No. 04- ____

IN THE

Supreme Court of the United States

MARIA DEL ROSARIO ORTEGA, SERGIO BLANCO, by themselves and representing minors BEATRIZ BLANCO-ORTEGA AND PATRIZIA BLANCO-ORTEGA,

Petitioners,

v.

STAR-KIST FOODS, INC.,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Of Counsel:

FREDDIE PEREZ-GONZALEZ
FREDDIE PEREZ-GONZALEZ & ASSOC., P.S.C.
Home Mortgage Plaza
4th Floor, Suite 433
Hato Rey, PR 00918
(787) 751-4334

DONALD B. AYER
(Counsel of Record)
GREGORY A. CASTANIAS
MICHAEL S. FRIED
JULIA C. AMBROSE
CHRISTIAN G. VERGONIS
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3939

Counsel for Petitioner

July 16, 2004

QUESTION PRESENTED

Whether, in a civil diversity action in which the claims of one plaintiff meet the amount-in-controversy threshold, 28 U.S.C. § 1367 authorizes the district courts to exercise supplemental jurisdiction over the related claims of additional plaintiffs who do not satisfy the amount-in-controversy requirement?

PARTIES TO THE PROCEEDING

The parties to the proceeding below are contained in the caption of this case.

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INTRODUCTION

With its decision in this case, the First Circuit became the ninth court of appeals to weigh in on the question whether, in a diversity action in which at least one plaintiff satisfies the amount-in-controversy requirement of 28 U.S.C. § 1332, Pet. App. 66a-67a, the supplemental jurisdiction statute, 28 U.S.C. § 1367, permits the district courts to exercise jurisdiction over the related claims of additional plaintiffs who do not independently satisfy the amount-in-controversy requirement. To date, five circuits have held that the statute authorizes the assertion of such pendent-party jurisdiction in diversity cases, while four circuits, including the First Circuit in this case, have held to the contrary. This Court itself has once attempted to answer the question, *see Free v. Abbott Labs., Inc.*, 528 U.S. 1018 (1999), but with one justice recused, the Court divided 4-4 and affirmed the lower-court decision without a precedential opinion. *See* 529 U.S. 333 (2000). As this question presents important issues with wide-ranging consequences across the civil justice system, the Court should again grant certiorari and resolve it.

As the First Circuit noted, the question presented actually arises in two similar but distinct contexts, and the circuits have split on both versions of the issue. First, there are cases, like this one, involving the ordinary joinder of additional plaintiffs under Rule 20 of the Federal Rules of Civil Procedure. Pet. App. 68a. Second, there are cases involving the claims of absent class members in diversity-only class actions. Prior to the enactment of § 1367, the rule in both contexts was the same: in diversity cases, multiple plaintiffs with separate claims were each required to satisfy the jurisdictional amount. *See Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939) (applying rule in multi-party non-class litigation raising federal question); *Zahn v. Int'l Paper Co.*, 414 U.S. 291 (1973) (extending *Clark* to Rule 23 class

actions). The question, put another way, is whether § 1367 abrogates those decisions.

OPINION AND JUDGMENT BELOW

The opinion of the court of appeals (Pet. App. 1a-45a) is reported at 370 F.3d 124. The opinion of the district court (Pet. App. 46a-64a) is reported at 213 F. Supp. 2d 84, and an order of the district court denying rehearing (Pet. App. 65a) is unreported.

JURISDICTION

The court of appeals entered judgment on June 2, 2004. Jurisdiction in this Court exists under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

This case involves § 1367 of Title 28, United States Code, which provides in pertinent part:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.
>
> (b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or

> seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.
>
> (c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—
>
> (1) the claim raises a novel or complex issue of State law,
>
> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
>
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
>
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

This case also involves § 1332 of Title 28, United States Code, and Rule 20 of the Federal Rules of Civil Procedure, which are reproduced in Petitioners' Appendix at pages 66a-67a and 68a, respectively.

STATEMENT OF THE CASE

This is a diversity action involving personal injury claims brought by Beatriz Blanco-Ortega, a citizen of Puerto Rico,[1] and three of her family members, also citizens of Puerto Rico, against Star-Kist Foods, Inc., a company then

[1] "The word 'States', as used in [the diversity-of-citizenship statute, 28 U.S.C. § 1332], includes . . . the Commonwealth of Puerto Rico." 28 U.S.C. § 1332(d).

incorporated, and having its principal place of business, in Pennsylvania.[2]

The case arises out of injuries suffered in 1999 when Beatriz, then nine years old, cut her pinky finger on a defective can of Star-Kist tuna while eating lunch at school. Beatriz's injuries ultimately led to surgery on her hand, the prospect of future surgery, and minor permanent disability and scarring.

In the amended complaint on which the case has gone forward, Beatriz, along with her mother, Maria del Rosario-Ortega, her father, Sergio Blanco, and her sister, Patrizia Blanco-Ortega, sued Star-Kist and its unnamed insurers. Beatriz alleged that she had suffered physical and emotional damages of not less than $900,000. In addition, each of Beatriz's family members sought emotional damages in excess of $75,000, with Ms. Ortega seeking an additional $30,000 in damages for past and future medical expenses.

Star-Kist moved for summary judgment on the ground that none of the plaintiffs had satisfied the $75,000 amount-in-controversy requirement needed to establish federal-court jurisdiction pursuant to § 1332. Applying the "legal certainty" test set forth by this Court in *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938), and surveying recoveries in similar cases, the district court concluded that it was a legal certainty that none of the plaintiffs could prove damages in excess of $75,000. Accordingly, the district court dismissed the case for lack of subject-matter jurisdiction.

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[2] Since the court below found the claims of Beatriz to be within the jurisdiction created by 28 U.S.C. § 1332, the petitioners in this Court are her three family members who were co-plaintiffs in the district court — Maria del Rosario-Ortega, Sergio Blanco, and Patrizia Blanco-Ortega.

The plaintiffs appealed, and the First Circuit (Lynch, J.) affirmed in part and reversed in part. The court first unanimously reversed the district court on the question whether Beatriz had satisfied the amount-in-controversy requirement. The court concluded that, in light of Beatriz's permanent physical impairment and claimed pain and suffering, it could not say to a legal certainty that Beatriz could not recover a jury award larger than $75,000, and that Beatriz's claim should therefore be allowed to go forward. By contrast, the court concluded that it was a legal certainty that the emotional distress claims of Beatriz's family members (even taking into account Ms. Ortega's additional claim for medical expenses) did not meet the $75,000 threshold. Pet. App. 3a-10a.

Next, speaking on behalf of two judges, the court considered whether the supplemental jurisdiction statute, 28 U.S.C. § 1367, nevertheless permitted the district court to assert jurisdiction over the claims of Beatriz's family members. It noted that the proper resolution of this issue "is far from clear," and has deeply divided the circuit courts. It observed further that this issue has arisen in two contexts — cases, such as this one, involving the ordinary permissive joinder of multiple plaintiffs under Rule 20 of the Federal Rules of Civil Procedure, and cases involving the claims of absent class members in diversity-only class actions. Pet. App. 11a.

Confining its consideration to the first of these contexts, the court below began its analysis by reviewing the law as it existed before the enactment of § 1367 in 1990. It noted that the previously settled rule, commonly associated with *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939), required that each plaintiff in a diversity action must separately satisfy the jurisdictional-amount requirement. The court noted further that the "impetus for Congress's adoption of § 1367 was the Supreme Court's 5-4 decision in *Finley v. United States*, 490 U.S. 545 (1989)," in which this Court had held that the

district courts lack jurisdiction over pendent-party state-law claims in federal-question cases. Pet. App. 14a. But while primarily aimed at overturning *Finley*, the court below observed, § 1367's text "can be read to do more than" that — indeed, on its face, § 1367 appears to be "a jurisdictional grant of such apparent breadth" as to have "created confusion in a number of areas in which principles were thought to be well established." Pet. App. 15a (quoting 13B Charles Alan Wright et al., *Federal Practice and Procedure* § 3567.2 (2d ed. 2003)).

The court stated that one such area of resulting confusion involves the continued validity of the Supreme Court's holdings that every plaintiff in a diversity case must meet the jurisdictional-amount requirement. Under one line of reasoning, adopted by the Seventh Circuit in *Stromberg Metal Works, Inc. v. Press Mechanical, Inc.*, 77 F.3d 928 (7th Cir. 1996), § 1367 has been found to overturn the jurisdictional amount holding of *Clark* in diversity cases because Congress failed in § 1367(b) "to include Rule 20 plaintiffs among those parties who cannot rely on supplemental jurisdiction where doing so would be inconsistent with § 1332." Pet. App. 15a. Under a second line of reasoning, which the court below ultimately adopted, *Clark* has been found to be preserved by "the requirement in § 1367(a) that the district court must first have 'original jurisdiction' over an action before supplemental jurisdiction can apply, . . . and thus [§ 1367] does not supply supplemental jurisdiction where, as in this case, only one of the named plaintiffs meets the amount in controversy." Pet. App. 16a (citing James E. Pfander, *Supplemental Jurisdiction and Section 1367: The Case for a Sympathetic Textualism*, 148 U. Pa. L. Rev. 109 (1999); *Leonhardt v. W. Sugar Co.*, 160 F.3d 631 (10th Cir. 1998); *Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214 (3d Cir. 1999)).

Applying this latter analysis to the facts of this case, the court reasoned that, because the district court lacked

jurisdiction over the claims of Beatriz's family members under the jurisdictional principles articulated in *Clark*, it lacked "original jurisdiction" over the entire action, and the statutory prerequisite for the exercise of supplemental jurisdiction was therefore not met.[3] While this interpretation of § 1367(a) obviated the need for the court to address the exceptions set forth in § 1367(b), the court noted that its interpretation provided an explanation for the omission of Rule 20 plaintiffs from those exceptions.

In support of its interpretation of the statutory language, the court opined that a contrary reading of the statute would necessarily permit the permissive joinder of non-diverse plaintiffs, thereby abrogating the complete-diversity rule of *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806), a "surprising and far-reaching consequence[]" that the court did not believe Congress intended. Finally, the court concluded that the legislative history of § 1367 supported the court's conclusion that Congress did not believe that the statute would make significant changes to the law of diversity jurisdiction.

Judge Torruella dissented from the portion of the court's ruling addressing supplemental jurisdiction, on the ground that it "is contrary to the plain language of § 1367." Pet. App. 33a. He began his analysis by noting that, while only two prior circuit courts had split on the question at hand in the Rule 20 joinder context, when class action cases are

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[3] The court noted that this reading of the "original jurisdiction" requirement in § 1367 is supported by "the settled meaning of identical language in 28 U.S.C. § 1441, the removal statute." Pet. App. 21a. There, the court asserted, the prerequisite to removal — that the action to be removed be one "of which the district courts . . . have original jurisdiction" — has been interpreted "to prohibit removal unless the entire action, as it stands at the time of removal, could have been filed in federal court in the first instance." Pet. App. 21a; *see infra* note 15.

considered, a total of five circuit courts had interpreted § 1367 to allow a plaintiff who does not independently meet the amount-in-controversy requirement to remain in federal court, while three other circuit courts had reached the opposite conclusion. Stating that "*Clark* and *Zahn* stand for the same principle," Judge Torruella suggested that the majority should have addressed the reasoning of the majority of class-action cases that came out the other way. He also asserted that if any distinction were to be drawn between the two situations with regard to the amount-in-controversy requirement, the Rule 20 joinder situation is the stronger one for allowing supplemental jurisdiction over additional plaintiffs who do not meet the jurisdictional amount requirement. Pet. App. 35a-36a.

Turning to the text of the statute, Judge Torruella explained that the district court had "original jurisdiction" over Beatriz's claim within the meaning of § 1367(a) because she and Star-Kist are diverse and her claim exceeds $75,000. Therefore, the district court also had supplemental jurisdiction over the related claims of Beatriz's family members unless one of the exceptions of § 1367(b) applied. While § 1367(b) excepts claims asserted by plaintiffs made parties pursuant to Rules 19 and 24 of the Federal Rules of Civil Procedure and *against* persons made parties pursuant to, *inter alia*, Rule 20, the claims in this case were being asserted by persons made parties pursuant to Rule 20 and, accordingly, none of the exceptions applied. Judge Torruella criticized the majority's alternative approach for misinterpreting the concept of original jurisdiction, making other provisions of § 1367 superfluous, and improperly relying on "internally contradictory" legislative history. Pet. App. 39a-45a.

REASONS FOR GRANTING THE WRIT

This case presents in the stark context of Rule 20 joinder the conundrum that this Court sought to resolve four years

ago in the class action context, *Free v. Abbott Labs., Inc.*, 529 U.S. 333 (2000) (affirming by equally divided Court): whether Congress's statutory grant of supplemental jurisdiction in 28 U.S.C. § 1367 extends in diversity actions to the claims of additional plaintiffs who fail to meet the amount-in-controversy requirement of 28 U.S.C. § 1332. This issue, in both of its factual contexts, has fomented clear splits among the federal courts of appeals, and has generated a remarkable and diverse body of commentary.

The issue at hand is a fundamental and frequently recurring one, with profound consequences to broaden or constrict the diversity jurisdiction of the federal courts. Ultimately at issue is the question whether federal courts sitting in diversity jurisdiction are to be a viable forum for the resolution of a very large category of disputes. For, in both the Rule 20 and class-action contexts, where some potential plaintiffs but not others can satisfy the amount-in-controversy requirement, the rule adopted by the court below would often render the federal forum non-viable by the resulting inability to resolve the entire dispute in a single proceeding.

The statutory construction issues presented by § 1367 in this Rule 20 joinder case are similar but not identical to those that arise in the class-action context. The language of § 1367 leads quite directly and unavoidably to the conclusion that diverse plaintiffs who lack the amount-in-controversy may be joined under Rule 20 pursuant to the supplemental jurisdiction. The textual analysis with regard to class-action plaintiffs under Rule 23 is similar, but somewhat less compelling in certain respects. There are also differences in the relevant legislative history. And it is at least conceivable that the Court might reach different conclusions applicable to the Rule 20 and class-action contexts. Thus the Court's consideration of the statute's proper construction would likely be enhanced by careful consideration of its application in both contexts.

Accordingly, petitioners submit that this case merits plenary review by this Court, either alone or in conjunction with a case presenting the parallel issue in the class action context.[4]

I. THE FEDERAL CIRCUITS ARE DEEPLY SPLIT ON THE APPLICATION OF § 1367 SUPPLEMENTAL JURISDICTION TO PLAINTIFFS IN A DIVERSITY ACTION WHO LACK THE AMOUNT-IN-CONTROVERSY

For the past fourteen years, the federal courts have wrestled with the problem of construing § 1367's grant of supplemental jurisdiction, and specifically with whether that 1990 statute altered the pre-existing law as announced in decisions of this Court requiring each plaintiff in a diversity case individually to satisfy the amount-in-controversy requirement of 28 U.S.C. § 1332. *See, e.g.*, *Zahn v. Int'l Paper Co.*, 414 U.S. 291, 294 (1973); *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939) (amount-in-controversy requirement in multi-party federal question context).

This issue has arisen in two contexts, and the decisions of the circuit courts are sharply split in both. First, three circuits have addressed whether the district courts' supplemental jurisdiction extends to the claims of additional plaintiffs permissively joined pursuant to Rule 20 of the

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[4] Presently pending before the Court is a petition for certiorari by Exxon, from the decision of the Eleventh Circuit in *Allapattah Services, Inc. v. Exxon Corp.*, 333 F.3d 1248 (11th Cir. 2003), *reh'g denied*, 362 F.3d 739 (11th Cir. 2004) (petition for certiorari filed July 14, 2004). In that case, the Eleventh Circuit held that § 1367 authorizes the exercise of jurisdiction over unnamed class plaintiffs who do not meet the amount-in-controversy requirement. Given the important differences between the statutory analysis required in the Rule 20 and class action contexts, petitioners urge the Court to grant certiorari in this case, whether or not it also decides to grant review in *Allapattah*. *See infra* Part III.

Federal Rules of Civil Procedure, asking, in effect, whether § 1367 overrules *Clark v. Paul Gray, Inc.* The First and Third Circuits have concluded that § 1367 does not authorize supplemental jurisdiction under such circumstances and that *Clark* therefore remains good law. *See* Pet. App. 20a-24a; *Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 216 (3d Cir. 1999). The Seventh Circuit, by contrast, has concluded that § 1367 abrogates the rule of *Clark* and permits the exercise of supplemental jurisdiction over the claims of permissively joined plaintiffs who do not meet the amount-in-controversy requirement. *See Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928, 932 (7th Cir. 1996).

Second, eight circuits have addressed the same issue in the Rule 23 class-action context. In this context, the Fourth, Fifth, Seventh, Ninth, and Eleventh Circuits have held that the statute abrogates *Zahn* and authorizes the district courts in diversity actions to exercise supplemental jurisdiction over the claims of class members who do not meet the amount-in-controversy requirement, provided that the named plaintiff does so. *See Allapattah Servs., Inc. v. Exxon Corp.*, 333 F.3d 1248, 1254 (11th Cir. 2003); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 934 (9th Cir. 2001); *Rosmer v. Pfizer Inc.*, 263 F.3d 110, 114 (4th Cir. 2001); *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 607 (7th Cir. 1997); *In re Abbott Labs.*, 51 F.3d 524, 528-29 (5th Cir. 1995). The Third, Eighth, and Tenth Circuits, by contrast, have concluded that § 1367 does not authorize the exercise of supplemental jurisdiction under such circumstances. *See Trimble v. Asarco, Inc.*, 232 F.3d 946, 962 (8th Cir. 2000); *Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 216 (3d Cir. 1999); *Leonhardt v. W. Sugar Co.*, 160 F.3d 631, 640 (10th Cir. 1998).

The academic commentators have given great attention to the issue of § 1367's proper construction, and they too are irreconcilably divided. Several of them urge the

interpretation advocated by petitioners.[5] Others acknowledge that the text of § 1367 is best read as petitioners urge, but nonetheless argue for an exceptional and less textually-grounded construction of the statute.[6] And one commentator, Professor Pfander, has divined a textually-based construction of the statute that yields the result reached by the court below.[7] All of the leading procedure treatises likewise acknowledge the debate — some taking sides;[8]

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[5] *See, e.g.*, Jeffrey L. Rensberger, *The Amount in Controversy: Understanding the Rules of Aggregation*, 26 Ariz. St. L.J. 925, 931-32 (1994) (§ 1367 abrogates previous jurisdictional requirements in multi-plaintiff diversity actions); Richard D. Freer, *The Cauldron Boils: Supplemental Jurisdiction, Amount in Controversy, and Diversity of Citizenship Class Actions*, 53 Emory L.J. 55, 60 (2004) (same); Michael B. Slade, Note, *Democracy in the Details: A Plea for Substance Over Form in Statutory Interpretation*, 37 Harv. J. on Legis. 187, 210 (2000) (same); Joel E. Tasca, Comment, *Judicial Interpretation of the Effect of the Supplemental Jurisdiction Statute on the Complete Amount in Controversy Rule: A Case for Plain Meaning Statutory Construction*, 46 Emory L.J. 435, 436–39 (1997) (same); Richard D. Freer, *Toward a Principled Statutory Approach to Supplemental Jurisdiction in Diversity of Citizenship Cases*, 74 Ind. L.J. 5, 5–6 (1998) (same)

[6] *See, e.g.*, Laura L. Hirshfeld, *The $50,000 Question: Does Supplemental Jurisdiction Extend to Claims Between Diverse Parties Which Do Not Meet § 1332's Amount-in-Controversy Requirement?*, 68 Temp. L. Rev. 107, 110–11 (1995) (§ 1367 does not abrogate amount-in-controversy requirement in multi-plaintiff diversity cases); Christopher M. Fairman, *Abdication to Academia: The Case of the Supplemental Jurisdiction Statute, 28 U.S.C. § 1367*, 19 Seton Hall Legis. J. 157, 192 (1994) (same); *and* Thomas D. Rowe, Jr. et al., *Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer*, 40 Emory L.J. 943, 961 n.91 (1991) (same).

[7] James E. Pfander, *Supplemental Jurisdiction and Section 1367: The Case for a Sympathetic Textualism*, 148 U. Pa. L. Rev. 109, 148 (1999); James E. Pfander, *The Simmering Debate Over Supplemental Jurisdiction*, 2002 U. Ill. L. Rev. 1209, 1231 (2002).

[8] *See, e.g.*, 16 James Wm. Moore *et al.*, *Moore's Federal Practice* ¶ 106.44 (3d ed.); 13 Charles Alan Wright *et al.*, *Federal Practice and*

others abstaining from the debate;[9] and still others being internally inconsistent on the issue.[10] The issue has been fully joined and ventilated, and it is ready for this Court's review.

II. THE QUESTION PRESENTED IS AN ISSUE OF SUBSTANTIAL RECURRING IMPORTANCE

It is hardly surprising that a total of nine courts of appeals (splitting 5-4) have addressed the question whether § 1367 extends supplemental jurisdiction in diversity actions to plaintiffs who do not satisfy the amount-in-controversy requirement. For that issue defines a critical boundary of the jurisdiction of the federal courts, which has broad practical consequences for the nature of the disputes that will be resolved there.

Under the decision below, federal courts are empowered to resolve controversies between diverse parties under state law, but only as to claimants asserting injury of at least $75,000. Other plaintiffs (whether diverse or not) with claims against the same defendant arising from the same

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Procedure § 3523.1, at 181 (Supp. 2004); Charles Alan Wright & Mary Kay Kane, *Law of Federal Courts* at 40, 217 & n.33 (6th ed. 2002).

[9] *See, e.g.*, Richard H. Fallon *et al.*, *Hart & Wechsler's The Federal Courts and the Federal System* 926–930, 1490–1493 (5th ed. 2003) (leaving open the question).

[10] *Compare* James Wm. Moore, *Moore's Federal Practice: Judicial Code Title 28 U.S.C.*, ¶ 1367.2[1] at 478 (Supp. 2004) (noting that § 1367(b) "precludes supplemental jurisdiction over claims asserted by plaintiffs if assertion of the claim would be inconsistent with the jurisdictional requirements of the statute, i.e., if the parties to the claim are not diverse, or the jurisdictional minimum is not present") *with id.* at 479 (noting the contradiction compelled by § 1367(b)'s language that appears to authorize supplemental jurisdiction when a joined plaintiff is a proper plaintiff under Rule 20 but not when the joined plaintiff is a necessary party under Rule 19).

transaction or occurrence, but falling below that amount, must pursue relief elsewhere. If the goal of § 1367 is to steer potential diversity cases away from federal court and back to the states — including major class action cases, which many believe most naturally belong in federal court — then the decision of the court below advances that goal by regularly preventing the federal court from dealing with the controversy at hand in its entirety. By contrast, if the goal of the statute is to provide an efficient federal forum for the resolution of the related claims of multiple plaintiffs, then the decision below frustrates this goal by preventing the federal courts from resolving all of the claims that may arise out of the same transaction or occurrence.

Given what is at stake, it is thus not surprising that the issue has been frequently litigated. The fact that the lower courts have been unable to resolve it, but rather have sharply split over the correct interpretation of § 1367, is a practical problem beyond the merits of the underlying question. The confusion generated by this issue has led to an uncommon number of collateral disputes over where, not how, a matter ought to be decided.

This lasting uncertainty regarding the impact of a single statute has prompted a regrettable expenditure of judicial and private resources. Litigation devoted solely to which court system has authority over a matter, as this Court has recognized, is far from desirable or efficient; in point of fact, "litigation over whether the case is in the right court is essentially a waste of time and resources." *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 464 n.13 (1980); *see also Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 549 (1995) (Thomas, J., concurring in the judgment) (noting that a "clear, bright-line" jurisdictional rule "ensures that judges and litigants will not waste their resources in determining the extent of federal subject-matter jurisdiction"). Plaintiffs and defendants alike, to say nothing of district court judges, will benefit from a definitive

resolution of the issue and what comes with it — a clear allocation of judicial responsibility between state and federal courts.

III. THE QUESTION AS PRESENTED IN THE RULE 20 JOINDER CONTEXT IS SUFFICIENTLY DISTINCT AS TO MERIT SEPARATE PLENARY CONSIDERATION, PRIOR TO RESOLUTION OF THE ISSUE IN THE CLASS ACTION CONTEXT

Perhaps due to the increasing popularity of the class action device, the question whether § 1367 authorizes the exercise of pendent-party jurisdiction in diversity actions over the claims of additional plaintiffs who do not independently meet the amount-in-controversy requirement has received more judicial and academic attention in the class-action context. Yet there are compelling reasons for the Court to fully consider the question as it arises in the context of multi-party non-class litigation before it resolves the issue in the class-action context.[11]

As an analytical matter, resolution of the issue in the Rule 20 joinder context lends clarity to the analysis in the class-action analysis, which adds additional complexities not present in this case. *See, e.g.*, *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 787 (1995) ("Our resolution of these issues draws upon our prior resolution of a related but distinct issue . . . ."). While the issue is, in many respects, similar in both contexts, the Rule 23 context raises additional issues unique to class actions.

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[11] As noted above, another pending petition, *Exxon Corp. v. Allapattah Services, Inc.*, No. 04-____ (filed July 14, 2004), raises the related question whether § 1367 authorizes supplemental jurisdiction over the claims of Rule 23 plaintiff class members who fail to satisfy the amount-in-controversy requirement.

As pointed out in the petition for certiorari filed July 14, 2004 in *Exxon Corp. v. Allapattah Services, Inc.*, No. 04-____, at 15-16, one such issue arises at the very threshold, in determining whether there is a "civil action of which the district courts have original jurisdiction." In the Rule 20 context, when one plaintiff brings claims meeting the jurisdictional amount against diverse defendants, jurisdiction over that dispute exists under § 1332. It is entirely clear that the joinder of additional diverse plaintiffs with similar claims lacking the jurisdictional amount, and thus not within the court's § 1332 jurisdiction, does not destroy diversity jurisdiction over the first plaintiff's claims. *See infra* note 14.[12] Exxon argues that it is significant that "a class action is a representative suit," and further contends that a "federal court does not have original jurisdiction over a class or representative action in which unnamed class members do not satisfy the amount in controversy requirement." Exxon Pet. at 16.

Further, in the class action context, the Court will be confronted with the question whether the separate claims of different plaintiffs stemming from different incidents and aggregated for purposes of Rule 23 constitute "part of the same case or controversy under Article III," which is a prerequisite to the triggering of supplemental jurisdiction under § 1367(a). By contrast, Rule 20 joinder, by definition, applies only with respect to claims "arising out of the same transaction, occurrence, or series of transactions or occurrences." Fed. R. Civ. P. 20(a).

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[12] It appears, in contrast, that the addition of non-diverse plaintiffs, which is not at issue in this case, does leave the court without jurisdiction under § 1332, although that fact apparently does not foreclose a court from proceeding with the case by dismissing the non-diverse parties. *See Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 831 (1989).

Also, § 1367(b) expressly addresses its application in the context of Rule 20 (excepting only application to Rule 20 defendants, but not plaintiffs, 28 U.S.C. § 1367(b)), but not in the context of Rule 23. Therefore, construction of the statute as it applies in the class-action context requires a textual analysis in the absence of the express statutory guidance available in the Rule 20 context. *See, e.g.*, *Jacobson v. Ford Motor Co.*, No. 98 C 742, 1999 U.S. Dist. LEXIS 16213, at *32 (N.D. Ill. Sept. 30, 1999) (noting textual distinction between Rules 20 and 23 in the statute); *cf. Allapattah*, 333 F.3d at 1255 ("Notably, Federal Rule of Civil Procedure 23, which pertains to class actions, is not one of the enumerated exceptions" in § 1367(b).).

Moreover, to the extent that the legislative history of § 1367 were to enter the statutory analysis, it would affect differently the statute's application in the Rule 20 and class-action contexts. For example, proponents of the view that all plaintiffs must meet the jurisdictional-amount requirement can point to language from the House Report stating that § 1367 "is not intended to affect the jurisdictional requirements of 28 U.S.C. §1332 in diversity-only class actions." H. Rep. No. 101-734, at 29 (Sept. 21, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, 6875. *See Allapattah Servs., Inc.*, 362 F.3d at 774 (Tjoflat, J., dissenting from denial of rehearing en banc). No parallel language can be found directly addressing Rule 20 joinder in the same way.

Whatever one's preliminary answer to the question whether a holding in one of these two contexts necessarily compels the same result in the other context,[13] the differences

[13] The courts have differed on the answer to this question. *Compare* Pet. App. at 32a n.19 (holding that § 1367 preserves the rule of *Clark* but stating that "the application of § 1367 to diversity-only class actions is a different problem for several reasons"), *with Meritcare*, 166 F.3d at 218 (concluding that § 1367 preserves both *Clark* and *Zahn* and that the *Zahn*

set forth above are reason enough for the Court to consider the issues separately, and to resolve the statute's application in the Rule 20 context before undertaking to apply it in class action cases. The textual argument for allowing supplemental Rule 20 plaintiffs who do not satisfy the amount-in-controversy requirement is simpler and more compelling. Also, as Judge Easterbrook has noted, because allowing joined Rule 20 plaintiffs into federal court involves a far more modest expansion of jurisdiction, it would be "easy to imagine [the Congress] wanting to overturn *Clark* but not *Zahn*; it is much harder to imagine wanting to overturn *Zahn* but not *Clark*, and we have no reason to believe that Congress harbored such a secret desire." *Stromberg*, 77 F.3d at 931. Deciding the Rule 20 issue first would thus allow an incremental approach to the statute, clarifying its reach in a more modest context before considering more aggressive applications.

This is precisely what the Court did in considering the analogous issues under the regime that existed prior to the enactment of § 1367. Following the enactment of the Federal Rules of Civil Procedure, the Court first resolved the jurisdictional requirements in multi-plaintiff cases in the non-class context. *See Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939). When the Court addressed the issue in the class context, it did so expressly by reference to the general rule set out in *Clark*, and asked whether the special context of the class action compelled any different result. *See Zahn*, 414 U.S. at 292 (noting that the class issue "is governed by the rationale of this Court's prior cases" in the non-class

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line of cases "applies equally to joinder cases and class actions"); *Stromberg*, 77 F.3d at 931 ("Section 1367(a) has changed the basic rule by authorizing pendent-party jurisdiction, and that change affects *Clark* and *Zahn* equally."); *and* Pet. App. at 35a (Torruella, J., dissenting) ("[F]or § 1367 purposes, *Clark* and *Zahn* stand for the same principle.").

context); *id.* at 302 (relying upon "the accepted approach to cases involving ordinary joinder of plaintiffs with separate and distinct claims"). The same order of decision is appropriate with respect to the same issues under the new regime implemented by § 1367.

IV. THE DECISION OF THE COURT BELOW CANNOT BE RECONCILED WITH THE LANGUAGE OF § 1367

Interpretation of an act of Congress begins, of course, with the language of the statute itself. *Lamie v. United States Trustee,* 124 S. Ct. 1023, 1030 (2004). As a general rule, one "must presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain,* 503 U.S. 249, 253-54 (1992).

In the context of multiple plaintiffs joined in a case pursuant to Rule 20, some of whom lack the required amount-in-controversy, the application of § 1367 is straightforward. Section 1367(a) describes both the triggering event for the exercise of supplemental jurisdiction and the nature of the claims and parties to which that jurisdiction extends. Section 1367(b) sets forth specific exceptions to the exercise of that jurisdiction, which are applicable in diversity cases brought under § 1332.

The triggering event for the exercise of supplemental jurisdiction is the existence of "any civil action of which the district courts have original jurisdiction." The lawsuit filed here in the District of Puerto Rico was such a case. The complaint as filed satisfied the requirements of complete diversity and, as held by the court below, satisfies the amount-in-controversy requirement as to the injured child, Beatriz. No one has ever argued — nor could they — that there was a basis for dismissal of the entire action on the

ground that the other plaintiffs named in the complaint failed to satisfy that requirement.[14] The district court clearly had jurisdiction over Beatriz's claims, and only the claims of the co-defendants were subject to dismissal under § 1332. Thus, it necessarily follows that the original suit embodying the claims of Beatriz was a "civil action of which the district court[] ha[d] original jurisdiction."

That much being clear, § 1367(a) expressly extends to the district court further "supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III." The statute further makes explicit that this supplemental jurisdiction is not limited to additional claims by the original parties, but "shall include claims that involve the joinder or intervention of additional parties."

Here, all of the claims alleged by all of the parties plainly are part of the same "case or controversy." That is, they arise from the injury to Beatriz involving the tuna can — a single "transaction" or "occurrence," one and the same "nucleus of operative fact." *See, e.g., City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 164-65 (1997). Accordingly, the affirmative requirements of § 1367(a) exist for the exercise of supplemental jurisdiction.

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[14] Where some plaintiffs but not others meet the jurisdictional minimum in diversity cases, courts routinely dismiss the claims only of the affected plaintiffs and retain jurisdiction over the valid claims of the remaining plaintiffs. *See, e.g.*, *Hymer v. Chai*, 407 F.2d 136, 137-39 (9th Cir. 1969); *United Pac./Reliance Ins. Cos. v. City of Lewiston*, 372 F. Supp. 700, 704-05 (D. Idaho 1974); *Robison v. Castello*, 331 F. Supp. 667, 669-70 (E.D. La. 1971); *Ciaramitaro v. Woods*, 324 F. Supp. 1388, 1390 (E.D. Mich. 1971); *Rompe v. Yablon*, 277 F. Supp. 662, 665 (S.D.N.Y. 1967). Indeed, that is precisely what the First Circuit did in this case. Pet. App. 33a.

This is true notwithstanding the argument originally articulated by Professor Pfander, 148 U. Pa. L. Rev. 109, 134-137, and adopted by the majority below, that the statute should be given a "sympathetic reading" that preserves this Court's pre-existing decisions in *Clark* and *Zahn* — and thus bars claims of co-plaintiffs who lack the amount-in-controversy. To achieve that result, Pfander's reading construes the "original jurisdiction" requirement triggering supplemental jurisdiction as satisfied only when the district court has § 1332 jurisdiction over the entire action as filed. By that standard, the present action is not one "of which the district courts have original jurisdiction" — even though there was indisputable jurisdiction to resolve Beatriz's claims — because § 1332 did not give the court power to resolve the claims of the other plaintiffs.

This interpretation is fatally flawed, most obviously, because it denies the existence of "original jurisdiction" where such jurisdiction plainly exists.[15] Beyond that, it

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[15] The court below drew support for its conclusion from the fact that 28 U.S.C. § 1441, the general removal statute, which allows removal only if the "civil action" in question is one "of which the district courts . . . have original jurisdiction," § 1441(a), has been construed to "prohibit removal unless the entire action, as it stands at the time of removal, could have been filed in federal court in the first instance." Pet. App. 21a-22a. The court noted that "[b]y the time Congress enacted section 1367 in 1990, this interpretation of section 1441(a) was well-settled," and thus concluded that "Congress purposefully employed language in section 1367(a) that had already been interpreted in section 1441 to incorporate the traditional doctrines of federal jurisdiction — including . . . *Clark*." Pet. App. 22a.

This reasoning is seriously flawed on several grounds. First, this Court has directly addressed the interaction of § 1441 and § 1367, and has rejected the sort of claim-specific interpretation of the removal statute assumed by the court below. When the district courts would have had original jurisdiction over some claim in the case, the entire action is removable under § 1441 so long as the accompanying claims over which

there is no original federal jurisdiction fall within the requirements for supplemental jurisdiction under § 1367. *City of Chicago*, 522 U.S. at 165. Requiring "that we first determine whether [a plaintiff's] state claims constitute 'civil actions' within a district court's 'original jurisdiction'" would "effectively read the supplemental jurisdiction statute out of the books: The whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking." *Id.* at 167.

Second, the court's conclusion that "section 1367's 'original jurisdiction' requirement [should be] consistent with the settled meaning of identical language in 28 U.S.C. 1441," Pet. App. 21a, makes little sense. The question at hand is not about the meaning of the words "original jurisdiction," but about the scope of the "civil action" referred to in each instance. And in the removal context, where the plaintiff is the master of his own complaint, *Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002); *Caterpillar Inc. v. Williams*, 482 U.S. 386, 398-99 (1987), one would expect that a defendant who wishes to remove a case to federal court would be required to take the case as plaintiff has pled it. Where the complaint as drafted is not within the jurisdiction of the federal court, no principle or doctrine exists that will force the plaintiff to modify it in order to confer such jurisdiction. Nor may the defendant unilaterally sever parties or claims, included by the plaintiff, in order to achieve that result. The reference to a "civil action" in § 1441 thus refers quite naturally to the complaint as drafted by the plaintiff.

No parallel justification exists in the context of § 1367 for construing the words "any civil action of which the district courts have original jurisdiction" to incorporate the same condition that jurisdiction must exist for the entire action as framed by the plaintiff. To the contrary, the facial purpose of the supplemental jurisdiction statute is to confer jurisdiction over claims and parties that are beyond the court's jurisdictional reach based solely on §§ 1331 and 1332. The natural reading of the words here leads to the conclusion that when there is a civil action — *"any civil action"* — over which the federal district court has original jurisdiction, the predicate for the exercise of supplemental jurisdiction (subject to the other limitations and qualifications of § 1367 (a), (b), and (c)) is present.

Further, § 1367(b), by expressly denying supplemental jurisdiction for the purpose of joining under Rule 20 *defendants* who could not otherwise be joined under § 1332, appears to contemplate that such jurisdiction is

ignores the fact that the whole point of § 1367 is to confer upon the federal court additional jurisdiction, beyond what is possible under either § 1331 or § 1332. If the essential predicate for the exercise of supplemental jurisdiction were really the existence of § 1331 or § 1332 jurisdiction over every aspect of a plaintiff's complaint, then the supplemental jurisdiction would have no effect at all on the claims or parties who may be named in the original complaint. Such a result is sharply at odds with Congress's undisputed desire to abrogate this Court's holding in *Finley*, as well as with § 1367(a)'s express provision extending supplemental jurisdiction to additional claims and additional parties, to the extent that the claims involved are part of the same "case or controversy" as the claims already within the jurisdiction of the court.

If one thus concludes that the affirmative requirements of § 1367(a) are met, one must further consider the provisions of § 1367(b), which expressly qualify and limit the grant of supplemental jurisdiction in diversity cases. In drafting § 1367(b), Congress obviously had in mind, and expressly imposed, certain limitations — but not others — on the use of supplemental jurisdiction to extend federal judicial power beyond the traditional limits of the diversity jurisdiction. It did this by expressly providing that any joinder of specified parties and/or claims, pursuant to particular rules of procedure, is permissible only if consistent with the requirements of § 1332.

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available to join *plaintiffs*, if the remaining requirements of § 1367 are met. These provisions regarding Rule 20 joinder cannot be reconciled with the so-called "sympathetic reading" of § 1367, under which § 1332 jurisdiction over the entire complaint is an essential prerequisite to any exercise of supplemental jurisdiction. Under that reading, supplemental jurisdiction to support Rule 20 joinder of additional plaintiffs exists only in those cases where it is not needed because § 1332 jurisdiction already exists.

Specifically, the statute states that the requirements of § 1332 must be met with regard to "claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24" of the Federal Rules, and "claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules."

Thus, plaintiffs in a diversity suit are expressly required to satisfy the requirements of § 1332 with regard to any claims against defendants whose joinder is to be justified under Rule 20 — which allows joinder of multiple parties in connection with claims "arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a). Section 1367 thus will not allow a plaintiff to join multiple defendants as to whom plaintiff does not meet the amount-in-controversy requirement.

At the same time, § 1367(b) creates no parallel exception for multiple plaintiffs who voluntarily join in one complaint as allowed by Rule 20. The only reasonable conclusion is that § 1367 authorizes supplemental jurisdiction over multiple plaintiffs who join in one complaint under Rule 20 but do not all meet the amount-in-controversy requirement of § 1332, but no such jurisdiction over multiple defendants who plaintiff seeks to bring into federal court although the amount-in-controversy is lacking.[16]

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[16] Such a jurisdictional scheme is perfectly sensible. Congress could well have sought to reserve supplemental jurisdiction in the diversity context as a tool by which willing plaintiffs with § 1332 jurisdiction against certain defendants can join together with other plaintiffs in one complaint to assert claims against those defendants arising from the same case or controversy, even though some plaintiffs lack the amount-in-controversy. Allowing such voluntary joinder of co-plaintiffs to pursue factually-related claims against defendants already in federal court

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Of Counsel:

FREDDIE PEREZ-GONZALEZ
FREDDIE PEREZ-GONZALEZ & ASSOC., P.S.C.
Home Mortgage Plaza
4th Floor, Suite 433
Hato Rey, PR 00918
(787) 751-4334

DONALD B. AYER
(*Counsel of Record*)
GREGORY A. CASTANIAS
MICHAEL S. FRIED
JULIA C. AMBROSE
CHRISTIAN G. VERGONIS
JONES DAY
51 Louisiana Avenue, N.W.
Washington, DC 20001
(202) 879-3939

Counsel for Petitioner

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pursuant to § 1332, is quite different than asserting federal court jurisdiction over new defendants or adding new plaintiffs not voluntarily joined by the existing plaintiffs, all in connection with only state law claims and in the absence of § 1332 jurisdiction. Section 1367(b) thus, in part, prevents the forced inclusion in diversity actions of defendants as to whom the requirements of § 1332 are not satisfied, or of similarly situated plaintiffs who the original plaintiffs are unwilling to join with under Rule 20.