No. 18-1592

IN THE

Supreme Court of the United States

ALLSTATE INSURANCE COMPANY,

Petitioner,

v.

DANIEL RIVERA, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United State Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Article III standing is an indispensable component of a federal court's original jurisdiction. Standing "enforces the Constitution's case-or-controversy requirement of Article III." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006). Thus, the Court has "always insisted on strict compliance" with the requirement that a plaintiff have Article III standing to sue. *Raines v. Byrd*, 521 U.S. 811, 819 (1997). This standing requirement is "not merely a traditional 'rule of practice.'" *Whitmore v. Arizona*, 495 U.S. 149, 161 (1990). Rather, it is "imposed directly by the Constitution," *id.*, and is "essential" and "unchanging," *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006).

Just as Article III standing is required to vest a federal court with original jurisdiction, original jurisdiction is, in turn, a prerequisite for a court to exercise supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367. *Exxon Mobil Corp. v. Allapattah Servs.*, 545 U.S. 546, 554 (2005). Where a jurisdictional defect—such as lack of Article III standing—impairs a party's federal claim, regardless of when the defect is detected, the court lacks original jurisdiction and, as a result, is without authority to adjudicate related state law claims. *Henderson v. Shinseki*, 562 U.S. 428, 434 (2011).

The question presented is whether the Court should reverse the Seventh Circuit's correct application of fundamental jurisdictional principles and disturb over 200 years of Article III standing jurisprudence to create an exception, in the name of judicial economy and efficiency, that allows district courts that lack original jurisdiction to exercise supplemental jurisdiction over state law claims.

PARTIES TO THE PROCEEDINGS

Petitioner Allstate Insurance Company was the defendant in the district court and the appellant in the circuit court.

Respondents Daniel Rivera, Stephen Kensinger, Deborah Joy Meacock, and Rebecca Scheuneman were the plaintiffs in the district court and appellees in the circuit court.

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OPINIONS BELOW

Pursuant to Supreme Court Rules 15(3) and 24(2), Plaintiffs are satisfied with Allstate's presentation of the opinions below.

JURISDICITION

Pursuant to Supreme Court Rules 15(3) and 24(2), Plaintiffs are satisfied with Allstate's presentation of the basis for this Court's jurisdiction.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

Article III, § 2 of the United States Constitution provides, in relevant part:

> The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls; —to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states; —between a state and citizens of another state; —between citizens of different states; —between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

28 U.S.C. § 1367(a) provides, in relevant part:

> [I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

28 U.S.C. § 1367(c) provides:

> The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—
>
> (1) the claim raises a novel or complex issue of State law,
>
> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
>
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
>
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

Fed. R. Civ. P. 12(h)(3) provides:

> *Lack of Subject-Matter Jurisdiction.* If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

Fair Credit Reporting Act, 15 U.S.C. § 1681n(a) provides:

> (a) In general. Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—
>
> (1)
>
> (A) any actual damages sustained by the consumer as a result of the

> failure or damages of not less than $100 and not more than $1,000; or
>
> (B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $1,000, whichever is greater;
>
> (2) such amount of punitive damages as the court may allow; and
>
> (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

Fair Credit Reporting Act, 15 U.S.C. § 1681y(2) provides:

> (2) Subsequent disclosure.—
>
> After taking any adverse action based in whole or in part on a communication described in paragraph (1), the employer shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based, except that the sources of information acquired solely for use in preparing what would be but for subsection (d)(2)(D) an investigative consumer report need not be disclosed.

INTRODUCTION

In February 2010, Allstate falsely stated that certain employees in its investment department had engaged in trading practices designed to enhance their individual bonuses and that their conduct was estimated to have caused Allstate damage in the amount of $207 million. Allstate later confessed to the Department of Labor that "no one [at Allstate] believed, then or now, that this was an accurate description of the activity on the trading desk" and that the activity had "virtually no effect on bonuses." As everyone in the investment business, inside and outside of Allstate, knew, Plaintiffs, four Chartered Financial Analysts, were the employees that were the subject of those statements. Plaintiffs filed suit against Allstate in federal court based on the Fair Credit Reporting Act, 15 U.S.C. § 1681a (FCRA), because Allstate failed to provide them a summary of Allstate's investigation and asserted state law defamation claims for damages to their professional reputations. After a ten-day trial, a jury unanimously concluded that Allstate had violated FCRA and defamed Plaintiffs. The jury awarded Plaintiffs $1,000 each in statutory damages on their FCRA claims and compensatory and punitive damages in the aggregate amount of $27 million on their defamation claims.

Despite six years of litigation during which Allstate brought multiple dispositive motions, Allstate never once challenged Plaintiffs' standing under FCRA. It was only after Allstate lost the case at trial that it argued for the first time on appeal that Plaintiffs lacked Article III standing under FCRA, even though it could have raised its standing challenge at any point during the district court proceedings. The Seventh Circuit, applying the principles articulated by this Court in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016),

agreed with Allstate and concluded that Plaintiffs lacked Article III standing to pursue their FCRA claims. The Seventh Circuit further concluded that Plaintiffs failed to prove the causation element of their defamation claims under Illinois law. The Seventh Circuit remanded the case to the district court with instructions to vacate the jury's award and enter judgment in favor of Allstate on both claims.

After the Seventh Circuit concluded that Plaintiffs lacked standing under FCRA, Plaintiffs filed a petition for rehearing and asserted—consistent with settled law—that if Plaintiffs lacked Article III standing on their federal, jurisdiction-invoking FCRA claims, then the district court was without jurisdiction to adjudicate their supplemental state law defamation claims. The Seventh Circuit agreed and, in its amended opinion, held that the jurisdictional defect required dismissal of the entire action for lack of subject matter jurisdiction.

Seeking to avoid the prospect of a retrial on Plaintiffs' defamation claims in state court, Allstate petitioned for certiorari and now asks the Court to upend two centuries of settled law involving original jurisdiction. Allstate invites the Court to fashion an exception to the fundamental requirement of original jurisdiction as a prerequisite for supplemental jurisdiction in cases where considerable judicial resources have been expended. Allstate argues that this exception is needed in order to achieve the aims of "judicial economy, convenience, and fairness." The Court should reject Allstate's invitation.

Beyond the change in settled law that Allstate seeks, Allstate contends that the Seventh Circuit's decision creates a circuit split with the Sixth Circuit.

Allstate asserts that the Sixth Circuit has sanctioned the exercise of supplemental jurisdiction when a jurisdiction-conferring claim failed for lack of standing. It has not. Allstate relies on one case, *Gucwa v. Lawley*, 731 F. App'x 408 (6th Cir. 2018), an unpublished, non-binding opinion "not recommended for full-text publication," which it claims creates a circuit split. The *Gucwa* court did not discuss what is at issue here—whether a district court has the authority to hear supplemental state law claims in the absence of original jurisdiction due to a plaintiff's lack of Article III standing. The *Gucwa* decision, whatever its value, does not create a circuit split on the longstanding requirement that a district court must have original jurisdiction before exercising the discretion to hear supplemental, related state law claims. The Sixth Circuit's decisions on this issue are entirely consistent with the Seventh Circuit's decision.

Allstate next contends that the Seventh Circuit's decision below is in tension with another Seventh Circuit decision, *Wright v. Associated Ins. Companies Inc.,* 29 F.3d 1244 (7th Cir. 1994), with the Fourth Circuit's decision in *Borzilleri v. Mosby,* 874 F.3d 187 (4th Cir. 2017), and with the Eighth Circuit's decision in *Ivy v. Kimbrough,* 115 F.3d 550 (8th Cir. 1997). No such conflict exists. As discussed below, the *Wright*, *Borzilleri*, and *Ivy* decisions are inapposite as in each of those cases—unlike the case currently before the Court—there was no question that the federal court had original jurisdiction. That prerequisite having been met, it was appropriate for the court in those cases to consider the propriety of adjudicating state law claims that were closely related to the dismissed federal claims.

Allstate also claims that the decision in *Gaia Technologies, Inc. v. Reconversion Technologies, Inc.*,

93 F.3d 774 (Fed. Cir. 1996), creates a split on whether supplemental jurisdiction can be exercised on the basis of a transient federal claim, different from the jurisdiction-invoking claim, which was asserted well after the litigation began and dropped four years before trial. *Gaia* creates no such split. The outcome in this case and in *Gaia* are consistent with the settled "time-of-filing" rule, articulated in the Court's opinion in *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567 (2004).

Finally, Allstate argues that the Seventh Circuit's decision contravenes the Court's decision in *Rosado v. Wyman*, 397 U.S. 397 (1970), and is contrary to the Eighth Circuit's decision in *Rheuport v. Ferguson*, 819 F.2d 1459 (8th Cir. 1987). That argument is similarly unavailing. *Rosado*, which involved only federal claims, did not consider the propriety of exercising supplemental jurisdiction over state law claims in the absence of original jurisdiction. Likewise, *Rheuport* did not consider the impact of a plaintiff's lack of standing on original jurisdiction. Rather, the *Rheuport* court, in a footnote, discussed whether the plaintiff's sole federal claim met *Gibbs*'s substantiality test. Both of these cases are inapposite to the issue of whether standing—and thus original jurisdiction—is a prerequisite for the exercise of supplemental jurisdiction.

Allstate has offered no "special justification," as it must, for the Court to depart from settled law. Original jurisdiction is a necessary anchor for a district court to exercise supplemental jurisdiction, and there is no circuit split on this issue. The petition should be denied.

STATEMENT OF THE CASE

A. Legal Framework

Federal courts are courts of limited jurisdiction. They possess "only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allapattah Servs. Inc.*, 545 U.S. 546, 552 (2005). It is a "bedrock requirement" under Article III of the Constitution that the jurisdiction of federal courts is limited to "actual cases or controversies." *Raines v. Byrd*, 521 U.S. 811, 818 (1997); *see* U.S. Const. art. III, § 2.

Standing is an indispensable component of the case-or-controversy requirement. *Raines*, 521 U.S. at 819 ("[This Court has] always insisted on strict compliance with this jurisdictional standing requirement."); *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). "The 'core component' of the requirement that a litigant have standing to invoke the authority of a federal court 'is an essential and unchanging part of the case-or-controversy requirement of Article III.'" *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). The doctrine of standing is rooted in separation-of-powers principles and "ensure[s] that federal courts do not exceed their authority." *Spokeo*, 136 S. Ct. at 1547. "Convenience and efficiency" do not trump the standing requirement and the "overriding and time-honored concern about keeping the Judiciary's power within its proper constitutional sphere." *Raines*, 521 U.S. at 820.

28 U.S.C. § 1367(a) vests federal courts with the authority to exercise supplemental jurisdiction over state law claims "in any civil action of which the district courts have original jurisdiction." 28 U.S.C. § 1367(a). To exercise that authority, however, a federal court "must first have original jurisdiction over at

least one claim in the action." *Exxon Mobil*, 545 U.S. at 554; *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966). Then—and only then—may a federal court assert jurisdiction over supplemental state law claims.

A federal court's authority to exercise supplemental jurisdiction over related state law claims is discretionary under 28 U.S.C. § 1367(c). As this Court ruled in *Gibbs*, the precursor to Section 1367, the power to hear state claims "need not be exercised in every case in which it is found to exist" and supplemental jurisdiction is a "doctrine of discretion, not of [a party's] right." *Gibbs*, 383 U.S. at 726. Importantly, a federal court "may decline to exercise supplemental jurisdiction" if the court has dismissed all claims over which it has original jurisdiction, among other reasons. 28 U.S.C. § 1367(c)(1)-(4).

A federal court "lacks discretion to consider the merits of a case over which it is without jurisdiction." *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 379 (1981). Thus, if at any point in [the] litigation, even after trial and "even initially at the highest appellate instance," *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004), it is determined that a federal court lacks subject matter jurisdiction, the court must dismiss the case, *Henderson v. Shinseki*, 562 U.S. 428, 434 (2011); Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

In *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), this Court held that a plaintiff must have suffered a "concrete" injury in order to have Article III standing to bring a claim under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq*.

B. Facts and Procedural History

In October 2009, Allstate advised the employees of the Equity Division within Allstate Investments that it was outsourcing its equity portfolio to Goldman Sachs and that all of the employees in the division were being terminated.[1] The employees impacted by this change were advised that they would receive severance packages, be granted access to their offices through the end of the year, and would be provided with other outplacement services.

Plaintiffs were among the twenty-five employees affected by Allstate's outsourcing decision. Unlike their co-workers, however, Plaintiffs were advised by Allstate that, based on an investigation it had commissioned, Allstate concluded that Plaintiffs had violated Allstate's code of ethics. They were terminated for cause and received no severance. Plaintiffs requested a summary of the investigative report upon which Allstate based its decision to terminate them. Allstate did not respond.

Two months after terminating Plaintiffs, in February 2010, Allstate filed its Form 10-K with the Securities Exchange Commission and publicly disclosed that it became aware of allegations of improper trading by certain employees in its Equity Division in 2009. Allstate stated that the trading activity was designed to improve those employees' individual bonuses while harming Allstate's investments. Allstate's consultants estimated the damage to Allstate was $207 million over six years and that the improper bonuses paid to those employees during the same period was $1.2 million.

Plaintiffs filed suit in March 2010. Plaintiffs brought a FCRA claim based on Allstate's refusal to

[1] The factual history is drawn from the record below.

provide a summary of the investigation that had formed the basis of its decision to terminate Plaintiffs. Plaintiffs also asserted a state law defamation claim based on statements Allstate made about Plaintiffs in its Form 10-K and in a memorandum widely circulated throughout Allstate by its Chief Investment Officer. Seven months after the case was filed, Plaintiffs amended their complaint to include, among other things, a claim for violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq*. Pursuant to a stipulation among the parties, however, that claim was dismissed with prejudice in 2012, four years before trial.

Plaintiffs' FCRA and defamation claims were tried to a jury. After a 10-day trial, the jury returned a verdict in favor of Plaintiffs and awarded them $1,000 each in statutory damages on their FCRA claims and $27 million in compensatory and punitive damages on their defamation claims. Additionally, District Court Judge Hart awarded Plaintiffs $3,000 each in punitive damages for Allstate's willful violation of FCRA.

Allstate did not challenge Plaintiffs' standing under FCRA at any point during the six years the case was pending before the district court. Instead, Allstate—*not Plaintiffs*—asserted that argument for the first time in its appeal to the Seventh Circuit, as part of its effort to unwind and reverse the jury's verdict. (App. at 47a)[2] (observing that "[r]elying on *Spokeo*, Allstate maintains that the FCRA awards must be tossed out for lack of standing.")).

[2] Citations to the Appendix are to the Appendix in Allstate's Petition.

The Seventh Circuit agreed with Allstate's standing argument. In its October 31, 2018 opinion, the Seventh Circuit concluded that although FCRA did not require a plaintiff to prove actual damages, the lack of a concrete injury meant that Plaintiffs lacked the necessary Article III standing to assert a FCRA claim. The Seventh Circuit vacated the FCRA awards and remanded the case to the district court with instructions to dismiss those claims for lack of standing.

The Seventh Circuit further concluded that Plaintiffs had failed to prove at trial that their inability to achieve gainful employment in their profession was caused by Allstate's defamatory statements. It grounded that decision on a 50-year old federal case interpreting Illinois law and looked past controlling decisions of the Illinois Appellate Court over the last half-century, including several in the last decade, that compel the opposite conclusion. The Seventh Circuit vacated the defamation awards and remanded the case with instructions to enter judgment in favor of Allstate on the defamation claims.

Confronted with the Seventh Circuit's decision that they lacked Article III standing to assert FCRA claims, Plaintiffs petitioned the Seventh Circuit to rehear the case. Plaintiffs pointed out that, consistent with a long line of settled decisions, if the FCRA claims—the only claims that could vest the district court with original jurisdiction—were dismissed for lack of Article III standing, then the Seventh Circuit lacked supplemental jurisdiction to consider the state law defamation claims and was required to dismiss those claims without prejudice.

Recognizing its error, the Seventh Circuit agreed with Plaintiffs and issued an amended opinion on January 14, 2019. The amended opinion addressed only the FCRA claims and reiterated that Plaintiffs lacked Article III standing to assert those claims. The Seventh Circuit then held that because it lacked original jurisdiction to hear Plaintiffs' FCRA claims, it had no authority to assert supplemental jurisdiction over Plaintiffs' remaining state law claims and dismissed them without prejudice.

The Seventh Circuit denied Allstate's petition for rehearing and rehearing en banc. Allstate's request for a writ of certiorari followed.

REASONS FOR DENYING THE PETITION

I. THE SEVENTH CIRCUIT CORRECTLY APPLIED THE LAW.

Allstate contends that the Seventh Circuit departed from established precedent by "adopt[ing] a strict rule that if there is no jurisdiction *at any stage of the proceedings* due to a lack of standing, federal courts cannot exercise supplemental jurisdiction." (Pet. at 13.) Far from creating a new rule, the Seventh Circuit upheld the foundational and time-honored requirement that a federal court must possess original jurisdiction before exercising supplemental jurisdiction over related state law claims. 28 U.S.C. § 1367(a) ("[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction . . . ."); *Exxon*, 545 U.S. at 554 ("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."); *Gibbs*, 383 U.S. at 725.

A. Original Jurisdiction is a Necessary and Indispensable Prerequisite for Supplemental Jurisdiction.

The Constitution limits federal courts' jurisdiction to "cases" and "controversies." Const. art. III, § 2. This Court has repeatedly held that "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Spokeo*, 136 S. Ct. at 1547 (quoting *Raines*, 521 U.S. at 818) (internal quotation marks omitted).

The question of original jurisdiction cannot be ignored by a court or waived by a party. It is well settled that "challenges to subject-matter jurisdiction may be raised by the defendant 'at any point in the litigation,' and courts must consider them *sua sponte*." *Fort Bend Cty. v. Davis*, 139 S. Ct. 1843, 1849 (2019); *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006) ("The objection that a federal court lacks subject-matter jurisdiction may be raised by a party, or by a court on its own initiative, at any stage in the litigation, even after trial and the entry of judgment." (citing Fed. R. Civ P. 12(b)(1)); *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004) ("A litigant generally may raise a court's lack of subject-matter jurisdiction at any time in the same civil action, even initially at the highest appellate instance."); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 95 (1998) ("This Court's insistence that proper jurisdiction appear begins at least as early as 1804, when we set aside a judgment for the defendant at the instance of the losing plaintiff *who had himself* failed to allege the basis for federal jurisdiction."); *cf.* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.")

In this same vein, circuit courts, including the Sixth Circuit, that have considered the effect of a jurisdictional defect discovered late in litigation have likewise recognized its negative impact on judicial economy and efficiency. *Rainero v. Archon Corp.*, 844 F.3d 832, 841 (9th Cir. 2016) ("If a court lacks subject matter jurisdiction, it is obligated to dismiss the case, regardless of how long the litigation has been ongoing. . . . This is true even though [a jurisdictional] objection 'may also result in the waste of judicial resources and may unfairly prejudice litigants.'"); *Belleville Catering Co. v. Champaign Mkt. Place*, 350 F.3d 691, 693 (7th Cir. 2003) (recognizing that a failure to properly assess the existence of original jurisdiction "has the potential . . . to waste time . . . and run up legal fees"); *Musson Theatrical, Inc. v. Federal Express Corp.,* 89 F.3d 1244, 1255 (6th Cir. 1996) (holding that supplemental jurisdiction can "*never* exist" if the federal claim has been dismissed pursuant to Rule 12(b)(1)); *Bigelow v. Michigan Department of Natural Resources,* 970 F.2d 154 (6th Cir. 1992) (vacating the district court's decision on the plaintiff's state law claims where original jurisdiction was found to be lacking, without regard to concerns for judicial economy); *Boelens v. Redman Homes, Inc.*, 748 F.2d 1058, 1071 (5th Cir. 1984) (finding after a trial that because the plaintiffs' claim for damages was not cognizable under the Magnuson-Moss Warranty Act, the only federal question raised, "[t]hat claim did not confer jurisdiction" and "the pendent state law claims therefore must be dismissed"); *Crane Co. v. American Standard*, 603 F.2d 244, 254 (2d Cir. 1978) ("Even where substantial time and resources have been expended in the trial of an action in federal court, pendent state claims must be dismissed if it later is determined that there never existed a federal claim sufficient to invoke the jurisdiction of

the federal court." (citation omitted)); *Tully v. Mott Supermarkets, Inc.*, 540 F.2d 187, 196 (3d Cir. 1976) ("[W]e do not believe that the hallmark considerations of 'judicial economy, convenience, and fairness to litigants' dictate that the pendent claims be entertained. It is indeed unfortunate that the case has progressed to the appellate level following a trial by the district court when it should have been dismissed on the pleading for lack of standing."); *see also Arena v. Graybar Elec. Co.*, 669 F.3d 214, 222 (5th Cir. 2012) ("The court's reasoning of judicial efficiency to resolve Arena's state-law claims comes into play only when [original] jurisdiction is proper.").

Moreover, there is no basis in the law or in the myriad decisions of this Court to treat the standing component of original jurisdiction as non-mandatory and discretionary. The law of Article III standing is "built on a single basic idea—the idea of separation of powers," *Raines*, 521 U.S. at 820 (quoting *Allen v. Wright*, 468 U.S. 737 (1984)) (internal quotation marks omitted), and is "founded in concern about the proper—and properly limited—role of the courts in a democratic society," *Warth v. Seldin*, 422 U.S. 490, 498 (1975). The doctrine of standing "ensure[s] that federal courts do not exceed their authority as it has been traditionally understood." *Spokeo*, 136 S. Ct. at 1547. This Court has "always insisted on strict compliance with this jurisdictional standing requirement," *Raines*, 521 U.S. at 819, and has deemed standing "an essential and unchanging part of the case-or-controversy requirement of Article III." *DaimlerChrysler*, 547 U.S. at 342 (quoting *Lujan*, 504 U.S. at 560 (internal quotation marks omitted)). Considering FCRA specifically, this Court held in *Spokeo* that Article III standing requires a plaintiff to have suffered a "concrete injury." *Spokeo*, 136 S. Ct. at 1549.

The Seventh Circuit properly applied these principles in dismissing the case for want of original jurisdiction. Having concluded that Plaintiffs did not have a "concrete injury" under FCRA and thus lacked Article III standing to sue, the Seventh Circuit correctly dismissed both the FCRA claims and the state law claims. The Seventh Circuit recognized that, without the "jurisdictional hook" of a federal claim, no claim existed to which the state law claims could be appended. The Seventh Circuit stated that it was "not unmindful of the costs of a jurisdictional dismissal at this late stage" (App. 29a), but nonetheless recognized that efficiency and duplication of efforts could not be considered and must give way in light of the primary jurisdictional defect.

B. The Seventh Circuit's Decision is Consistent with the Decisions from the Fourth, Seventh, and Eighth Circuits.

The Seventh Circuit's decision here is consistent with its decision in *Wright v. Associated Insurance Companies Inc.,* 29 F.3d 1244 (7th Cir. 1994), the Fourth Circuit's decision in *Borzilleri v. Mosby,* 874 F. 3d 187 (4th Cir. 2017), and the Eighth Circuit's decision in *Ivy v. Kimbrough,* 115 F.3d 550 (8th Cir. 1997). A circuit split does not exist between or among them.

The decisions in *Wright*, *Ivy*, and *Borzilleri* each approved the district court's exercise of supplemental jurisdiction to dismiss with prejudice state law claims that were "intertwined" with a dismissed federal claim. Allstate claims they are therefore in conflict with the Seventh Circuit's decision below. They are not. In each of those cases, the district court had original jurisdiction. With that initial threshold satisfied, it was wholly appropriate in each instance for the circuit court to consider whether or not

supplemental jurisdiction was properly exercised by the district court under 28 U.S. C. § 1367(c). That is not the case here, where original jurisdiction was lacking. Whether state law claims are intertwined with federal law claims is thus not relevant here. As the Seventh Circuit correctly recognized, given the lack of original jurisdiction, it had no discretion to consider, let alone apply, the 1367(c) factors informing supplemental jurisdiction. (App. 28a.)[3]

C. The Seventh Circuit Correctly Disregarded Allstate's Argument that the ADEA Claim Supplied Original Jurisdiction.

The Seventh Circuit correctly rejected Allstate's argument that Plaintiffs' ADEA claim vested the district court with original jurisdiction. *Gaia Technologies, Inc. v. Reconversion Technologies, Inc.*, 93 F.3d 774 (Fed. Cir. 1996), *amended on reh'g*, 104 F.3d 1296 (Fed. Cir. 1996), is not in conflict with the Seventh Circuit's decision. The cases differ in important and significant ways. Unlike in *Gaia*, where at

[3] Allstate attempts to raise the specter that *Ivy* did involve a jurisdictional defect in that the district court called the plaintiff's case "frivolous from the start" in dismissing all claims with prejudice pursuant to defendants' motion for summary judgment. *Ivy*, 115 F.3d at 552. Based on that, Allstate concludes—even though the Eighth Circuit did not—that the claim would not have been "substantial" under *Gibbs* and thus presumably there was in actuality no original jurisdiction. The court in *Ivy* did not consider the issue Allstate raises. The *Ivy* court presumed original jurisdiction, and without a reasoned basis to conclude differently, it is not appropriate to impugn the Eighth Circuit with having overstepped its bounds by exercising power in a case over which it did not have original jurisdiction.

least four federal claims were asserted when the case was initially filed, at the time Plaintiffs' case was filed, the only federal claim asserted—and thus the sole claim on which original jurisdiction could have been tethered—was Plaintiffs' FCRA claim. Plaintiffs' ADEA claim, asserted in an amended complaint well after the case was filed and subsequently dismissed with prejudice by stipulation four years before trial, is of no consequence.

A federal court's jurisdiction is determined at the time an action is filed. This Court has adhered to that settled principle for nearly two hundred years. *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 570 (2004) (citing *Mollan v. Torrance*, 22 U.S. 537 (1824)). The "time-of-filing" rule is not only well settled, it is to be strictly applied "regardless of the costs it imposes." *Id.* at 571; *see e.g.*, *Anderson v. Watt*, 138 U.S. 694 (1891). Issues of "finality, efficiency, and judicial economy" have never been held to justify a departure from or an exception to the "time-of-filing" rule. *Grupo*, 541 U.S. at 575-77 (holding that a "suspension of the time-of filing rule would create an exception of indeterminate scope").

The Seventh Circuit's holding—that Plaintiffs' lack of Article III standing on the FCRA claims compelled dismissal of the remaining state law claims—is entirely consistent with the "time-of-filing" rule. The Seventh Circuit was correct to disregard Allstate's argument. Certiorari is not warranted to resolve a conflict between the Federal Circuit's decision in *Gaia* and the Seventh Circuit's decision here because none exists.

II. THERE IS NO CIRCUIT SPLIT ON THE ISSUE WHETHER A FEDERAL COURT MAY EXERCISE SUPPLEMENTAL JURISDICTION OVER STATE LAW CLAIMS WHEN STANDING ON THE SOLE FEDERAL CLAIM IS LACKING.

Allstate invites this Court to intervene and resolve what it characterizes as a circuit split on the issue of supplemental jurisdiction. Allstate relies on a single case, *Gucwa v. Lawley*, 731 Fed. App'x. 408 (6th Cir. 2018), an unpublished, non-binding opinion, which it contends creates a divide between the Sixth Circuit and the Seventh Circuit on the issue whether standing—and thus original jurisdiction—is required to exercise supplemental jurisdiction over related state law claims. Because *Gucwa* does not contain even one sentence addressing this fundamental issue, Allstate is incorrect to proffer it as evidence of a circuit split. The Sixth Circuit has specifically stated that *Gucwa* is "not recommended for full-text publication." *Id.*; *see also Crump v. Lafler*, 657 F.3d 393, 405 (6th Cir. 2011) (acknowledging that unpublished decisions in the Sixth Circuit are "not binding precedent," "carry no precedential weight," and "have no binding effect on anyone other than the parties to the action"). The Sixth Circuit itself has thus openly disavowed *Gucwa*'s precedential value. Moreover, as several district and circuit court cases from within the Sixth Circuit illustrate, the decision in *Gucwa* does not fairly represent the Sixth Circuit's position on the jurisdictional question here.

In *Gucwa*, the district court held that the plaintiffs did not have standing to bring claims under RICO and the Medicare Secondary Payer Act, the only federal claims in the case. *Gucwa*, 731 Fed. App'x. at 412-13,

415. Accordingly, the district court dismissed those claims with prejudice and, at the same time, dismissed with prejudice the remaining state law claims.

Plaintiffs in *Gucwa* argued to the Sixth Circuit that the district court abused its discretion in exercising supplemental jurisdiction over the state law claims. The Sixth Circuit affirmed, agreeing with the district court that plaintiffs lacked standing to assert claims under the federal statutes. Addressing the state law claims, the Sixth Circuit erroneously considered Section 1367(c) and stated the district court's "exercise of its discretion under §1367(c) is not a jurisdictional matter . . . [and thus] may not be raised at any time as a jurisdictional defect." *Gucwa*, 731 Fed. App'x. at 416 (quoting *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 640 (2009)).

Because the Sixth Circuit incorrectly framed the issue as one of supplemental jurisdiction, the court concluded plaintiffs had waived their challenge by failing to raise it below. *Id.* The Sixth Circuit went on to say, "Were it not waived, this court would nonetheless conclude that the district court properly exercised its discretion because 'the interests of judicial economy and the avoidance of multiplicity of litigation' weighed in favor of deciding the straightforward state-law issues at hand." *Id.* (quoting *Moon v. Harrison Piping Supply*, 465 F.3d 719, 728 (6th Cir. 2006)).

The *Gucwa* court did not state, much less decide, that supplemental jurisdiction is permitted in the absence of standing—and thus original jurisdiction—with respect to the federal claims. Rather, the court concluded that there was no standing on the federal

claims but then failed to examine the consequence of that jurisdictional ruling—i.e., that without original jurisdiction, a federal court lacks the authority to exercise supplemental jurisdiction. That is precisely the error the Seventh Circuit made here in its original opinion, before Plaintiffs raised that error, which the Seventh Circuit corrected in its amended opinion.

Allstate construes the *Gucwa* court's silence as an upheaval of longstanding principles of standing and jurisdiction. According to Allstate, "[B]y affirming the exercise of supplemental jurisdiction, the Sixth Circuit found that a lack of standing does not preclude the exercise of supplemental jurisdiction." (Pet. at 22.) The Sixth Circuit reached no such conclusion and "found" no such thing. The decision in *Gucwa* contains no reasoned analysis or informed discussion on the issue of original jurisdiction as a predicate to the exercise of supplemental jurisdiction. The court simply failed to recognize the jurisdictional implications of its standing decision for purposes of 1367(a) and went on to discuss supplemental jurisdiction under 1367(c). And, unlike in the Seventh Circuit below, the parties failed to bring that error to the Sixth Circuit's attention. As this Court has acknowledged, these sorts of "drive-by jurisdictional rulings . . . have no precedential effect." *Steel Co.*, 523 U.S. at 91.

At bottom, *Gucwa* was erroneously decided and is an outlier in the annals of Sixth Circuit law. Indeed, in cases where the Sixth Circuit has expressly considered and decided the consequences for state law claims in instances where original jurisdiction has been found lacking, it has clearly stated—in line with this Court's jurisprudence and consistent with the decisions of other circuit courts—that original jurisdiction is a prerequisite for the exercise of supplemental jurisdiction

and that a district court's discretion to consider state law claims only vests where original jurisdiction exists.

For example, in *Musson Theatrical, Inc. v. Federal Express Corp.,* 89 F.3d 1244 (6th Cir. 1996), the Sixth Circuit held that if a district court "dismisses plaintiff's federal claims pursuant to Rule 12(b)(1), then supplemental jurisdiction can *never* exist." *Id.* at 1255. The court explained that a jurisdictional dismissal "postulates that there never was a valid federal claim." *Id.* Under such circumstances, the "[e]xercise of jurisdiction on a theory of supplemental jurisdiction would . . . violate Article III of the Constitution." *Id.* (quoting *Gibbs*, 383 U.S. at 725).

In *Bigelow v. Michigan Department of Natural Resources,* 970 F.2d 154 (6th Cir. 1992), the Sixth Circuit determined that the federal claims were not ripe for review and that the court therefore lacked subject matter jurisdiction. *Id.* at 157-60. The Sixth Circuit vacated the district court's decision on the state law claims, holding that, without original jurisdiction, it could not rule on pendent state law claims. *Id.* at 160. The *Bigelow* court expressly observed that issues of judicial economy cannot—and do not—come into play absent an independent source of subject matter jurisdiction. *Id*.; *see also Saginaw City v. Stat Emergency Med. Serv.*, No. 4:17-cv-10275, 2018 U.S. Dist. LEXIS 127349, *39 (E.D. Mich. July 31, 2018) ("Because the Court lacks subject matter jurisdiction over this action, Plaintiff's state law claim(s) are no longer properly supplemental, and the Court lacks jurisdiction to adjudicate those claims . . . ."); *Calabrese, Racek & Markos, Inc. v. Racek*, No. 5:12-cv-02891-SL, 2013 U.S. Dist. LEXIS 105260,*16-17 (N.D. Ohio July 26, 2013) (concluding that the court could not exercise jurisdiction over state law claims because

the sole federal claim was dismissed under Rule 12(b)(1)); *Franklin County v. Nationwide Mut. Ins. Co.*, No. 3:08-46-DCR, 2008 U.S. Dist. LEXIS 105355, *26 (E.D. Ky. Dec. 17, 2008) (holding that supplemental claims "must also be dismissed, because they are premised on the statutory claim, which this Court lacks subject matter jurisdiction to hear"); *cf. Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 805 (9th Cir. 2001) (the Ninth Circuit citing the Sixth Circuit in *Musson* to conclude that, where there is no original jurisdiction, the court has no authority to adjudicate supplemental claims under § 1367).

These cases make clear that there is no circuit split. The Sixth Circuit follows established precedent, in line with every other circuit, which holds that without original subject matter jurisdiction, a district court is without authority to exercise jurisdiction over supplemental claims. Had the *Gucwa* court set out to depart from longstanding, well-settled, and fundamental tenets of original federal jurisdiction, it would have done so overtly, conspicuously, and with a thorough analysis and explanation of its rationale for doing so. The unavoidable conclusion is that Allstate has seized upon an improvident omission, in an unpublished opinion not intended by the Sixth Circuit to have precedential value, to argue the existence of a circuit split. *Gucwa* provides no basis for this Court to grant the petition, and it should therefore be denied.

III. ALLSTATE ASKS THE COURT TO ADOPT A NEW RULE THAT REMOVES THE REQUIREMENT THAT A FEDERAL COURT MUST POSSESS ORIGINAL JURISDICTION AS A PREREQUISITE TO EXERCISING SUPPLEMENTAL JURISDICTION.

Standing is an indispensable ingredient of the case-or-controversy requirement. This Court has "always insisted on strict compliance with this jurisdictional standing requirement," *Raines*, 521 U.S. at 819, and has repeatedly resisted efforts to relax the application of standing principles, even in unique and extraordinary cases. As the Court observed in *Whitmore v. Arkansas*, 495 U.S. 149, 161 (1990), "the requirement of an [Article] III 'case or controversy' is not merely a traditional 'rule of practice,' but rather is imposed directly by the Constitution." *Id.* In "resisting the temptation" to relax the standing doctrine, the Court has acknowledged the limitation of its own power: "It is not for this Court to employ untethered notions of what might be good public policy to expand our jurisdiction in an appealing case." *Id*. Thus, while judicial economy and avoiding a duplication of efforts are indisputably noble ends, notions of "convenience and efficiency" do not override Article III's standing requirement. *Raines*, 521 U.S. at 820. And, as *Spokeo* clearly states, "Article III standing [under FCRA] requires a concrete injury." *Spokeo*, 136 S. Ct. 1549.

Despite these settled principles, Allstate asks this Court—in the name of judicial economy and efficiency—to render the Article III standing requirement non-mandatory. Allstate contends that the absence of Article III standing, if discovered late enough in a case and after sufficient judicial resources have been spent litigating the claims, "should have the same effect on

supplemental jurisdiction as any other failure to prove a claim that provides the basis for federal jurisdiction." (Pet. at 14.) That is not the law.

This Court has considered that when faced with a failure of proof on a jurisdictional fact—even after a trial and a jury verdict—that failure mandates a dismissal of the entire case, including any state law claims. *See Arbaugh*, 546 U.S. at 513-14 (observing that even when original jurisdiction "turns on contested facts" that require an evidentiary review, where it is found lacking, "the court must dismiss the complaint in its entirety"). *Arbaugh* teaches that, even if inconvenient, a failure of proof of a jurisdictional fact is not to be treated in the same manner as a failure of proof of an "essential ingredient" of a federal claim. *Id*. at 503; *see id.* at 506-07 (discussing the distinction between a Rule 12(b)(1) dismissal and a Rule 12(b)(6) dismissal and the consequences of each). And, as *Spokeo* makes clear, Plaintiffs' lack of a concrete injury in the present case is an Article III jurisdictional defect, not a failure to make out an element of a FCRA cause of action. *Spokeo*, 139 S. Ct. at 1548-50. Indeed, damages are not an element of a FCRA cause of action. 15 U.S.C. § 1681n(a).

Moreover, this Court "does not overturn its precedents lightly." *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 798 (2014). "*Stare decisis* . . . is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Id*. (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)). *Stare decisis* is a "foundation stone of the rule of law, necessary to ensure the legal rules develop 'in a principled and intelligible fashion.'"

Id. (quoting *Vasquez v. Hillery*, 474 U.S. 254, 265 (1986)). Indeed, departing from the doctrine of *stare decisis* is an "exceptional action" that demands a "special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984).

There is thus no basis in the law or this Court's jurisprudence for the new rule Allstate advances. Nonetheless, to bolster its argument that Article III standing should not be strictly required, Allstate relies primarily on three cases, *Gibbs*, 383 U.S. at 725; *Rheuport v. Ferguson*, 819 F.2d 1459 (8th Cir. 1987); and *Rosado v. Wyman*, 397 U.S. 397 (1970).

Allstate cites *Gibbs* for the proposition that supplemental jurisdiction is appropriate where the federal claim asserted in a complaint is "substantial." (Pet. at 12.) While the substantiality of a federal claim is a required component of original jurisdiction, "substantiality" alone is not sufficient nor is it the only consideration. A plaintiff must also have Article III standing, as the cases cited above affirm. As this Court stated in *DaimlerChrysler*: "What we have never done is apply the rationale of *Gibbs* to permit a federal court to exercise supplemental jurisdiction over a claim that does not itself satisfy those elements of the Article III inquiry, such as constitutional standing, that 'serve to identify those disputes which are appropriately resolved through the judicial process.'" *DaimlerChrysler*, 547 U.S. at 351-52 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155, 158 (1990)).

Allstate attempts to conflate standing and substantiality by relying on the Eighth Circuit's decision in *Rheuport*, but *Rheuport* is likewise inapposite. There, the plaintiffs brought a procedural due process claim and several state law claims in connection with the eviction from their mobile home. After trial, the

Eighth Circuit upheld a judgment notwithstanding the verdict on the due process claim in favor of the defendants. The court found that, because the writ of eviction had been obtained through normal channels and the state had afforded plaintiffs a full and fair hearing before the writ was issued, plaintiffs had not proven a due process violation. In a footnote, the Eighth Circuit discussed the propriety of supplemental jurisdiction since the sole federal claim had dropped out of the case. Performing a *Gibbs* analysis, the court concluded that the failed due process claim met *Gibbs*'s substantiality test and thus conferred original jurisdiction such as to permit the exercise of supplemental jurisdiction over the remaining state law claims. *Rheuport*, 819 F.2d at 1467 n.13. The *Rheuport* court identified indicia of substantiality in that the claim was "colorable" and "rejected only after complicated legal analysis." *Id.* Standing, however, was not at issue in *Rheuport*, and the case in no way suggests that its substantiality analysis can or should supplant the requirement that a federal court plaintiff have Article III standing.

Allstate's reliance on *Rosado* is similarly misplaced. *Rosado* did not involve supplemental jurisdiction over *any* state law claims. Rather, *Rosado* considered whether a district court had jurisdiction over a *federal* statutory claim that was "pendent" to a constitutional claim that had become moot during the course of the proceedings. In *Rosado*, the plaintiffs alleged that a New York welfare law violated both the Constitution's equal protection clause and the Social Security Act of 1935. In keeping with statutory requirements in place at the time, the district court convened a three-judge panel to hear the case. During the course of the litigation, the constitutional claim became moot. The three-judge panel determined that there was thus no

longer a reason to continue the three-judge court, dissolved itself, and remanded the matter to the district court judge who originally had the case. The district court judge proceeded to decide the merits of plaintiff's statutory claim.

The issue before this Court was whether the district court had subject matter jurisdiction over the "pendent" federal statutory claim after the constitutional claim had become moot. This Court held that although Congress had determined that certain types of cases should be heard in the first instance by a three-judge tribunal, "that does not mean that the court *qua* court loses all jurisdiction over the complaint that is initially lodged with it." *Rosado*, 397 U.S. at 402-03. This Court concluded that once the plaintiffs filed their complaint alleging the New York law's unconstitutionality, "the District Court sitting as a one-man tribunal[] was properly seized of jurisdiction over the case under §§ 1343 (3) and (4) of Title 28," *id.* at 403, and jurisdiction was "vested at the outset in the *district court* and not the three-judge panel," *id.* at 403 n.3. As original jurisdiction had already vested, this Court agreed that considerations of judicial economy favored a single judge determining the federal statutory claim rather than "consuming the time of three federal judges in a matter that was not required to be determined by a three-judge court." *Id.* at 403. As the concurring opinion makes clear, since the pendent claim was "one of federal rather than state law," considerations of "federal-state comity" were simply not present in *Rosado*. *Id.* at 425 (Douglas, J., concurring).[4]

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[4] Petitioner also cites *Brookshire Brothers Holding v. Dayco Products*, 554 F.3d 595 (5th Cir. 2009). There, one of the defendants removed plaintiffs' case to federal court on the basis

IV. ALLSTATE SEEKS TO CURTAIL THE DISCRETION AFFORDED BY CONGRESS IN 28 U.S.C. § 1367(C).

A district court's authority to exercise supplemental jurisdiction is discretionary, not mandatory. A federal court "*may decline* to exercise supplemental jurisdiction" if the court has dismissed all claims over which it has original jurisdiction (among other reasons). 28 U.S.C. § 1367(c)(1)-(4) (emphasis added). As this Court stated in *Gibbs*, the power to hear state law claims "need not be exercised in every case in which it is found to exist," and supplemental jurisdiction is "a doctrine of discretion, not of [a party's] right." *Gibbs*, 383 U.S. at 726; *Exxon*, 545 U.S. at 552-23 (noting that *Gibbs* "confirmed that the District Court had the additional power (though not the obligation) to exercise supplemental jurisdiction over related state claims"). The outcome Allstate seeks here cannot be squared with this discretionary doctrine.

Allstate asks the Court to impose a limitation on this discretionary doctrine once a certain level of judicial resources have been expended in a case. To do so, the Court would not only be required to define what

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that the case "related to" the bankruptcy of another defendant. There was no question, however, that the case was "properly removed and that the district court had jurisdiction over the suit at the time of removal." *Id.* at 598. Thereafter, the plaintiffs settled with the defendant in bankruptcy and dismissed the claims against it. The district court granted plaintiffs' request to remand the case to state court rather than exercise supplemental jurisdiction over the purely state law claims. Performing an analysis under 28 U.S.C. 1367(c), the Fifth Circuit held that the district court abused its discretion in declining supplemental jurisdiction in light of significant judicial resources the district court had invested in the case. *Brookshire* is simply an application of the 1367(c) analysis where original jurisdiction was present.

"too much" judicial resources is, but also to impinge the province of Congress in violation of separation-of-powers principles. Only Congress, in executing its Article III powers, has the Constitutional authority to expand the jurisdictional reach of the federal courts. *E.g.*, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

Moreover, there is no compelling reason for this Court to restrict a district court's discretion. Section 1367(c) lays out factors a court should consider when determining whether to exercise supplemental jurisdiction. It makes sense for district courts to have the flexibility such discretion affords. Every day, district courts across the country are presented with unique factual, legal, and procedural scenarios. Weighing the Section 1367(c) factors in light of those particular circumstances, district courts will necessarily come to differing conclusions about the wisdom of adjudicating supplemental claims in different cases.

Congress's grant of this discretion in Section 1367(c) contemplates scenarios in which a case has commanded substantial federal court resources over the course of years but where the only remaining claim is a state law claim involving complex and undecided issues of state law. In such a scenario, relinquishing supplemental jurisdiction despite the cost to efficiency and duplication of efforts may be the most prudent course.[5]

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[5] The teaching of *Gibbs*, 383 U.S. at 726, that "[n]eedless 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" is particularly compelling here. In reversing the jury's verdict on the defamation claim in its original opinion, the Seventh Circuit elected to rely on a case it decided over 50 years ago, *Continental Nut Co. v. Robert L. Berner Co.*, 393 F.2d 283 (7th Cir. 1968), in which the court

Any new rule would have to allow for such an outcome and thus embroil the Court in creating balancing tests involving various factors to be given different weights and measures depending on the particular facts of a case. The Court should decline Allstate's request to engage in such rulemaking.

Moreover, any new rule that would remove a district court's discretion once a certain quantum of judicial resources has been expended would not actually serve the ends of judicial economy and efficiency. To the contrary, such a rule would provide an additional basis for future litigants to appeal whether a district court should or should not have exercised supplemental jurisdiction in a particular case and thus undermine those very ends.

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attempted to predict Illinois law on the level of circumstantial proof necessary to show causation in a case involving state law defamation claims. The Seventh Circuit here looked past and failed to analyze controlling decisions of the Illinois Appellate Court over the last decade that compel the opposite conclusion of the one reached by *Continental Nut*, including *Imperial Apparel Ltd. v. Cosmo's Designer Direct, Inc.*, 367 Ill. App. 3d 48 (1st Dist. 2006), *rev'd on other grounds*, 227 Ill. 2d 381 (2008); *Tunca v. Painter*, 2012 IL App (1st) 093384; and, most significantly, *Leyshon v. Diehl Controls North America, Inc.*, 407 Ill. App. 3d 1 (1st Dist. 2010), a case that is factually indistinguishable from this case. *Leyshon* demonstrates that a plaintiff's unrebutted testimony regarding his employment prospects and unsuccessful efforts to obtain new employment were sufficient to establish the causal link between the defamatory statement and the damages the plaintiff suffered as a result. While the Seventh Circuit touched on *Imperial Apparel*, it ignored and failed to apply *Tunca* and *Leyshon* altogether, despite Plaintiffs' bringing this controlling authority to the court's attention.

V. FEDERAL COURTS WILL NOT BECOME A VENUE FOR BET-HEDGING LITIGANTS AS ALLSTATE PREDICTS.

The consequences of the Seventh Circuit's decision and its corresponding dismissal of the case—the nullifying of eight years of litigation, the loss of a $27 million jury verdict, and the having to restart in state court—are borne equally, if not more significantly, by Plaintiffs. This outcome, real and concrete, will not, as Allstate argues, incentivize litigants to "test" state law claims in federal court in cases where original jurisdiction may not exist. Nor will it encourage the type of recreational or duplicative litigation that Allstate theorizes will abound if the decision below is affirmed.

Allstate contends that allowing the Seventh Circuit's decision to stand will open the floodgates to litigants who, having failed to prove the damages, or some other, element of their federal claim, will then seek a "redo" on the basis that the district court lacked original jurisdiction. This Court's prior decisions serve as a sufficient bar to alleviate any such concern. The Court has stated that the failure to prove, on the merits, that a violation of federal law occurred does not divest the court of original jurisdiction. *Steel Co.*, 523 U.S. at 91-92 ("[T]he failure of a cause of action does not automatically produce a failure of jurisdiction."); *Bell v. Hood*, 327 U.S. 678, 682 (1946) ("Jurisdiction . . . is not defeated . . . by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover.").

Allstate's argument also fails as a practical matter. The Court in *Grupo* examined a similar efficiency argument as Allstate advances here. Allstate contends that unless the requirement of original jurisdiction is

watered down, plaintiffs will game the judicial system by hedging their bets in federal court knowing that they will "be allowed to retry [a] case they just lost," (Pet. at 26), if standing or original jurisdiction is found to be lacking post-trial. In rejecting such an efficiency argument—that a jurisdictional dismissal after trial "condemns the parties to an 'almost certain replay of the case'"—this Court aptly observed that "even if the parties run the case through complete 'relitigation,'" the "'waste' will not be great" because, "having been through [several] years of discovery and pretrial motions . . . the parties would most likely proceed to trial promptly." *Grupo*, 541 U.S. at 581.

The outcome in this case is illustrative and establishes there was no such gamesmanship by Plaintiffs. Indeed, it is Allstate who lost at trial and now seeks a do-over, but in the form of an outright reversal. This case exists in its current posture because Allstate waited to challenge the Plaintiffs' Article III standing under FCRA until after the jury had spoken, even though Allstate was represented by a phalanx of first-rate law firms and filed multiple dispositive motions over the course of six years of pre-trial litigation. Under these circumstances, it is difficult to imagine that a standing challenge was not contemplated by Allstate, at least at some point before trial, or that the standing argument raised on appeal would ever have been raised had Allstate won.

As Allstate's conduct fairly demonstrates, defendants will be equally incentivized to withhold a standing challenge (or other jurisdictional challenge) in order to test the waters in federal court and avail themselves of that escape valve after trial to avoid an adverse result—like the one Allstate confronted here. But collateral litigation, sunk costs, and the expendi-

ture of judicial resources have never been found to justify a departure from the necessity of an original jurisdictional hook. *Grupo*, 541 U.S. at 581; *Herman*, 254 F.3d at 805.

In the final analysis, this Court should decline to unwind the settled law of Article III standing and replace it with a new, different rule. *See Whitmore*, 495 U.S. at 161 (refusing to "justify a relaxed application" of Article III standing). Moreover, this Court's time-tested application of the Article III standing principles counsels heavily against the tectonic shift urged by Allstate in the name of efficiency and judicial economy. A departure of this sort from the doctrine of *stare decisis* is an "exceptional action" and one for which Allstate has failed to provide a "special justification." *Arizona*, 467 U.S. at 212.

VI. SUMMARY REVERSAL IS NOT WARRANTED.

For the reasons stated above, reversal, more so summary reversal, is not warranted in this case. Summary reversal is an "extraordinary remedy" usually reserved for situations where "the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Kisela v. Hughes*, 138 S. Ct. 1148, 1162 (2018) (Sotomayor, J., dissenting). This is not such a case—the Seventh Circuit correctly applied well settled law in dismissing Plaintiffs' case for want of original jurisdiction, and summary reversal is not appropriate here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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