GRANTED

No. 99-391

IN THE

Supreme Court of the United States

ROBIN FREE and RENEE FREE,

Petitioners,

v.

ABBOTT LABORATORIES, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF ON THE MERITS FOR PETITIONERS

SAMUEL D. HEINS
ERIC L. OLSON
DANIEL E. GUSTAFSON
KENT M. WILLIAMS
HEINS MILLS & OLSON, P.L.C.
700 Northstar East
608 Second Avenue S.
Minneapolis, MN 55402
(612) 338-4605

MICHAEL D. HAUSFELD
Counsel of Record
DANIEL A. SMALL
MATTHEW F. PAWA
CHARLES E. TOMPKINS
COHEN, MILSTEIN, HAUSFELD
& TOLL, P.L.L.C.
1100 New York Avenue, N.W.
Suite 500 - West Tower
Washington, D.C. 20005
(202) 408-4600

Attorneys for Petitioners

(Additional Attorneys Listed on Signature Page)

157162

Counsel Press LLC
FORMERLY LUTZ APPELLATE SERVICES
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether the supplemental jurisdiction statute, 28 U.S.C. § 1367, overrules *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), and thus expands federal subject matter jurisdiction in a class action to encompass class members whose claims do not satisfy the amount-in-controversy requirement of 28 U.S.C. § 1332, as long as diversity jurisdiction exists over the claims of one named plaintiff.

PARTIES TO THE PROCEEDING

The Petitioners are Robin Free and Renee Free, plaintiffs in the action originally filed in Louisiana state court and removed by the Respondents to federal district court.

The Respondents are the defendants in the action below: Abbott Laboratories, Bristol-Myers Squibb Company, and Mead Johnson & Company.

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The District Court's initial opinion on jurisdiction is reported at 1994 U.S. Dist. LEXIS 4563, and reprinted as Pet. App. L. The District Court's denial of reconsideration of the jurisdictional issue is reported at 1994 WL 422298 and is reprinted at Pet. App. K.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on June 3, 1999. Pet. App. 1a. A Petition for Writ of Certiorari was timely filed on September 1, 1999. The Petition was granted on November 29, 1999. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1367 (1994) provides in 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.

* * *

28 U.S.C. § 1332 provides in part:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between —

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

STATEMENT OF THE CASE

Petitioners Robin and Renee Free (the "Frees") are retail purchasers of infant formula. J.A. 48a. They filed a class action petition on October 14, 1993 in the Eighteenth Judicial District Court of the State of Louisiana against infant formula manufacturers Abbott Laboratories, Bristol-Myers Squibb Company, and Mead Johnson & Company (collectively, "defendants"). J.A. 39a. The Frees allege that the defendants conspired to raise the price of infant formula in violation of the Louisiana antitrust statute and other state law; no federal claims are presented. Pet. App. 77a; J.A. 46a. They claim that, as a result of defendants' conduct, retail purchasers of infant formula in Louisiana paid higher prices than they otherwise would have paid. J.A. 46a; Pet. App. 77a. The petition seeks relief on behalf of themselves and a class of purchasers in an amount not to exceed $20,000 each. J.A. 40-41a, 48-49a. The defendants answered the petition and denied all relevant allegations. J.A. 52-59a.

The defendants removed the action to the United States District Court for the Middle District of Louisiana, alleging diversity and federal question jurisdiction. The Frees moved for remand to Louisiana state court, arguing that neither their claims nor the claims of unnamed class members satisfied the then-applicable $50,000 matter-in-controversy requirement of

diversity jurisdiction and that there was no federal question jurisdiction. See 28 U.S.C. § 1332(a), Pet. App. 106a. The district court held there was no federal question jurisdiction. Pet. App. 103a. It did, however, determine that the matter-in-controversy requirement of Section 1332 was met for the Frees' claims because their status as the named plaintiffs in a class action could entitle them to an individual award of attorney's fees under the terms of Article 595 of the Louisiana Code of Civil Procedure.[1] Pet. App. 104a. The district court then held that 28 U.S.C. § 1367 permitted it to exercise supplemental jurisdiction over the claims of the unnamed class members, none of which satisfy the matter-in-controversy requirement of 28 U.S.C. § 1332(a). Pet. App. 104a. However, acting under Section 1367(c), the district court declined to exercise supplemental jurisdiction because the action presented novel issues of state law. Pet. App. 104a-05a. With respect to the named plaintiffs, the district court declined jurisdiction under an abstention doctrine. Pet. App. 95a-97a.

Defendants took an interlocutory appeal of the remand order. The Frees again argued that their claims do not exceed the jurisdictional minimum and further that federal supplemental jurisdiction under 28 U.S.C. § 1367 does not encompass class members whose claims do not satisfy the jurisdictional minimum. The Fifth Circuit held that the Frees' claims satisfy the jurisdictional minimum because of their entitlement to Article 595 attorney's fees. Pet. App. 82a. The Fifth Circuit then held that the line of cases culminating in *Zahn* was overruled by Section 1367 and therefore affirmed supplemental jurisdiction over unnamed class members even though their claims do not satisfy the jurisdictional minimum. Pet. App. 89a. Finally, the court reversed the district court's decision to abstain

1. Article 595 states: "The court may allow the representative parties their reasonable expenses of litigation, including attorney's fees, when as a result of the class action a fund is made available, or a recovery or compromise is had which is beneficial, to the class." Pet. App. 79-80a.

with respect to the Frees' claims and held that to decline supplemental jurisdiction under Section 1367(c) with respect to the unnamed class members was an abuse of discretion. Pet. App. 90-91a. In light of its holdings on diversity and supplemental jurisdiction, the Fifth Circuit declined to address the federal question issue. The Frees sought rehearing and rehearing en banc; both requests were denied. Pet. App. 75a.

When the action returned to federal district court, two defendants moved to dismiss based on Louisiana antitrust law. Prior to a ruling on the motion, all defendants agreed to settle the case for $4.35 million. Pet. App. 55a. The district court preliminarily approved the settlement and certified a settlement class. Pet. App. 66-73a. However, following notice to the class and a hearing, the court declined to grant final settlement approval. Pet. App. 65a. Defendants moved for reconsideration of the denial of settlement approval; the motion was denied. Pet. App. 52a. The third defendant then joined the pending motion to dismiss. The district court determined that Louisiana state antitrust law does not permit damages actions by indirect purchasers and ordered the action dismissed for failure to state a claim. Pet. App. 44a.

The Frees appealed the dismissal and continued to assert the lack of federal subject matter jurisdiction over this action because of failure to satisfy the matter-in-controversy requirement. On January 19, 1999, a new three-judge panel of the Fifth Circuit ruled that, under the law of the case doctrine, it would not consider further the issue of subject matter jurisdiction. Pet. App. 15a. The Fifth Circuit then certified two questions of state antitrust law to the Louisiana Supreme Court, including the question of whether Louisiana state law permits actions for antitrust damages by indirect purchasers. Pet. App. 24-25a. On March 19, 1999, the Louisiana Supreme Court denied certification. Pet. App. 9a. On June 3, 1999, the Fifth Circuit predicted that Louisiana law would not permit antitrust damages actions by indirect purchasers, and affirmed the district

court's dismissal of the action. Pet. App. 8a. The Frees sought certiorari to review the Fifth Circuit's determination that the district court had subject matter jurisdiction over this action when the district court entered its order of dismissal. The Petition for Writ of Certiorari was filed on September 1, 1999. This Court granted certiorari on November 29,1999. *Free v. Abbott Labs,* 120 S. Ct. 525 (U.S. 1999).

SUMMARY OF ARGUMENT

There can be no legitimate dispute that Congress *actually and specifically intended* the supplemental jurisdiction statute, 28 U.S.C. § 1367, to preserve the well-established rule that federal courts do not have original jurisdiction over state-law multi-plaintiff actions (including class actions) unless each and every plaintiff in the action has claims that satisfy the matter-in-controversy requirement of 28 U.S.C. § 1332(a). Congress's intent in this regard is clear, and none of the circuit courts that have examined congressional intent have found otherwise. Thus, the central question presented by this case is whether the language of Section 1367 requires this Court to disregard Congress's unmistakable intent. It does not. This Court's longstanding interpretations of the matter-in-controversy requirement in multi-plaintiff diversity actions, including *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), remain good law.

Section 1367 grants federal district courts supplemental jurisdiction over certain claims (hereafter, "supplemental claims") that are outside the courts' original jurisdiction. However, by its terms, Section 1367 grants supplemental jurisdiction only when there first is a "civil action of which the district courts have original jurisdiction." 28 U.S.C. § 1367(a). Section 1367 *supplements* other conferrals of original jurisdiction that go only so far. It does not alter original jurisdiction by overriding original jurisdiction requirements.

A long-established requirement of original jurisdiction in diversity cases arises in multi-plaintiff actions. In decisions

dating back to the early nineteenth century, this Court has consistently held that the phrase "matter in controversy" means that the claims of each and every plaintiff in an action must satisfy the jurisdictional minimum (hereafter, the "matter-in-controversy rule"). This rule, which Congress has relied on for over a century, purposefully limits federal courts' intrusion into state court authority and ensures that state-law claims do not so swamp the federal judiciary that it becomes unable to provide federal question litigants with timely justice.

Nevertheless, the Fifth Circuit disregarded the matter-in-controversy rule in concluding that the class representatives' claims in this action are within the district court's diversity jurisdiction, even though it is undisputed that none of the absent class members have claims that satisfy the jurisdictional minimum. The Fifth Circuit erred because the matter-in-controversy rule, which requires *all* plaintiffs in the action (or class members in a class action) to have jurisdictionally-sufficient claims, necessarily is incompatible with an exercise of supplemental jurisdiction over plaintiffs (or class members) with jurisdictionally-insufficient claims.

Similar incompatibilities do not arise in other jurisdictional contexts. For example, the requirement of 28 U.S.C. § 1331, that a civil action arise under federal law is satisfied by the presence of a federal claim, *whether or not* the action also contains a state-law claim. Therefore, in federal question cases, Section 1367's original jurisdiction requirement is not defeated by using supplemental jurisdiction to include otherwise jurisdictionally-deficient claims. It is the nature of the matter-in-controversy rule, requiring *all* plaintiffs in a multi-plaintiff diversity action to have claims in the requisite amount, that leaves no opportunity for any plaintiff in the action to seek access to the federal courts through supplemental jurisdiction.

Applying Section 1367 to the facts of this case is straightforward. None of the absent class members have claims that satisfy the jurisdictional minimum. The matter-in-controversy requirement of diversity jurisdiction, therefore, is

not satisfied. With this element of the diversity statute unfulfilled, the district court does not have original jurisdiction over this action. Absent original jurisdiction, the district court may not exercise supplemental jurisdiction under Section 1367.

All of the other evidence of congressional intent confirms that this analysis is correct. Both Section 1367(b) and the legislative history make it absolutely clear that Congress did not intend Section 1367(a) to abrogate the matter-in-controversy rule.

Section 1367(b) applies to diversity-only cases and prohibits the exercise of supplemental jurisdiction in certain enumerated circumstances where the exercise of such jurisdiction "would be inconsistent with the jurisdictional requirements of section 1332." 28 U.S.C. § 1367(b). Specifically, Section 1367(b) eliminates supplemental jurisdiction over the claims of potential plaintiffs who seek to join an existing action under Federal Rule of Civil Procedure 19 or to intervene pursuant to Rule 24, but whose presence would destroy diversity jurisdiction. 28 U.S.C. § 1367(b). This restriction on the exercise of supplemental jurisdiction would be largely meaningless, however, if Section 1367(a) were construed, as it was by the Fifth Circuit, to grant supplemental jurisdiction over such claims if the same persons joined the litigation at the outset under Rule 20.

Section 1367(b) also eliminates supplemental jurisdiction over claims that do not satisfy diversity requirements by plaintiffs against parties added to an existing action under Rules 14, 19, 20 or 24. This further limitation on supplemental jurisdiction also cannot be reconciled with the Fifth Circuit's interpretation of Section 1367(a) as opening the federal courts to multi-plaintiff diversity actions. Section 1367(b)'s clear purpose to preserve the requirements of diversity jurisdiction in several situations where parties are added or proposed to be added to the litigation only makes sense if Section 1367(a) does not abrogate the matter-in-controversy rule.

Moreover, what the language of Section 1367(b) strongly suggests the legislative history conclusively establishes. Congress understood the matter-in-controversy rule to state a fundamental requirement of original jurisdiction in diversity cases and unmistakably intended to leave that requirement in place. There is not a shred of evidence in the legislative history to the contrary. Indeed, the legislative history is devoid of any comment suggesting that any legislator intended the supplemental jurisdiction statute not merely to add to existing statutory grants of jurisdiction, but to abrogate important requirements of those existing grants such as the matter-in-controversy rule.

The Court must give effect to congressional intent — expressed in the language, structure, and purpose of Section 1367 and in reliable and compelling legislative history — to maintain the current requirements of diversity jurisdiction and prevent federal courts from undermining the state courts' traditional role in developing and interpreting state law. Congressional policy limiting diversity jurisdiction has continued unchanged for over 150 years, and it is clear that Congress did not intend Section 1367 to change that course.

ARGUMENT

I. SECTION 1367(a) LEAVES THE REQUIREMENTS OF ORIGINAL JURISDICTION UNDISTURBED.

A. Section 1367(a) Requires That A Federal Court First Have Original Jurisdiction Over A Civil Action Before Exercising Supplemental Jurisdiction Over Supplemental Claims.

The supplemental jurisdiction statute, 28 U.S.C. § 1367, permits a district court that has original jurisdiction of a civil action to exercise supplemental jurisdiction over certain claims that are outside the court's original jurisdiction. 28 U.S.C.

§ 1367(a).[2] However, by its terms, Section 1367 grants only "supplemental" jurisdiction and requires that there first be a "civil action of which the district courts have original jurisdiction." 28 U.S.C. § 1367(a). This requirement codifies the well-established rule that the district courts first must have original jurisdiction of a civil action before exercising supplemental jurisdiction over pendent or ancillary claims. *See Peacock v. Thomas*, 516 U.S. 349, 355 (1996); *Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966). Thus, under Section 1367, as before, the first step in deciding whether supplemental jurisdiction is available is determining whether the civil action is within the district court's original jurisdiction. *See Chicago v. International College of Surgeons*, 522 U.S. 156, 166 (1997); *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 531 (1995).

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2. Section 1367(a) states:

> Except as expressly 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 that they form part of the same case or controversy under Article III of the Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

28 U.S.C. § 1367(a).

Section 1367(b), quoted and discussed in detail in Sections II. A & B, *infra*, creates a number of exceptions to the grant of supplemental jurisdiction in Section 1367(a) aimed at preventing plaintiffs in a diversity case from using supplemental jurisdiction after an action has been filed to undercut the original jurisdiction requirements of 28 U.S.C. § 1332. 28 U.S.C. § 1367(b)

Section 1367(c) sets forth a number of discretionary reasons a district court may decline to exercise supplemental jurisdiction. It is quoted in full at p. 2, *supra*. 28 U.S.C. § 1367(c).

The availability of original jurisdiction is determined by reference to the relevant original jurisdiction statutes and the case law interpreting them. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (federal courts "possess only that power authorized by Constitution and statute"); *Chicago*, 522 U.S. at 163-64 (finding original jurisdiction under 28 U.S.C. § 1331 and relevant case law and then exercising supplemental jurisdiction under Section 1367); *Grubart*, 513 U.S. at 532-548 (finding original jurisdiction under admiralty jurisdiction statute and applicable case law and then exercising supplemental jurisdiction under Section 1367). If an action is not within a statutory grant of original jurisdiction, Section 1367 grants no supplemental jurisdiction.

B. Section 1367(a) Does Not Abrogate Original Jurisdiction Requirements.

Supplemental jurisdiction granted by Section 1367 does not change the requirements of original jurisdiction, including diversity jurisdiction. 28 U.S.C. § 1367(a).[3] Original jurisdiction analysis is the same whether the existence of original jurisdiction is being examined alone or to determine whether the prerequisite to the exercise of supplemental jurisdiction is satisfied. *See id.* Both the nature of the jurisdiction granted by Section 1367 and the statute's language support this conclusion.[4]

First, Section 1367 *supplements* the jurisdiction Congress granted in the original jurisdiction statutes. That is, Section 1367 adds to otherwise-conferred federal jurisdiction by codifying ancillary and pendent jurisdiction, *Chicago*, 522 U.S. at 165, but it does *not* abrogate original jurisdiction requirements. There is no reason to think that Section 1367's grant of supplemental

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3. Indeed, as discussed in Part IV.A, *infra*, the legislative history specifically states that Congress did not intend Section 1367 to alter original jurisdiction concepts.

4. *See generally* James E. Pfander, *Supplemental Jurisdiction and Section 1367: The Case For A Sympathetic Textualism*, 148 U. Pa. L. Rev. Vol. 109 (1999).

jurisdiction, which operates in a separate sphere of jurisdiction from original jurisdiction, alters such otherwise-established requirements of original jurisdiction.

Second, the term "civil action," used by Section 1367 to describe the matter over which the district court must have original jurisdiction, is the same term that pervades the original jurisdiction statutes, including the federal question and diversity statutes. *See, e.g.*, 28 U.S.C. § 1331 (granting the district courts original jurisdiction of all "civil actions" arising under federal law); 28 U.S.C. § 1332(a)(1) (granting the district courts original jurisdiction over all "civil actions" between citizens of different states where the matter in controversy exceeds $75,000). This language shows that Section 1367's requirement of original jurisdiction is co-extensive with the grants of original jurisdiction found in Sections 1331 and 1332 (and most of the other original jurisdiction statutes), and makes it clear that Congress intended Section 1367's original jurisdiction analysis to proceed as if original jurisdiction were being examined independently of Section 1367. That is the analysis this Court has undertaken when applying Section 1367's original jurisdiction prerequisite. *See Chicago*, 522 U.S. at 163-64; *Grubart*, 513 U.S. at 532-48.

Thus, whether original jurisdiction exists for purposes of the exercise of supplemental jurisdiction under Section 1367 is purely a question of construing and applying the relevant original jurisdiction statute and case law. The Fifth Circuit erred in applying Section 1367 because it misunderstood the nature of the matter-in-controversy requirement of 28 U.S.C. § 1332(a) as long construed in *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), and its forebears.

II. UNDER THE MATTER-IN-CONTROVERSY RULE, WHICH FURTHERS CONGRESS'S LONG-STANDING POLICY OF LIMITING DIVERSITY JURISDICTION, THE DISTRICT COURT LACKS ORIGINAL JURISDICTION OVER THIS ENTIRE CIVIL ACTION.

A. In A Multi-Plaintiff Action, The Diversity Statute Requires That The Claims Of Each Plaintiff Satisfy The Matter-In-Controversy Rule.

There is no dispute that this civil action is within the original jurisdiction of the district court only if the requirements of the diversity jurisdiction statute are satisfied. Under the terms of that statute, district courts have "original jurisdiction" over a "civil action" only when the action is between "citizens of different states" and the "matter in controversy" exceeds a certain sum, set at $50,000 when this case was filed. 28 U.S.C. § 1332(a)(1) (1993). If any of the statute's requirements are not met, the entire civil action is outside the district court's diversity jurisdiction. *See Zahn*, 414 U.S. at 292; *Snyder v. Harris*, 394 U.S. 332, 336 (1969); *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373-74 (1978); *Strawbridge v. Curtiss*, 3 Cranch (7 U.S.) 267 (1806).

In this case, the critical original jurisdiction issue involves the "matter in controversy" requirement. This Court repeatedly has held that in a multi-plaintiff diversity action the phrase "matter in controversy" means that the claims of each plaintiff must satisfy the jurisdictional minimum. *See Zahn*, 414 U.S. at 300-01; *Snyder*, 394 U.S. at 336-37; *Clark v. Paul Gray, Inc.*, 306 U.S. 583, 589 (1939); *Pinel v. Pinel*, 240 U.S. 594, 596 (1916); *Troy Bank v. G.A. Whitehead & Co.*, 222 U.S. 39, 40-41 (1911).

The matter-in-controversy rule was applied in *Zahn* to the same basic jurisdictional facts that exist in this case. In *Zahn*, the claims of the representative plaintiffs satisfied the jurisdictional minimum, but the claims of many of the absent

class members did not. *Zahn*, 414 U.S. at 292. The plaintiffs, who filed the case in federal court, argued that because diversity jurisdiction purportedly existed over the claims of the class representatives, the district court could exercise ancillary jurisdiction over the claims of absent class members that did not satisfy the jurisdictional minimum. *Id.* at 305 (Brennan, J., dissenting). The Court did not directly address this ancillary jurisdiction argument, deciding the case based instead on the matter-in-controversy rule. *Id.* at 300-01.

The Court began its analysis in *Zahn* with the language of Section 1332(a), stating that "suits between citizens of different states are maintainable in the district courts only if the 'matter in controversy' exceeds the statutory minimum, now set at $10,000. 28 U.S.C. § 1332(a)." *Id.* at 292-93. The Court then stated its longstanding interpretation of the matter-in-controversy requirement in multi-plaintiff cases:

> When two or more plaintiffs, having separate and distinct demands, unite for convenience and economy in a single suit, it is essential that the demand of each be of the requisite jurisdictional amount. . . .

Id. at 294. The Court noted that this rule was "firmly rooted in prior cases dating from 1832, and ha[s] continued to be the accepted construction of the controlling statutes, now §§ 1331 and 1332." *Id.* at 294-95.

This same rule, the Court observed in *Zahn*, "[was] applied to class actions contemplated by Fed. Rule Civ. Proc. 23." *Id.* at 296. The Court continued with a full discussion of *Snyder v. Harris*, 394 U.S. 332 (1969), the case where, "[t]he meaning of the 'matter in controversy' language of § 1332 as it applied to class actions under Rule 23 reached this Court. . . ." *Zahn*, 414 U.S. at 298. Unlike in *Zahn*, none of the class representatives and none of the absent class members in *Snyder* asserted claims above the jurisdictional minimum. Significantly, the Court in *Zahn* did not find this difference to be material:

> None of the plaintiffs in *Snyder v. Harris* alleged a claim exceeding $10,000, but there is no doubt that *the rationale of that case controls this one*. As previously indicated, *Snyder* invoked the well-established rule that each of several plaintiffs asserting separate and distinct claims must satisfy the jurisdictional-amount requirement if his claim is to survive a motion to dismiss. *The rule* plainly mandates not only that there be no aggregation and that the entire case must be dismissed where none of the plaintiffs claims more than $10,000 but also *requires that any plaintiff without the jurisdictional amount must be dismissed from the case, even though others allege jurisdictionally sufficient claims.*

Id. at 300 (emphasis added). Thus, it was the matter-in-controversy rule (and nothing else) that required the dismissal of jurisdictionally-insufficient claims in *Zahn*. The Court gave no reason, other than that rule, for implicitly rejecting the plaintiffs' invitation to exercise ancillary jurisdiction.

B. The Matter-In-Controversy Rule Precludes The Exercise of Supplemental Jurisdiction Over The Claims Of Any Plaintiff In A Multi-Plaintiff Diversity Action.

That this Court in *Zahn* relied solely on the matter-in-controversy rule to decide the case is significant here. The rule was dispositive in *Zahn* because the rule was understood as a declaration by Congress that the federal courts shall not have jurisdiction, based only on diversity, where the claims of any plaintiff in a multi-plaintiff diversity action do not meet the matter-in-controversy threshold. Because the matter-in-controversy rule applies to *each and every* plaintiff in a multi-plaintiff action, an exercise of supplemental jurisdiction over the jurisdictionally-insufficient claims of any plaintiff necessarily would defeat the rule. The rule simply is not satisfied

if any plaintiff with claims for less than the jurisdictional minimum is in the action.

The nature of the matter-in-controversy rule differentiates it from other original jurisdiction requirements in terms of how they interrelate with supplemental jurisdiction. For example, the requirement of 28 U.S.C. § 1331 that the civil action arise under federal law is satisfied by the presence of a federal claim, *whether or not* the action also contains a state-law claim. *Chicago*, 522 U.S. at 166 (in federal question cases, "federal claims suffice to make the actions 'civil actions' within the 'original jurisdiction' of the district court for purposes of removal" and the "presence of related state law claims" does not alter this analysis). Similarly, the requirement of 28 U.S.C. § 1346 that the United States be a defendant in the action is satisfied as long as the action includes the United States as a defendant, *whether or not* other defendants also are sued. In both of these examples, an exercise of supplemental jurisdiction over the claims outside the district court's original jurisdiction would not defeat the original jurisdiction requirement. In contrast, an exercise of supplemental jurisdiction over the absent class members in this case necessarily would defeat the original jurisdiction requirement that each and every plaintiff in the action has claims exceeding the jurisdictional minimum.

In contravention of the matter-in-controversy rule, the Fifth Circuit implicitly held that this civil action was within the district court's original jurisdiction even though none of the absent class members have claims that satisfy the jurisdictional minimum. This misapplication of the rule led the Fifth Circuit to err in concluding that Section 1367 confers supplemental jurisdiction over the claims of the absent class members.

C. Absent A Clear Statement Of Congressional Intent To Abrogate The Matter-In-Controversy Rule, Section 1367 Should Be Read To Preserve The Rule.

Congressional policy for over a century has been to narrow the reach of diversity jurisdiction. *See Snyder*, 394 U.S. at 339.

This has been accomplished directly, by raising the matter-in-controversy requirement from time to time,[5] and indirectly, by acquiescing in the numerous rulings of this Court restrictively interpreting the "matter-in-controversy" requirement of Section 1332. *See id.* Congress has accepted the matter-in-controversy rule for so long that this Court has stated that the requirement is to be viewed as more than a judge-made doctrine:

> Congress has thus consistently amended the amount-in-controversy section and re-enacted the "matter in controversy" language without change of its jurisdictional effect against a background of judicial interpretation that has consistently interpreted that congressionally enacted phrase as not encompassing the aggregation of separate and distinct claims.
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> * * *
>
> [T]he settled judicial interpretation of "amount in controversy" was implicitly taken into account by the relevant congressional committees in determining, in 1958, the extent to which the jurisdictional amount should be raised. . . . Where Congress has consistently re-enacted its prior statutory language for more than a century and a half in the face of a settled interpretation of that language, it is perhaps not entirely realistic to designate the resulting rule a "judge made formula."

Id.; *cf. Kroger*, 437 U.S. at 374 (finding that the longevity of the complete diversity rule "clearly demonstrates a congressional mandate" for the rule).

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5. For example, in 1989, the year before Section 1367's enactment, Congress increased the matter-in-controversy requirement from $10,000 to $50,000, to reduce the number of diversity cases in the federal courts (and to take into account the effects of inflation since 1958). H.R. Rep. No. 100-889 (1988), *reprinted in* 1989 U.S.C.C.A.N. 5982, 6005-6006 (estimating a 40% reduction in diversity caseload from increase in jurisdictional minimum).

The congressional policy of limiting diversity jurisdiction ensures that the federal docket does not become so overloaded with state-law cases that reasonably prompt access to federal courts in federal question cases is no longer a practical possibility:

> [T]o overrule the aggregation doctrine at this late date would run counter to the congressional purpose in steadily increasing through the years the jurisdictional amount requirement. That purpose was to check, to some degree, the rising caseload of the federal courts, especially with regard to the federal courts' diversity of citizenship jurisdiction.

Snyder, 394 U.S. at 339-40. In light of Congress's policy of limiting diversity jurisdiction, this Court should not infer, unless a contrary intention is clear, that Section 1367 expands diversity jurisdiction by abrogating the well-established matter-in-controversy requirement. *Zahn*, 414 U.S. at 302; *see Snyder*, 394 U.S. at 339.

This is especially true because Congress's policy of limiting diversity jurisdiction protects state sovereignty against the inevitable encroachment that would result from an increase in the number of diversity cases in federal court. *See Snyder*, 394 U.S. at 340 ("'Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which [Section 1332] has defined.'") (quoting *Healy v. Ratta*, 292 U.S. 263, 270 (1934)). Important principles of federalism also require that Congress make its intention " 'clear and manifest' if it intends to pre-empt the historic powers of the States." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). The Court has held that

> [t]his plain statement rule is nothing more than an acknowledgment that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere.

Gregory v. Ashcroft, 501 U.S. 452, 461 (1991). The plain statement rule is further justified as a principle of judicial restraint in situations where "the courts themselves must decide whether their own jurisdiction has been expanded" and thus "we rely only on the clearest indications in holding that Congress has enhanced our power." *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 243 (1985).

Here, neither Section 1367 nor its legislative history offers any statement of congressional intent to increase the number or magnitude of diversity cases in federal court.[6] Because any weakening of the matter-in-controversy rule at this late date would upset settled jurisdictional law, would contravene longstanding congressional policy to limit diversity jurisdiction, would burden the federal courts with a heavier diversity docket, and would encroach upon state sovereignty, this Court should be chary to read Section 1367 to diminish the rule's vitality.

III. THE LANGUAGE, PURPOSE, AND OPERATION OF SECTION 1367(b) STRONGLY SUGGEST THAT CONGRESS INTENDED TO LEAVE THE MATTER-IN-CONTROVERSY RULE INTACT.

Section 1367(b) strongly indicates that Congress did not intend to abrogate the matter-in-controversy rule and confirms that Congress continued to understand that rule as a well-established preclusion of federal court authority that would otherwise displace state court power. Section 1367(b) sets forth a number of limitations on the exercise of supplemental jurisdiction in a diversity action that are inconsistent with an intent to broadly expand the scope of diversity cases by circumventing the matter-in-controversy

6. In fact, Congress's contrary intention could not be more clearly expressed in the legislative history to Section 1367. *See infra* at Part IV.A.

rule. Further, if Section 1367(a)'s jurisdictional grant were read to override the rule, the operation of Section 1367(b) would create absurd results, detailed below, that Congress could not possibly have intended. By contrast, if the matter-in-controversy rule is left intact, then Section 1367(b) codifies, with only slight changes,[7] the pre-existing jurisdictional scheme that essentially prohibited the use of ancillary jurisdiction in diversity actions to circumvent Section 1332's original jurisdiction requirements.

A. The Purpose Of Section 1367(b) Is To Prevent Parties, After The Action Has Commenced, From Invoking Supplemental Jurisdiction Over Claims They Could Not Have Asserted, Consistent With Diversity Jurisdiction Requirements, At The Outset.

Section 1367(b) provides that where original jurisdiction is founded solely on diversity:

> 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 of 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 jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

7. Before Section 1367(b) was enacted, ancillary jurisdiction permitted parties whose presence would defeat diversity jurisdiction to intervene as of right under Fed. R. Civ. P. 24(a). *See, e.g., Smith Petroleum Serv., Inc. v. Monsanto Chem. Co.*, 420 F.2d 1103, 1113-15 (5th Cir. 1970) *cited in Kroger*, 437 U.S. at 376 n.18. Section 1367(b) eliminated this aspect of ancillary jurisdiction. This narrowing of existing law further supports the conclusion that Section 1367(a) was not meant, at the same time, to expand the number of parties eligible to join a diversity action.

28 U.S.C. § 1367(b). Section 1367(b) creates two types of restrictions on the use of supplemental jurisdiction in a diversity case. First, Section 1367(b) eliminates supplemental jurisdiction over claims by plaintiffs against parties added after the action has commenced, if the requirements of Section 1332 would have prevented plaintiffs from suing those parties at the action's outset. Second, Section 1367(b) prevents persons seeking to join or intervene as plaintiffs in a previously-filed diversity action from doing so if, under diversity requirements, they could not have joined the action at its inception. These restrictions essentially codify pre-Section 1367 case law,[8] and their purpose is to prevent plaintiffs from using supplemental jurisdiction after the action has commenced to circumvent the requirements of diversity jurisdiction — the same purpose that animated this Court's decision in *Kroger*. *See Kroger*, 437 U.S. at 374-75.

Section 1367(b) implements this purpose through several prohibitions on the exercise of supplemental jurisdiction. Section 1367(b) prevents plaintiffs suing in diversity from using supplemental jurisdiction to assert a claim against a defendant impleaded under Rule 14 if that claim could not have been asserted at the outset, such as when the impleaded defendant's citizenship is not diverse. *See* 28 U.S.C. § 1367(b). This prohibition furthers Section 1367(b)'s purpose by preventing plaintiffs from circumventing the requirements of diversity jurisdiction by, for example, suing a single defendant of diverse citizenship, waiting for the defendant to implead a third-party that the plaintiff expected from the outset would be impleaded, and then using Section 1367(a)'s grant of supplemental jurisdiction to sue that third party. *See Kroger*, 437 U.S. at 374 (refusing to permit precisely this result prior to the passage of Section 1367).

8. For example, Section 1367(b)'s reference to Rule 14 codifies this Court's decision in *Kroger*. *Kroger*, 437 U.S. at 374-75.

The other provisions of Section 1367(b) prohibiting the exercise of supplemental jurisdiction over claims by plaintiffs "against persons made parties" after the complaint is filed are aimed at preventing similar tactics. The reference to Rules 19 and 24 prevent the plaintiff from suing only diverse parties in the original complaint and deferring claims against non-diverse persons until they are subsequently joined under Rule 19 or intervene under Rule 24. *See* Fed. R. Civ. P. 19; Fed. R. Civ. P. 24. The reference to Rule 20 prevents plaintiffs from suing a non-diverse party that has been joined to a cross-claim or counterclaim. *See* Fed. R. Civ. P. 13(h) (referencing joinder provisions of Rule 20); Fed R. Civ. P. 20.

Similarly, the other category of Rule 1367(b) prohibitions on the exercise of supplemental jurisdiction are directed at parties seeking to join an existing lawsuit in violation of diversity requirements. Specifically, the references to Rules 19 and 24 prevent persons whose claims would destroy diversity jurisdiction if asserted at the outset from using those rules to join or intervene in an action filed by other persons whose claims do satisfy diversity requirements. *See* Fed R. Civ. P. 19; Fed R. Civ. P. 24. Taken together, the provisions of Section 1367(b) indicate that Congress sought to prevent plaintiffs from circumventing diversity jurisdiction requirements through artful post-complaint use of supplemental jurisdiction.[9]

Section 1367(a) should be read to complement, not defeat, Section 1367(b)'s clear purpose. Interpreting Section 1367(a) to uphold the matter-in-controversy rule is consistent with Section 1367(b)'s purpose, while the Fifth Circuit's interpretation brings the operation of Section 1367(a) into conflict with that purpose.

9. Indeed, as Petitioners discuss in Part IV, *infra*, the legislative history of Section 1367 confirms that this was precisely Congress's intent. *See infra* at p. 25.

B. Under The Fifth Circuit's Reading, Section 1367(a) Renders The Prohibitions In Section 1367(b) Largely Meaningless.

Section 1367(b)'s limitations on the exercise of supplemental jurisdiction in diversity cases are nonsensical if Section 1367(a)'s original jurisdiction requirement is not read to preserve the matter-in-controversy rule. Section 1367(b) does not prohibit the exercise of supplemental jurisdiction in a diversity action over claims of plaintiffs who join together under Rule 20. If Section 1367(a) were read, as the Fifth Circuit did, to confer such jurisdiction, then the statute could drastically curtail the complete diversity requirement of *Strawbridge v. Curtiss*, 3 Cranch (7 U.S.) 267 (1806), as well as the matter-in-controversy rule of *Zahn* and *Snyder*, because plaintiffs with jurisdictionally-insufficient claims could join diversity actions as long the claims of one plaintiff met Section 1332's requirements.

Not only would the Fifth Circuit's construction fundamentally alter diversity jurisdiction jurisprudence as it has existed for nearly 200 years, it would also trivialize the prohibitions in Section 1367(b). The Fifth Circuit's approach necessarily rests on the premise that Congress, in Section 1367(b), carefully crafted prohibitions on the exercise of supplemental jurisdiction for the purpose of protecting diversity jurisdiction requirements against incursions under Rules 14, 19, 20, and 24 after an action has begun, while at the same time leaving a wide opening for persons whose claims would defeat diversity jurisdiction to join the action at the outset as plaintiffs under Rule 20. The statute should not be read to produce such an outcome.

The Fifth Circuit's interpretation of Section 1367(a), moreover, creates at least one absurd result. Under that interpretation, persons whose claims do not satisfy diversity jurisdiction requirements cannot join a diversity action under Rule 19 or intervene under Rule 24, but they can join the action under Rule 20. *See* 28 U.S.C. § 1367(b). As Judge Easterbrook

asked: "What sense can this make?" *See Stromberg Metal Works, Inc. v. Press Mechanical*, 77 F.3d 928, 932 (7th Cir. 1996). The answer is that it makes none: under this interpretation, a plaintiff may voluntarily dismiss his action and refile adding a co-plaintiff under Rule 20 who could not have been added under Rule 19 or who could not have intervened under Rule 24. Congress could not have intended to tailor the scope of supplemental jurisdiction based on meaningless distinctions between the ways plaintiffs can join a lawsuit.

However, if Section 1367(a)'s original jurisdiction prerequisite is understood to preserve the matter-in-controversy rule, Section 1367(b)'s restrictions merely track existing case law and make sense. Under this reading of Section 1367(a), there is no need for Section 1367(b) to include a reference to Rule 20 or Rule 23. Section 1367(a) does not confer supplemental jurisdiction over actions where the claims of any of the plaintiffs or class members do not satisfy diversity jurisdiction requirements, obviating the need to prohibit the exercise of such supplemental jurisdiction in Section 1367(b). The prohibitions in Section 1367(b) on the exercise of supplemental jurisdiction simply prevent an artful plaintiff from later adding claims or parties that, consistent with diversity jurisdiction requirements, could not have been included at the outset. *See Kroger*, 437 U.S. at 374-75.

The reality that Section 1367(b)'s provisions make sense only if Section 1367(a) preserves the matter-in-controversy rule is strong evidence that Congress intended to leave the rule intact. *See, e.g., United States v. X-Citement Video, Inc.*, 513 U.S. 64, 69 (1994) (concluding that the absurd results created by a literal reading of the statutory text strongly indicated that Congress did not intend the statute to operate as an unreflective reading of the text would suggest); *Public Citizen v. United States Dep't of Justice*, 491 U.S. 440, 453-54 (1989) (finding that the absurd results created by a broad interpretation of the ambiguous word "utilize" provided strong evidence that Congress did not intend the word to be read broadly); *Holy Trinity Church v. United States*, 143 U.S. 457, 459 (1892) (stating that the absurd results arising from a particular statutory interpretation may make it "unreasonable to believe" that the legislature intended such an interpretation). It is always more reasonable to believe that Congress intended to enact a sensible scheme than a nonsensical one. *Cf. West Va. Univ. Hosp. v. Casey*, 499 U.S. 83, 101 (1991) (stating that the Court's role in statutory interpretation is to "make sense rather than nonsense out of the corpus juris"); *Bank One Chicago, N.A. v. Midwest Bank & Trust Co.*, 516 U.S. 264, 275 (1995) (particular statutory interpretation favored partly because it was "sensible").

Here, reading Section 1367(a) as preserving the matter-in-controversy rule makes sense of Section 1367(b)'s restrictions. In contrast, the Fifth Circuit's interpretation of Section 1367(a) deprives Section 1367 of a coherent purpose and leads to absurd results. Because Congress certainly did not intend to create a nonsensical statute, Section 1367(b)'s provisions provide compelling evidence that Congress drafted Section 1367 with the understanding that the amount-in-controversy rule, as interpreted by *Zahn* and other decisions of this Court, was left intact.

IV. THE LEGISLATIVE HISTORY CONCLUSIVELY ESTABLISHES THAT CONGRESS INTENDED SECTION 1367 TO PRESERVE THE MATTER-IN-CONTROVERSY RULE.

A. The Committee Reports And Other Legislative Materials Reliably And Conclusively Demonstrate That Congress Did Not Intend To Alter The Matter-In-Controversy Rule.

The legislative history of Section 1367 makes it unmistakably clear that Congress intended for the statute to perpetuate this Court's long-standing interpretation of "matter in controversy" as applied in multi-plaintiff actions. Section 1367 had its genesis in a report written by the Federal Courts Study Committee (the "Study Committee"), established by the

100th Congress in 1988. 28 U.S.C. § 331 (1988). The Study Committee spent fifteen months undertaking "the most comprehensive examination of the federal court system in the half-century." Federal Courts Study Comm., 101st Cong., 2d Sess., Report of the Fed. Courts Study Comm. 31 (Comm. Print 1990) ("Report"), at 3. The Study Committee found that one of the greatest problems facing the federal judiciary was the size of its docket, which the Report termed a "crisis." *Id.* at 4-10. The Study Committee determined that one of the primary reasons for the overloaded nature of the federal docket was diversity jurisdiction, which accounts for half of the federal courts' caseload. *Id.* at 14, 38-42. It noted that the burgeoning diversity caseload significantly affected the federal courts' ability to administer federal question cases in a timely fashion:

> The general (not unvarying) principle of division should be that state courts resolve disputes over state law and federal courts resolve disputes over federal law. We do not base this principle on a love of symmetry, but on a theory of comparative advantage and on a desire that federal courts remain accessible in a practical as well as a theoretical sense to federal claimants.

Id. at 14. As a result of these concerns, the Study Committee recommended that Congress substantially reduce diversity jurisdiction. *Id.* at 14-15, 39-41. In so doing, the Study Committee rejected a proposal by a subcommittee to overrule *Zahn*. *See* Report to the Federal Courts Study Comm. of the Subcomm. on the Federal Courts and Their Relation to the States (Mar. 12, 1990) (Working Papers), *reprinted in* Federal Courts Study Committee, Working Papers and Subcommittee Reports, Vol. 1 (July 1, 1990) at 561 n.33; *see also Meritcare Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 219 (3d Cir. 1999) (discussing Study Committee's rejection of subcommittee proposal).

In July, 1990, H.R. 5381, entitled the "Federal Courts Study Committee Implementation Act of 1990" was introduced in the

House of Representatives. *See* H.R. 5381, 101st Cong. (Version 1, Aug. 1, 1990). Section 120 of that bill addressed supplemental jurisdiction and was significantly different from the version ultimately enacted. On September 6, 1990, the Chairman of the Study Committee, Judge Joseph Weis, testified before a subcommittee of the House Judiciary Committee considering the bill and objected to section 120 as an expansion of diversity jurisdiction that was inconsistent with the Study Committee's recommendation regarding supplemental jurisdiction. *See Federal Courts Study Comm. Implementation Act & Civil Justice Reform Act: Hearings on H.R. 5381 & H.R. 3898 Before the Subcomm. on Courts, Intellectual Property & the Admin. of Justice of the House Comm. on the Judiciary*, 101st Cong. 92-94 (1990) (testimony of Judge Joseph F. Weis). Judge Weis noted that section 120 would "change the doctrine of complete diversity articulated in *Strawbridge v. Curtiss*, 3 Cranch 267 and *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978)" and that the "Study Committee did not intend to encourage additional diversity jurisdiction in that fashion." *Id.* at 94. Judge Weis encouraged the Committee to distinguish between federal question cases and diversity cases and to reduce the scope of section 120 in keeping with the Study Committee's view that "the requirement of complete diversity in § 1332 cases should be continued as it presently exists and should not be eroded through operation of the proposed supplemental jurisdiction." *Id.* at 95. In late September 1990 a redrafted H.R. 5381 was introduced with an entirely different supplemental jurisdiction provision as section 114. *See* H.R. 5381, 101st Cong. (Version 2, Sept. 30, 1990; Version 3, Oct. 4, 1990). Section 114 is the provision enacted as Section 1367.

The House Judiciary Committee Report on H.R. 5381 commences by stating that "[t]he purpose of H.R. 5381 is to implement several of the more noncontroversial recommendations of the Federal Courts Study Committee." H.R. Rep. No. 101-734, at 15 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, 6861; *see also id.* at 16, 1990 U.S.C.C.A.N.

at 6862 ("The core of H.R. 5381 is Title I, which implements a number of salutary, but essentially noncontroversial recommendations of the Federal Courts Study Committee."). The Report describes the reforms implemented by the statute as "modest proposals that, but for the work of the Federal Courts Study Committee, might not have come to the attention of Congress at all." H.R. Rep. No. 101-734, at 15, 1990 U.S.C.C.A.N. at 6861.

The section-by-section analysis states that section 114 "implements a recommendation of the Federal Courts Study Committee." *Id.* at 27, 1990 U.S.C.C.A.N. at 6873. The report describes the advantages of pendent and ancillary jurisdiction in promoting the efficient administration of justice, but notes that "[r]ecently, however, in *Finley v. United States*, 109 S. Ct. 2003 (1989) [490 U.S. 545 (1989)], the Supreme Court cast substantial doubt on the authority of the federal courts to hear some claims within supplemental jurisdiction." *Id.* at 28, 1990 U.S.C.C.A.N. at 6874. The Report further notes that the rationale of *Finley* "threatens to eliminate other previously accepted forms of supplemental jurisdiction" and cites as an example a recently decided district court diversity case dismissing, due to *Finley*, a defendant's impleader claim against a non-diverse third party. *See id.* at 28 & n.14, 1990 U.S.C.C.A.N. at 6874 (citing *Aetna Cas. & Sur. Co. v. Spartan Mechanical Corp.*, 738 F. Supp. 664 (E.D.N.Y. 1990)). The Report concludes that legislation is necessary "to provide the federal courts with statutory authority to hear supplemental claims," *id.* at 28, 1990 U.S.C.C.A.N. at 6874, and describes Section 1367 as follows:

> This section would authorize jurisdiction in a case like *Finley*, as well as essentially restore the pre-*Finley* understandings of the authorization for and limits on other forms of supplemental jurisdiction. In federal question cases, it broadly authorizes the district courts to exercise supplemental jurisdiction over additional claims, including claims involving the joinder of additional parties. *In diversity cases, the district courts may exercise supplemental jurisdiction, except when doing so would be inconsistent with the jurisdictional requirements of the diversity statute.* In both cases, the district courts, as under current law, would have discretion to decline supplemental jurisdiction in appropriate circumstances.
>
> Subsection 114(a) generally authorizes the district court to exercise jurisdiction over a supplemental claim whenever it forms part of the same constitutional case or controversy as the claim or claims that provide the basis of the district court's original jurisdiction. [n.15] In providing for supplemental jurisdiction over claims involving the addition of parties, subsection (a) explicitly fills the statutory gap noted in *Finley v. United States*.
>
> Subsection 114(b) prohibits a district court in a case over which it has jurisdiction founded solely on the general diversity provision, 28 U.S.C. § 1332, from exercising supplemental jurisdiction in specified circumstances. [n.16] In diversity-only actions the district courts may not hear plaintiffs' supplemental claims when exercising supplemental jurisdiction would encourage plaintiffs to evade the jurisdictional requirement of 28 U.S.C. § 1332 by the simple expedient of naming *initially* only those defendants whose joinder satisfies section 1332's requirements and *later* adding claims not within original federal jurisdiction against other defendants who have intervened or been joined on a supplemental basis. *In accord with case law*, the subsection also prohibits the joinder or intervention of persons as plaintiffs if adding them is inconsistent with section 1332's requirements. *The section is not intended to affect the jurisdictional requirements of 28 U.S.C. § 1332*

> *in diversity-only class actions, as those requirements were interpreted prior to Finley.* [n.17]
>
> n.15 In so doing, subsection (a) codifies the scope of supplemental jurisdiction first articulated by the Supreme Court in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966).
>
> n.16 The net effect of subsection (b) is to implement the principal rationale of *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 57 L. Ed. 2d 274, 98 S. Ct. 2396 (1978).
>
> n.17 *See Supreme Tribe of Ben Hur v Cauble*, 255 U.S. 356, 65 L. Ed. 673, 41 S. Ct. 338 (1921); *Zahn v. International Paper Co.*, 414 U.S. 291, 38 L. Ed. 2d 511, 94 S. Ct. 505 (1973).

Id. at 28-29, 1990 U.S.C.C.A.N. at 6874-75 (emphasis added). The Report notes that Section 1367(b) does make "one small change in pre-*Finley* practice," *i.e.*, excluding Rule 24(a) intervenors to the same extent as those sought to be joined as plaintiffs under Rule 19. *Id.* at 29, 1990 U.S.C.C.A.N. at 6875.[10] The House report was adopted by the Senate Judiciary Committee in its consideration of the bill. *See* 136 Cong. Rec. S17580-81 (daily ed. Oct. 27, 1990). Section 114 was enacted as section 310 of the Judicial Improvements Act of 1990. *See* Pub. L. No. 101-650, 104 Stat. 5089.

There is no legislative history suggesting Congress was undertaking a major change in the rules of original or supplemental jurisdiction, nor were any comments made reflecting a belief that the revised version of the supplemental jurisdiction provision would overrule *Zahn* or other cases

10. The Report contains a typographical error in which Rule 24(a) is written as "Rule 23(a)." In the context of a discussion of intervention and given the actual language of Section 1367(b) prohibiting Rule 19 joinder and Rule 24 intervention in the same phrase, the reference in the Report to Rule 23(a) must have been a typographical error.

governing the basic rules of original jurisdiction. Indeed, there is no other legislative history at all.

Thus, the legislative history is clear that Congress: (1) intended Section 1367 to leave the matter-in-controversy rule intact, (2) intended to retain the other original jurisdiction requirements of Section 1332 (such as the complete diversity requirement), (3) intended to distinguish, as case law had in the past, between federal question and diversity cases insofar as the addition of supplemental parties and claims was concerned, (4) intended Section 1367(b) to prevent certain joinder and intervention maneuvers made subsequent to the filing of the complaint, and (5) intended to codify pre-*Finley* law except insofar as Rule 24(a) intervention was concerned.[11]

This legislative history should be regarded as compelling evidence of congressional intent, for three reasons. First, it is entirely one-sided. There is no need for this Court to decide which legislator's statements it will credit, or to compare varying analyses of the bill created by differing committees. Second, the only legislative history that must be consulted are committee reports, which are an authoritative source of congressional intent when reference to legislative history is appropriate. *See Garcia v. United States*, 469 U.S. 70, 76 (1984) ("In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represents the considered and

11. Both the Tenth and Third Circuits noted Congress's clear intent not to overrule *Zahn* and to fashion subsection (b) so as to prevent certain post-complaint maneuvers that would be inconsistent with the original jurisdiction requirements of Section 1332. *See Leonhardt v. Western Sugar Co.*, 160 F.3d 631, 640-41 (10th Cir. 1998); *Meritcare*, 166 F.3d at 222. The Fifth Circuit appeared to agree that Congress intended to leave *Zahn* intact. Pet. App. 87a. Apparently the only cases to the contrary are ones that mistakenly failed to understand that the Study Committee had rejected the subcommittee's proposal to overrule *Zahn*. *See Meritcare*, 166 F.3d at 219 n.4 (citing district court cases).

collective understanding of those Congressmen involved in drafting and studying the proposed legislation.' ") (quoting *Zuber v. Allen*, 396 U.S. 168, 186 (1969)). Third, both the House of Representatives and the Senate "agreed on the pertinent language" in the committee reports. *Leonhardt*, 160 F.3d at 641, fn. 9. All three of these characteristics lessen the danger that the legislative history may reflect the will of one or only a handful of legislators, and make it highly probable that the legislative history accurately reflects the intent of Congress in passing Section 1367.

B. The Absence of Any Reference In The Legislative History Of Section 1367 To Overruling The Matter-In-Controversy Rule Is Further Evidence That Congress Did Not Intend To Do So.

The legislative history of Section 1367 makes Congress's intention clear, not only by what it says, but also by what it omits. The legislative history is absolutely devoid of any statement indicating that Congress even considered abrogating the matter-in-controversy rule. The rule is so well-established in this Court's jurisprudence that if Congress had intended for Section 1367 to change the rule "some express statement of that intention would surely have appeared" either in the statute itself or in its legislative history. *Zahn*, 414 U.S. at 302. But, as in *Zahn*, "we find not a trace to this effect." *Id.*

The complete absence of any congressional history remotely suggesting that Congress meant to alter the matter-in-controversy rule is strong evidence that Congress did not intend such a sweeping change in jurisdictional law. *See American Hosp. Ass'n v. N.L.R.B.*, 499 U.S. 606, 613-14 (1991) ("If this amendment had been intended to place the important limitation on the scope of the Board's rulemaking powers that petitioner suggests, we would expect to find some expression of that intent in the legislative history."). Congress generally does not effect sweeping changes in the law without any comment from objectors:

> In a case where the construction of legislative language such as this makes so sweeping and so relatively unorthodox a change as that made here, I think judges as well as detectives may take into consideration the fact that a watchdog did not bark in the night.

Harrison v. PPG Indus., Inc., 446 U.S. 578, 602 (1980) (Rehnquist, J., dissenting), *cited in American Hosp. Ass'n*, 499 U.S. at 614; *see also Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 267 (1979) ("At the very least, one would expect some hint of a purpose to work such a change, but there was none."). Here, congressional silence is deafening: had Congress intended to overrule case law as fundamental as *Strawbridge* and *Zahn*, surely such a purpose would have drawn some comment in the legislative process.

V. CONGRESSIONAL INTENT TO MAINTAIN THE-MATTER-IN-CONTROVERSY RULE IS CONTROLLING.

Given the language and structure of Section 1367, as well as its legislative history, it is indisputable that to read Section 1367 to overturn the matter-in-controversy rule would flout congressional intent. The purpose of statutory construction is to determine Congress's intent. *Regions Hosp. v. Shalala*, 522 U.S. 448, 457 (1998) ("If, by employing traditional tools of statutory construction, we determine that Congress's intent is clear, that is the end of the matter.") (quotation and citations omitted); *Chevron v. Natural Resources Def. Council*, 467 U.S. 837, 842 n.9 (1984) ("If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect.").

Usually the language of the statute provides the most reliable evidence of Congress's intent and for that reason statutory construction begins with the words of the statute. *Holloway v. United States*, 526 U.S. 1, 119 S. Ct. 966, 969

(1999). As a result, in general, where the language of the statute conveys a plain meaning, that meaning controls and statutory construction is complete. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989).

However, where there is no plain meaning, as a result of ambiguity or a statutory scheme that is not "coherent and consistent," the statutory language is not dispositive. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997) (quotation omitted). In such cases, the Court may look to legislative history and other evidence of congressional intent. *See Concrete Pipe & Prods. of Cal,. Inc. v. Construction Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 627 (1993) (stating that statutory incoherence or ambiguity justifies reference to legislative history); *see also Wisconsin Pub. Intervenor v. Mortier*, 501 U.S. 597, 608-609, 610 n.4 (holding that judicial inquiry benefits by reference to legislative history and was proper in case where statutory scheme was "unclear" and suffered from "textual inadequacies"); *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 737 (1985). To determine plainness or ambiguity, the Court refers to "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson*, 519 U.S. at 341; *see also Brown v. Gardner*, 513 U.S. 115, 118 (1994) (employing "textual cross-reference" to other portions of same statutory scheme to determine meaning) (quotation omitted). A phrase that is unambiguous is one that "has a clearly accepted meaning in both legislative and judicial practice." *West Va. Univ. Hosps*, 499 U.S. at 98.

Further, the language of a statute is not dispositive where, applied literally, it would produce significant "anomalies," *X-Citement Video*, 513 U.S. at 68, or results that are "absurd," *id.* at 69, or "odd," *id.*; *Green v. Bock Laundry Machine Co.*, 490 U.S. 504, 509-10 (1989). In *X-Citement Video*, a literal reading of the statute would have criminalized UPS drivers and other innocents who knowingly transported materials despite having no knowledge that the materials were pornographic. The

Court thus looked to legislative history and held that the plain meaning did not control. 513 U.S. at 73-79. In *Green*, a literal reading of the language of Federal Rule of Evidence 609 would have denied a civil plaintiff the right to impeach the testimony of his adversary while granting that right to a civil defendant. *Green*, 490 U.S. at 509. The Court concluded that "[n]o matter how plain the text of the Rule may be" such an interpretation could not be accepted given that it would "compel an odd result." *Id.* at 509-510; *see also id.* at 527 (Scalia, J., concurring in the judgment) ("I think it entirely appropriate to consult all public materials, including the background of Rule 609(a)(1) and the legislative history of its adoption, to verify that what seems to us an unthinkable disposition . . . was indeed unthought of, and thus to justify a departure from the ordinary meaning. . . .").

Here, even if the Fifth Circuit's interpretation of Section 1367(a) is given some credence, the most that would be established is that the statute is susceptible of different meanings, i.e., that it is ambiguous. Such an ambiguity would, in turn, militate reference to legislative history, as the vast majority of lower courts have done. *See, e.g., Meritcare*, 166 F.3d at 221.

Moreover, even if the Fifth Circuit's reading of the statute were the only possible meaning of Section 1367's language, which surely it is not, it would simply produce odd and absurd results. Here, as described in Part III.B, *supra*, the Fifth Circuit's reading of the statute produces serious anomalies and results that can only be characterized as odd and absurd, most notably by allowing plaintiffs with jurisdictionally-deficient claims to join together in filing a complaint as long as the claims of one plaintiff are jurisdictionally sufficient while prohibiting post-filing joinder and intervention tactics that would accomplish the same result. *See supra, pp.* 23 -24. This bizarre result would justify reference to the legislative history, *X-Citement Video*, 513 U.S. at 73-79, which clearly demonstrates Congress's intent

to maintain the rules of original jurisdiction in diversity cases, including *Zahn*.[12]

Finally, even ignoring such absurd and odd results, it is fundamental that where the text of a statute, literally applied, would "produce a result demonstrably at odds with the intentions of its drafters" then "the intention of the drafters, rather than the strict language, controls." *Ron Pair*, 489 U.S. at 242; *Ardestani v. INS*, 502 U.S. 129, 135-36 (1991) (same); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 n.12 (1987) (same); *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982) (same); *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980) (same). Clearly, the Fifth Circuit's reading of Section 1367 is at odds with the intentions of the drafters of Section 1367. The House Committee responsible for drafting the bill specifically and clearly stated that *Zahn* would be preserved and the responsible Senate Committee adopted that statement. No reasonable observer possibly could conclude that Congress intended Section 1367 to overrule *Zahn*. Ignoring the clear congressional intent, particularly when the language of a statute easily can be read as consistent with that intent, would disrespect Congress's role in our system of government. As Judge Pollak observed:

> To retain this case in this court is to say to Congress: "We know what you meant to say, but you didn't quite say it. So the message from us in the judicial branch to you in the legislative branch is 'Gotcha! And better luck next time.' " Such a message is not required by the separation of powers. Nor is it in harmony with the fact that Congress and the courts, however different their respective roles, are parts of a single government.

Russ v. State Farm Mut. Auto Ins. Co., 961 F. Supp. 808, 820 (E.D. Pa. 1997). Congress did not intend Section 1367 to affect the matter-in-controversy rule as stated in *Zahn*, and the Fifth Circuit's decision ignoring this intent should be reversed.

12. The *Abbott* court wrongly applied the absurdity rule by narrowly looking only at whether reversing the result in *Zahn* would be absurd. Pet. App. 88-89a. The proper inquiry examines whether the reading of the statute produces *any* absurd results as applied to factual scenarios beyond that *sub judice*. *See X-Citement Video*, 513 U.S. at 468-69 (absurdity resulted not from literal reading applied to the facts *sub judice* but literal reading applied to other, foreseeable, situations).

CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

MICHAEL D. HAUSFELD
Counsel of Record
DANIEL A. SMALL
MATTHEW F. PAWA
CHARLES E. TOMPKINS
COHEN, MILSTEIN, HAUSFELD
& TOLL, P.L.L.C.
1100 New York Avenue, N.W.
Suite 500 - West Tower
Washington, D.C. 20005
(202) 408-4600

SAMUEL D. HEINS
ERIC L. OLSON
DANIEL E. GUSTAFSON
KENT M. WILLIAMS
HEINS MILLS & OLSON, P.L.C.
700 Northstar East
608 Second Avenue S.
Minneapolis, MN 55402
(612) 338-4605

PATRICK W. PENDLEY
A PROFESSIONAL LAW CORPORATION
58005 Meriam Street
Post Office Drawer 71
Plaquemine, LA 70764
(504) 687-6396

GORDON BALL
LAW OFFICES OF GORDON BALL
750 NationsBank Center
550 Main Avenue
Knoxville, TN 37902
(615) 525-7028

HOWARD J. SEDRAN
LEVIN, FISHBEIN SEDRAN
& BERMAN
320 Walnut Street
Suite 600
Philadelphia, PA 19106
(215) 592-1500

DON BARRETT
BARRETT LAW OFFICES
404 Court Square North
Post Office Drawer 631
Lexington, MS 39095
(601) 834-2376

Attorneys for Petitioners