

# SUPREME COURT OF THE UNITED STATES

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IN THE SUPREME COURT OF THE UNITED STATES

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ROYAL CANIN U.S.A., INC., ET AL., )

Petitioners, )

v. ) No. 23-677

ANASTASIA WULLSCHLEGER, ET AL., )

Respondents. )  
- - - - -

Pages: 1 through 73

Place: Washington, D.C.

Date: October 7, 2024

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3   ROYAL CANIN U.S.A., INC., ET AL.,   )  
4                           Petitioners,                   )  
5                           v.                                ) No. 23-677  
6   ANASTASIA WULLSCHLEGER, ET AL.,   )  
7                           Respondents.                   )  
8   - - - - -

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10                           Washington, D.C.  
11                           Monday, October 7, 2024  
12

13           The above-entitled matter came on for  
14   oral argument before the Supreme Court of the  
15   United States at 11:23 a.m.  
16

17   APPEARANCES:  
18   KATHERINE B. WELLINGTON, ESQUIRE, Boston,  
19       Massachusetts; on behalf of the Petitioners.  
20   ASHLEY C. KELLER, ESQUIRE, Chicago, Illinois; on  
21       behalf of the Respondents.  
22  
23  
24  
25

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1 P R O C E E D I N G S

2 (11:23 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear  
4 argument next in Case 23-677, Royal Canin versus  
5 Wullschleger.

6 Ms. Wellington.

7 ORAL ARGUMENT OF KATHERINE B. WELLINGTON  
8 ON BEHALF OF THE PETITIONERS

9 MS. WELLINGTON: Mr. Chief Justice,  
10 and may it please the Court:

11 The Eighth Circuit's decision below is  
12 an extreme outlier. It conflicts with the text  
13 and structure of Section 1367 with more than a  
14 century of precedent. Chief Justice Marshall  
15 held in Mollan against Torrance in 1824 that in  
16 a diversity case, a federal court's jurisdiction  
17 once vested cannot be divested by subsequent  
18 events.

19 The Court extended that reasoning to  
20 removal actions in Kirby against American Soda  
21 in 1904. And in 1938, this Court held in St.  
22 Paul Mercury that if the plaintiff after removal  
23 amends his pleadings, this does not deprive the  
24 district court of jurisdiction because the  
25 defendant's statutory right to removal should

1 not be subject to the plaintiff's caprice. The  
2 second Justice Marshall confirmed that  
3 conclusion in Carnegie-Mellon against Cohill in  
4 1988, and Justice Scalia concurred in Rockwell  
5 in 2007.

6 Respondents ask this Court to upset  
7 that settled interpretation, claiming that it  
8 conflicts with the text of Section 1367. But  
9 Congress codified this Court's longstanding  
10 precedent in the text of Section 1367 itself,  
11 making clear that if the federal court has  
12 original jurisdiction, it shall continue to have  
13 supplemental jurisdiction unless Congress  
14 expressly provided otherwise.

15 Respondents cannot cite a single  
16 decision of this Court, a single decision of a  
17 court of appeals outside of the Eighth Circuit,  
18 or a single treatise that supports their  
19 position. Respondents realize how weak their  
20 case is and instead ask the Court to decide  
21 something else, whether Grable should be  
22 overruled and, if not, whether Grable's  
23 requirements were met.

24 This Court did not grant certiorari on  
25 either question. Grable is settled law, and the

1 Eighth Circuit correctly applied it here. The  
2 Court should affirm its longstanding precedent  
3 and reverse the decision below.

4 I welcome the Court's questions.

5 JUSTICE THOMAS: You mentioned Section  
6 1367. Could you spend a few minutes on your  
7 argument as to how it disposes of -- supports  
8 your argument?

9 MS. WELLINGTON: Certainly, Your  
10 Honor. So the text of Section 1367 states that  
11 there is supplemental jurisdiction unless  
12 Congress has expressly provided otherwise. And  
13 the text of Section 1367 does not say that when  
14 a plaintiff amends the complaint to delete the  
15 federal question, there is no longer  
16 supplemental jurisdiction.

17 And that's exactly the interpretive  
18 approach that this Court adopted in Exxon Mobil  
19 against Allapattah, where the Court was trying  
20 to figure out what does Section 1367 say about  
21 Rule 23 and plaintiffs in class actions. And  
22 the Court looked at Section 1367, said it  
23 doesn't say anything about Rule 23, and that  
24 means that there is supplemental jurisdiction.

25 There are also some important

1 structural inferences here. So -- so Section  
2 1367(c)(3) makes clear that where the district  
3 court has dismissed all claims over which it has  
4 original jurisdiction, it can continue to  
5 exercise supplemental jurisdiction. And that  
6 really disposes of the argument that there has  
7 to be an ongoing federal question in the case in  
8 order for supplemental jurisdiction to be  
9 warranted. Congress didn't intend that here.

10 JUSTICE KAGAN: So do you think,  
11 Ms. Wellington, that -- let's say this wasn't a  
12 removal case. Let's say this was an original  
13 case and it was brought in federal court, and  
14 then the plaintiff took out the federal claim,  
15 leaving only state claims. Is there  
16 supplemental jurisdiction there?

17 MS. WELLINGTON: So this Court has  
18 treated these two situations differently, and  
19 Justice Scalia explained why in Rockwell. So  
20 there was a concern in Rockwell that when a  
21 plaintiff goes into federal court, pleads a  
22 federal question, and then immediately or  
23 subsequently drops it, that they're trying to  
24 plead their way into federal court.

25 JUSTICE KAGAN: So forgetting what the

1     reason for that is, you do agree with that rule  
2     that once I -- I file a -- a suit in federal  
3     court as an original matter, then take out the  
4     federal claims, leaving only state law claims,  
5     there's nothing at that point for the federal  
6     court to do? It's not a doctrine of discretion  
7     anymore. The federal court has to dismiss. Is  
8     that correct?

9             MS. WELLINGTON: That is how we have  
10    asked this Court to read Rockwell. The U.S.  
11    Chamber of Commerce brief, you know --

12            JUSTICE KAGAN: I -- I just --

13            MS. WELLINGTON: Yes.

14            JUSTICE KAGAN: -- want to make sure.

15            MS. WELLINGTON: That is our view.

16            JUSTICE KAGAN: So, if that's the  
17    case, I don't think that your arguments from  
18    1367 can be right because your arguments from  
19    1367 would suggest the opposite result in the  
20    case that I gave. In other words, it's very  
21    hard to read 1367 as imposing some kind of  
22    distinction between original cases and removed  
23    cases.

24            MS. WELLINGTON: So I agree, Your  
25    Honor, that there is no distinction in the text



1 of 1367 itself. This Court could revisit its  
2 decision in Rockwell or limit it to the FCA  
3 context. We haven't asked the Court to do that  
4 because we think that we win on the text here.  
5 We think, if you just --

6 JUSTICE KAGAN: I guess what it  
7 suggests to me, though, is, if you were willing  
8 to say, look, the Rockwell understanding of  
9 original cases is settled, we're not contesting  
10 that, then I think your arguments from 1367 go  
11 away because 1367 just doesn't create the kind  
12 of distinction that you're asking us to create.

13 So either you lose as to removed cases  
14 too, or these arguments from the text are just  
15 not going to get us to your result.

16 MS. WELLINGTON: So we disagree, Your  
17 Honor, with the -- your interpretation of the  
18 text of Section 1367. We think Congress has  
19 made clear that there is supplemental  
20 jurisdiction unless Congress has expressly  
21 provided otherwise. It hasn't done that.

22 And I think it's very important to  
23 consider how Congress came to write Section  
24 1367. It was in response to Finley, where this  
25 Court took an extremely narrow view of

1     pendent-claim and pendent-party jurisdiction,  
2     pendent-party jurisdiction in particular, and  
3     Congress said no, that's not what we want. We  
4     want a broader view of pendent-claim and  
5     pendent-party jurisdiction.

6             And that's why they wrote this very  
7     broad statute here. And it would be very  
8     strange to conclude that Congress intended to  
9     abrogate Cohill. It was decided just two years  
10    before it enacted --

11            JUSTICE SOTOMAYOR: That's the  
12    point --

13            JUSTICE BARRETT: But Cohill --

14            JUSTICE SOTOMAYOR: -- isn't it?

15            JUSTICE BARRETT: Sorry. Go ahead.

16            JUSTICE SOTOMAYOR: Yeah. That's the  
17    point, isn't it? I -- I can't get over the fact  
18    that what Congress did in 1367 was address the  
19    questions that had been in the Court. The first  
20    one was the diversity issue under St. Paul, and  
21    it agreed with the Court.

22            It disagreed with the Court on pendent  
23    and supplemental jurisdiction, and it wrote a  
24    statute to address that. And yet it knew from  
25    Cohill that we had said that if a plaintiff

1 dismisses an action, that potentially we go back  
2 to the original amendment, and it didn't do what  
3 it did for diversity. It wrote it to say only  
4 when the district court dismisses the federal  
5 claims do you retain supplemental jurisdiction.

6 That, to me, is the statute. They had  
7 all our case law. They addressed one -- one  
8 thing they agreed with. They disagreed with  
9 another, and they disagreed with the third by  
10 not adopting what it did with diversity.

11 MS. WELLINGTON: So two responses,  
12 Your Honor. First, Section (3) -- (c)(2) does  
13 express -- expressly address this Cohill  
14 situation. It says the district courts may  
15 decline to exercise supplemental jurisdiction  
16 when the state law claim substantially  
17 predominates.

18 JUSTICE SOTOMAYOR: No, when the  
19 district court has dismissed all claims. It  
20 doesn't say when the plaintiff has dismissed all  
21 claims.

22 MS. WELLINGTON: So I agree, that's  
23 (c)(3).

24 JUSTICE SOTOMAYOR: And when the  
25 district court dismisses all federal claims, the

1 party still has a right to appeal, correct?

2 MS. WELLINGTON: That's correct.

3 JUSTICE SOTOMAYOR: When the district  
4 court doesn't do that in a diverse action, then  
5 that -- because the claim has disappeared,  
6 there's no appeal for the defendant -- for  
7 the -- for -- for anybody, correct?

8 MS. WELLINGTON: I -- I sort of -- I  
9 think, Your Honor, it depends on the case. I  
10 think there could still be an appeal in a  
11 diversity case where the district court  
12 dismisses a claim and the plaintiff says you  
13 shouldn't have dismissed that claim.

14 JUSTICE SOTOMAYOR: No, but that's  
15 because they're there because of the -- the  
16 diversity provision of the statute.

17 JUSTICE JACKSON: Can I just  
18 understand your argument about whether or not an  
19 amendment can affect federal question  
20 jurisdiction? So setting aside diversity for a  
21 second, we're in federal question land. The  
22 case is filed in federal court. And the  
23 plaintiff goes through the first couple weeks  
24 and then says: You know what? I'm dropping my  
25 federal claims, because it originally brought a

1 complaint that had federal and state claims.

2 Does that affect jurisdiction in your  
3 view or not?

4 MS. WELLINGTON: And this is a case  
5 originally brought --

6 JUSTICE JACKSON: Originally  
7 brought --

8 MS. WELLINGTON: -- in federal court?

9 JUSTICE JACKSON: -- originally  
10 brought in federal court. And the plaintiff  
11 amends and takes out the federal claims.

12 Can the court proceed, can it decide  
13 through supplemental jurisdiction or whatnot to  
14 continue on with the case?

15 MS. WELLINGTON: So this Court  
16 suggested in Rockwell that the answer to that  
17 would be no, you would not continue in that  
18 case. And just --

19 JUSTICE JACKSON: Okay. So next  
20 question. You -- the case is brought in state  
21 court and it has federal and state claims, and  
22 before the defendant has the ability to remove,  
23 the plaintiff says: Oops, I didn't mean to  
24 bring the federal claims, I'm dropping them. So  
25 no removal action yet or motion yet.

1                   Can it be still removed? Is there any  
2                   basis for federal jurisdiction in that  
3                   situation?

4                   MS. WELLINGTON: No, Your Honor.

5                   JUSTICE JACKSON: All right. So it  
6                   seems to me then your argument comes down to the  
7                   impact of removal because somehow, even though  
8                   in a situation in which the plaintiff amends, if  
9                   it was brought originally in federal court or  
10                  amends if it's brought originally in state  
11                  court, those have an impact, you say, on federal  
12                  question jurisdiction.

13                  Somehow, if the defendant removes  
14                  before the plaintiff can drop the federal  
15                  claims, you say no impact on federal question  
16                  jurisdiction. Is that right?

17                  MS. WELLINGTON: That's correct.

18                  JUSTICE JACKSON: Why?

19                  MS. WELLINGTON: So this Court  
20                  explained in St. Paul Mercury that once you've  
21                  removed to federal court, there is a removal  
22                  statute and the defendants have a right to  
23                  remove.

24                  JUSTICE JACKSON: But the removal  
25                  statute doesn't say, as I think Justice

1     Sotomayor was trying to get at, anything about  
2     what happens to jurisdiction. I thought the  
3     removal statute was really just giving the  
4     defendant the ability to bring this action into  
5     federal court.

6             It doesn't say anything about whether  
7     or not the federal court can be divested of  
8     jurisdiction once it's there. And I don't  
9     understand why the federal court can be divested  
10    of jurisdiction if it starts in federal court  
11    because the plaintiff brought it -- brought it  
12    there but can't be divested of jurisdiction if  
13    it comes to federal court because the defendant  
14    brought it there.

15            MS. WELLINGTON: And -- and just to be  
16    clear, the rule that we're asking for and the  
17    rule that this Court has applied for a hundred  
18    years is that it's a matter of discretion once  
19    you get to federal court on removal. It's up to  
20    the district court judge.

21            JUSTICE JACKSON: On removal. But I  
22    guess I -- why -- why does it make a difference  
23    as to how this case landed in federal court as  
24    to whether or not the federal judge can be  
25    divested of his jurisdiction? That's what your

1 argument seems to turn on, and I don't know why  
2 that's the case.

3 MS. WELLINGTON: And this Court  
4 addressed that in St. Paul Mercury and said that  
5 the defendant's right to remove should not be  
6 subject to the plaintiff's caprice. Congress  
7 gave defendants rights in the situation when the  
8 case gets to federal court on removal. That's  
9 different than when a case is originally --

10 JUSTICE BARRETT: That's --

11 JUSTICE JACKSON: It changes the scope  
12 of jurisdiction. The -- the -- the removal  
13 right carries with it the ability to affect the  
14 jurisdiction of the Court, is what you're  
15 saying?

16 MS. WELLINGTON: That's what this  
17 Court has long held in cases like St. Paul  
18 Mercury. In Cohill, the Court recognized that,  
19 in Rockwell. It also recognized it in cases  
20 like Carlsbad, where this Court was talking  
21 about Cohill remands and determined that they  
22 were not mandatory, that they were a matter of  
23 discretion for the district court.

24 And I agree, Your Honor, that in most  
25 cases, the outcome's going to be the same. When



1     you get to federal court on a removal, in a  
2     removal case, you drop your federal claim.  
3     Immediately, most of the time you're going to go  
4     right back to state court. It's going to be the  
5     same outcome.

6             Where it matters are cases like this  
7     one, where the case has been going on for almost  
8     two years when they amend their claims. We've  
9     cited other cases where it's been pending in  
10    federal court for a long time and right before  
11    an adverse decision -- so that's on page 16 of  
12    our yellow brief -- right before an adverse  
13    decision, the plaintiff amends their complaint  
14    to try to get back to state court.

15            And in that situation, district courts  
16    have said: Well, I'm going to balance this  
17    attempt at gamesmanship with other  
18    considerations like --

19            JUSTICE BARRETT: Counsel, can I  
20    interrupt you there? I mean, St. Paul Mercury  
21    is a little bit different because it's  
22    diversity. And there's always been a problem,  
23    you know, when I used to teach diversity  
24    jurisdiction, in the amount in controversy and  
25    figuring out how to value it. And you're not

1 capped to the damages that you claim. And so  
2 there wasn't a real change there.

3 And, you know, Cohill, okay, it's --  
4 it's helpful, but it's really about a different  
5 point. It's about dismissal versus remand. I  
6 think the best thing for you are all these court  
7 of appeals cases.

8 I mean, I -- I have a lot of trouble  
9 with the textual argument for the reasons  
10 Justice Kagan is saying, but, I mean, it does  
11 give me some pause to say, well, all these  
12 courts of appeals have thought this was okay and  
13 there is that footnote in Rockwell, but it's not  
14 quite the old soil principle because the old  
15 soil principle requires you to be able to hang  
16 your hat on something in the statute and say  
17 this is what brought along the old -- old soil  
18 with it.

19 So you cite Taggart and the old soil  
20 principle, but what are you attaching it to as  
21 opposed to just some sort of, like,  
22 free-floating, everyone thought we could do  
23 this?

24 MS. WELLINGTON: So we totally agree,  
25 Your Honor, it has to be important that for

1 decades and decades and decades every court of  
2 appeals has gone the same way. We disagree,  
3 Your Honor, that Cohill didn't address this  
4 question. It does say that when a federal law  
5 claim is eliminated at an early stage of the  
6 litigation, the district court has a powerful  
7 reason to choose.

8 JUSTICE BARRETT: To choose its dicta,  
9 its dicta. Just go with my old soil question.

10 MS. WELLINGTON: So -- so I think it  
11 is important here that Congress whole swath took  
12 parts of Gibbs and Cohill and the lower court  
13 cases prior to the enactment of the statute. So  
14 Section (a) as well as Sections (c)(2) and (3)  
15 are word for word from Gibbs.

16 The top part of Section (c), the  
17 district court may decline to exercise  
18 supplemental jurisdiction, that's drawn directly  
19 from Cohill. And (c)(1), where it talks about  
20 the claim raises a novel or complex issue of  
21 state law, that comes from 1980s court of  
22 appeals decisions that took that into account  
23 when determining whether to exercise  
24 supplemental jurisdiction. So this --

25 JUSTICE KAVANAUGH: I just --

1 CHIEF JUSTICE ROBERTS: Your -- your  
2 briefing, obviously, suggests at least at the  
3 outset you don't think Grable has much to do  
4 with this case. And your friend on the other  
5 side obviously disagrees.

6 But I wonder why it -- it doesn't. I  
7 mean, your reading, I think, assumes the  
8 correctness of your position under 1367 that  
9 this complaint is one over which the district  
10 court would have original jurisdiction.

11 And your friend, I think, has  
12 concluded that depends upon whether Grable is  
13 correct. And so why -- why isn't it -- why  
14 doesn't it depend upon Grable?

15 MS. WELLINGTON: So this Court can  
16 decide jurisdictional issues in any order.  
17 That's what it held in Sinochem. We agree that  
18 there has to be an adjudication of the Grable  
19 question in order to get to the ultimate, you  
20 know, remedy in this case. But that's not what  
21 we're asking this Court to decide.

22 So we don't think the Court has to  
23 decide the issue. If the Court wants to decide  
24 the issue, we think there plainly was  
25 jurisdiction based on the original complaint.

1 The original complaint repeatedly claims that  
2 there are violations of the Food, Drug, and  
3 Cosmetic Act and then in paragraphs 136 and 137  
4 of the complaint asks for an injunction  
5 requiring ongoing compliance with federal law.

6 CHIEF JUSTICE ROBERTS: Well, the  
7 original complaint but not the removed  
8 complaint. In other words, not the complaint  
9 with all the federal things stripped out of it.

10 In that situation, if that's the one  
11 you look at, then Grable is critical to your  
12 success, I think.

13 MS. WELLINGTON: Just to be clear, so  
14 the -- the complaint at the time of removal had  
15 a federal claim, you know, that's our position.  
16 I think Your Honor is talking about supplemental  
17 jurisdiction.

18 CHIEF JUSTICE ROBERTS: I'm sorry,  
19 yes, of course.

20 MS. WELLINGTON: And -- and this Court  
21 has long held that you don't have to have a  
22 federal question at all stages of the case in  
23 order to exercise supplemental jurisdiction.  
24 That's exactly what the Court held in Rosado,  
25 where the original federal claim became moot,

1     and this Court said that -- that the three-judge  
2     district court could continue to go on and  
3     decide the ancillary claims even though it  
4     didn't have original jurisdiction because you  
5     don't have to have jurisdiction over the  
6     original federal claim through all proceedings.

7             JUSTICE KAVANAUGH:  In -- in 2007, in  
8     Rockwell, in Footnote 6, the statement there  
9     resolves this case in your favor, Footnote 6.

10            Now the other side's going to say a  
11     lot of things about Footnote 6, I think, that  
12     it's dicta, that it's mistaken, that it's wrong,  
13     that it should be ditched.

14            You want to just take on Footnote 6?  
15     Because you win with Footnote 6, but --

16            MS. WELLINGTON:  So we --

17            JUSTICE KAVANAUGH:  -- is there -- you  
18     know, do we stick with that?

19            MS. WELLINGTON:  We think Footnote 6  
20     is not dicta.  We think it's actually quite  
21     essential to answering the question that Justice  
22     Jackson was asking:  Why do we treat these two  
23     circumstances differently?

24            And you have to remember, prior to  
25     Rockwell, this Court had not addressed cases

1     that were originally filed in federal court. So  
2     this Court was trying to explain we have a  
3     hundred years where we do something different in  
4     the removal context. Why are we going to do  
5     something different here? And Justice Scalia  
6     was explaining the different policy concerns.

7             So we don't think that's dicta. We  
8     actually think it is essential to the reasoning  
9     in that case. And even if you think it isn't a  
10    holding, it certainly is recognizing that this  
11    Court has resolved the question in the removal  
12    context going all the way back to --

13            JUSTICE ALITO: Ms. Wellington --

14            JUSTICE KAVANAUGH: And why is it  
15    correct --

16            JUSTICE ALITO: Go ahead.

17            JUSTICE KAVANAUGH: -- why -- okay,  
18    assuming -- why is it correct? In other words,  
19    it does seem, as Justice Kagan's questions  
20    indicate, that the Rockwell above the line and  
21    the Rockwell footnote, you would think, would  
22    come out the same way under the text of the  
23    statute. So I guess, assuming the  
24    above-the-line part is correct, why does the  
25    text to the statute support Footnote 6?

1 MS. WELLINGTON: So -- so I think the  
2 text of the statute supports the removal  
3 jurisdiction in this case, not what happened in  
4 Rockwell. So I -- I actually --

5 JUSTICE KAVANAUGH: Right. So the --  
6 I think your answer is the part of Rockwell  
7 that's not in the footnote is -- is shaky.

8 MS. WELLINGTON: That's correct. And  
9 that's what the Chamber of Commerce --

10 JUSTICE KAVANAUGH: The part in the  
11 footnote, you think that's solid.

12 MS. WELLINGTON: I think that's solid  
13 because the text of Section 1367 says there is  
14 supplemental jurisdiction unless Congress has  
15 expressly provided otherwise. Section (c)(3)  
16 makes clear that you don't have to have a  
17 federal question throughout the proceedings in  
18 order for there to continue to be supplemental  
19 jurisdiction; (c)(2) expressly addresses  
20 situations like this one, where the federal law  
21 claims have fallen out. In that situation, the  
22 state law claims would substantially  
23 predominate.

24 JUSTICE KAVANAUGH: I think they're  
25 going to probably say something also like it was



1     stray comments that weren't carefully  
2     considered. And I -- you want to respond to  
3     the -- I'm just previewing what they're likely  
4     to say.

5             MS. WELLINGTON: It -- one thing I  
6     would -- I -- I do want to emphasize here is  
7     this Court was thinking about this question in  
8     Cohill. If you go to the oral argument in  
9     Cohill -- right around minute 5, Justice Scalia  
10    is asking the same questions that we're talking  
11    about today. So the Court wasn't somehow  
12    unaware of this question.

13            JUSTICE KAVANAUGH: Right. He seemed  
14    to be articulating the position in the oral  
15    argument, as I read it, that Judge Stras  
16    ultimately came to in the Eighth Circuit, but,  
17    obviously, by the time of Rockwell, Justice  
18    Scalia had not stuck with that.

19            MS. WELLINGTON: I -- I think that's  
20    right, and I think it is important that this  
21    Court was aware of the question, continued to  
22    apply its precedents, longstanding precedent in  
23    Cohill. And I don't think you can write Cohill,  
24    which is all about this is a doctrine of  
25    discretion. I don't think you can write Cohill

1 if you think that the court didn't have  
2 jurisdiction.

3 JUSTICE SOTOMAYOR: So can we go back  
4 to --

5 JUSTICE ALITO: Suppose a --

6 JUSTICE SOTOMAYOR: Go ahead.

7 JUSTICE ALITO: Suppose a diversity  
8 case -- I have a diversity case, I file it in  
9 state court, it's removed to federal court, and  
10 once I'm in federal court, I join a non-diverse  
11 party. Can the federal -- can the federal court  
12 hold onto that case?

13 MS. WELLINGTON: So, no, Your Honor,  
14 and that is addressed specifically in 1367(b).  
15 So there are circumstances, you know, for  
16 example, where there's a third-party defendant  
17 or a dispensable plaintiff under Rule 20 that,  
18 you know, the court may be able to because it's  
19 not addressed in Section --

20 JUSTICE ALITO: Yeah. Well, why  
21 should there be a different rule regarding  
22 parties and claims?

23 MS. WELLINGTON: So Congress thought  
24 very hard about this. This Court has long  
25 held -- had two different lines of precedent,

1     one for pendent-claim jurisdiction and one for  
2     pendent-party jurisdiction. It has taken a very  
3     broad view to pendent-claim jurisdiction and  
4     very narrow view to pendent-party jurisdiction.

5             And Congress said that's not what we  
6     want. We don't want Finley. We do want some  
7     limits. I think (b) tells you that (a) is so  
8     broadly written that if you don't have (b), that  
9     there would be concerns about diversity  
10    jurisdiction questions, Your Honor. But  
11    Congress thought very carefully about this, and  
12    it -- it made clear that there would continue to  
13    be supplemental jurisdiction even when the  
14    federal claims dropped out of the case.

15            JUSTICE ALITO: If we thought that the  
16    Eighth Circuit's decision is right as a matter  
17    of first principle, what relevance, if any,  
18    would this line of court of appeals decisions  
19    have in our decision-making?

20            MS. WELLINGTON: I think it's very  
21    important here because Congress is codifying  
22    precedent. It's codifying these court of  
23    appeals decisions in particular in (c)(1). It's  
24    very much aware of them. And the court of  
25    appeals decisions are reflecting this Court's

1 decision in St. Paul Mercury and Cohill and --  
2 and now Rockwell. This is incredibly well  
3 established.

4 So I don't think the Court should  
5 ignore that that's what the court of appeals  
6 have been doing and that they're doing it for a  
7 reason, because this is a doctrine of  
8 discretion. It's a matter for the district  
9 court to say, what are the fairness concerns?  
10 What are the comity concerns? What are the  
11 judicial efficiency concerns?

12 Maybe the district court can dispose  
13 of the state law questions really easily and the  
14 case has been going on for two years in the  
15 district court. It doesn't make sense to send  
16 that case back to state court.

17 JUSTICE ALITO: Well, this goes back  
18 to a question that Justice Barrett asked.  
19 Usually, when we apply this old soil rule, we're  
20 talking about a term of art in the statute about  
21 which there was a body of preexisting precedent.

22 What term of art can you point to here  
23 that supports your argument?

24 MS. WELLINGTON: Sure. So, if you  
25 look at (c), the district courts may decline to

1 exercise supplemental jurisdiction, that  
2 language comes directly from Cohill. It's not  
3 in Gibbs. That's the language the Court uses  
4 twice. And so, when you're thinking about what  
5 did Congress intend to codify when it comes to  
6 whether the district court can exercise  
7 discretion, I think you have to take into  
8 account what this Court held in Cohill.

9 I also think, Your Honor, if you think  
10 that the text doesn't say anything, this Court  
11 has held that statutory silence implies  
12 ratification by Congress. I think you can apply  
13 that doctrine as well to reach the answer here.

14 JUSTICE KAGAN: I think, if you think  
15 that the text doesn't say anything, you're left  
16 with trying to figure out what rule to use in  
17 this instance that best coheres with the whole  
18 panoply of rules that we use in other contexts.

19 And I think that on that account, you  
20 have a tough road to hoe. You have -- you have  
21 St. Paul, and that's the amount in controversy.  
22 But, for the reasons that Justice Barrett said,  
23 the amount in controversy requirement has  
24 generally been thought of as sui generis because  
25 of the difficulty of figuring out when, how

1     you're supposed to measure that.

2                   But, otherwise, you know, I think that  
3     the rule basically is we look to the operative  
4     complaint. We look to the original complaint  
5     when the original complaint is operative, but  
6     once the complaint has been amended, we look to  
7     the amended complaint because that's the  
8     operative complaint, and that's why you can  
9     create diversity jurisdiction or destroy  
10    diversity jurisdiction by adding and removing  
11    parties.

12                  And it's also why you can, you know,  
13    add -- it's also what -- what explains Rockwell.  
14    And it also explains how you can add and remove  
15    federal claims to create or -- or get rid of  
16    federal question jurisdiction.

17                  So you're asking for a very kind of  
18    unique rule, where it's like, no, we don't look  
19    to the operative complaint; we look to this old  
20    complaint that has nothing to do with the case  
21    anymore.

22                  MS. WELLINGTON: May I respond, Your  
23    Honor?

24                  CHIEF JUSTICE ROBERTS: Certainly.

25                  MS. WELLINGTON: So I think it's very

1 important here that this is a longstanding rule  
2 that really reflects the idea that Congress  
3 wanted district courts to make the decision.  
4 They wanted district courts to decide, is there  
5 gamesmanship going on here? Is there judicial  
6 efficiency concerns? Are there comity concerns?

7 And this rule that -- that this Court  
8 is talking about would need to apply to all  
9 sorts of different circumstances, such as when  
10 the claims become moot, when the parties settle  
11 the claim, when the plaintiff amends the  
12 complaint. And when Congress drafted Section  
13 1367(c), what it wanted was to give district  
14 courts discretion, and that's a reflection of  
15 decades and decades of precedent, Your Honor.

16 CHIEF JUSTICE ROBERTS: Thank you.  
17 Thank you, counsel.

18 Just a brief question. You complain  
19 about the forum manipulation problems this would  
20 create. I don't see how that's a problem here.  
21 They wanted -- they start in state court; they  
22 want to go back to state court. They're not  
23 trying to manipulate anything.

24 MS. WELLINGTON: So we think that it  
25 is forum manipulation, particularly in this

1 case, where they waited almost two years to  
2 amend the complaint after they lose in the  
3 Eighth Circuit. We think that's a form of forum  
4 manipulation.

5 We think there are much more extreme  
6 forms of forum manipulation, for example, where  
7 a plaintiff -- you know, the district court  
8 says: I'm about to rule against you. That's  
9 what happened in three cases on page 16 of the  
10 yellow brief. And the plaintiff says: Great,  
11 send me back to state court. And that's a very  
12 serious form of forum manipulation.

13 But we agree, Your Honor, in -- in  
14 many cases, the mine-run of cases, you get to  
15 federal court, you immediately amend the  
16 complaint, the federal judge is going to send  
17 that back to state court. We're really talking  
18 about the more unique circumstances like this  
19 one where it's been going on for a long time and  
20 Congress wanted district courts to consider  
21 different considerations.

22 CHIEF JUSTICE ROBERTS: Thank you.

23 Justice Thomas?

24 JUSTICE THOMAS: Justice Sotomayor  
25 asked you about what happens when the -- a judge



1 dismisses some of the federal -- the federal  
2 claims, and you responded to that. And she was  
3 referring to (c)(3), and which only refers to  
4 the district court dismissing those claims. It  
5 says -- but (c)(3) says nothing about the  
6 instance in which the party amends the complaint  
7 and eliminates the federal claims.

8 Would you address that?

9 MS. WELLINGTON: Certainly. That's a  
10 really important point. So that is addressed in  
11 (c)(2). So, in (c)(2), where there is no longer  
12 a federal claim, the state claim will  
13 substantially predominate. It could also fall  
14 under (c)(4), an exceptional circumstance.

15 I would point out, Your Honor, that  
16 (c) is simply listing when district courts may  
17 decline to exercise supplemental jurisdiction.  
18 This Court in Exxon Mobil against Allapattah  
19 said really the key question is, is it in the  
20 statute? And -- and, certainly, amendments to  
21 the complaint is not in the statute. So we  
22 think that's sufficient.

23 But, if you want to look at the text  
24 of (c)(2), I think that also answers the  
25 question.

1 JUSTICE THOMAS: But -- but do you  
2 agree that when the district court dismisses the  
3 claim, it remains in the case?

4 MS. WELLINGTON: I -- I agree, Your  
5 Honor. But that is also true of an amended  
6 complaint. You can appeal whether a complaint  
7 was properly amended. We cited the Lucente case  
8 in the Second Circuit that reinstates the  
9 original complaint on appeal. So, if that's the  
10 test, we think that's met.

11 JUSTICE THOMAS: Do we normally think  
12 of a complaint that's amended by the party to  
13 eliminate a federal claim as still having that  
14 claim?

15 MS. WELLINGTON: I -- I think that's  
16 true of all these circumstances. Where the  
17 claim becomes moot, where the parties settle,  
18 where the plaintiff voluntarily amends, where  
19 the district court dismisses, those claims, for  
20 the purposes of the party, aren't going to  
21 continue to be litigated.

22 We think the important question here  
23 is: When do you evaluate whether there is an  
24 original federal question in the case? Under  
25 this Court's longstanding precedent going all

1 the way back to St. Paul Mercury, you look at  
2 the time of removal, Your Honor.

3 JUSTICE THOMAS: So when does an -- an  
4 amended complaint supersede the earlier  
5 complaint?

6 MS. WELLINGTON: Your Honor, we don't  
7 think that's the right question. The question  
8 isn't whether it supersedes the original  
9 complaint. The question is: At the time of  
10 removal, is there a -- an original federal  
11 question in the case? We think that's what the  
12 phrase "in the action" is doing.

13 If you look directly at Gibbs, which  
14 is where that language came from, Gibbs is  
15 saying what you need is the original claim and  
16 the supplemental claim to be in the same case.  
17 That's true regardless of whether the complaint  
18 is amended. That claim was filed in the same  
19 case.

20 CHIEF JUSTICE ROBERTS: Justice Alito?

21 JUSTICE ALITO: When -- and many  
22 courts of appeals have considered a question and  
23 they've all decided it the same way, that  
24 certainly requires very respectful  
25 consideration. They are very likely correct.

1                   But would you also recognize that  
2           there can be circumstances in which there can be  
3           sort of a snowball effect in busy courts of  
4           appeals, particularly on certain -- a -- a  
5           certain category of issues so that if a court of  
6           appeals decides a question one way, then the  
7           next one just latches onto that, and pretty  
8           soon, courts of appeals confronting an issue are  
9           very likely to say: Wow, if all these other  
10          circuits have gone this way, I'm not going to  
11          create a conflict in the circuits on this, I'm  
12          just going to go along with it.

13                   Do you think that's a -- a dynamic  
14          that can occur in courts of appeals and, if so,  
15          should we take it into account?

16                   MS. WELLINGTON: I think that's  
17          possible, Your Honor, but I think this is a  
18          pretty unique case.

19                   We searched high and low, and the only  
20          two cases we found that went the other way was  
21          one district court case from 1915 and one  
22          district court case from 1940. That is  
23          overwhelming precedent in the courts of appeals.

24                   And if you look at cases like Boelens,  
25          which is a case that Justice Scalia cited in

1 Rockwell from the Fifth Circuit, it very  
2 carefully explains the reasoning of why we treat  
3 these two circumstances differently.

4 I think you also have to look at this  
5 Court's precedents, cases like International  
6 College of Surgeons, Rosado, Carlsbad, Osborn  
7 against Haley. All of those cases are  
8 suggesting that this is a doctrine of  
9 discretion. So this Court has been giving the  
10 lower federal courts the same signal for many,  
11 many decades of this is how we're going to treat  
12 this situation, and we think that's what  
13 Congress codified in the text of Section 1367  
14 itself.

15 JUSTICE ALITO: Well, do you think  
16 that -- that courts of appeals read our  
17 decisions differently than we may?

18 I mean, you know, I'm -- I was on a  
19 court of appeals for 15 years. If I saw a  
20 strong dictum in a Supreme Court decision, I  
21 would very likely just salute and move on. But,  
22 here --

23 (Laughter.)

24 JUSTICE ALITO: -- we have --

25 JUSTICE SOTOMAYOR: Not now.

1 (Laughter.)

2 JUSTICE ALITO: -- more of an  
3 obligation -- it depends, Justice Sotomayor --

4 (Laughter.)

5 JUSTICE ALITO: -- both when we're  
6 considering -- you know, when we're considering  
7 what we've written -- we know how these things  
8 are written. You know, we know how these  
9 footnotes are written.

10 Can -- do we have liberty to read them  
11 a little bit differently?

12 MS. WELLINGTON: Of course, the Court  
13 has the liberty to read its footnotes how it  
14 would like. But I -- but I do think it is  
15 important to keep in mind here that the question  
16 is what did Congress intend.

17 Congress enacted this statute in  
18 reaction to the Court's very narrow view of  
19 supplemental jurisdiction. In Finley, it  
20 adopted very broad language. And I think it  
21 would be very weird to think that Congress  
22 intended to abrogate Cohill silently without  
23 saying anything about it.

24 And I think it would also be strange  
25 to treat the situation where the plaintiff

1 amends the complaint differently than a  
2 situation where it becomes moot, where it drops  
3 out of the case for some other reason, such as  
4 settlement.

5 I think then you'd have to get into  
6 the Eighth Circuit's decision between  
7 involuntary and voluntary amendments.

8 JUSTICE ALITO: Thank you. Thank you.

9 CHIEF JUSTICE ROBERTS: Justice  
10 Sotomayor?

11 JUSTICE SOTOMAYOR: I -- I go back to  
12 Congress knew when to adopt or not adopt a  
13 particular circuit court reading, and it didn't  
14 do anything with 1367, but it did do with  
15 diversity to codify that. So I don't know how  
16 much the old soil counts.

17 But let's go back to first principles.  
18 What's the justification for this? Plaintiff  
19 manipulation, correct?

20 MS. WELLINGTON: It's much broader  
21 than that, Your Honor.

22 So judicial efficiency is a very  
23 important reason why Congress enacted the Gibbs  
24 principles into Section 1367.

25 So a case may be pending for two or

1     three years. The district court might be really  
2     familiar with it. It might be a really  
3     straightforward question of state law. In that  
4     situation --

5             JUSTICE SOTOMAYOR: So how doesn't  
6     Rule 15 take care of that? It gives plaintiffs  
7     a narrow window to amend and, otherwise, it  
8     needs to seek permission.

9             So why didn't the district court  
10    simply deny permission here?

11            MS. WELLINGTON: This case was pending  
12    almost two years before the amendment was made,  
13    but it was still an amendment as of right in  
14    this case. So you can have an amendment --

15            JUSTICE SOTOMAYOR: It wasn't within  
16    the window permitted by the rule.

17            MS. WELLINGTON: It was, Your Honor,  
18    because the case went up on appeal and came  
19    down. So there are situations like that.

20            JUSTICE SOTOMAYOR: I see.

21            MS. WELLINGTON: But there's also --  
22    you know, leave to amend should be freely given  
23    under Rule 15. That's not really the kind of  
24    standard that takes into account these judicial  
25    efficiencies, comity --



1 JUSTICE SOTOMAYOR: Oh, it certainly  
2 does. I mean, that's the entire purpose of the  
3 freedom -- of the power and discretion to amend.

4 So I just think, as a matter of first  
5 principles, it's -- it's really -- you have  
6 an -- an amici, it's the Center for Litigation  
7 and Courts, who supports your argument but says  
8 don't rely on that. And I think they make that  
9 point for a reason. It's not your strongest  
10 point.

11 And then I don't understand why we  
12 should change all the other rules that respect  
13 an amended complaint as the complaint setting  
14 forth the claims in an action.

15 MS. WELLINGTON: Your Honor, we think,  
16 if you were to rule for the other side, that  
17 would be upsetting a hundred years of precedent,  
18 every single court of appeals decisions. That  
19 would be changing the rules.

20 All we ask this Court to do here is  
21 apply settled law.

22 CHIEF JUSTICE ROBERTS: Justice Kagan?  
23 Justice Gorsuch?

24 JUSTICE GORSUCH: We talked a lot  
25 about 1367, but I'm not sure we paid much

1     attention yet to 1447. And I -- I can certainly  
2     see the argument that the operative complaint  
3     should be the one at the time of removal under  
4     the old version of 1447, which suggests that a  
5     case should be remanded if it was improvidently  
6     removed.

7             That -- that does seem to focus the  
8     Court's attention on the complaint at the time  
9     of removal. And I think a lot of the court of  
10    appeals kind of -- been operating under that  
11    kind of idea of the rule.

12            But it's been amended, and it now  
13    reads that -- that a case should be remanded if  
14    at any time it appears that the district court  
15    lacks subject matter jurisdiction, which, you  
16    know, just reading that, one might -- and I'm  
17    sure we're going to hear this argument, so I  
18    wanted to give you a chance to respond to it  
19    before you sit down -- that that focuses the  
20    Court's attention on -- on the then-operative  
21    complaint.

22            Thoughts?

23            MS. WELLINGTON: Two responses, Your  
24    Honor.

25            So I think it's important to keep in

1 mind that the 1911 version of the statute, the  
2 predecessor of 1447 that was in effect during  
3 St. Paul Mercury, had basically the same text as  
4 it did today.

5 JUSTICE GORSUCH: I grant -- I grant  
6 you that. And then it went to was  
7 improvidently removed --

8 MS. WELLINGTON: Yes.

9 JUSTICE GORSUCH: -- for a very long  
10 time. And now it's come back to looking more  
11 directly at the -- the then-operative complaint,  
12 doesn't it?

13 MS. WELLINGTON: So I think it is  
14 important that this Court reached the ruling  
15 that it did in St. Paul Mercury under the old  
16 text. I think that suggests that it --

17 JUSTICE GORSUCH: I -- I grant you  
18 that --

19 MS. WELLINGTON: Yes.

20 JUSTICE GORSUCH: -- with respect to  
21 the amount in controversy. We've been around  
22 that -- that tree a few times.

23 So putting aside that point, you got  
24 anything else you want to say about it?

25 MS. WELLINGTON: Certainly.

1                   So they didn't make that argument in  
2     the red brief because it doesn't answer the  
3     question. The question is whether the federal  
4     court has jurisdiction or not.

5                   We think that's answered at the time  
6     of removal. And this Court, in the Wisconsin  
7     Department of Corrections case, said that  
8     Section 1447 was merely procedural. It did not  
9     affect the district court's jurisdiction. So I  
10    think you would have to --

11                  JUSTICE GORSUCH: Okay.

12                  MS. WELLINGTON: -- revisit that case  
13    in order to read 1447 here the way you suggest.

14                  JUSTICE GORSUCH: Okay. Thank you.

15                  CHIEF JUSTICE ROBERTS: Justice  
16    Kavanaugh?

17                  JUSTICE KAVANAUGH: I just want to  
18    make sure on the state of the law, and maybe  
19    following up on Justice Kagan's question,  
20    because you would think when you pick this up,  
21    if you were uninitiated, that there would be a  
22    standard rule. Look at the complaint at the  
23    time of filing or removal, or look at the  
24    complaint at the time of amendment.

25                  But at least as I looked at

1 everything, it's just a mess, right? There's  
2 just boxes everywhere where, you know, in the  
3 diversity context, destroying diversity almost  
4 always compels dismissal or a remand, but  
5 reducing the amount in controversy or changing  
6 citizenship of a party almost never does.  
7 Right? Is that correct?

8 MS. WELLINGTON: That's correct, Your  
9 Honor. There --

10 JUSTICE KAVANAUGH: Like Morgan's  
11 Heirs and St. Paul Mercury on the one hand and  
12 Owen Equipment on the other, there's no logic  
13 connecting those things at least as I see it.

14 MS. WELLINGTON: I --

15 JUSTICE KAVANAUGH: They were just  
16 rules out there without connective logic. There  
17 might be -- each box has its own little  
18 idiosyncratic policy considerations, but there's  
19 no connective rule at least as I read it.  
20 Correct me if I'm wrong.

21 MS. WELLINGTON: I think you're right.

22 JUSTICE KAVANAUGH: Or the other side  
23 can correct me if I'm wrong too. Yeah.

24 MS. WELLINGTON: I think you're right,  
25 Your Honor, that there are different rules that

1     apply in different circumstances, that they have  
2     different policy concerns or longstanding  
3     prudential concerns and that this Court  
4     shouldn't go around disrupting those rules.

5             There are lots of different rules that  
6     apply with respect to adding diverse parties.  
7     Sometimes you can do that. Sometimes you can't.  
8     You can add a non-diverse successor in interest,  
9     for example. So there's lots of different  
10    circumstances. And we simply ask the Court to  
11    apply settled law. We don't think the Court has  
12    to come up with a unifying theory for all these  
13    different areas of the law. Congress acted with  
14    an important reason here with respect to  
15    supplemental jurisdiction. It wanted to protect  
16    the defendant's right to remove. And I think  
17    that's why you see this broad text here. And --  
18    and as well as judicial efficiency. So --

19            JUSTICE KAVANAUGH: And by "settled  
20    law," you mean Footnote 6, you mean Cohill? Or  
21    what -- what are you referring to there?

22            MS. WELLINGTON: So you're right, Your  
23    Honor. So St. Paul Mercury, Cohill, and  
24    Rockwell. There are also cases like Carlsbad,  
25    where this Court expressly asked, "is a Cohill

1 remand" -- that's the phrase the Court used --  
2 "is a Cohill remand discretionary?" I don't  
3 think this Court could answer the question yes  
4 without having, again, decided this question.  
5 There are other cases like International College  
6 of Surgeons and Rosado that, again, emphasize  
7 that this is a discretionary question.

8 And I don't think this Court should  
9 just depart from all of that precedent here. I  
10 don't think there's a good reason to. And this  
11 Court should -- this is a statutory question.  
12 Stare decisis carries enhanced force in the  
13 statutory context, and that's why we've asked  
14 the Court to continue to apply settled law.

15 JUSTICE KAVANAUGH: Thank you.

16 CHIEF JUSTICE ROBERTS: Justice  
17 Barrett?

18 Justice Jackson?

19 JUSTICE JACKSON: Just a couple of  
20 quick points. So you keep talking about  
21 protecting the defendant's prerogative of  
22 removal. But I thought there was also sort of  
23 basic principles about the plaintiff's  
24 prerogative to bring a case in state or federal  
25 court to be the master of their claims.

1                   And so what I don't understand is why  
2     the plaintiff has to be stuck with the  
3     jurisdictional consequences of claims they are  
4     no longer bringing? They've given up their  
5     ability to seek relief on the federal claims,  
6     and so it just seems odd to me, especially when  
7     our case law kind of generally links  
8     jurisdiction with the claim, you have to have  
9     jurisdiction for every claim, those two concepts  
10    run together, and yet somehow they can drop  
11    claims and still be, in your view, subject to  
12    the jurisdictional consequences of that.

13                  That just seems discordant to me, so  
14    can you speak a little bit about that?

15                  MS. WELLINGTON: It's a really  
16    important question, Your Honor, because what  
17    Congress was trying to do is take into account  
18    the right of plaintiffs to be the master of  
19    their complaint but also the right of defendants  
20    to remove. And that's exactly what investing  
21    discretion --

22                  JUSTICE JACKSON: But -- but Justice  
23    Gorsuch points to statutes that talk about  
24    remand. So, even though the defendant has  
25    exercised its right of removal, there are



1     circumstances in which that right is not given  
2     precedence. The case goes back to state court,  
3     right?

4                 MS. WELLINGTON: That's exactly right.  
5     It's up to the district court to decide. And we  
6     think in the mine run of cases where you amend  
7     the complaint right after you remove, there's  
8     removal to federal court, that's going to go  
9     back to state court.

10                What we're really talking about here  
11     are more unusual cases where it's been going on  
12     for a long time. There may be particular  
13     concerns --

14                JUSTICE JACKSON: Can I just ask you  
15     about the text, moving quickly because I'm  
16     mindful of the time. I don't understand how the  
17     question could possibly be whether or not there  
18     is original jurisdiction at the time of removal.  
19     Of course, there is. That's why the case gets  
20     to be removed. I mean, there's no question  
21     there that does any work because you only get to  
22     remove it if there's original jurisdiction.

23                So isn't the question really what  
24     happens when, after we've identified original  
25     jurisdiction and it's removed, the claims over

1     which there were original jurisdiction drop out?  
2     Can supplemental jurisdiction be exercised when  
3     those original jurisdiction claims are no longer  
4     there?

5                 When we look at the text of 1367, I  
6     don't understand your argument that supplemental  
7     jurisdiction arises in that situation because  
8     (a) says, "in any civil action of which district  
9     courts have original jurisdiction, the district  
10    court shall have supplemental jurisdiction."

11                But, in my scenario, original  
12    jurisdiction is gone. So -- how can you have  
13    supplemental jurisdiction in a situation like  
14    this?

15                MS. WELLINGTON: I think it's really  
16    important to go back to the first principles  
17    that this Court was applying in Cohill. It was  
18    looking at St. Paul Mercury, which holds that  
19    you have original jurisdiction at a particular  
20    time. And so, once you get original  
21    jurisdiction, you continue to have supplemental  
22    jurisdiction. That's what the Court held in  
23    Rosado. There, the original claim became moot  
24    and --

25                JUSTICE JACKSON: So -- wouldn't we

1     expect it to say in which the district court had  
2     original -- or ever had original jurisdiction?  
3     It seems to be in the present tense saying that  
4     you have to have original jurisdiction in order  
5     to exercise supplemental.

6                 MS. WELLINGTON:  And -- and I think  
7     that's because you have decades and decades of  
8     precedent saying that in a removal context, you  
9     look at whether there's jurisdiction at the time  
10    of removal.  At that time, the district court  
11    has original jurisdiction, and then the question  
12    is, will it continue to have supplemental  
13    jurisdiction?

14                The text here is framed in a  
15    forward-looking future tense, and we think  
16    "shall have" does cover the situation where  
17    there's ongoing supplemental jurisdiction.

18                JUSTICE JACKSON:  Thank you.

19                CHIEF JUSTICE ROBERTS:  Thank you,  
20    counsel.

21                Mr. Keller.

22                ORAL ARGUMENT OF ASHLEY C. KELLER

23                ON BEHALF OF THE RESPONDENTS

24                MR. KELLER:  Mr. Chief Justice, and  
25    may it please the Court:

1           The life of the law has not been  
2     logic. It has been experience. And experience  
3     should have taught us by now that a suit arises  
4     under the law that creates the cause of action.  
5     That should be the definitive test for arising  
6     under jurisdiction for at least three reasons.  
7     It's the most faithful to the text, it avoids  
8     serious constitutional problems, and it will  
9     save decades of pointless litigation over  
10    jurisdiction.

11           Now, if you're not yet ready to  
12    re-embrace American Well Works, and it sounds  
13    like you might not be, I suspect that stare  
14    decisis does a fair bit of work, in which case  
15    stare decisis applies an easy alternative path  
16    to affirm. This case is Merrell Dow but for  
17    pets not people. And while I take a back seat  
18    to nobody in my love of our four-legged friends,  
19    I am confident Congress believed that misbranded  
20    human product was a more substantial federal  
21    issue than misbranded pet food.

22           If we turn to which complaint  
23    controls, the Eighth Circuit again should be  
24    affirmed. My friend and I crucially agree the  
25    text of 1367 is dispositive here. And,

1     remarkably, we also agree, if this case were  
2     originally in federal court, it must be  
3     dismissed. Why? Because, by amending out all  
4     of the federal issues, they're no longer in the  
5     action. If that's what the text of 1367 means  
6     for an original case, how can the exact same  
7     words take on a different meaning with removal?

8             Despite my friend's professed  
9     commitment to textualism, she has no choice but  
10    to flee to public policy. We can't have these  
11    mischievous plaintiffs' lawyers shopping around  
12    for their judges, we're told. Now that concern  
13    is not happening in the real world, and my  
14    friend's solution wouldn't solve the problem  
15    even if it were.

16            But none of that matters. This Court  
17    has said many times that text trumps policy.  
18    You merely need to say so once again in order to  
19    affirm.

20            I welcome your questions.

21            JUSTICE THOMAS: Mr. Keller, would you  
22    spend a bit more time on the application of 1367  
23    and how it supports your argument?

24            MR. KELLER: Of -- of course, Your  
25    Honor. So I think the plain text controls. We

1 agree about that. The present tense verbs, I  
2 think, are intended to indicate that there is  
3 jurisdiction presently.

4 We focused on the word "have" with the  
5 colloquy with Justice -- Justice Jackson. I  
6 would also focus on the word "are." There has  
7 to be a relationship between the other claims,  
8 the state law claims that "are" related to  
9 claims in the action, the federal -- federal  
10 claims that are within the Court's original  
11 jurisdiction.

12 If we amend out those federal claims,  
13 they're no longer in the action. There's no  
14 relationship. And so there's no supplemental  
15 jurisdiction. That's 1367(a). That's the  
16 requirement to establish supplemental  
17 jurisdiction. You don't get to the exceptions  
18 in (b) or (c) unless you establish jurisdiction  
19 under (a).

20 JUSTICE KAGAN: I think not logic but  
21 experience, you lose, Mr. Keller, because the  
22 experience cuts the other way. I mean, just  
23 the -- this has all -- until the Eighth Circuit  
24 came along, the position of the Petitioners has  
25 always been understood, assumed. Every --

1     everybody thought that that was the rule. And  
2     it was a rule which really has no adverse  
3     consequences because everybody remands these  
4     cases anyway. In 99 percent of the cases,  
5     these -- these -- you know, there's a remand.

6             So, like, what harm is this rule  
7     doing? And this rule has existed in every  
8     single circuit court for 10 these many years.

9             MR. KELLER: Yeah, so I -- I  
10    respectfully disagree. The master principle  
11    that I think governs in every context, except  
12    the amount in controversy, is that the amended  
13    complaint controls. If you amend a complaint in  
14    state court to add a federal claim --

15            JUSTICE KAGAN: So I basically agree  
16    with you. I mean, I basically agree with you on  
17    that and not with Justice Kavanaugh. Justice  
18    Kavanaugh says it's all arbitrary. I don't  
19    think it's arbitrary. I think some of the cases  
20    that he was talking about is when facts in the  
21    world change, but when we're not talking about  
22    facts in the world, when we're talking about  
23    allegations, I think that the structure is the  
24    way you describe it, that we look to the  
25    operative complaint, the amended complaint,

1     except in the amount in controversy area, where  
2     there are sort of special considerations.

3             But -- so I -- I kind of agree with  
4     you that if we were creating a system where all  
5     the rules cohered, yours is the better rule.  
6     But -- but I think on the other side of the  
7     table is, look, we have this anomalous rule, but  
8     this anomalous rule has been accepted by  
9     everybody for many, many years, and it does no  
10    harm anyway since most of these cases are  
11    remanded back to state court where they belong.

12            MR. KELLER:  Yeah, a couple of  
13    responses to that, Justice Kagan.

14            First of all, I don't think that we,  
15    meaning this Court, has ever embraced that rule.  
16    It's true that the lower courts deserve  
17    respectful consideration, but a lot of these  
18    cases predate binding statutory text, so I'm not  
19    sure that that's dispositive.

20            Also, I would respectfully submit that  
21    you're the supervisory Court that's most  
22    important in our Article III system.  And when  
23    you're hearing a question for the first time,  
24    you ought to adjudicate it correctly,  
25    notwithstanding the respectful consideration



1       that you would give to the lower courts.

2               And if you've determined, as it sounds  
3       like you have, that from first principles I'm  
4       right, the fact that lower courts that obviously  
5       can't bind this one got it wrong I don't think  
6       is a reason to just say let's go along to get  
7       along.

8               And I also think there --

9               JUSTICE GORSUCH:  Counsel, you're --

10              MR. KELLER:  -- are -- oh, I beg your  
11       pardon.

12              JUSTICE GORSUCH:  -- you're suggesting  
13       that it's kind of the -- the first time the  
14       Court's considered the question.  I understand  
15       that.  But you do have Cohill and the  
16       Rockhill -- Rockwell footnote to deal with, and  
17       I haven't heard a word about those yet.

18              MR. KELLER:  Well, here it comes,  
19       Justice Gorsuch.  As Justice --

20              (Laughter.)

21              JUSTICE GORSUCH:  I can't wait.

22              (Laughter.)

23              MR. KELLER:  As -- as Justice  
24       Kavanaugh previewed, I don't think that Footnote  
25       6 in Rockwell is anywhere near the ratio

1 decidendi of the opinion. Justice Scalia was as  
2 care -- capable as anyone of making a stray  
3 remark. He didn't even consider the statutory  
4 text of 1367, which both my friend and I agree  
5 is dispositive.

6 And the easiest way to tell that it's  
7 dicta is, if you cover up Footnote 6, would it  
8 make any difference for the adjudication of the  
9 rights and responsibilities of the parties?  
10 Obviously not. Rockwell would have come out the  
11 exact same way and the exact same outcome and  
12 judgment would have occurred. So, for --

13 JUSTICE KAVANAUGH: We have a lot of  
14 things in opinions that you can make that same  
15 comment about that we follow, just for the --  
16 just to put that out there. Sorry to interrupt.

17 MR. KELLER: I -- I -- and I -- and I  
18 agree with you, Justice Kavanaugh. The fact  
19 that it's dicta doesn't mean that you toss it  
20 out the window. I think what it means is you  
21 take it for what --

22 JUSTICE KAVANAUGH: No, that we don't  
23 even treat it as dicta, but keep going.

24 MR. KELLER: Well, it's up to you to  
25 decide whether or not you would treat it as

1 dicta here. I think it's pretty ill-considered  
2 and it doesn't get into the fact that it creates  
3 the inconsistency that we've been talking about,  
4 where the exact same text means one thing for an  
5 original case and something else for a removed  
6 case. I don't think that's the sort of thing  
7 that Justice Scalia would have countenanced  
8 given his commitment to textualism.

9 JUSTICE BARRETT: Counsel, your friend  
10 on the other side -- were you finished?

11 JUSTICE GORSUCH: Yeah. Thank you.

12 JUSTICE BARRETT: Your friend on the  
13 other side says that this would wreak havoc with  
14 the Class Action Fairness Act and remove cases.  
15 Do you want to address that?

16 MR. KELLER: I'm not sure that I  
17 understand that point, Your Honor. I don't see  
18 why it would wreak any havoc. CAFA makes it a  
19 lot easier to remove cases into federal court.  
20 So, in the mine-run case, they're going to have  
21 no difficulty.

22 The difficulty that they face here is  
23 that you have no diversity of any kind. CAFA  
24 obviously eliminates complete diversity and goes  
25 to minimal diversity as the standard, but that's

1 a relatively unusual circumstance. Oftentimes,  
2 we -- plaintiffs are trying to seek a nationwide  
3 class or something broader.

4 So I don't think it's going to wreak  
5 havoc because the incentives are still going to  
6 be there when there's widespread harm for  
7 plaintiffs to pursue classes that include  
8 citizens from many different states.

9 CHIEF JUSTICE ROBERTS: Counsel, we  
10 have had cases where we came out the other way  
11 than -- every court of appeals had come out,  
12 right?

13 MR. KELLER: Yes, you have, Mr. Chief  
14 Justice.

15 CHIEF JUSTICE ROBERTS: Like what?

16 MR. KELLER: I -- I think there are --  
17 that's a great question.

18 (Laughter.)

19 MR. KELLER: And none spring to mind,  
20 but I am positive that I can find some.

21 JUSTICE KAVANAUGH: Central Bank?

22 CHIEF JUSTICE ROBERTS: Well, I mean,  
23 it's pretty bold to take the position without  
24 knowing one.

25 MR. KELLER: Fair. Mea culpa.

1 CHIEF JUSTICE ROBERTS: Was that --  
2 was that the case in Chadha?

3 MR. KELLER: INS versus Chadha?

4 CHIEF JUSTICE ROBERTS: Yes.

5 MR. KELLER: I -- I don't know. I  
6 apologize.

7 CHIEF JUSTICE ROBERTS: Somebody will  
8 check. I just --

9 JUSTICE KAGAN: Gosh, I'm not sure  
10 which way that cuts.

11 (Laughter.)

12 CHIEF JUSTICE ROBERTS: I'm not sure  
13 that's true. I just have it in the back of my  
14 mind, but -- okay.

15 JUSTICE KAVANAUGH: Just go back to  
16 the state of the law. I certainly didn't use  
17 the word "arbitrary." It's just that each  
18 bucket has developed based on its own  
19 idiosyncratic considerations. And you can't  
20 necessarily get a through line of look at the  
21 time of filing or the time of amendment at least  
22 as I look at them. And it's beyond just amount  
23 in controversy. It's change in citizenship as  
24 well.

25 I just want to -- do you agree with

1       that on the change in citizenship?

2               MR. KELLER: I agree, obviously, that  
3       the change in citizenship rule has a long  
4       pedigree. It goes back to 1824. I don't agree  
5       that that's about which complaint controls.  
6       That's about real-world facts.

7               JUSTICE KAVANAUGH: Right.

8               MR. KELLER: So, if you want to amend  
9       a complaint to say: I made a mistake, I said  
10      that I was from Florida and the defendant was  
11      from Illinois, but I realized that the defendant  
12      actually moved to Florida two years ago, so  
13      we're both from Florida, the amended complaint  
14      would control there.

15              JUSTICE KAVANAUGH: Right. And then,  
16      on Footnote 6, let me just -- I know you're  
17      going to disagree that it controls. If -- if it  
18      does control, I mean, if it is binding, it goes  
19      against you in this case, correct?

20              MR. KELLER: Of course. And then I  
21      win under Grable or Merrell Dow.

22              JUSTICE KAVANAUGH: Right.

23              JUSTICE KAGAN: And, you know, I just  
24      wonder, so you look at Footnote 6. To me,  
25      Footnote 6 is like somebody said: Hey, but how

1     about Cohill? And then they said: Oh, yeah,  
2     Cohill, so we have to put in Footnote 6. And --  
3     and so the fact that Footnote 6 is there  
4     suggests a certain kind of reading of Cohill.

5             And, you know, what Cohill was about  
6     that it was -- was this question of do you have  
7     to dismiss a case or can you remand the case  
8     back to the state court? But Cohill's logic  
9     does cut against you, I think, fairly heavily  
10    here because, as I read, Cohill what it does is  
11    say something like this: You know, the  
12    supplemental jurisdiction business, ever since  
13    Gibbs, we've understood it as a completely  
14    discretionary area of jurisdiction. You can  
15    keep the case. You can dismiss the case. If  
16    you can keep the case and you can dismiss the  
17    case, surely you should be able to remand the  
18    case as well.

19            And that's the essential logic of  
20    Cohill. It's like everything is discretionary  
21    in this area, why shouldn't this be too?

22            But that logic really does cut against  
23    you because it suggests that everything is  
24    discretionary in this area, including keeping  
25    the case.

1           MR. KELLER: Yeah, a couple of  
2     responses to that, Justice Kagan.

3           Whatever amount of discretion I think  
4     existed in the Cohill era I don't think can  
5     continue through binding statutory text. So  
6     we're no longer operating in a common law realm.  
7     We're operating in a realm where Congress chose  
8     to act.

9           We can debate whether Congress chose  
10    to codify whatever the common law rules were  
11    hook, line, and sinker. I would suggest from  
12    Allapattah that it codified binding statutory  
13    text, and we should follow the text.

14          So I don't think we can just go with  
15    free-wheeling old principles now that  
16    Congress --

17          JUSTICE KAGAN: Well, how about if I  
18    think that the text doesn't really help either  
19    of you? The -- you know, you're saying text;  
20    you're saying text, and, in fact, neither of you  
21    really has a very strong argument about text and  
22    we have to decide this case on other grounds.

23          MR. KELLER: So the other grounds, I  
24    think, would be the master principle that we  
25    talked about that the operative complaint almost



1 always controls. The only context that I'm  
2 aware of where it doesn't control is the amount  
3 in controversy.

4 That, by the way, was also codified  
5 through binding text. That's 1446. I agree  
6 that it goes back longer to cases like St. Paul  
7 Mercury. As an aside, I actually think that's a  
8 completely defensible interpretation of the old  
9 statutory text precisely because Congress  
10 understands it doesn't want to blur the line  
11 between jurisdictional facts and the merits.

12 We don't want to create the Judge  
13 Posner problem where a plaintiff comes into  
14 court and loses or wins an amount that's less  
15 than the amount in controversy and now we have  
16 to --

17 JUSTICE KAGAN: Thank you.

18 MR. KELLER: -- remand for lack of  
19 jurisdiction.

20 JUSTICE ALITO: Do I understand  
21 your -- what you just said to mean that you  
22 would win this case even if 1367 had never been  
23 enacted?

24 MR. KELLER: I think that I would win  
25 this case if 1367 hadn't been enacted and we

1     were still in a more common law regime and this  
2     issue were squarely presented to the Court for  
3     the first time.

4             Cohill had this issue obliquely  
5     presented. Yes, there was an amended complaint.  
6     But the party presentation rule should matter.  
7     No one made that fact relevant for the Court's  
8     consideration.

9             You could have considered it sua  
10    sponte because it went to jurisdiction, but no  
11    one did. And this Court has pointed out before  
12    that drive-by jurisdictional rulings don't have  
13    any precedential effect.

14            The reason you had to say that is  
15    sometimes, even though you would like to avoid  
16    it, you issue drive-by jurisdictional rulings.

17            JUSTICE GORSUCH: Why -- why -- why --  
18    why would we say Cohill addressed this? As I  
19    understand it, in -- the question there was  
20    whether to remand or dismiss, and this -- this  
21    issue wasn't presented to the Court at all.

22            MR. KELLER: I completely agree with  
23    it. It was not presented to the Court. The  
24    facts of Cohill, though, I have to say in the --  
25    in the spirit of candor was that there was an

1     amended complaint and it dropped the federal  
2     claim, and then there was the question of  
3     whether there is discretion to remand versus  
4     just discretion to dismiss for lack of  
5     continuing jurisdiction.

6             JUSTICE GORSUCH:   And do you have any  
7     way to rationalize St. Paul Mercury other than  
8     it's been codified now?

9             MR. KELLER:   No, I -- I do think that  
10    I can rationalize St. Paul Mercury.   As I was  
11    saying just a moment ago, I do think that the  
12    amount in controversy, even before Congress said  
13    in 1446 we have to look to the initial pleading,  
14    going back to cases like St. Paul Mercury, it is  
15    reasonable to read -- read the words "amount in  
16    controversy" to mean theoretically possible to  
17    be recovered.   It doesn't matter what happens  
18    after you file your lawsuit.

19            And so, if the plaintiff pleads in an  
20    initial complaint, consistent with Rule 11 or  
21    whatever the equivalent was in 1938, I'm above  
22    the jurisdictional amount in controversy, that's  
23    showing that it's theoretically possible to  
24    recover that amount in good faith, and that's  
25    good enough for the statutory jurisdictional

1 requirement that Congress added onto Article  
2 III.

3 JUSTICE BARRETT: Mr. Keller, in  
4 thinking about -- you know, Justice Kavanaugh  
5 was talking about the different boxes and some  
6 of the inconsistencies. One way I've been  
7 thinking about this is I think it's been true  
8 for a very long time, back to Strawbridge versus  
9 Curtiss and the complete diversity requirement,  
10 you know, talking about Mottley and the  
11 well-pleaded complaint rule, that the Court for  
12 a very long time exercised a pretty free hand in  
13 interpreting 13-1 and -- 1331 and 1332.

14 That language is identical to Article  
15 III, but yet the Court interpreted it to mean  
16 something different. And I think that in the  
17 Gibbs regime pre-1367, the Court was exercising  
18 a pretty free hand in -- in articulating the  
19 contours of pendent jurisdiction and ancillary  
20 jurisdiction before Congress controlled it.

21 Can you think -- I mean, I think a lot  
22 of this case seems to kind of come down to is  
23 that just the way we've been treating  
24 jurisdictional statutes and do we keep it up  
25 with 1367, or in 1367 because, in Finley, the

1 Court kind of said no, look, Congress, there  
2 need to be clear jurisdictional rules, expressly  
3 invited Congress to address it, which Congress  
4 did. Would you say, do you think it's fair to  
5 say, or can you think of a counter-example that  
6 in 1367, when it comes to supplemental  
7 jurisdiction, the Court has tightened its belt  
8 and isn't being as free-wheeling, or can you  
9 think of other examples where the Court, this  
10 Court, has done kind of what the court of  
11 appeals seemed to have continued to do in 1367,  
12 which is maybe make a little bit more  
13 jurisdictional policy than was set out in the  
14 text?

15 MR. KELLER: Yeah, an important  
16 question, Justice Barrett. I think I would  
17 describe the history a little differently. I  
18 wouldn't describe it as free-wheeling. I would  
19 say it all points in one direction. The Court  
20 construed jurisdictional statutes more narrowly  
21 than Article III. So that's certainly true with  
22 Strawbridge versus Curtiss. We know that  
23 there's not a complete diversity requirement  
24 because of CAFA.

25 It's the same thing with 1331.

1 Justice Thomas noted this in Grable. From the  
2 very beginning of the Jurisdiction and Removal  
3 Act of 1875, this Court almost immediately  
4 construed the words "arising under" to be not  
5 coextensive with Article III.

6 JUSTICE BARRETT: Gibbs is a  
7 counter-example for you, though.

8 MR. KELLER: Gibbs is a  
9 counter-example, and the Court in Finley, I  
10 think, gently criticized Gibbs for operating  
11 without a statute. It did invite Congress to  
12 act. Congress has now acted, and so, having  
13 taken up this Court's invitation to supply  
14 positive law codifying this entire area, I think  
15 you should stick to your normal statutory  
16 interpretation principles. And if you want to  
17 put a thumb on the scale, it should be against  
18 jurisdiction, consistent with tradition.

19 JUSTICE JACKSON: Setting aside 1367,  
20 going back to Justice Alito's question, I'm  
21 wondering whether the sort of core principles  
22 basis for your position is basically the  
23 plaintiff is the master of the complaint. They  
24 get to plead the claims.

25 For federal question jurisdiction, the

1     claims matter. That is, jurisdiction is based  
2     on the claims that the plaintiff pleads. If the  
3     claims are amended, the federal court can be  
4     divested of jurisdiction, and removal really has  
5     no bearing on the scope of jurisdiction or at  
6     least that's never been established, that --  
7     that how it comes to federal court matters with  
8     respect to an amended complaint.

9             Is that roughly where you're coming  
10    from with the principles that would underlie  
11    this, even setting aside the statute?

12            MR. KELLER: Yes, that syllogism is  
13    perfect.

14            If there are no further questions  
15    or -- I'm happy to go to seriatim.

16            CHIEF JUSTICE ROBERTS: Justice  
17    Thomas?

18            Justice Kavanaugh?

19            Thank you, counsel.

20            MR. KELLER: Thank you, Your Honor.

21            CHIEF JUSTICE ROBERTS: Rebuttal?

22            REBUTTAL ARGUMENT OF KATHERINE B. WELLINGTON

23            ON BEHALF OF THE PETITIONERS

24            MS. WELLINGTON: Thank you, Your  
25    Honor.

1           As Justice Kagan says, under  
2     experience, Respondents lose. To rule for  
3     Respondents on the question presented, this  
4     Court would need to overrule or distinguish away  
5     St. Paul Mercury, Cohill, Rockwell, Gibbs,  
6     Carlsbad, Rosado, Powerex, Osborn against Haley,  
7     International College of Surgeons, and Wisconsin  
8     Department of Corrections. That's 10 decisions  
9     of this Court, on top of dozens and dozens of  
10    court of appeals decisions that have  
11    consistently and unanimously supported  
12    Petitioners' position.

13           Indeed, even Respondents agreed that  
14    the district court could exercise supplemental  
15    jurisdiction. They said it in their amended  
16    complaint. It's only until the Eighth Circuit  
17    invited briefing on this that they switched  
18    positions.

19           And I think it's quite telling here  
20    that the Eighth Circuit reached the decision it  
21    did by apparently missing all of the footnotes  
22    that it should have read, including in Rockwell  
23    but also in the Second Circuit and the Eleventh  
24    Circuit decisions that it cited. So I think  
25    that's the reason we're here today.



1           As Justice Barrett asked, ruling for  
2   Respondents would also call into question the  
3   rule that applies in CAFA cases. The court of  
4   appeals have said -- you know, if you get into  
5   federal court on a removal in a CAFA case, the  
6   plaintiff immediately amends to try to get rid  
7   of all the class action allegations, the courts  
8   of appeals have said that's a question of  
9   discretion for the district court.

10           Maybe the district court will send a  
11   lot of those cases back to state court, but  
12   maybe, when the case has been going on for two  
13   years and the class is about to get certified,  
14   that's a situation in which the district court  
15   may say, okay, I'm going to keep this case here  
16   in federal court.

17           It would also call into question the  
18   Court's longstanding rules that amendments to  
19   the amount in controversy do not affect  
20   jurisdiction.

21           And what do Respondents want instead?  
22   So, instead of an approach that gives district  
23   courts discretion in every case to determine  
24   what makes sense as a matter of judicial  
25   economy, convenience, fairness, and comity, they

1 want an inflexible rule that gives district  
2 courts no choice and that would subject the  
3 defendant's right to removal to the plaintiff's  
4 caprice.

5 As the Chief's questions suggest,  
6 where this Court decides to overrule every  
7 single court of appeals, it should have a really  
8 good reason. And there isn't a really good  
9 reason here to upset a longstanding  
10 jurisdictional rule that has worked just fine  
11 for a century. The Eighth Circuit simply got it  
12 wrong, and this Court should vacate the decision  
13 below.

14 Thank you.

15 CHIEF JUSTICE ROBERTS: Thank you.  
16 The case is submitted.

17 (Whereupon, at 12:29 p.m., the case  
18 was submitted.)  
19  
20  
21  
22  
23  
24  
25

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