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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.)

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Washington, D.C.

Monday, October 7, 2024

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

APPEARANCES:

KATHERINE B. WELLINGTON, ESQUIRE, Boston, Massachusetts; on behalf of the Petitioners.

ASHLEY C. KELLER, ESQUIRE, Chicago, Illinois; on behalf of the Respondents.

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P R O C E E D I N G S

(11:23 a.m.)

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

Ms. Wellington.

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

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

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

The Court extended that reasoning to removal actions in Kirby against American Soda in 1904. And in 1938, this Court held in St. Paul Mercury that if the plaintiff after removal amends his pleadings, this does not deprive the district court of jurisdiction because the 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 file a suit in federal court as an
3 original matter, then take out the federal
4 claims, leaving only state law claims, there's
5 nothing at that point for the federal court to
6 do? It's not a doctrine of discretion anymore.
7 The federal court has to dismiss. Is that
8 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 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 your interpretation of the text of
18 Section 1367. We think Congress has made clear
19 that there is supplemental jurisdiction unless
20 Congress has expressly provided otherwise. It
21 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 point
12 --

13 JUSTICE BARRETT: But Cohill --

14 JUSTICE SOTOMAYOR: -- isn't it?

15 JUSTICE BARRETT: Sorry. Go ahead.

16 JUSTICE SOTOMAYOR: That's the point,
17 isn't it? I -- I can't get over the fact that
18 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 Cahill 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 the
7 -- 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 brought
7 --

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 why -- why does it make a difference as to
23 how this case landed in federal court as to
24 whether or not the federal judge can be divested
25 of his jurisdiction? That's what your argument

1 seems to turn on, and I don't know why that's
2 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 JACKSON: It changes the scope
11 of jurisdiction. The -- the removal right
12 carries with it the ability to affect the
13 jurisdiction of the Court, is what you're
14 saying?

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

23 And I agree, Your Honor, that in most
24 cases, the outcome's going to be the same. When
25 you get to federal court on a removal, in a

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

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

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

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

1 there wasn't a real change there.

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

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

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

22 MS. WELLINGTON: So we totally agree,
23 Your Honor, it has to be important that for
24 decades and decades and decades every court of
25 appeals has gone the same way. We disagree,

1 Your Honor, that Cohill didn't address this
2 question. It does say that when a federal law
3 claim is eliminated at an early stage of the
4 litigation, the district court has a powerful
5 reason to choose.

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

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

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

23 CHIEF JUSTICE ROBERTS: Your -- your
24 briefing, obviously, suggests at least at the
25 outset you don't think Grable has much to do

1 with this case. And your friend on the other
2 side obviously disagrees.

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

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

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

19 So we don't think the Court has to
20 decide the issue. If the Court wants to decide
21 the issue, we think there plainly was
22 jurisdiction based on the original complaint.
23 The original complaint repeatedly claims that
24 there are violations of the Food, Drug, and
25 Cosmetic Act and then in paragraphs 136 and 137

1 of the complaint asks for an injunction
2 requiring ongoing compliance with federal law.

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

7 In that situation, if that's the one
8 you look at, then Grable is critical to your
9 success, I think.

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

15 CHIEF JUSTICE ROBERTS: I'm sorry,
16 yes, of course.

17 MS. WELLINGTON: And -- and this Court
18 has long held that you don't have to have a
19 federal question at all stages of the case in
20 order to exercise supplemental jurisdiction.
21 That's exactly what the Court held in Rosado,
22 where the original federal claim became moot,
23 and this Court said that the three-judge
24 district court could continue to go on and
25 decide the ancillary claims even though it

1 didn't have original jurisdiction because you
2 don't have to have jurisdiction over the
3 original federal claim through all proceedings.

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

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

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

13 MS. WELLINGTON: So we --

14 JUSTICE KAVANAUGH: -- is there -- you
15 know, do we stick with that?

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

21 And you have to remember, prior to
22 Rockwell, this Court had not addressed cases
23 that were originally filed in federal court. So
24 this Court was trying to explain we have a
25 hundred years where we do something different in

1 the removal context. Why are we going to do
2 something different here? And Justice Scalia
3 was explaining the different policy concerns.

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

10 JUSTICE ALITO: Ms. Wellington --

11 JUSTICE KAVANAUGH: And why is it
12 correct --

13 JUSTICE ALITO: Go ahead.

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

23 MS. WELLINGTON: So I think the text
24 of the statute supports the removal jurisdiction
25 in this case, not what happened in Rockwell. So

1 I -- I actually --

2 JUSTICE KAVANAUGH: Right. So the --
3 I think your answer is the part of Rockwell
4 that's not in the footnote is -- is shaky.

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

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

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

21 JUSTICE KAVANAUGH: I think they're
22 going to probably say something also like it was
23 stray comments that weren't carefully
24 considered. And I -- do you want to respond to
25 the -- I'm just previewing what they're likely

1 to say.

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

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

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

25 JUSTICE SOTOMAYOR: So can we go back

1 to --

2 JUSTICE ALITO: Suppose a --

3 JUSTICE SOTOMAYOR: Go ahead.

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

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

17 JUSTICE ALITO: Yeah. Well, why
18 should there be a different rule regarding
19 parties and claims?

20 MS. WELLINGTON: So Congress thought
21 very hard about this. This Court has long held
22 -- had two different lines of precedent, one for
23 pendent-claim jurisdiction and one for
24 pendent-party jurisdiction. It has taken a very
25 broad view to pendent-claim jurisdiction and

1 very narrow view to pendent-party jurisdiction.

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

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

17 MS. WELLINGTON: I think it's very
18 important here because Congress is codifying
19 precedent. It's codifying these court of
20 appeals decisions in particular in (c)(1). It's
21 very much aware of them. And the court of
22 appeals decisions are reflecting this Court's
23 decision in St. Paul Mercury and Cohill and --
24 and now Rockwell. This is incredibly well
25 established.

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

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

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

19 What term of art can you point to here
20 that supports your argument?

21 MS. WELLINGTON: Sure. So, if you
22 look at (c), the district courts may decline to
23 exercise supplemental jurisdiction, that
24 language comes directly from Cohill. It's not
25 in Gibbs. That's the language the Court uses

1 twice. And so, when you're thinking about what
2 did Congress intend to codify when it comes to
3 whether the district court can exercise
4 discretion, I think you have to take into
5 account what this Court held in Cohill.

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

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

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

24 But, otherwise, you know, I think that
25 the rule basically is we look to the operative

1 complaint. We look to the original complaint
2 when the original complaint is operative, but
3 once the complaint has been amended, we look to
4 the amended complaint because that's the
5 operative complaint, and that's why you can
6 create diversity jurisdiction or destroy
7 diversity jurisdiction by adding and removing
8 parties.

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

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

19 MS. WELLINGTON: May I respond, Your
20 Honor?

21 CHIEF JUSTICE ROBERTS: Certainly.

22 MS. WELLINGTON: So I think it's very
23 important here that this is a longstanding rule
24 that really reflects the idea that Congress
25 wanted district courts to make the decision.

1 They wanted district courts to decide, is there
2 gamesmanship going on here? Is there judicial
3 efficiency concerns? Are there comity concerns?

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

13 CHIEF JUSTICE ROBERTS: Thank you.
14 Thank you, counsel.

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

21 MS. WELLINGTON: So we think that it
22 is forum manipulation, particularly in this
23 case, where they waited almost two years to
24 amend the complaint after they lose in the
25 Eighth Circuit. We think that's a form of forum

1 manipulation.

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

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

19 CHIEF JUSTICE ROBERTS: Thank you.

20 Justice Thomas?

21 JUSTICE THOMAS: Justice Sotomayor
22 asked you about what happens when the -- a judge
23 dismisses some of the federal -- the federal
24 claims, and you responded to that. And she was
25 referring to (c)(3), which only refers to the

1 district court dismissing those claims. It says
2 -- but (c)(3) says nothing about the instance in
3 which the party amends the complaint and
4 eliminates the federal claims.

5 Would you address that?

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

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

20 But, if you want to look at the text
21 of (c)(2), I think that also answers the
22 question.

23 JUSTICE THOMAS: But -- but do you
24 agree that when the district court dismisses a
25 claim, it remains in the case?

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

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

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

19 We think the important question here
20 is: When do you evaluate whether there is an
21 original federal question in the case? Under
22 this Court's longstanding precedent going all
23 the way back to St. Paul Mercury, you look at
24 the time of removal, Your Honor.

25 JUSTICE THOMAS: So when does an

1 amended complaint supersede the earlier
2 complaint?

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

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

17 CHIEF JUSTICE ROBERTS: Justice Alito?

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

23 But would you also recognize that
24 there can be circumstances in which there can be
25 sort of a snowball effect in busy courts of

1 appeals, particularly on certain -- a certain
2 category of issues so that if a court of appeals
3 decides a question one way, then the next one
4 just latches onto that, and pretty soon, courts
5 of appeals confronting an issue are very likely
6 to say: Wow, if all these other circuits have
7 gone this way, I'm not going to create a
8 conflict in the circuits on this, I'm just going
9 to go along with it.

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

13 MS. WELLINGTON: I think that's
14 possible, Your Honor, but I think this is a
15 pretty unique case.

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

21 And if you look at cases like Boelens,
22 which is a case that Justice Scalia cited in
23 Rockwell from the Fifth Circuit, it very
24 carefully explains the reasoning of why we treat
25 these two circumstances differently.

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

12 JUSTICE ALITO: Well, do you think
13 that -- that courts of appeals read our
14 decisions differently than we may?

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

20 (Laughter.)

21 JUSTICE ALITO: -- we have --

22 JUSTICE SOTOMAYOR: Not now.

23 (Laughter.)

24 JUSTICE ALITO: -- more of an
25 obligation -- it depends, Justice Sotomayor --

1 (Laughter.)

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

7 Can -- do we have liberty to read them
8 a little bit differently?

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

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

21 And I think it would also be strange
22 to treat the situation where the plaintiff
23 amends the complaint differently than a
24 situation where it becomes moot, where it drops
25 out of the case for some other reason, such as

1 settlement.

2 I think then you'd have to get into
3 the Eighth Circuit's decision between
4 involuntary and voluntary amendments.

5 JUSTICE ALITO: Thank you. Thank you.

6 CHIEF JUSTICE ROBERTS: Justice
7 Sotomayor?

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

14 But let's go back to first principles.
15 What's the justification for this? Plaintiff
16 manipulation, correct?

17 MS. WELLINGTON: It's much broader
18 than that, Your Honor.

19 So judicial efficiency is a very
20 important reason why Congress enacted the Gibbs
21 principles into Section 1367.

22 So a case may be pending for two or
23 three years. The district court might be really
24 familiar with it. It might be a really
25 straightforward question of state law. In that

1 situation --

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

6 So why didn't the district court
7 simply deny permission here?

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

12 JUSTICE SOTOMAYOR: It wasn't within
13 the window permitted by the rule.

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

17 JUSTICE SOTOMAYOR: I see.

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

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

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

7 And then I don't understand why we
8 should change all the other rules that respect
9 an amended complaint as the complaint setting
10 forth the claims in an action.

11 MS. WELLINGTON: Your Honor, we think,
12 if you were to rule for the other side, that
13 would be upsetting a hundred years of precedent,
14 every single court of appeals decision. That
15 would be changing the rules.

16 All we ask this Court to do here is
17 apply settled law.

18 CHIEF JUSTICE ROBERTS: Justice Kagan?
19 Justice Gorsuch?

20 JUSTICE GORSUCH: We talked a lot
21 about 1367, but I'm not sure we paid much
22 attention yet to 1447. And I -- I can certainly
23 see the argument that the operative complaint
24 should be the one at the time of removal under
25 the old version of 1447, which suggests that a

1 case should be remanded if it was improvidently
2 removed.

3 That -- that does seem to focus the
4 Court's attention on the complaint at the time
5 of removal. And I think a lot of the court of
6 appeals kind of have been operating under that
7 kind of idea of the rule.

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

18 Thoughts?

19 MS. WELLINGTON: Two responses, Your
20 Honor.

21 So I think it's important to keep in
22 mind that the 1911 version of the statute, the
23 predecessor of 1447 that was in effect during
24 St. Paul Mercury, had basically the same text as
25 it did today.

1 JUSTICE GORSUCH: I grant -- I grant
2 you that. And then it went to was
3 improvidently removed --

4 MS. WELLINGTON: Yes.

5 JUSTICE GORSUCH: -- for a very long
6 time. And now it's come back to looking more
7 directly at the -- the then-operative complaint,
8 doesn't it?

9 MS. WELLINGTON: So I think it is
10 important that this Court reached the ruling
11 that it did in St. Paul Mercury under the old
12 text. I think that suggests that it --

13 JUSTICE GORSUCH: I grant you that --

14 MS. WELLINGTON: Yes.

15 JUSTICE GORSUCH: -- with respect to
16 the amount in controversy. We've been around
17 that -- that tree a few times.

18 So putting aside that point, have you
19 got anything else you want to say about it?

20 MS. WELLINGTON: Certainly.

21 So they didn't make that argument in
22 the red brief because it doesn't answer the
23 question. The question is whether the federal
24 court has jurisdiction or not.

25 We think that's answered at the time

1 of removal. And this Court, in the Wisconsin
2 Department of Corrections case, said that
3 Section 1447 was merely procedural. It did not
4 affect the district court's jurisdiction. So I
5 think you would have to revisit that case in
6 order to read 1447 here the way you suggest.

7 JUSTICE GORSUCH: Okay. Thank you.

8 CHIEF JUSTICE ROBERTS: Justice
9 Kavanaugh?

10 JUSTICE KAVANAUGH: I just want to
11 make sure on the state of the law, and maybe
12 following up on Justice Kagan's question,
13 because you would think when you pick this up,
14 if you were uninitiated, that there would be a
15 standard rule. Look at the complaint at the
16 time of filing or removal, or look at the
17 complaint at the time of amendment.

18 But at least as I looked at
19 everything, it's just a mess, right? There's
20 just boxes everywhere where, you know, in the
21 diversity context, destroying diversity almost
22 always compels dismissal or a remand, but
23 reducing the amount in controversy or changing
24 citizenship of a party almost never does.
25 Right? Is that correct?

1 MS. WELLINGTON: That's correct, Your
2 Honor. There --

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

7 MS. WELLINGTON: I --

8 JUSTICE KAVANAUGH: They were just
9 rules out there without connective logic. There
10 might be -- each box has its own little
11 idiosyncratic policy considerations, but there's
12 no connective rule at least as I read it.
13 Correct me if I'm wrong.

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

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

17 MS. WELLINGTON: I think you're right,
18 Your Honor, that there are different rules that
19 apply in different circumstances, that they have
20 different policy concerns or longstanding
21 prudential concerns and that this Court
22 shouldn't go around disrupting those rules.

23 There are lots of different rules that
24 apply with respect to adding diverse parties.
25 Sometimes you can do that. Sometimes you can't.

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

12 JUSTICE KAVANAUGH: And by "settled
13 law," you mean Footnote 6, you mean Cohill? Or
14 what are you referring to there?

15 MS. WELLINGTON: So you're right, Your
16 Honor. So St. Paul Mercury, Cohill, and
17 Rockwell. There are also cases like Carlsbad,
18 where this Court expressly asked, is a Cohill
19 remand -- that's the phrase the Court used -- is
20 a Cohill remand discretionary? I don't think
21 this Court could answer the question yes without
22 having, again, decided this question. There are
23 other cases like International College of
24 Surgeons and Rosado that, again, emphasize that
25 this is a discretionary question.

1 And I don't think this Court should
2 just depart from all of that precedent here. I
3 don't think there's a good reason to. And this
4 Court should -- this is a statutory question.
5 Stare decisis carries enhanced force in the
6 statutory context, and that's why we've asked
7 the Court to continue to apply settled law.

8 JUSTICE KAVANAUGH: Thank you.

9 CHIEF JUSTICE ROBERTS: Justice
10 Barrett?

11 Justice Jackson?

12 JUSTICE JACKSON: Just a couple of
13 quick points. So you keep talking about
14 protecting the defendant's prerogative of
15 removal. But I thought there was also sort of
16 basic principles about the plaintiff's
17 prerogative to bring a case in state or federal
18 court to be the master of their claims.

19 And so what I don't understand is why
20 the plaintiff has to be stuck with the
21 jurisdictional consequences of claims they are
22 no longer bringing? They've given up their
23 ability to seek relief on the federal claims,
24 and so it just seems odd to me, especially when
25 our case law kind of generally links

1 jurisdiction with the claim, you have to have
2 jurisdiction for every claim, those two concepts
3 run together, and yet somehow they can drop
4 claims and still be, in your view, subject to
5 the jurisdictional consequences of that.

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

8 MS. WELLINGTON: It's a really
9 important question, Your Honor, because what
10 Congress was trying to do is take into account
11 the right of plaintiffs to be the master of
12 their complaint but also the right of defendants
13 to remove. And that's exactly what investing
14 discretion --

15 JUSTICE JACKSON: But Justice Gorsuch
16 points to statutes that talk about remand. So,
17 even though the defendant has exercised its
18 right of removal, there are circumstances in
19 which that right is not given precedence. The
20 case goes back to state court, right?

21 MS. WELLINGTON: That's exactly right.
22 It's up to the district court to decide. And we
23 think in the mine run of cases where you amend
24 the complaint right after you remove, there's
25 removal to federal court, that's going to go

1 back to state court.

2 What we're really talking about here
3 are more unusual cases where it's been going on
4 for a long time. There may be particular
5 concerns --

6 JUSTICE JACKSON: Can I just ask you
7 about the text, moving quickly because I'm
8 mindful of the time. I don't understand how the
9 question could possibly be whether or not there
10 is original jurisdiction at the time of removal.
11 Of course, there is. That's why the case gets
12 to be removed. I mean, there's no question
13 there that does any work because you only get to
14 remove it if there's original jurisdiction.

15 So isn't the question really what
16 happens when, after we've identified original
17 jurisdiction and it's removed, the claims over
18 which there were original jurisdiction drop out?
19 Can supplemental jurisdiction be exercised when
20 those original jurisdiction claims are no longer
21 there?

22 When we look at the text of 1367, I
23 don't understand your argument that supplemental
24 jurisdiction arises in that situation because
25 (a) says, in any civil action of which district

1 courts have original jurisdiction, the district
2 court shall have supplemental jurisdiction.

3 But, in my scenario, original
4 jurisdiction is gone. So how can you have
5 supplemental jurisdiction in a situation like
6 this?

7 MS. WELLINGTON: I think it's really
8 important to go back to the first principles
9 that this Court was applying in Cohill. It was
10 looking at St. Paul Mercury, which holds that
11 you have original jurisdiction at a particular
12 time. And so, once you get original
13 jurisdiction, you continue to have supplemental
14 jurisdiction. That's what the Court held in
15 Rosado. There, the original claim became moot
16 and --

17 JUSTICE JACKSON: So wouldn't we
18 expect it to say in which the district court had
19 original -- or ever had original jurisdiction?
20 It seems to be in the present tense saying that
21 you have to have original jurisdiction in order
22 to exercise supplemental.

23 MS. WELLINGTON: And I think that's
24 because you have decades and decades of
25 precedent saying that in a removal context, you

1 look at whether there's jurisdiction at the time
2 of removal. At that time, the district court
3 has original jurisdiction, and then the question
4 is, will it continue to have supplemental
5 jurisdiction?

6 The text here is framed in a
7 forward-looking future tense, and we think
8 "shall have" does cover the situation where
9 there's ongoing supplemental jurisdiction.

10 JUSTICE JACKSON: Thank you.

11 CHIEF JUSTICE ROBERTS: Thank you,
12 counsel.

13 Mr. Keller.

14 ORAL ARGUMENT OF ASHLEY C. KELLER
15 ON BEHALF OF THE RESPONDENTS

16 MR. KELLER: Mr. Chief Justice, and
17 may it please the Court:

18 The life of the law has not been
19 logic. It has been experience. And experience
20 should have taught us by now that a suit arises
21 under the law that creates the cause of action.
22 That should be the definitive test for arising
23 under jurisdiction for at least three reasons.
24 It's the most faithful to the text, it avoids
25 serious constitutional problems, and it will

1 save decades of pointless litigation over
2 jurisdiction.

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

14 If we turn to which complaint
15 controls, the Eighth Circuit again should be
16 affirmed. My friend and I crucially agree the
17 text of 1367 is dispositive here. And,
18 remarkably, we also agree, if this case were
19 originally in federal court, it must be
20 dismissed. Why? Because, by amending out all
21 of the federal issues, they're no longer in the
22 action. If that's what the text of 1367 means
23 for an original case, how can the exact same
24 words take on a different meaning with removal?

25 Despite my friend's professed

1 commitment to textualism, she has no choice but
2 to flee to public policy. We can't have these
3 mischievous plaintiffs' lawyers shopping around
4 for their judges, we're told. Now that concern
5 is not happening in the real world, and my
6 friend's solution wouldn't solve the problem
7 even if it were.

8 But none of that matters. This Court
9 has said many times that text trumps policy.
10 You merely need to say so once again in order to
11 affirm.

12 I welcome your questions.

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

16 MR. KELLER: Of course, Your Honor.
17 So I think the plain text controls. We agree
18 about that. The present tense verbs, I think,
19 are intended to indicate that there is
20 jurisdiction presently.

21 We focused on the word "have" with the
22 colloquy with Justice -- Justice Jackson. I
23 would also focus on the word "are." There has
24 to be a relationship between the other claims,
25 the state law claims that are related to claims

1 in the action, the federal -- federal claims
2 that are within the Court's original
3 jurisdiction.

4 If we amend out those federal claims,
5 they're no longer in the action. There's no
6 relationship. And so there's no supplemental
7 jurisdiction. That's 1367(a). That's the
8 requirement to establish supplemental
9 jurisdiction. You don't get to the exceptions
10 in (b) or (c) unless you establish jurisdiction
11 under (a).

12 JUSTICE KAGAN: I think not logic but
13 experience, you lose, Mr. Keller, because the
14 experience cuts the other way. I mean, just the
15 -- this has all -- until the Eighth Circuit came
16 along, the position of the Petitioners has
17 always been understood, assumed. Every --
18 everybody thought that that was the rule. And
19 it was a rule which really has no adverse
20 consequences because everybody remands these
21 cases anyway. In 99 percent of the cases, these
22 -- these -- you know, there's a remand.

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

1 MR. KELLER: Yeah, so I respectfully
2 disagree. The master principle that I think
3 governs in every context, except the amount in
4 controversy, is that the amended complaint
5 controls. If you amend a complaint in state
6 court to add a federal claim --

7 JUSTICE KAGAN: So I basically agree
8 with you. I mean, I basically agree with you on
9 that and not with Justice Kavanaugh. Justice
10 Kavanaugh says it's all arbitrary. I don't
11 think it's arbitrary. I think some of the cases
12 that he was talking about is when facts in the
13 world change, but when we're not talking about
14 facts in the world, when we're talking about
15 allegations, I think that the structure is the
16 way you describe it, that we look to the
17 operative complaint, the amended complaint,
18 except in the amount in controversy area, where
19 there are sort of special considerations.

20 But -- so I -- I kind of agree with
21 you that if we were creating a system where all
22 the rules cohered, yours is the better rule.
23 But -- but I think on the other side of the
24 table is, look, we have this anomalous rule, but
25 this anomalous rule has been accepted by

1 everybody for many, many years, and it does no
2 harm anyway since most of these cases are
3 remanded back to state court where they belong.

4 MR. KELLER: Yeah, a couple of
5 responses to that, Justice Kagan.

6 First of all, I don't think that we,
7 meaning this Court, has ever embraced that rule.
8 It's true that the lower courts deserve
9 respectful consideration, but a lot of these
10 cases predate binding statutory text, so I'm not
11 sure that that's dispositive.

12 Also, I would respectfully submit that
13 you're the supervisory Court that's most
14 important in our Article III system. And when
15 you're hearing a question for the first time,
16 you ought to adjudicate it correctly,
17 notwithstanding the respectful consideration
18 that you would give to the lower courts.

19 And if you've determined, as it sounds
20 like you have, that from first principles I'm
21 right, the fact that lower courts that obviously
22 can't bind this one got it wrong I don't think
23 is a reason to just say let's go along to get
24 along.

25 And I also think there --

1 JUSTICE GORSUCH: Counsel, you're --

2 MR. KELLER: -- are -- oh, I beg your
3 pardon.

4 JUSTICE GORSUCH: -- you're suggesting
5 that it's kind of the -- the first time the
6 Court's considered the question. I understand
7 that. But you do have Cohill and the Rockhill
8 -- Rockwell footnote to deal with, and I haven't
9 heard a word about those yet.

10 MR. KELLER: Well, here it comes,
11 Justice Gorsuch. As Justice --

12 (Laughter.)

13 JUSTICE GORSUCH: I can't wait.

14 (Laughter.)

15 MR. KELLER: As -- as Justice
16 Kavanaugh previewed, I don't think that Footnote
17 6 in Rockwell is anywhere near the ratio
18 decidendi of the opinion. Justice Scalia was as
19 capable as anyone of making a stray remark. He
20 didn't even consider the statutory text of 1367,
21 which both my friend and I agree is dispositive.

22 And the easiest way to tell that it's
23 dicta is, if you cover up Footnote 6, would it
24 make any difference for the adjudication of the
25 rights and responsibilities of the parties?

1 Obviously not. Rockwell would have come out the
2 exact same way and the exact same outcome and
3 judgment would have occurred. So, for --

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

8 MR. KELLER: I -- and I -- and I agree
9 with you, Justice Kavanaugh. The fact that it's
10 dicta doesn't mean that you toss it out the
11 window. I think what it means is you take it
12 for what --

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

15 MR. KELLER: Well, it's up to you to
16 decide whether or not you would treat it as
17 dicta here. I think it's pretty ill-considered
18 and it doesn't get into the fact that it creates
19 the inconsistency that we've been talking about,
20 where the exact same text means one thing for an
21 original case and something else for a removed
22 case. I don't think that's the sort of thing
23 that Justice Scalia would have countenanced
24 given his commitment to textualism.

25 JUSTICE BARRETT: Counsel, your friend

1 on the other side -- were you finished?

2 JUSTICE GORSUCH: Yeah. Thank you.

3 JUSTICE BARRETT: Your friend on the
4 other side says that this would wreak havoc with
5 the Class Action Fairness Act and remove cases.
6 Do you want to address that?

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

13 The difficulty that they face here is
14 that you have no diversity of any kind. CAFA
15 obviously eliminates complete diversity and goes
16 to minimal diversity as the standard, but that's
17 a relatively unusual circumstance. Oftentimes,
18 plaintiffs are trying to seek a nationwide class
19 or something broader.

20 So I don't think it's going to wreak
21 havoc because the incentives are still going to
22 be there when there's widespread harm for
23 plaintiffs to pursue classes that include
24 citizens from many different states.

25 CHIEF JUSTICE ROBERTS: Counsel, we

1 have had cases where we came out the other way
2 than every court of appeals had come out, right?

3 MR. KELLER: Yes, you have, Mr. Chief
4 Justice.

5 CHIEF JUSTICE ROBERTS: Like what?

6 MR. KELLER: I think there are --
7 that's a great question.

8 (Laughter.)

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

11 JUSTICE KAVANAUGH: Central Bank?

12 CHIEF JUSTICE ROBERTS: Well, I mean,
13 it's pretty bold to take the position without
14 knowing one.

15 MR. KELLER: Fair. Mea culpa.

16 CHIEF JUSTICE ROBERTS: Was that --
17 was that the case in Chadha?

18 MR. KELLER: INS versus Chadha?

19 CHIEF JUSTICE ROBERTS: Yes.

20 MR. KELLER: I -- I don't know. I
21 apologize.

22 CHIEF JUSTICE ROBERTS: Somebody will
23 check. I just --

24 JUSTICE KAGAN: Gosh, I'm not sure
25 which way that cuts.

1 (Laughter.)

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

5 JUSTICE KAVANAUGH: Just go back to
6 the state of the law. I certainly didn't use
7 the word "arbitrary." It's just that each
8 bucket has developed based on its own
9 idiosyncratic considerations. And you can't
10 necessarily get a through line of look at the
11 time of filing or the time of amendment at least
12 as I look at them. And it's beyond just amount
13 in controversy. It's change in citizenship as
14 well.

15 I just want to -- do you agree with
16 that on the change in citizenship?

17 MR. KELLER: I agree, obviously, that
18 the change in citizenship rule has a long
19 pedigree. It goes back to 1824. I don't agree
20 that that's about which complaint controls.
21 That's about real-world facts.

22 JUSTICE KAVANAUGH: Right.

23 MR. KELLER: So, if you want to amend
24 a complaint to say: I made a mistake, I said
25 that I was from Florida and the defendant was

1 from Illinois, but I realized that the defendant
2 actually moved to Florida two years ago, so
3 we're both from Florida, the amended complaint
4 would control there.

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

10 MR. KELLER: Of course. And then I
11 win under Grable or Merrell Dow.

12 JUSTICE KAVANAUGH: Right.

13 JUSTICE KAGAN: And, you know, I just
14 wonder, so you look at Footnote 6. To me,
15 Footnote 6 is like somebody said: Hey, but how
16 about Cohill? And then they said: Oh, yeah,
17 Cohill, so we have to put in Footnote 6. And --
18 and so the fact that Footnote 6 is there
19 suggests a certain kind of reading of Cohill.

20 And, you know, what Cohill was about
21 that it -- was this question of do you have to
22 dismiss a case or can you remand the case back
23 to the state court? But Cohill's logic does cut
24 against you, I think, fairly heavily here
25 because, as I read, Cohill what it does is say

1 something like this: You know, the supplemental
2 jurisdiction business, ever since Gibbs, we've
3 understood it as a completely discretionary area
4 of jurisdiction. You can keep the case. You
5 can dismiss the case. If you can keep the case
6 and you can dismiss the case, surely you should
7 be able to remand the case as well.

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

11 But that logic really does cut against
12 you because it suggests that everything is
13 discretionary in this area, including keeping
14 the case.

15 MR. KELLER: Yeah, a couple of
16 responses to that, Justice Kagan.

17 Whatever amount of discretion I think
18 existed in the Cohill era I don't think can
19 continue through binding statutory text. So
20 we're no longer operating in a common law realm.
21 We're operating in a realm where Congress chose
22 to act.

23 We can debate whether Congress chose
24 to codify whatever the common law rules were
25 hook, line, and sinker. I would suggest from

1 Allapattah that it codified binding statutory
2 text, and we should follow the text.

3 So I don't think we can just go with
4 free-wheeling old principles now that Congress
5 --

6 JUSTICE KAGAN: Well, how about if I
7 think that the text doesn't really help either
8 of you? The -- you know, you're saying text;
9 you're saying text, and, in fact, neither of you
10 really has a very strong argument about text and
11 we have to decide this case on other grounds.

12 MR. KELLER: So the other grounds, I
13 think, would be the master principle that we
14 talked about that the operative complaint almost
15 always controls. The only context that I'm
16 aware of where it doesn't control is the amount
17 in controversy.

18 That, by the way, was also codified
19 through binding text. That's 1446. I agree
20 that it goes back longer to cases like St. Paul
21 Mercury. As an aside, I actually think that's a
22 completely defensible interpretation of the old
23 statutory text precisely because Congress
24 understands it doesn't want to blur the line
25 between jurisdictional facts and the merits.

1 We don't want to create the Judge
2 Posner problem where a plaintiff comes into
3 court and loses or wins an amount that's less
4 than the amount in controversy and now we have
5 to --

6 JUSTICE KAGAN: Thank you.

7 MR. KELLER: -- remand for lack of
8 jurisdiction.

9 JUSTICE ALITO: Do I understand your
10 -- what you just said to mean that you would win
11 this case even if 1367 had never been enacted?

12 MR. KELLER: I think that I would win
13 this case if 1367 hadn't been enacted and we
14 were still in a more common law regime and this
15 issue were squarely presented to the Court for
16 the first time.

17 Cohill had this issue obliquely
18 presented. Yes, there was an amended complaint.
19 But the party presentation rule should matter.
20 No one made that fact relevant for the Court's
21 consideration.

22 You could have considered it sua
23 sponte because it went to jurisdiction, but no
24 one did. And this Court has pointed out before
25 that drive-by jurisdictional rulings don't have

1 any precedential effect.

2 The reason you had to say that is
3 sometimes, even though you would like to avoid
4 it, you issue drive-by jurisdictional rulings.

5 JUSTICE GORSUCH: Why -- why -- why --
6 why would we say Cohill addressed this? As I
7 understand it, in -- the question there was
8 whether to remand or dismiss, and this -- this
9 issue wasn't presented to the Court at all.

10 MR. KELLER: I completely agree with
11 it. It was not presented to the Court. The
12 facts of Cohill, though, I have to say in the --
13 in the spirit of candor was that there was an
14 amended complaint and it dropped the federal
15 claim, and then there was the question of
16 whether there is discretion to remand versus
17 just discretion to dismiss for lack of
18 continuing jurisdiction.

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

22 MR. KELLER: No, I do think that I can
23 rationalize St. Paul Mercury. As I was saying
24 just a moment ago, I do think that the amount in
25 controversy, even before Congress said in 1446

1 we have to look to the initial pleading, going
2 back to cases like St. Paul Mercury, it is
3 reasonable to read -- read the words "amount in
4 controversy" to mean theoretically possible to
5 be recovered. It doesn't matter what happens
6 after you file your lawsuit.

7 And so, if the plaintiff pleads in an
8 initial complaint, consistent with Rule 11 or
9 whatever the equivalent was in 1938, I'm above
10 the jurisdictional amount in controversy, that's
11 showing that it's theoretically possible to
12 recover that amount in good faith, and that's
13 good enough for the statutory jurisdictional
14 requirement that Congress added onto Article
15 III.

16 JUSTICE BARRETT: Mr. Keller, in
17 thinking about -- you know, Justice Kavanaugh
18 was talking about the different boxes and some
19 of the inconsistencies. One way I've been
20 thinking about this is I think it's been true
21 for a very long time, back to Strawbridge versus
22 Curtiss and the complete diversity requirement,
23 you know, talking about Mottley and the
24 well-pleaded complaint rule, that the Court for
25 a very long time exercised a pretty free hand in

1 interpreting 13-1 and -- 1331 and 1332.

2 That language is identical to Article
3 III, but yet the Court interpreted it to mean
4 something different. And I think that in the
5 Gibbs regime pre-1367, the Court was exercising
6 a pretty free hand in -- in articulating the
7 contours of pendent jurisdiction and ancillary
8 jurisdiction before Congress controlled it.

9 Can you think -- I mean, I think a lot
10 of this case seems to kind of come down to is
11 that just the way we've been treating
12 jurisdictional statutes and do we keep it up
13 with 1367, or in 1367 because, in Finley, the
14 Court kind of said no, look, Congress, there
15 need to be clear jurisdictional rules, expressly
16 invited Congress to address it, which Congress
17 did. Would you say, do you think it's fair to
18 say, or can you think of a counter-example that
19 in 1367, when it comes to supplemental
20 jurisdiction, the Court has tightened its belt
21 and isn't being as free-wheeling, or can you
22 think of other examples where the Court, this
23 Court, has done kind of what the court of
24 appeals seemed to have continued to do in 1367,
25 which is maybe make a little bit more

1 jurisdictional policy than was set out in the
2 text?

3 MR. KELLER: Yeah, an important
4 question, Justice Barrett. I think I would
5 describe the history a little differently. I
6 wouldn't describe it as free-wheeling. I would
7 say it all points in one direction. The Court
8 construed jurisdictional statutes more narrowly
9 than Article III. So that's certainly true with
10 Strawbridge versus Curtiss. We know that
11 there's not a complete diversity requirement
12 because of CAFA.

13 It's the same thing with 1331.
14 Justice Thomas noted this in Grable. From the
15 very beginning of the Jurisdiction and Removal
16 Act of 1875, this Court almost immediately
17 construed the words "arising under" to be not
18 coextensive with Article III.

19 JUSTICE BARRETT: Gibbs is a
20 counter-example for you, though.

21 MR. KELLER: Gibbs is a
22 counter-example, and the Court in Finley, I
23 think, gently criticized Gibbs for operating
24 without a statute. It did invite Congress to
25 act. Congress has now acted, and so, having

1 taken up this Court's invitation to supply
2 positive law codifying this entire area, I think
3 you should stick to your normal statutory
4 interpretation principles. And if you want to
5 put a thumb on the scale, it should be against
6 jurisdiction, consistent with tradition.

7 JUSTICE JACKSON: Setting aside 1367,
8 going back to Justice Alito's question, I'm
9 wondering whether the sort of core principles
10 basis for your position is basically the
11 plaintiff is the master of the complaint. They
12 get to plead the claims.

13 For federal question jurisdiction, the
14 claims matter. That is, jurisdiction is based
15 on the claims that the plaintiff pleads. If the
16 claims are amended, the federal court can be
17 divested of jurisdiction, and removal really has
18 no bearing on the scope of jurisdiction or at
19 least that's never been established, that --
20 that how it comes to federal court matters with
21 respect to an amended complaint.

22 Is that roughly where you're coming
23 from with the principles that would underlie
24 this, even setting aside the statute?

25 MR. KELLER: Yes, that syllogism is

1 perfect.

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

4 CHIEF JUSTICE ROBERTS: Justice
5 Thomas?

6 Justice Alito?

7 Justice Kavanaugh?

8 Thank you, counsel.

9 MR. KELLER: Thank you, Your Honor.

10 CHIEF JUSTICE ROBERTS: Rebuttal?

11 REBUTTAL ARGUMENT OF KATHERINE B. WELLINGTON

12 ON BEHALF OF THE PETITIONERS

13 MS. WELLINGTON: Thank you, Your
14 Honor.

15 As Justice Kagan says, under
16 experience, Respondents lose. To rule for
17 Respondents on the question presented, this
18 Court would need to overrule or distinguish away
19 St. Paul Mercury, Cohill, Rockwell, Gibbs,
20 Carlsbad, Rosado, Powerex, Osborn against Haley,
21 International College of Surgeons, and Wisconsin
22 Department of Corrections. That's 10 decisions
23 of this Court, on top of dozens and dozens of
24 court of appeals decisions that have
25 consistently and unanimously supported

1 Petitioners' position.

2 Indeed, even Respondents agreed that
3 the district court could exercise supplemental
4 jurisdiction. They said it in their amended
5 complaint. It's only until the Eighth Circuit
6 invited briefing on this that they switched
7 positions.

8 And I think it's quite telling here
9 that the Eighth Circuit reached the decision it
10 did by apparently missing all of the footnotes
11 that it should have read, including in Rockwell
12 but also in the Second Circuit and the Eleventh
13 Circuit decisions that it cited. So I think
14 that's the reason we're here today.

15 As Justice Barrett asked, ruling for
16 Respondents would also call into question the
17 rule that applies in CAFA cases. The court of
18 appeals have said -- you know, if you get into
19 federal court on a removal in a CAFA case, the
20 plaintiff immediately amends to try to get rid
21 of all the class action allegations, the courts
22 of appeals have said that's a question of
23 discretion for the district court.

24 Maybe the district court will send a
25 lot of those cases back to state court, but

1 maybe, when the case has been going on for two
2 years and the class is about to get certified,
3 that's a situation in which the district court
4 may say, okay, I'm going to keep this case here
5 in federal court.

6 It would also call into question the
7 Court's longstanding rules that amendments to
8 the amount in controversy do not affect
9 jurisdiction.

10 And what do Respondents want instead?
11 So, instead of an approach that gives district
12 courts discretion in every case to determine
13 what makes sense as a matter of judicial
14 economy, convenience, fairness, and comity, they
15 want an inflexible rule that gives district
16 courts no choice and that would subject the
17 defendant's right to removal to the plaintiff's
18 caprice.

19 As the Chief's questions suggest,
20 where this Court decides to overrule every
21 single court of appeals, it should have a really
22 good reason. And there isn't a really good
23 reason here to upset a longstanding
24 jurisdictional rule that has worked just fine
25 for a century. The Eighth Circuit simply got it

1 wrong, and this Court should vacate the decision
2 below.

3 Thank you.

4 CHIEF JUSTICE ROBERTS: Thank you.

5 The case is submitted.

6 (Whereupon, at 12:29 p.m., the case
7 was submitted.)

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