grundy relative to the haulage contract and on other coal operators generally were substantial. Although § 303 limited recovery to compensatory damages based on secondary pressures, Local 20, Teamsters, Chauffeurs and Helpers Union, v. Morton, supra, and state law allowed both compensatory and punitive damages, and allowed such damages as to both secondary and primary activity, the state and federal claims arose from the same nucleus of operative fact and reflected alternative remedies. Indeed, the verdict sheet sent in to the jury authorized only one award of damages, so that recovery could not be given separately on the federal and state claims.

It is true that the § 303 claims ultimately failed and that the only recovery allowed respondent was on the state claim. We cannot confidently say, however, that the federal issues were so remote or played such a minor role at the trial that in effect the state claim only was tried. Although the District Court dismissed as unproved the § 303 claims that petitioner's secondary activities included attempts to induce coal operators other than Grundy to cease doing business with respondent, the court submitted the § 303 claims relating to Grundy to the jury. The jury returned verdicts against petitioner on those § 303 claims, and it was only on petitioner's motion for a directed verdict and a judgment n.o.v. that the verdicts on those claims were set aside. The District Judge considered the claim as to the haulage contract proved as to liability, and held it failed only for lack of proof of damages. Although there was some risk of confusing the jury in joining the state and federal claims—especially since, as will be developed, differing standards of proof of UMW involvement applied—the possibility of confusion could be lessened by employing a special verdict form, as the District Court did. Moreover, the question whether the permissible scope of the state claim was limited by the doctrine of pre-emption afforded a special reason for the exercise of pendent jurisdiction; the federal courts are particularly appropriate bodies for the application of pre-emption principles. We thus conclude that although it may be that the District Court might, in its sound discretion, have dismissed the state claim, the circumstances show no error in refusing to do so.

# SUPREME COURT OF THE UNITED STATES

Nos. 04–70 and 04–79

EXXON MOBIL CORPORATION, PETITIONER
04–70 v.
ALLAPATTAH SERVICES, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MARIA DEL ROSARIO ORTEGA, ET AL., PETITIONERS
04–79 v.
STAR-KIST FOODS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[June 23, 2005]

JUSTICE KENNEDY delivered the opinion of the Court.

These consolidated cases present the question whether a federal court in a diversity action may exercise supplemental jurisdiction over additional plaintiffs whose claims do not satisfy the minimum amount-in-controversy requirement, provided the claims are part of the same case or controversy as the claims of plaintiffs who do allege a sufficient amount in controversy. Our decision turns on the correct interpretation of 28 U. S. C. §1367. The question has divided the Courts of Appeals, and we granted certiorari to resolve the conflict. 543 U. S. ___ (2004).

We hold that, where the other elements of jurisdiction are present and at least one named plaintiff in the action satisfies the amount-in-controversy requirement, §1367 does authorize supplemental jurisdiction over the claims

of other plaintiffs in the same Article III case or controversy, even if those claims are for less than the jurisdictional amount specified in the statute setting forth the requirements for diversity jurisdiction. We affirm the judgment of the Court of Appeals for the Eleventh Circuit in No. 04–70, and we reverse the judgment of the Court of Appeals for the First Circuit in No. 04–79.

I

In 1991, about 10,000 Exxon dealers filed a class-action suit against the Exxon Corporation in the United States District Court for the Northern District of Florida. The dealers alleged an intentional and systematic scheme by Exxon under which they were overcharged for fuel purchased from Exxon. The plaintiffs invoked the District Court's §1332(a) diversity jurisdiction. After a unanimous jury verdict in favor of the plaintiffs, the District Court certified the case for interlocutory review, asking whether it had properly exercised §1367 supplemental jurisdiction over the claims of class members who did not meet the jurisdictional minimum amount in controversy.

The Court of Appeals for the Eleventh Circuit upheld the District Court's extension of supplemental jurisdiction to these class members. *Allapattah Services, Inc.* v. *Exxon Corp.*, 333 F. 3d 1248 (2003). "[W]e find," the court held, "that §1367 clearly and unambiguously provides district courts with the authority in diversity class actions to exercise supplemental jurisdiction over the claims of class members who do not meet the minimum amount in controversy as long as the district court has original jurisdiction over the claims of at least one of the class representatives." *Id.*, at 1256. This decision accords with the views of the Courts of Appeals for the Fourth, Sixth, and Seventh Circuits. See *Rosmer* v. *Pfizer, Inc.*, 263 F. 3d 110 (CA4 2001); *Olden* v. *LaFarge Corp.*, 383 F. 3d 495 (CA6 2004); *Stromberg Metal Works, Inc.* v. *Press Mechanical,*

*Inc.*, 77 F. 3d 928 (CA7 1996); *In re Brand Name Prescription Drugs Antitrust Litigation*, 123 F. 3d 599 (CA7 1997). The Courts of Appeals for the Fifth and Ninth Circuits, adopting a similar analysis of the statute, have held that in a diversity class action the unnamed class members need not meet the amount-in-controversy requirement, provided the named class members do. These decisions, however, are unclear on whether all the named plaintiffs must satisfy this requirement. *In re Abbott Labs.*, 51 F. 3d 524 (CA5 1995); *Gibson* v. *Chrysler Corp.*, 261 F. 3d 927 (CA9 2001).

In the other case now before us the Court of Appeals for the First Circuit took a different position on the meaning of §1367(a). 370 F. 3d 124 (2004). In that case, a 9-year-old girl sued Star-Kist in a diversity action in the United States District Court for the District of Puerto Rico, seeking damages for unusually severe injuries she received when she sliced her finger on a tuna can. Her family joined in the suit, seeking damages for emotional distress and certain medical expenses. The District Court granted summary judgment to Star-Kist, finding that none of the plaintiffs met the minimum amount-in-controversy requirement. The Court of Appeals for the First Circuit, however, ruled that the injured girl, but not her family members, had made allegations of damages in the requisite amount.

The Court of Appeals then addressed whether, in light of the fact that one plaintiff met the requirements for original jurisdiction, supplemental jurisdiction over the remaining plaintiffs' claims was proper under §1367. The court held that §1367 authorizes supplemental jurisdiction only when the district court has original jurisdiction over the action, and that in a diversity case original jurisdiction is lacking if one plaintiff fails to satisfy the amount-in-controversy requirement. Although the Court of Appeals claimed to "express no view" on whether the result would

be the same in a class action, *id.*, at 143, n. 19, its analysis is inconsistent with that of the Court of Appeals for the Eleventh Circuit. The Court of Appeals for the First Circuit's view of §1367 is, however, shared by the Courts of Appeal for the Third, Eighth, and Tenth Circuits, and the latter two Courts of Appeals have expressly applied this rule to class actions. See *Meritcare, Inc.* v. *St. Paul Mercury Ins. Co.*, 166 F. 3d 214 (CA3 1999); *Trimble* v. *Asarco, Inc.*, 232 F. 3d 946 (CA8 2000); *Leonhardt* v. *Western Sugar Co.*, 160 F. 3d 631 (CA10 1998).

II

A

The district courts of the United States, as we have said many times, are "courts of limited jurisdiction. They possess only that power authorized by Constitution and statute," *Kokkonen* v. *Guardian Life Ins. Co. of America*, 511 U. S. 375, 377 (1994). In order to provide a federal forum for plaintiffs who seek to vindicate federal rights, Congress has conferred on the district courts original jurisdiction in federal-question cases—civil actions that arise under the Constitution, laws, or treaties of the United States. 28 U. S. C. §1331. In order to provide a neutral forum for what have come to be known as diversity cases, Congress also has granted district courts original jurisdiction in civil actions between citizens of different States, between U. S. citizens and foreign citizens, or by foreign states against U. S. citizens. §1332. To ensure that diversity jurisdiction does not flood the federal courts with minor disputes, §1332(a) requires that the matter in controversy in a diversity case exceed a specified amount, currently $75,000. §1332(a).

Although the district courts may not exercise jurisdiction absent a statutory basis, it is well established—in certain classes of cases—that, once a court has original jurisdiction over some claims in the action, it may exercise

supplemental jurisdiction over additional claims that are part of the same case or controversy. The leading modern case for this principle is *Mine Workers* v. *Gibbs*, 383 U. S. 715 (1966). In *Gibbs*, the plaintiff alleged the defendant's conduct violated both federal and state law. The District Court, *Gibbs* held, had original jurisdiction over the action based on the federal claims. *Gibbs* confirmed that the District Court had the additional power (though not the obligation) to exercise supplemental jurisdiction over related state claims that arose from the same Article III case or controversy. *Id.*, at 725 ("The federal claim must have substance sufficient to confer subject matter jurisdiction on the court. . . . [A]ssuming substantiality of the federal issues, there is *power* in federal courts to hear the whole").

As we later noted, the decision allowing jurisdiction over pendent state claims in *Gibbs* did not mention, let alone come to grips with, the text of the jurisdictional statutes and the bedrock principle that federal courts have no jurisdiction without statutory authorization. *Finley* v. *United States*, 490 U. S. 545, 548 (1989). In *Finley*, we nonetheless reaffirmed and rationalized *Gibbs* and its progeny by inferring from it the interpretive principle that, in cases involving supplemental jurisdiction over additional claims between parties properly in federal court, the jurisdictional statutes should be read broadly, on the assumption that in this context Congress intended to authorize courts to exercise their full Article III power to dispose of an "'entire action before the court [which] comprises but one constitutional "case."'" 490 U. S., at 549 (quoting *Gibbs*, *supra*, at 725).

We have not, however, applied *Gibbs*' expansive interpretive approach to other aspects of the jurisdictional statutes. For instance, we have consistently interpreted §1332 as requiring complete diversity: In a case with multiple plaintiffs and multiple defendants, the presence

in the action of a single plaintiff from the same State as a single defendant deprives the district court of original diversity jurisdiction over the entire action. *Strawbridge* v. *Curtiss*, 3 Cranch 267 (1806); *Owen Equipment & Erection Co.* v. *Kroger*, 437 U. S. 365, 375 (1978). The complete diversity requirement is not mandated by the Constitution. *State Farm Fire & Casualty Co.* v. *Tashire*, 386 U. S. 523, 530–531 (1967), or by the plain text of §1332(a). The Court, nonetheless, has adhered to the complete diversity rule in light of the purpose of the diversity requirement, which is to provide a federal forum for important disputes where state courts might favor, or be perceived as favoring, home-state litigants. The presence of parties from the same State on both sides of a case dispels this concern, eliminating a principal reason for conferring §1332 jurisdiction over any of the claims in the action. See *Wisconsin Dept. of Corrections* v. *Schacht*, 524 U. S. 381, 389 (1998); *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U. S. 826, 829 (1989). The specific purpose of the complete diversity rule explains both why we have not adopted *Gibbs*' expansive interpretive approach to this aspect of the jurisdictional statute and why *Gibbs* does not undermine the complete diversity rule. In order for a federal court to invoke supplemental jurisdiction under *Gibbs*, it must first have original jurisdiction over at least one claim in the action. Incomplete diversity destroys original jurisdiction with respect to all claims, so there is nothing to which supplemental jurisdiction can adhere.

In contrast to the diversity requirement, most of the other statutory prerequisites for federal jurisdiction, including the federal-question and amount-in-controversy requirements, can be analyzed claim by claim. True, it does not follow by necessity from this that a district court has authority to exercise supplemental jurisdiction over all claims provided there is original jurisdiction over just one. Before the enactment of §1367, the Court declined in

contexts other than the pendent-claim instance to follow *Gibbs*' expansive approach to interpretation of the jurisdictional statutes. The Court took a more restrictive view of the proper interpretation of these statutes in so-called pendent-party cases involving supplemental jurisdiction over claims involving additional parties—plaintiffs or defendants—where the district courts would lack original jurisdiction over claims by each of the parties standing alone.

Thus, with respect to plaintiff-specific jurisdictional requirements, the Court held in *Clark* v. *Paul Gray, Inc.*, 306 U. S. 583 (1939), that every plaintiff must separately satisfy the amount-in-controversy requirement. Though *Clark* was a federal-question case, at that time federal-question jurisdiction had an amount-in-controversy requirement analogous to the amount-in-controversy requirement for diversity cases. "Proper practice," *Clark* held, "requires 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. The Court reaffirmed this rule, in the context of a class action brought invoking §1332(a) diversity jurisdiction, in *Zahn* v. *International Paper Co.*, 414 U. S. 291 (1973). It follows "inescapably" from *Clark*, the Court held in *Zahn*, that "any plaintiff without the jurisdictional amount must be dismissed from the case, even though others allege jurisdictionally sufficient claims." 414 U. S., at 300.

The Court took a similar approach with respect to supplemental jurisdiction over claims against additional defendants that fall outside the district courts' original jurisdiction. In *Aldinger* v. *Howard*, 427 U. S. 1 (1976), the plaintiff brought a 42 U. S. C. §1983 action against county officials in district court pursuant to the statutory grant of jurisdiction in 28 U. S. C. §1343(3) (1976 ed.).

The plaintiff further alleged the court had supplemental jurisdiction over her related state-law claims against the county, even though the county was not suable under §1983 and so was not subject to §1343(3)'s original jurisdiction. The Court held that supplemental jurisdiction could not be exercised because Congress, in enacting §1343(3), had declined (albeit implicitly) to extend federal jurisdiction over any party who could not be sued under the federal civil rights statutes. 427 U. S., at 16–19. "Before it can be concluded that [supplemental] jurisdiction [over additional parties] exists," *Aldinger* held, "a federal court must satisfy itself not only that Art[icle] III permits it, but that Congress in the statutes conferring jurisdiction has not expressly or by implication negated its existence." *Id.*, at 18.

In *Finley* v. *United States*, 490 U. S. 545 (1989), we confronted a similar issue in a different statutory context. The plaintiff in *Finley* brought a Federal Tort Claims Act negligence suit against the Federal Aviation Administration in District Court, which had original jurisdiction under §1346(b). The plaintiff tried to add related claims against other defendants, invoking the District Court's supplemental jurisdiction over so-called pendent parties. We held that the District Court lacked a sufficient statutory basis for exercising supplemental jurisdiction over these claims. Relying primarily on *Zahn*, *Aldinger*, and *Kroger*, we held in *Finley* that "a grant of jurisdiction over claims involving particular parties does not itself confer jurisdiction over additional claims by or against different parties." 490 U. S., at 556. While *Finley* did not "limit or impair" *Gibbs*' liberal approach to interpreting the jurisdictional statutes in the context of supplemental jurisdiction over additional claims involving the same parties, 490 U. S., at 556, *Finley* nevertheless declined to extend that interpretive assumption to claims involving additional parties. *Finley* held that in the context of parties, in con-

trast to claims, "we will not assume that the full constitutional power has been congressionally authorized, and will not read jurisdictional statutes broadly." *Id.*, at 549.

As the jurisdictional statutes existed in 1989, then, here is how matters stood: First, the diversity requirement in §1332(a) required complete diversity; absent complete diversity, the district court lacked original jurisdiction over all of the claims in the action. *Strawbridge*, 3 Cranch, at 267–268; *Kroger*, 437 U. S., at 373–374. Second, if the district court had original jurisdiction over at least one claim, the jurisdictional statutes implicitly authorized supplemental jurisdiction over all other claims between the same parties arising out of the same Article III case or controversy. *Gibbs*, 383 U. S., at 725. Third, even when the district court had original jurisdiction over one or more claims between particular parties, the jurisdictional statutes did not authorize supplemental jurisdiction over additional claims involving other parties. *Clark*, *supra*, at 590; *Zahn*, *supra*, at 300–301; *Finley*, *supra*, at 556.

B

In *Finley* we emphasized that "[w]hatever we say regarding the scope of jurisdiction conferred by a particular statute can of course be changed by Congress." 490 U. S., at 556. In 1990, Congress accepted the invitation. It passed the Judicial Improvements Act, 104 Stat. 5089, which enacted §1367, the provision which controls these cases.

Section 1367 provides, in relevant part:

> "(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 ju-

> risdiction 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."

All parties to this litigation and all courts to consider the question agree that §1367 overturned the result in *Finley*. There is no warrant, however, for assuming that §1367 did no more than to overrule *Finley* and otherwise to codify the existing state of the law of supplemental jurisdiction. We must not give jurisdictional statutes a more expansive interpretation than their text warrants, 490 U. S., at 549, 556; but it is just as important not to adopt an artificial construction that is narrower than what the text provides. No sound canon of interpretation requires Congress to speak with extraordinary clarity in order to modify the rules of federal jurisdiction within appropriate constitutional bounds. Ordinary principles of statutory construction apply. In order to determine the scope of supplemental jurisdiction authorized by §1367, then, we must examine the statute's text in light of context, structure, and related statutory provisions.

Section 1367(a) is a broad grant of supplemental juris-

diction over other claims within the same case or controversy, as long as the action is one in which the district courts would have original jurisdiction. The last sentence of §1367(a) makes it clear that the grant of supplemental jurisdiction extends to claims involving joinder or intervention of additional parties. The single question before us, therefore, is whether a diversity case in which the claims of some plaintiffs satisfy the amount-in-controversy requirement, but the claims of others plaintiffs do not, presents a "civil action of which the district courts have original jurisdiction." If the answer is yes, §1367(a) confers supplemental jurisdiction over all claims, including those that do not independently satisfy the amount-in-controversy requirement, if the claims are part of the same Article III case or controversy. If the answer is no, §1367(a) is inapplicable and, in light of our holdings in *Clark* and *Zahn*, the district court has no statutory basis for exercising supplemental jurisdiction over the additional claims.

We now conclude the answer must be yes. When the well-pleaded complaint contains at least one claim that satisfies the amount-in-controversy requirement, and there are no other relevant jurisdictional defects, the district court, beyond all question, has original jurisdiction over that claim. The presence of other claims in the complaint, over which the district court may lack original jurisdiction, is of no moment. If the court has original jurisdiction over a single claim in the complaint, it has original jurisdiction over a "civil action" within the meaning of §1367(a), even if the civil action over which it has jurisdiction comprises fewer claims than were included in the complaint. Once the court determines it has original jurisdiction over the civil action, it can turn to the question whether it has a constitutional and statutory basis for exercising supplemental jurisdiction over the other claims in the action.

Section 1367(a) commences with the direction that §§1367(b) and (c), or other relevant statutes, may provide specific exceptions, but otherwise §1367(a) is a broad jurisdictional grant, with no distinction drawn between pendent-claim and pendent-party cases. In fact, the last sentence of §1367(a) makes clear that the provision grants supplemental jurisdiction over claims involving joinder or intervention of additional parties. The terms of §1367 do not acknowledge any distinction between pendent jurisdiction and the doctrine of so-called ancillary jurisdiction. Though the doctrines of pendent and ancillary jurisdiction developed separately as a historical matter, the Court has recognized that the doctrines are "two species of the same generic problem," *Kroger*, 437 U. S., at 370. Nothing in §1367 indicates a congressional intent to recognize, preserve, or create some meaningful, substantive distinction between the jurisdictional categories we have historically labeled pendent and ancillary.

If §1367(a) were the sum total of the relevant statutory language, our holding would rest on that language alone. The statute, of course, instructs us to examine §1367(b) to determine if any of its exceptions apply, so we proceed to that section. While §1367(b) qualifies the broad rule of §1367(a), it does not withdraw supplemental jurisdiction over the claims of the additional parties at issue here. The specific exceptions to §1367(a) contained in §1367(b). moreover, provide additional support for our conclusion that §1367(a) confers supplemental jurisdiction over these claims. Section 1367(b), which applies only to diversity cases, withholds supplemental jurisdiction over the claims of plaintiffs proposed to be joined as indispensable parties under Federal Rule of Civil Procedure 19, or who seek to intervene pursuant to Rule 24. Nothing in the text of §1367(b), however, withholds supplemental jurisdiction over the claims of plaintiffs permissively joined under Rule 20 (like the additional plaintiffs in No. 04–79) or

certified as class-action members pursuant to Rule 23 (like the additional plaintiffs in No. 04–70). The natural, indeed the necessary, inference is that §1367 confers supplemental jurisdiction over claims by Rule 20 and Rule 23 plaintiffs. This inference, at least with respect to Rule 20 plaintiffs, is strengthened by the fact that §1367(b) explicitly excludes supplemental jurisdiction over claims against defendants joined under Rule 20.

We cannot accept the view, urged by some of the parties, commentators, and Courts of Appeals, that a district court lacks original jurisdiction over a civil action unless the court has original jurisdiction over every claim in the complaint. As we understand this position, it requires assuming either that all claims in the complaint must stand or fall as a single, indivisible "civil action" as a matter of definitional necessity—what we will refer to as the "indivisibility theory"—or else that the inclusion of a claim or party falling outside the district court's original jurisdiction somehow contaminates every other claim in the complaint, depriving the court of original jurisdiction over any of these claims—what we will refer to as the "contamination theory."

The indivisibility theory is easily dismissed, as it is inconsistent with the whole notion of supplemental jurisdiction. If a district court must have original jurisdiction over every claim in the complaint in order to have "original jurisdiction" over a "civil action," then in *Gibbs* there was no civil action of which the district court could assume original jurisdiction under §1331, and so no basis for exercising supplemental jurisdiction over any of the claims. The indivisibility theory is further belied by our practice—in both federal-question and diversity cases—of allowing federal courts to cure jurisdictional defects by dismissing the offending parties rather than dismissing the entire action. *Clark*, for example, makes clear that claims that are jurisdictionally defective as to amount in

controversy do not destroy original jurisdiction over other claims. 306 U. S., at 590 (dismissing parties who failed to meet the amount-in-controversy requirement but retaining jurisdiction over the remaining party). If the presence of jurisdictionally problematic claims in the complaint meant the district court was without original jurisdiction over the single, indivisible civil action before it, then the district court would have to dismiss the whole action rather than particular parties.

We also find it unconvincing to say that the definitional indivisibility theory applies in the context of diversity cases but not in the context of federal-question cases. The broad and general language of the statute does not permit this result. The contention is premised on the notion that the phrase "original jurisdiction of all civil actions" means different things in §1331 and §1332. It is implausible, however, to say that the identical phrase means one thing (original jurisdiction in all actions where at least one claim in the complaint meets the following requirements) in §1331 and something else (original jurisdiction in all actions where every claim in the complaint meets the following requirements) in §1332.

The contamination theory, as we have noted, can make some sense in the special context of the complete diversity requirement because the presence of nondiverse parties on both sides of a lawsuit eliminates the justification for providing a federal forum. The theory, however, makes little sense with respect to the amount-in-controversy requirement, which is meant to ensure that a dispute is sufficiently important to warrant federal-court attention. The presence of a single nondiverse party may eliminate the fear of bias with respect to all claims, but the presence of a claim that falls short of the minimum amount in controversy does nothing to reduce the importance of the claims that do meet this requirement.

It is fallacious to suppose, simply from the proposition

that §1332 imposes both the diversity requirement and the amount-in-controversy requirement, that the contamination theory germane to the former is also relevant to the latter. There is no inherent logical connection between the amount-in-controversy requirement and §1332 diversity jurisdiction. After all, federal-question jurisdiction once had an amount-in-controversy requirement as well. If such a requirement were revived under §1331, it is clear beyond peradventure that §1367(a) provides supplemental jurisdiction over federal-question cases where some, but not all, of the federal-law claims involve a sufficient amount in controversy. In other words, §1367(a) unambiguously overrules the holding and the result in *Clark*. If that is so, however, it would be quite extraordinary to say that §1367 did not also overrule *Zahn*, a case that was premised in substantial part on the holding in *Clark*.

We also reject the argument, similar to the attempted distinction of *College of Surgeons* discussed above, that while the presence of additional claims over which the district court lacks jurisdiction does not mean the civil action is outside the purview of §1367(a), the presence of additional parties does. The basis for this distinction is not altogether clear, and it is in considerable tension with statutory text. Section 1367(a) applies by its terms to any civil action of which the district courts have original jurisdiction, and the last sentence of §1367(a) expressly contemplates that the court may have supplemental jurisdiction over additional parties. So it cannot be the case that the presence of those parties destroys the court's original jurisdiction, within the meaning of §1367(a), over a civil action otherwise properly before it. Also, §1367(b) expressly withholds supplemental jurisdiction in diversity cases over claims by plaintiffs joined as indispensable parties under Rule 19. If joinder of such parties were sufficient to deprive the district court of original jurisdiction over the civil action within the meaning of §1367(a), this specific limitation on supplemental jurisdiction in §1367(b) would be superfluous. The argument that the presence of additional parties removes the civil action from the scope of §1367(a) also would mean that §1367 left the *Finley* result undisturbed. *Finley*, after all, involved a Federal Tort Claims Act suit against a federal defendant and state-law claims against additional defendants not otherwise subject to federal jurisdiction. Yet all concede that one purpose of §1367 was to change the result

reached in *Finley*.

Finally, it is suggested that our interpretation of §1367(a) creates an anomaly regarding the exceptions listed in §1367(b): It is not immediately obvious why Congress would withhold supplemental jurisdiction over plaintiffs joined as parties "needed for just adjudication" under Rule 19 but would allow supplemental jurisdiction over plaintiffs permissively joined under Rule 20. The omission of Rule 20 plaintiffs from the list of exceptions in §1367(b) may have been an "unintentional drafting gap," *Meritcare*, 166 F. 3d, at 221 and n. 6. If that is the case, it is up to Congress rather than the courts to fix it. The omission may seem odd, but it is not absurd. An alternative explanation for the different treatment of Rule 19 and Rule 20 is that Congress was concerned that extending supplemental jurisdiction to Rule 19 plaintiffs would allow circumvention of the complete diversity rule: A nondiverse plaintiff might be omitted intentionally from the original action, but joined later under Rule 19 as a necessary party. See *Stromberg Metal Works*, 77 F. 3d, at 932. The contamination theory described above, if applicable, means this ruse would fail, but Congress may have wanted to make assurance double sure. More generally, Congress may have concluded that federal jurisdiction is only appropriate if the district court would have original jurisdiction over the claims of all those plaintiffs who are so essential to the action that they could be joined under Rule 19.

To the extent that the omission of Rule 20 plaintiffs from the list of §1367(b) exceptions is anomalous, moreover, it is no more anomalous than the inclusion of Rule 19 plaintiffs in that list would be if the alternative view of §1367(a) were to prevail. If the district court lacks original jurisdiction over a civil diversity action where any plaintiff's claims fail to comply with all the requirements of §1332, there is no need for a special §1367(b) exception

for Rule 19 plaintiffs who do not meet these requirements. Though the omission of Rule 20 plaintiffs from §1367(b) presents something of a puzzle on our view of the statute, the inclusion of Rule 19 plaintiffs in this section is at least as difficult to explain under the alternative view.

And so we circle back to the original question. When the well-pleaded complaint in district court includes multiple claims, all part of the same case or controversy, and some, but not all, of the claims are within the court's original jurisdiction, does the court have before it "any civil action of which the district courts have original jurisdiction"? It does. Under §1367, the court has original jurisdiction over the civil action comprising the claims for which there is no jurisdictional defect. No other reading of §1367 is plausible in light of the text and structure of the jurisdictional statute. Though the special nature and purpose of the diversity requirement mean that a single nondiverse party can contaminate every other claim in the lawsuit, the contamination does not occur with respect to jurisdictional defects that go only to the substantive importance of individual claims.

It follows from this conclusion that the threshold requirement of §1367(a) is satisfied in cases, like those now before us, where some, but not all, of the plaintiffs in a diversity action allege a sufficient amount in controversy. We hold that §1367 by its plain text overruled *Clark* and *Zahn* and authorized supplemental jurisdiction over all claims by diverse parties arising out of the same Article III case or controversy, subject only to enumerated exceptions not applicable in the cases now before us.

C

The proponents of the alternative view of §1367 insist that the statute is at least ambiguous and that we should look to other interpretive tools, including the legislative history of §1367, which supposedly demonstrate Congress

did not intend §1367 to overrule *Zahn*. We can reject this argument at the very outset simply because §1367 is not ambiguous. For the reasons elaborated above, interpreting §1367 to foreclose supplemental jurisdiction over plaintiffs in diversity cases who do not meet the minimum amount in controversy is inconsistent with the text, read in light of other statutory provisions and our established jurisprudence. Even if we were to stipulate, however, that the reading these proponents urge upon us is textually plausible, the legislative history cited to support it would not alter our view as to the best interpretation of §1367.

As we have repeatedly held, the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms. Not all extrinsic materials are reliable sources of insight into legislative understandings, however, and legislative history in particular is vulnerable to two serious criticisms. First, legislative history is itself often murky, ambiguous, and contradictory. Judicial investigation of legislative history has a tendency to become, to borrow Judge Leventhal's memorable phrase, an exercise in "looking over a crowd and picking out your friends." See Wald, Some Observations on the Use of Legislative History in the 1981 Supreme Court Term, 68 Iowa L. Rev. 195, 211 (1983). Second, judicial reliance on legislative materials like committee reports, which are not themselves subject to the requirements of Article I, may give unrepresentative committee members—or, worse yet, unelected staffers and lobbyists—both the power and the incentive to attempt strategic manipulations of legislative history to secure results they were unable to achieve through the statutory text. We need not comment here on whether these problems are sufficiently prevalent to render legislative history inherently unreliable in all circumstances, a point on which Members of this Court have disagreed. It is clear, however, that in this instance both criticisms are right on the mark.

In sum, even if we believed resort to legislative history were appropriate in these cases—a point we do not concede—we would not give significant weight to the House Report. The distinguished jurists who drafted the Subcommittee Working Paper, along with three of the participants in the drafting of §1367, agree that this provision, on its face, overrules *Zahn*. This accords with the best reading of the statute's text, and nothing in the legislative history indicates directly and explicitly that Congress understood the phrase "civil action of which the district courts have original jurisdiction" to exclude cases in which some but not all of the diversity plaintiffs meet the amount in controversy requirement.

* * *

The judgment of the Court of Appeals for the Eleventh Circuit is affirmed. The judgment of the Court of Appeals for the First Circuit is reversed, and the case is remanded for proceedings consistent with this opinion.

*It is so ordered.*

# SOME SUPPLEMENTAL JURISDICTION HYPOTHETICALS

PROFESSOR LONNY HOFFMAN

**Question 1**

P (Texas) files suit against D (Oklahoma) in the U.S. District Court for the Southern District of Texas based on a car accident in which P was injured. P seeks $100K in damages.

D files a third party complaint under Rule 14 against T (Okl) alleging T is contributorily negligent and thus is or may be liable to D for any damages that D is found to owe to P.

P then files a claim against T for $50,000 seeking recover for harm caused in the same accident.

Can all claims be adjudicated in the same federal action?

**Question 2**

What if T, instead, is from Texas?

**Question 3**

Does your answer change if P's claim against T is for $100,000?

**Question 4**

P (Texas) files suit against D (Oklahoma) in the U.S. District Court for the Southern District of Texas based on a federal patent infringement claim. P seeks $50K in damages.

D files a third party complaint under Rule 14 against T (Okl) alleging T owes contractual indemnity to D for any damages that D is ultimately found to owe to P.

P then files a claim against T for $50,000 seeking recover from T as a co-conspirator in the infringement. Assume this claim also arises under federal law.

Can all claims be adjudicated in the same federal action?

**Question 5**

What if, instead, P's claim against T arises only under state conspiracy law and does not come within 1331?

# SUPREME COURT OF THE UNITED STATES

No. 04–1140

## GERALD T. MARTIN, ET UX., PETITIONERS v. FRANKLIN CAPITAL CORPORATION ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[December 7, 2005]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

A civil case commenced in state court may, as a general matter, be removed by the defendant to federal district court, if the case could have been brought there originally. 28 U. S. C. §1441 (2000 ed. and Supp. II). If it appears that the federal court lacks jurisdiction, however, "the case shall be remanded." §1447(c). An order remanding a removed case to state court "may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." *Ibid.* Although §1447(c) expressly permits an award of attorney's fees, it provides little guidance on when such fees are warranted. We granted certiorari to determine the proper standard for awarding attorney's fees when remanding a case to state court.

I

Petitioners Gerald and Juana Martin filed a class-action lawsuit in New Mexico state court against respondents Franklin Capital Corporation and Century-National Insurance Company (collectively, Franklin). Franklin re-

moved the case to Federal District Court on the basis of diversity of citizenship. See §§1332, 1441 (2000 ed. and Supp. II). In its removal notice, Franklin acknowledged that the amount in controversy was not clear from the face of the complaint—no reason it should be, since the complaint had been filed in state court—but argued that this requirement for federal diversity jurisdiction was nonetheless satisfied. In so arguing, Franklin relied in part on precedent suggesting that punitive damages and attorney's fees could be aggregated in a class action to meet the amount-in-controversy requirement. See App. 35.

Fifteen months later, the Martins moved to remand to state court on the ground that their claims failed to satisfy the amount-in-controversy requirement. The District Court denied the motion and eventually dismissed the case with prejudice. On appeal, the Court of Appeals for the Tenth Circuit agreed with the Martins that the suit failed to satisfy the amount-in-controversy requirement. The Tenth Circuit rejected Franklin's contention that punitive damages and attorney's fees could be aggregated in calculating the amount in controversy, in part on the basis of decisions issued after the District Court's remand decision. The Court of Appeals reversed and remanded to the District Court with instructions to remand the case to state court. 251 F. 3d 1284, 1294 (2001).

Back before the District Court, the Martins moved for attorney's fees under §1447(c). The District Court reviewed Franklin's basis for removal and concluded that, although the Court of Appeals had determined that removal was improper, Franklin "had legitimate grounds for believing this case fell within th[e] Court's jurisdiction." App. to Pet. for Cert. 20a. Because Franklin "had objectively reasonable grounds to believe the removal was legally proper," the District Court denied the Martins' request for fees. *Ibid.*

The Martins appealed again, arguing that §1447(c)

requires granting attorney's fees on remand as a matter of course. The Tenth Circuit disagreed, noting that awarding fees is left to the "wide discretion" of the district court, subject to review only for abuse of discretion. 393 F. 3d 1143, 1146 (2004). Under Tenth Circuit precedent, the "'key factor'" in deciding whether to award fees under §1447(c) is "'the propriety of defendant's removal.'" *Ibid.* (quoting *Excell, Inc.* v. *Sterling Boiler & Mechanical, Inc.*, 106 F. 3d 318, 322 (CA10 1997)). In calculating the amount in controversy when it removed the case, Franklin had relied on case law only subsequently held to be unsound, and therefore Franklin's basis for removal was objectively reasonable. 393 F. 3d, at 1148. Because the District Court had not abused its discretion in denying fees, the Tenth Circuit affirmed. *Id.*, at 1151.

We granted certiorari, 544 U. S. ___ (2005), to resolve a conflict among the Circuits concerning when attorney's fees should be awarded under §1447(c). Compare, *e.g.*, *Hornbuckle* v. *State Farm Lloyds*, 385 F. 3d 538, 541 (CA5 2004) ("Fees should only be awarded if the removing defendant lacked objectively reasonable grounds to believe the removal was legally proper" (internal quotation marks omitted)), with *Sirotzky* v. *New York Stock Exchange*, 347 F. 3d 985, 987 (CA7 2003) ("[P]rovided removal was improper, the plaintiff is *presumptively* entitled to an award of fees"), and *Hofler* v. *Aetna U. S. Healthcare of Cal., Inc.*, 296 F. 3d 764, 770 (CA9 2002) (affirming fee award even when "the defendant's position may be fairly supportable" (internal quotation marks omitted)). We hold that, absent unusual circumstances, attorney's fees should not be awarded when the removing party has an objectively reasonable basis for removal. We therefore affirm the judgment of the Tenth Circuit.

II

The Martins argue that attorney's fees should be

awarded automatically on remand, or that there should at least be a strong presumption in favor of awarding fees. Section 1447(c), however, provides that a remand order "may" require payment of attorney's fees—not "shall" or "should." As Chief Justice Rehnquist explained for the Court in *Fogerty* v. *Fantasy, Inc.*, 510 U. S. 517, 533 (1994), "[t]he word 'may' clearly connotes discretion. 'The automatic awarding of attorney's fees to the prevailing party would pretermit the exercise of that discretion.'" Congress used the word "shall" often enough in §1447(c)—as when it specified that removed cases apparently outside federal jurisdiction "shall be remanded"—to dissuade us from the conclusion that it meant "shall" when it used "may" in authorizing an award of fees.

The Martins are on somewhat stronger ground in pressing for a presumption in favor of awarding fees. As they explain, we interpreted a statute authorizing a discretionary award of fees to prevailing plaintiffs in civil rights cases to nonetheless give rise to such a presumption. *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U. S. 400, 402 (1968) *(per curiam)*. But this case is not at all like *Piggie Park*. In *Piggie Park*, we concluded that a prevailing plaintiff in a civil rights suit serves as a "'private attorney general,'" helping to ensure compliance with civil rights laws and benefiting the public by "vindicating a policy that Congress considered of the highest priority." *Ibid.* We also later explained that the *Piggie Park* standard was appropriate in that case because the civil rights defendant, who is required to pay the attorney's fees, has violated federal law. See *Flight Attendants* v. *Zipes*, 491 U. S. 754, 762 (1989) ("Our cases have emphasized the crucial connection between liability for violation of federal law and liability for attorney's fees under federal fee-shifting statutes").

In this case, plaintiffs do not serve as private attorneys general when they secure a remand to state court, nor is it

reasonable to view the defendants as violators of federal law. To the contrary, the removal statute grants defendants a right to a federal forum. See 28 U. S. C. §1441 (2000 ed. and Supp. II). A remand is necessary if a defendant improperly asserts this right, but incorrectly invoking a federal right is not comparable to violating substantive federal law. The reasons for adopting a strong presumption in favor of awarding fees that were present in *Piggie Park* are accordingly absent here. In the absence of such reasons, we are left with no sound basis for a similar presumption. Instead, had Congress intended to award fees as a matter of course to a party that successfully obtains a remand, we think that "[s]uch a bold departure from traditional practice would have surely drawn more explicit statutory language and legislative comment." *Fogerty*, *supra*, at 534.

For its part, Franklin begins by arguing that §1447(c) provides little guidance on when fees should be shifted because it is not a fee-shifting statute at all. According to Franklin, the provision simply grants courts jurisdiction to award costs and attorney's fees when otherwise warranted, for example when Federal Rule of Civil Procedure 11 supports awarding fees. Although Franklin is correct that the predecessor to §1447(c) was enacted, in part, because courts would otherwise lack jurisdiction to award costs on remand, see *Mansfield, C. & L. M. R. Co.* v. *Swan*, 111 U. S. 379, 386–387 (1884), there is no reason to assume Congress went no further than conferring jurisdiction when it acted. Congress could have determined that the most efficient way to cure this jurisdictional defect was to create a substantive basis for ordering costs. The text supports this view. If the statute were strictly jurisdictional, there would be no need to limit awards to "just" costs; any award authorized by other provisions of law would presumably be "just." We therefore give the statute its natural reading: Section 1447(c) authorizes courts to

award costs and fees, but only when such an award is just. The question remains how to define that standard.

The Solicitor General would define the standard narrowly, arguing that fees should be awarded only on a showing that the unsuccessful party's position was "frivolous, unreasonable, or without foundation"—the standard we have adopted for awarding fees against unsuccessful plaintiffs in civil rights cases, see *Christiansburg Garment Co.* v. *EEOC*, 434 U. S. 412, 421 (1978), and unsuccessful intervenors in such cases, see *Zipes*, *supra*, at 762. Brief for United States as *Amicus Curiae* 14–16. But just as there is no basis for supposing Congress meant to tilt the exercise of discretion in *favor* of fee awards under §1447(c), as there was in *Piggie Park*, so too there is no basis here for a strong bias *against* fee awards, as there was in *Christiansburg Garment* and *Zipes*. The statutory language and context strike us as more evenly balanced between a pro-award and anti-award position than was the case in either *Piggie Park* or *Christiansburg Garment* and *Zipes*; we see nothing to persuade us that fees under §1447(c) should either usually be granted or usually be denied.

The fact that an award of fees under §1447(c) is left to the district court's discretion, with no heavy congressional thumb on either side of the scales, does not mean that no legal standard governs that discretion. We have it on good authority that "a motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles." *United States* v. *Burr*, 25 F. Cas. 30, 35 (No. 14,692d) (CC Va. 1807) (Marshall, C. J.). Discretion is not whim, and limiting discretion according to legal standards helps promote the basic principle of justice that like cases should be decided alike. See Friendly, Indiscretion About Discretion, 31 Emory L. J. 747, 758 (1982). For these reasons, we have often limited courts' discretion to award fees despite the absence of express legislative restrictions. That is, of course, what

we did in *Piggie Park*, *supra*, at 402 (A prevailing plaintiff "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust"), *Christiansburg Garment*, *supra*, at 422 ("[A] plaintiff should not be assessed his opponent's attorney's fees unless a court finds that his claim was frivolous, unreasonable, or groundless"), and *Zipes*, 491 U. S., at 761 (Attorney's fees should be awarded against intervenors "only where the intervenors' action was frivolous, unreasonable, or without foundation").

In *Zipes*, we reaffirmed the principle on which these decisions are based: "Although the text of the provision does not specify any limits upon the district courts' discretion to allow or disallow fees, in a system of laws discretion is rarely without limits." *Id.*, at 758. *Zipes* also explains how to discern the limits on a district court's discretion. When applying fee-shifting statutes, "we have found limits in 'the large objectives' of the relevant Act, which embrace certain 'equitable considerations.'" *Id.*, at 759 (citation omitted).*

By enacting the removal statute, Congress granted a right to a federal forum to a limited class of state-court defendants. If fee shifting were automatic, defendants might choose to exercise this right only in cases where the right to remove was obvious. See *Christiansburg Garment*, *supra*, at 422 (awarding fees simply because the party did not prevail "could discourage all but the most airtight claims, for seldom can a [party] be sure of ultimate success"). But there is no reason to suppose Congress meant to confer a right to remove, while at the same

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*In *Fogerty*, we did not identify a standard under which fees should be awarded. But that decision did not depart from *Zipes* because we granted certiorari to decide only whether the same standard applied to prevailing plaintiffs and prevailing defendants. See *Fogerty* v. *Fantasy, Inc.*, 510 U. S. 517, 521 (1994). Having decided this question and rejected the claim that fee shifting should be automatic, we remanded to the Court of Appeals to consider the appropriate test in the first instance. *Id.*, at 534–535.

time discouraging its exercise in all but obvious cases.

Congress, however, would not have enacted §1447(c) if its only concern were avoiding deterrence of proper removals. Instead, Congress thought fee shifting appropriate in some cases. The process of removing a case to federal court and then having it remanded back to state court delays resolution of the case, imposes additional costs on both parties, and wastes judicial resources. Assessing costs and fees on remand reduces the attractiveness of removal as a method for delaying litigation and imposing costs on the plaintiff. The appropriate test for awarding fees under §1447(c) should recognize the desire to deter removals sought for the purpose of prolonging litigation and imposing costs on the opposing party, while not undermining Congress' basic decision to afford defendants a right to remove as a general matter, when the statutory criteria are satisfied.

In light of these "'large objectives,'" *Zipes*, *supra*, at 759, the standard for awarding fees should turn on the reasonableness of the removal. Absent unusual circumstances, courts may award attorney's fees under §1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal. Conversely, when an objectively reasonable basis exists, fees should be denied. See, *e.g.*, *Hornbuckle*, 385 F. 3d, at 541; *Valdes* v. *Wal-Mart Stores, Inc.*, 199 F. 3d 290, 293 (CA5 2000). In applying this rule, district courts retain discretion to consider whether unusual circumstances warrant a departure from the rule in a given case. For instance, a plaintiff's delay in seeking remand or failure to disclose facts necessary to determine jurisdiction may affect the decision to award attorney's fees. When a court exercises its discretion in this manner, however, its reasons for departing from the general rule should be "faithful to the purposes" of awarding fees under §1447(c). *Fogerty*, 510 U. S., at 534, n. 19; see also *Milwaukee* v. *Cement Div., National Gypsum Co.*,

515 U. S. 189, 196, n. 8 (1995) ("[A]s is always the case when an issue is committed to judicial discretion, the judge's decision must be supported by a circumstance that has relevance to the issue at hand").

* * *

The District Court denied the Martins' request for attorney's fees because Franklin had an objectively reasonable basis for removing this case to federal court. The Court of Appeals considered it a "close question." 393 F. 3d, at 1148, but agreed that the grounds for removal were reasonable. Because the Martins do not dispute the reasonableness of Franklin's removal arguments, we need not review the lower courts' decision on this point. The judgment of the Court of Appeals is therefore affirmed.

*It is so ordered.*

Removal

**Question 1:**

Texas Citizen v. New York Citizen

→

State cause of action for $100,000

*If Tx citizen wants to sue in Texas, in what court(s) may she do so?*

**Question 2:**

NY Citizen v. Tx Citizen

→

(State cause of action for $100,000)

*If case is filed in State District Court, Harris County, Tx, can Tx citizen remove the case? If not, why not?*

**Question 3:**

STATE DISTRICT COURT, HARRIS COUNTY, TEXAS

Texas Citizen v. New York Citizen

→

(State cause of action for $100,000)

*If D removes the case:*

*What documents does he file (and where)?*
*By what date must he remove?*
*What if D first filed an answer one week after being served and then, the next day, sought to remove the case? What result?*

**Question 4:**

STATE DISTRICT COURT, HARRIS COUNTY, TEXAS

Texas Citizen ⟶ New York Citizen
(state cause of action: damages not plead)

*What does NY Defendant do now? What is the burden of proof in this circumstance and who bears it?*

*What if P wants to seek remand. What is the burden of proof in this circumstance and who bears it?*

*What if NY D asserts that in calculating AIC, you include punitive damages but the law in circuit is clear that you do not?*

*What if the court believes that the defendant was wrong to remove but the P does not make this AIC/punitive damage argument? Is the argument waived?*

**Question 5:**

STATE DISTRICT COURT, HARRIS COUNTY, TEXAS

Texas Citizen ⟶ Texas Citizen
(state cause of action: federal defense asserted by Defendant )

*May D remove case to federal court?*

*If it does, what result?*

*Would the result change if instead of it being a federal defense, the D asserts a federal counterclaim?*

**Question 6:**

STATE DISTRICT COURT, HARRIS COUNTY, TEXAS

Texas Citizen ——————→ Texas Citizen
(state cause of action)

*If D wants to remove the case based on 1331, what arguments must she make to have a chance at successfully doing so?*

**Question 7:**

STATE DISTRICT COURT, HARRIS COUNTY, TEXAS

Texas Citizen ——————→ New York Citizen
(state cause of action for $100,000)

——————→ Ohio Citizen
(state cause of action for $100,000)

*If NY wants to remove the case now, what must it do?*

*What if NY Defendant does not do what it was supposed to do? How is P to challenge once case has been removed?*

*What if NY D does not do what it was supposed to do, and court is aware of this. But P does not make this argument? Is the argument waived?*

**Question 8:**

STATE DISTRICT COURT, HARRIS COUNTY, TEXAS

Texas Citizen ⟶ New York Citizen
(state cause of action for $100,000)

⟶ Texas Citizen
(state cause of action for $100,000)

*If Tx citizen brings suit against NY and Tx originally (on January 2, 2009), case is not removable because there is not complete diversity of citizenship*

*But what if plaintiff voluntarily drops Tx defendant from case on Sept 22, 2009?*

*What if plaintiff drops Tx defendant from case on January 22, 2010?*

*What other means are there by which NY could argue that the case should be subject to removal?*

**Question 9:**

STATE DISTRICT COURT, HARRIS COUNTY, TEXAS

Texas Citizen ⟶ New York Citizen
(state cause of action for $100,000)

Assume that NY Defendant removes case to federal court:

FEDERAL DISTRICT COURT

Texas Citizen ⟶ New York Citizen
(state cause of action for $100,000)

*If Tx plaintiff, post removal, wants to add a Texas defendant after case is removed to federal court, what result? What rules and statutes bear relevance to this analysis?*

*Would it change the result if NY Defendant removes case to federal court based on federal question jurisdiction, like this:*

FEDERAL DISTRICT COURT

Texas Citizen ⟶ New York Citizen
(federal cause of action – defendant removed case under §1331)

(Proposed)
Texas Citizen ⟶ Texas Citizen
(state cause of action)

ERIE R. CO.

v.
TOMPKINS.

Argued Jan. 31, 1938.

Decided April 25, 1938.

Messrs. Theodore Kiendl, Harold W. Bissell, and William C. Cannon, all of New York City, for petitioner.

Messrs. Fred H. Rees, Alexander L. Strouse, and Bernard G. Nemeroff, all of New York City (Bernard Kaufman and William Walsh, both of New York City, and Aaron L. Danzig, of Jamaica, L.I., on the brief) for respondent.

Mr. Justice BRANDEIS delivered the opinion of the Court.

The question for decision is whether the oft-challenged doctrine of Swift v. Tyson shall now be disapproved.

Tompkins, a citizen of Pennsylvania, was injured on a dark night by a passing freight train of the Erie Railroad Company while walking along its right of way at Hughestown in that state. He claimed that the accident occurred through negligence in the operation, or maintenance, of the train; that he was rightfully on the premises as licensee because on a commonly used beaten footpath which ran for a short distance alongside the tracks; and that he was struck by something which looked like a door projecting from one of the moving cars. To enforce that claim he brought an action in the federal court for Southern New York, which had jurisdiction because the company is a corporation of that state. It denied liability; and the case was tried by a jury.

The Erie insisted that its duty to Tompkins was no greater than that owed to a trespasser. It contended, among other things, that its duty to Tompkins, and hence its liability, should be determined in accordance with the Pennsylvania law; that under the law of Pennsylvania, as declared by its highest court, persons who use pathways along the railroad right of way—that is, a longitudinal pathway as distinguished from a crossing—are to be deemed trespassers; and that the railroad is not liable for injuries to undiscovered trespassers resulting from its negligence, unless it be wanton or willful. Tompkins denied that any such rule had been established by the decisions of the Pennsylvania courts; and contended that, since there was no statute of the state on the subject, the railroad's duty and liability is to be determined in federal courts as a matter of general law.

The trial judge refused to rule that the applicable law precluded recovery. The jury brought in a verdict of $30,000; and the judgment entered thereon was affirmed by the Circuit Court of Appeals, which held (2 Cir., 90 F.2d 603, 604), that it was unnecessary to consider whether the law of Pennsylvania was as contended, because the question was one not of local, but of general, law, and that 'upon questions of general law the federal courts are free, in absence of a local statute, to exercise their independent judgment as to what the law is; and it is well settled that the question of the responsibility of a railroad for injuries caused by its servants is one of general law. * * * Where the public has made open and notorious use of a railroad right of way for a long period of time and without objection, the company owes to persons on such permissive pathway a duty of care in the operation of its trains. * * * It is likewise generally recognized law that a jury may find that negligence exists toward a pedestrian using a permissive path on the railroad right of way if he is hit by some object projecting from the side of the train.'

The Erie had contended that application of the Pennsylvania rule was required, among other things, by section 34 of the Federal Judiciary Act of September 24, 1789, c. 20, 28 U.S.C. §

725, 28 U.S.C.A. § 725, which provides: 'The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply.'

Because of the importance of the question whether the federal court was free to disregard the alleged rule of the Pennsylvania common law, we granted certiorari. 302 U.S. 671, 58 S.Ct. 50, 82 L.Ed. —.

First. Swift v. Tyson, 16 Pet. 1, 18, 10 L.Ed. 865, held that federal courts exercising jurisdiction on the ground of diversity of citizenship need not, in matters of general jurisprudence, apply the unwritten law of the state as declared by its highest court; that they are free to exercise an independent judgment as to what the common law of the state is—or should be; and that, as there stated by Mr. Justice Story, 'the true interpretation of the 34th section limited its application to state laws, strictly local, that is to say, to the positive statutes of the state, and the construction thereof adopted by the local tribunals, and to rights and titles to things having a permanent locality, such as the rights and titles to real estate, and other matters immovable and intra-territorial in their nature and character. It never has been supposed by us, that the section did apply, or was designed to apply, to questions of a more general nature, not at all dependent upon local statutes or local usages of a fixed and permanent operation, as, for example, to the construction of ordinary contracts or other written instruments, and especially to questions of general commercial law, where the state tribunals are called upon to perform the like functions as ourselves, that is, to ascertain, upon general reasoning and legal analogies, what is the true exposition of the contract or instrument, or what is the just rule furnished by the principles of commercial law to govern the case.'

The Court in applying the rule of section 34 to equity cases, in Mason v. United States, 260 U.S. 545, 559, 43 S.Ct. 200, 204, 67 L.Ed. 396, said: 'The statute, however, is merely declarative of the rule which would exist in the absence of the statute.' [2] The federal courts assumed, in the broad field of 'general law,' the power to declare rules of decision which Congress was confessedly without power to enact as statutes. Doubt was repeatedly expressed as to the correctness of the construction given section 34, [3] and as to the soundness of the rule which it introduced. [4] But it was the more recent research of a competent scholar, who examined the original document, which established that the construction given to it by the Court was erroneous; and that the purpose of the section was merely to make certain that, in all matters except those in which some federal law is controlling, the federal courts exercising jurisdiction in diversity of citizenship cases would apply as their rules of decision the law of the state, unwritten as well as written. [5]

Criticism of the doctrine became widespread after the decision of Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co., 276 U.S. 518, 48 S.Ct. 404, 72 L.Ed. 681, 57 A.L.R. 426. [6] There, Brown &Yellow, a Kentucky corporation owned by Kentuckians, and the Louisville & Nashville Railroad, also a Kentucky corporation, wished that the former should have the exclusive privilege of soliciting passenger and baggage transportation at the Bowling Green, Ky., Railroad station; and that the Black & White, a competing Kentucky corporation, should be prevented from interfering with that privilege. Knowing that such a contract would be void under the common law of Kentucky, it was arranged that the Brown & Yellow reincorporate under the law of Tennessee, and that the contract with the railroad should be executed there. The suit was then brought by the Tennessee corporation in the federal court for Western Kentucky to enjoin competition by the Black & White; an injunction issued by the District Court was sustained by the Court of Appeals; and this Court, citing many decisions in which the doctrine of Swift & Tyson had been applied, affirmed the decree.

Second. Experience in applying the doctrine of Swift v. Tyson, had revealed its defects, political and social; and the benefits expected to flow from the rule did not accrue. Persistence of state courts in their own opinions on questions of common law prevented uniformity; [7] and the

impossibility of discovering a satisfactory line of demarcation between the province of general law and that of local law developed a new well of uncertainties. [8]

On the other hand, the mischievous results of the doctrine had become apparent. Diversity of citizenship jurisdiction was conferred in order to prevent apprehended discrimination in state courts against those not citizens of the state. Swift v. Tyson introduced grave discrimination by noncitizens against citizens. It made rights enjoyed under the unwritten 'general law' vary according to whether enforcement was sought in the state or in the federal court; and the privilege of selecting the court in which the right should be determined was conferred upon the noncitizen. [9] Thus, the doctrine rendered impossible equal protection of the law. In attempting to promote uniformity of law throughout the United States, the doctrine had prevented uniformity in the administration of the law of the state.

The discrimination resulting became in practice far-reaching. This resulted in part from the broad province accorded to the so-called 'general law' as to which federal courts exercised an independent judgment. [10] In addition to questions of purely commercial law, 'general law' was held to include the obligations under contracts entered into and to be performed within the state, [11] the extent to which a carrier operating within a state may stipulate for exemption from liability for his own negligence or that of his employee; [12] the liability for torts committed within the state upon persons resident or property located there, even where the question of liability depended upon the scope of a property right conferred by the state; [13] and the right to exemplary or punitive damages. [14] Furthermore, state decisions construing local deeds, [15] mineral conveyances, [16] and even devises of real estate, [17] were disregarded. [18]

In part the discrimination resulted from the wide range of persons held entitled to avail themselves of the federal rule by resort to the diversity of citizenship jurisdiction. Through this jurisdiction individual citizens willing to remove from their own state and become citizens of another might avail themselves of the federal rule. [19] And, without even change of residence, a corporate citizen of the state could avail itself of the federal rule by reincorporating under the laws of another state, as was done in the Taxicab Case.

The injustice and confusion incident to the doctrine of Swift v. Tyson have been repeatedly urged as reasons for abolishing or limiting diversity of citizenship jurisdiction. [20] Other legislative relief has been proposed. [21] If only a question of statutory construction were involved, we should not be prepared to abandon a doctrine so widely applied throughout nearly a century. [22] But the unconstitutionality of the course pursued has now been made clear, and compels us to do so.

Third. Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a state whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts. As stated by Mr. Justice Field when protesting in Baltimore & Ohio R.R. Co. v. Baugh, 149 U.S. 368, 401, 13 S.Ct. 914, 927, 37 L.Ed. 772, against ignoring the Ohio common law of fellow-servant liability: I am aware that what has been termed the general law of the country—which is often little less than what the judge advancing the doctrine thinks at the time should be the general law on a particular subject—has been often advanced in judicial opinions of this court to control a conflicting law of a state. I admit that learned judges have fallen into the habit of repeating this doctrine as a convenient mode of brushing aside the law of a state in conflict with their views. And I confess that, moved and governed by the authority of the great names of those judges, I have, myself, in many instances, unhesitatingly and confidently, but I think now erroneously, repeated the same doctrine. But, notwithstanding the great names which may be cited in favor of the doctrine, and notwithstanding the frequency with which the doctrine has been reiterated, there stands, as a perpetual protest against its repetition, the constitution of the United States, which recognizes and preserves the

autonomy and independence of the states,—independence in their legislative and independence in their judicial departments. Supervision over either the legislative or the judicial action of the states is in no case permissible except as to matters by the constitution specifically authorized or delegated to the United States. Any interference with either, except as thus permitted, is an invasion of the authority of the state, and, to that extent, a denial of its independence.'

The fallacy underlying the rule declared in Swift v. Tyson is made clear by Mr. Justice Holmes. [23] The doctrine rests upon the assumption that there is 'a transcendental body of law outside of any particular State but obligatory within it unless and until changed by statute,' that federal courts have the power to use their judgment as to what the rules of common law are; and that in the federal courts 'the parties are entitled to an independent judgment on matters of general law':

'But law in the sense in which courts speak of it today does not exist without some definite authority behind it. The common law so far as it is enforced in a State, whether called common law or not, is not the common law generally but the law of that State existing by the authority of that State without regard to what it may have been in England or anywhere else. * * *

'The authority and only authority is the State, and if that be so, the voice adopted by the State as its own (whether it be of its Legislature or of its Supreme Court) should utter the last word.'

Thus the doctrine of Swift v. Tyson is, as Mr. Justice Holmes said, 'an unconstitutional assumption of powers by the Courts of the United States which no lapse of time or respectable array of opinion should make us hesitate to correct.' In disapproving that doctrine we do not hold unconstitutional section 34 of the Federal Judiciary Act of 1789 or any other act of Congress. We merely declare that in applying the doctrine this Court and the lower courts have invaded rights which in our opinion are reserved by the Constitution to the several states.

Fourth. The defendant contended that by the common law of Pennsylvania as declared by its highest court in Falchetti v. Pennsylvania R. Co., 307 Pa. 203, 160 A. 859, the only duty owed to the plaintiff was to refrain from willful or wanton injury. The plaintiff denied that such is the Pennsylvania law. [24] In support of their respective contentions the parties discussed and cited many decisions of the Supreme Court of the state. The Circuit Court of Appeals ruled that the question of liability is one of general law; and on that ground declined to decide the issue of state law. As we hold this was error, the judgment is reversed and the case remanded to it for further proceedings in conformity with our opinion.

Reversed.

# WHAT IS THE *ERIE* DOCTRINE? (AND WHAT DOES IT MEAN FOR THE CONTEMPORARY POLITICS OF JUDICIAL FEDERALISM?)

*Adam N. Steinman**

## II. MIDDLE-AGED *ERIE*: THE MODERN *ERIE* DOCTRINE

This Part summarizes the black letter *Erie* doctrine as it is currently understood. Subpart A describes the Supreme Court's instructions for determining which prong of *Hanna*'s bifurcated approach to the *Erie* doctrine applies to a particular issue. Subpart B summarizes the Supreme Court's guidance for "typical, relatively unguided *Erie* choice[s],"[102] and Subpart C summarizes the Court's treatment of *Erie* issues that are controlled by federal positive law such as the Federal Rules of Civil Procedure.

### *A. Guided or Unguided? Whether Federal Positive Law Governs the Issue*

The *Erie* doctrine's threshold inquiry is which of *Hanna*'s two modes of analysis applies to a given issue. As shorthand, this Article refers to the two prongs of *Hanna* as "guided" and "unguided" *Erie* choices.[103] Briefly stated, a guided *Erie* choice is one where state law is potentially trumped by federal positive law that enshrines a federal law standard for resolving that same issue. Most typically, the federal standard is embodied in a true Federal Rule[104]—one promulgated in accordance with the Rules Enabling Act.[105] If the Federal Rules do not dictate a federal standard for the issue at hand, the federal court must make an "unguided *Erie* choice."[106] In that situation, the federal court must choose between following state law and following a judicially created federal standard that is not embodied in positive federal law such as a Federal Rule of Civil Procedure.

Because guided and unguided *Erie* choices are made according to different standards,[107] characterizing a particular *Erie* choice is critical. The Supreme Court's guidance on this issue is muddled, however. It has at various times described the distinction as: whether the issue "is covered by one of the Federal Rules";[108] whether there is a "'direct collision' between the Federal Rule and the state law";[109] whether the "clash" between state law and a Federal Rule is "unavoidable";[110] "whether the scope of the Federal Rule in fact is sufficiently broad to control the issue before the Court";[111] whether following state law would "command[ ] displacement of a Federal Rule by an inconsistent state rule";[112] whether the Federal Rule "leav[es] no room for the operation of [state] law";[113] whether the Federal Rule and state law "can exist side by side, . . . each controlling its own intended sphere of coverage without conflict";[114] and whether "the purposes underlying the [Federal] Rule are sufficiently coextensive with the asserted purposes of the [state law] to indicate that the Rule occupies the [state law's] field of operation."[115] In one decision, the Supreme Court flatly rejected the idea that Federal Rules should be construed narrowly in order to avoid possible conflicts with state law.[116] But a subsequent decision instructed that the scope of the Federal Rules (and their corresponding ability to displace state law)

should be determined "with sensitivity to important state interests and regulatory policies."[117]

It is also difficult to extract meaningful guidance from the results the Supreme Court has reached in cases presenting this issue. The service of process issue in *Hanna* fell quite easily on the "guided" side of this distinction; the Federal Rules unambiguously authorized a method of service that was impermissible under Massachusetts law.[118] In *Walker v. Armco Steel Corp.*,[119] the Court confronted the more challenging question of whether Rule 3's command that "[a] civil action is commenced by *filing* a complaint with the court"[120] overrode Oklahoma's rule that mere filing of a complaint did not toll the Oklahoma statute of limitations (Oklahoma law required that a complaint be *served* on the defendant within the relevant statutory period).[121] The Court held that Rule 3 did not displace state law with respect to this issue, reasoning that "Rule 3 governs the date from which various timing requirements of the Federal Rules begin to run, but does not affect state statutes of limitations."[122]

Just a few years later, the Court indicated that Federal Rules might pose a more significant obstacle to invoking state law in federal court. *Burlington Northern Railroad Co. v. Woods*[123] involved an Alabama statute providing that, when a trial court's money judgment against a defendant is unsuccessfully appealed, the defendant must pay a penalty in the amount of ten percent of the judgment.[124] The defendant argued that Alabama's mandatory ten percent penalty did not apply in federal court because Rule 38 of the Federal Rules of Appellate Procedure gave federal courts discretion to "'award just damages and single or double costs'" in the event of a frivolous appeal.[125] The Supreme Court found that the Alabama statute did not apply because the Federal Rule's "discretionary mode of operation unmistakably conflicts with the mandatory provision of Alabama's affirmance penalty statute."[126]

Recently, however, the Court was more reluctant to read the Federal Rules to displace state law. *Gasperini v. Center for Humanities, Inc.*[127] considered whether federal courts were bound by a New York statute requiring a new trial if a jury's verdict "'deviates materially from what would be reasonable compensation.'"[128] The plaintiff argued that Rule 59 of the Federal Rules of Civil Procedure mandated a federal standard that was more deferential to jury verdicts.[129] Rule 59, which empowers federal district courts to "grant a new trial . . . after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court,"[130] had long been construed to allow a new trial because of excessive damages only where the jury's award "shock[s] the conscience."[131] The Court concluded that Rule 59 did not displace New York law on this issue: "Whether damages are excessive for the claim-in-suit must be governed by *some law*. And there is no candidate for that governance other than the law that gives rise to the claim for relief—here, the law of New York."[132]

Inconsistencies in the Supreme Court's case law make it difficult to confidently derive a precise test for determining whether or not an issue is "guided" by federal positive law. It remains, however, a threshold issue for proper application of the *Erie* doctrine. The next two subparts summarize the methods for choosing between state and federal law once an issue is characterized as guided or unguided.

### B. *The Unguided* Erie *Choice: Should Federal Courts Develop Procedural Common Law?*

Where federal practice on a particular issue is not dictated by federal positive law, a federal court faces a "typical, relatively unguided *Erie* choice."[133] In this situation, the court's choice is either (a) to follow the state law on that issue, or (b) to develop what is essentially a federal common law rule to decide the issue. For the last forty years (since *Hanna*), the Supreme Court has consistently stated that such choices must be made with reference to "the twin aims of the *Erie* rule: discouragement of forum-shopping and avoidance of inequitable administration of the laws."[134] If federal judicial lawmaking "would disserve these two policies," then the federal court must follow state law.[135]

#### 1. *Erie*'s Twin Aims in Action

The forty years since *Hanna* have witnessed several Supreme Court decisions applying the twin-aims test. Most recently, in *Semtek International Inc. v. Lockheed Martin Corp.*,[136] the Court indicated that it would contravene *Erie*'s twin aims to disregard California claim preclusion principles that would permit refiling of a lawsuit dismissed on statute of limitations grounds.[137] The Court was particularly troubled by the possibility that a more rigorous federal rule of preclusion might lead to forum shopping; it feared that "[o]ut-of-state defendants sued on stale claims in California . . . would systematically remove state-law suits brought against them to federal court—where, unless otherwise specified, a statute-of-limitations dismissal would bar suit everywhere."[138]

A few years earlier in *Gasperini*, the Supreme Court had applied the twin-aims test to choose between a New York law authorizing a new trial where a jury's damage award "'deviates materially from what would be reasonable compensation,'"[139] and the common law federal standard allowing a new trial only if a jury's award "shock[s] the conscience."[140] The Supreme Court concluded that "New York's check on excessive damages implicates what we have called *Erie*'s 'twin aims,'"[141] because if federal courts "persist in applying the 'shock the conscience' test to damage awards on claims governed by New York law, '"substantial" variations between state and federal [money judgments]' may be expected."[142] *Gasperini* explained that "*Erie* precludes a recovery in federal court significantly larger than the recovery that would have been tolerated in state court."[143]

*Chambers v. NASCO, Inc.*[144] used the twin-aims test to review a federal court's order that the defendant pay the plaintiff's attorneys' fees as a sanction for bad-faith conduct. The defendant argued that federal courts must follow state law on this issue, while the plaintiff maintained that federal courts could develop and apply federal standards with respect to such sanctions.[145] The Supreme Court found that "neither of [*Erie*'s] twin aims is implicated by the [federal court's] assessment of attorney's fees as a sanction for bad-faith conduct."[146] Because such sanctions depend "not on which party wins the lawsuit, but on how the parties conduct themselves during the litigation,"[147] the Court found that "there is no risk that the exception will lead to forum-shopping. Nor is it inequitable to apply the exception to citizens and noncitizens alike, when the party, by controlling his or her conduct in litigation, has the power to determine whether sanctions will be assessed."[148]

In *Walker v. Armco Steel Corp.*, the Supreme Court held that *Erie*'s twin aims did not permit federal courts to ignore a state law statute of limitations rule requiring that a complaint be served on the defendant within the relevant statutory period (rather than merely filed with the court clerk within the relevant period).[149] The Court was skeptical that disregarding this state rule would lead to forum shopping,[150] but

it found that failing to apply the state rule would result in inequitable administration of laws by allowing a state law claim that "concededly would be barred in the state courts by the state statute of limitations" to survive in federal court.[151]

2. Beyond *Erie*'s Twin Aims: Balancing Federal Interests?

One puzzle concerning unguided *Erie* choices is the vitality of the suggestion in *Byrd* that a federal interest in rules that are essential to the federal courts' independent system of administering justice might outweigh the concern that different rules in federal and state court would lead to different litigation outcomes.[152] When *Hanna* articulated *Erie*'s "twin aims" without mentioning any need to consider the federal interest in a particular rule, many believed that *Byrd* had been implicitly overruled.[153] And indeed, that aspect of *Byrd* was ignored by the Supreme Court for the better part of forty years.[154] In 1996, however, the Court's *Gasperini* decision cited *Byrd* for the notion that the "outcome-determinate" test that began with *Guaranty Trust Co. v. York* (and was refined in *Hanna*) must be balanced against "countervailing federal interests."[155]

On closer analysis, *Gasperini*'s endorsement of *Byrd*-balancing is ambivalent at best. The New York statute at issue in *Gasperini* had two components. First, it provided that a new trial is proper if the damage award "deviates materially" from reasonable compensation (in contrast to the shock-the-conscience standard that had traditionally applied in federal court).[156] Second, it gave New York appellate courts the authority to examine damage awards de novo (in contrast to the federal appellate courts' practice of reviewing a trial court's ruling on a new-trial motion for abuse of discretion).[157] As to the first issue, *Gasperini* held that it would contravene the *Erie*'s twin aims to disregard New York's deviates-materially standard.[158] If *Gasperini* had truly endorsed *Byrd*'s interest-balancing approach, one would have expected the Court then to inquire whether a "countervailing federal interest" in the shock-the-conscience standard overrode the result of the twin-aims test. But *Gasperini* never undertook such an inquiry, nor did it imply that such an inquiry was required.[159]

Rather, *Gasperini* cited *Byrd* only in connection with the second aspect of the New York statute—the standard that appellate courts should use to review a trial court's ruling on a new-trial motion. Just as *Byrd* held that an "'essential characteristic'" of the federal system is that disputed questions of fact must be determined by the jury,[160] *Gasperini* held that a "characteristic of the federal court system" is that the district court decides whether a jury's verdict is so excessive as to require a new trial, and the court of appeals may only review that decision for abuse of discretion.[161] Accordingly, *Gasperini* rejected the Second Circuit's view that a federal appellate court could assess the excessiveness of a jury's verdict de novo.[162] But it was never contended in *Gasperini* that New York's vesting of de novo review in state appellate courts was outcome determinative or otherwise ran afoul of *Erie*'s twin aims. So for *Gasperini* to insist on the traditional allocation of authority among federal trial and appellate courts does not suggest

that a federal interest in that allocation would override a disparity between state and federal law that *did* contravene *Erie*'s twin aims. Accordingly, many have read *Gasperini* not as reinvigorating *Byrd*'s consideration of "countervailing federal interests," but rather as recognizing constraints on appellate review that are imposed by the Seventh Amendment itself.[163]

### C. *The Guided* Erie *Choice: Is the Federal Positive Law Valid?*

*Hanna* made clear that federal courts must follow federal positive law as long as that law is valid.[164] For a judicially promulgated Federal Rule (such as a Federal Rule of Civil Procedure), a prerequisite for validity is compliance with the Rules Enabling Act.[165] The Rules Enabling Act provides that such rules "shall not abridge, enlarge or modify any substantive right."[166] This so-called substantive-rights provision is usually the most significant obstacle to the application of Federal Rules in the context of what this Article calls a "guided" *Erie* choice.[167]

The Supreme Court has given little concrete direction on the scope of the Rules Enabling Act's substantive-rights provision. In the Court's very first Rules Enabling Act case, it rejected the idea that all "important and substantial rights" qualified as "substantive rights" that were insulated from interference by Federal Rules.[168] The Court has also stated that incidental effects on substantive rights do not violate the Rules Enabling Act, provided such effects are "reasonably necessary to maintain the integrity of the system of federal practice and procedure."[169] But it has failed to elucidate what *do* qualify as "substantive rights," or where the line is between a permissible "incidental effect" on substantive rights and an impermissible "abridge[ment], enlarge[ment] or modif[ication]"[170] of such rights.

For the better part of the twentieth century, Supreme Court precedent on the substantive-rights provision led many to wonder whether it provided any meaningful check on federal rulemaking.[171]

167 Two other potential constraints on Federal Rules are the Constitution and the Rules Enabling Act's requirement that a Federal Rule qualify as a "general rule[ ] of practice and procedure." *Id.* § 2072(a). These limits, however, place no greater constraint on rulemaking than the Rules Enabling Act's substantive-rights provision itself. The constitutional authority for the Federal Rules derives from "the constitutional provision for a federal court system (augmented by the Necessary and Proper Clause)." *Hanna*, 380 U.S. at 472. Under current case law, it would be constitutional to allow Federal Rules "to regulate matters which, though falling within the uncertain area between substance and procedure, are rationally capable of classification as either." *Id.*; *see also, e.g.*, *Stewart*, 487 U.S. at 32 (concluding that because the contested statute is "*capable* of classification as a procedural rule," it "falls comfortably within Congress' powers under Article III as augmented by the Necessary and Proper Clause" (emphasis added)). The Rules Enabling Act provides that even if a Federal Rule is rationally classifiable as procedural, it is invalid if it also abridges, enlarges, or modifies substantive rights. *See* 19 WRIGHT ET AL., *supra* note 78, § 4509, at 259–61. *But cf.* Jonathan M. Landers, *Of Legalized Blackmail and Legalized Theft: Consumer Class Actions and the Substance-Procedure Dilemma*, 47 S. CAL. L. REV. 842, 855 (1974) ("[A] proper construction of the Rules Enabling Act would be that the limitations on rulemaking power . . . should be coextensive with constitutional limitations on the delegation of rulemaking power."). Similarly, the Rules Enabling Act's substantive-rights provision is generally viewed as being at least as strict (and certainly not less strict) than the Rules Enabling Act's requirement that Federal Rules be "general rules of practice and procedure." 28 U.S.C. § 2072(a); *see* Ely, *supra* note 2, at 719 ("Not only must a Rule be procedural; it must in addition abridge, enlarge or modify no substantive right."). Professor Burbank has made a compelling argument that the Rules Enabling Act's drafters believed that limiting rulemaking authority to "procedure" did "impose significant restrictions on court rulemaking," such that the substantive-rights provision was "surplusage." Stephen B. Burbank, *The Rules Enabling Act of 1934*, 130 U. PA. L. REV. 1015, 1107–08 (1982) ("In the opinion of the [Rules Enabling Act's] draftsman . . . , the second sentence served only to emphasize a restriction inherent in the use of the word 'procedure' in the first sentence."). But it has not been suggested that the requirement that Rules regulate "procedure" places a *greater* limit on the rulemaking process than the substantive-rights provision.

The Court has rejected Rules Enabling Act challenges to Federal Rules dictating the time for effecting service of process after a complaint is filed,[172] authorizing methods of serving process,[173] permitting suit in a particular federal district,[174] and empowering courts to order parties to submit to mental or physical examinations.[175] An important recent case is *Business Guides, Inc. v. Chromatic Communications Enterprises*,[176] which upheld Rule 11's authorization of monetary sanctions against a party who files documents in federal court without a reasonable inquiry into the merits of the factual and legal claims made therein.[177] The Court rejected the argument that such sanctions violated the Rules Enabling Act by creating an impermissible substantive tort remedy.[178] It reasoned that "[t]he main objective of the Rule is not to reward parties who are victimized by litigation; it is to deter baseless filings and curb abuses."[179] In *Burlington Northern Railroad Co. v. Woods*, the Court allowed the Federal Rules of Appellate Procedure to displace an Alabama law requiring defendants to pay plaintiffs an additional ten percent of the trial court judgment if they unsuccessfully challenged the judgment on appeal.[180] The Court explained that the Federal Rules' choice of a discretionary cost-shifting regime for frivolous appeals "affects only the process of enforcing litigants' rights and not the rights themselves."[181]

While these examples suggest that the Rules Enabling Act's substantive-rights provision poses minimal restrictions on federal rulemaking, more recent rulings reveal a possible change in attitude. Since the 1990s, the Supreme Court has suggested on a number of occasions that certain Federal Rules would violate the substantive-rights provision if interpreted in a particular way. In *Semtek International Inc. v. Lockheed Martin Corp.*, the defendant argued that Rule 41(b) required particular dismissals by federal district courts to have claim-preclusive effect on subsequent litigation.[182] The Court held that Rule 41(b) did not mandate that such dismissals be preclusive and noted that a contrary reading "would seem to violate" the substantive-rights provision if, under state law, such a dismissal would not foreclose future litigation.[183] In *Ortiz v. Fibreboard Corp.*,[184] the Court expressed concern that allowing Rule 23(b)(1)(B) to permit the certification of a massive asbestos class action with no opportunity for class members to opt out would violate the Rules Enabling Act's substantive-rights provision.[185] It noted that the equitable, pro rata recoveries that would result from such a limited fund[186] class action were in "tension" with the "rights of individual tort victims at law."[187] In *Gasperini*, the Supreme Court strongly implied that it would violate the substantive-rights provision to read Rule 59 as imposing a federal standard for determining whether a damages award is excessive.[188] And in *Kamen v. Kemper Financial Services, Inc.*,[189] the Court stated that it would violate the substantive-rights provision to read Rule 23.1 as imposing a requirement that plaintiffs in shareholder derivative lawsuits seek relief directly from the corporation's directors before filing suit.[190]

For these reasons, it is difficult to glean concrete guidance on the critical question of what constitutes improper interference with substantive rights for purposes of the Rules Enabling Act. It is fair to say, however, that Supreme Court decisions in the last decade or so suggest that the substantive-rights provision may be a more robust check on federal rulemaking than it appeared to be for most of the twentieth century.

### A. Erie's *Problems*

#### 1. *Erie*'s Relationship to "Classic" Federal Common Law

One puzzle that has plagued the *Erie* doctrine is its relationship to the Supreme Court's acceptance of what Judge Friendly once called "the new federal common law"[326] and what today might be called "classic federal common law"[327] or "substantive federal common law."[328] These labels refer to judicially developed federal legal standards that unquestionably define litigants' substantive rights and thereby override contrary state law.[329] One contemporary example of such judicial lawmaking is the government-contractor defense that the Supreme Court created in *Boyle v. United Technologies Corp.*[330] *Boyle* held that as a matter of federal common law, a government contractor who manufacturers a product according to the government's specifications is immune from state law tort liability for injuries resulting from product defects.[331] Other examples include federal common law rules to govern the effect of a foreign government's act on property rights within its territory,[332] and the U.S. government's obligation to pay on a government-issued check that was fraudulently transferred.[333] It is also a remarkable coincidence that the Supreme Court (per Justice Brandeis, no less) recognized federal court authority to make substantive, common law rules on the very same day it decided *Erie*.[334] In *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*,[335] Justice Brandeis declared that how water in an interstate stream should be apportioned between two states is a question of "'federal common law' upon which neither the statutes nor the decisions of either State can be conclusive."[336] Federal courts also use federal common law to fill substantive gaps in federal statutory schemes.[337]

Such decisions are hard to square with *Erie*'s command that federal courts lack the power to "declare substantive rules of common law."[338] Not surprisingly, *Erie* is often ignored when federal courts make the kind of substantive federal common law that *Erie* purportedly forbade.[339] Conversely, decisions holding that the *Erie* doctrine requires federal courts to apply state law rarely address whether federal standards might be justified by the lawmaking authority federal courts exercise in cases like *Boyle*.[340] The failure to reconcile these two divergent lines of authority has been one of *Erie*'s persistent puzzles.[341]

#### 2. *Erie*'s Relationship to Its Procedural Progeny

Another problem is the factual disconnect between the *Erie* decision itself and the cases that have come to constitute *Erie*'s doctrinal "progeny."[342] These cases—many of which are described in Part II—are principally about procedural federalism. They examine when a federal court is bound by a state procedural rule the same way it is bound (per *Erie* itself) by the state's rule for the standard of care in a tort case. Examples of such procedural issues include the kinds of discovery devices parties may use,[343] whether a judge or jury acts as the factfinder,[344] the methods by which process may be served,[345] the availability of sanctions for conduct during litigation,[346] the standard for granting a new trial,[347] and the preclusive effect of a pretrial dismissal.[348]

Identifying these cases as *Erie*'s progeny is conceptually problematic, because it gives *Erie* paternity over a set of cases that bear little resemblance to the *Erie* case itself. *Erie* had nothing to do with federal procedural lawmaking—it concerned the quintessentially substantive issue of the standard of care owed by the defendant in a tort case.[349] Nor did *Erie* purport to address the propriety of federal procedural lawmaking in the face of a contrary state rule.[350] As Professor Geoffrey Hazard recently put it, "*Erie v. Tompkins* is one thing; the *Erie* Doctrine is something else."[351] One could perhaps argue that *Erie* is a proper progenitor of the procedural federalism cases in that they all involve vertical choice of law problems (whether state or federal law applies to a particular issue). But if that is the only common genetic marker, it is not clear why *Erie* is especially significant. The Supreme Court has been examining vertical choice of law issues since the days of Chief Justice Marshall, long before *Erie* and even before *Swift*.[352]