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# Supreme Court Cordially Invited You to Sue in Federal Court: Hope You Don't Mind Waiting, The

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# The Supreme Court Cordially Invites You to Sue in Federal Court: Hope You Don't Mind Waiting

*Exxon Mobil Corp. v Allapattah Services, Inc.*[1]

## I. INTRODUCTION

Congestion in the federal judiciary is so prevalent that it has become an afterthought. From the outset of their introductory Federal Civil Procedure course, most law students learn that any attorney who brings an action in a federal court better be prepared to wait. A recent report by the Federal Judicial Center indicated that the average time between filing and adjudication of issues in federal district courts was approximately two years.[2] It can reasonably be asserted that this length of time is directly proportional to the amount of cases on the federal docket. Therefore, any step to reduce the caseload would likely be a beneficial step toward alleviating the congestion and decreasing the amount of time it takes to try a case in federal court.

This Note argues that in deciding *Exxon Mobil Corp. v. Allapattah Services Inc.*, the Supreme Court of the United States may have better served the federal judiciary by reading 28 U.S.C. § 1367's conferral of supplemental jurisdiction narrowly so as to preclude district courts from extending jurisdiction to diversity action plaintiffs whose claims fail to meet the statutorily required minimum amount in controversy.

## II. FACTS AND HOLDING

In 1983, Exxon Mobil Corporation suggested that its gasoline dealers implement a pricing system in which the dealers would charge customers who paid cash for gasoline slightly less money than customers who paid with credit cards.[3] Exxon encouraged cooperation with the pricing scheme by charging the dealers a processing fee on gasoline sales paid by credit card.[4] Exxon promised to offset this fee by charging dealers lower wholesale gasoline prices.[5] Exxon adhered to this promise for approximately six months and

1. 545 U.S. 546 (2005).

2. JUDICIAL FACTS AND FIGURES, TABLE 2.1—CIVIL CASES FILED BY JURISDICTION, *available at* http://www.uscourts.gov/judicialfactsfigures/2006/Table408.pdf [hereinafter JUDICIAL FACTS].

3. Allapattah Servs., Inc. v. Exxon Corp., 333 F.3d 1248, 1252 (11th Cir. 2003), *aff'd*, 545 U.S. 546 (2005).

4. *Id.*

5. *Id.*

then ceased providing the lowered price without informing the dealers.[6] In 1991, Exxon's failure to uphold its agreement was discovered, and 10,000 gasoline dealers filed a class action lawsuit in the United States District Court for the Northern District of Florida.[7] The dealers claimed that Exxon had breached contractual obligations by intentionally and systematically overcharging them for wholesale gasoline and invoked the federal court's diversity jurisdiction to hear the case under 28 U.S.C. § 1332(a).[8]

After the jury unanimously ruled in the dealers' favor, the district court certified the case to the Eleventh Circuit Court of Appeals for interlocutory review.[9] The district court sought appellate guidance to determine whether it had properly exercised supplemental jurisdiction under 28 U.S.C. § 1367 over the claims of class members who did not meet the $75,000 minimum amount in controversy required by § 1332(a).[10] The Eleventh Circuit held that § 1367 "clearly and unambiguously provides . . . the authority in diversity class actions to exercise supplemental jurisdiction over the claims of class members who do not meet the minimum amount in controversy as long as the district court has original jurisdiction over the claims of at least one of the class representatives."[11]

Meanwhile, the First Circuit Court of Appeals took a different position on the meaning of § 1367.[12] In 1999, Beatriz Blanco-Ortega, a nine year old Puerto Rican girl, cut her finger on a can of Star-Kist tuna and sustained injuries greater than might be typically expected from such a routine incident.[13] Blanco-Ortega's finger required surgery to repair damaged nerves and tendons and was permanently scarred and disabled.[14] Blanco-Ortega, along with her parents and sister, filed suit in the United States District Court for the District of Puerto Rico, invoking the court's diversity jurisdiction under § 1332.[15]

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6. *Id.*

7. *Id.*

8. Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 546 (2005).

9. *Id.* Through interlocutory review, district courts can obtain appellate guidance to determine issues that involve a "substantial ground for difference of opinion" and where immediate appellate review "may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292 (2000).

10. *Allapattah*, 545 U.S. at 550.

11. Allapattah Servs., Inc. v. Exxon Corp., 333 F.3d 1248, 1256 (11th Cir. 2003), *aff'd*, 545 U.S. 546 (2005).

12. *Allapattah*, 545 U.S. at 551.

13. Rosario Ortega v. Star-Kist Foods, Inc., 370 F.3d 124, 126 (1st Cir. 2004), *rev'd sub nom.* Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546 (2005).

14. *Id.* at 129.

15. *Id.* at 126. The plaintiffs' choice to bring this state law tort claim in federal court was undoubtedly attributable to the unavailability of civil jury trials in the local courts of Puerto Rico. *Id.*

Blanco-Ortega claimed that she had suffered physical damages of not less than $500,000 and emotional damages of not less than $400,000.[16] Her parents and sister each claimed they had suffered emotional damages in excess $150,000, and her mother additionally sought approximately $26,000 in past and future medical expenses.[17] Star-Kist moved for summary judgment, claiming that no plaintiff alleged facts sufficient to indicate damages in excess of the $75,000 minimum required to sustain the federal court's diversity jurisdiction under § 1332.[18] The district court agreed and dismissed the case for lack of jurisdiction.[19]

The First Circuit held that the unique nature of Blanco-Ortega's injury presented at least the possibility that she could meet the necessary amount in controversy for diversity jurisdiction.[20] The court agreed with the district court's conclusion that Blanco-Ortega's family members' claims could not meet the requisite amount and considered whether the district court could nonetheless exercise supplemental jurisdiction over the claims under § 1367.[21] The court held that supplemental jurisdiction is authorized "only when the district court has original jurisdiction over the action, and that in a diversity case original jurisdiction is lacking if one plaintiff fails to satisfy the amount-in-controversy requirement."[22]

The Supreme Court consolidated these cases to address the difference of opinion between the Courts of Appeals concerning the meaning of § 1367.[23] The Court resolved the dispute by holding that, where the other elements of jurisdiction are present and at least one plaintiff in an action satisfies the $75,000 minimum amount in controversy required by § 1332 to sustain diversity jurisdiction, federal courts may exercise supplemental jurisdiction under § 1367 over other plaintiffs' claims in the same Article III case or controversy, even if those claims would not individually satisfy the requisite statutory amount.[24]

## III. LEGAL BACKGROUND

Article III of the United States Constitution vests the judicial power of the United States in the Supreme Court "and in such inferior Courts as the Congress may from time to time ordain and establish."[25] This provision gives

16. *Id.* at 127.
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 551 (2005).
23. *Id.* at 549.
24. *Id.*
25. U.S. CONST. art. III, § 1.

Congress the power to create lower federal courts and the discretion to extend to those courts less than the full jurisdiction allowed by Article III.[26] As a result, a lower federal court (a district court) may hear a case only where it has both Constitutional authority under Article III and statutory authority granted by Congress.[27]

The Constitution extends federal judicial power over many different cases, such as those arising under the Constitution and the laws of the United States (federal question cases) and those between citizens of different states (diversity cases).[28] Additionally, Congress enacted 28 U.S.C. § 1331, which gives the district courts original jurisdiction in federal question cases[29] and 28 U.S.C. § 1332, which gives the district courts original jurisdiction in diversity cases.[30] Congress enabled the district courts to hear federal question cases in order to provide a federal forum in which plaintiffs can vindicate federal rights.[31] And the rationale traditionally cited for Congress's conferral of diversity jurisdiction upon the district courts is the desire to provide a neutral forum for out-of-state litigants who might face geographic bias in foreign state courts.[32] However, "[t]o ensure that diversity jurisdiction does not flood the federal courts with minor disputes, [Congress] requires that the matter in controversy in a diversity case exceed a specified amount, currently $75,000."[33]

One of the first cases to address the issue of whether district courts can exercise jurisdiction over claims that fail to meet a statutorily required amount in controversy was *Clark v. Paul Gray, Inc.*,[34] which was decided in 1939. In *Clark*, numerous plaintiffs filed suit in a district court alleging violation of a federal statute.[35] The plaintiffs sought to invoke the district court's federal question jurisdiction, which, at that time, had "an amount-in-

26. Sheldon v. Sill, 49 U.S. 441, 446, 449 (1850).

27. *Allapattah*, 545 U.S. at 552.

28. U.S. CONST. art. III, § 2, cl. 1.

29. 28 U.S.C. § 1331 (2000).

30. 28 U.S.C. § 1332.

31. *Allapattah*, 545 U.S. at 552.

32. ERWIN CHEMERINSKY, FEDERAL JURISDICTION 289 (4th ed. 2003). Professor Chemerinsky points out that this rationale was most famously articulated by Chief Justice John Marshall's statement

> [h]owever true the fact may be, that the tribunals of the states will administer justice as impartially as those of the nation, to parties of every description, it is not less true that the constitution itself either entertains apprehensions on this subject, or views with such indulgence the possible fears and apprehensions of suitors, that it has established national tribunals for the decision of controversies between . . . citizens of different states.

*Id.* (quoting Bank of United States v. Deveaux, 9 U.S. (5 Cranch) 61, 87 (1809)).

33. *Allapattah*, 545 U.S. at 552 (citing 28 U.S.C. § 1332(a)).

34. 306 U.S. 583 (1939).

35. *Id.* at 588.

controversy requirement analogous to the amount-in-controversy requirement for diversity cases."[36] Only one of the plaintiffs alleged a claim that met the requisite amount, and the Court held that only that plaintiff could invoke the district court's jurisdiction.[37] The Court expressly rejected the argument that all the plaintiffs' claims could be aggregated to meet the required amount and dismissed the other plaintiffs' claims.[38]

In the 1973 case *Zahn v. International Paper Co.*,[39] the Supreme Court applied its holding in *Clark* to class actions. The plaintiff class members in *Zahn* filed a state law tort claim in a district court based on diversity jurisdiction under § 1332.[40] The district court found that, although each of the named class members alleged sufficient claims, many of the unnamed class members failed to state claims that satisfied the required amount in controversy.[41] Thus, the district court refused to allow those plaintiffs with insufficient claims to proceed in the litigation.[42]

The Supreme Court upheld the district court's actions based on its holding in *Clark*.[43] The Court held that the amount in controversy element of § 1332 "requires dismissal of those litigants whose claims do not satisfy the jurisdictional amount, even though other litigants assert claims sufficient to invoke the jurisdiction of the federal court."[44] In the *Zahn* Court's opinion, the "distinction and rule that multiple plaintiffs with separate and distinct claims must each satisfy the jurisdictional-amount requirement for suit in the federal courts were firmly rooted in prior cases dating from 1832, and have continued to be the accepted construction of the controlling statutes."[45] In a succinct summary, the Court noted that "one plaintiff may not ride in on another's coattails."[46]

Notwithstanding these cases, the Supreme Court has long recognized the concept of supplemental jurisdiction, which allows district courts to hear claims that do not have an individual Constitutional or statutory basis for original federal jurisdiction.[47] An early Supreme Court case that addressed supplemental jurisdiction was the 1966 case *United Mine Workers of America v. Gibbs*.[48] In *Gibbs*, the plaintiff filed both federal and state law claims

36. *Allapattah*, 545 U.S. at 554-55.
37. *Clark*, 306 U.S. at 590.
38. *Id.*
39. 414 U.S. 291 (1973).
40. *Id.* at 291-92.
41. *Id.* at 292.
42. *Id.*
43. *Id.* at 295.
44. *Id.*
45. *Id.* at 294-95 (footnotes omitted).
46. *Id.* at 301 (quoting Zahn v. Int'l Paper Co., 469 F.2d 1033, 1035 (1972)).
47. *See, e.g.*, United Mine Workers of Am. v. Gibbs, 383 U.S. 715 (1966).
48. *Id.*

against a single defendant in a district court.[49] The Supreme Court had to consider whether it was proper for the district court to exercise jurisdiction concurrently over both federal and state law claims.[50]

Adhering to a concept know as pendent jurisdiction, the Court held that jurisdiction over the plaintiff's state law claims was proper.[51] Pendent jurisdiction, the Court held, exists where the relationship between a federal law claim and a state law claim is such that they comprise the same Article III controversy, or "but one constitutional case."[52] The Court held that claims comprise the same Article III controversy if they would ordinarily be expected to be tried in one judicial proceeding when considered without regard to the claims' federal or state character.[53]

Proper application of pendent jurisdiction under *Gibbs* was based on two qualifications.[54] First, the federal claim must be of substance sufficient to confer jurisdiction on the district court.[55] Second, "[t]he state and federal claims must derive from a common nucleus of operative fact."[56] Should a case satisfy these qualifications, the Court held that judicial economy, convenience, and fairness to litigants dictate that a district court may permissibly entertain any state law claims a plaintiff brings in addition to federal claims.[57] This doctrine later became known as pendent-claim jurisdiction.[58]

In the 1976 case *Aldinger v. Howard*,[59] the Supreme Court again addressed the doctrine of pendent jurisdiction. In *Aldinger*, the plaintiff filed suit in a district court alleging various federal and state law claims against a group of county commissioners and the county for which they worked.[60] Because the federal statute under which the plaintiff filed suit allowed suits only against "person[s]," the district court held that the plaintiff could not assert the federal claims against the county.[61] The plaintiff claimed that the district court could nonetheless exercise "pendent-party" jurisdiction over the county because the claims against the commissioners and the county arose from a common nucleus of operative fact.[62]

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49. *Id.* at 720.
50. *Id.* at 721.
51. *Id.* at 725.
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.* at 726. The Court also recognized that pendent jurisdiction "need not be exercised in every case in which it is found to exist. . . . pendent jurisdiction is a doctrine of discretion, not of plaintiff's right." *Id.*
58. Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 559 (2005).
59. 427 U.S. 1 (1976).
60. *Id.* at 4.
61. *Id.* at 5.
62. *Id.* at 5-6.

The Supreme Court rejected this contention and held that a district court could not exercise jurisdiction over parties who would not otherwise be in federal court merely because the claims against those parties were factually related to claims over which the court did have jurisdiction.[63] Holding otherwise would, in the Court's opinion, "run counter to the well-established principle that federal courts, as opposed to state trial courts of general jurisdiction, are courts of limited jurisdiction marked out by Congress."[64] The Court also noted that this type of jurisdiction was not granted to the district courts by Congress,[65] which was a point the Court failed to address in *Gibbs*.[66]

Neither *Gibbs* nor *Aldinger* sufficiently addressed the problem created by the lack of statutory authority for pendent jurisdiction. In the 1989 case *Finley v. United States*,[67] the Court commented on this omission from previous opinions. In *Finley*, the plaintiff filed a federal question suit in a district court against the Federal Aviation Administration.[68] As in *Aldinger*, the plaintiff in *Finley* asked the district court to adjudicate state law claims arising from a common nucleus of operative fact against defendants over whom the court had no independent basis for jurisdiction.[69] The primary difference from *Aldinger* was that the statute under which the plaintiff sued in *Finley* gave exclusive jurisdiction to the district court in actions filed under the statute.[70] Thus, if the district court elected not to exercise jurisdiction, the plaintiff's only choice would have been to file a separate suit in a state court to address the state claims.[71]

The Court noted that, in order for a district court to exercise jurisdiction, "[t]he Constitution must have given to the court the capacity to take it, *and an act of Congress must have supplied it* . . . . [t]o the extent that such action is not taken, the power lies dormant."[72] Despite the lack of statutory authority, the Court reaffirmed *Gibbs* by holding that district courts may exercise supplemental jurisdiction over claims against parties properly within the jurisdiction of the federal court arising out of the same nucleus of operative fact.[73] The Court held that, in such cases, "the jurisdictional statutes should be read broadly, on the assumption that in this context Congress intended to authorize courts to exercise their full Article III power to dispose of an 'entire action

63. *Id.* at 9.
64. *Id.* at 15.
65. *Id.* at 17.
66. *See generally* United Mine Workers of Am. v. Gibbs, 383 U.S. 715 (1966).
67. 490 U.S. 545 (1989).
68. *Id.* at 546.
69. *Id.*
70. Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 578 (Ginsburg, J., dissenting).
71. *Id.*
72. *Finley*, 490 U.S. at 548 (quoting Mayor of Nashville v. Cooper, 73 U.S. 247, 252 (1868)) (omission in original).
73. *Allapattah*, 545 U.S. at 553 (citing *Finley*, 490 U.S. at 549).

before the court [which] comprises but one constitutional case.'"[74] The Court however declined to extend supplemental jurisdiction to cases such as this in which claims are asserted against "pendent-parties" over whom the district court has no independent basis for jurisdiction.[75]

To briefly summarize the state of the law in 1989, in cases where a district court had original jurisdiction over one claim, the "jurisdictional statutes implicitly authorized supplemental jurisdiction over all other claims between the same parties arising out of the same Article III case or controversy."[76] And, "even when the district court had original jurisdiction over one or more claims between particular parties, the jurisdictional statutes did not authorize supplemental jurisdiction over additional claims involving other parties."[77]

Although the Supreme Court took the first steps to develop supplemental jurisdiction, Congress retains the ultimate power to determine the jurisdiction of the lower federal courts.[78] In 1990, Congress passed the Judicial Improvement Act, which enacted 28 U.S.C. § 1367, which delineates the instances in which district courts may exercise supplemental jurisdiction.[79] Section 1367 dictates "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."[80] This supplemental jurisdiction includes "claims that involve the joinder or intervention of additional parties."[81]

The statute also provides that, in any civil action in which a district court has original jurisdiction solely on the basis of diversity under 28 U.S.C. § 1332,

> the district courts shall not have supplemental jurisdiction . . . 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.[82]

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74. *Id.* (quoting *Finley*, 490 U.S. at 549) (alternation in original).
75. *Finley*, 490 U.S. at 556.
76. *Allapattah*, 545 U.S. at 556.
77. *Id.* at 557.
78. *See, e.g., Finley*, 490 U.S. at 556.
79. *Allapattah*, 545 U.S. at 557.
80. 28 U.S.C. § 1367(a) (2000).
81. *Id.*
82. *Id.* § 1367(b).

Finally, § 1367 affords district courts the discretion to decline to extend supplemental jurisdiction to (1) claims that raise novel or complex issues of state law, (2) claims that substantially predominate the claim over which the district court has original jurisdiction, (3) cases in which the district court has dismissed all claims over which it has jurisdiction, or (4) cases in which exceptional circumstances or other compelling reasons exist to decline jurisdiction.[83]

Interpretation of § 1367 created a major rift in the federal appellate courts. As previously mentioned, the Eleventh Circuit held that § 1367 "clearly and unambiguously provides . . . the authority in diversity class actions to exercise supplemental jurisdiction over the claims of class members who do not meet the minimum amount in controversy as long as the district court has original jurisdiction over the claims of at least one of the class representatives."[84] The Fourth, Fifth, Sixth, and Seventh Circuits agreed with the Eleventh Circuit's interpretation of § 1367.[85] However, the First Circuit held that supplemental jurisdiction is authorized "only when the district court has original jurisdiction over the action, and that in a diversity case original jurisdiction is lacking if one plaintiff fails to satisfy the amount-in-controversy requirement."[86] The Third, Eighth, and Tenth Circuits each adhered to this view, with the Eighth Circuit applying it specifically to class actions.[87]

## IV. THE INSTANT DECISION

In *Exxon Mobil Corp. v. Allapattah Services, Inc.*, the Supreme Court decided whether a federal court sitting in diversity can exercise supplemental jurisdiction under 28 U.S.C. § 1367 over plaintiffs whose claims fail to meet the $75,000 minimum amount in controversy required by 28 U.S.C. § 1332.[88] To resolve disagreement between the federal appellate courts, the Court em-

83. *Id.* § 1367(c).

84. Allapattah Servs., Inc. v. Exxon Corp., 333 F.3d 1248, 1256 (11th Cir. 2003).

85. Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 550 (2005). *See also* Rosmer v. Pfizer, Inc., 263 F.3d 110, 114 (4th Cir. 2001); *In re* Abbott Labs., 51 F.3d 524, 529 (5th Cir. 1995); Olden v. LaFarge Corp., 383 F.3d 495, 506-07 (6th Cir. 2004); Stromberg Metal Works, Inc. v. Press Mech., Inc., 77 F.3d 928, 931 (7th Cir. 1996); *In re* Brand Name Prescription Drugs Antitrust Litig., 123 F.3d 599, 607 (7th Cir. 1997).

86. *Allapattah*, 545 U.S. at 551.

87. *Id. See also* Meritcare, Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 218-22 (3d Cir. 1999), *abrogated by* Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546 (2005); Trimble v. Asarco, Inc., 232 F.3d 946, 961-63 (8th Cir. 2000), *abrogated by Allapattah*, 545 U.S. 546; Leonhardt v. W. Sugar Co., 160 F.3d 631, 640-41 (10th Cir. 1998), *abrogated by Allapattah*, 545 U.S. 546.

88. 545 U.S. 546 (2005).

ployed a textualist approach, examining the "statute's text in light of context, structure, and related statutory provisions."[89]

Writing for the majority, Justice Kennedy noted that § 1367 "is a broad grant of supplemental jurisdiction over other claims within the same case or controversy, as long as the action is one in which the district courts would have original jurisdiction."[90] Thus, the Court had to decide "whether a diversity case in which the claims of some plaintiffs satisfy the amount-in-controversy requirement, but the claims of others [sic] plaintiffs do not, presents a 'civil action of which the district courts have original jurisdiction.'"[91] The Court determined that when a federal court "has original jurisdiction over a single claim in the complaint, it has original jurisdiction over a 'civil action' within the meaning of § 1367(a), even if the civil action over which it has jurisdiction comprises fewer claims than were included in the complaint."[92] Once a district court determines it has original jurisdiction over a civil action, it must next inquire whether "it has a constitutional and statutory basis for exercising supplemental jurisdiction over the other claims in the action."[93]

The Court then addressed the language of § 1367(b), which qualifies the broad rule of § 1367(a) and "does not withdraw supplemental jurisdiction over the claims of the additional parties at issue here."[94] Section 1367(b), by its text, applies only to diversity cases and withholds supplemental jurisdiction over the claims of plaintiffs joined under Federal Rule of Civil Procedure 19 as indispensable parties and the claims of plaintiffs who seek to intervene in an action under Rule 24.[95] However, the Court noted that the text of § 1367(b) does not withhold supplemental jurisdiction over the claims of plaintiffs permissively joined under Rule 20 (such as Beatriz Rosario-Ortega's family members from the first case in this appeal) or the claims of members of a class certified under Rule 23 (such as the gasoline dealers from the other case consolidated in this decision).[96] Because the text did not preclude the extension of jurisdiction in these cases, the Court held that the natural and necessary "inference is that § 1367 confers supplemental jurisdiction over claims by Rule 20 and Rule 23 plaintiffs."[97] The Court further noted that "[t]his inference, at least with respect to Rule 20 plaintiffs, is strengthened by the fact that § 1367(b) explicitly excludes supplemental jurisdiction over claims against defendants joined under Rule 20."[98]

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89. *Id.* at 558.

90. *Id.* The majority consisted of Justice Kennedy, Chief Justice Rehnquist, and Justices, Scalia, Souter, and Thomas. *Id.*

91. *Id.* (quoting 28 U.S.C. § 1367(a) (2000)).

92. *Id.* at 559.

93. *Id.*

94. *Id.* at 560.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

The Court then examined two theories advanced by some commentators and Courts of Appeals that contradicted this holding.[99] The first theory, the "indivisibility theory," presumes "that all claims in the complaint must stand or fall as a single, indivisible 'civil action' as a matter of definitional necessity."[100] In the Court's opinion, this theory can be easily dismissed as "inconsistent with the whole notion of supplemental jurisdiction."[101] The Court reasoned that holding otherwise would be inexplicable given the fact that supplemental jurisdiction is expressly granted to claims that do not have an independent basis for jurisdiction when plaintiffs allege a federal question.[102]

The Court also examined the "contamination theory," which asserts "that the inclusion of a claim or party falling outside the district court's original jurisdiction somehow contaminates every other claim in the complaint, depriving the court of original jurisdiction over any of these claims."[103] Like the indivisibility theory, the Court also dismissed this theory by reasoning that "the presence of a claim that falls short of the minimum amount in controversy does nothing to reduce the importance of the claims that do meet this requirement."[104] For this reason, the Court ruled that § 1367 "unambiguously overrule[d]" the holdings in *Clark* and *Zahn*, where the claims of some plaintiffs were dismissed for failing to meet the requisite amount in controversy.[105]

The Court next addressed the applicability of supplemental jurisdiction under § 1367 to additional parties.[106] The Court held that § 1367 "expressly contemplates that the court may have supplemental jurisdiction over additional parties."[107] Thus, in a civil action that is otherwise properly before a district court, the presence of additional parties does not destroy the court's original jurisdiction within the meaning of § 1367(a).[108] The Court commented that its reading of § 1367 could be viewed as creating an anomaly because the Court read § 1367 to withhold supplemental jurisdiction over plaintiffs joined as essential parties under Rule 19 but to confer supplemental jurisdiction over plaintiffs permissively joined under Rule 20.[109] The Court explained that this puzzling result could possibly have been caused by an unintentional omission Congress made when drafting the statute.[110] If that

99. *Id.* at 560-61.
100. *Id.* at 560.
101. *Id.* at 561
102. *Id.*
103. *Id.*
104. *Id.*
105. *Id.* See *supra* Part III, discussing *Clark* and *Zahn*.
106. *Allapattah*, 545 U.S. at 564.
107. *Id.*
108. *Id.*
109. *Id.* at 565.
110. *Id.*

was the case, the Court concluded that it was up to Congress to remedy the error.[111]

In conclusion, the Court held that the requirements of § 1367(a) are satisfied in cases, such as those in this appeal, "where some, but not all, of the plaintiffs in a diversity action allege a sufficient amount in controversy."[112] Therefore, the Court held that § 1367 "by its plain text overruled *Clark* and *Zahn* and authorized supplemental jurisdiction over all claims by diverse parties arising out of the same Article III case or controversy, subject only to enumerated exceptions [in § 1367(b)] not applicable in the cases now before us."[113]

Although the issue in this case had been decided, the Court proceeded to refute arguments in opposition to its holding.[114] The Court addressed an alternative reading of § 1367 as an ambiguous statute that required the statute to be evaluated beyond its plain text, specifically with an inquiry into legislative history.[115] The dissenting Justices in *Allapattah* believed that legislative history demonstrated that Congress did not intend § 1367 to overrule *Clark* and *Zahn*.[116] However, the majority summarily rejected this proposition "simply because § 1367 is not ambiguous."[117]

The Court found examining legislative history to be an unreliable and easily manipulated method of statutory interpretation, citing a memorable saying that interpreting legislative history is "an in exercise in 'looking over a crowd and picking out your friends.'"[118] Additionally, the Court feared that the materials frequently used to interpret legislative history are prepared by unelected Congressional staff members or lobbyists who may have altered records to meet their own agendas.[119] The Court indicated that such a concern may be extreme, but is at least validated by the fact that, unlike legislators, neither staff members nor lobbyists are subject to the requirements in Article I of the United States Constitution.[120]

Despite its distaste for using legislative history to interpret statutes, the Court examined the history of § 1367 to determine whether Congress intended the interpretation the Court reached in its holding.[121] The basic thrust of the Court's findings was that § 1367 restored the law as it existed prior to *Finley* and overruled the holding in *Zahn* that the claims of plaintiff class

111. *Id.* at 566.
112. *Id.*
113. *Id.* at 566-67.
114. *Id.* at 567.
115. *Id.*
116. *Id.* See *supra* Part III, for a discussion of *Clark* and *Zahn*.
117. *Allapattah*, 545 U.S. at 567.
118. *Id.* at 568 (citing Patricia M. Wald, *Some Observations on the Use of Legislative History in the 1981 Supreme Court Term*, 68 IOWA L. REV. 195, 214 (1983)).
119. *Id.*
120. *Id.*
121. *Id.* at 569.

members that failed to meet the required minimum amount in controversy must be dismissed, which, in the Congressional drafting committee's opinion, was a good idea.[122]

Justice Stevens filed a dissent that was joined by Justice Breyer.[123] The dissent stated that a statute need not be determined to be ambiguous in order to turn the legislative history as an interpretative tool.[124] However, Stevens also reasoned that § 1367 was proven to be ambiguous by the fact that Justices of the Supreme Court differed as to its meaning.[125] Justice Stevens read the legislative history of § 1367 as clearly contradictory to the majority's holding.[126] He based his opinion primarily on a House Committee report which specifically stated that § 1367 was not intended to overrule *Zahn*, which therefore meant that under § 1367 a plaintiff class member must allege a claim in excess of the statutory minimum amount in controversy in order to remain a party to the litigation.[127] The majority, in his opinion, misconstrued prior case law that has "never recognized a presumption in *favor* of expansive diversity jurisdiction."[128] Justice Stevens noted the irony in the majority opinion, that "[a]fter nearly 20 pages of complicated analysis, which explores subtle doctrinal nuances and coins various neologisms . . . announces that § 1367 could not reasonably be read another way."[129]

Justice Ginsburg also authored a dissent that was joined by Justices Stevens, O'Connor, and Breyer.[130] The dissent began by conceding that all the Justices agreed that § 1367 was intended to overturn the decision in *Finley*.[131] Ginsburg refuted the majority's contention that § 1367 is unambiguous by offering a plausible alternative reading.[132] Ginsburg took a narrower view of § 1367, which would leave *Clark* and *Zahn* in place and "does not open the way for joinder of plaintiffs, or inclusion of class members, who do not independently meet the amount-in-controversy requirement."[133] Ginsburg based this view on the proposition that "close questions of [statutory] construction should be resolved in favor of continuity against change."[134]

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122. *Id.* See *supra* Part III, for a discussion of *Finley* and *Zahn*.
123. *Allapattah*, 545 U.S. at 572 (Stevens, J., dissenting).
124. *Id.*
125. *Id.*
126. *Id.* at 572-73.
127. *Id.* at 574. *See supra* Part III, for a discussion of *Zahn*.
128. *Allapattah*, 545 U.S. at 575 (Stevens, J., dissenting).
129. *Id.* at 577.
130. *Id.* (Ginsburg, J., dissenting).
131. *Id.* See *supra* Part III, for a discussion of *Finley*.
132. *Allapattah*, 545 U.S. at 579 (Ginsburg, J., dissenting).
133. *Id.*
134. *Id.* at 594-95 (quoting David L. Shapiro, *Continuity and Change in Statutory Interpretation*, 67 N.Y.U. L. REV. 921, 925 (1992)) (alteration in original).

Ginsburg's dissent argued that the narrow interpretation of § 1367 was more consistent with the origins of § 1367 than was the majority's holding.[135] Prior to enacting § 1367, Congress commissioned a Federal Courts Study Committee to examine congestion, delay, expense, and expansion in the federal judiciary.[136] The Committee's main task was to study the "crisis in the federal courts caused by the rapidly growing caseload."[137] One of the predominate recommendations yielded by the Committee's work was the suggestion that the federal judiciary would be well-served if Congress eliminated diversity jurisdiction except for cases involving complex multi-state litigation, interpleader, and suits involving aliens.[138] Congress did not heed this suggestion, but, acting on the Committee's findings, enacted § 1367.[139] Ginsburg indicated that this legislative history compelled the narrow reading of § 1367 she advanced, so as to leave diversity jurisdiction unexpanded.[140]

## V. COMMENT

Although the majority in *Exxon Mobil Corp. v. Allapattah Services, Inc.* held that 28 U.S.C. § 1367 is by its terms unambiguous,[141] the fact that at least four Courts of Appeals and four Supreme Court Justices disagreed with the majority's interpretation of § 1367 reasonably indicates otherwise.[142] The majority adhered to a broad reading of § 1367 and held that where the other elements of jurisdiction are present and at least one plaintiff in an action satisfies the $75,000 minimum amount in controversy required by 28 U.S.C. § 1332 to sustain diversity jurisdiction, federal courts may exercise supplemental jurisdiction under § 1367 over other plaintiffs' claims in the same Article III case or controversy, even if those claims would not individually satisfy the requisite statutory amount.[143] Had the Justices in the majority (like the dissenting Justices) considered § 1367 ambiguous, they may have read the statute narrowly and reached the exact opposite outcome.[144] Indeed, both the

135. *Id.* at 579.
136. *Id.* at 582.
137. *Id.*
138. *Id.* at 583.
139. *Id.* at 583-84.
140. *Id.* at 594.
141. *Id.* at 567 (majority opinion).
142. *See, e.g.*, Rosario Ortega v. Star-Kist Foods, Inc., 370 F.3d 124, 127 (1st Cir. 2004), *rev'd sub nom.* Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546 (2005); Meritcare, Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214 (3d Cir. 1999), *abrogated by* Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546 (2005); Trimble v. Asarco, Inc., 232 F.3d 946 (8th Cir. 2000), *abrogated by Allapattah*, 545 U.S. 546; Leonhardt v. W. Sugar Co., 160 F.3d 631 (10th Cir. 1998), *abrogated by Allapattah*, 545 U.S. 546; *Allapattah*, 545 U.S. at 578-79 (Ginsburg, J., dissenting).
143. *Allapattah*, 545 U.S. at 549 (majority opinion).
144. *See id.* at 577 (Ginsburg, J., dissenting).

majority's broad reading and the dissent's narrow reading seem to be plausible interpretations of § 1367. The result in *Allapattah* then begs the question of why the majority chose a broad interpretation when a narrow interpretation likely presents the fewest possibilities for negative consequences.

By increasing the number of plaintiffs who can pursue claims in diversity actions in federal courts, a broad reading of § 1367 creates unnecessary strain on an already overtaxed federal judiciary.[145] In 1990, a report released by the Federal Courts Study Committee estimated that diversity jurisdiction accounts for approximately one of every four cases in the district courts, approximately one of every two civil trials, one of every ten appeals, and more than one of every ten dollars expended in the federal judicial budget.[146] Statistics maintained by the Federal Judicial Center indicate that by 2004 the percentage of diversity jurisdiction cases in the district courts had not significantly changed, with diversity cases comprising more than one quarter of the private civil cases filed in the federal judiciary.[147]

Since the United States Constitution vests in Congress the power to determine the jurisdiction of the lower federal courts,[148] alleviating the burden diversity jurisdiction places on the federal judiciary will require a legislative remedy. One proposed legislative action is to raise the minimum amount in controversy under § 1332.[149] Raising the statutory minimum has previously had positive effects on the diversity caseload in federal courts.[150] In 1989, the minimum amount in controversy required to invoke diversity jurisdiction was raised from $10,000 to $50,000, and in 1997 that number was again increased to the current level of $75,000.[151] In the years immediately following these statutory increases, the number of diversity cases filed significantly declined.[152] However, in both instances, the reduction in filing was short-lived.[153] For example, the 1997 increase to the minimum amount in controversy caused reduced diversity filings until 2000, but in each year since 2000, diversity filings significantly increased.[154]

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145. Though the fact that the federal judiciary is overtaxed is likely a generally accepted principle, a detailed description of the "explosion" in federal district court filings can be found in RICHARD A. POSNER, THE FEDERAL COURTS 59-77 (1985).

146. LINDA MULLENIX ET AL., UNDERSTANDING THE FEDERAL COURTS 112 n.1 (1998).

147. JUDICIAL FACTS, *supra* note 2. In 2004 there were 67,624 diversity cases filed in federal courts, while federal question cases represented the other 165,241 private civil actions filed. *Id.*

148. U.S. CONST. art. III, § 1.

149. *See* POSNER, *supra* note 145, at 146.

150. JUDICIAL FACTS, *supra* note 2.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

Additionally, some scholars have advanced the proposition that the best way for the legislature to eliminate the burden on federal courts would be to completely abolish, or at least severely restrict, diversity jurisdiction.[155] In 1969, the American Law Institute proposed a revision to diversity jurisdiction which would preclude litigants from removing cases to federal courts in states of which they are citizens.[156] And in 1990, the Federal Courts Study Committee recommended that Congress limit diversity jurisdiction to only those cases involving complex multi-state litigation, interpleader, and the claims of aliens.[157] But as Professor Erwin Chemerinsky points out, these arguments are not likely to prevail any time soon.[158] Thus, "[f]or the time being, diversity jurisdiction seems safe."[159]

Neither of these two predominantly advanced legislative remedies seems to be a viable way to dispose of the burden diversity jurisdiction imposes on the federal judiciary. Until such time as an adequate legislative remedy is advanced, the Supreme Court may be well-advised to read jurisdictional statutes narrowly so as to leave the federal judiciary as unclogged as possible. The fact that the *Allapattah* holding contradicts this proposition may be explained by the majority's unstated interest in preserving its view on proper statutory interpretation.[160]

According to one commentator, "[t]he [*Allapattah*] majority's relentless examination of the statutory text appears to have been motivated in part by concerns about the reliability of legislative history in general."[161] This theory seems consistent with Justice Kennedy's penchant for authoring opinions that refuse to use legislative history as a tool of statutory interpretation.[162]

Indeed, the *Allapattah* majority voiced two general concerns about using legislative history to interpret statutes.[163] First, "legislative history is . . . often murky, ambiguous, and contradictory."[164] Second, legislative materials, like committee reports, are subject to manipulation by unelected legislative staff

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155. *See, e.g.*, Thomas D. Rowe, Jr., *Abolishing Diversity Jurisdiction: Positive Side Effects and Potential for Further Reforms*, 92 HARV. L. REV. 963 (1979). Justice Frankfurter was also a "long-time foe of diversity." CHARLES ALAN WRIGHT & MARY KAY KANE, LAW OF THE FEDERAL COURTS 144 (6th ed. 2002).

156. MULLENIX ET AL., *supra* note 146, at 114.

157. *Id.*

158. CHEMERINSKY, *supra* note 32, at 294.

159. *Id.*

160. *Supplemental Jurisdiction – Amount in Controversy Requirement*, 119 HARV. L. REV. 317, 323 (2005) [hereinafter *Supplemental Jurisdiction*].

161. *Id.*

162. *See* Lamie v. U.S. Trustee, 540 U.S. 526 (2004); State Farm Mut. Ins. Co. v. Campbell, 538 U.S. 408 (2003); Circuit City Stores, Inc. v. Adams, 532 U.S. 105 (2001).

163. Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 568 (2005).

164. *Id.*

members of lobbyists who may have a strong incentive to alter these materials to meet their individual agendas.[165]

However, the Court did not expressly "comment . . . on whether these problems are sufficiently prevalent to render legislative history inherently unreliable in all circumstances."[166] The Court merely indicated that its members have disagreed on this issue, "suggesting that a majority does not exist for rejecting the use of legislative history in most circumstances."[167] Regardless of the Court's exact wording in the *Allapattah* opinion, the decision makes clear the Court's desire to dismiss the usefulness of legislative history in statutory interpretation.

## VI. CONCLUSION

Judicial decision-making can reasonably be portrayed as an exercise in balancing competing interests. In *Exxon Mobil Corp. v. Allapattah Services, Inc.*, the Supreme Court seemingly balanced the interest of alleviating the strain diversity cases place on already crowded federal dockets against the interest of preserving strict textualism as the most useful method of statutory interpretation. The former interest is of great practical benefit to the federal judiciary, while the latter is a theoretical distinction that is of little, if any, discernable value. Given this, it is odd that the Court chose to read 28 U.S.C. § 1367 broadly in favor of the latter interest when a completely plausible narrow reading of § 1367 would have favored the former.

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165. *Id.*
166. *Id.* at 568-69.
167. *Supplemental Jurisdiction*, *supra* note 160, at 325 n.54.