Affirmative Mass Tort Litigation for N.Y. Counties—A Landscape

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SLIP OPINION NO. 2024-OHIO-5744

IN RE NATIONAL PRESCRIPTION OPIATE LITIGATION;

TRUMBULL COUNTY, OHIO ET AL. *v.* PURDUE PHARMA, L.P., ET AL.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *In re Natl. Prescription Opiate Litigation*, Slip Opinion No. 2024-Ohio-5744.]

Torts—Products liability—Public nuisance—Ohio Product Liability Act, R.C. 2307.71 et seq.—All common-law public-nuisance claims arising from the sale of a product have been abrogated by Ohio Product Liability Act—Certified question of state law answered in the affirmative.

(No. 2023-1155—Submitted March 26, 2024—Decided December 10, 2024.)

CERTIFIED QUESTION from the U.S. Court of Appeals for the Sixth Circuit, Nos. 22-3750, 22-3751, 22-3753, 22-3841, and 22-3844.

DETERS, J., authored the opinion of the court, which KENNEDY, C.J., and DEWINE and BRUNNER, JJ., joined. FISCHER, J., concurred in judgment only.

STEWART, J., concurred in part and dissented in part, with an opinion joined by DONNELLY, J.

DETERS, J.

{¶ 1} We accepted review of a certified question of state law from the United States Court of Appeals for the Sixth Circuit regarding whether R.C. 2307.71 abrogates a common-law claim of absolute public nuisance resulting from the sale of a product. For the reasons that follow, we answer the certified question in the affirmative and hold that all common-law public-nuisance claims arising from the sale of a product have been abrogated by the Ohio Product Liability Act, R.C. 2307.71 et seq. ("OPLA").

I. BACKGROUND

{¶ 2} The Sixth Circuit Court of Appeals provided the following facts and allegations from which the certified question of state law arises. A group of city and county governments from across the nation, Indian tribes, and other entities have brought actions alleging "that opioid manufacturers, opioid distributors, and opioid-selling pharmacies and retailers acted in concert to mislead medical professionals into prescribing, and millions of Americans into taking and often becoming addicted to, opiates." *In re Natl. Prescription Opiate Litigation*, 976 F.3d 664, 667 (6th Cir. 2020). Collectively, these actions make up the multidistrict National Prescription Opiate Litigation pending in the United States District Court for the Northern District of Ohio. One of these actions—brought by two northeast Ohio counties—gave rise to this certified question of state law.

{¶ 3} Plaintiffs Trumbull County and Lake County (collectively, the "Counties") allege that national pharmaceutical chains, including defendants Walgreens, CVS, and Walmart (collectively, the "Pharmacies"), "'created, perpetuated, and maintained' the opioid epidemic by filling prescriptions for opioids without controls in place to stop the distribution of those that were illicitly prescribed."

{¶ 4} The Counties pleaded their allegations as a common-law absolute public-nuisance claim, which this court has defined as "'an unreasonable interference with a right common to the general public,' " *Cincinnati v. Beretta U.S.A. Corp.*, 2002-Ohio-2480, ¶ 8, quoting 4 Restatement of the Law 2d, Torts, § 821B(1), 87 (1979), that "is based on either intentional conduct or an abnormally dangerous condition that cannot be maintained without injury to property, no matter what care is taken," *State ex rel. R.T.G., Inc. v. State*, 2002-Ohio-6716, ¶ 59. Invoking the OPLA, the Pharmacies filed a motion to dismiss. The OPLA is, as the name suggests, a statutory scheme governing product-liability claims. *See* R.C. 2307.71 et seq. Relevant here, the OPLA is "intended to abrogate all common law product-liability claims or causes of action." R.C. 2307.71(B). The Pharmacies argued that the OPLA abrogates public-nuisance claims like those brought by the Counties, arguing in part that certain public-nuisance claims are included in the OPLA's definition of product-liability claims. *See* R.C. 2307.71(A)(13).

{¶ 5} The federal district court denied the Pharmacies' motion to dismiss. It did so based on its prior decision in a separate action within the same multidistrict litigation brought by Summit County, Ohio (the "Summit County Action"), *see In re Natl. Prescription Opiate Litigation*, 2018 WL 6628898, *12-15 (N.D. Ohio Dec. 19, 2018), determining that it would not reconsider its prior rulings at that time. In the Summit County Action, the federal district court concluded that the OPLA does not abrogate absolute public-nuisance claims seeking relief for harm other than compensatory damages (e.g. equitable remedies). Legislative history heavily influenced the federal district court's decision. In particular, the district court considered legislative history surrounding two amendments to the OPLA: the first in 2005 (the "2005 Amendment"), and the second in 2007 (the "2007 Amendment").

{¶ 6} The 2005 Amendment added R.C. 2307.71(B), which is the subsection abrogating all common-law product-liability claims. Am.Sub.S.B. No. 80, 150 Ohio Laws, 7915. The legislative history expressed the General Assembly's intent "to supersede the holding of the Ohio Supreme Court in *Carrel v. Allied Products Corp.* (1997), 78 Ohio St.3d 284, that the common law product-liability cause of action of negligent design survives the enactment of [the OPLA] . . . , and to abrogate all common law product liability causes of action." Am.Sub.S.B. No. 80, Section 3, 150 Ohio Laws, 7915, 8031. But despite expressing a desire to supersede *Carrel*, the legislative history made no mention of our decision in *LaPuma v. Collinwood Concrete*, 1996-Ohio-305, ¶ 10 (holding that claims seeking only economic damages are excluded from the OPLA's definition of "product liability claim"). The federal district court placed great significance on the inclusion of *Carrel* but exclusion of *LaPuma* in the 2005 Amendment's legislative history. According to the federal district court, omitting *LaPuma* from the 2005 Amendment's stated purpose evinced a "tacit acceptance of the Ohio Supreme Court's holding in *LaPuma*." 2018 WL 6628898 at *13.

{¶ 7} And the 2007 Amendment, which added "any public nuisance claim" to the definition of "product liability claim" in R.C. 2307.71(A)(13), did not persuade the federal district court otherwise. *See* 2018 WL 6628898 at *13. The 2007 Amendment's legislative history bills the amendment as an attempt "to clarify the General Assembly's original intent in enacting [the OPLA] . . . to abrogate all common law product liability causes of action" regardless of how they are pleaded. Am.Sub.S.B. No. 117, Section 3, 151 Ohio Laws, Part II, 2274, 2291. But the inclusion of "public nuisance claims" in the definition of "product liability claim" was "not intended to be substantive." *Id.* So, the federal district court reasoned, the 2007 Amendment left the OPLA's reach unaltered: it, along with the 2005 Amendment, eliminated all common-law theories of product liability seeking non-economic damages but left common-law claims seeking economic damages or equitable relief intact. 2018 WL 6628898 at *13.

{¶ 8} In the Counties' public-nuisance claim, they seek equitable relief, not compensatory damages. Refusing to reconsider its reasoning from the Summit County Action, the federal district court denied the motion to dismiss. After the case went to trial and a jury rendered a verdict in the Counties' favor, the Pharmacies reiterated their OPLA-abrogation argument in a motion for judgment as a matter of law. That, too, was denied.

{¶ 9} The Pharmacies appealed. Recognizing that this court has not yet spoken on the proper interpretation of the OPLA in the aftermath of the 2005 and 2007 Amendments, the Sixth Circuit certified a question of state law. We accepted the certification and agreed to answer the following question:

> Whether the Ohio Product Liability Act, Ohio Revised Code § 2307.71 et seq., as amended in 2005 and 2007, abrogates a common law claim of absolute public nuisance resulting from the sale of a product in commerce in which the plaintiffs seek equitable abatement, including both monetary and injunctive remedies?

2023-Ohio-4259.

II. ANALYSIS

A. Ohio's statutory scheme for product-liability claims

{¶ 10} In 1988, Ohio's General Assembly enacted a statutory scheme for regulating product-liability claims: R.C. 2307.71 et seq. The definition of "product liability claim," which is the point of contention between the Counties and the Pharmacies, was originally limited to the following paragraph:

> "Product liability claim" means a claim that is asserted in a civil action and that seeks to recover compensatory damages from a manufacturer or supplier for death, physical injury to person, emotional distress, or physical damage to property other than the product in question, that allegedly arose from any of the following:
>
> (1) The design, formulation, production, construction, creation, assembly, rebuilding, testing, or marketing of that product;
>
> (2) Any warning or instruction, or lack of warning or instruction, associated with that product;
>
> (3) Any failure of that product to conform to any relevant representation or warranty.

Former R.C. 2307.71(M), Am.Sub.H.B. No. 1, 142 Ohio Laws, Part I, 1661, 1674.

{¶ 11} Nearly a decade after the statute was enacted, this court interpreted R.C. 2307.71 in *Carrel v. Allied Prods. Corp.*, 1997-Ohio-12. This court was confronted with the question whether a common-law claim for negligent design of a product was abrogated by the OPLA. *Id.* at ¶ 13-14. Applying the principle that a statutory enactment does not abrogate common law unless the intent to do so is clear, this court concluded that the OPLA did not expressly eliminate causes of action sounding in negligence—such as negligent design. *Id.* at ¶ 17, 24. But the court went further. In dicta, this court put its imprimatur on a dissenting justice's earlier comment that "'it should now be understood that all common-law products liability causes of action survive the enactment of [the OPLA], unless *specifically* covered by the Act.' " (Emphasis added in *Byers* and *Curtis*.) *Id.* at ¶ 23, quoting *Byers v. Consol. Aluminum Corp.*, 1995-Ohio-216, (Douglas, J., dissenting) and *Curtis v. Square-D Co.*, 1995-Ohio-23, (Douglas, J. dissenting).

{¶ 12} Following *Carrel*'s limitation of the OPLA's abrogating effect, this court expanded opportunities for product-based lawsuits at common law. It did so by endorsing an unorthodox use of the tort of public nuisance in *Cincinnati v. Beretta U.S.A. Corp.*, 2002-Ohio-2480. Public-nuisance suits were historically used to address violations of public rights "connected to real property or to statutory or regulatory violations involving public health or safety." *Id.* at ¶ 9. But, in *Beretta*, this court permitted a public-nuisance suit to proceed based on the manufacture, marketing, distribution, and sale of firearms. *Id.* at ¶ 7, 16. Relying on the Restatement of the Law Second, this court concluded that public-nuisance law covers "injuries caused by a product if the facts establish that the design, manufacturing, marketing, or sale of the product unreasonably interferes with a right common to the general public." *Id.* at ¶ 10.

{¶ 13} Several years later, the General Assembly enacted amendments to the OPLA in an apparent response to *Carrel* and *Beretta*. In 2005, an amendment added language to the definition of "product liability claim" to specify that such a claim is "asserted in a civil action pursuant to sections 2307.71 to 2307.80 of the Revised Code." R.C. 2307.71(A)(13); *see also* Am.Sub.S.B. No. 80, 150 Ohio Laws, 7915, 7954. It also added a new subsection: "Sections 2307.71 to 2307.80 of the Revised Code are intended to abrogate all common law product liability causes of action." Former R.C. 2307.71(B), Am.Sub.S.B. No. 80, 150 Ohio Laws, 7915, 7955. The next year, in 2006, the General Assembly enacted a further amendment to the definition of "product liability claim," creating the version of R.C. 2307.71 that remains in effect today. A new paragraph was added addressing public-nuisance claims:

> "Product liability claim" *also includes any public nuisance claim* or cause of action at common law in which it is alleged that the design, manufacture, supply, marketing, distribution, promotion,

> advertising, labeling, or sale of a product unreasonably interferes with a right common to the general public.

(Emphasis added.) Am.Sub.S.B. No. 117, 151 Ohio Laws, Part II, 2274, 2279 (codified at R.C. 2307.71(A)(13)).

B. The statutory definition of "product liability claim" includes public-nuisance causes of action regardless of the kind of relief requested

{¶ 14} Much of the debate between the parties turns on how the phrase "also includes" functions in the paragraph added by the 2007 Amendment. According to the Counties, "also includes" is not synonymous with "means." "Includes," they insist, signals the words that follow—i.e. "public nuisance claim"—are an example of a subset of a broader category and nothing more. The language added by the 2007 Amendment, according to the Counties, merely illustrates the type of claim that comes within the ambit of the already existing definition of "product liability claim": "[A] claim or cause of action that is asserted in a civil action pursuant to sections 2307.71 to 2307.80 of the Revised Code and that seeks to recover compensatory damages from a manufacturer or supplier for death, physical injury to person, emotional distress, or physical damage to property other than the product in question, that allegedly arose from" one of the enumerated product defects. R.C. 2307.71(A)(13). In other words, the Counties believe that the OPLA abrogates only the public-nuisance claims seeking compensatory damages.

{¶ 15} The Pharmacies disagree with the Counties' circumscribed construction of the OPLA. In their view, the phrase "also includes" expands the definition of product liability. It creates a second category of product-liability claims—public-nuisance claims based on the design, manufacture, supply, marketing, distribution, or sale of a product—that are abrogated by the OPLA. To reach this interpretation, the Pharmacies explain that "includes," while sometimes serving an illustrative function, may also perform additive duties. Divining the appropriate meaning in a particular circumstance is a question of context, they say, and the General Assembly's choice to combine "also" with "includes" establishes that the additive meaning was intended.

{¶ 16} The Pharmacies have the better argument. Narrowly construing "also includes any public nuisance claim" to mean only those public-nuisance claims that satisfy the first paragraph of (A)(13) reads "also" out of the statute. It is true that "include" often serves to introduce a non-exhaustive list of examples of parts of a previously introduced whole. *See, e.g.*, Scalia & Garner, *Reading Law: The Interpretation of Legal Texts*, 132 (2012). But the General Assembly did not merely say that product-liability claims "include" public-nuisance claims; it said that they "also include[]" public-nuisance claims.

{¶ 17} "Also" is additive. That is inherent in the meaning of "also," which is defined as "in addition." *Webster's Third New International Dictionary* (2002). Modifying "includes" with "also" thus signals an expansive, not illustrative, use of the term. *See Miller v. Youakim*, 440 U.S. 125, 136-137 (1979) (holding that the phrase "also include" was "language that unquestionably expand[ed] the scope" of the defined term); *D&A Rofael Ents., Inc. v. Tracy*, 1999-Ohio-256, ¶ 16 (interpreting "also includes" as expanding a statutory definition).

{¶ 18} In *D&A Rofael Ents.*, this court recognized that the General Assembly's use of "also includes" enlarged a statutory definition. At issue was whether a mall food court was part of the "premises" of several restaurants in the mall for tax purposes. *D&A Rofael Ents.* at ¶ 9. Resolution of the issue turned on the statutory definition of "premises," which contained two parts. The first part of the statute defined "premises" as "'any real property . . . upon which any person engages in selling tangible personal property at retail or making retail sales.' " *Id.* at ¶ 15, quoting R.C. 5739.01(K). However, the second part of the statute provided that "premises" "'*also includes* any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person.'"

(Emphasis added.) *Id.* at ¶ 16, quoting R.C. 5739.01(K). Rather than interpreting the second part of the relevant statute as illustrative of the first part, this court concluded that the second part "obviously" enlarged the statutory definition. *Id.* at ¶ 16. So too here.

{¶ 19} The cases cited by the Counties do not require a different result. In those cases, the statutes at issue did not use "also" to modify "include." *See In re Hartman*, 2 Ohio St.3d 154 (1983) (Interpreting former R.C. 2501.02(A), which provided, "'Upon an appeal upon questions of law to review . . . judgments or final orders of courts of record inferior to the court of appeals within the district, *including* the finding, order or judgment of a juvenile court" (emphasis added)); *In re Z.N.*, 2015-Ohio-1213, ¶ 14 (11th Dist.), quoting R.C. 2152.02(L) ("'Economic loss' means any economic detriment suffered by a victim of a delinquent act . . . and *includes* any loss of income due to lost time at work . . . ." (Emphasis added)). So, those cases are inapposite.

{¶ 20} The Counties draw our attention to *Cleveland Bar Assn. v. Misch*, 1998-Ohio-413, but this case is no help to them. In *Misch*, this court explained that "the practice of law is not limited to appearances in court, but *also includes* giving legal advice and counsel and the preparation of legal instruments and contracts." (Emphasis added.) *Id.* at ¶ 13. In *Misch*, the Counties say, this court used the phrase "also includes" to clarify the scope of the meaning of the phrase "practice of law" and so that's what the 2007 Amendment did, too. Not so.

{¶ 21} True, this court in *Misch* used the phrase "also includes" to clarify the definition of another phrase. What's important, however, is how the phrase "also includes" accomplished that task. The phrase did not introduce a list of additional acts already subsumed by the phrase "appearances in court." Had it served such a function, the Counties might have a point. Instead, "also includes" was used to show that the phrase "practice of law" encompasses acts that are different from, and additional to, "appearances in court"—namely, "giving legal advice and counsel" and "preparing[ing] . . . legal instruments and contracts." *Id.* at ¶ 13. And that is precisely how "also includes" functions in R.C. 2307.71(A)(13): it expands the definition of "product liability claim."

{¶ 22} Because "includes" has been used in its additive sense, public-nuisance claims are a second, independent category of product-liability claims. This means that the confines of the first category of product-liability claims are of no moment when determining the bounds of the second. Instead, the parameters of the second category must be drawn from the second paragraph of R.C. 2307.71(A)(13), not the first.

{¶ 23} The second paragraph says that "any public nuisance claim or cause of action at common law in which it is alleged that the design, manufacture, supply, marketing, distribution, promotion, advertising, labeling, or sale of a product unreasonably interferes with a right common to the general public" is a product-liability claim. R.C. 2307.71(A)(13). Omitted from this definition is a requirement that "any public nuisance claim or cause of action at common law" seek compensatory damages. This omission is key. Product-liability claims subsume all public-nuisance claims based on a product as specified in (A)(13). The kind of relief requested is immaterial.

C. The OPLA does not limit product-liability claims to public-nuisance claims based on product defects

{¶ 24} The Counties advance a similar statutory-interpretation argument with respect to product defects. The first paragraph of R.C. 2307.71(A)(13) requires that a product-liability claim arise from harm caused by a defective product, and the Counties contend that this requirement applies to public-nuisance claims, too. But this argument fails for the same reason as the Counties' argument about compensatory damages: any mention of defective products is absent from the expanded definition of "product liability claim" in (A)(13)'s second paragraph. *See* R.C. 2307.71(A)(13).

{¶ 25} The Counties also maintain that other provisions of the OPLA demonstrate that it covers only common-law product-liability claims that arise from harm caused by a defective product. Each of the OPLA's statutory analogs for common-law theories involve product defects, the Counties insist, and so the meaning of "product liability claim" as defined by R.C. 2307.71 must be limited to claims based on a product defect. *See, e.g.*, R.C. 2307.74 (manufacture defect); R.C. 2307.75 (design defect); R.C. 2307.76 (inadequate warning); R.C. 2307.77 (nonconformance with manufacturer's representations). We reject this argument because it contravenes the plain language of R.C. 2307.71(A)(13), which contains no requirement that a public-nuisance claim be based on a defective product.

{¶ 26} What's more, the OPLA's limitation on product-liability theories to those involving a defect by no means demands the conclusion that the definition of "product liability claim" is equally limited. Another possibility is that "product liability claim" is defined broadly enough to eliminate all product-based common-law claims while the rest of the OPLA is narrowly tailored to resurrect only some of the common-law theories into statutory form. Such an understanding of the OPLA is consistent with the plain text of R.C. 2307.71.

{¶ 27} We hold, therefore, that a public-nuisance claim need not involve allegations of a product defect to satisfy the definition of "product liability claim."

D. The OPLA expressly abrogates all common-law public-nuisance claims

{¶ 28} The remaining puzzle pieces easily fall into place following the conclusion that all product-based public-nuisance claims are product-liability claims. "[A]ll common law product liability claims or causes of action" are abrogated by R.C. 2307.71, et seq. R.C. 2307.71(B). This is straightforward: product-liability claims brought at common law—such as the Counties' claims—have been abrogated.

{¶ 29} The Counties nonetheless insist that public-nuisance claims seeking equitable relief are not abrogated by the OPLA. Adding common-law claims seeking equitable relief to the definition of product-liability claim only to then bar the use of such causes of action is, in the Counties' view, incoherent. We are not convinced. The OPLA already abrogated common-law product-liability claims following the 2005 Amendment. Further amending the statute to clarify that product-liability claims disguised as public-nuisance claims, in the mold of the claim this court permitted in *Beretta*, is not incoherent.

{¶ 30} The Counties also suggest that the General Assembly is prohibited from abolishing a common-law cause of action without providing a reasonable statutory replacement. For this, they cite the concurring opinion from *Mominee v. Scherbarth*, 28 Ohio St.3d 270 (1986). There, the concurring opinion stated that "[w]here a right or action existed at common law at the time the Constitution was adopted, that right is constitutionally protected, by the access-to-the-courts provision, from subsequent legislative action which abrogates or impairs that right without affording a reasonable substitute." *Id.* at 291-292 (Douglas, J., concurring). In the time since Justice Douglas penned his concurring opinion in *Mominee,* this court has clarified that "the right to a remedy protects only those causes of action that the General Assembly identifies and for the period of time it determines." *Antoon v. Cleveland Clinic Found.*, 2016-Ohio-7432, ¶ 27, citing *Ruther v. Kaiser*, 2012-Ohio-5686, ¶ 12. That is because "'there is no property or vested right in any of the rules of the common law.' " *Id.*, quoting *Leis v. Cleveland Ry. Co.*, 101 Ohio St. 162 (1920), syllabus.

{¶ 31} The plain language of the OPLA abrogates product-liability claims, including product-related public-nuisance claims seeking equitable relief. We are constrained to interpret the statute as written, not according to our own personal policy preferences. For this reason, we answer the certified question in the affirmative: all public-nuisance claims alleging "that the design, manufacture, supply, marketing, distribution, promotion, advertising, labeling, or sale of a product unreasonably interferes with a right common to the general public" have been abrogated by the OPLA, including those seeking equitable relief.

E. Resort to legislative history to twist the plain meaning of the OPLA is improper

{¶ 32} Notwithstanding the plain text of R.C. 2307.71, the Counties insist that the legislative history infuses the text with a different meaning—one more agreeable to their purposes. But even for those who believe that resorting to legislative history is sometimes appropriate, "if the text of a statute is unambiguous, it should be applied by its terms without recourse to policy arguments, legislative history, or any other matter extraneous to the text." Scalia & Garner, *Reading Law*, at 436; *see also Beachwood City School Dist. Bd. of Edn. v. Warrensville Hts. City School Dist. Bd. of Edn.*, 2022-Ohio-3071, ¶ 55 (Fischer, J., dissenting) ("[O]nly when the statute is ambiguous do we look to legislative history and other factors to provide guidance."). We find no ambiguity in R.C. 2307.71; therefore, its legislative history is irrelevant.

{¶ 33} It is also worth noting that the Counties' arguments about the legislative history are not only inconsistent with the plain text of R.C. 2307.71, but they are also inconsistent with an uncodified section of the 2007 Amendment adopted by the General Assembly. That section expresses the General Assembly's intent to abrogate "all common law product liability causes of action including common law public nuisance causes of action, regardless of how the claim is described, . . . *including claims against a manufacturer or supplier for a public nuisance allegedly caused by a manufacturer's or supplier's product*." (Emphasis added.) Am.Sub.S.B. No. 117, Section 3, 151 Ohio Laws, Part II, 2274, 2291. Nothing in this statement of purpose suggests that claims abrogated by R.C 2307.71 are limited to those seeking compensatory damages or involving defective products. Rather, the statement evinces an intent to abrogate all public-nuisance claims based on a product—just like the codified statute says.

{¶ 34} We recognize that the opioid crisis has touched the lives of people in every corner of Ohio. The devastation experienced by these private citizens, individually and collectively, undoubtedly has far-reaching consequences for their communities and for the State as a whole. Creating a solution to this crisis out of whole cloth is, however, beyond this court's authority. We must yield to the branch of government with the constitutional authority to weigh policy considerations and craft an appropriate remedy. And the General Assembly has spoken, plainly and unambiguously: a public-nuisance claim seeking equitable relief is not that remedy.

F. The Counties' claims are based on the "sale" of a product

{¶ 35} One final argument from the Counties that we must address is that their claims are based on the Pharmacies' dispensing of opioids, not the "design," "manufacture," "marketing," "promotion," "advertising," "labeling," "supply," "sale," or "distribution" of opioids. *See* 2307.71(A)(13). Dispensing, they claim, is outside the scope of the OPLA. But the distinction between "dispensing" and "selling" or "distributing" is one without a difference in this context. To "dispense," particularly in the context of medicine, means "to prepare and distribute." *Webster's Third New International Dictionary* (2002). Regardless of whether "dispensing" also qualifies as "supplying," it is equivalent to "distributing." Furthermore, dispensing a product—a drug, in this case—in exchange for a price is indisputably a sale. *See Black's Law Dictionary* (12th Ed. 2024) (defining "sale" as "[t]he transfer of property . . . for a price"). And because the OPLA includes public-nuisance claims based on the distribution or sale of a product within the definition of "product liability claim," the Counties' claims based on dispensing a product are abrogated.

III. CONCLUSION

{¶ 36} For the foregoing reasons, we answer the certified question of state law in the affirmative.

So answered.

STEWART, J., joined by DONNELLY, J., concurring in part and dissenting in part.

{¶ 37} I concur in the majority's analysis of this certified question except that I would hold that public-nuisance claims seeking equitable relief are not abrogated by the Ohio Product Liability Act, R.C. 2307.71 et seq. ("OPLA").

{¶ 38} Under the plain language of the OPLA, a product-liability claim is "a claim or cause of action that is asserted in a civil action pursuant to sections 2307.71 to 2307.80 of the Revised Code *and* that seeks to recover compensatory damages." (Emphasis added.) R.C. 2307.71(A)(13). Respondents Trumbull County and Lake County (collectively, the "Counties") have not sought, and did not receive, compensatory damages. Instead, they sought and received equitable relief; therefore, their claims do not meet the second prong of the definition of a "product liability claim" and thus are not abrogated by the OPLA.

{¶ 39} Specifically, the Counties sought and received equitable relief in the form of money to be used for abatement of the nuisance, i.e., funds to treat issues caused by the oversupply of opioids. Petitioners Walgreens, CVS, and Walmart (collectively, the "Pharmacies") argue that the relief the Counties sought and that the federal district court awarded went too "far beyond the well-established scope of equitable abatement under Ohio law" for it to be fairly considered equitable relief and, as such, "is in fact akin to compensatory damages." But this argument is unavailing. Any award to abate a public nuisance like the opioid epidemic would certainly be substantial in size and scope, given that the claimed nuisance is both long-lasting and widespread. But just because an abatement award is of substantial size and scope does not mean it transforms it into a compensatory-damages award.

{¶ 40} The equitable relief awarded by the federal court was designed, and has been used, to abate the nuisance caused by the flood of opioids into the market, not to compensate the Counties for the loss of life or economic consequences of opioid addiction. As the County Commissioners Association of Ohio's amicus brief explains, Cuyahoga and Summit Counties, the bellwether plaintiffs in the multidistrict National Prescription Opiate Litigation, *see generally In re Natl. Prescription Opiate Litigation*, 2018 WL 6628898 (N.D. Ohio Dec. 19, 2018), have used the money they received as an abatement to create or bolster opioid-addiction prevention and treatment services. For example, Cuyahoga County used the abatement award to construct and fund various treatment facilities, and other counties have used the award to create or expand various drug treatment programs and fund harm-reduction strategies, including safe needle exchanges, naloxone, drug courts, peer counseling, and more. These programs are designed to address both the current and long-term effects of the opioid epidemic, yet no one would argue that the programs are "compensating" the Counties. Instead, the equitable relief allows the local governments to fulfill their duty to protect public health through the abatement of a public nuisance.

{¶ 41} The Pharmacies and the majority ignore the plain language of the statute to their error. As Judge Polster noted in his decision in a sister case, nothing in either the 2005 or 2007 OPLA amendments changed the meaning of the term "product liability claim" to exclude public-nuisance claims seeking only equitable relief. *See id*. at *13-14. In deciding this certified question of state law, this court need look no further than the explicit words the General Assembly has chosen (and has not changed) in R.C. 2307.71 et seq.: "'Product liability claim' means a claim or cause of action . . . that seeks to recover compensatory damages . . . ." For that reason, my answer to the certified question is no: claims for equitable relief under Ohio's public-nuisance law are not abrogated by the OPLA. I therefore concur in part and dissent in part.

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Jones Day, Noel J. Francisco, John M. Majoras, Anthony J. Dick, and James Saywell, for Petitioner Walmart Inc.

Munger, Tolles & Olson L.L.P., Donald B. Verrilli, Jr., and Ginger D. Anders, for Petitioners CVS Pharmacy, Inc., Ohio CVS Stores, L.L.C., CVS Tennessee Distribution, L.L.C., CVS RX Services, Inc., CVS Indiana, L.L.C.

Shook, Hardy & Bacon L.L.P., Philip S. Goldberg, and Victor E. Schwartz; Dinsmore & Shohl L.L.P., Frank C. Woodside III, and Gregory P. Mathews, in support of petitioners for amicus curiae Product Liability Advisory Council.

Alston & Bird L.L.P., Brian D. Boone, D. Andrew Hatchett, and Ethan J. Bond, in support of petitioners for amici curiae Chamber of Commerce of the United States of America and the American Tort Reform Association.

Dickinson Wright P.L.L.C., Terrence O'Donnell, Kevin D. Shimp, and David A. Lockshaw, Jr., in support of petitioners for amici curiae The Ohio Chamber of Commerce and Ohio Alliance for Civil Justice.

The Buckeye Institute, Jay R. Carson, and David C. Tryon, in support of petitioners for amicus curiae the Buckeye Institute.

Murray Murphy Moul + Basil L.L.P., and Jonathan P. Misny, in support of respondents for amicus curiae the Cleveland Building & Construction Trade Council.

Allen Stovall Neuman & Ashton L.L.P., and Rick L. Ashton, in support of respondents for amici curiae County Commissioners Association of Ohio, Ohio Association of County Behavioral Health Authorities, Ohio Municipal League, Ohio Township Association, Ohio Mayors Alliance, and Fraternal Order of Police of Ohio, Inc.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ROYAL CANIN U. S. A., INC., ET AL. *v.* WULLSCHLEGER ET AL.

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

No. 23–677. Argued October 7, 2024—Decided January 15, 2025

Respondent Anastasia Wullschleger sued petitioner Royal Canin U. S. A., Inc., in state court, alleging that Royal Canin had engaged in deceptive marketing practices. Her original complaint asserted claims based on both federal and state law. Royal Canin removed the case to federal court under 28 U. S. C. §1441(a). That removal was premised on Wullschleger's federal claim, which gave rise to federal-question jurisdiction and also allowed the federal court to exercise supplemental jurisdiction over Wullschleger's factually intertwined state claims. §§1331, 1367. But federal court is not where Wullschleger wanted the case to be resolved. So she amended her complaint, deleting every mention of federal law, and petitioned the District Court for a remand to state court. The District Court denied Wullschleger's request, but the Eighth Circuit reversed. In the Eighth Circuit's view, Wullschleger's amendment had eliminated any basis for federal-question jurisdiction. And without a federal question, the court concluded, there was no possibility of supplemental jurisdiction over Wullschleger's state-law claims.

Held: When a plaintiff amends her complaint to delete the federal-law claims that enabled removal to federal court, leaving only state-law claims behind, the federal court loses supplemental jurisdiction over the state claims, and the case must be remanded to state court. Pp. 6–20.

(a) Under the text of §1367, the supplemental-jurisdiction statute, a post-removal amendment to a complaint that eliminates any basis for federal-question jurisdiction also divests a federal court of supplemental jurisdiction over remaining state-law claims. Subsection (a) states that "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." The statute thus confers supplemental jurisdiction over state-law claims sharing a sufficient factual relationship with the federal claims in a case. And in *Rockwell Int'l Corp.* v. *United States*, 549 U. S. 457, 473–474, this Court held that "when a plaintiff files a complaint in federal court and then voluntarily amends the complaint, courts look to the amended complaint to determine jurisdiction." So under §1367(a), when the plaintiff in an original case amends her complaint to withdraw the federal claims, leaving only state claims behind, she divests the federal court of supplemental jurisdiction. And the result must be the same in a removed case, because nothing in §1367(a)'s text distinguishes between cases removed to federal court and cases originally filed there.

The exclusion from §1367(a) of such post-amendment state-law claims is reflected in the text of §1367(c). Subsection (c) provides that a district court "may decline to exercise supplemental jurisdiction" over state-law claims covered by §1367(a)'s jurisdictional grant in three specific situations where the state-law claims overshadow the federal claims in a case. If §1367(a)'s grant of jurisdiction included the leftover state claims in an amended complaint, they too would have appeared on §1367(c)'s list: Even more than the claims addressed there, they are ill-suited to federal adjudication. That §1367(c) makes no mention of such claims demonstrates that §1367(a) does not extend to them.

That result accords with Congress's usual view of how amended pleadings can affect jurisdiction. On that view, apparent in varied federal statutes, an amendment can wipe the jurisdictional slate clean, giving rise to a new analysis with a different conclusion. *E.g.,* §1653 ("[d]efective allegations of jurisdiction may be amended" so a case can come within a federal court's jurisdiction); §1446(b)(3) (even "if the case stated by the initial pleading is not removable," the defendant can remove the case after receiving "an amended pleading" establishing a basis for federal jurisdiction); §1332(d)(7) (similar). And just the same here: Section 1367 contemplates that when an amended complaint is filed, the jurisdictional basis for the suit is reviewed anew. Pp. 7–10.

(b) That reading of §1367 also parallels a slew of other procedural rules linking jurisdiction to the amended, rather than initial, complaint. In deciding which substantive claims to bring against which defendants, a plaintiff can establish—or not—the basis for a federal court's subject-matter jurisdiction. And her control over those matters extends beyond the time her first complaint is filed. If a plaintiff amends her complaint, the new pleading supersedes the old one and can bring the suit either newly within or newly outside a federal court's jurisdiction. Thus, as *Rockwell* explained, if "a plaintiff files a complaint in federal court and later voluntarily amends the complaint" to "withdraw[ ]" the allegations supporting federal jurisdiction, that amendment "will defeat jurisdiction" unless the withdrawn allegations were "replaced by others" giving the court adjudicatory power. 549 U. S., at 473–474.

Rockwell's rule has a host of variations in both original and removed federal cases. Adding federal claims can create original jurisdiction where it once was wanting. See, *e.g.*, *ConnectU LLC* v. *Zuckerberg*, 522 F. 3d 82, 91. And an amendment can either destroy or create jurisdiction in an original diversity case. See *Owen Equipment & Erection Co.* v. *Kroger*, 437 U. S. 365, 374–377; *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U. S. 826, 832–833. Similarly, if removing a case was improper because the initial complaint did not contain a federal claim, the plaintiff's later assertion of such a claim establishes jurisdiction going forward. See *Pegram* v. *Herdrich*, 530 U. S. 211, 215–216, and n. 2. And by the same token, amending a complaint in a removed case to join a non-diverse party destroys diversity jurisdiction, and the federal court must remand the case to state court. See §1447(e). In removed and original cases alike, the rule that jurisdiction follows the operative pleading ensures that the case, as it will actually be litigated, merits a federal forum. Pp. 10–15.

(c) Royal Canin contends that this Court has twice before reached the opposite conclusion—first, in *Carnegie-Mellon Univ.* v. *Cohill*, 484 U. S. 343, and next in *Rockwell*, in a footnote. But in each case, the relied-on passage is extraneous to the Court's holding and reasoning, and so cannot bear the weight of Royal Canin's argument. The footnote in *Rockwell* does state the rule Royal Canin propounds: "[W]hen a defendant removes a case to federal court based on the presence of a federal claim," it says, "an amendment eliminating the original basis for federal jurisdiction generally does not defeat jurisdiction." 549 U. S., at 474, n. 6. But *Rockwell* was an original federal case, not a removed one, so its drive-by assertion of a jurisdictional rule for removed cases was entirely outside the issue being decided. That dictum cannot overcome the Court's analysis here or *Rockwell*'s own core insight that federal courts "look to the amended complaint to determine jurisdiction." *Id.*, at 474. Pp. 15–20.

75 F. 4th 918, affirmed.

KAGAN, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

No. 23–677

ROYAL CANIN U. S. A., INC., ET AL., PETITIONERS *v.* ANASTASIA WULLSCHLEGER, ET AL.

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

[January 15, 2025]

JUSTICE KAGAN delivered the opinion of the Court.

If a complaint filed in state court asserts federal-law claims, the defendant may remove the case to federal court. See 28 U. S. C. §1441(a). And if the complaint also asserts state-law claims arising out of the same facts, the federal court may adjudicate those claims too, in the exercise of what is called supplemental jurisdiction. See §1367.

This case presents a further question: What happens if, after removal, the plaintiff amends her complaint to delete all the federal-law claims, leaving nothing but state-law claims behind? May the federal court still adjudicate the now purely state-law suit? We hold that it may not. When an amendment excises the federal-law claims that enabled removal, the federal court loses its supplemental jurisdiction over the related state-law claims. The case must therefore return to state court.

I

A

"Federal courts," we have often explained, "are courts of limited jurisdiction." *E.g.*, *Kokkonen* v. *Guardian Life Ins. Co. of America*, 511 U. S. 375, 377 (1994). Limited first by the Constitution, to only the kinds of “Cases” and “Controversies” listed in Article III. And for all lower federal courts, limited as well by statute. Congress determines, through its grants of jurisdiction, which suits those courts can resolve. So, for example, Congress has always given federal courts power to decide “diversity” cases, between “citizens of different States” whose dispute involves more than a stated sum (the so-called amount-in-controversy). §1332(a). And of special importance here, Congress has long conferred jurisdiction on federal courts to resolve cases “arising under” federal law. §1331.

“Arising under” jurisdiction—more often known as federal-question jurisdiction—enables federal courts to decide cases founded on federal law. A suit most typically falls within that statutory grant “when federal law creates the cause of action asserted.” *Gunn* v. *Minton*, 568 U. S. 251, 257 (2013). On rare occasions, the grant also covers a suit containing state-law claims alone, because one or more of them “necessarily raise[s]” a “substantial” and “actually disputed” federal question. *Id.*, at 258. Either way, the determination of jurisdiction is based only on the allegations in the plaintiff's “well-pleaded complaint”—not on any issue the defendant may raise. *Franchise Tax Bd. of Cal.* v. *Construction Laborers Vacation Trust for Southern Cal.*, 463 U. S. 1, 9–10 (1983). That longstanding rule makes the complaint—the plaintiff's own claims and allegations—the key to “arising under” jurisdiction. If the complaint presents no federal question, a federal court may not hear the suit.

But if a complaint includes the requisite federal question, a federal court often has power to decide state-law questions too. Suppose a complaint with two claims—one based on federal, the other on state, law. This Court held in *Mine Workers* v. *Gibbs*, 383 U. S. 715, 725 (1966), that a federal court may exercise supplemental jurisdiction over the state claim so long as it "derive[s] from" the same "nucleus of operative fact" as the federal one. The *Gibbs* Court reasoned that when the two claims are so closely related, they make up "but one constitutional 'case'"; and the Court presumed that Congress wanted in that situation to confer jurisdiction up to the Constitution's limit. *Ibid.* (quoting U. S. Const., Art. III, §2, cl. 1); see *Exxon Mobil Corp.* v. *Allapattah Services, Inc.*, 545 U. S. 546, 553 (2005). Congress later confirmed that view, generally codifying *Gibbs*'s supplemental-jurisdiction rule in 28 U. S. C. §1367 (whose text we will soon consider, see *infra*, at 7–8). Under that statute, as under *Gibbs*, jurisdiction over a federal-law claim brings with it supplemental jurisdiction over a state-law claim arising from the same facts. That derivative jurisdiction, though, is to some extent discretionary; §1367 spells out circumstances, again derived from *Gibbs*, in which a federal court may decline to hear a state claim falling within the statute's bounds. See §1367(c); *Gibbs*, 383 U. S., at 726–727.

And yet one more preparatory point: If a statute confers federal jurisdiction over a suit, not only the plaintiff but also the defendant can get it into federal court. Take the "arising under" statute: It grants federal district courts "original jurisdiction" over cases presenting a federal question. §1331; see §1332 (similarly providing "original jurisdiction" over diversity suits). The plaintiff may avail herself of that jurisdiction (and of the opportunity §1367 affords to add supplemental state claims); but she also may file her suit in state court. If she takes the latter route, another statute then gives the defendant an option. Because the case falls within the federal courts' "original jurisdiction," the defendant may "remove[ ]" it from state to federal court. §1441(a). And there the case (including supplemental state claims) usually remains. Except that "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction," the case must be "remanded" to state court. §1447(c). That is because, to return to where we started, federal courts are courts of limited jurisdiction: When they do not have (or no longer have) authorization to resolve a suit, they must hand it over.

B

Before raising issues demanding a jurisdictional primer, this case was all about the marketing of dog food. Petitioner Royal Canin U. S. A., Inc., manufactures a brand of dog food available only with a veterinarian's prescription—and thus sold at a premium price. Respondent Anastasia Wullschleger purchased the food, thinking it contained medication not found in off-the-shelf products. She later learned it did not. Her suit, initially filed in a Missouri state court, contends that Royal Canin's dog food is ordinary dog food: The company sells the product with a prescription not because its ingredients make that necessary, but solely to fool consumers into paying a jacked-up price. Her original complaint asserted claims under the Missouri Merchandising Practices Act and state antitrust law. It also alleged violations of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U. S. C. §301 *et seq.*

And so began the procedural back-and-forth that eventually landed Wullschleger's case in this Court. Royal Canin went first: It removed the case to federal court based on the asserted violations of the FDCA.[1] That removal properly

[1] That first step provoked an earlier jurisdictional battle, resolved in favor of allowing removal and not at issue here. The dispute arose because Wullschleger's complaint alleged the FDCA violations not as independent federal claims, but instead in support of her state claims. Did the complaint, then, contain the needed federal question? The Court of Appeals held that it did because the meaning of the referenced FDCA provisions was thoroughly embedded in, and integral to the success of, Wullschleger's state-law claims. See *Wullschleger* v. *Royal Canin U. S. A., Inc.*, 953 F. 3d 519, 522 (CA8 2020) (citing *Gunn* v. *Minton*, 568 U. S. 251, 258 (2013)); see *supra,* at 2. We here treat that finding of federal-question jurisdiction as a given. And for ease of exposition, we take

brought to the District Court not only Wullschleger's FDCA claims, but also her factually intertwined state-law claims. The parties were thus set to litigate the entire suit in federal court. But that is not where Wullschleger wanted the case to be resolved. So she countered Royal Canin's move: She amended her complaint to delete its every mention of the FDCA, leaving her state claims to stand on their own. And with that amended, all-state-law complaint in hand, she petitioned the District Court to remand the case to state court.

Although the District Court denied Wullschleger's request, the Court of Appeals for the Eighth Circuit reversed that decision and ordered a remand. See 75 F. 4th 918, 924 (2023).[2] In the Eighth Circuit's view, Wullschleger's amendment had eliminated any basis for federal jurisdiction. An amended complaint, the court reasoned, "[supersedes] an original complaint and renders the original complaint without legal effect." *Id.*, at 922 (alteration in original). And nothing in the amended complaint supported federal-question jurisdiction: It was, after all, now based entirely on state law. Nor could the District Court now exercise supplemental jurisdiction over Wullschleger's state-law claims. "[T]he possibility of supplemental jurisdiction," the court reasoned, "vanished right alongside the once-present federal questions." *Id.*, at 924. And that analysis held good even though it was Royal Canin, rather than Wullschleger, that had brought the suit to the District Court: "It makes no difference," the Eighth Circuit stated, that the case "end[ed] up in federal court through removal." *Id.*, at 922.

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a slight liberty throughout this opinion, referring to the original complaint's FDCA allegations simply as federal claims.

[2] Because the denial of a remand request is not immediately appealable, see *Caterpillar Inc.* v. *Lewis*, 519 U. S. 61, 74 (1996), the issue reached the Court of Appeals only after the District Court dismissed Wullschleger's amended complaint on the merits.

Other Courts of Appeals have reached the opposite conclusion, holding that a post-removal amendment cannot divest a federal court of jurisdiction.[3] On that view, "[t]he existence of subject matter jurisdiction is determined by examining the complaint as it existed at the time of removal." *Harper* v. *AutoAlliance Int'l, Inc.*, 392 F. 3d 195, 210 (CA6 2004). So the District Court here would have retained supplemental jurisdiction over Wullschleger's state-law claims even after she amended her complaint to delete all her federal-law ones.

We granted certiorari to resolve the Circuit split, 601 U. S. ___ (2024), and we now affirm the decision below.

II

When a plaintiff amends her complaint following her suit's removal, a federal court's jurisdiction depends on what the new complaint says. If (as here) the plaintiff eliminates the federal-law claims that enabled removal, leaving only state-law claims behind, the court's power to decide the dispute dissolves. With the loss of federal-question jurisdiction, the court loses as well its supplemental jurisdiction over the state claims. That conclusion fits the text of §1367, governing supplemental jurisdiction. And it accords with a bevy of rules hinging federal jurisdiction on the allegations made in an amended complaint, because that complaint has become the operative one. Royal Canin argues that our precedent makes an exception for when an amendment follows a lawsuit's removal, but that is to read two bits of gratuitous language for a good deal more than they are worth.

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[3] *Ching* v. *Mitre Corp.*, 921 F. 2d 11, 13 (CA1 1990); *Collura* v. *Philadelphia*, 590 Fed. Appx. 180, 184 (CA3 2014) (*per curiam*); *Harless* v. *CSX Hotels, Inc.*, 389 F. 3d 444, 448 (CA4 2004); *Harper* v. *AutoAlliance Int'l, Inc.*, 392 F. 3d 195, 210–211 (CA6 2004); *Behlen* v. *Merrill Lynch,* 311 F. 3d 1087, 1095 (CA11 2002).

A

Begin with §1367, entitled "Supplemental jurisdiction." Subsection (a) states the basic rule:

> "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."

The subsection thus takes as its starting point claims within a federal district court's original jurisdiction—because, say, they turn on federal law. See §1331. It then confers authority on the court to decide certain "other" claims in the same suit, involving only state law. That added authority—the court's supplemental jurisdiction—extends to claims "so related to" the claims supporting original jurisdiction as to form "part of the same [constitutional] case." And that needed relationship, *Gibbs* explains, is one of fact: The federal court has supplemental jurisdiction over state-law claims sharing a "common nucleus of operative fact" with the federal-law ones. 383 U. S., at 725; see *supra*, at 2–3.

Skip down a bit and subsection (c) explains that the supplemental jurisdiction just conferred is in some measure discretionary. That subsection provides that a district court "may decline to exercise supplemental jurisdiction" in three specific situations: (1) if the supplemental claim "raises a novel or complex issue of State law"; (2) if the supplemental claim "substantially predominates" over the claims within the court's original jurisdiction; and (3) if the district court "has dismissed all claims over which it has original jurisdiction."[4] In all those contexts, federal law is not where the real action is. So although supplemental jurisdiction persists, the district court need not exercise it: Instead, the court may (and indeed, ordinarily should) kick the case to state court. See *Gibbs*, 383 U. S., at 726–727.

In addressing the text of §1367, Royal Canin argues primarily from the first subsection's grant of jurisdiction. The language there is "broad," the company says: Section 1367(a) grants "supplemental jurisdiction over '*all* other claims' within the case or controversy, *unless* Congress 'expressly provided otherwise.'" Reply Brief 2 (emphasis in original). And Congress did not expressly provide that an amendment deleting federal claims eliminates supplemental jurisdiction. See *id.*, at 4–5. The upshot, Royal Canin says, is the rule it espouses: The amendment of a complaint following removal of a suit to federal court cannot divest that court of supplemental jurisdiction.

But that position founders on an undisputed point: Nothing in §1367's text—including in the text Royal Canin highlights—distinguishes between cases removed to federal court and cases originally filed there. See Tr. of Oral Arg. 7–8. Whatever that text says about removed cases, it also says about original ones, and vice versa. That means if (as Royal Canin urges) §1367(a)'s language prevents an amendment from ousting supplemental jurisdiction in removed cases, then so too it does in original ones. But here is the rub: In original cases, this Court has already reached the opposite conclusion. The pertinent rule comes from *Rockwell Int'l Corp.* v. *United States*, 549 U. S. 457, 473–474 (2007): "[W]hen a plaintiff files a complaint in federal court and then voluntarily amends the complaint, courts look to the amended complaint to determine jurisdiction."

[4] A fourth, more general provision, which neither party thinks relevant here, allows a court to decline supplemental jurisdiction "in exceptional circumstances," for "other compelling reasons." 28 U. S. C. §1367(c)(4).

So when the plaintiff in an original case amends her complaint to withdraw the federal claims, leaving only state claims behind, she divests the federal court of adjudicatory power. See *ibid.* Royal Canin concedes that result, as it must. See Tr. of Oral Arg. 6–7. The position it adopts—applying only in removed cases—is indeed designed not to collide with *Rockwell*'s ruling. But once §1367(a) is taken as consistent with *Rockwell*, it cannot say what the company posits. Under that provision—as under *Rockwell*—an amendment excising all federal claims divests a court of supplemental jurisdiction over the remaining state claims in an original case. And if in an original case, then also in a removed case—because, again, §1367(a) draws no distinction between the two.

The exclusion from §1367(a) of such post-amendment state-law claims is reflected in the text of §1367(c). Recall that §1367(c) describes three contexts in which state-law claims, though covered by §1367(a)'s jurisdictional grant, are often better given to state courts. See *supra*, at 7–8. If §1367(a)'s grant included the leftover state claims in an amended complaint, they too would have appeared on §1367(c)'s list: Even more than the claims addressed there, they are ill-suited to federal adjudication. The leftover state claims, after all, are now the entirety of the plaintiff's suit. Federal claims are not just subordinate, as in §§1367(c)(1) and (2), but gone. And gone for good as well. When federal claims are dismissed by the district court, as in §1367(c)(3), an appellate court may yet revive them; but that cannot happen when the plaintiff has excised them through a proper amendment. So, again, it follows: If §1367(a) conferred supplemental jurisdiction over the claims here, §1367(c) would make that jurisdiction discretionary. That §1367(c) does not do so—that even while it addresses, for example, dismissals of federal claims, it makes no mention of amendments deleting them—shows that §1367(a) does not extend so far. Or otherwise said, there is no discretion to decline supplemental jurisdiction here because there is no supplemental jurisdiction at all. Once the plaintiff has ditched all claims involving federal questions, the leftover state claims are supplemental to nothing—and §1367(a) does not authorize a federal court to resolve them.

That result accords with Congress's usual view of how amended pleadings can affect jurisdiction. On that view, apparent in varied federal statutes, an amendment can wipe the jurisdictional slate clean, giving rise to a new analysis with a different conclusion. Consider 28 U. S. C. §1653: It states broadly that, in both trial and appellate courts, "[d]efective allegations of jurisdiction may be amended" to ensure that a case can go forward. So a case falling outside the federal court's jurisdiction can come within it by virtue of an amendment. Or take the statute laying out procedures for removal. It provides that even "if the case stated by the initial pleading is not removable," an amendment may make it so: The defendant can remove the case after receiving "an amended pleading" establishing that the case is newly subject to federal jurisdiction. §1446(b)(3); see §1332(d)(7) (similarly providing that an "amended complaint" in a proposed class action may create "[f]ederal jurisdiction"). In such statutes, Congress conceives of amendments as having the potential to alter jurisdiction. And just the same here. Section 1367 contemplates that when an amended complaint is filed, the jurisdictional basis for the suit is reviewed anew. If nothing in the amended complaint now falls "within [the federal court's] original jurisdiction," then neither does anything fall within the court's "supplemental jurisdiction." §1367(a). In the superseding pleading, the state-law claims are just state-law claims, outside §1367(a)'s purview.

B

That reading of §1367 also parallels a slew of other, mainly judge-made procedural rules linking jurisdiction to the amended, rather than initial, complaint. In multiple contexts—involving both cases brought in federal court and cases removed there—courts conceive of amendments to pleadings as potentially jurisdiction-changing events. The amended complaint becomes the operative one; and in taking the place of what has come before, it can either create or destroy jurisdiction. Section 1367, as laid out above, fits hand in glove with—indeed, embodies—that familiar approach. A post-removal amendment can divest a federal court of its supplemental jurisdiction because—as the usual procedural principle holds—jurisdiction follows from (and only from) the operative pleading.

Begin from the beginning: The plaintiff is "the master of the complaint," and therefore controls much about her suit. *Caterpillar Inc.* v. *Williams*, 482 U. S. 386, 398–399 (1987). She gets to determine which substantive claims to bring against which defendants. And in so doing, she can establish—or not—the basis for a federal court's subject-matter jurisdiction. She may, for example, name only defendants who come from a different State, or instead add one from her own State and thereby destroy diversity of citizenship. See §1332(a). Or in cases like this one, she may decide to plead federal-law claims, or instead to allege state-law claims alone and thus ensure a state forum. See §1331; *supra*, at 2 (describing the well-pleaded complaint rule).

And the plaintiff's control over those matters extends beyond the time her first complaint is filed. If a plaintiff amends her complaint, the new pleading "supersedes" the old one: The "original pleading no longer performs any function in the case." 6 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §1476, pp. 636–637 (3d ed. 2010). Or as we put the matter over a century ago: "When a petition is amended," the "cause proceeds on the amended petition." *Washer* v. *Bullitt County*, 110 U. S. 558, 562 (1884).

So changes in parties, or changes in claims, effectively remake the suit. And that includes its jurisdictional basis: The reconfiguration accomplished by an amendment may bring the suit either newly within or newly outside a federal court's jurisdiction.

That idea is the one *Rockwell* invoked, as earlier noted. See *supra*, at 8–9. Recall the situation there considered: "[A] plaintiff files a complaint in federal court and later voluntarily amends the complaint" to "withdraw[]" the allegations supporting federal jurisdiction. *Rockwell*, 549 U. S., at 473–474. Should the suit proceed? "[C]ourts," *Rockwell* replied, "look to the amended complaint to determine jurisdiction." *Id.*, at 474. That complaint is now the operative one; the old complaint has become irrelevant. So unless the withdrawn allegations were "replaced by others" giving the court adjudicatory power, the plaintiff's amendment "will defeat jurisdiction." *Id.*, at 473. Or more specifically: If a plaintiff files a suit in federal court based on federal claims and later scraps those claims, the federal court cannot go forward with a now all-state-claim suit. See *id.*, at 473–474.[5]

That rule for original federal cases has a host of variations, each tying jurisdiction to an amended pleading. If, as *Rockwell* spelled out, eliminating federal claims in such a suit can destroy federal jurisdiction, the opposite is also true: Adding federal claims can create federal jurisdiction where it once was wanting. See, *e.g.*, *ConnectU LLC* v.

[5] The *Rockwell* Court distinguished its rule from another, operating in diversity cases, which evaluates a party's citizenship (*e.g.,* whether the defendant is in fact from New York) at the time a suit is brought, and never again later. See 549 U. S., at 473 (citing, *e.g.*, *Anderson* v. *Watt*, 138 U. S. 694, 701 (1891)). That so-called time-of-filing rule, *Rockwell* explained, concerns only the actual "state of things" relevant to jurisdiction—meaning, the facts on the ground, rather than (as addressed here) the claims and parties that the plaintiff includes in a complaint. 549 U. S., at 473; see 75 F. 4th 918, 922–923 (CA8 2023) (case below) (discussing that distinction).

Zuckerberg, 522 F. 3d 82, 91 (CA1 2008) (holding that an amended complaint, which "replaced the original complaint lock, stock, and barrel," conferred jurisdiction). And so too, an amendment can either destroy or create jurisdiction in an original diversity case. The addition of a non-diverse party in such a case typically destroys diversity jurisdiction, requiring the case's dismissal. See *Owen Equipment & Erection Co.* v. *Kroger*, 437 U. S. 365, 374–377 (1978) (stating that an amendment asserting claims against a non-diverse party "destroy[s]" complete diversity "just as surely as" joining that party in the first instance); see also, *e.g.*, *American Fiber & Finishing, Inc.* v. *Tyco Healthcare Group, LP*, 362 F. 3d 136, 139 (CA1 2004).[6] Conversely, the elimination of a non-diverse defendant by way of amendment ensures that a case can proceed in federal court, though it could not have done so before. See *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U. S. 826, 832–833 (1989). In short, the rule in original cases that jurisdiction follows the amended (*i.e.,* now operative) pleading applies across the board.

And still more: Similar rules have long applied in the removal context. Not across the board, of course, else this case would not have arisen: The very issue here is whether, in a removed case (as in an original one), an amended complaint dropping federal claims destroys jurisdiction. But in two of the other situations discussed above, the rule in removed cases is the same as the rule in original ones.[7] First,

[6] That general rule does not apply when an amendment merely substitutes a successor-in-interest for the first-named defendant. In that situation, the former steps into the latter's shoes, and the diversity jurisdiction founded on the initial complaint thus continues. See *Freeport-McMoRan Inc.* v. *K N Energy, Inc.*, 498 U. S. 426, 428–429 (1991) (*per curiam*).

[7] To our knowledge, no appellate decision addresses whether in the final situation discussed—when an amendment eliminates a non-diverse party—the rule in removed cases similarly follows the rule in original cases.

in removed cases too, amending a complaint to add a federal claim creates federal jurisdiction when it did not previously exist. So even if removing a case was improper because the initial complaint did not contain a federal claim, the plaintiff's later assertion of such a claim establishes jurisdiction going forward. See *Pegram* v. *Herdrich*, 530 U. S. 211, 215–216, and n. 2 (2000); *Bernstein* v. *Lind-Waldock & Co.*, 738 F. 2d 179, 185–186 (CA7 1984) (Posner, J.). The federal court can thus resolve both the newly added federal-law claim and the now supplemental state-law ones. See *id.*, at 186–187. And second, in removed cases too, amending a complaint to join a non-diverse party destroys diversity jurisdiction. So if such a joinder occurs after removal, the federal court must remand the case to the state court it began in. See §1447(e); *Powerex Corp.* v. *Reliant Energy Services, Inc.*, 551 U. S. 224, 231–232 (2007). Once again, federal jurisdiction—or its absence—follows from the amended complaint.[8]

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[8] Royal Canin offers up something of an exception: In both original and removed cases, an amendment reducing the alleged amount-in-controversy to below the statutory threshold—like a post-filing development that makes recovering the needed amount impossible—will usually not destroy diversity jurisdiction. See *St. Paul Mercury Indemnity Co.* v. *Red Cab Co.*, 303 U. S. 283, 289, 292 (1938); Brief for Petitioners 20. But that rule is inapposite here, by virtue of its subject and function alike. First, the rule more concerns a fact on the ground—that is, the value of a suit—than it does the plaintiff's selection of claims and parties. So this Court has viewed it as analogous to the time-of-filing rule applying to citizenship, which also assesses a factual issue relevant to jurisdiction only at the suit's outset. See *St. Paul Mercury*, 303 U. S., at 294–295; *Rosado* v. *Wyman*, 397 U. S. 397, 405, n. 6 (1970); *supra,* at 12, n. 5. Second, the rule responds to the difficulties of assessing a suit's value and the likelihood that the calculation will change over the course of litigation. Especially given that the alleged amount-in-controversy does not cap damages, "constant litigation" over the matter, having the potential to alter a court's jurisdiction, "would be wasteful." *Grupo Dataflux* v. *Atlas Global Group, L. P.*, 541 U. S. 567, 580–581 (2004) (making the same point about changes in citizenship). But as all the examples given above show, we have never held such a concern to limit the effect of the

The uniformity of that principle, as between original and removed cases, is not surprising. The appropriateness of federal jurisdiction—or the lack thereof—does not depend on whether the plaintiff first filed suit in federal or state court. Rather, it depends, in either event, on the substance of the suit—the legal basis of the claims (federal or state?) and the citizenship of the parties (diverse or not?). (That focus on substance is indeed why original jurisdiction and removal jurisdiction generally mirror each other in scope. See §1441(a).) So in a removed no less than in an original case, the rule that jurisdiction follows the operative pleading serves a critical function. It too ensures that the case, as it will actually be litigated, merits a federal forum.

And with all that recognized, the answer to the disputed question here becomes yet more certain: On top of §1367, a panoply of procedural rules shows that a post-removal amendment excising all federal claims destroys federal jurisdiction. Under those rules, the presence of jurisdiction, in removed as in original cases, hinges on the amended, now operative pleading. By adding or subtracting claims or parties, and thus reframing the suit, that pleading can alter a federal court's authority. And so it is here. When a plaintiff, after removal, cuts out all her federal-law claims, federal-question jurisdiction dissolves. And with any federal anchor gone, supplemental jurisdiction over the residual state claims disappears as well. The operative pleading no longer supports federal jurisdiction, and the federal court must remand the case to the state court where it started.

C

Royal Canin contends that this Court has twice before reached the opposite conclusion—first, in *Carnegie-Mellon Univ.* v. *Cohill*, 484 U. S. 343 (1988), and next in *Rockwell*,

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plaintiff's decision, as the master of her complaint, to add or subtract claims or parties.

in a footnote to the analysis we have related above. See *supra,* at 8–9, 12. But in each case, the relied-on passage is extraneous to the Court's holding and reasoning, and so cannot bear the weight of Royal Canin's argument.

Begin with *Cohill*, which shares the procedural posture of this case but asked and answered a different question. There, as here, the plaintiff filed a suit in state court, asserting both federal and state claims; the defendant removed the suit to federal court; and the plaintiff then dropped her federal claim and sought a remand. The District Court granted that request over the defendant's objection. But in opposing that ruling, the defendant did not argue (à la Royal Canin) that the court should have held on to the case. Rather, the defendant urged that the court should have dismissed the case outright instead of remanding it. (The difference mattered because the statute of limitations had by then expired, and a dismissal would have ended the suit.) The disputed issue was thus not about keeping the case in federal court, but about two different ways of expelling it. Or as *Cohill* put it: The question "present[ed] is whether the District Court could relinquish jurisdiction over the case only by dismissing it without prejudice or whether the District Court could relinquish jurisdiction over the case by remanding it to state court as well." 484 U. S., at 351. We held that the federal court could remand as well as dismiss, even though no statute then authorized the former action. *Id.*, at 357; see §1447(c) (now filling that vacuum). Our reasoning, in that pre-§1367 era, focused on the values served by supplemental jurisdiction, as set out in *Gibbs*. "[E]conomy, convenience, fairness, and comity," we stated, "support[] giving a district court discretion to remand when the exercise of [supplemental] jurisdiction is inappropriate." *Cohill*, 484 U. S., at 351. So when a plaintiff cuts her federal claims, the court should have a choice about how best to get rid of the case.

In one spot, though, the *Cohill* Court intimated a view on whether the District Court also had discretion to retain the suit. The sentence, pressed by Royal Canin, comes just before the Court's statement of the question presented, quoted above. See Brief for Petitioners 10–11, 19. It reads: "When the single federal-law claim in the action was eliminated at an early stage of the litigation, the District Court had a powerful reason to choose not to continue to exercise jurisdiction." *Cohill*, 484 U. S., at 351. In using the word "choose," *Cohill* suggested that the court, though having strong cause to dismiss or remand, likewise had authority to decide the case.

But that slender (and somewhat backhanded) dictum cannot make us stop in our tracks. Nowhere did *Cohill* analyze why a federal court could retain jurisdiction once an amendment excised all federal-law claims. *Cohill* simply supposed the court could and asserted as much, without pausing to consider the matter. And that lack of scrutiny reflected the issue's lack of importance—not in today's case of course, but in that earlier one. As just explained, the District Court in *Cohill* never thought to exercise jurisdiction after the amendment; the issue in dispute was only how to get rid of the action. So *Cohill*'s view about keeping jurisdiction was gratuitous, and no sooner noted than dropped. It supported neither the decision's result nor its values-based reasoning. And anyway, our own analysis is based mainly on legal authorities post-dating *Cohill*—most notably, §1367 and our *Rockwell* decision. See *supra,* at 6–10, 12. Those later materials supersede whatever *Cohill* presumed about exercising federal jurisdiction in a case like this one. So by virtue of both what it decided and when it arose, *Cohill* does not matter to the question before us.

That leaves the *Rockwell* footnote Royal Canin cites. As earlier explained, the body of *Rockwell* examines what happens in an original case when a plaintiff amends a complaint to expunge federal claims. See *supra,* at 8–9, 12. The federal court, *Rockwell* held, loses jurisdiction. See 549

U. S., at 473–474. But in a two-sentence footnote, the *Rockwell* Court said that the opposite rule applies in removed cases. "[W]hen a defendant removes a case to federal court based on the presence of a federal claim," the footnote stated, "an amendment eliminating the original basis for federal jurisdiction generally does not defeat jurisdiction." *Id.*, at 474, n. 6. That is because "removal cases raise forum-manipulation concerns that simply do not exist when it is the *plaintiff* who chooses a federal forum and then pleads away jurisdiction through amendment." *Ibid.* (emphasis in original). The footnote thus sets out exactly the rule Royal Canin wants—and, in so doing, gives the company its best argument.

But still, the footnote is dictum, and does not control the outcome here. *Rockwell* was an original federal case, not a removed one. So the footnote's assertion of a special rule for removed cases was outside the issue being decided—or more colloquially put, beside the point. The statement had no bearing on the Court's conclusion about jurisdiction in original cases. Nor did it relate to the rationale supporting that result. And to top it off, the footnote was itself barely reasoned.[9] This Court has often stated that "drive-by juris-

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[9] The footnote's cursory reference to "forum-manipulation concerns" fails on multiple levels. First, and most practically, plaintiffs can usually forum shop without any resort to amendments. Except when a statute of limitations has expired, a plaintiff need only voluntarily dismiss her federal suit and file a new state-claim-only action in state court. So the forum-manipulation benefit of the *Rockwell* footnote's approach to removed federal-question cases is likely quite marginal. Second, that approach conflicts with the one taken in the most comparable situation: when in a removed diversity case, a plaintiff seeks a remand to state court by means of adding a non-diverse party. As noted earlier, the rule in that context is the standard one: Jurisdiction follows the amended pleading—regardless of any (probably minor) forum-manipulation concerns. See §1447(e); *supra,* at 14. Third and most important, those policy-based concerns, even if significant, cannot trump a federal statute. And as we elsewhere discuss—including in the next paragraph—§1367

dictional rulings"—asserting or denying jurisdiction "without elaboration," or analysis of whether anything "turn[ed] on" the ruling—should be accorded "no precedential effect." *Wilkins* v. *United States*, 598 U. S. 152, 160 (2023) (quoting *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, 511, 512 (2006); alteration in original; *Henderson* v. *Shinseki*, 562 U. S. 428, 437 (2011)). The admonition goes double for throwaway footnotes about jurisdictional issues neither raised in nor conceivably relevant to a case. We therefore need not follow the *Rockwell* footnote just because it exists; our adherence instead depends on whether it withstands analysis.[10]

And it does not, for all the reasons already given. A recap here fittingly begins with *Rockwell*'s own core insight, which points the opposite way. Federal courts, *Rockwell* stated, "look to the amended complaint to determine jurisdiction." 549 U. S., at 474. That rule, as earlier described, explains a host of jurisdictional outcomes. See *supra*, at 11–14. It operates in federal-question cases and diversity cases, both to destroy and to create jurisdiction. And it cannot give way, in a case like this one, just because the case was removed from state to federal court. When, as here, a complaint asserts both federal and state claims, and an amendment strips out the federal ones, a district court's jurisdiction depends on §1367. And §1367, as earlier shown, makes no distinction between cases beginning in federal court and cases removed there. See *supra*, at 8–9. If in the former the amendment "defeat[s] jurisdiction," as *Rockwell* rightly held, 549 U. S., at 473, then so too in the latter. Regardless of removal, the plaintiff's excision of her federal-

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offers no basis for treating original and removed cases differently, as the *Rockwell* footnote proposes. See *supra,* at 8–9.

[10] It is of course a much different thing for this Court to reach that conclusion than for a lower court to do so. We do not at all fault any court that relied on the *Rockwell* footnote to find jurisdiction in a case like this one. Courts that did so simply took us at our word, in a way both understandable and appropriate.

law claims deprives the district court of its authority to decide the state-law claims remaining.

III

For those reasons, the District Court here should have remanded Wullschleger's suit to state court. The earliest version of that suit contained federal-law claims and therefore was properly removed to federal court. The additional state-law claims were sufficiently related to the federal ones to come within that court's supplemental jurisdiction. But when Wullschleger amended her complaint, the jurisdictional analysis also changed. Her deletion of all federal claims deprived the District Court of federal-question jurisdiction. And once that was gone, the court's supplemental jurisdiction over the state claims dissolved too. Wullschleger had reconfigured her suit to make it only about state law. And so the suit became one for a state court.

We accordingly affirm the judgment of the Court of Appeals for the Eighth Circuit.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

Syllabus

DEWBERRY GROUP, INC., FKA DEWBERRY CAPITAL CORP. *v.* DEWBERRY ENGINEERS INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 23–900. Argued December 11, 2024—Decided February 26, 2025

The federal Lanham Act provides for a prevailing plaintiff to recover the "defendant's profits" deriving from improper use of a mark. 15 U. S. C. §1117(a). Dewberry Engineers successfully sued Dewberry Group—a competitor real-estate development company—for trademark infringement under the Lanham Act. Dewberry Group provides services needed to generate rental income from properties owned by separately incorporated affiliates. That income goes on the affiliates' books; Dewberry Group receives only agreed-upon fees. And those fees are apparently set at less than market rates—the Group has operated at a loss for decades, surviving only through cash infusions by John Dewberry, who owns both the Group and the affiliates. To reflect that "economic reality," the District Court treated Dewberry Group and its affiliates "as a single corporate entity" for purposes of calculating a profits award. The District Court thus totaled the affiliates' real-estate profits from the years Dewberry Group infringed, producing an award of nearly $43 million. A divided Court of Appeals panel affirmed that award.

Held: In awarding the "defendant's profits" to the prevailing plaintiff in a trademark infringement suit under the Lanham Act, §1117(a), a court can award only profits ascribable to the "defendant" itself. And the term "defendant" bears its usual legal meaning: the party against whom relief or recovery is sought—here, Dewberry Group. The Engineers chose not to add the Group's affiliates as defendants. Accordingly, the affiliates' profits are not the (statutorily disgorgable) "defendant's profits" as ordinarily understood.

Nor do background principles of corporate law convert the one into the other. This Court has often read federal statutes to incorporate such principles. So if corporate law treated all affiliated companies as "a single corporate entity," there could be reason to construe the term "defendant" in the same vein. See *United States* v. *Bestfoods*, 524 U. S. 51, 62. But the usual rule is the opposite. "[I]t is long settled as a matter of American corporate law that separately incorporated organizations are separate legal units with distinct legal rights and obligations." *Agency for Int'l Development* v. *Alliance for Open Society Int'l Inc.*, 591 U. S. 430, 435. And that is so even if the entities are affiliated—as they are here by virtue of having a common owner. While a court may in select circumstances "pierc[e] the corporate veil," especially to prevent corporate formalities from shielding fraudulent conduct, *Bestfoods*, 524 U. S., at 62, Dewberry Engineers admits that it never tried to make the showing needed for veil-piercing. So the demand to respect corporate formalities remains. And that demand accords with the Lanham Act's text: the "defendant's profits" are the *defendant's* profits, not its plus its affiliates'.

Dewberry Engineers does not contest these points; it instead argues that a court may take account of an affiliate's profits under a later sentence in the Lanham Act's remedies section: "If the court shall find that the amount of the recovery based on profits is either inadequate or excessive[,] the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances." §1117(a). In the Engineers' view, this so-called "just-sum provision" enables a court, after first assessing the "defendant's profits," to determine that a different figure better reflects the "defendant's true financial gain." Brief for Respondent 24. And at that "second step" of the process, the court can consider "as relevant evidence" the profits of related entities. But the District Court did not rely on the just-sum provision. It simply treated Dewberry Group and its affiliates as a single corporate entity in calculating the "defendant's profits." And the Fourth Circuit approved that approach, thinking it justifiable in the circumstances to ignore the corporate separateness of the affiliated companies. The just-sum provision did not come into the analysis and therefore does not support the $43 million award given.

In remanding this case for a new award proceeding, the Court leaves a number of questions unaddressed. The Court expresses no view on whether or how the courts could have used the just-sum provision to support a profits award; whether or how courts can look behind a defendant's tax or accounting records to consider a defendant's true financial gain even without relying on the just-sum provision; and whether veil-piercing remains an available option. Pp. 4–8.

77 F. 4th 265, vacated and remanded.

KAGAN, J., delivered the opinion for a unanimous Court. SOTOMAYOR, J., filed a concurring opinion.

SUPREME COURT OF THE UNITED STATES

No. 23–900

DEWBERRY GROUP, INC., FKA DEWBERRY CAPITAL CORPORATION, PETITIONER *v.* DEWBERRY ENGINEERS INC.

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

[February 26, 2025]

JUSTICE KAGAN delivered the opinion of the Court.

A prevailing plaintiff in a trademark infringement suit is often entitled to an award of the "defendant's profits." 15 U. S. C. §1117(a). In making such an award, the District Court in this case totaled the profits of the named corporate defendant with those of separately incorporated affiliates not parties to the suit. We hold today that the court erred in doing so. Under the pertinent statutory provision, the court could award only profits properly ascribable to the defendant itself.

I

The trademark dispute here is between two unrelated real-estate companies with the word "Dewberry" in their names.

Dewberry Engineers provides real-estate development services for commercial entities across the country, and particularly in several southeastern States. It owns a registered trademark in the word "Dewberry." That mark gives Dewberry Engineers certain exclusive rights to use the "Dewberry" name in offering real-estate services.

Dewberry Group is also a commercial real-estate company operating in the southeast. Owned by developer John Dewberry, it provides services solely to other, separately incorporated companies in his portfolio (about 30 in all). Each of those affiliates owns a piece of commercial property for lease, but none has employees to carry out business functions. That is instead Dewberry Group's role. It affords the affiliates the services needed—financial, legal, operational, and marketing—to generate rental income from the properties they own. That income goes on the affiliates' books; Dewberry Group receives only agreed-upon fees. And those fees are apparently set at less than market rates. According to its tax returns, the Group has operated at a loss for decades; it survives only through occasional cash infusions from John Dewberry himself. Meanwhile, the affiliates—which, recall, he also owns—have racked up tens of millions of dollars in profit.

The success of John Dewberry's overall business comes in part from trademark infringement—specifically, from Dewberry Group's violation of Dewberry Engineers' trademark rights in the "Dewberry" name. (If that sentence is confusing—too darn many Dewberrys—it is also a good illustration of why trademarks exist: to prevent consumers from being confused about which company is providing a product or service.) Dewberry Engineers has sought to defend its trademark rights against Dewberry Group for nearly two decades. In 2007, an infringement suit the Engineers brought against the Group led to a settlement limiting the latter's use of the word "Dewberry." But a decade or so later, Dewberry Group reneged on the deal. As part of a rebranding effort, the Group resumed its use of the "Dewberry" name in the marketing and other materials it used to lease its affiliates' properties.

So Dewberry Engineers sued Dewberry Group again, and won decisively. The action—brought against Dewberry Group alone—alleged trademark infringement and unfair competition under the federal Lanham Act, as well as breach of contract (*i.e.*, the settlement agreement) under state law. The District Court found Dewberry Group liable on all counts. It was especially scathing about Dewberry Group's trademark infringements. Those violations, the court held, were "intentional, willful, and in bad faith." 2022 WL 1439826, *6 (ED Va., Mar. 2, 2022). Dewberry Group had encountered "numerous red flags alerting it to the illegality of its conduct," yet continued to use the trademarked name. *Id.*, at *2; see *id.*, at *6. Those findings of willful infringement, later affirmed by the Court of Appeals for the Fourth Circuit, are not before us. See 77 F. 4th 265, 289, 291 (2023).

What remains in dispute is the District Court's award of profits to remedy the infringement. The Lanham Act provides for a prevailing plaintiff like Dewberry Engineers to recover the "defendant's profits" deriving from a trademark violation. §1117(a). The sole named defendant here is Dewberry Group. But Dewberry Group, as noted above, reports no profits. See *supra,* at 2. Rather, the District Court found, the profits from the Group's illicit conduct (as from all its services) "show up exclusively on the [property-owning affiliates'] books." 2022 WL 1439826, *9. To reflect that "economic reality," the court decided to treat Dewberry Group and its affiliates "as a single corporate entity" for purposes of calculating a profits award. *Id.*, at *10. If those companies were viewed separately, the court reasoned, the "entire Dewberry Group enterprise" would "evade the financial consequences of its willful, bad faith infringement." *Ibid.* By contrast, considering the companies together would prevent the "unjust enrichment" that the Act was meant to target. *Ibid.* The court thus totaled the affiliates' real-estate profits from the years Dewberry Group infringed, producing an award of nearly $43 million. See *id.*, at *14.

A divided Court of Appeals panel affirmed that award.

Reiterating the "'economic reality' of Dewberry Group's relationship with its affiliates," the majority approved the District Court's treatment of all the companies "as a single corporate entity." 77 F. 4th, at 290 (quoting 2022 WL 1439826, *10). That approach, the majority reasoned, properly "h[e]ld Dewberry Group to account" for its use of infringing materials to generate corporate profits. 77 F. 4th, at 293. It did not matter that the affiliates, rather than the Group, "receive[d] the revenues" earned, given the links among those companies. *Ibid.* To hold otherwise, the majority thought, would give businesses a "blueprint for using corporate formalities to insulate their infringement from financial consequences." *Ibid.* Judge Quattlebaum dissented. He would have held that the District Court had no authority, in calculating a defendant's profits, to "simply add the revenues [of] non-parties." *Id.*, at 300.

We granted certiorari, 602 U. S. ___ (2024), and we now vacate the decision below.

II

The statutory text authorizing a profits award for trademark infringement offers no support for the approach the courts below took. Again, the section of the Lanham Act addressing remedial issues provides that a plaintiff like Dewberry Engineers is "entitled" to "recover [the] defendant's profits." §1117(a); see *supra*, at 3. The term "defendant" is not specially defined, and thus bears its usual legal meaning. A "defendant" is "the party against whom relief or recovery is sought in an action or suit." Black's Law Dictionary 541 (3d ed. 1933). So here the defendant is the entity named in Dewberry Engineers' complaint as liable for infringing the "Dewberry" trademark. And that entity is Dewberry Group alone. See App. 1 ("The Plaintiff, Dewberry Engineers . . . files this Complaint against the Defendant, Dewberry Group"). The Engineers chose not to add the Group's property-owning affiliates as defendants.

Accordingly, the affiliates' profits are not the (statutorily disgorgable) "defendant's profits" as ordinarily understood.

Nor do background principles of corporate law convert the one into the other. We have often read federal statutes to incorporate such principles, on the view that Congress would not have wanted to displace "bedrock" features of the common law. *United States* v. *Bestfoods*, 524 U. S. 51, 62 (1998). So if corporate law treated all affiliated companies as (in the District Court's phrase) "a single corporate entity," we might construe the term "defendant" in the same vein—as sweeping in the named defendant's affiliates because they lack a distinct identity. But in fact the usual rule is the opposite. "[I]t is long settled as a matter of American corporate law that separately incorporated organizations are separate legal units with distinct legal rights and obligations." *Agency for Int'l Development* v. *Alliance for Open Society Int'l Inc.*, 591 U. S. 430, 435 (2020). And that is so even if the entities are affiliated—as they are here by virtue of having a common owner. See *ibid.*; *Dole Food Co.* v. *Patrickson*, 538 U. S. 468, 474–475 (2003). To be sure, the "principle[] of corporate separateness" has exceptions: A court may in select circumstances "pierc[e] the corporate veil," especially to prevent corporate formalities from shielding fraudulent conduct. *Bestfoods*, 524 U. S., at 62; *Dole Food*, 538 U. S., at 475. But Dewberry Engineers, as it admits, never tried to make the showing needed for veil-piercing. See Brief for Respondent 52, n. 8. So the demand to respect corporate formalities remains. And that demand fits hand-in-glove with the Lanham Act's text: Again, the "defendant's profits" are the *defendant's* profits, not its plus its affiliates'.

Dewberry Engineers cannot, and so does not, contest those points; to defend the decisions below, it must set off on a different path, involving different statutory language. True enough, concede the Engineers, that a court has no authority to "disregard corporate separateness" and order disgorgement of an affiliate's profits as the "defendant's" own. *Id.*, at 2. But a court, the company says, may take account of an affiliate's profits in another way. Dewberry Engineers here invokes a later sentence in the Act's remedies section: "If the court shall find that the amount of the recovery based on profits is either inadequate or excessive[,] the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances." §1117(a). In the Engineers' view, that so-called just-sum provision enables a court, after first assessing the "defendant's profits," to determine that a different figure better reflects the "defendant's true financial gain." *Id.*, at 24. And at that "second step" of the process, the court can consider "as relevant evidence" the profits of related entities—for example, to see if the defendant diverted some of its earnings to an affiliate's books. *Id.*, at 1, 38. Finally, Dewberry Engineers contends that the courts below in fact followed that approach. In other words, those courts merely considered the affiliates' profits as evidence in assessing Dewberry Group's "true financial gain" under the just-sum provision. *Id.*, at 40.

But that is not a tenable take on why Dewberry Engineers got a $43 million award. The District Court did not rely on the just-sum provision, or suggest that it was departing up from Dewberry Group's reported profits to reflect the company's true gain. There was no two-step process for deciding on the award, but only a single step: the calculation of the "defendant's profits." 2022 WL 1439826, *14; see *id.*, at *9–*10. And in making that assessment, the District Court designated whose profits should count: *both* Dewberry Group's *and* its affiliates', because all those companies should be "treated as a single corporate entity." *Ibid.* That treatment, by its terms, disregards "corporate formalities"—and likewise the "principle[] of corporate separateness." *Dole Food*, 538 U. S., at 476; *Bestfoods*, 524 U. S., at 62. The proof, if any more were needed, is in the number the court arrived at. It was simply the sum of all the Dewberry entities' real-estate profits for the relevant years. That amount accords with the idea that Dewberry Group and its affiliates should be regarded as one—as *in toto* the "defendant." But it conflicts with the Engineers' alternative understanding of what happened below. For a court adopting the Engineers' view would have had to identify which of the affiliates' profits were properly attributable to Dewberry Group, as reflecting the Group's own gain. And the court could not plausibly have concluded that *all* of them were, given (at a minimum) that the affiliates owned the rent-producing properties. The only way to reach the District Court's wholesale result was to take a simpler tack: to lump together Dewberry Group and its affiliates as (in the court's own words) a single entity.

So too, the Court of Appeals' decision bears no resemblance to Dewberry Engineers' description. No more than the District Court did the Fourth Circuit rely on the just-sum provision, or on any "second-step" analysis that it enables. The Court of Appeals related, in straightforward manner, the basis of the District Court's decision: The lower court, to determine profits, "treated Dewberry Group and its affiliates as a single corporate entity." 77 F. 4th, at 290. And the appellate court approved that treatment for much the same reasons the District Court gave—because of the "economic reality" of how the Dewberry companies operated and the fear that "corporate formalities" would otherwise insulate infringing conduct from any penalty. See *ibid.*; *id.*, at 293; *supra*, at 3. The concern in such circumstances is not amiss. But as even the Engineers agree, it cannot justify ignoring the distinction between a corporate defendant (*i.e.*, Dewberry Group) and its separately incorporated affiliates. By treating those entities as one and the same, the courts below approved an award including *non*-defendants' profits—and thus went further than the Lanham Act permits.

In remanding this case for a new award proceeding, we leave a number of questions unaddressed. First, we express no view on Dewberry Engineers' understanding of the just-sum provision. We have concluded only that the courts below did not invoke that provision to support the $43 million award. Whether (or how) they could have used the provision is not properly before us; still less is whether Dewberry Engineers may press its just-sum theory on remand given forfeiture rules. Second, we also state no view on the position of the Government respecting when courts, even without relying on the just-sum provision, can look behind a defendant's tax or accounting records to consider "the economic realities of a transaction" and identify the defendant's "true financial gain." Brief for United States as *Amicus Curiae* 13; see *id.*, at 18–22, 30–34; Tr. of Oral Arg. 36–41. Again, it is now up to the lower courts to decide whether to consider the Government's proposals. And third, we offer no opinion on whether, as raised during oral argument here, corporate veil-piercing is an available option on remand. See *id.*, at 77; Brief for Respondent 52, n. 8.

All we hold today is that the courts below were wrong to treat Dewberry Group and its affiliates as a single entity in calculating the "defendant's profits." Dewberry Group is the sole defendant here, and under that language only its own profits are recoverable.

We therefore vacate the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 23–900

DEWBERRY GROUP, INC., FKA DEWBERRY CAPITAL CORPORATION, PETITIONER *v.* DEWBERRY ENGINEERS INC.

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

[February 26, 2025]

JUSTICE SOTOMAYOR, concurring.

I join in full the Court's opinion, which holds that courts must respect principles of corporate separateness in calculating a "defendant's profits" for purposes of the Lanham Act. See *ante*, at 5, 8. Those principles and the Lanham Act's plain text forbade the lower courts from attributing to Dewberry Group all the profits of its affiliates, absent veil piercing. See *ante*, at 4–5. Dewberry Group itself, however, reports no profits on its tax returns. It has operated at a loss for decades, while its affiliates have made tens of millions in profits with the aid of the Group's trademark-infringing services. Before the lower courts, Dewberry Group indicated that its own tax returns should control the calculation of its profits, meaning that the Group would owe zero dollars in disgorgement.*

I write separately to underscore that principles of corporate separateness do not blind courts to economic realities. Nor do they force courts to accept clever accounting, including efforts to obscure a defendant's true financial gain

*See 77 F. 4th 265, 290 (CA4 2023) ("Dewberry Group presented evidence that it 'generated zero profits because the Dewberry Group, Inc. tax entity showed losses on its tax returns'"); 2022 WL 1439826, *9, *13 (ED Va., Mar. 2, 2022); 10 Ct. App. in No. 22–1622 etc. (CA4), pp. 4958–4965.

through arrangements with affiliates. To the contrary, there are myriad ways in which courts might consider accounting arrangements between a defendant and its affiliates in calculating a "defendant's profits." Two examples illustrate the point.

First, consider a company that establishes a non-arm's-length relationship with an affiliate that effectively assigns some portion of its revenues to the latter. For instance, if the company charges below-market rates to its affiliate for infringing services, that arrangement might be seen as essentially assigning a share of the company's earnings to its affiliate in advance. The affiliate's profits in that scenario might bear on what the company itself would have earned in an arm's-length relationship. Taking account of such evidence in calculating the company's profits would likely not transgress corporate formalities or the Lanham Act's text, so long as the court's focus remained on calculating "profits properly ascribable to the defendant itself." *Ante*, at 1.

This Court, moreover, has long recognized in the tax context that it is possible to account for anticipatory assignment schemes without contravening principles of corporate separateness. See, *e.g.*, *Commissioner* v. *Banks*, 543 U. S. 426, 433 (2005) ("A taxpayer cannot exclude an economic gain from gross income by assigning the gain in advance to another party"); *Commissioner* v. *Sunnen*, 333 U. S. 591, 604 (1948) (similar); *Lucas* v. *Earl*, 281 U. S. 111, 114–115 (1930) (similar). That precedent may provide guidance in calculating a "defendant's profits" under the Lanham Act when courts are faced with similar arrangements, "'however skillfully devised[,] to prevent [income] . . . from vesting even for a second in the man who earned it.'" *Banks*, 543 U. S., at 434 (quoting *Lucas*, 281 U. S., at 115 (second alteration in original)).

Second, courts calculating disgorgement awards might consider evidence that a company indirectly received compensation for infringing services through related corporate entities. For instance, where there is evidence that a company charged below-market rates for infringing services to affiliates, but a common owner made up the difference via cash infusions to the company, that evidence may bear on the company's profits under the Lanham Act. Indeed, such cash infusions may reflect some portion of the profits that the company would have earned from its infringing services in an arm's-length relationship. See Brief for United States as *Amicus Curiae* 18–19. Again, drawing on such evidence in calculating a Lanham Act disgorgement award need not impermissibly attribute an affiliate's profits to the defendant.

This is all to say that principles of corporate separateness do not force courts to close their eyes to practical realities in calculating a "defendant's profits." After all, the Lanham Act itself directs courts to calculate such profits "subject to the principles of equity." 15 U. S. C. §1117(a). Those principles, unsurprisingly, support the view that companies cannot evade accountability for wrongdoing through creative accounting. Equity "regards substance rather than form." 2 J. Pomeroy, Equity Jurisprudence §378, p. 40 (5th ed. 1941) (internal quotation marks omitted). And equity demands "the wrongdoer should not profit by his own wrong." *Liu* v. *SEC*, 591 U. S. 71, 80 (2020) (internal quotation marks omitted). Congress enacted the Lanham Act, moreover, to ensure "trademarks [w]ould receive nationally the greatest protection that can be given them." *Park 'N Fly, Inc.* v. *Dollar Park & Fly, Inc.*, 469 U. S. 189, 193 (1985) (internal quotation marks omitted). Disgorgement awards play a leading role in that regime, and the text of the Act forecloses any claim that Congress looked favorably on easy evasion.

Because this issue was not considered below within the right framework, the Court today rightly declines to decide exactly when and how courts may look beyond a defendant's books in calculating Lanham Act disgorgement awards.

See *ante,* at 8. In new award proceedings on remand, however, the lower courts may explore that important issue and consider reopening the record if appropriate. See *Zenith Radio Corp*. v. *Hazeltine Research, Inc.*, 401 U. S. 321, 331 (1971) ("[A] motion to reopen to submit additional proof is addressed to [the trial court's] sound discretion"). Courts must be attentive to practical business realities for our Nation's trademark laws to function, and the Lanham Act gives courts the power and the duty to do so.