

No. _____

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**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Petition presents two separate but related questions concerning the ability of a plaintiff, in an action properly removed to federal court pursuant to 28 U.S.C. § 1441(a) on the basis of federal-question jurisdiction under 28 U.S.C. § 1331, to compel a remand to state court by amending the complaint to omit federal questions:

1. Whether such a post-removal amendment of the complaint defeats federal-question subject-matter jurisdiction.
2. Whether such a post-removal amendment of the complaint precludes a district court from exercising supplemental jurisdiction over the plaintiff's remaining state-law claims pursuant to 28 U.S.C. § 1367.

Departing from every other circuit to consider these questions, the Eighth Circuit in this case answered each question in the affirmative and ordered a remand to state court, thereby providing a roadmap for any Eighth Circuit plaintiff determined to undermine a defendant's exercise of removal jurisdiction.

PARTIES TO THE PROCEEDINGS BELOW

Petitioners here are Royal Canin U.S.A., Inc. (“Royal Canin”) and Nestlé Purina PetCare Company (“Purina”), who were the defendants-appellees below.

Respondents here are Anastasia Wullschleger and Geraldine Brewer, who were the plaintiffs-appellants below.

RULE 29.6 STATEMENT

Royal Canin certifies that it is a wholly owned subsidiary of Mars, Incorporated, a privately held corporate entity. No publicly held company owns 10% or more of the stock of Mars, Incorporated or Royal Canin.

Purina certifies that it is indirectly a wholly owned subsidiary of Nestlé S.A., a Swiss corporation traded publicly on the SIX Swiss Exchange and in the United States in the form of American Depository Receipts. No publicly held company owns 10% or more of Nestlé S.A.’s stock.

RELATED PROCEEDINGS

This case arises from the following proceedings:

Wullschleger v. Royal Canin, No. 22-1796, (8th Cir. July 31, 2023) (vacating dismissal and ordering remand to state court for lack of subject-matter jurisdiction).

Wullschleger v. Royal Canin, No. 4:19-CV-00235, (W.D. Mo. October 17, 2022) (granting motion to dismiss).

Wullschleger v. Royal Canin, No. 19-2645, (8th Cir. March 13, 2020) (vacating order to remand).

Wullschleger v. Royal Canin, No. 4:19-CV-00235,
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Petitioners Royal Canin and Purina respectfully submit this Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The Eighth Circuit's Opinion, Pet. App. 3a-12a, is reported at 75 F.4th 918 (8th Cir. 2023). The Eighth Circuit's denial of rehearing or rehearing en banc (noting that two judges would grant rehearing en banc) is reproduced at Pet. App. 58a.

JURISDICTION

On July 31, 2023, the Eighth Circuit entered judgment. On September 20, 2023, the Eighth Circuit denied Petitioners' timely filed petition for rehearing or rehearing en banc.

28 U.S.C. § 1254(1) provides this Court with jurisdiction to review the Eighth Circuit's opinion.

PROVISIONS INVOLVED

The relevant provisions of the United States Code are set forth in Petitioners' Appendix I. These provisions are: 28 U.S.C. § 1331; 28 U.S.C. § 1367; 28 U.S.C. § 1441; and 28 U.S.C. § 1447.

INTRODUCTION

In this case, the Eighth Circuit purposefully departed from uniform law in all other circuits to hold that, in an action properly removed from state court to federal court, a plaintiff may amend the complaint to eliminate federal subject-matter jurisdiction and compel a remand back to state court. Beyond creating a circuit split, the Eighth Circuit

decision runs roughshod over a defendant's statutory right to remove and entitles plaintiffs to engage in a new form of federal-state forum shopping that disrupts orderly case management in federal and state courts alike.

Until the Eighth Circuit's decision here, every Court of Appeals to consider the issue had held that a district court is to look to the original complaint that supplied the basis for removal (not a post-removal amended complaint) to determine whether there is federal-question subject-matter jurisdiction. *See, e.g., Collura v. City of Philadelphia*, 590 Fed. Appx. 180, 184 (3d Cir. 2014) (holding that "federal jurisdiction cannot be defeated by amending a complaint to eliminate federal claims after removal"); *Smith v. Wynfield Dev. Co.*, 238 Fed. Appx. 451, 455 (11th Cir. 2007) (explaining that "a district court's removal jurisdiction is determined at the time of removal, and 'events occurring after removal . . . do not oust the district court's jurisdiction'"); *Sparta Surgical Corp. v. Nat'l Ass'n of Sec. Dealers, Inc.*, 159 F.3d 1209, 1213 (9th Cir. 1998) (holding that "a plaintiff may not compel remand by amending a complaint to eliminate the federal question upon which removal was based"), *overruled on other grounds by Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374 (2016).

Indeed, the Eighth Circuit expressly acknowledged that other Courts of Appeals look to the original complaint (not a post-removal amended complaint) to determine whether there is federal-question subject-matter jurisdiction. Pet App. 10a (citing *16 Front St., L.L.C. v. Miss. Silicon, L.L.C.*,

886 F.3d 549 (5th Cir. 2018), and *In Touch Concepts, Inc. v. Celco P'Ship*, 788 F.3d 98 (2d Cir. 2015)).

In *16 Front St., L.L.C.*, the first contrary case cited by the Eighth Circuit, the Fifth Circuit reasoned that a plaintiff cannot “replead to divest the federal court of jurisdiction and therefore require remand to state court.” 886 F.3d at 558-59 (discussing *Boelens v. Redman Homes, Inc.*, 759 F.2d 504, 507 n.2 (5th Cir. 1985) (collecting cases)). The Fifth Circuit observed that the “time of filing rule is most frequently employed in the removal context, to prevent a plaintiff from re-pleading after removal to deprive the federal court of jurisdiction.” *Id.* at 558.

In *In Touch Concepts, Inc.*, the other contrary case cited by the Eighth Circuit, the Second Circuit observed that courts treat amended complaints differently when assessing subject-matter jurisdiction in a removed case as opposed to in a case originally filed in federal court. 788 F.3d at 101 (citing *Rockwell Int’l Corp. v. United States*, 549 U.S. 457, 474 n.6 (2007) (“[W]hen a defendant removes a case to federal court based on the presence of a federal claim, an amendment eliminating the original basis for federal jurisdiction generally does not defeat jurisdiction.”)).

Indeed, until the Eighth Circuit’s decision here, the uniform rule in the other Courts of Appeals appeared to be the rule in the Eighth Circuit as well. *See, e.g., McLain v. Andersen Corp.*, 567 F.3d 956, 965 (8th Cir. 2009) (following a line of modern Eighth Circuit cases and dismissing as “meritless” the argument that the omission of a federal claim in an amended complaint in a removed case deprives a

district court of subject-matter jurisdiction). The Eighth Circuit's decision in this case expressly discarded *McLain* in favor of a long abandoned Eighth Circuit case from nearly a century ago, *Highway Constr. Co. v. McClelland*, 15 F.2d 187, 188 (8th Cir. 1926) (per curiam). Pet. App. 11a n.3. In expressly departing from the rule uniformly adopted in other circuits and even in its own circuit, the Eighth Circuit could not have been more clear that its adoption of a conflicting rule was fully informed and purposeful.

The Eighth Circuit also expressly split from other circuits on the issue of whether an amended complaint that deletes the federal claims on which removal was predicated may preclude a district court from exercising supplemental jurisdiction. See *Grispino v. New Eng. Mut. Life Ins. Co.*, 358 F.3d 16, 19 (1st Cir. 2004) (characterizing as “wrong” the argument that a post-removal amendment to a complaint deprives a federal court of supplemental jurisdiction); *Harper v. AutoAlliance Int'l, Inc.*, 392 F.3d 195, 210-11 (6th Cir. 2004) (rejecting the argument that plaintiff's amendment to drop Title VII claim, his only federal claim, required the district court to remand as supplemental jurisdiction was foreclosed); *Savage v. W. Va. Dep't of Health & Human Res.*, 523 Fed. Appx. 249, 250 (4th Cir. 2013) (concluding that in a removed case a plaintiff's abandonment of federal claims does not disturb the court's “wide latitude in determining whether or not to retain jurisdiction over [the] state claims”) (quoting *Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995)).

The Eighth Circuit's decision directly conflicts with these cases in explicitly holding that a district court's discretion to exercise supplemental jurisdiction "vanish[es]" when a plaintiff amends the complaint to remove the federal claims that provided a basis for original subject-matter jurisdiction.

In holding that a post-removal amendment may destroy federal-question jurisdiction and may preclude supplemental jurisdiction, the Eighth Circuit has decisively split from other Courts of Appeals on a fundamental and recurring issue of federal subject-matter jurisdiction. In departing from the otherwise-uniform law relating to post-removal amendments, the Eighth Circuit creates powerful incentives for forum-shopping by plaintiffs seeking to avoid a federal forum.

The Eighth Circuit, the second largest federal judicial circuit by geographic area, comprises seven states in the nation's breadbasket and is the home to numerous major manufacturers and retailers (such as both Royal Canin and Purina). Plaintiffs will frequently have the opportunity to bring their actions in state courts within the Eighth Circuit, knowing that they will always have a reliable escape hatch back to state court if their defendants successfully remove their actions to federal court.

This case is an ideal vehicle for resolution of both of the questions presented. Both questions were squarely before the Eighth Circuit, fully addressed in supplemental briefing at the Eighth Circuit's request, and were the only grounds for the Eighth Circuit's decisive decision. Moreover, absent this Court's review now, the divergent rule in the Eighth Circuit,

while likely to be applied frequently, is not likely to be presented frequently in a petition for certiorari, as appellate review of orders granting motions to remand are reviewable only in limited circumstances. *See, e.g.*, 28 U.S.C. § 1447(d) (“An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.”).

This Court should grant this Petition and review the judgment of the Eighth Circuit in this case.

STATEMENT

I. Initial District Court Proceedings

On February 8, 2019, Plaintiffs filed this putative class action in the Circuit Court of Jackson County, Missouri. In their initial complaint, Plaintiffs alleged that they overpaid for Defendants’ prescription pet food, a product sold only to pet owners who first consult with their veterinarians and obtain a prescription authorizing the purchase. While Plaintiffs’ initial complaint contained numerous allegations related to Federal food and drug law and regulation, Plaintiffs characterized their claims as arising under state law: violation of the Missouri Antitrust Law, violation of the Missouri Merchandising Practices Act, and common-law unjust enrichment.

Defendants timely removed this action from the Circuit Court of Jackson County, Missouri, to the U.S. District Court for the Western District of

Missouri, based on the original subject-matter jurisdiction of the district court under 28 U.S.C. § 1331 (federal question) and under 28 U.S.C. § 1332(d) (diversity of citizenship under the Class Action Fairness Act). Pet. App. 60a. Plaintiffs filed a motion to remand the action to Missouri state court, and Defendants opposed. On June 13, 2019, the district court granted Plaintiffs' motion and remanded the action to state court for lack of federal subject-matter jurisdiction. Pet. App. 25a-26a. The Eighth Circuit granted a petition for review under a provision of the Class Action Fairness Act, 28 U.S.C. § 1453(c)(1).

II. The First Decision by the Eighth Circuit

On March 13, 2020, the Eighth Circuit reversed. Applying this Court's framework from *Gunn v. Minton*, 568 U.S. 251, 258 (2013), the Eighth Circuit determined that the district court *did* possess federal-question subject-matter jurisdiction over Plaintiffs' state-law claims because they necessarily raised disputed, substantial federal issues. Pet. App. 33a. The Eighth Circuit found that "plaintiffs rely explicitly on federal law throughout their pleadings" and that "Plaintiffs' dependence on federal law permeates the allegations." Pet. App. 30a, 32a. With respect to Plaintiffs' antitrust conspiracy claims in particular, the Eighth Circuit held: "As evidence of coordination and conspiracy, plaintiffs explicitly claim that defendants violated the FDCA, were non-compliant with FDA guidance, and that their refusal to submit the prescription pet food to FDA review was improper." Pet. App. 32a. The Eighth Circuit further held that "plaintiffs' prayer for relief invokes federal jurisdiction because it seeks injunctive and

declaratory relief that necessarily requires the interpretation and application of federal law.” Pet. App. 32a. The Eighth Circuit rejected Plaintiffs’ arguments against federal-question jurisdiction, stating: “plaintiffs’ isolated focus on their alleged state law claims is nothing more than an apparent veil to avoid federal jurisdiction.” Pet. App. 32a.

The Eighth Circuit subsequently denied Plaintiffs’ petition for rehearing or rehearing en banc. This Court denied Plaintiffs’ petition for a writ of certiorari. Pet. App. 59a.

III. Further District Court Proceedings on Remand

Upon return to the district court, nearly two years after the case was originally filed, Plaintiffs filed an amended complaint and, on the same day, moved the district court to remand the action to Missouri state court. The amended complaint asserted the same Missouri Merchandising Practices Act claims but excised dozens of paragraphs referencing the FDCA and FDA regulatory guidance and re-packaged Plaintiffs’ Missouri antitrust-conspiracy claim as a civil-conspiracy claim. The amended complaint also dropped Plaintiffs’ unjust enrichment claims and revised their prayer for relief. The district court denied Plaintiffs’ second motion to remand, holding that federal-question jurisdiction still existed because “Plaintiffs’ civil conspiracy claim necessarily raises a substantial federal issue that is actually disputed.” Pet. App. 44a.

On July 6, 2021, Defendants moved to dismiss Plaintiffs’ amended complaint for failure to state a claim under Rule 12(b)(6) of the Federal Rules of

Civil Procedure. On March 22, 2022, the district court granted Defendants' motion. Pet. App. 57a.

IV. The Second Decision by the Eighth Circuit

Plaintiffs appealed the dismissal of their amended complaint but did not appeal the district court's denial of their second motion to remand. Pet. App. 5a. During oral argument at the Eighth Circuit, the question was raised as to whether the district court possessed subject-matter jurisdiction after Plaintiffs had deleted from the amended complaint the original allegations that the Eighth Circuit had earlier determined supplied the basis for federal subject-matter jurisdiction. The Eighth Circuit thereafter directed the parties to file supplemental briefs addressing two questions: (1) whether there is federal-question jurisdiction in this case, and whether jurisdiction depends on looking to the face of the amended complaint or the facts that exist at the time of removal; and (2) whether there is supplemental jurisdiction in this case. Pet. App. 5a.

The Eighth Circuit subsequently held that Plaintiffs' post-removal amendments had destroyed federal-question jurisdiction and precluded supplemental jurisdiction. On that basis, the Eighth Circuit reversed the district court's dismissal of the amended complaint and remanded with instructions for the district court to remand the action to state court. Pet. App. 9a.

As for federal-question jurisdiction, the Eighth Circuit expressly acknowledged that its decision created a split among the circuits and that other Courts of Appeals have come to the opposite conclusion: "To the extent that other courts have

come out differently, most have emphasized forum-manipulation concerns over jurisdictional rigor.” Pet. App. 10a (citing *16 Front St., L.L.C.*, 886 F.3d at 558-59; *In Touch Concepts*, 788 F.3d at 101-02). The Eighth Circuit also acknowledged that its own precedent supported the continued presence of federal-question jurisdiction, but abrogated that precedent in favor of a 1926 per curiam decision to the contrary. Pet. App. 11a n.3 (abrogating *McLain* in favor of *McClelland*).

As for supplemental jurisdiction, the Eighth Circuit concluded in a one-paragraph passage that Plaintiffs’ amendments precluded the district court from exercising supplemental jurisdiction. The Eighth Circuit reasoned that because “[t]he original complaint is ‘without legal effect’ . . . the possibility of supplemental jurisdiction vanished right alongside the once-present federal questions.” Pet. App. 11a-12a.

On August 14, 2023, Defendants filed a petition for rehearing or rehearing en banc. The Eighth Circuit ordered Plaintiffs to file a response. On September 20, 2023, the Eighth Circuit denied the petition for rehearing or rehearing en banc, noting that two judges voted in favor of rehearing en banc. Pet. App. 58a.

REASONS FOR GRANTING THE PETITION**I. This Court Should Grant the Petition to Resolve an Important and Recurring Question of Federal-Question Subject-Matter Jurisdiction in Actions Properly Removed to Federal Court****A. The Eighth Circuit Expressly Rejected the Majority Rule That a Post-Removal Amendment of the Complaint Cannot Destroy Federal-Question Subject-Matter Jurisdiction**

Only the Eighth Circuit has concluded that, in a properly removed action, the district court must look to an amended complaint to determine whether it possesses federal-question subject-matter jurisdiction. Every other circuit has come to the opposite conclusion; namely that once an action is removed to federal court, the pleading on which removal was predicated is the source of the district court's subject-matter jurisdiction, notwithstanding any subsequent amendment.

The Third Circuit, in *Collura*, faced circumstances substantially identical to those here. Defendants removed a civil-rights action to federal district court. 590 Fed. Appx. at 182. Following a failed motion to remand, the plaintiff amended the complaint to drop the federal claims and once again sought remand. *Id.* at 183. The district court denied plaintiff's second motion to remand and ultimately dismissed the case. *Id.* Plaintiff appealed the district court's orders denying remand, as well as the district court's order dismissing the case, contending that the district court no longer had federal-question subject-matter

jurisdiction after plaintiff amended the complaint. *Id.* at 184. The Third Circuit squarely rejected plaintiff's contention, explaining that "federal jurisdiction cannot be defeated by amending a complaint to eliminate federal claims after removal," and held that the district court "had subject matter jurisdiction over the removed complaint, and retained jurisdiction even when [plaintiff] attempted to defeat its jurisdiction by removing the federal claims." *Id.*

The Eleventh Circuit, in *Smith*, faced similar circumstances and reached the same conclusion as the Third Circuit. There, defendants removed plaintiff's action from state court based on federal-question jurisdiction resulting from complete preemption. 238 Fed. Appx. at 453. After removal, plaintiff filed an amended complaint that continued to allege only state-law claims but deleted all references to federal law. *Id.* at 454. Plaintiff moved to remand on the basis that her amended complaint contained only state-law claims, none of which were preempted. *Id.* The district court granted defendants' motion to dismiss without ruling on the motion to remand. *Id.* Plaintiff appealed, arguing that the district court erred in dismissing the case because the court lacked subject-matter jurisdiction. *Id.* at 454-55. The Eleventh Circuit rejected plaintiff's argument and determined that "a district court's removal jurisdiction is determined at the time of removal" and the court must look to plaintiff's "original complaint, not her first amended complaint, to determine whether [plaintiff] brought a federal claim that was subject to removal." *Id.* at 455. After analyzing plaintiff's original complaint, the Eleventh Circuit held that "removal of [plaintiff's] complaint to

federal court was proper and the district court had subject matter jurisdiction” as some of plaintiff’s claims were indeed completely preempted by federal law. *Id.* at 458.

Likewise, in *Sparta*, a Ninth Circuit case, plaintiff filed a complaint in state court and defendants removed the action to federal court. 159 F.3d at 1211. After the district court denied plaintiff’s motion to remand, plaintiff amended the complaint, and the district court subsequently dismissed plaintiff’s case for failure to state a claim. *Id.* at 1211, 1213. On appeal, plaintiff argued that the district court lacked subject-matter jurisdiction based on the post-removal amended complaint, which deleted most references to federal law. *Id.* at 1213. The Ninth Circuit rejected the argument as “of no moment” because “jurisdiction must be analyzed on the basis of the pleadings filed at the time of removal without reference to subsequent amendments.” *Id.* The Ninth Circuit concluded that “a plaintiff may not compel remand by amending a complaint to eliminate the federal question upon which removal was based.” *Id.*

Other Courts of Appeals are also aligned against the Eighth Circuit decision here. *See In Touch Concepts*, 788 F.3d at 100-01 (2d Cir. 2015) (“After proper removal to federal court, post-removal amendments generally do not destroy statutory subject-matter jurisdiction.”); *Salzer v. SSM Health Care of Okla. Inc.*, 762 F.3d 1130, 1133 (10th Cir. 2014) (looking to plaintiff’s original complaint as “the propriety of removal is judged on the complaint as it stands at the time of the removal”) (quoting *Pfeiffer v. Hartford Fire Ins. Co.*, 929 F.2d 1484, 1488 (10th Cir.

1991)); *Prince v. Rescorp Realty*, 940 F.2d 1104, 1105 n.2 (7th Cir. 1991) (concluding that plaintiff's post-removal amendment deleting federal claim did not destroy subject-matter jurisdiction); *Brown v. Eastern States Corp.*, 181 F.2d 26, 28 (4th Cir. 1950) (“[T]he fact that plaintiff subsequently amended his complaint in an attempt to eliminate the federal question did not make remand proper.”). And while Congress has frequently revised 28 U.S.C. § 1441, it has not seen fit to alter the rule adopted by the other Courts of Appeals that a post-removal amendment to the complaint does not eliminate subject-matter jurisdiction. *See Monessen S. R. Co. v. Morgan*, 486 U.S. 330, 338 (1988) (recognizing “that Congress’ failure to disturb a consistent judicial interpretation of a statute may provide some indication that Congress at least acquiesces in, and apparently affirms, that interpretation”) (quotations and alterations omitted) (collecting cases).

The Eighth Circuit’s departure from the uniform rule elsewhere is stark, irreconcilable, and purposeful. The Eighth Circuit had full briefing that addressed the uniform rule elsewhere, and acknowledged as much. Pet. App. 10a. The Eighth Circuit even overruled a prior Eighth Circuit panel decision that had abided by the uniform rule (*McLain*), instead reviving a 1926 per curiam decision that held otherwise (*McLelland*). Pet. App. 11a n.3. And the Eighth Circuit denied en banc review even though two of its judges recognized that the issue merited such review. Pet. App. 58a.

B. The Eighth Circuit's Outlier Decision Is Incorrect

Here, the Eighth Circuit concluded that a plaintiff may compel a remand by amending the complaint to delete the allegations on which federal-question subject-matter jurisdiction was based. Pet. App. 3a. In reaching that conclusion the Eighth Circuit mistakenly relied on cases originally filed in federal court (i.e., not cases removed to federal court from state court) in which an amended complaint destroyed the basis for federal subject matter jurisdiction. *See, e.g.*, Pet. App. 8a (relying on the Second Circuit's decision in *Gale v. Chi. Title Ins. Co.*, 929 F.3d 74 (2d Cir. 2019)). In *Gale*, the plaintiffs filed a putative class action in federal court pursuant to the Class Action Fairness Act. 929 F.3d at 76. After years of litigation, plaintiffs filed a fourth amended complaint that removed the class-action allegations and asserted only state-law claims. *Id.* The district court determined that the amendments divested it of subject-matter jurisdiction and dismissed the case. *Id.* On appeal, the Second Circuit affirmed the dismissal, quoting this Court's statement in *Rockwell*, 549 U.S. 457 (2007), that "when a plaintiff files a complaint in federal court and then voluntarily amends the complaint, courts look to the amended complaint to determine jurisdiction." *Id.* at 77-78. The Second Circuit was careful to note, however, that "this rule would not apply to cases that were removed to federal court." *Id.* at 78 n.2. The Second Circuit again quoted *Rockwell*: "When a defendant removes a case to federal court based on the presence of a federal claim, an amendment eliminating the original basis for

federal jurisdiction generally does not defeat jurisdiction.” *Id.* Here, the Eighth Circuit disregarded the distinction between cases *originally filed in federal court* and those *removed to federal court*. Indeed, the Court misstated Defendants’ argument as “once a federal question, always a federal question.” Pet. App. 7a. But a case filed in federal court does not implicate a defendant’s statutory right to remove, and the Eighth Circuit’s misplaced reliance on inapposite cases where the plaintiff elected to file in federal court creates a roadmap for how a plaintiff may subvert a defendant’s right to a federal forum in a case filed in state court that is within the original jurisdiction of the district court.

A pair of decisions from the Fifth Circuit illustrates that while a court looks to an amended complaint in a case *originally filed* in federal court to determine subject-matter jurisdiction, a court looks to the original complaint in a case *removed to federal court* to determine subject-matter jurisdiction. *See 16 Front St., L.L.C.*, 886 F.3d at 558-59 (discussing *Boelens* and holding a plaintiff cannot “replead to divest the federal court of jurisdiction and therefore require remand to state court”); *Boelens*, 759 F.2d at 507. *Boelens* makes the important observation that:

The rule that a plaintiff cannot oust removal jurisdiction by voluntarily amending the complaint to drop all federal questions serves the salutary purpose of preventing the plaintiff from being able to destroy the jurisdictional choice that Congress intended to afford a defendant in the removal statute.

Id. Notably, 28 U.S.C. § 1441(a) speaks of removing an “action,” not a specific claim. *City of Chi. v. Int’l College of Surgeons*, 522 U.S. 156, 163 (1997) (observing that a defendant may remove any “action” where the federal district court has original jurisdiction).

The Eighth Circuit also blithely brushed off “forum-manipulation concerns” that this Court has found weighty in these circumstances. *See Rockwell*, 549 U.S. at 474 n.6 (reasoning that “removal cases raise forum-manipulation concerns that simply do not exist when it is the plaintiff who chooses a federal forum and then pleads away jurisdiction through amendment.”). But *Rockwell’s* reasoning is sound: a plaintiff who files a state-court action that raises federal questions, thereby allowing a defendant to remove the action to federal court, ought not be able to have a jurisdictional do-over that burdens both the state and federal court with start-and-stop litigation. Sound judicial administration, as well as principles of comity and federalism, need not yield to the whims of a forum-manipulating plaintiff. *See, e.g., Boelens*, 759 F.2d at 507 (noting that “jockeying” cases from state court to federal court and back to state court “is a drain on the resources of the state judiciary, the federal judiciary and the parties involved”); *Prince*, 940 F.2d at 1105 n.2 (same).

The Eighth Circuit decision seems to accept that forum manipulation should be disallowed when possible, but suggests disallowance must be limited to where a plaintiff needs to seek leave to amend. Pet. App. 10a n.2. But, of course, such leave is to be “freely give[n].” Fed. R. Civ. P.15(a)(2).; *Foman v. Davis*, 371 U.S. 178, 182 (1962).

A consequence of the Eighth Circuit's decision is that a plaintiff may subvert a defendant's right to remove from state court an action within the original jurisdiction of the federal district court. A plaintiff in the Eighth Circuit is effectively granted a mulligan after a failed attempt to remand a case when the district court finds that it falls within its federal-question subject-matter jurisdiction. If a motion to remand is denied on the basis that the claims are federal in nature, a plaintiff may simply amend the complaint to eliminate or conceal the federal allegations, move to remand a second time, and force the district court to return the case to state court. Plaintiffs in this case were unabashed in admitting that the post-removal amendments to the complaint were to subvert federal jurisdiction. When Defendants described the Amended Complaint as a "transparent attempt to avoid federal jurisdiction," Plaintiffs agreed: "Plaintiffs consider this a compliment that they are being transparent in their efforts to return to Missouri State Court." *See* No. 4:19-cv-235 (W.D. Mo.), ECF No. 55, at 1. Additionally, a plaintiff could file federal claims in state court and wait to see if the defendant removed. If the defendant did exercise its statutory right to remove, then, in the Eighth Circuit, a plaintiff could amend the complaint to drop the federal claims and compel a remand to state court.

These types of forum manipulation will have adverse consequences for both state and federal courts. State courts will suffer the burden of cases being jockeyed to and from federal courts. A properly removed case would be only temporarily lifted from the docket of an over-burdened state court. After

some period of litigating in federal court, should a plaintiff find it desirable to return to state court (perhaps based on the judicial assignment), the plaintiff could then amend the complaint, move to remand, and return to the state-court forum. If a plaintiff still possessed the ability to amend as of right, no leave of court would be required to file the amended complaint, as was the situation here. *See* Fed. R. Civ. P. 15. Federal courts will suffer the burden of protracted and multiplied removal proceedings. *See Boelens*, 759 F.2d at 507; *Prince*, 940 F.2d at 1105 n.2.

Indeed, this case is a harbinger of what awaits district courts that follow the Eighth Circuit's approach to federal-question jurisdiction in removed cases: years of litigation over whether the case belongs in state or federal court and tactical maneuvers by plaintiffs to amend the complaint to deprive the district court of subject-matter jurisdiction.

II. This Court Should Grant the Petition to Resolve an Important and Recurring Question of Supplemental Jurisdiction in Actions Properly Removed to Federal Court

A. The Eighth Circuit Expressly Rejected the Majority Rule That a Post-Removal Amendment of the Complaint Cannot Preclude Supplemental Jurisdiction

The Eighth Circuit compounded its jurisdictional error by determining that an amended complaint in a properly removed case may not only destroy federal-question jurisdiction but also preclude a district court from exercising supplemental jurisdiction. Pet. App.

12a (“the possibility of supplemental jurisdiction vanished right alongside the once-present federal questions”). On this issue too, the Eighth Circuit decisively split from the other Courts of Appeals. The split could not be more stark. Outside of the Eighth Circuit, a district court retains the discretion afforded in 28 U.S.C. § 1367 to either retain or remand such state-law claims. Again, a few examples suffice to demonstrate the circuit split caused by the Eighth Circuit’s decision in this case.

In the First Circuit’s *Grispino* case, defendants removed an action that alleged state-law violations as well as a violation of the federal Racketeering Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1961 *et seq.* 358 F.3d at 18. Post-removal, plaintiffs amended the complaint to delete the RICO claim and moved to remand the action to state court. *Id.* On appeal, plaintiffs argued that “the district court should have granted some form of remand order because there was no federal subject matter jurisdiction once they amended the complaint to delete the federal RICO claim.” *Id.* at 19. The First Circuit rejected plaintiffs’ argument as “wrong” and determined that “the dismissal of the only federal claim after removal of an action to federal court does not by itself deprive the federal court of jurisdiction over the remaining state claims.” *Id.* (citing 28 U.S.C. § 1367(c)).

The Sixth Circuit has similarly concluded that the possibility of supplemental jurisdiction is not destroyed by a plaintiff’s post-removal amendment eliminating federal claims. In *Harper*, the defendant removed plaintiff’s action that alleged violations of both state law and Title VII. 392 F.3d at 199. The

district court denied plaintiff's motion to remand, finding federal-question jurisdiction based on plaintiff's Title VII claim. *Id.* at 199-200. Plaintiff filed an amended complaint deleting the Title VII claim and again moved to remand. *Id.* at 200. The district court denied plaintiff's second motion to remand and granted defendants' pending motion for summary judgment. *Id.* Plaintiff appealed the district court's decision to deny plaintiff's motion to remand, arguing that the district court did not have subject-matter jurisdiction. *Id.* The Sixth Circuit determined that plaintiff's dismissal of his only federal claim did not divest the court of supplemental jurisdiction as "[t]he existence of subject matter jurisdiction is determined by examining the complaint as it existed at the time of removal." *Id.* at 210. "Accordingly, because the district court's jurisdiction originally was premised on a federal claim and that claim subsequently was dismissed, remand to the state court was a matter of discretion." *Id.* at 211; *see id.* at 210 (quoting *Rosado v. Wyman*, 397 U.S. 397, 405 (1970) for the proposition that "we are not willing to defeat the commonsense policy of pendent jurisdiction — the conservation of judicial energy and the avoidance of multiplicity of litigation — by a conceptual approach that would require jurisdiction over the primary claim at all stages as a prerequisite to resolution of the pendent claim."). The Sixth Circuit went on to conclude that the district court did not abuse its discretion in retaining supplemental jurisdiction, despite the deletion of the Title VII claim, in part because plaintiff "was attempting to engage in forum manipulation" by dropping his federal claim "only

after the district court had denied his first motion to remand.” *Id.* at 211-12.

The Fourth Circuit follows the same approach. In *Savage*, defendants removed to federal court plaintiff’s action alleging various state-law violations as well as a claim implicating Title VII. 523 Fed. Appx. at 249. Post removal, plaintiff filed an amended complaint in which he “abandoned his federal claims” and moved to remand. *Id.* at 250. The district court denied the motion and exercised supplemental jurisdiction over plaintiff’s remaining state-law claims. *Id.* The Fourth Circuit held that the district court did not abuse its discretion in exercising supplemental jurisdiction as “the district court had ‘wide latitude in determining whether or not to retain jurisdiction over [the] state claims.’” *Id.* (quoting *Shanaghan*, 58 F.3d at 110). In contrast, the Eighth Circuit’s decision is express that there is *no discretion*, much less “wide latitude,” to decide whether to retain state-law claims after an amendment deletes the federal claims that were the predicate for removal.

Other circuits have held similarly to the First, Sixth, and Fourth Circuits, and all are in sharp contrast to the Eighth Circuit’s approach. *See Coefield v. GPU*, 125 Fed. Appx. 445, 448 n.3 (3d Cir. 2005) (noting that the district court had supplemental jurisdiction over plaintiff’s remaining state-law claims even after plaintiff filed a post-removal amended complaint “purging it of all claims implicating federal law”); *Behlen v. Merrill Lynch*, 311 F.3d 1087, 1095 (11th Cir. 2002) (“The court had discretion to retain jurisdiction over the state law claims even after [plaintiff] amended the complaint to

remove any federal cause of action.”). Here again, prior to the Eighth Circuit’s decision, the Eighth Circuit conformed to the approach in other circuits. See *McLain*, 567 F.3d at 965 (confirming both federal-question and supplemental jurisdiction existed following post-removal amendments to complaint).

The Eighth Circuit’s split from the other Courts of Appeals is clear and express. In the Eighth Circuit, a plaintiff in a removed case may preclude a district court’s exercise of supplemental jurisdiction by amending the complaint to delete the federal-questions that supplied the basis for removal. No other Court of Appeals follows this approach.

B. The Eighth Circuit’s Outlier Decision Is Incorrect

The Eighth Circuit’s decision to permit a plaintiff to undercut removal and preclude supplemental jurisdiction by amending the complaint is a dramatic break from the rule adopted by other Courts of Appeals. But on supplemental jurisdiction, like federal-question jurisdiction, the Eighth Circuit’s reasoning is faulty and will invariably lead to forum manipulation.

The Eighth Circuit’s error was again its reliance on a case addressing subject-matter jurisdiction in the situation where the plaintiff *originally filed in federal court*, instead of looking to cases addressing supplemental jurisdiction in cases removed to district court from state court. Pet App. 12a (applying *Pintando v. Miami-Dade Hous. Agency*, 501 F.3d 1241 (11th Cir. 2007)). In *Pintando*, the plaintiff “filed his original complaint in the Southern District

of Florida” alleging violations of both state and federal law. *Id.* at 242. The defendant moved for summary judgment and the plaintiff moved to amend to drop his federal claim. *Id.* The district court allowed the amendment and subsequently granted the defendant’s motion for summary judgment. *Id.* On appeal, the Eleventh Circuit took care to assure itself that it possessed jurisdiction. *Id.* (“The question before us is whether the district court continued to possess subject-matter jurisdiction over [plaintiff’s] state law claims after he amended his complaint to no longer include any federal law claim.”). Relying on *Rockwell*, the Eleventh Circuit concluded that, in a case *originally filed in federal court*, when a plaintiff files an amended complaint, it is the amended complaint that a district court looks to in assessing whether it may exercise supplemental jurisdiction. *Id.* at 1243. As the plaintiff had amended away his basis for federal jurisdiction, the Eleventh Circuit vacated the district court’s grant of summary judgment and ordered the case dismissed. *Id.* at 1244. But the Eleventh Circuit was careful to note that had it been a removal case, the jurisdictional question would have the opposite outcome. *Id.* at 1243 n.2 (“In [removal] cases the district court must look at the case at the time of removal to determine whether it has subject-matter jurisdiction. Later changes to the pleadings do not impact the court’s exercise of supplemental jurisdiction.”). The Eighth Circuit again ignored cautionary language that cases removed to federal court are treated differently than those filed in federal court.

Importantly, the principle of supplemental jurisdiction “applies with equal force to cases removed to federal court as to cases initially filed there; a removed case is necessarily one ‘of which the district courts have original jurisdiction.’” *City of Chi.*, 522 U.S. at 165 (quoting 28 U.S.C. § 1441(a)). Yet inexplicably, the Eighth Circuit’s decision disregards district courts’ long-standing discretion to exercise supplemental jurisdiction — “a doctrine of flexibility, designed to allow courts to deal with cases involving pendent claims in the manner that most sensibly accommodates a range of concerns and values.” *Carnegie-Mellon v. Cohill*, 484 U.S. 343, 350 (1988) (citing *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966)). As this Court has explained, “this Court has long adhered to principles of pendent and ancillary jurisdiction” and “Congress has codified those principles in the supplemental jurisdiction statute, which combines the doctrines of pendent and ancillary jurisdiction under a common heading. 28 U.S.C. § 1367.” *City of Chi.*, 522 U.S. at 164, 165.

A consequence of the Eighth Circuit’s treating removed cases in the same fashion as those originally filed in federal court is that it eliminates a district courts’ discretion to retain jurisdiction over state-law claims any time a plaintiff chooses to amend a complaint to delete federal claims in a removed action. *See* 28 U.S.C. § 1367(c) (“The district courts *may* decline to exercise supplemental jurisdiction over a claim under subsection (a) . . .”) (emphasis added). Indeed, the Eighth Circuit’s decision invites plaintiffs to tactically amend the complaint to preclude a district court from exercising supplemental jurisdiction. This approach is flatly

contrary to well-settled principles of supplemental jurisdiction. See *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 640 (2009) (“Upon dismissal of the federal claim, the District Court retain[s] its statutory supplemental jurisdiction over the state-law claims. Its decision declining to exercise that statutory authority [i]s not based on a jurisdictional defect but on its discretionary choice not to hear the claims despite its subject-matter jurisdiction over them.”); *Cohill*, 484 U.S. at 357 (noting that courts may exercise supplemental jurisdiction even if a plaintiff “delet[es] all federal-law claims from the complaint” post-removal).

Without this Court’s intervention, the Eighth Circuit’s decision provides a blueprint for a plaintiff to defeat a defendant’s right to remove and a district court’s ability to exercise supplemental jurisdiction in removed cases. A plaintiff may simply amend the complaint after failing in a motion to remand and thereby divest the court of both federal-question and supplemental jurisdiction. This case, which cleanly presents the issues of federal-question and supplemental jurisdiction in removed cases, is an ideal vehicle for this Court to prevent such a subversion of a defendant’s right to remove.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted, and the decision should be reversed.

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