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Supplemental Jurisdiction Extended Over Claims From Class Action Plaintiffs: *Exxon Mobil Corporation v. Allapattah Services, Inc.*

CIVIL LITIGATION – FEDERAL JURISDICTION – SUPPLEMENTAL JURISDICTION – DIVERSITY JURISDICTION – CLASS ACTIONS – COMPLEX LITIGATION – The Supreme Court of the United States held that 28 U.S.C. § 1367 grants the federal court supplemental jurisdiction over claims in class action suits that do not meet the amount in controversy requirement, provided that jurisdiction is based on diversity of citizenship and there are no other jurisdictional deficiencies.


The respondents, Exxon service station dealers (“dealers”), were certified as a class in federal court despite the fact that certain class members’ claims did not exceed the minimum monetary value required for diversity jurisdiction under 28 U.S.C. § 1332. Petitioner, Exxon Mobil Corporation (“Exxon”) appealed the certification, claiming that the federal court lacked jurisdiction to hear the claims that did not meet the diversity jurisdiction requirements. The Supreme Court granted certiorari to decide the issue.

The case involved a fundamental contract dispute between Exxon and its dealers. In 1982, Exxon began a program called

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1. A class action is “[a] lawsuit in which the court authorizes a single person or a small group of people to represent the interests of a larger group.” BLACK'S LAW DICTIONARY 267 (8th ed. 2004). See generally FED. R. CIV. P. 23.

2. Exxon Mobil Corporation v. Allapattah Services, Inc., 125 S. Ct. 2611, 2615 (2005). Section 1332(a)(1) provides that, “[t]he 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 citizens of different States.” 28 U.S.C. § 1332(a)(1) (2005).


4. Certiorari is “[a]n extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review.” BLACK'S LAW DICTIONARY 241 (8th ed. 2004).


"Discounts for Cash," which encouraged dealers to lower their gas prices by several cents per gallon for customers who paid in cash. The dealers, in turn, would receive wholesale discounts from Exxon if they had enough customers pay in cash. The program carried on without conflict until the dealers noticed that Exxon was charging a fee for credit card payments, instead of providing a discount for cash payments.

In May of 1991, the dealers filed a class action lawsuit against Exxon in the United States District Court for the Northern District of Florida, with jurisdiction based on diversity of citizenship. The district court affirmed the certification after a preliminary hearing in which a magistrate judge recommended that the class be certified under Rule 23(b)(3) of the Federal Rules of Civil Procedure. Exxon objected to the court's jurisdiction, claiming that, because every class member's claim did not meet the requisite amount in controversy, federal jurisdiction was lacking. The district court, however, found that it had supplemental jurisdiction over these additional claims based on 28 U.S.C. § 1367.

7. Allapattah, 333 F.3d at 5452.
8. Id.
10. Exxon, 125 S. Ct. at 2615. See 28 U.S.C. § 1332. The dealers, approximately 10,000 current and former Exxon vendors from thirty-five different states, claimed that Exxon breached its contractual duty to the class collectively when Exxon started penalizing credit card payments instead of rewarding cash payments. Allapattah, 333 F.3d at 1252. The complaint alleged that Exxon had reduced its wholesale price by 1.7 cents per gallon for a period of time, but then stopped providing the reduction in May 1983 without telling the dealers. Id. The dealers sought to recover the amount that they were allegedly overcharged. Id.
11. Rule 23(b)(3) allows class certification if "[t]he court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." FED. R. CIV. P. 23(b)(3).
12. Allapattah, 333 F.3d at 1253.
13. Section 1332(a)(1) requires all claims to exceed $75,000 when federal jurisdiction is based upon diversity of citizenship. 28 U.S.C. § 1332(a)(1).
15. Id. at 1253. Section 1367(a) provides: Except as provided in subsections (b) and (c) . . . 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. 28 U.S.C. § 1367(a) (2005).
In January of 2001, the case was tried, and the jury entered a verdict in favor of the dealers.\textsuperscript{16} Despite the verdict, the district court judge believed there was substantial ground for difference of opinion on the jurisdictional issue and, therefore, certified the matter to the United States Court of Appeals for the Eleventh Circuit for interlocutory review\textsuperscript{17} pursuant to 28 U.S.C. § 1292(b).\textsuperscript{18} One of the questions certified was whether the court properly exercised supplemental jurisdiction over the claims of class members who did not meet the amount in controversy requirement.\textsuperscript{19}

The Eleventh Circuit answered in the affirmative, finding that the plain language of § 1367 allows a district court entertaining a diversity class action suit to exercise supplemental jurisdiction over claims that do not meet the amount in controversy requirement.\textsuperscript{20} In reaching this conclusion, the circuit court called in to question \textit{Zahn v. International Paper Co.},\textsuperscript{21} which held that each plaintiff in a Rule 23(b)(3) class action must satisfy the amount in controversy requirement or be dismissed from the case.\textsuperscript{22} Due to the discrepancy, the Supreme Court granted certiorari to decide the issue.\textsuperscript{23}

\textsuperscript{16} \textit{Allapattah}, 333 F.3d at 1252. The jury found Exxon liable for breach of contract and for fraudulent concealment of the breach. \textit{Id.}

\textsuperscript{17} An interlocutory review is "[a]n appeal that occurs before the trial court's final ruling on the entire case." \textsc{Black's Law Dictionary} 106 (8th ed. 2004).

\textsuperscript{18} \textit{Allapattah}, 333 F.3d at 1252. See 28 U.S.C. § 1292(b) (2005). The proper test for interlocutory review is whether an "order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b).

\textsuperscript{19} \textit{Allapattah}, 333 F.3d at 1252-53. The interlocutory appeal also asked if it was proper to enter judgment for the class representatives, but not for the class as a whole. \textit{Id.} The circuit court answered this question in the affirmative as well. \textit{Id.} at 1253.

\textsuperscript{20} \textit{Id.} at 1256. The circuit court decided:

Thus, we find that § 1367 clearly and unambiguously provides district courts with the authority in diversity class actions to exercise supplemental jurisdiction over the claims of class members who do not meet the minimum amount in controversy as long as the district court has original jurisdiction over the claims of at least one of the class representatives.

\textit{Id.}

\textsuperscript{21} 414 U.S. 291 (1973).

\textsuperscript{22} \textit{Allapattah}, 333 F.3d at 1253 (quoting \textit{Zahn}, 414 U.S. at 301).

\textsuperscript{23} \textit{Exxon}, 125 S. Ct. at 2615. This case was consolidated with \textit{Ortega, et. al. v. Star-Kist Foods, Inc.}, 370 F.3d 124 (1st Cir. 2004). \textit{Id.} Ortega involved the same legal issue as Exxon; however, the Court of Appeals for the First Circuit held that supplemental jurisdiction could not extend to plaintiffs whose claims did not meet the requisite amount in controversy requirement, even if other plaintiffs' claims did. \textit{Ortega}, 370 F.3d at 143.
Justice Kennedy wrote the majority opinion of the Court. He began by discussing the federal court’s role in the judicial branch. He explained that federal district courts are courts of limited jurisdiction, as both the United States Constitution and the United States Code limit the scope of cases that a district court may adjudicate. While the Constitution bequeaths federal courts with a broad jurisdictional basis, the Code limits that power by providing three primary methods for federal jurisdiction to attach: federal question jurisdiction, diversity jurisdiction, and supplemental jurisdiction.

Kennedy explained that 28 U.S.C. § 1331 requires the action to arise under the Constitution, laws, or treaties of the United States for federal question jurisdiction to attach. Section 1332 requires both that the action be between citizens of different states and that the monetary value of each claim in the action exceed $75,000 for diversity jurisdiction to attach. Justice Kennedy went on to discuss § 1367, which grants federal courts supplemental jurisdiction.

The first sentence of § 1367(a) extends supplemental jurisdiction over all claims that form part of the same case or controversy as another claim that is properly before the court. The second sentence of § 1367(a) states that supplemental jurisdiction will extend over additional claims from additional parties who have

24. Exxon, 125 S. Ct. at 2615. This was a 5-4 opinion, in which Chief Justice Rehnquist, and Justices Scalia, Kennedy, Souter, and Thomas were of the majority. Id. Justice Stevens filed a dissenting opinion in which Justice Breyer joined. Id. Justice Ginsburg also filed a dissenting opinion in which Justices O’Connor, Stevens, and Breyer joined. Id.

25. Id. at 2616.
26. Id. at 2616-17 (citing Kokkonen v. Guardian Life Insurance Company of America, 511 U.S. 375, 377 (1994)).
27. Exxon, 125 S. Ct. at 2617-19.
29. The Supreme Court has interpreted § 1332 as requiring complete diversity, meaning that every plaintiff must be of a different citizenship than every defendant. State Farm Fire & Casualty Co. v. Tashire, 386 U.S. 523, 530-31 (1967). This is a statutory requirement, not a Constitutional requirement, however, as statutes such as the Interpleader Act allow minimal diversity in certain situations. State Farm, 386 U.S. at 530-31. Minimal diversity only requires one plaintiff to be of a different citizenship than one defendant. Id. See Interpleader Act of 1948, 28 U.S.C. § 1335 (2005).
31. Exxon, 125 S. Ct. at 2619-20. Supplemental jurisdiction gives courts the power to hear a claim that they do not have original jurisdiction over, but forms part of the same case or controversy as a claim properly before the court. Id. See 28 U.S.C. § 1367(a).
joined or intervened in the action. Based on a plain language reading of the statute, Justice Kennedy concluded that § 1367(a) grants district courts supplemental jurisdiction over any claim, by any party, so long as one claim that is part of the same case or controversy is properly before the court.

Justice Kennedy then decided the specific issue of whether original jurisdiction is present in a diversity case where all plaintiffs do not satisfy the amount in controversy requirement. He concluded that original jurisdiction does exist, so long as complete diversity exists and a single claim exceeds the amount in controversy requirement. The majority went on to say that if original jurisdiction attaches to one such claim, the Court has original jurisdiction over a civil action within the meaning of § 1367(a), thus allowing supplemental jurisdiction to attach to all other claims that are part of the same case or controversy.

The majority came to the conclusion that, based on § 1367(a) alone, the district court had original jurisdiction to hear each and every dealer's claim against Exxon. Complete diversity existed between the parties; therefore, original jurisdiction attached to the dealers' claims that exceeded $75,000. Supplemental jurisdiction then attached to the dealers' claims that did not exceed $75,000, as they were part of the same case or controversy.

33. Joinder is “[t]he uniting of parties or claims in a single lawsuit.” BLACK'S LAW DICTIONARY 853 (8th ed. 2004).
36. A plain language reading constrains the court to the “statute's text in light of context, structure, and related statutory provisions.” Exxon, 125 S. Ct. at 2620. A plain language reading does not take into account legislative history or any other materials outside of the statutory text. Id. at 2625.
37. Id. at 2620-21. There is no dispute that each and every plaintiff's claim arose from the same “case or controversy.” Id. at 2615.
38. Original jurisdiction is the threshold requirement for supplemental jurisdiction. 28 U.S.C. § 1367(a). Original jurisdiction is conferred once at least one claim is sufficient to grant the court subject matter jurisdiction. MCI Telecommunications Corp. v. Teleconcepts, Inc., 71 F.3d 1086, 1094 (3d Cir. 1995).
39. Exxon, 125 S. Ct. at 2621.
40. Id.
41. Id.
42. Id.
43. The parties do not dispute that complete diversity existed under § 1332. Id. at 2615.
44. Id. at 2622. See 28 U.S.C. § 1332.
The jurisdictional issue was not resolved, however, as the Court then turned to § 1367(b)⁴⁶ to see if any exceptions applied to § 1367(a)'s broad jurisdictional grant.⁴⁷ Justice Kennedy explained that the first set of exceptions⁴⁸ contained within § 1367(b) only applied to claims by current plaintiffs against joined defendants; therefore, they were of no consequence to the case at hand.⁴⁹ However, § 1367(b)'s second set of exceptions applied, since they pertained to claims by joined plaintiffs against current defendants.⁵⁰ But as Justice Kennedy explained, only claims by plaintiffs joined under Rules 19 or 24 of the Federal Rules of Civil Procedure fell within the exception, and since the dealers were joined under Rule 23, the exception was inapplicable.⁵¹

After a thorough analysis of § 1367, the Court decided that the requirements of § 1367 are met in diversity cases when complete diversity exists and one plaintiff in a class action meets the amount in controversy requirement, thus impliedly overruling previous Supreme Court cases that held otherwise, such as Zahn⁵² and Clark v. Paul Gray, Inc.⁵³

Before concluding the opinion, however, the majority addressed the position taken by the dissent, that the legislative history of § 1367 should have been consulted before the statute was inter-

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46. Section 1367(b) provides:

[T]he district courts shall not have supplemental jurisdiction... over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24... 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 or such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.


47. Exxon, 125 S. Ct. at 2621. Before analyzing § 1367(b), the Court noted, "[i]f § 1367(a) were the sum total of the relevant statutory language, our holding would rest on that language alone." Id.

48. The first set of exceptions contained within § 1367(b) state that "the district courts shall not have supplemental jurisdiction... over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24." 28 U.S.C. § 1367(b).

49. Exxon, 125 S. Ct. at 2621. This case involves claims from additional plaintiffs against a current defendant. Id. at 2616.

50. Id. at 2621. The second set of exceptions contained within § 1367(b) states that "the district courts shall not have supplemental jurisdiction... 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." 28 U.S.C. § 1367(b).


52. See Zahn, 414 U.S. at 300.

53. Exxon, 125 S. Ct. at 2622; Clark v. Paul Gray Inc., 306 U.S. 583 (1939). Clark held that every plaintiff must separately satisfy the amount in controversy requirement in cases involving federal question jurisdiction. Clark, 306 U.S. at 590. This holding is no longer applicable because there is currently not an amount in controversy requirement for federal question cases. Exxon, 125 S. Ct. at 2625.
Justice Kennedy disagreed, arguing that legislative history is an interpretative tool that should only be consulted when a statute is ambiguous. Because the majority found the statute to be unambiguous, Justice Kennedy decided that interpretative tools, such as legislative history, were not required to determine the meaning of § 1367. The Court noted that dependence on legislative history is dangerous because legislative history is itself often ambiguous, and resorting to it would encourage others to manipulate such materials to affect the outcome of judicial decisions.

The Court ultimately affirmed the judgment of the Eleventh Circuit, holding (1) when complete diversity exists and at least one claim satisfies the amount in controversy requirement, the courts shall have diversity jurisdiction over that action, and (2) the courts shall have supplemental jurisdiction over all other claims in the action that form part of the same case or controversy, subject to the restrictions of § 1367, as interpreted by the Court.

Justice Stevens, with whom Justice Breyer joined, dissented from the majority, claiming that the legislative history of § 1367 should have been referenced, as it indicated Congress's intent to withhold supplemental jurisdiction over claims in a Rule 23 class action that did not meet the amount in controversy requirement. Justice Stevens began his argument by stating that the legislative history of a congressional enactment should always be consulted when applying a statute, whether or not the statutory language is ambiguous. The dissent argued that courts should utilize as much relevant legislative history as possible before applying a statute, because it is the best evidence of the legislature's intent.
Justice Stevens then turned to the legislative history of § 1367, by means of a House Report\textsuperscript{63} that was adopted by both the House of Representatives and the Senate.\textsuperscript{64} In this House Report, the drafters of the statute specifically stated that § 1367 was meant neither to overrule 
\textit{Zahn}, nor to change the jurisdictional requirements of § 1332 in diversity-based class actions.\textsuperscript{65} Justice Stevens believed that this committee report showed the legislature’s clear and unequivocal purpose for drafting § 1367.\textsuperscript{66}

Justice Stevens argued that the majority should have given deference to the legislative history of § 1367 so that the Court’s holding would have complied with the legislature’s intent.\textsuperscript{67} He stated that congressmen draft committee reports along with statutes so that the courts will consult them and that congressmen rely on these reports when casting their votes.\textsuperscript{68} Justice Stevens would not have conferred federal jurisdiction to the dealers because he believed it was Congress’ intent to deny the federal courts diversity jurisdiction over those plaintiffs that fail to meet the amount in controversy requirement.\textsuperscript{69}

Justice Ginsburg also filed a dissenting opinion, with whom Justices Stevens, O’Connor, and Breyer joined.\textsuperscript{70} In her dissent, Justice Ginsburg provided a different interpretation of § 1367 than that of the majority.\textsuperscript{71} She began by discussing the requirements of § 1332, noting that the statute requires both complete diversity between adversaries and a requisite amount in controversy of $75,000 for each claim.\textsuperscript{72} She went on to mention that the Court has never allowed a class of plaintiffs to bypass the amount in controversy requirement and that every claim must exceed the requirement individually.\textsuperscript{73} Justice Ginsburg concluded by argu-

\begin{itemize}
\item \textsuperscript{64} Exxon, 125 S. Ct. at 2628 (Stevens, J., dissenting).
\item \textsuperscript{65} H.R. REP. No. 101-734, at 78. "The section \textit{[§ 1367]} is not intended to affect the jurisdictional requirements of 28 U.S.C. \textit{§ 1332} in diversity-only class actions, as those requirements were interpreted prior to [1990]." \textit{Id.} Further, the report specifically stated that "\textit{[subsection (b)] is meant to eliminate} Rule 23(a) plaintiff-intervenors to the same extent as those sought to be joined as plaintiffs under Rule 19." \textit{Id.}
\item \textsuperscript{66} Exxon, 125 S. Ct. at 2629 (Stevens, J., dissenting).
\item \textsuperscript{67} \textit{Id.} at 2630. Justice Stevens felt that the majority failed to make "any serious attempts at ascertaining [Congress'] intent." \textit{Id.}
\item \textsuperscript{68} \textit{Id.} at 2628.
\item \textsuperscript{69} \textit{Id.} at 2630.
\item \textsuperscript{70} Exxon, 125 S. Ct. at 2631 (Ginsburg, J., dissenting).
\item \textsuperscript{71} \textit{Id.}
\item \textsuperscript{72} \textit{Id.} See 28 U.S.C. \textit{§§ 1332(a)(1), (2).}
\item \textsuperscript{73} Exxon, 125 S. Ct. at 2636 (Ginsburg, J., dissenting) (citing Clark, 306 U.S. at 589). \end{itemize}
ing that original diversity jurisdiction requires every claim to individually satisfy the amount in controversy requirement, and because such was lacking here, original jurisdiction never attached. According to Justice Ginsburg, because the district court never had original jurisdiction, it certainly did not have supplemental jurisdiction; therefore, the case should have been dismissed.

Prior to this decision, the circuit courts, much like the court at hand, were split as to whether a federal court could exercise supplemental jurisdiction over additional claims that did not satisfy the amount in controversy requirement. While some courts interpreted § 1367 to extend supplemental jurisdiction over such claims, others determined that § 1367(b) specifically precluded this exercise of power. This dispute stemmed from the history of supplemental jurisdiction and its treatment in federal court.

In *Mine Workers v. Gibbs*, the Supreme Court conferred supplemental jurisdiction in federal court for the first time. Gibbs brought suit in the United States District Court for the Eastern District of Tennessee, alleging that the conduct of his labor union, United Mine Workers of America, violated both federal and state law. The district court allowed the federal law claim to proceed based on federal question jurisdiction, but refused to hear the state law claim for lack of original jurisdiction.

The Supreme Court granted certiorari and overruled the district court's decision, creating what is now known as supplemental jurisdiction. The *Gibbs* Court held that a federal court has the power to hear an additional claim over which it does not have original jurisdiction, so long as the claim arises out of the same "case or controversy" as another claim properly before the court.

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75. *Id.* at 2640.
76. *Id.* at 2615 (majority opinion).
77. *Id.*
78. *Id.* at 2617.
82. *Id.* at 725.
83. *Id.*
84. *Id.* at 728. Supplemental jurisdiction is based on the fact that district courts have the Constitutional authority under U.S. CONST. art. 3, § 2, to hear the entire "case" or "controversy" if a portion of the case or controversy is presently before the court. *Id.* at 725.
The Supreme Court created a two-pronged test to determine whether supplemental jurisdiction could attach. If the federal court has (1) original jurisdiction over at least one claim in the action and (2) the additional claim forms a part of the same case or controversy as the original claim, supplemental jurisdiction can attach.

Despite the broad holding in *Gibbs*, federal courts were still reluctant to authorize supplemental jurisdiction over claims by additional parties when doing so would be inconsistent with § 1332's diversity jurisdiction requirements. Courts felt that the requirements of § 1332 applied to all parties in an action; thus, if one party was non-diverse or failed to claim the requisite amount in controversy, the entire case must be dismissed for lack of original jurisdiction and failure of the first prong of the *Gibbs* test. This rationale was soon tested in *Zahn v. International Paper Co.*

In *Zahn*, the plaintiffs, 200 lakefront property owners along Lake Champlain in Vermont, were certified as a class under Rule 23(b)(3), and brought suit against the International Paper Company for allegedly polluting the lake and causing property damage. Despite the fact that only several of the plaintiffs' claims met the amount in controversy requirement, the class filed suit in federal court, invoking the court's diversity jurisdiction. The class was not allowed to proceed, however, as the district court found that there was no jurisdictional basis for the claims of class members who did not meet the minimum amount in controversy.

The Supreme Court upheld this decision, explaining that the amount in controversy requirement applies to all plaintiffs, and if one claim does not satisfy the requirement, all claims fail for lack of original jurisdiction. The Court found that, since every plain-

86. *Id*. The proper test was whether the two claims derived from a "common nucleus of operative fact." *Id*.
87. *Id*. at 725.
89. *Id*.
91. *Id*. at 291-92. "The claim of each of the named plaintiffs was found to satisfy the $10,000 jurisdictional amount, but the District Court was convinced 'to a legal certainty' that not every individual owner in the class had suffered pollution damages in excess of $10,000." *Id*. at 292. The jurisdictional amount, also known as the amount-in-controversy requirement, was $75,000 when *Exxon* was decided. 28 U.S.C. § 1332(a)(1).
93. *Id*.
94. *Id*. at 294. "Each plaintiff in a Rule 23(b)(3) class action must satisfy the jurisdictional amount, and any plaintiff who does not must be dismissed from the case — one plain-
tiff must satisfy the diversity requirements individually, if one plaintiff did not, original jurisdiction would be lost over all.95

A similar result followed in Owen Equipment & Erection Co. v. Kroger.96 Kroger, a citizen of Iowa, brought a wrongful death action against her decedent husband's employer, Omaha Public Power District, a Nebraska corporation.97 Omaha then joined Owen Equipment & Erection Company as a third party defendant.98 The suit was filed in the United States District Court for the District of Nebraska, with jurisdiction based on diversity of citizenship.99 The case was tried in the district court despite the fact that Kroger was domiciled in Iowa and Owen was an Iowa corporation.100

The Supreme Court granted certiorari and remanded the case, holding that supplemental jurisdiction could not attach to Kroger's claim against Owen, because each party in a diversity suit must individually meet the requirements of § 1332 before the court has original jurisdiction.101 Despite the fact that Kroger's claim against Omaha had a proper jurisdictional basis, and Kroger's claim against Owen arose out of a "common nucleus of operative fact," the Supreme Court found that Owen should not have participated in the suit because the company destroyed complete diversity, a requirement that each party must individually satisfy.102 Since incomplete diversity deprived the court of original jurisdiction, supplemental jurisdiction could not have attached.103

The holdings in Zahn and Owen followed the same basic principle.104 In Zahn, the Court would not extend supplemental jurisdiction over claims from additional plaintiffs that did not meet

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95. Zahn, 414 U.S. at 301.
97. Owen, 437 U.S. at 366.
98. Id. at 367-68. Rule 14 allows for such a practice:
At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third party plaintiff.

FED. R. CIV. P. 14.

100. Id. at 369. Kroger eventually amended her complaint to include Owen as a first party defendant as well. Id. at 366.
101. Id. at 367.
102. Id. at 378.
103. Id.
104. Owen, 437 U.S. at 372.
§ 1332’s requirements. In Owen, supplemental jurisdiction was not extended to a claim that was against an additional defendant who did not meet § 1332’s requirements. Following these decisions, the state of the law was clear: supplemental jurisdiction was not to attach to claims from or against parties that did not first meet the requirements of § 1332.

Consistent with these decisions, the legislature purported to codify supplemental jurisdiction as it stood by means of § 1367. The committee reports associated with § 1367 show that Congress’ intent in passing the statute was to codify the rules of law set forth in Gibbs, Zahn, and Owen. According to the aforementioned House report, Congress’ intent in passing § 1367(a) was to codify the broad holding in Gibbs by allowing supplemental jurisdiction to extend to any claims that are part of the same case or controversy as a claim that the court has original jurisdiction over.

The report also stated that the exceptions found within subsection (b) were intended to prevent the circumvention of the diversity jurisdiction requirements and uphold Owen and Zahn. The first set of subsection (b) exceptions codify Owen, as it prevents claims from current plaintiffs against additional defendants who do not meet § 1332’s requirements. Further, according to the House report, the second set of exceptions was in place to codify Zahn, as it prevents claims from additional plaintiffs who destroy § 1332’s requirements over current defendants.

While Congress’ attempt to codify Owen was apparently effective, their attempt to codify Zahn was somewhat more troublesome. For whatever reason, Congress did not include claims by

\[105\] Zahn, 414 U.S. at 301. "Each plaintiff in a Rule 23(b)(3) class action must satisfy the jurisdictional amount, and any plaintiff who does not must be dismissed from the case." Id.

\[106\] Owen, 437 U.S. at 377.

\[107\] Exxon, 125 S. Ct. at 2619.

\[108\] Id.

\[109\] Id. at 2625. This report explained that the purpose of § 1367 was to codify the common law rules surrounding supplemental jurisdiction as they stood in 1990. H. R. REP. No. 101-734.

\[110\] Exxon, 125 S. Ct. at 2625 (citing H. R. REP. No. 101-734).

\[111\] The House report stated that § 1367(b) "is not intended to affect the jurisdictional requirements of [§ 1332] in diversity-only class actions, as those requirements were interpreted prior to this statute." H. R. REP. No. 101-734.

\[112\] Exxon, 125 S. Ct. at 2625. The first set of exceptions bar "claims by plaintiffs against persons made parties under Rules 14, 19, 20, or 24." 28 U.S.C. § 1367(b).

\[113\] H. R. REP. No. 101-734.

\[114\] Exxon, 125 S. Ct. at 2626.
persons joined under Rule 23 of the Federal Rules of Civil Procedure in their second set of subsection (b) exceptions.\textsuperscript{115} Therefore, it still remained questionable as to whether supplemental jurisdiction could attach to claims from class action plaintiffs that did not meet the amount in controversy requirement.\textsuperscript{116} Since the statute's enactment, eleven of the twelve federal courts of appeal have decided the issue, with varying results.\textsuperscript{117}

The Courts of Appeals for the Fourth, Sixth, Seventh, and Eleventh Circuits have held that § 1367 extends supplemental jurisdiction over claims from class members who do not meet the amount in controversy requirement, so long as the district court has original jurisdiction over at least one claim.\textsuperscript{118} The Courts of Appeals for the Fifth and Ninth Circuits have held the same; however, those circuits limited the grant of jurisdiction to the claims of unnamed class members only.\textsuperscript{119} The Courts of Appeals for the First, Third, Eighth and Tenth Circuits have taken a different approach, holding that original jurisdiction is lacking if a single plaintiff's claim does not meet the amount in controversy requirement.\textsuperscript{120}

After a plain-text reading of § 1367, there is no doubt that the statute confers supplemental jurisdiction over all additional claims in subsection (a),\textsuperscript{121} yet in subsection (b), does not exclude claims from Rule 23 class action plaintiffs. Whether this was an oversight by the legislature or an intentional act is a moot point. As Justice Kennedy pointed out, it is the Court's job to apply the applicable law, and when the law is unequivocal and unambiguous, the Court may not read inferences into the law or refer to extrinsic materials.\textsuperscript{122} Committee and House reports may only act as evidence of the legislature's intent, as they are not laws.

\textsuperscript{115} Id. at 2620 (citing 28 U.S.C. § 1367(b)).
\textsuperscript{116} Exxon, 125 S. Ct. at 2615. "The question has divided the courts of appeals, and we granted certiorari to resolve the conflict." Id.
\textsuperscript{117} Id. at 2616.
\textsuperscript{118} Id. See Olden v. La Farge Corp., 383 F.3d 495 (6th Cir. 2004); Allapattah, 333 F.3d at 5458; Rosmer v. Pfizer, Inc., 263 F.3d 110 (4th Cir. 2001); In re Brand Name Prescription Drugs Antitrust Litigation, 123 F.3d 599 (7th Cir. 1997); Stromberg Metal Works, Inc. v. Press Mechanical, Inc., 77 F.3d 928 (7th Cir. 1996).
\textsuperscript{119} Exxon, 125 S. Ct. at 2616. See Gibson v. Chrysler Corp., 261 F.3d 927 (9th Cir. 2001); In re Abbot Labs, 51 F.3d 524 (5th Cir. 1995).
\textsuperscript{120} Exxon, 125 S. Ct. at 2616. See Ortega, 370 F.3d at 124; Trimble v. Asarco, Inc., 232 F.3d 946 (8th Cir. 2000); Meritcare, Inc. v. St. Paul Mercury Insurance Co., 166 F.3d 214 (3d Cir. 1999); Leonhardt v. Western Sugar Co., 160 F.3d 631 (10th Cir. 1998).
\textsuperscript{121} This refers to all additional claims that form a part of the same case or controversy as a claim properly before the court. 28 U.S.C. § 1367(a).
\textsuperscript{122} Exxon, 125 S. Ct. at 2625.
Justice Kennedy gave two reasons why legislative history should not be consulted, both of which are persuasive. First, he likened using a statute's legislative history to resolve its ambiguity to using gasoline to put out a fire, as legislative history is often ambiguous itself. The legislative history of § 1367, for example, consists of several years worth of studies and reports, many of which contain contradictory text and terminology. Legislative history should be a last resort because it is often murky itself.

Justice Kennedy also stated that giving credence to legislative history could give those with no say in the enactment a means to push their agenda. Unrepresented committee members, unelected staffers, and lobbyists could all find their opinions floating in committee and House reports. These individuals could potentially amend a statute by use of a committee report if a court were to adopt their view. This would pose a serious threat to Article I of the Constitution, as the lawmaking power is expressly conferred to Congress alone.

If courts defer to legislative history when a statute is not ambiguous, committee and House reports would become analogous to statutes and bills. Making statutory amendments is a detailed process that requires approval from the House of Representatives, the Senate, and the President. Courts must not allow the legislature to bypass these requirements by putting materials analogous to statutory provisions in their committee reports. Giving statutes and other legislative enactments a plain-text reading will instead encourage congressmen to draft clear and unambiguous rules. Legislative history can be a useful interpretative tool, but it is a tool that can easily be abused; therefore, courts should only defer to it when absolutely necessary.

Finally, as Justice Scalia stated in *Finley v. United States*, "[w]hatsoever we say regarding the scope of jurisdiction conferred by

123. *Id.* at 2626.
124. *Id.*
125. *Id.* at 2626-27.
126. *Id.*
128. *Id.*
129. *Id.* at 2627. “All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.” U.S. CONST. art. 1, § 1.
130. 490 U.S. 545, 557 (1989). In *Finley*, the Supreme Court was faced with a statutory construction problem with regards to 28 U.S.C. § 1346(b) (1987), which granted plaintiffs asserting claims under the Federal Tort Claims Act original federal jurisdiction. *Finley*, 490 U.S. at 546.
a particular statute can of course be changed by Congress."\textsuperscript{131} The Exxon opinion should send a message to Congress that it ought to draft statutes more carefully. While it is apparent that § 1367 does not read as Congress intended it to be read, the proper recourse was not for the Court to read language into the statute that did not exist. Our Constitution requires the courts to apply the law as it is written by the legislature. To do otherwise would be repugnant to Article I.

\textit{Salvatore Joseph Bauccio}