No. 23-677

IN THE
Supreme Court of the United States

ROYAL CANIN U.S.A., INC. AND NESTLÉ PURINA PETCARE COMPANY,

Petitioners,

v.

ANASTASIA WULLSCHLEGER AND GERALDINE BREWER,

Respondents.

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

BRIEF FOR THE STATE OF TENNESSEE AND TWENTY-ONE OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

Office of Tennessee Attorney General
P.O. Box 20207
Nashville, TN 37202
(615) 741-2162
Matt.Cloutier
@ag.tn.gov

*Counsel of Record

JONATHAN SKRMETTI
Attorney General

J. MATTHEW RICE
Solicitor General

MATTHEW D. CLOUTIER*
Assistant Solicitor General

JOSHUA D. MINCHIN
Honors Fellow

Counsel for Amicus Curiae *State of Tennessee*

QUESTIONS PRESENTED

The petition presents two closely related questions about the ability of a plaintiff, in a case properly removed to federal court based on federal-question jurisdiction under 28 U.S.C. § 1331, to compel a remand to state court by amending the complaint to eliminate federal questions:

1. Whether a post-removal amendment of the complaint defeats federal-question subject-matter jurisdiction.

2. Whether a post-removal amendment of the complaint precludes a district court from exercising supplemental jurisdiction over the plaintiffs' remaining state-law claims under 28 U.S.C. § 1367.

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INTEREST OF *AMICI CURIAE*

The States of Tennessee, Alaska, Connecticut, Delaware, Florida, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Ohio, South Carolina, South Dakota, Texas, Utah, and Virginia have a long-recognized interest in protecting the proper balance of governmental power between the federal government and the States.

To maintain that balance, the Constitution allows for independent federal and state judiciaries. It tasks federal courts with adjudicating federal issues, and generally leaves the interpretation and application of state law to state courts. This division of labor ensures that the "function of interpreting [] state statute[s][] rests primarily upon the state court[s]." *Bell v. Maryland*, 378 U.S. 226, 240 (1964). An expansive reading of 28 U.S.C. §§ 1331 and 1367, though, would permit federal courts to retain jurisdiction over removed cases involving only state-law questions. Such a reading not only invades state courts' historical prerogative to interpret state laws, it also needlessly increases federal-state friction by inviting federal courts to guess at how state courts might decide state-law questions.

The *amici* States urge the Court to adopt an interpretation of Sections 1331 and 1367 that respects the role of state courts as the ultimate expositors of state law, rather than one that facilitates continued federal-court jurisdiction over pure state-law cases.

SUMMARY OF THE ARGUMENT

Two well-settled and oft-applied interpretive canons counsel against an interpretation of Sections 1331 and 1367 that would keep pure state-law cases in federal courts. These settled tools of statutory construction override Petitioners' policy predictions, which do not pan out regardless.

I. When invited to read a statute in a way that would raise "a serious doubt" as to its constitutionality, this Court looks for alternative readings that avoid the problem. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Petitioners' reading runs aground on this constitutional-avoidance canon. Article III of the Constitution authorizes federal jurisdiction over cases arising under the laws of the United States. There is no jurisdictional grant, by contrast, for cases turning solely on state-law issues. But Petitioners' reading of Sections 1331 and 1367 would facilitate federal jurisdiction over cases involving pure state-law questions *with no federal ingredient*. To avoid the "grave constitutional problems" with licensing jurisdiction over cases and controversies beyond Article III, *Mesa v. California*, 489 U.S. 121, 137 (1989), this Court should interpret these statutes to preclude federal-question jurisdiction over pure state-law cases.

II. Federalism concerns likewise cut against Petitioners. "Out of respect for state courts, this Court has time and again declined to construe federal jurisdictional statutes more expansively than their language, most fairly read, requires." *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374, 389 (2016). "That interpretive stance," this Court explained,

"keep[s] state-law actions . . . in state court, and thus . . . help[s] maintain the constitutional balance between state and federal judiciaries." *Id.* at 390. Petitioners' reading of Sections 1331 and 1367 upsets that balance by ensuring that cases removed to federal court stay there, even if the plaintiff eliminates all federal issues. Nothing in Sections 1331 or 1367 clearly mandates this federalism-damaging result, and that lack of clarity dooms Petitioners' reading.

III. The policy concerns Petitioners proffer cannot trump these canons. For one thing, "considerations of practical judicial policy cannot overcome the Constitution's mandates." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 405 (2024) (Thomas, J., concurring). And for another, Petitioners' policy concerns are exaggerated and can be easily addressed without testing the Constitution's jurisdictional and structural limits.

ARGUMENT

I. Petitioners' view of removal jurisdiction exceeds Article III's limitations.

The constitutional-avoidance canon weighs against Petitioners' interpretation of Sections 1331 and 1367.

It is a "'cardinal principle' of statutory interpretation . . . that when an Act of Congress raises 'a serious doubt' as to its constitutionality, 'this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.'" *Zadvydas*, 533 U.S. at 689 (quoting *Crowell v. Benson*, 285 U.S. 22, 62 (1932)). And "if a construction of the statute is fairly possible by which a serious doubt of

constitutionality may be avoided, a court should adopt that construction." *Califano v. Yamasaki*, 442 U.S. 682, 693 (1979) (cleaned up). This avoidance principle acts as "a tool for choosing between competing plausible interpretations of a statutory text." *Clark v. Martinez*, 543 U.S. 371, 381 (2005). It "rest[s] on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts." *Id.* And it "should apply with particular force when an Article III issue is at stake." *Peretz v. United States*, 501 U.S. 923, 949 (Marshall, J., dissenting).

Petitioners' construction of Sections 1331 and 1367 would enable federal courts to keep hold of pure state-law claims lacking any federal ingredient. That dynamic raises the exact sort of "grave constitutional problems" that the constitutional-avoidance canon exists to prevent. *Mesa*, 489 U.S. at 137.

A. Federal courts, this Court has made clear, "are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). As such, they "possess only that power authorized by Constitution and statute." *Id.* But while Congress can confer jurisdiction through statute, the Constitution imposes a hard limit "[b]eyond [which] [jurisdiction] does not extend." *Muskrat v. United States*, 219 U.S. 346, 356 (1911); *see Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 491 (1983).

Article III extends the judicial power to only "eleven classes of cases." Scott A. Rosenberg, Note, *The Theory of Protective Jurisdiction*, 57 N.Y.U. L.

Rev. 933, 933 (1982) (first citing U.S. Const. art. III, § 2, cl. 1; and then citing 3 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 572 (Jonathan Elliot ed. 1836)). Four concern disputes between states or their citizens. *See id.*; *see also* U.S. Const. art. III, § 2, cl. 1. And the remaining seven "serve more substantial federal interests" by extending jurisdiction to disputes "likely to affect the nation's foreign relations," or those involving the interpretation of the United States Constitution or federal laws. Rosenberg, *supra*, at 933–34; *see* U.S. Const. art. III, § 2, cl. 1.

As relevant here, Article III provides that "[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution," or under "the Laws of the United States." U.S. Const. art. III, § 2, cl. 1. This Court, in *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738, 823 (1824), interpreted that text to apply to cases with a federal "ingredient." There, the Court faced a suit by the congressionally created Bank of the United States to prevent Ohio's state auditor from collecting a tax levied against the bank, *id.* at 838, and held that the suit arose under the laws of the United States, *id.* at 823–24. The bank was created and incorporated by a federal statute. *Id.* at 823. So it followed, the Court reasoned, that federal law "form[ed] an original ingredient" of the case. *Id.* at 824.

Osborn "reflects a broad conception of 'arising under' jurisdiction"—one where "Congress may confer on the federal courts jurisdiction over any case or controversy that might call for the application of federal

law." *Verlinden*, 461 U.S. at 492. And while the full reach of *Osborn*'s holding remains uncertain,[1] at least this much is clear: Article III requires *some* federal "ingredient" to support the exercise of federal jurisdiction. *Osborn*, 22 U.S. (9 Wheat.) at 824.

B. Petitioners' proposed rule would allow federal courts to exercise jurisdiction over cases with no federal ingredient. As Petitioners would have it, a case removed to federal court based on a federal question should stay in federal court—even if the plaintiff amends the complaint to "eliminate the federal question" and press only pure state-law claims. Pet. Br. 16; *see also id.* at 10 (arguing that the district court

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[1] An expansive reading of *Osborn*'s federal "ingredient" holding has "been questioned," *Verlinden*, 461 U.S. at 492, and "has encountered substantial resistance among courts and scholars," Carlos M. Vázquez, *The Federal 'Claim' in the District Courts:* Osborn*,* Verlinden*, and Protective Jurisdiction*, 95 Cal. L. Rev. 1731, 1735 (2007). While this Court has not explicitly clarified the scope of *Osborn*, it has characterized the decision as holding that "Article III's 'arising under' jurisdiction is broad enough to authorize Congress to confer federal-court jurisdiction over actions involving federally chartered corporations." *Am. Nat'l Red Cross v. S.G.*, 505 U.S. 247, 264 (1992); *see also A.I. Trade Fin., Inc. v. Petra Intern. Banking Corp.*, 62 F.3d 1454, 1461 (D.C. Cir. 1995) (observing that *Osborn*'s "narrow holding" applies in cases "involving a federally created entity"); *In re TMI Litig. Cases Consol. II*, 940 F.2d 832, 866–67 (3d Cir. 1991) (Scirica, J., concurring) (same, compiling cases). And the Court long ago acknowledged that *Osborn* and other "early cases" involving "suits by or against" congressionally chartered corporations were "less exacting" in their approach to jurisdiction. *Gully v. First Nat'l Bank*, 299 U.S. 109, 113 (1936). But even accepting the laxest view of *Osborn*'s federal "ingredient" requirement, Petitioners' position raises Article III problems.

"retained jurisdiction over state-law claims after Respondents amended the complaint to delete the federal questions").

An example illustrates. Imagine an employer fires an employee for discriminatory reasons. The employee sues in state court, bringing three claims: breach of contract, intentional infliction of emotional distress, and unlawful termination under Title VII. The first two are pure state-law claims; the third purely federal. The employer removes the case to federal court and the employee promptly amends her complaint to delete the Title VII claim, leaving only her pure state-law claims. Even if all parties and the court agree that there's no longer any federal question or any federal ingredient in the case, Petitioners' rule would permit the federal court to retain jurisdiction.[2]

That rule is as sweeping as it is rigid. It means, in essence, that if there was a federal ingredient in the

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[2] This example also highlights another important fact: not all disappearances of federal questions are alike. If this hypothetical federal court had *dismissed* the employee's Title VII claim, it could of course retain jurisdiction because that claim—i.e., that federal ingredient—would still be part of the case. A dismissal of a claim, as Respondents explain, is "interlocutory until final judgment," before which it can be reconsidered, and after which it can be appealed. Resp. Br. 38–39. But a party's voluntary amendment to delete a claim is different. A plaintiff is the master of their complaint. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (recognizing that the plaintiff, as "master of the claim," may "avoid federal jurisdiction by exclusive reliance on state law"). And when a plaintiff chooses to amend their complaint, the amended version supersedes the original for all purposes. 6 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1476 (3d ed. 2024); *see also* Fed. R. Civ. P. 15(c).

original complaint, then the federal courts have jurisdiction forever, no matter what else may happen during the life of the case.

That is not how Article III works. On the contrary, Article III jurisdiction is a necessity throughout the duration of a case. This Court has "repeatedly held that an 'actual controversy' must exist not only 'at the time the complaint is filed,' but through 'all stages' of the litigation." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90–91 (2013). That's why issues of standing and mootness can be raised at any time, even on appeal. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006); *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). And it's why federal courts, "including this Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." *Arbaugh*, 546 U.S. at 514.

Petitioners dispute none of this; they simply ignore that their proposed interpretation would extend jurisdiction beyond Article III's limits.

C. Petitioners' approach also promotes none of Article III's purposes. Article III, this Court has observed, has the object of "preserv[ing] . . . the constitution and laws of the United States, so far as they can be preserved by judicial authority." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 391 (1821). To further that goal, "the jurisdiction of the Courts of the Union was expressly extended to all cases arising under that constitution and those laws." *Id.* Article III's grant of diversity jurisdiction, on the other hand, sought to

"open[] the federal courts' doors to those who might otherwise suffer from local prejudice against out-of-state parties." *Hertz Corp. v. Friend*, 559 U.S. 77, 85 (2010); *see also Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 347 (1816).

None of these purposes are furthered by federal courts retaining jurisdiction over pure questions of state law in non-diversity cases. A case presenting only questions of state law necessarily does not call for the "preservation of the constitution and laws of the United States." *Cohens*, 19 U.S. (6 Wheat.) at 391. It's hard to fathom how the mine run of state-law claims (e.g., divorce, child custody, probate, contract) would conceivably implicate *any* meaningful federal interest, much less how one of these state-law disputes could "threaten the peace and unity of the Nation." *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 269 (1985) (Brennan, J., dissenting). And cases without diverse parties necessarily do not require the neutral federal forum that Article III guarantees in disputes between citizens of different states. *Cf. Hertz Corp.*, 559 U.S. at 85. Still, Petitioners' rule would irrevocably extend federal jurisdiction to state-law cases simply because they at one time raised federal questions.

The bottom line: Petitioners' reading of Sections 1331 and 1367, which would facilitate continued federal-court jurisdiction over cases containing only state law questions, runs headlong into Article III's jurisdictional limits. To avoid that conflict, this Court should read those jurisdictional statutes narrowly to permit

jurisdiction when—and only when—the operative complaint contains federal questions.

II. Petitioners' reading harms States' prerogative to interpret their laws.

The federalism canon likewise cuts against Petitioners' broad conception of removal jurisdiction. This Court has long presumed that Congress does not legislate with intent to upset the constitutional balance of power between the States and the federal government. To protect that balance, this Court requires clear congressional direction before permitting federal interference with core state prerogatives. And nothing in Sections 1331 or 1367 authorizes federal courts to intrude into the States' judicial power to adjudicate pure state-law issues.

A. "[O]ur Constitution establishes a system of dual sovereignty" that divides power "between the States and the Federal Government." *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). Under that system, the federal government wields only the "enumerated powers" that the States surrendered in the Constitution. *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 405 (1819). The States, by contrast, retain "numerous and indefinite" powers that "extend to all the objects . . . concern[ing] the lives, liberties, and properties of the people; and the internal order, improvement, and prosperity of the State[s]." *Gregory*, 501 U.S. at 458 (quoting The Federalist No. 45, at 292–93 (James Madison) (Clinton Rossiter ed. 1961)).

This system of joint sovereignty has "numerous advantages." *Id.* It "preserves the integrity, dignity,

and . . . sovereignty of the States," and thereby "secures to citizens the liberties that derive from the diffusion of sovereign power." *Bond v. United States* (*Bond I*), 564 U.S. 211, 221 (2011) (quotations omitted); *see* The Federalist No. 51, at 351 (J. Madison) (J. Cooke ed. 1961) (discussing the "double security" provided by the "compound republic of America"). Put simply, reserving States' powers reflects that citizens are often best served "by governments more local and more accountable than a distant federal bureaucracy." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012).

Recognizing the importance of state sovereignty, this Court has long presumed that Congress legislates with an eye toward "preserv[ing] 'the constitutional balance between the National Government and the States.'" *Bond v. United States* (*Bond II*), 572 U.S. 844, 862 (2014) (quoting *Bond I*, 564 U.S. at 222). To displace traditional spheres of state authority, Congress must "make its intention to do so 'unmistakably clear.'" *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989) (quotations omitted). And that is no low hurdle: The text itself must contain "*exceedingly clear language* . . . to significantly alter the balance between federal and state power." *U.S. Forest Serv. v. Cowpasture River Pres. Ass'n*, 590 U.S. 604, 621–22 (2020) (emphasis added); *see also Sackett v. EPA*, 598 U.S. 651, 679 (2023). This Court has invoked the federalism-based interpretive principle in areas ranging from

property rights to criminal punishment to labor relations.[3]

This federalism canon applies with special force when interpreting jurisdiction-granting statutes. "Out of respect for state courts, this Court has time and again declined to construe federal jurisdictional statutes more expansively than their language, most fairly read, requires." *Merrill Lynch*, 578 U.S. at 389. Indeed, this Court's decisions "reflect a 'deeply felt and traditional reluctance . . . to expand the jurisdiction of federal courts through a broad reading of jurisdictional statutes.'" *Id.* at 389–90 (quoting *Romero v. Int'l Terminal Operating Co.*, 358 U.S. 354, 379 (1959)). "That interpretive stance," this Court explained, "keep[s] state-law actions . . . in state court, and thus . . . help[s] maintain the constitutional balance between state and federal judiciaries." *Id.* at 390.

The takeaway: Before upsetting "the usual constitutional balance of federal and state powers," it is "incumbent upon the . . . courts to be certain of Congress'[s] intent." *Bond II*, 572 U.S. at 858 (quoting *Gregory*, 501 U.S. at 460) (cleaned up).

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[3] *See Cowpasture*, 590 U.S. at 621–22; *Bond II*, 572 U.S. at 857–860; *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 174 (2001); *Jones v. United States*, 529 U.S. 848, 858 (2000); *BFP v. Resol. Tr. Corp.*, 511 U.S. 531, 544 (1994); *Will*, 491 U.S. at 65; *United States v. Bass*, 404 U.S. 336, 349–50 (1971); *United Auto., Aircraft & Agric. Implement Workers of Am. v. Wisc. Emp. Rels. Bd.*, 351 U.S. 266, 274–75 (1956); *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 513 (1940); *Palmer v. Massachusetts*, 308 U.S. 79, 84 (1939).

B. States' prerogative to interpret their own laws implicates core federalism principles. Because there is a "scrupulous regard for the rightful independence of the state governments," *R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 501 (1941), this Court has held that the "proper construction of state statutes" is "a matter primarily for determination by the local courts," *Gilchrist v. Interborough Rapid Transit Co.*, 279 U.S. 159, 208 (1929). State courts have long been understood to be the dispositive "expositors of state law." *Harman v. Forssenius*, 380 U.S. 528, 535 (1965); *see also Watson v. Buck*, 313 U.S. 387, 401–02 (1941). "As a general rule," then, even "this Court defers to a state court's interpretation of a state statute." *Bush v. Palm Beach Cnty. Canvassing Bd.*, 531 U.S. 70, 76 (2000); *see also Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975) (noting that this Court "repeatedly has held that state courts are the ultimate expositors of state law" and that federal courts "are bound by their constructions except in extreme circumstances" (first citing *Murdock v. City of Memphis*, 87 U.S. (20 Wall.) 590 (1875); and then citing *Winters v. New York*, 333 U.S. 507 (1948))).

This Court's various abstention doctrines highlight the central role of state courts in interpreting state law. Those doctrines, this Court has explained, afford "appropriate deference to the 'respective competence of the state and federal court systems.'" *England v. La. State Bd. of Med. Exam'rs*, 375 U.S. 411, 415–16 (1964) (quoting *La. Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 29 (1959)). More broadly, the abstention doctrines help to "avoid unnecessary friction in federal-state relations, interference with

important state functions, tentative decisions on questions of state law, and premature constitutional adjudication." *Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 511 (1972) (quoting *Forssenius*, 380 U.S. at 534).

Federal courts, to be sure, can and do decide questions of state law when sitting in diversity or when exercising supplemental jurisdiction. But federal courts by no means claim primacy over the adjudication of state-law questions. They "appl[y] . . . the law of the state" as evidenced by "its [l]egislature in a statute or by its highest court in a decision." *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). And, in doing so, they defer to state courts. Even in the absence of state high-court precedent, "a federal court is not free to reject the state rule"—it remains the "duty" of federal courts to "ascertain from all the available data what the state law is and apply it rather than to prescribe a different rule." *West v. Am. Tel. & Tel. Co.*, 311 U.S. 223, 236–37 (1940).

State courts, in short, are the "ultimate expositors of state law." *Mullaney*, 421 U.S. at 691. And this Court has long sought to keep the task of interpreting state law squarely in the hands of state courts.

C. Petitioners' proposed rule upends this longstanding federal-state balance. As Petitioners envision it, their rule would keep cases in federal court even if everyone agrees that there is no federal question to be resolved—indeed, even if the federal question has been "eliminate[d]" by amendment. Pet. Br. 16. Nothing in Sections 1331 or 1367 permits this

federal encroachment on traditional state-court jurisdiction—let alone in "unmistakably clear" language. *Gregory*, 501 U.S. at 460 (quoting *Will*, 491 U.S. at 65).

Begin with the text of the relevant statutes. Section 1331 states that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Section 1367 provides, in relevant part: "[I]n 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." *Id.* § 1367(a). And Section 1441 says that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . . to the district court of the United States for the district and division embracing the place where such action is pending." *Id.* § 1441(a).

Nothing in these statutes provides clear authorization for federal courts to retain jurisdiction over pure state-law cases. They do not contemplate unfettered federal-court jurisdiction over all claims, state or federal. Just the opposite—they extend jurisdiction to non-federal questions *only* when they are sufficiently "related" to federal claims properly within the federal courts' jurisdiction. *See id.* §§ 1367, 1447. "[M]ost fairly read," *Merrill Lynch*, 578 U.S. at 389, then, these statutes make clear that federal courts have jurisdiction over federal questions, no matter where the

suit was first filed, *see* 28 U.S.C. § 1331; *see also id.* § 1441. They also make clear that those courts can exercise jurisdiction over questions of state law so long as there is at least one related federal question in the case. *See id.* §§ 1367, 1441. They do not direct—let alone using "exceedingly clear language"—that federal courts can retain jurisdiction over cases when plaintiffs abandon all federal ingredients. *Cowpasture*, 590 U.S. at 622.

The Court should interpret Sections 1331 and 1367 in a way that "maintain[s] the constitutional balance between state and federal judiciaries." *Merril Lynch*, 578 U.S. at 390. Ensuring pure state-law cases proceed in state court does so; keeping state-law cases in federal court does not.

III. Petitioners' policy appeals fall flat.

Petitioners do not acknowledge the Article III problems or harms to state autonomy that follow from their rule. Rather, they defend their rule with a range of arguments that uniformly elevate policy considerations over the Constitution's structural limits. That alone is reason enough to reject them. When constitutional constraints are at issue, courts are not at liberty to "employ untethered notions of what might be good public policy to expand [their] jurisdiction." *Whitmore v. Arkansas*, 495 U.S. 149, 161 (1990).

In any event, Petitioners' arguments also fail on their own terms.

Start with their claim that their position "prevents gamesmanship." *See* Pet. Br. 35–38; *see also id.* at 47–

49. "If Respondents prevail," Petitioners say, "a plaintiff could plead a federal claim in state court, wait for defendants to remove, and if the plaintiff dislikes the federal judge to whom the case is assigned, amend the complaint to return to state court." *Id.* at 35. Petitioners also hypothesize that a plaintiff who "anticipates receiving an imminent adverse ruling from a federal court" could "seek to amend a complaint and force a snap remand." *Id.* at 36. And Federal Rule of Civil Procedure 15, Petitioners say, "does not solve the problem." *Id.* at 47. They point out that the Rule "permits a plaintiff to amend 'once as a matter of course,'" *id.* (quoting Fed. R. Civ. P. 15(a)), meaning that "every plaintiff can engage in judge shopping by amending the complaint and returning to state court," *id.*

These concerns are almost certainly overblown. It is true, of course, that plaintiffs are entitled to amend their complaints "once as a matter of course." Fed. R. Civ. P. 15(a)(1). But Petitioners bury the lede—the Rule goes on to say that a party may amend a pleading as a matter of course "no later than . . . 21 days after serving it, or . . . if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading" or a motion filed under Rule 12(b). *Id.* Petitioners' slippery-slope catastrophizing thus ignores a critical limitation in Rule 15.[4]

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[4] It also ignores the reality that many amendments, no matter their intent, will not actually eliminate the federal questions that might be present. *Cf. Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005) (contemplating federal jurisdiction over "claims recognized under state law that nonetheless turn on substantial questions of federal law").

In reality, then, the consequences of the Eighth Circuit's rule are not nearly as sweeping as Petitioners suggest. The rule means that a plaintiff can amend once as of right, but only within a tight window. And outside of that window, courts can deny leave to amend, especially "if the only reason for the changes is to destroy federal jurisdiction." Pet. App. 10a n.2 (citing Fed. R. Civ. P. 15(a)); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) (contemplating denial of amendment based on "apparent or declared reason[s]" like "undue delay, bad faith or dilatory motive," or "undue prejudice").

Petitioners' insistence that their position conserves judicial resources fares no better. A "ruling for Respondents," they say, "will waste resources and needlessly prolong proceedings." Pet. Br. 47. But even if that were true, those consequences do not permit courts to circumvent the Constitution's jurisdictional limits. "Jurisdictional rules," by their very nature, can "result in the waste of judicial resources." *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011). Indeed, because "[o]bjections to subject-matter jurisdiction . . . may be raised at any time," "many months of work on the part of the attorneys and the court may be wasted." *Id.* at 434–35. "Harsh consequences," in other words, "attend the jurisdictional brand." *Fort Bend Cnty. v. Davis*, 587 U.S. 541, 548 (2019) (cleaned up).

What's more, there are good reasons to reject the core premise of Petitioners' judicial-resources argument. As some courts have recognized, "[i]t would be an inappropriate exercise of pendent jurisdiction and

a waste of federal judicial resources for [a court] to hold a trial on a purely state claim." *Rounseville v. Zahl*, 13 F.3d 625, 631 (2d Cir. 1994); *cf. also United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966) ("Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law."). Again, Article III contemplates the extension of the federal-judicial power to certain categories of cases—all of which, at some level, implicate an important federal interest. *See supra* pp. 4–5. It can hardly be a good use of the federal judiciary's limited resources to retain jurisdiction over cases involving only state-law claims that could not trigger federal jurisdiction in the first instance.

Finally, take Petitioners' repeated assertion that the Eighth Circuit's rule would "frustrate the right to remove that Congress afforded defendants." Pet. Br. 36; *see also id.* at 47 (suggesting that the Eighth Circuit's rule "may effectively defeat the defendant's right to removal"). This argument also misses the mark. The right to remove is not unqualified. It exists only to the extent that the federal courts would "have original jurisdiction." 28 U.S.C. § 1441(a); *see also id.* § 1441(c)(1)(A) (contemplating removal of both state and federal claims when the "civil action includes . . . a claim arising under the Constitution, Laws, or treaties of the United States"). And it follows that where a federal court would *lack* jurisdiction, there is no right to remove. *Cf.* Br. of Center for Litigation and Courts as *Amicus Curiae* Supporting Petitioners at 11–12, *Royal Canin U.S.A., Inc. v. Wullschleger*, No.

23-677 ("[T]he loaded phrase 'right to remove' has little purchase in the context of removal of a federal-question case between private parties").

And to the extent Petitioners worry that future plaintiffs will try to smuggle in federal questions after a remand, that's what *Grable* is for. *See* 545 U.S. at 314 (prescribing a multifactor inquiry to determine whether a case raises a federal question). Under current precedent, courts should look closely at whether there is actually a federal question; they shouldn't blindly accept whatever labels the parties may attach to their claims. *See id.* And if, after conducting that close look, the court determines that there is in fact a federal question, removal would of course be proper.[5] That approach applies to a post-remand amended complaint, just as it does to an original complaint. *See* 28 U.S.C. § 1446(b)(3) (permitting removal based on an amended complaint that provides a new basis for removal). To be sure, the smuggling-in of federal issues on remand may warrant concern—courts typically frown on attempts to "manipulate [their] jurisdiction." *Hertz Corp.*, 559 U.S. at 85–86. But Petitioners address that concern with a sledgehammer, not a scalpel. They urge a blunt approach at the expense of precision and "jurisdictional rigor." Pet. App. 10a.

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[5] If this Court were to return to its pre-*Grable* approach, *see* Resp. Br. 3, Petitioners' question-smuggling concerns could be rejected out of hand. It's hard to see how a plaintiff could sneak a federal question into the case under Justice Holmes's *American Well Works* test, for example. *American Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 260 (1916) (reasoning that "[a] suit arises under the law that creates the cause of action").

CONCLUSION

The judgment of the Eighth Circuit should be affirmed.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General

J. MATTHEW RICE
Solicitor General

MATTHEW D. CLOUTIER
Assistant Solicitor General
Counsel of Record

JOSHUA D. MINCHIN
Honors Fellow

State of Tennessee
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202
(615) 741-2162
Matt.Cloutier@ag.tn.gov

Counsel for Amicus Curiae

AUGUST 12, 2024

ADDITIONAL COUNSEL

Treg Taylor
Attorney General
State of Alaska

William Tong
Attorney General
State of Connecticut

Kathy Jennings
Attorney General
State of Delaware

Ashley Moody
Attorney General
State of Florida

Kris W. Kobach
Attorney General
State of Kansas

Liz Murrill
Attorney General
State of Louisiana

Dana Nessel
Attorney General
State of Michigan

Keith Ellison
Attorney General
State of Minnesota

Lynn Fitch
Attorney General
State of Mississippi

Andrew Bailey
Attorney General
State of Missouri

Austin Knudsen
Attorney General
State of Montana

Michael T. Hilgers
Attorney General
State of Nebraska

Matthew J. Platkin
Attorney General
State of New Jersey

Raúl Torrez
Attorney General
State of New Mexico

Drew H. Wrigley
Attorney General
State of North Dakota

Dave Yost
Attorney General
State of Ohio

Alan Wilson
Attorney General
State of
South Carolina

Marty J. Jackley
Attorney General
State of South Dakota

Ken Paxton
Attorney General
State of Texas

Sean D. Reyes
Attorney General
State of Utah

Jason Miyares
Attorney General
Commonwealth of
Virginia