No. 23-677

IN THE

Supreme Court of the United States

ROYAL CANIN U.S.A. INC. AND NESTLÉ PURINA PETCARE COMPANY,

Petitioners,

v.

ANASTASIA WULLSCHLEGER AND GERALDINE BREWER,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Eighth Circuit correctly held that, where the plaintiffs' amended complaint contains no claims that could possibly give rise to federal jurisdiction, the district court should remand the case to state court.

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INTRODUCTION

Respondents are Missouri consumers who allege that Petitioners, two pet food companies working in concert, intentionally misled and deceived them into believing that certain of their products could be legally obtained only by prescription. As a result of Petitioners' misleading statements, Respondents paid a substantial premium for the food, which contained the same or similar ingredients as cheaper products sold by Petitioners, contained no medicine, and was not a prescription product. Upon discovering the truth, Respondents filed suit against Petitioners under Missouri antitrust and consumer protection law in Missouri state court.

Petitioners did not allege any federal claims. Nonetheless, Respondent Purina removed the action to federal court. Reviewing the original state-court petition, the Eighth Circuit held—incorrectly—that the pleading's references to federal law brought the case into the "special and small category of cases in which arising under jurisdiction" exists over claims brought solely under state law, *Gunn v. Minton*, 568 U.S. 251, 258 (2013) (citation and internal quotation marks omitted), pursuant to the "substantial federal question" doctrine recognized by this Court in *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005). After that decision, and before any other proceedings in the district court, Respondents amended their complaint to eliminate any allegations that could conceivably give rise to federal jurisdiction. In a subsequent appeal, the Eighth Circuit found that nothing in the amended complaint that provided a basis for exercising federal jurisdiction, and thus held that remand was required in light of the widely accepted

principle that, once an amended complaint is filed, the earlier complaint is a dead letter.

The Eighth Circuit's holding does not warrant review. To start, both of Petitioners' questions presented take as their premise that the initial state-court pleading created substantial federal question jurisdiction under *Grable*. Notwithstanding the Eighth Circuit's earlier decision, it did not. Thus, the answers to the questions presented are irrelevant to the proper outcome of the case, making this case a poor vehicle to address them.

In addition, Petitioners' first question presented assumes that *federal question* jurisdiction may exist over state-law claims after all federal questions are eliminated from a case. Even under the cases cited by Petitioners in their discussion of the first question presented, though, the only basis for federal jurisdiction over the state-law claims is *supplemental* jurisdiction—the jurisdiction that (purportedly) existed over the state-law claims in the since superseded original pleading. Moreover, none of the cited cases decided by other courts of appeals would come out differently under the Eighth Circuit's decision in this case.

Petitioners' second question presented essentially asks whether, after all federal questions have disappeared in light of a voluntarily amended complaint, a district court must remand or instead has discretion to continue to exercise supplemental jurisdiction over state-law claims. Although Petitioners argue at length that the decision below departs from decisions of other courts in holding that remand is mandatory, those other courts' decisions recognize a presumption in favor of remand that

applies in all but exceptional circumstances. The decisions reflect that, while a defendant has a right to a federal forum for the adjudication of claims that arise under federal law, no party has a "right" to litigate state-law claims in federal court absent diversity. The strong presumption courts apply against exercising supplemental jurisdiction over state-law claims absent federal-law claims—particularly where any federal claims disappear very early in the case—means that the second question presented has little practical significance and, thus, that this case does not warrant review. The lack of practical significance is confirmed by the fact that the Eighth Circuit's approach would not change the outcome in the majority of cases cited by the Petitioners. And the result in *this* case would be the same under the approach in all of those cases.

Finally, the Eighth Circuit's remand decision was correct. There is no statutory basis for treating amendments in cases that were removed from state court on the basis of federal question jurisdiction differently from those amendments in cases first filed in federal court. In both scenarios, the voluntary elimination of all claims giving rise to federal jurisdiction divests the court of such jurisdiction. Petitioners' policy-based arguments cannot overcome the statutory language requiring remand in such cases.

STATEMENT OF THE CASE

Factual background

In this action, Respondents allege that Petitioners Royal Canin and Purina have created and enforced on retailers and consumers a requirement that certain dog and cat foods be sold only with a "prescription"

from a veterinarian—even though no law requires such a prescription. *See* 8th Cir. App. 14–15. Respondents allege that Petitioners' marketing and advertising deceive and mislead consumers into believing that there is a legal prescription requirement. *Id.* at 14–15, 24.

In reality, Respondents allege, Petitioners' "prescription-only" pet foods contain no drug or special ingredient that is not common in non-prescription pet food. *Id.* at 16, 26–27. The only differences between the prescription and non-prescription pet foods are the prescription requirement, the representation that the food contains medicine necessary for the pet's health, and the significant premium that Petitioners charge for the prescription food. *Id.* at 16.

Respondent Anastasia Wullschleger purchased Petitioner Royal Canin's prescription pet food for her dog, Clinton. *Id.* at 17. Respondent Geraldine Brewer purchased Petitioner Purina's prescription pet food for her cat, Sassie. *Id.* Both purchased the food under the belief that it was designed to treat their pets' specific disease and health problems, that it contained medicine of some sort, and that the food was an actual prescription product. *Id.* at 29–34. Neither would have paid the "prescription" premium had she known that none of this was true. *Id.* at 32, 34.

Procedural background

A. Respondents commenced this action on February 8, 2019, by filing a petition in the Jackson County, Missouri, Circuit Court on behalf of themselves and similarly situated Missouri consumers. *See* Dist. Ct. Dkt. 1-1. The petition included six state-law causes of action. The first two causes of action were brought by both plaintiffs against both

Purina and Royal Canin for violating Missouri antitrust law by (1) conspiring to inflate prices via the prescription requirement, in violation of Mo. Rev. Stat. § 416.031(1); and (2) conspiring to monopolize the market through the prescription requirement, and by conspiring to limit and preclude non-conspiring competitors from access to major channels of distribution, in violation of Mo. Rev. Stat. § 416.031(2). *Id.* ¶¶ 101–12. Respondent Wullschleger brought two additional claims against Royal Canin, for knowingly deceptive and misleading marketing and selling of "prescription" pet food in violation of the Missouri Merchandising Practices Act (MMPA), Mo. Rev. Stat. §§ 407.020 *et seq.*, and for unjust enrichment. *Id.* ¶¶ 113–18, 125–29. Respondent Brewer brought the same two claims against Purina. *Id.* ¶¶ 119–24, 130–34.

On March 26, 2019, Purina removed the action to the United States District Court for the Western District of Missouri. Pet. 60a. In its notice of removal, Purina asserted two bases for subject-matter jurisdiction. First, it asserted federal question jurisdiction under 28 U.S.C. § 1331, based on the substantial federal question doctrine, often referred to as *Grable* jurisdiction. Pet. 63a–66a. Second, it asserted that jurisdiction existed under the Class Action Fairness Act (CAFA), 28 U.S.C. § 1332(d)(2)(A). *Id.* at 66a–71a.

The district court rejected both theories of federal jurisdiction and remanded the case to state court. Pet. 13a–26a. As to substantial federal question jurisdiction, the court explained that "references to federal law in the Complaint do not, by their presence alone, mean that an interpretation of federal law is necessary to resolve the case." *Id.* at 21a. And it found

that Respondents' claims could be "evaluated with reference only to state law" and thus "d[id] not necessarily implicate significant federal issues." *Id.*

Petitioners sought appellate review pursuant to 28 U.S.C. § 1453(c)(1). The Eighth Circuit granted the request limited to the question of federal question jurisdiction, Pet. 30a; Order, 8th Cir. No. 19-8013 (Aug. 5, 2019), and reversed. The court acknowledged that "[r]esolution of the MMPA claims in this case might not depend on federal law" and that those claims did not independently trigger *Grable* jurisdiction. Pet. 31a (citing *Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804 (1986)). Nonetheless, the court concluded that, in light of the complaint's references to violations of federal law, the state-law antitrust and unjust enrichment claims and prayer for relief gave rise to federal jurisdiction under the substantial federal question doctrine. *Id.* at 31a–33a. The court did not, however, address each of the four required elements identified by this Court in *Gunn*, 568 U.S. at 258. *See id.*

Respondents petitioned this Court for a writ of certiorari, arguing the Eighth Circuit's decision misapplied this Court's holdings. *See Wullschleger v. Royal Canin U.S.A., Inc.*, No. 20-152 (Pet. Aug. 6, 2020). The Court denied review. 141 S. Ct. 621 (2020).

B. Respondents then filed an amended complaint as of right. The amended complaint contained the same MMPA claims as the initial state-court pleading, but it eliminated the antitrust and unjust enrichment claims and any references to federal food and drug law. *See* 8th Cir. App. 39–42. The complaint also added a state-law claim alleging a conspiracy to violate the MMPA. *Id.* at 42–43.

Respondents then moved to remand, arguing that the only potential basis for continuing jurisdiction over the case was supplemental jurisdiction, which the court should decline to exercise pursuant to 28 U.S.C. § 1367(c). *See* Dist. Ct. Dkt. 45. Petitioners opposed, arguing that the remaining claims still created *Grable* jurisdiction and that, even if they did not, the court should exercise supplemental jurisdiction. *See* Dist. Ct. Dkt. 52. The district court denied the motion to remand, finding that the conspiracy claim satisfied *Grable*. Pet. 43a–44a. The district court did not address supplemental jurisdiction. Petitioners then filed a motion to dismiss, which the district court granted. *Id.* at 46a.

Respondents appealed the district court's final judgment to the Eighth Circuit. After oral argument, the Eighth Circuit directed the parties to file letter briefs addressing whether federal jurisdiction existed after the filing of the amended complaint. *See* Jan. 26, 2023 Order. In their brief, Petitioners argued that the complaint at the time of removal was the only relevant pleading and that an amended pleading is relevant only as a one-way ratchet—that is, only where "a plaintiff amends the complaint to *reinforce* federal jurisdiction." Appellees' Supp. Br. 4. In their view, because the Eighth Circuit had found subject-matter jurisdiction in the first appeal, jurisdiction necessarily continued to exist. *Id.* at 5. In the alternative, Petitioners argued that the claims in the amended complaint themselves triggered jurisdiction under *Grable*. *Id.* at 5–7. By contrast, Respondents' supplemental brief argued that the amended complaint governed and provided no basis for either federal question jurisdiction or supplemental jurisdiction. *See* Appellants' Supp. Br. 3–9.

The court of appeals issued a unanimous opinion vacating the district court's judgment and directing it to remand the case to Missouri state court. *See* Pet. 3a. First, the Eighth Circuit rejected the theory on which the district court had based jurisdiction: that the amended complaint raised claims that satisfied the requirements of *Grable* jurisdiction. *Id.* at 6a–7a. Second, the court rejected defendants' argument that the court continued to have federal question jurisdiction based on the earlier pleading. *Id.* at 7a. The court relied on the longstanding "rule that 'an amended complaint supersedes an original complaint and renders the original complaint without legal effect.'" *Id.* (brackets omitted; quoting *In re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8th Cir. 2000), and citing *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 929 (8th Cir. 2005)).

The court provided two reasons why the so-called "time-of-filing rule," under which "the jurisdiction of the [c]ourt depends upon the state of things at the time of the action brought," did not require a contrary result. Pet. 8a. (alteration in original; quoting *Mollan v. Torrance*, 22 U.S. 537, 539 (1824)). First, the court explained that "the state of things" to which the rule refers is "the actual facts on the ground," such as a party's citizenship for diversity purposes, that can change over the course of litigation without impacting jurisdiction. *Id.* (discussing *Gale v. Chi. Title Ins. Co.*, 929 F.3d 74, 77–78 (2d Cir. 2019)). It does not refer to changes to the "*alleged* state of things" set out in the complaint. *Id.* at 9a (citation omitted). Noting the courts of appeals' agreement that post-removal amendments that add a federal claim can create federal jurisdiction, the court found "little difference, from a jurisdictional perspective, between *adding* a

federal claim in the absence of federal-question jurisdiction, and *subtracting* a claim or two, as happened here, to eliminate federal-question jurisdiction." *Id.* (citations omitted). Both scenarios, the court explained, involve "a change to the 'alleged state of things.'" *Id.* Second, the court noted, "it is not even clear that the time-of-filing rule applies in federal-question cases, and certainly not to the extent it does in diversity cases." *Id.* at 11a. The court observed that, "for the most part, [the rule] has not strayed" beyond diversity cases. *Id.* (citing, *e.g.*, *Mollan*, 22 U.S. at 539, and *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 571 (2004)).

While acknowledging that other courts have held that the continued exercise of supplemental jurisdiction is within district courts' discretion, the Eighth Circuit noted that those courts "emphasized forum-manipulation concerns over jurisdictional rigor." Pet. 10a (footnote omitted). The court observed that forum-manipulation concerns were overblown and that, other than in cases where amendment is as of right under Federal Rule of Civil Procedure 15(a)(1), "a district court can withhold 'leave' to amend if the only reason for the changes is to destroy federal jurisdiction." *Id.* at 10a n.2.

Finally, the court of appeals rejected the notion that supplemental jurisdiction exists in this case despite the lack of federal question jurisdiction. Pet. 11a–12a. The court explained that, because the "original complaint is without legal effect," "the possibility of supplemental jurisdiction" had "vanished." *Id.* (citation and internal quotation marks omitted; citing, among others, *Pintando v. Miami-Dade Hous. Agency*, 501 F.3d 1241, 1243–44 (11th Cir. 2007) (per curiam)).

Petitioners filed a petition for rehearing and rehearing en banc, which the court denied. Pet. 58a.

REASONS FOR DENYING THE WRIT

I. Neither question presented is relevant to this case, where there never was federal question jurisdiction.

Both of Petitioners' questions presented assume that the pleading at the time of removal provided a basis for federal jurisdiction. It did not. Accordingly, regardless of the answers to those questions, this case was properly remanded to state court. This case is therefore an unsuitable vehicle for addressing either question presented.[1]

The asserted basis for federal jurisdiction over the original pleading was the substantial federal question doctrine, often referred to as *Grable* jurisdiction. *Grable* jurisdiction exists over a state-law claim only "if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn*, 568 U.S. at 258. To determine whether the first three *Grable*

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[1] The Eighth Circuit's contrary conclusion in its 2020 opinion does not bind this Court. *See Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986) ("[E]very federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review.'" (quoting *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934))); *see also Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 278 (1977) (recognizing that this Court is "obliged to inquire sua sponte whenever a doubt arises as to the existence of federal jurisdiction").

elements are satisfied, courts "look only to the necessary elements of the [plaintiff's] causes of action." *Burrell v. Bayer Corp.*, 918 F.3d 372, 382 (4th Cir. 2019); *see also Rhode Island v. Shell Oil Prods. Co.*, 35 F.4th 44, 57 (1st Cir. 2022); *Cent. Iowa Power Co-op. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 561 F.3d 904, 914 (8th Cir. 2009).

The Eighth Circuit's 2020 decision failed to address the four required elements. Pet. 31a–32a. And consideration of those elements makes clear that no federal jurisdiction existed over the earlier pleading.

Missouri antitrust law makes any "contract, combination or conspiracy in restraint of trade or commerce," and any "monopol[y], attempt to monopolize, or conspir[acy] to monopolize trade or commerce" unlawful. Mo. Rev. Stat. §§ 416.031(1)–(2). A determination whether Respondents had proved such conduct would not hinge on the resolution of any substantial federal question. Respondents alleged that state law was violated by the coordinated "knowingly deceptive, misleading, and self-imposed prescription requirement having no legal basis or mandate," and by "conspiring to limit and preclude non-conspiring competing manufacturers of Prescription Pet Food from access to major channels of distribution." Dist. Ct. Dkt. 1-1 ¶¶ 106, 108. Neither allegation implicated any actually disputed substantial question of federal law.[2]

A Missouri unjust enrichment claim requires a showing that: "(1) the plaintiff conferred a benefit on

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[2] There is no dispute that federal law does not require a prescription for purchase of the pet food at issue.

the defendant; (2) the defendant appreciated the benefit; and (3) the defendant accepted and retained the benefit under inequitable and/or unjust circumstances." *Hargis v. JLB Corp.*, 357 S.W.3d 574, 586 (Mo. 2011) (en banc) (cleaned up). Respondents alleged that Petitioners received the benefit of "an unwarranted price premium for Prescription Pet Food," while knowing that the "prescription requirement ha[d] no legal basis or mandate." Dist. Ct. Dkt. 1-1 ¶¶ 126, 131. No substantial federal question was implicated by this allegation.

Finally, Respondents' initial request in their prayer for relief that the court "enjoin[] Defendants to comply with all federal and Missouri provisions applicable," Dist. Ct. Dkt. 1-1 ¶ 138, does not satisfy the requirements of substantial federal question jurisdiction. Such an oblique reference to federal law in the request for a remedy does not make any substantial federal issue necessary to the resolution of the case.

Holding otherwise, the Eighth Circuit's 2020 decision pointed to references in the Missouri antitrust and unjust enrichment claims, and in the prayer for relief, to violations of the federal Food, Drug, and Cosmetic Act (FDCA) and related guidance. Pet. 32a–33a. These passing references were insufficient to create federal jurisdiction. "[I]t takes more than a federal element to open the 'arising under' door" and create *Grable* jurisdiction. *Empire HealthChoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 701 (2006) (cleaned up). For example, in *Merrell Dow*, 478 U.S. 804, where the plaintiff alleged, in support of a state-law negligence claim, that a drug was misbranded in violation of the FDCA, this Court held that the allegations did not create federal question

jurisdiction. Likewise here, the allegations in the original complaint that Petitioners violated federal law did not mean that those violations were "a necessary element" of the state-law claims, as required for *Grable* jurisdiction. *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 13 (1983).

Because the predicate question of whether there was a basis for exercising federal jurisdiction over the original pleading would pose a barrier to this Court's reaching either of the petition's two questions presented, this case is unsuitable for review.

II. The petition's first question does not warrant review.

The petition's first question presented suggests that federal question jurisdiction can exist over an action even after all federal questions have been eliminated. Federal question jurisdiction, however, does not on its own ever provide a basis for a federal court to exercise original jurisdiction over claims that do *not* arise under federal law. Rather, when a federal court entertains state-law claims because an action raises a federal question, the court is exercising supplemental jurisdiction over those state-law claims. "The whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking." *City of Chi. v. Int'l Coll. of Surgeons*, 522 U.S. 156, 167 (1997). Thus, absent diversity, where all federal claims in an action are dismissed, any jurisdiction that continues over the remaining state-law claims is supplemental jurisdiction. *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006).

Whether or not supplemental jurisdiction is available where the elimination of federal claims is the result of a post-removal voluntary amendment to the complaint is the petition's second question presented and is addressed below. But no court of appeals has held that the amendment of a complaint to eliminate federal question jurisdiction somehow converts the supplemental jurisdiction available to hear state-law claims into federal question jurisdiction. In the cases cited by Petitioners, courts addressed the exercise of *supplemental* jurisdiction over the remaining state-law claims, on the basis that federal question jurisdiction *previously* existed in the case. *See, e.g.*, *Collura v. City of Phila.*, 590 F. App'x 180, 184 (3d Cir. 2014) (per curiam) (referring to court's "supplemental jurisdiction to consider … state-law claims"); *Smith v. Wynfield Dev. Co.*, 238 F. App'x 451, 455 (11th Cir. 2007) (per curiam) (addressing whether district court "could have exercised supplemental jurisdiction over any remaining state law claims").

Moreover, none of these cases would come out differently under the Eighth Circuit's decision in this case. In both *Collura* and *Smith*, the plaintiffs *involuntarily* amended their complaints post-removal, after the district courts had granted motions to dismiss. *See Collura*, 590 F. App'x at 182–83; *Smith*, 238 F. App'x at 454. The holding that Petitioners challenge in this case expressly does *not* apply to cases involving amendment in that circumstance. The Eighth Circuit explicitly stated that, had "the decision to amend [been] … involuntary," it "would have looked at the original complaint" to assess federal jurisdiction over the remaining claims. Pet. 7a–8a n.1 (first quoting *Atlas Van Lines*, 209 F.3d at 1067).

The outcome of the other case discussed by Petitioners, *Sparta Surgical Corp. v. National Ass'n of Securities Dealers, Inc.*, 159 F.3d 1209 (9th Cir. 1998), would also be the same in the Eighth Circuit. There, the Ninth Circuit held that an action fell within the exclusive federal jurisdiction conferred by 15 U.S.C. § 78aa for claims concerning violations of securities exchange rules. 159 F.3d at 1212–13. In passing at the end of its analysis, the Ninth Circuit briefly invoked a "time of removal" rule to find that plaintiff's amendment of its complaint to omit "most references to exchange rule violations" was immaterial. *Id.* at 1213. But the amendment was also immaterial with regard to jurisdiction because, as the district court had held, "despite plaintiff's elimination of most references to [exchange] rule violations in the amended complaint, … issues of [exchange] rule violations [still] underl[ay] the state common law claims." *Sparta Surgical Corp. v. Nat'l Ass'n of Sec. Dealers, Inc.*, No. C-95-3926-MHP, 1997 WL 50223, at *3 (N.D. Cal. 1997). Thus, in the court's view, there was jurisdiction under § 78aa whether the court looked to the original complaint *or* the amended complaint.[3] Nothing in the Eighth Circuit's decision in this case would require remand in that circumstance.

In a string cite, Petitioners cite *Salzer v. SSM Health Care of Okla. Inc.*, 762 F.3d 1130 (10th Cir. 2014), and *Prince v. Rescorp Realty*, 940 F.2d 1104 (7th Cir. 1991). *See* Pet. 13–14. Like *Collura* and *Smith*, those cases involved involuntary amendments

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[3] The Ninth Circuit's view of the scope of § 78aa in *Sparta* was abrogated by this Court's decision in *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374 (2016).

after a district court granted a motion to dismiss. In a third case cited by Petitioners, *Brown v. Eastern States Corp.*, 181 F.2d 26 (4th Cir. 1950), the court based its decision that remand was not required on language in the then-operative 28 U.S.C. § 1447(c), which it viewed as standing for the proposition that a "case is not to be remanded if it was properly removable upon the record as it stood at the time that the petition for removal was filed." *See id.* at 28–29. The statute has since been amended, and the current version requires remand if jurisdiction disappears at *any* time during a case. *See infra* at 28. Finally, the petition cites *In Touch Concepts, Inc. v. Cellco Partnership*, 788 F.3d 98 (2d Cir. 2015), but that case did not involve an amendment to the substantive claims alleged, but to whether the plaintiff was pursuing the claims on behalf of a class. The impact of such an amendment on jurisdiction under CAFA, 28 U.S.C. § 1332(d), a form of diversity jurisdiction, is not a question addressed by the Eighth Circuit and is not within the scope of the petition's questions presented.[4]

In sum, although federal question jurisdiction over some claims may provide a basis for *supplemental* jurisdiction over other state-law claims, it does not create *federal question* jurisdiction over those other claims—neither before nor after amendment of a pleading. No case cited by Petitioners supports their assertion that post-removal amendments create federal question jurisdiction over purely state-law

[4] Petitioners also cite *Boelens v. Redman Homes, Inc.*, 759 F.2d 504 (5th Cir. 1985). *See* Pet. 3, 16, 17, 19. Any discussion of post-removal amendments there is dicta because that case originated in federal court.

claims. Even if the original complaint had provided a basis for federal jurisdiction, *but see supra* part I, review to consider Petitioners' novel theory of federal question jurisdiction—unsupported by any court of appeals decision—would be unwarranted.

III. The petition's second question does not warrant review.

As the Eighth Circuit noted, Pet. 10a, courts of appeals have taken different approaches to the second question presented: whether a federal court may continue to exercise supplemental jurisdiction over state-law claims after the post-removal voluntary elimination of the claims that provided the basis for the court's federal question jurisdiction. The court below held that remand is required in that situation. Some courts of appeals, however, have expressed the view that the possibility of exercising supplemental jurisdiction still remains in such situations, and that whether to do so is left to the district courts' discretion. At the same time, though, those courts of appeals have recognized that remand is ordinarily the appropriate outcome in such cases, because the factors that guide the decision whether to exercise supplemental jurisdiction will almost always weigh in favor of remand. Thus, the difference between the two views has minimal practical effect. Under either view, the outcome will be the same in most every case—including in the majority of cases cited by Petitioners and in *this* case. For this reason, the petition should be denied.

A. The exercise of supplemental jurisdiction is never mandatory. *See Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639–40 (2009). And it is well-established that federal courts should generally

decline to exercise supplemental jurisdiction "when the federal-law claims have dropped out of [a] lawsuit in its early stages and only state-law claims remains." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988) (citing *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726–27 (1966)). As this Court confirmed in *Cohill*, this principle applies where a case is in federal court after having been removed from state court and, therefore, authorizes remands in such cases. *Id.* at 350, 357.

Accordingly, courts in the circuits to which Petitioners point as applying their preferred approach regularly affirm remands of state-law claims to state court and reverse district court decisions to continue to exercise jurisdiction, "appl[ying] a strong presumption against the exercise of supplemental jurisdiction" in circumstances like those in this case. *Packard v. Farmers Ins. Co. of Columbus Inc.*, 423 F. App'x 580, 584 (6th Cir. 2011). *See also, e.g.*, *Dirauf v. Berger*, 57 F.4th 101, 108–09, 108 n.6 (3d Cir. 2022) (affirming remand where the plaintiff eliminated the federal-law claim post-removal and endorsing the district court's application of a "presumption in favor of remand"); *Watson v. City of Allen*, 821 F.3d 634, 642–43 (5th Cir. 2016) (holding that the district court abused its discretion by failing to remand after a post-removal amendment eliminated the sole federal claim); *Enochs v. Lampasas Cnty.*, 641 F.3d 155, 161–63 (5th Cir. 2011) (same); *Gamel v. City of Cincinnati*, 625 F.3d 949, 952–53 (6th Cir. 2010) (holding that forum-manipulation concerns did not authorize retention of supplemental jurisdiction and affirming remand); *Arrington v. City of Raleigh*, 369 F. App'x 420, 422–23 (4th Cir. 2010) (per curiam) (vacating the lower court judgment and directing remand as

"precedent[] make[s] clear" that jurisdiction should have been declined where the plaintiff amended her complaint to dismiss the federal claims post-removal); *Harless v. CSX Hotels, Inc.*, 389 F.3d 444, 448–49 (4th Cir. 2004) (affirming remand based on post-removal amendment where the plaintiff "never intended to allege a federal claim").[5]

The presumption applied by these courts against the exercise of supplemental jurisdiction is based on the four "statutory factors set forth by 28 U.S.C. § 1367(c), and [] the common law factors of judicial economy, convenience, fairness, and comity" set out in *Cohill*. *Enochs*, 641 F.3d at 159 (citing *Cohill*, 484 U.S. at 350). In cases like this one, where the district court does not have original jurisdiction over any remaining claim, one of the bases set forth in section 1367(c) for declining supplemental jurisdiction will *always* be present: whether "the claim substantially predominates over the claim or claims over which the district court ha[d] original jurisdiction." *See, e.g.*, *Bentley*, 1995 WL 534726, at *3 ("Because all of the federal

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[5] Other decisions approving of remands after the post-removal voluntary elimination of federal claims include *Southard v. Newcomb Oil Co.*, 7 F.4th 451, 455 (6th Cir. 2021); *A.W. v. Tuscaloosa City Schs. Bd. of Educ.*, 744 F. App'x 668, 673 (11th Cir. 2018) (per curiam); *Regents of Univ. of Cal. v. Aisen*, 742 F. App'x 186, 188–89 (9th Cir. 2018) (mem.); *Hicks v. Austin Indep. Sch. Dist.*, 564 F. App'x 747, 748–49 (5th Cir. 2014) (per curiam); *Bentley v. Tarrant Cnty. Water Control & Improvement Dist. No. One*, 66 F.3d 319, 1995 WL 534726, at *3 (5th Cir. 1995); *Neal v. Sky Chefs, Inc.*, 39 F.3d 321, 1994 WL 612799, at *2–3 (5th Cir. 1994) (per curiam); *Massachusetts v. V & M Mgmt., Inc.*, 929 F.2d 830, 835–36 (1st Cir. 1991) (per curiam).

claims have been withdrawn, the state claims clearly predominate….”).[6]

Common-law factors also weigh strongly in favor of remand in such cases: Convenience will generally weigh in favor of remand, because state courts tend to be closer to parties, witnesses, and evidence. *See*, *e.g.*, *Enochs*, 641 F.3d at 160. There is nothing unfair about having purely state-law claims litigated in state court. *Id.* And comity weighs in favor of remand for state-court consideration of wholly state-law cases. *Id.* (“[F]ederal courts … are courts of limited jurisdiction and ‘not as well equipped for determinations of state law as are state courts.’” (quoting *Parker & Parsley Petroleum Co. v. Dresser Indus.*, 972 F.2d 580, 588–89 (5th Cir. 1992))). Likewise, judicial economy points to remand in cases that, like this case, are at their earliest stages. *See, e.g.*, *id.* at 159; *Packard*, 423 F. App’x at 585. By contrast, later in a case, when a complaint may be amended only with consent or pursuant to court order, *see* Fed. R. Civ. P. 15(a)(2), a district judge who believes that it would be appropriate to exercise supplemental jurisdiction may deny a motion to amend that has no basis other than forum manipulation, as the Eighth Circuit suggested. *See* Pet. 10a n.2; *see also, e.g.*, *Canada v. Tex. Mut. Ins. Co.*, 766 F. App’x 74, 82 (5th Cir. 2019) (per curiam) (affirming denial of leave to amend on such grounds); *Skinner v. First Am. Bank of Va.*, 64 F.3d 659, 1995

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[6] The other bases set forth in section 1367(c) that authorize a court to decline supplemental jurisdiction are “the district court has dismissed all claims over which it has original jurisdiction,” “the claim raises a novel or complex issue of State law,” and “in exceptional circumstances, there are other compelling reasons for declining jurisdiction.”

WL 507264, at *2–3 (4th Cir. 1995) (per curiam) (same).

Petitioners have identified a few cases where, while recognizing a presumption against remand, courts of appeals have found that extraordinary circumstances warranted an exception to the general rule. *See, e.g., Grispino v. New Eng. Mut. Life. Ins. Co.*, 358 F.3d 16, 19 (1st Cir. 2004) (acknowledging that the district court "could easily have concluded that a recommendation for remand was appropriate" but finding that exceptional circumstances—including the case's status as part of multi-district litigation involving related claims—authorized exercise of discretion to retain jurisdiction); *Harper v. Auto-Alliance Int'l, Inc.*, 392 F.3d 195, 211–12 (6th Cir. 2004) (acknowledging the general rule but finding that the continued exercise of supplemental jurisdiction was justified where the amended pleading was filed after summary-judgment briefing).[7] None of the exceptional circumstances noted in those cases were present in this case.

The other cases cited by Petitioners likewise do not evidence a divide of significance. The two unpublished opinions that Petitioners cite contain no analysis and are in tension with other decisions of the same courts. *Compare Coefield v. GPU*, 125 F. App'x 445, 448 n.3

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[7] In addition, *Grispino* suggests that the plaintiffs amended their complaint after the filing of a motion to dismiss, which would have required either the consent of the defendants or leave of the district court. 358 F.3d at 18. And in *Harper*, the plaintiff filed an amended complaint "upon stipulation of the parties." 392 F.3d at 200. As the Eighth Circuit noted, the denial of leave would be the appropriate response if a district court wanted to maintain jurisdiction in such cases. Pet. 10a n.2.

(3d Cir. 2005), *with Dirauf*, 57 F.4th at 108; *compare Savage v. W. Va. Dep't of Health & Hum. Res.*, 523 F. App'x 249, 250 (4th Cir. 2013) (per curiam), *with Arrington*, 369 F. App'x at 423–24. And in *Behlen v. Merrill Lynch*, 311 F.3d 1087, 1095 (11th Cir. 2002), also cited by Petitioners, the Eleventh Circuit held that "it was proper for the court to retain jurisdiction over [the plaintiff]'s amended complaint, because … the amended complaint still present[ed] a federal question." Nothing in the Eighth Circuit's decision suggests disagreement with that conclusion.

B. Applying a presumption against the discretionary exercise of supplemental jurisdiction and in favor of remand, rather than a requirement of remand, would not alter the result in this case. Section 1367(c) and the *Cohill* factors point to remand, and there are no countervailing exceptional circumstances. Several section 1367(c) factors point to remand, including that the amended complaint raised several disputed issues concerning the appropriate interpretation of the MMPA and that there are no federal-law claims pending.

The *Cohill* factors of judicial economy, convenience, fairness, and comity also support remand. Respondents amended their complaint before Petitioners had filed either a responsive pleading or a Rule 12 motion. No discovery had taken place, and the only substantive decision by the district court had been its remand order. Any claim of unfairness is particularly weak in this case because, as in *Harless*, 389 F.3d at 448–49, the plaintiffs *never* intended to bring a federal claim and always maintained that they were bringing claims solely under state law. To allow the case to return to state court when the plaintiffs

always intended to bring only state-law claims is not inequitable.

The inability of Petitioners to cite any reasoned opinion addressing a scenario similar to that presented here where the result would have been different is strong evidence that certiorari is not warranted.

IV. The decision below is correct.

The Eighth Circuit correctly determined that supplemental jurisdiction was not available because the amended complaint pleaded no claim that supported federal question jurisdiction.

As every court of appeals has recognized, "[a]n amended complaint supersedes an earlier complaint for all purposes." *In re Refrigerant Compressors Antitrust Litig.*, 731 F.3d 586, 589 (6th Cir. 2013) (citing *Pac. Bell Tel. Co. v. linkLine Commc'ns, Inc.*, 555 U.S. 438, 456 n.4 (2009)); *see also* Pet. 7a (quoting *Atlas Van Lines*, 209 F.3d at 1067); *ConnectU LLC v. Zuckerberg*, 522 F.3d 82, 91 (1st Cir. 2008); *Pettaway v. Nat'l Recovery Sols., LLC*, 955 F.3d 299, 303 (2d Cir. 2020) (per curiam); *Garrett v. Wexford Health*, 938 F.3d 69, 82 (3d Cir. 2019); *Berkeley Cnty. Sch. Dist. v. Hub Int'l Ltd.*, 944 F.3d 225, 241 (4th Cir. 2019); *Raskin ex rel. JD v. Dallas Indep. Sch. Dist.*, 69 F.4th 280, 282 n.1 (5th Cir. 2023); *Johnson v. Dossey*, 515 F.3d 778, 780 (7th Cir. 2008); *Ramirez v. Cnty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015); *Predator Int'l, Inc. v. Gamo Outdoor USA, Inc.*, 793 F.3d 1177, 1180–81 (10th Cir. 2015); *Hoefling v. City of Miami*, 811 F.3d 1271, 1277 (11th Cir. 2016); *Webb v. U.S. Vets. Initiative*, 993 F.3d 970, 972 (D.C. Cir. 2021); *In re Samsung Elecs. Co.*, 2 F.4th 1371, 1376 (Fed. Cir. 2021). Accordingly, this Court has explained

that courts should look to the operative complaint, not any preceding complaint, to assess federal jurisdiction (1) where a plaintiff has initially filed in federal court and voluntarily amended his complaint to eliminate the basis for federal question jurisdiction, *Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 473–74 (2007), and (2) where, post-removal, a plaintiff has voluntarily amended his complaint to add a federal claim for the first time, *Pegram v. Herdrich*, 530 U.S. 211, 216 n.2 (2000). The Eighth Circuit correctly declined to create a different, "time of filing" rule for evaluating jurisdiction applicable only in the category of cases where the amendment eliminates a basis for federal question jurisdiction and only in actions removed to federal court.

For one, as the Eighth Circuit noted, it is hardly clear that the "time-of-filing" rule has any application to questions relating to federal question jurisdiction. Pet. 11a; *see Grupo Dataflux*, 541 U.S. at 571 (describing the time-of-filing rule as one that "measures all challenges to subject-matter jurisdiction premised upon diversity of citizenship against the state of facts that existed at the time of filing"); *Ford Motor Co. v. United States*, 688 F.3d 1319, 1325 (Fed. Cir. 2012) (noting that courts of appeals "have expressed doubt that the time-of-filing rule uniformly governs subject matter jurisdiction in federal question cases"); *New Rock Asset Partners, L.P. v. Preferred Entity Advancements, Inc.*, 101 F.3d 1492, 1503 (3d Cir. 1996) ("The rule that jurisdiction is assessed at the time of the filing of the complaint has been applied only rarely to federal question cases. Moreover, in these rare cases, the rule has often been applied axiomatically, without extensive discussion or analysis.").

Even where it does apply, the rule does not make post-filing changes irrelevant for purposes of jurisdiction. As this Court recognized in *Rockwell*, the withdrawal of allegations that had established jurisdiction "will defeat jurisdiction …, unless they are replaced by others that establish jurisdiction." 549 U.S. at 473. Therefore, "when a plaintiff … voluntarily amends the complaint, courts look to the amended complaint to determine jurisdiction." *Id.* at 473–74; *see also Robinson v. Anderson*, 121 U.S. 522, 524 (1887) (holding that a complaint will not provide a continuing basis for federal question jurisdiction where, after "the pleadings are all in," no such question exists); *Ford Motor Co.*, 688 F.3d at 1325–26 (collecting cases for the proposition that amendments to a complaint are relevant to jurisdiction when "they involve not changes in the underlying facts of the case, but changes in the legal theories plaintiff seeks to have applied to those facts"). In cases filed in federal court, courts regularly apply this rule to hold that they lack jurisdiction where the amended complaint contains no federal question, even where the original complaint did. *See, e.g.*, *Smith v. Toyota Motor Corp.*, 978 F.3d 280, 281 (5th Cir. 2020); *Hooten v. Ikard Servi Gas*, 525 F. App'x 663, 668 (10th Cir. 2013); *Pintando*, 501 F.3d at 1243–44.

Petitioners suggest that a different rule should apply in cases removed to federal court (as opposed to filed in federal court) due to forum-manipulation concerns, citing dicta in a footnote in *Rockwell*, 549 U.S. at 474 n.6. But amending a "complaint to delete the federal claims is not a particularly egregious form of forum manipulation, if it is manipulation at all," given that, in general, "plaintiffs get to pick their forum and pick the claims they want." *Enochs*, 641

F.3d at 160 (second quoting *Guzzino v. Felterman*, 191 F.3d 588, 595 (5th Cir. 1999)); *see also Dirauf*, 57 F.4th at 109 (“Parties are the masters of their pleadings, and a party can seek to drop a federal claim for any number of reasons[.]”); *Baddie v. Berkeley Farms, Inc.*, 64 F.3d 487, 491 (9th Cir. 1995) (finding “nothing manipulative about th[e] straight-forward tactical decision” to amend the complaint to drop federal claims post-removal); *V & M Mgmt.*, 929 F.2d at 835 (citing *Cohill* and noting that this Court “casts no aspersions” on post-removal amendments).

“[T]he need for judicial administration of a jurisdictional statute to remain as simple possible,” *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010), cuts against Petitioners’ proposed carveout from the generally applicable rule that the amended complaint governs, given the oddities and inconsistencies that Petitioners’ carveout would produce. For instance, the existence of federal jurisdiction in two cases with the exact same amended complaint—with identical non-federal claims and parties—would depend solely on where the action was first filed. If the plaintiff first filed in federal court, there would be no federal jurisdiction. But if the plaintiff filed in state court and the defendant removed, there would be federal jurisdiction. Nothing in the jurisdictional statutes requires that outcome. To the contrary, as Petitioners concede, the supplemental jurisdiction statute “applies with equal force to cases removed to federal court as to cases initially filed there.” Pet. 25 (quoting *City of Chi.*, 522 U.S. at 165). The statute has no thumb on the scale in favor of jurisdiction in removed cases, and thus there is no reason to interpret the statute as applying differently based on the initial site of filing.

Additionally, Petitioners' approach would produce a "time of filing" rule to assess jurisdiction where plaintiffs amend their complaints post-removal to *delete* federal claims, but an "operative pleading" rule where plaintiffs amend their complaints post-removal to *add* federal claims. As the Eighth Circuit noted, it is well-established that, where a plaintiff adds claims that create federal jurisdiction post-removal, that amended pleading, not the complaint at the time of removal, is the relevant pleading for determining whether federal jurisdiction exists. Pet. 9a–10a; *see also, e.g.*, *Pegram*, 530 U.S. at 216 n.2; *Moffitt v. Residential Funding Co.*, 604 F.3d 156, 159 (4th Cir. 2010); *Alabama v. PCI Gaming Auth.*, 801 F.3d 1278, 1286 n.16 (11th Cir. 2015). No statute or policy principle requires this rule to be twisted into a one-way ratchet in favor of federal jurisdiction.

Petitioners' concerns provide no basis to expand federal jurisdiction given the "bedrock principle that federal courts have no jurisdiction without statutory authorization." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553 (2005); *see Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 818 (1988) (noting the "[t]he age-old rule that a court may not in any case, even in the interest of justice, extend its jurisdiction where none exists"). In the removal statutes, Congress could have directed federal courts to treat post-removal amendments to complaints removed from state court differently than those to complaints originating in state court. It did not. Indeed, post-*Cohill* amendments to the removal statute eliminate any argument that remand is appropriate only if jurisdiction was lacking *at the time of removal*. As this Court explained in *Powerex Corp. v. Reliant Energy Services, Inc.*, 551 U.S. 224 (2007),

the pre-1988 version of the statute "authorized remand only for cases that were *removed* improperly." *Id.* at 231 (discussing 28 U.S.C. § 1447(c) (1982 ed.)). The current version of the statute, though, requires a district court to "remand[] a properly removed case because it nonetheless lacks subject-matter jurisdiction." *Id.* at 232. Inherent in this statutory command is the assumption that there will be cases that present a basis for federal jurisdiction at the time of removal, but that the basis for such jurisdiction will later disappear. The Eighth Circuit was correct to conclude that this is one such case.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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