

Comments

Supplemental Jurisdiction over Permissive Counterclaims in Light of *Exxon v. Allapattah*

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THE DOCTRINES of ancillary and pendent jurisdiction¹ existed for over seventy years² before their codification as supplemental jurisdiction in 1990.³ In *United Mine Workers v. Gibbs*,⁴ the Supreme Court described the standard of relatedness for a claim to be supported by pendent jurisdiction.⁵ Under the *Gibbs* standard, claims which shared a “common nucleus of operative fact” with the main action and were such that the plaintiff “would ordinarily be expected to try them all in one judicial proceeding” were supported by pendent or ancillary jurisdiction.⁶ Compulsory counterclaims, which by definition “arise[] out

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1. “The term ‘ancillary jurisdiction’ has traditionally been used to refer to federal jurisdiction over claims other than those of the plaintiff, such as compulsory counterclaims, cross-claims, impleader claims, and the claims of a party intervening as of right.” *Ambromovage v. United Mine Workers*, 726 F.2d 972, 989 n.48 (3d Cir. 1984). It is “derived from the notion that, once a federal court acquires jurisdiction over property, all claimants to the property must be able to litigate their claims in that federal court.” *Id.* Pendent jurisdiction allows federal courts to hear state law claims presented by the plaintiff that are closely related to the federal claims. *Perkins v. Halex Co.* Div. of Scott Fetzer, 744 F. Supp. 169, 173 (N.D. Ohio 1990). See discussion *infra* Part I.A.

2. Ancillary jurisdiction has been in existence since at least 1861, and pendent jurisdiction since at least 1933. See *Ambromovage*, 726 F.2d at 989 n.48.

3. 28 U.S.C. § 1367 (2000); *Baggett v. First Nat’l Bank*, 117 F.3d 1342, 1352–53 n.4 (11th Cir. 1997). See *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966) (describing pendent jurisdiction); *Ambromovage*, 726 F.2d at 989 n.48 (giving a brief history of ancillary jurisdiction).

4. 383 U.S. 715 (1966).

5. *Id.* at 725. The *Gibbs* standard was later held to apply to ancillary jurisdiction in *Owen Equipment & Electric Co. v. Kroger*, 437 U.S. 365, 378–79 (1978).

6. *Gibbs*, 383 U.S. at 725.

of the transaction or occurrence that is the subject matter of the opposing party's claim,"⁷ were held to be supported by ancillary jurisdiction.⁸ Permissive counterclaims do not arise "out of the same transaction or occurrence that is the subject matter of the opposing party's claim,"⁹ and require an independent basis of jurisdiction to be brought in federal court.¹⁰

When ancillary and pendent jurisdiction were codified as supplemental jurisdiction in 28 U.S.C. § 1367,¹¹ Congress clearly stated that it meant to codify the "scope of supplemental jurisdiction first articulated by the Supreme Court in *United Mine Workers v. Gibbs*."¹² However, § 1367 does not use the language of *Gibbs*. Instead, it states that the court may exercise jurisdiction "over all other claims that are so related to claims in the action . . . that they form part of the same case or controversy under Article III of the United States Constitution."¹³

This inconsistency between Congress's intention to codify the *Gibbs* standard and the actual language of § 1367 has led to a circuit split as to whether the "same case or controversy" statutory standard is broader than the *Gibbs* test, and therefore whether supplemental jurisdiction might also support permissive counterclaims that have some factual connection to the main claim.¹⁴ Some circuits continue to find that § 1367 requires permissive counterclaims to have an independent

7. FED. R. CIV. P. 13(a). The definition of a compulsory counterclaim "mirrors the condition that triggers a defense of claim preclusion (*res judicata*) if a claim was left out of a prior suit." *Publicis Commun. v. True North Communs. Inc.*, 132 F.3d 363, 365 (7th Cir. 1997). *Dindo v. Whitney*, 52 F.R.D. 194 (N.H. 1971), presents a classic example of a compulsory counterclaim. *Id.* at 197. In *Dindo*, the plaintiff automobile passenger sued the driver for negligence arising out of an accident. *Id.* at 196. The driver then asserted a defense of contributory negligence, alleging that the passenger caused the vehicle to crash. *Id.* at 197. The driver's claim against the passenger would be a compulsory counterclaim, since it arises out of the same occurrence (the accident) as the main negligence claim. *Id.*

8. *Baker v. Gold Seal Liquors, Inc.*, 417 U.S. 467, 469 n.1 (1974).

9. FED. R. CIV. P. 13(b).

10. *Lesnik v. Pub. Indus. Corp.*, 144 F.2d 968, 976 n.10 (2d Cir. 1944). For example, if a borrower defaults on a loan and then sues the lender for discriminatory lending, the lender's counterclaim for the unpaid balance of the loan would be a permissive counterclaim. *See, e.g., Jones v. Ford Motor Credit Co.*, 358 F.3d 205, 209–10 (2d Cir. 2004). Under the traditional independent basis test, the permissive counterclaim for the unpaid balance could not be heard in federal court without an independent basis of jurisdiction, such as either diversity or federal question. *See Oak Park Trust & Sav. Bank v. Therkildsen*, 209 F.3d 648, 651 (7th Cir. 2000).

11. 28 U.S.C. § 1367(a) (2000). *See infra* Part II.B for further discussion on the codification of these doctrines.

12. House Report, Judiciary Committee Report on the Judicial Improvements Act, H.R. Rep. No. 101-734, at 29 n.15 (1990) [hereinafter House Report].

13. 28 U.S.C. § 1367(a) (2000).

14. *See* discussion *infra* Part III.

basis of jurisdiction.¹⁵ This analysis is consistent with the language in the legislative history stating that the statute was meant to codify the scope of supplemental jurisdiction set forth in *Gibbs*. Other circuits read the statute literally, and find that the “same case or controversy” language in § 1367 is broad enough to allow supplemental jurisdiction over permissive counterclaims that would not have been allowed under the *Gibbs* test.¹⁶

In June of 2005, the Supreme Court decided *Exxon Mobil Corp. v. Allapattah Services, Inc.*¹⁷ *Exxon* dealt with the application of § 1367 to claims based on diversity jurisdiction.¹⁸ The Court, relying on a literal interpretation of the statute, found that § 1367 was “not ambiguous,” and that there was therefore no need to look to the legislative history.¹⁹ In *Exxon*, the Court held that if one named plaintiff satisfies the amount in controversy requirement for diversity jurisdiction, § 1367 authorizes supplemental jurisdiction over “the claims of other plaintiffs in the same Article III case or controversy,” even if those claims do not meet the amount in controversy requirement.²⁰

Even though *Exxon* dealt with joinder of parties in diversity cases, the Court’s literal reading of § 1367 strongly supports a literal reading of the statute with regard to jurisdiction over permissive counterclaims as well. As stated by one court, “common sense suggests that courts should interpret the same language in the same section of the same statute uniformly.”²¹ Thus, when deciding whether to exercise supplemental jurisdiction over permissive counterclaims, the lower courts will be bound to follow the Supreme Court’s literal interpretation of § 1367 and its refusal to rely on the statute’s legislative history. By following this literal interpretation, they will be forced to exercise jurisdiction over these claims. In this way, the circuit split over whether § 1367(a) supports supplemental jurisdiction over permissive counterclaims would be resolved.

This Comment will examine the development of supplemental jurisdiction as applied to counterclaims, as well as analyze the circuit split over whether § 1367 allows for supplemental jurisdiction over

15. *See, e.g., Hart v. Clayton-Parker & Assocs.*, 869 F. Supp. 774, 776–78 (D. Ariz. 1994).

16. *See, e.g., Channell v. Citicorp Nat’l Servs.*, 89 F.3d 379, 385–86 (7th Cir. 1996). *See also Jones v. Ford Motor Credit Co.*, 358 F.3d 205 (2d Cir. 2004).

17. 125 S. Ct. 2611 (2005).

18. *Id.* at 2615, 2625–26.

19. *Id.* at 2625.

20. *Id.* at 2615.

21. *United States v. Nippon Paper Indus. Co.*, 109 F.3d 1, 4 (1st Cir. 1997).

permissive counterclaims. Part II will argue that the Court's interpretation of § 1367 in *Exxon*, albeit in a diversity context, strongly supports reading the statute literally with regard to jurisdiction over permissive counterclaims. This Part will further contend that it would be inconsistent for the Court to reject § 1367's legislative history in *Exxon* and then embrace that same legislative history when deciding whether to exercise supplemental jurisdiction over permissive counterclaims. Finally, Part III will discuss the possible implications of following a literal interpretation of § 1367. It will focus on the different ways that courts can apply § 1367(c), which grants federal courts the discretion not to hear a claim that supplemental jurisdiction would otherwise support. In order to provide an example of how this interpretation of § 1367 could affect another area of the law, this Comment will conclude by examining a topic oft-seen in the cases discussed below: unfair lending and debt collection practices.

I. History and Background: Pre-1990

A. Ancillary and Pendent Jurisdiction

The hallmark of federal court jurisdiction is that "federal courts are courts of limited jurisdiction."²² In order to hear a claim, jurisdiction must be expressly granted by statute and the Constitution.²³ However, once a federal court has original jurisdiction over the matter at issue, it can exercise ancillary and pendent jurisdiction over other claims presented in the action, even if those other claims are based on state law and could not normally be heard in federal court.²⁴

Ancillary jurisdiction traditionally allowed federal courts to hear state law claims brought by parties other than the plaintiff when based on the same matter as the original suit.²⁵ Similarly, pendent jurisdiction allowed federal courts to hear related state law claims presented

22. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). See also *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978) ("It is a fundamental precept that federal courts are courts of limited jurisdiction.").

23. *Kokkonen*, 511 U.S. at 377.

24. See *Perkins v. Halex Co. Div. of Scott Fetzer*, 744 F. Supp. 169, 173 (N.D. Ohio 1990) (discussing the court's power under pendent jurisdiction to hear state law claims); *Florida Medical Ass'n. v. Dep't of Health, Educ. & Welfare*, 454 F. Supp. 326, 330 (M.D. Fla. 1978) (discussing the court's right to exercise ancillary jurisdiction).

25. *Ambromovage v. United Mine Workers*, 726 F.2d 972, 989 n.48 (3d Cir. 1984) ("Ancillary jurisdiction is derived from the notion that, once a federal court acquires jurisdiction over property, all claimants to the property must be able to litigate their claims in that federal court The scope of ancillary jurisdiction was later expanded to include cases in which there was no particular 'property' involved, except for the claim.").

by the plaintiff.²⁶ While pendent and ancillary jurisdiction originated as two separate doctrines, the Supreme Court eventually held in *Owen Equipment & Electric Co. v. Kroger*²⁷ that they were “two species of the same generic problem.”²⁸

These doctrines can be characterized as doctrines of judicial necessity. Without them, a federal court could not resolve a case presenting both federal and state law issues in a single action, since the court would not be able to hear the state law claims.²⁹ Pendent and ancillary jurisdiction thus promote judicial economy and helped avoid unnecessary suits by allowing the federal courts to hear federal and state claims simultaneously.³⁰ The two originated as, and remained, two separate doctrines until the Court’s decision in *Owen*.³¹

B. Standard of Relatedness: The *Gibbs* Test

United Mine Workers v. Gibbs laid out the pre-1990 standard that pendent and ancillary jurisdiction could only support a state law claim which “derived from a common nucleus of operative fact” as the federal claim.³² In *Gibbs*, a plaintiff mine superintendent sued a union, alleging that the union had improperly pressured the company to fire him.³³ He brought a federal suit under the Labor Management Relations Act,³⁴ and a state law claim for unlawful conspiracy to interfere with his employment contract.³⁵ While the jury found for the plaintiff on both the federal and state claims, the trial court held that he failed to establish a federal claim, and the Court of Appeals affirmed.³⁶ The Supreme Court granted certiorari and held that pendent jurisdiction

26. See *Perkins v. Halex Co. Div. of Scott Fetzer*, 744 F. Supp. 169, 173 (N.D. Ohio 1990).

27. 437 U.S. 365 (1978).

28. *Id.* at 370.

29. See *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 379–80 (1994).

30. See *Hagans v. Lavine*, 415 U.S. 528, 545–46 (1974); *Potter v. Rain Brook Feed Co.*, 530 F. Supp. 569, 577 (E.D. Cal. 1982) (stating that the doctrines of pendent and ancillary jurisdiction rest on considerations of fairness and judicial economy).

31. *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 370 (1978) (describing ancillary and pendent jurisdiction as “two species of the same generic problem: Under what circumstances may a federal court hear and decide a state-law claim arising between citizens of the same State?”). The court in *Owen* went on to find that the *Gibbs* standard represented a constitutional hurdle that must be overcome when considering a claim under ancillary jurisdiction. *Id.* at 371–72.

32. 383 U.S. 715, 725 (1966).

33. *Id.* at 718, 720.

34. 29 U.S.C. §§ 141–197 (2000).

35. *Gibbs*, 383 U.S. at 720.

36. See *id.*

applied to support state law claims which “derived from a common nucleus of operative fact” with the federal claim, and were such that the plaintiff “would ordinarily be expected to try them all in one judicial proceeding.”³⁷

The Supreme Court clarified the *Gibbs* standard in a later decision, where it stated that “[i]f a counterclaim is compulsory, the federal court will have ancillary jurisdiction over it even though ordinarily it would be a matter for a state court.”³⁸ This implied that ancillary jurisdiction would not be available to support permissive counterclaims.³⁹ In essence, while compulsory counterclaims met the *Gibbs* standard,⁴⁰ permissive counterclaims did not satisfy the test, and were held to require an independent basis of subject matter jurisdiction.⁴¹

Eventually, the Supreme Court held, as noted above, that pendent and ancillary jurisdiction were “two species of the same generic problem.”⁴² In *Owen*, the court found that even though *Gibbs* concerned a pendent state claim, its reasoning was broad enough to cover claims arising under ancillary jurisdiction as well.⁴³ “[I]f, considered without regard to their federal or state character, a plaintiff’s claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is *power* in federal courts to hear the whole.”⁴⁴ Thus *Gibbs* operated as the standard of relatedness for both pendent and ancillary claims.⁴⁵

C. Pendent Party Jurisdiction: *Finley v. United States*

Over the years, a separate issue arose as to whether a party suing the United States under the Federal Tort Claims Act (“FTCA”)⁴⁶ could assert a claim against a third party over whom the court did not

37. *Id.* at 725.

38. *Baker v. Gold Seal Liquors, Inc.*, 417 U.S. 467, 469 n.1 (1974) (citation omitted).

39. *See Jones v. Ford Motor Credit Co.*, 358 F.3d 205, 210 (2d Cir. 2004).

40. *See Ambromovage v. United Mine Workers*, 726 F.2d 972, 990 (3d Cir. 1984).

41. *See Chase Manhattan Bank v. Fidata Corp.*, 700 F. Supp. 1252, 1265 (S.D.N.Y. 1988).

42. *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 370 (1978).

43. *See id.* at 370–71.

44. *Id.* at 371 (citing *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 725 (1966)).

45. *In re Cenco, Inc. Sec. Litigation*, 601 F. Supp. 336, 343 n.9 (N.D. Ill. 1984).

46. 28 U.S.C. §§ 1346, 2671–80 (2000).

have jurisdiction.⁴⁷ This became known as the “pendent party” problem.⁴⁸

The Supreme Court took up the issue in *Finley v. United States*.⁴⁹ In *Finley*, the plaintiff’s husband and children died when their plane struck electric power lines on its approach to a city-run airfield.⁵⁰ The plaintiff filed a negligence action against the Federal Aviation Administration under the FTCA,⁵¹ which confers federal jurisdiction over certain civil actions against the United States.⁵² The plaintiff amended her complaint to add state law negligence claims against the city and the utility company that maintained the power lines.⁵³

Writing for the majority, Justice Scalia stated that the holding of *Gibbs* did not apply to pendent party claims, as the addition of a new party would run counter to the principle that federal courts are courts of limited jurisdiction.⁵⁴ The Court held that the language of the FTCA did not confer jurisdiction over third parties,⁵⁵ and that despite considerations of efficiency and the convenience of consolidating different actions, the courts could not join pendent parties without a specific grant of jurisdiction from Congress.⁵⁶

While its narrow holding was that the FTCA did not necessarily authorize federal jurisdiction over pendent parties,⁵⁷ *Finley* raised serious questions about the lack of existing statutory authority supporting ancillary and pendent jurisdiction.⁵⁸ Under the Court’s reasoning, these doctrines would essentially be undone, since they had no statutory basis at the time.⁵⁹ Almost as a foreshadowing of what was to come, Justice Scalia stated that “[w]hatever we say regarding the scope

47. See *Ayala v. United States*, 550 F.2d 1196, 1200–01 n.8 (9th Cir. 1977).

48. *Stewart v. United States*, 716 F.2d 755, 757 (10th Cir. 1982).

49. 490 U.S. 545, 547 (1989).

50. *Id.* at 546.

51. 28 U.S.C. §§ 1346, 2671–80 (2000).

52. *Finley*, 490 U.S. at 547.

53. *Id.*

54. *Id.* at 550.

55. *Id.* at 552.

56. *Id.* at 556.

57. *Id.* at 555–56.

58. See *Kelley v. Michaels*, 59 F.3d 1055, 1058 (10th Cir. 1995) (stating that *Finley* “had cast doubt on the authority of federal courts to hear some claims within supplemental jurisdiction.”).

59. *Finley*, 490 U.S. at 548–49. These doctrines were not codified until 1990, when 28 U.S.C. § 1367 was enacted.

of jurisdiction conferred by a particular statute can of course be changed by Congress.”⁶⁰

D. The Codification of Supplemental Jurisdiction

Congress acted quickly to overrule *Finley* and codify ancillary and pendent jurisdiction.⁶¹ In 1990, one year after the case was decided, 28 U.S.C. § 1367 was enacted to codify the two doctrines under the umbrella title of “supplemental jurisdiction.”⁶² This statute provides:

[the federal] courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.⁶³

The statute further provides that a federal court can decline to exercise jurisdiction over a claim if

(1) the claim raises a novel or complex issue of state law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.⁶⁴

The legislative history of § 1367 clearly states that it was meant to “authorize jurisdiction in a case like *Finley*, as well as essentially restore the pre-*Finley* understandings of the authorization for and limits on other forms of supplemental jurisdiction.”⁶⁵ Congress also intended the statute to codify the “scope of supplemental jurisdiction first articulated by the Supreme Court in *United Mine Workers v. Gibbs*.”⁶⁶

While Congress intended § 1367(a) to codify supplemental jurisdiction under the *Gibbs* standard, it did not use the same language that was used in *Gibbs*. Section 1367(a) states that courts have jurisdic-

60. *Finley*, 490 U.S. at 556. See also House Report, *supra* note 12, at 28 (stating that the Supreme Court in *Finley* “virtually invited Congress to codify supplemental jurisdiction”).

61. See *Rosmer v. Pfizer, Inc.*, 263 F.3d 110, 113 (4th Cir. 2001); *Baggett v. First Nat’l Bank*, 117 F.3d 1342, 1352–53 n.4 (11th Cir. 1997).

62. 28 U.S.C. § 1367(a) (2000). This statute was adopted as section 310 of the Judicial Improvements Act of 1990. H.R. Res. 5316, 101st Cong., 104 Stat. 5089, 5113 (1990).

63. 28 U.S.C. § 1367(a). The last sentence of subdivision (a) specifically overrules *Finley* and allows for joinder of “additional parties.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 125 S. Ct. 2611, 2620 (2005).

64. 28 U.S.C. § 1367(c). See *infra* Part V for a discussion of how the courts use this discretion to decline exercise of jurisdiction over certain claims.

65. *Exxon*, 125 S. Ct. at 2625 (citing House Report, *supra* note 12, at 28).

66. *Id.*

tion over all claims so related to the claims in the action “that they form part of the same case or controversy under Article III of the United States Constitution.”⁶⁷ In contrast, under the traditional *Gibbs* standard “state and federal claims must derive from a common nucleus of operative fact. But if . . . a plaintiff’s claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then . . . there is *power* in federal courts to hear the whole.”⁶⁸

This disparity in language has given rise to a split in the circuit courts as to the proper interpretation of § 1367(a). Specifically, the courts disagree over whether the statute supports permissive counterclaims, which would not have been allowed under the *Gibbs* test.⁶⁹

II. The Circuit Split: 1990-Present

Courts following both the traditional and literal interpretations of § 1367 agree that the statute allows for federal jurisdiction over compulsory counterclaims.⁷⁰ However, two distinct interpretations of § 1367 have developed in the circuit courts as to the statute’s reach over permissive counterclaims.

A. The Traditionalist Interpretation

Many circuit courts continue to follow the traditional rule that while a federal court has supplemental jurisdiction over compulsory counterclaims, permissive counterclaims require an independent jurisdictional basis.⁷¹ These courts read § 1367 as nothing more than a codification of the law as it existed pre-*Finley*, and as such, have continued to apply the *Gibbs* test.

This traditionalist interpretation is exemplified by *Hart v. Clayton-Parker & Associates*.⁷² In *Hart*, the plaintiff defaulted on her credit card bill from the J.C. Penney Company and was sent to a collection

67. 28 U.S.C. § 1367(a).

68. *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 725 (1966).

69. Circuits were also split over how section 1367 was to be applied to the joinder of plaintiffs who did not meet the amount in controversy requirement in diversity actions. *See infra* Part III.A.

70. *See Leipzig v. AIG Life Ins. Co.*, 362 F.3d 406, 410 (7th Cir. 2004) (stating that compulsory counterclaims do not require an independent basis of jurisdiction, but nonetheless embracing the literalist interpretation of § 1367); *Unique Concepts, Inc. v. Manuel*, 930 F.2d 573, 574 (7th Cir. 1991) (holding that compulsory counterclaims are supported under the traditional interpretation of § 1367).

71. *See, e.g., Hart v. Clayton-Parker & Assocs.*, 869 F. Supp. 774, 777–78 (D. Ariz. 1994); *Unique Concepts*, 930 F.2d at 574.

72. 869 F. Supp. 774 (D. Ariz. 1994).

agency.⁷³ The plaintiff, alleging that the defendant engaged in deceptive, unfair and abusive debt-collection practices,⁷⁴ filed suit in federal court under the Federal Fair Debt Collection Practices Act ("FDCPA")⁷⁵ and under applicable Arizona state law. The defendant counterclaimed for the amount of debt unpaid.⁷⁶

The plaintiff argued that the court did not have subject matter jurisdiction over the counterclaim, as it did not arise under federal law and there was no basis for diversity jurisdiction.⁷⁷ She further argued that because her claim focused on the defendant's alleged unfair collection practices, and the defendant's claim focused on the payments made under the contract, the claims did not arise out of the same transaction or occurrence.⁷⁸ Accordingly, the counterclaim was not compulsory,⁷⁹ and would therefore require its own jurisdictional basis.⁸⁰

The defendant, on the other hand, contended that the counterclaim was compulsory, as there was a logical relationship between the complaint and the counterclaim.⁸¹ It also argued that the court should exercise jurisdiction over the counterclaim in order to "avoid a multiplicity of lawsuits."⁸²

The court then found:

[E]ven under section 1367(a), courts must still distinguish between compulsory and permissive counterclaims: federal courts have supplemental jurisdiction over compulsory counterclaims, but permissive counterclaims require their own jurisdictional basis. That is, section 1367(a) itself implicitly recognizes that only a compulsory counterclaim forms a part of the same case or controversy of the claim giving rise to federal jurisdiction. Thus, resolution of the question of the court's jurisdiction over defendant's counterclaim depends on whether the counterclaim is compulsory or permissive.⁸³

The court also noted that "every published decision directly addressing the issue in this case has found that FDCPA lawsuits and lawsuits arising from the underlying contractual debt are *not* compulsory

73. *Id.* at 775.

74. *Id.*

75. 15 U.S.C. § 1692-1692o (2000).

76. *Hart*, 869 F. Supp. at 775.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at 776.

81. *Id.* at 775.

82. *Id.*

83. *Id.* at 776 (citations omitted).

counterclaims.”⁸⁴ It reasoned that even though there were factual connections between the defendant’s right to payment and the fairness of the collection practices, “a cause of action on the debt arises out of events different from the cause of action for abuse in collecting.”⁸⁵ The plaintiff’s FDCPA claim “turn[ed] on the content of defendant’s written demand letters, and the validity of the debt itself [was not] relevant to [the] plaintiff’s case.”⁸⁶ As the claims involved “different legal and factual issues governed by different bodies of law,” the court found that the defendant’s counterclaim was not logically related to the plaintiff’s complaint.⁸⁷ The counterclaim was therefore not compulsory,⁸⁸ and the court thus lacked jurisdiction over it.⁸⁹

B. The Literalist Interpretation

Those courts following a literalist interpretation of § 1367 have confronted facts similar to those in *Hart* and come to the opposite conclusion. The leading example of this approach is *Channell v. Citicorp National Services*.⁹⁰ In *Channell*, automobile lessees filed a class action alleging that after their cars were destroyed in accidents, Citicorp overcharged them to terminate their lease.⁹¹ Citicorp counterclaimed for the termination fee under the lease.⁹² The trial court found this to be a permissive counterclaim, and following the traditional belief that § 1367 “does not enlarge the federal courts’ jurisdiction,” dismissed the claim.⁹³

The Seventh Circuit reversed, finding that § 1367 gives district courts supplemental jurisdiction “over all other claims that are so related to claims in the action within [the court’s] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.”⁹⁴ The court stated that § 1367 had superseded past law in a number of ways, such as allowing an action against a pendent party even when the claim against that party was less

84. *Id.* at 777.

85. *Id.*

86. *Id.*

87. *Id.* (citing *Ayres v. Nat’l Credit Mgmt. Corp.*, No. 90-5535, 1991 WL 66845, at *4 (E.D. Pa. Apr. 25, 1991)).

88. *Id.* at 777–78.

89. *Id.* at 778.

90. 89 F.3d 379 (7th Cir. 1996).

91. *Id.* at 381.

92. *Id.* at 384.

93. *Id.* at 385.

94. *Id.* (citing section 1367(a)).

than the amount in controversy.⁹⁵ The Seventh Circuit also cited previous case law holding that § 1367 had “extended the scope of supplemental jurisdiction, as the statute’s language says, to the limits of Article III—which means that ‘[a] loose factual connection between the claims’ can be enough.”⁹⁶

The court rejected the notion that the distinction between compulsory and permissive should determine the application of supplemental jurisdiction over Citicorp’s counterclaim, reasoning that the distinction was based on doctrines of preclusion, and “[n]ow that Congress has codified the supplemental jurisdiction in § 1367(a), courts should use the language of the statute to define the extent of their powers.”⁹⁷ The court went on to state that the class members’ claims were dependent on the same clause of the lease that Citicorp’s counterclaim depended on, and that this counterclaim fell “within the outer boundary of § 1367(a).”⁹⁸ The court then remanded the case to the district court to use its discretion under § 1367(c) to decide whether to decline or exercise jurisdiction over the claim.⁹⁹

The Second Circuit confronted similar facts in *Jones v. Ford Motor Credit Co.*¹⁰⁰ and came to a similar conclusion. In *Jones*, car buyers sued the company operating their financing plan, alleging that the company permitted dealers to mark up rates based on subjective criteria, including race.¹⁰¹ According to the plaintiffs, African-American buyers had to pay higher rates than similarly-situated Caucasian buyers.¹⁰² The defendant alleged that the named plaintiffs were in default on their loans, and asserted state law counterclaims against them for the amounts unpaid.¹⁰³ The plaintiffs then moved to dismiss these coun-

95. *Id.* (citing *Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928 (7th Cir. 1996)).

96. *Id.* (citing *Baer v. First Options of Chi., Inc.*, 72 F.3d 1294, 1298–1301 (7th Cir. 1995)).

97. *Id.*

98. *Id.*

99. *Id.* at 387. Section 1367(c) allows the court to “decline to exercise supplemental jurisdiction over a claim under subsection (a) if (1) the claim raises a novel or complex issue of State law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.” 28 U.S.C. § 1367(c) (2000).

100. 358 F.3d 205 (2d Cir. 2004).

101. *Id.* at 207.

102. *Id.*

103. *Id.* at 207–208.

terclaims, arguing that the court lacked subject matter jurisdiction over them.¹⁰⁴

The district court found the counterclaims to be permissive, and following the traditional interpretation of § 1367, dismissed them for lacking an independent basis of subject matter jurisdiction.¹⁰⁵ The court then acknowledged the literalist interpretation of § 1367, stating that “‘there [was] some authority to suggest that . . . the court should determine, based on the particular circumstances of the case, whether it ha[d] authority to exercise supplemental jurisdiction under § 1367(a)’ over a counterclaim, regardless of whether it was compulsory or permissive.”¹⁰⁶ The district court went on to state that if it was wrong, and supplemental jurisdiction was applicable to these counterclaims, it would still use its discretion under § 1367(c) to dismiss them, since “[t]he claims and counterclaims arise out of the same occurrence only in the loosest terms There does not exist a logical relationship between the essential facts [to be proven] in the claim and those of the counterclaims.”¹⁰⁷ However, the court did not state which subdivision of § 1367(c) it was relying upon when dismissing the claim.¹⁰⁸

On appeal, the Second Circuit agreed that the counterclaims were primarily concerned with the plaintiffs’ non-payment and not with any mark-up policy, and thus held them to be permissive.¹⁰⁹ It also found that the facts to prove the claims and the counterclaims were not so related that solving both together would be judicially efficient.¹¹⁰

Nonetheless, the Second Circuit rejected the traditional reading of § 1367 and stated that supplemental jurisdiction would support the claims. The court looked at past case law and found that a “reasoned explanation of why independent jurisdiction should be needed for permissive counterclaims” was lacking.¹¹¹ It also noted a continual erosion of the independent basis doctrine even before the passage of

104. *Id.* at 208.

105. *Id.*

106. *Id.* (citing *Solow v. Jenkins*, No. 98-CV-8726, 2000 WL 489667, at *2 (S.D.N.Y. Apr. 25, 2000)).

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* at 209–10.

111. *Id.* at 210–11.

§ 1367.¹¹² The court then rejected the traditionalist view of § 1367, stating that

[t]he explicit extension to the limit of Article III of a federal court's jurisdiction over "all other claims" sought to be litigated with an underlying claim within federal jurisdiction recast the jurisdictional basis of permissive counterclaims into constitutional terms. After section 1367, it is no longer sufficient for courts to assert, without any reason other than dicta or even holdings from the era of judge-created ancillary jurisdiction, that permissive counterclaims require independent jurisdiction.¹¹³

While the Second Circuit briefly examined the legislative history of the statute, it did so only to reject it.¹¹⁴ "[T]he provision's legislative history indicates that Congress viewed the *Gibbs* 'common nucleus' test as delineating [the limits of supplemental jurisdiction]."¹¹⁵ The court did not find the legislative history persuasive. Instead, it stated that Congress' understanding of the extent of Article III was not binding, nor was the legislative history an independent limit on § 1367's clear language.¹¹⁶ It reasoned that the test in *Gibbs* was developed to limit state law claims that a plaintiff could join with its federal law claims, and that this rationale was not necessarily applicable to a defendant's counterclaims.¹¹⁷

A plaintiff might be tempted to file an insubstantial federal law claim as an excuse to tie to it one or more state law claims that do not belong in a federal court. There is no corresponding risk that a defendant will decline to file in state court an available state law claim, hoping to be lucky enough to be sued by his adversary on a federal claim so that he can assert a state law counterclaim.¹¹⁸

The court went on to find that the counterclaims were sufficiently related to the underlying claims to constitute the same "case" within the meaning of Article III, and therefore within the meaning of § 1367.¹¹⁹ This relationship came from the simple fact that "[b]oth the [Plaintiffs'] claim[s] and the debt collection claims originate from

112. *Id.* at 211–12. This erosion of the independent basis doctrine is illustrated in Judge Friendly's concurrence in *United States v. Heyward-Robinson Co.*, 430 F.2d 1077, 1088–89 (1970) (Friendly, J., concurring) (arguing against requiring an independent basis of jurisdiction for permissive counterclaims).

113. *Jones v. Ford Motor Credit Co.*, 358 F.3d 205, 212–13 (2d Cir. 2004) (footnote omitted).

114. *Id.* at 213–14.

115. *Id.* at 212–13 n.5 (citing House Report, *supra* note 12, at 29 n.15).

116. *Id.*

117. *Id.* at 213–14 n.7.

118. *Id.*

119. *Id.* at 213–14.

the Plaintiffs' decisions to purchase Ford cars."¹²⁰ The court then remanded the case to the district court, as the lower court had not stated which of the § 1367(c) exceptions it had relied on to deny the claims.¹²¹

III. The Supreme Court's Analysis of Section 1367 in *Exxon v. Allapattah*

A. Section 1367 and the Amount in Controversy Requirement Under Diversity Jurisdiction

As previously stated, the primary function of § 1367 was to overrule *Finley*, a case dealing with joinder of pendent parties.¹²² In addition to the circuit court split over the scope of supplemental jurisdiction, another split had arisen over whether § 1367 permitted plaintiffs who did not meet the amount in controversy requirement in a diversity suit to be joined as long as one plaintiff met the requirement.

This circuit split over the amount in controversy requirement arose in an almost identical manner as the split over supplemental jurisdiction and permissive counterclaims. The Supreme Court's decisions in *Snyder v. Harris*¹²³ and *Zahn v. International Paper Co.*¹²⁴ held that each individual plaintiff or member of a plaintiff class had to meet the amount in controversy requirement in order to be joined.¹²⁵ Some courts looked to § 1367's legislative history and found that because the statute was written to codify pre-existing law, including amount in controversy rules, each plaintiff still had to separately meet the \$75,000 amount in controversy.¹²⁶ Other courts found that § 1367 overruled *Zahn* by its plain language, and allowed plaintiffs who did not meet the amount in controversy to be joined, regardless of any legislative history stating a contrary intent.¹²⁷

120. *Id.* at 214.

121. *Id.* at 215–16. See discussion *infra* Part IV for further discussion of the court's discretion to decline exercise of supplemental jurisdiction under § 1367(c).

122. See discussion *supra* Part I.D.

123. 394 U.S. 332 (1969).

124. 414 U.S. 291 (1973).

125. *Snyder*, 394 U.S. at 336 (holding that each plaintiff must satisfy the amount in controversy requirement in a diversity action); *Zahn*, 414 U.S. at 301 (holding that each member of a plaintiff class had to satisfy the amount in controversy in a class action based on diversity).

126. See, e.g., *Leonhardt v. W. Sugar Co.*, 160 F.3d 631, 638–40 (10th Cir. 1998).

127. See, e.g., *Olden v. LaFarge Corp.*, 383 F.3d 495, 506–507 (6th Cir. 2004); *Rosmer v. Pfizer, Inc.*, 263 F.3d 110, 114 (4th Cir. 2001).

B. The Factual and Procedural Background of *Exxon v. Allapattah*

In 2005, the Supreme Court decided *Exxon Mobil Corp. v. Allapattah Services, Inc.*, in order to resolve the circuit split over whether § 1367 permits joinder of plaintiffs who do not meet the amount in controversy requirement in a diversity action.¹²⁸ In *Exxon*, gas station dealers filed a class action against the Exxon Corporation.¹²⁹ The plaintiffs alleged that the corporation had been “intentionally and systematically” overcharging dealers for fuel.¹³⁰ Although the case was in federal court pursuant to diversity jurisdiction, some of the unnamed class members did not meet the amount in controversy requirement.¹³¹

After a unanimous jury verdict in favor of the plaintiffs, the district court certified the case for interlocutory review to determine whether it had properly exercised jurisdiction over the plaintiffs who did not meet the amount in controversy requirement.¹³² The Court of Appeals for the Eleventh Circuit upheld the extension of jurisdiction.¹³³

The Supreme Court also decided a companion case in the same opinion. In *Rosario Ortega v. Star-Kist Foods, Inc.*,¹³⁴ the issue was whether family members with claims less than \$75,000 could join in a personal injury suit as long as one plaintiff had claims in excess of \$75,000.¹³⁵ In *Ortega*, a nine-year-old girl sued Star-Kist after receiving unusually severe injuries when she sliced her finger on a tuna can.¹³⁶ Her family joined in the suit, seeking damages for emotional distress and medical expenses.¹³⁷ The plaintiffs filed suit in federal court based on diversity jurisdiction.¹³⁸

Finding that none of the plaintiffs met the amount in controversy requirement, the district court granted summary judgment in favor of the defendant.¹³⁹ The Court of Appeals for the First Circuit reversed in part, finding that the girl, but not her family members, had met the

128. 125 S. Ct. 2611, 2615 (2005).

129. *Id.* at 2615.

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.* at 2616.

134. 125 S. Ct. 2611 (2005).

135. *Exxon*, 125 S. Ct. at 2616.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

amount in controversy.¹⁴⁰ The Court in *Rosario* held that § 1367 did not authorize supplemental jurisdiction unless all the plaintiffs met the amount in controversy.¹⁴¹

C. The Supreme Court's Interpretation of Section 1367

In *Exxon*, the Supreme Court began by examining the state of the law before the enactment of § 1367 in 1990.¹⁴² The Court characterized § 1367 as allowing for “a broad grant of supplemental jurisdiction over other claims within the same case or controversy, as long as the [original] action is one in which the district courts would have original jurisdiction.”¹⁴³ It reasoned that once the complaint contains a claim satisfying the amount in controversy requirement, there is original jurisdiction over that claim.¹⁴⁴ “The presence of other claims in the complaint, over which the district court may lack original jurisdiction, is of no moment. If the court has original jurisdiction over a single claim in the complaint, it has original jurisdiction over a ‘civil action’ within the meaning of § 1367(a)”¹⁴⁵

Because there was original jurisdiction over one claim, the Court found that it had jurisdiction over the entire civil action, regardless of the presence of other parties whose claims did not meet the amount in controversy requirement.¹⁴⁶ The Court went on to hold that § 1367 “authorized supplemental jurisdiction over all claims by diverse parties arising out of the same Article III case or controversy, subject only to enumerated exceptions not applicable in the cases now before us.”¹⁴⁷

The Court then addressed the legislative history of § 1367. It found that the statute was not ambiguous and that it was unnecessary to look at “other interpretative tools, including the legislative history”¹⁴⁸

Notwithstanding the irrelevance of the legislative history, the Court examined it for the sake of argument. It looked at part of the

140. *Id.*

141. *Id.*

142. *Id.* at 2617–20.

143. *Id.* at 2620.

144. *Id.* at 2620–21.

145. *Id.* at 2620–21.

146. *Id.* at 2620–21.

147. *Id.* at 2625. The other enumerated exceptions referred to are found in section 1367(b), which the court found did not apply. Section 1367(b) is a codification of the principal holding of *Owen Equipment & Electric Co. v. Kroger*, 437 U.S. 365, 377 (1978), and only applies in diversity actions. *Exxon*, 125 S. Ct. at 2625.

148. *Exxon*, 125 S. Ct. at 2625.

House Report, which stated that § 1367 would “authorize jurisdiction in a case like *Finley*, as well as essentially restore the pre-*Finley* understandings of the authorization for and limits on other forms of supplemental jurisdiction.”¹⁴⁹ The Court found that according to this report, § 1367(a) “‘generally authorizes the district court to exercise jurisdiction over a supplemental claim whenever it forms part of the same constitutional case or controversy as the claim or claims that provide the basis of the district court’s original jurisdiction,’ and in so doing codifies *Gibbs*.”¹⁵⁰

The Court did not follow the view that the legislative history shows the statute did no more than codify *Gibbs* and overrule *Finley*.¹⁵¹ It also criticized reliance on legislative history to analyze an unambiguous statute.¹⁵² The court further found that the legislative history was ambiguous regarding whether § 1367 did more than simply codify the state of the law before *Finley*.¹⁵³ This was due to a Subcommittee Working Paper’s acknowledgement that the statute may overrule *Zahn*’s holding that each member of a plaintiff class had to satisfy the amount in controversy in a class action based on diversity.¹⁵⁴ The Court also looked at the statements of three law professors who worked on the drafting of § 1367 and observed that the law “on its face” could overrule *Zahn*.¹⁵⁵ The professors conceded that “if one refuses to consider the legislative history, one has no choice but to ‘conclude that section 1367 has wiped *Zahn* off the books.’”¹⁵⁶ The Court thus found that

there exists an acknowledgment, by parties who have detailed, specific knowledge of the statute and the drafting process, both that the plain text of § 1367 overruled *Zahn* and that language to the contrary in the House Report was a *post hoc* attempt to alter that result. One need not subscribe to the wholesale condemnation of legislative history to refuse to give any effect to such a deliberate effort to amend a statute through a committee report.¹⁵⁷

149. *Id.* at 2625 (citing House Report, *supra* note 12, at 28).

150. *Id.* (citing House Report, *supra* note 12, at 28–29).

151. *Id.* at 2625–26.

152. *Id.*

153. *Id.* at 2627.

154. *Id.* at 2626 (citing Report to the Federal Courts Study Committee of the Subcommittee on the Role of the Federal Courts and Their Relation to the States, 561 at n.33 (Mar. 12, 1990)).

155. *Id.* at 2627 (citing House Report, *supra* note 12, at 27 n.13).

156. *Id.* at 2627 (citing Thomas D. Rowe, Jr., Stephen B. Burbank & Thomas M. Mengler, *Compounding or Creating Confusion about Supplemental Jurisdiction? A Reply to Professor Freer*, 40 EMORY L.J. 943, 960 n.90 (1991)).

157. *Id.* at 2627.

In this way, the Court held that the legislative history was not controlling and that § 1367 on its face overruled *Zahn* and allowed for federal court jurisdiction in circumstances that would not have been allowed pre-1990.¹⁵⁸

D. The Applicability of *Exxon* to Permissive Counterclaims

While this Comment is concerned with the application of § 1367(a) to supplemental jurisdiction, § 1367(a) also governs the rules regarding joinder of parties in diversity actions.¹⁵⁹ Moreover, the legislative history at issue in *Exxon* is also at issue in the split over the applicability of supplemental jurisdiction to permissive counterclaims.¹⁶⁰ In both circuit splits, courts either follow the legislative history to find that the law has not changed since 1990—thus finding that supplemental jurisdiction does not apply to permissive counterclaims—or they look to the plain language of § 1367 to reason that the rule does allow for jurisdiction over these claims.

Another look at the reasoning of *Channell* and *Jones* leads to this conclusion. The court in *Channell* declined to follow the previously used “independent basis” standard in light of the enactment of § 1367.¹⁶¹ The Second Circuit in *Jones* took a deeper look at the legislative history, yet came to the same conclusion: given the statutory language in § 1367, supplemental jurisdiction can now support a permissive counterclaim.¹⁶² Likewise, the Supreme Court in *Exxon* examined the legislative history of § 1367 and came to the conclusion that the standard had changed due to the plain language of the statute, despite Congress’ possible intent to do nothing more than codify existing law.

158. *Id.* at 2615.

159. While the main reason behind the enactment of § 1367 was to overrule *Finley*, a case regarding joinder of pendent parties, the statute also effectively codified the doctrines of ancillary and pendent jurisdiction. Thus, § 1367 dictates rules regarding both supplemental jurisdiction and joinder of parties in diversity actions. See discussion *supra* Part I.D.

160. See *Exxon*, 125 S. Ct. at 2625 (discussing the legislative history of § 1367 as it relates to *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966)); *Jones v. Ford Motor Credit Co.*, 358 F.3d 205, 212–13 n.5 (2d Cir. 2004) (also discussing the legislative history of § 1367 as it relates to *Gibbs*).

161. The court in *Channell* refused to extend its decision in *Unique Concepts Inc. v. Manuel*, 930 F.2d 573, 574 (7th Cir. 1991), which held that a permissive counterclaim based on state law requires an independent basis of jurisdiction, to cases under § 1367. See *Channell v. Citicorp Nat’l Servs.*, 89 F.3d 379, 385 (7th Cir. 1996) (“Now that Congress has codified the supplemental jurisdiction in § 1367(a), courts should use the language of the statute to define the extent of their powers.”).

162. *Jones*, 358 F.3d at 212–14.

It follows that if the Supreme Court rejects the legislative history of § 1367 when examining joinder of parties in a diversity context, the same legislative history of that statute would also be rejected when dealing with supplemental jurisdiction. A different holding would lead to a situation where the court rejects the legislative history of the statute in one instance, but embraces the same legislative history of the same statute in another.

When interpreting a statute, a court will not examine extrinsic material, such as legislative history, unless it “shed[s] a reliable light on the enacting Legislature’s understanding of otherwise ambiguous terms.”¹⁶³ In *Exxon*, the court stated that “§ 1367 is not ambiguous,” and thus did not follow the legislative history.¹⁶⁴ While this statement pertained specifically to joinder of parties in diversity actions, it was referring to §1367(a)—the same statute that governs supplemental jurisdiction over permissive counterclaims.¹⁶⁵ “[C]ommon sense suggests that courts should interpret the same language in the same section of the same statute uniformly.”¹⁶⁶ In order to reach an opposite result, the court would have to contradict its previous statement that §1367(a) is unambiguous, and then rely on the same legislative history it had previously found did not control in *Exxon*.

In this way, the Supreme Court’s interpretation of § 1367 in *Exxon* is equally applicable in the context of supplemental jurisdiction over permissive counterclaims. As such, the Court’s reading of § 1367 in *Exxon*, paired with the analysis of § 1367 in *Channell* and *Jones*, strongly supports the contention that § 1367 should be followed according to its plain language, regardless of any legislative history which may lead to a contrary result.¹⁶⁷ Permissive counterclaims no longer need an independent basis of jurisdiction—they are supported by supplemental jurisdiction so long as they are so related to the original claim that they make up the same case or controversy under Article III. While it has not been decided if the “loose factual connection” test of *Channell* will define this standard, it certainly seems that the independent basis test has been invalidated.

163. *Id.*

164. *Id.* at 2625–27.

165. See discussion *supra* Part III.A.

166. *United States v. Nippon Paper Indus. Co.*, 109 F.3d 1, 4 (1st Cir. 1997).

167. See discussion *supra* Part II.B.

IV. The Effect of *Exxon* on Permissive Counterclaims, the Court's Discretion Under Section 1367(c), and a Brief Look at Debt Collection Law.

It is unclear what effect the change suggested by *Exxon* will have on future federal court litigation involving permissive counterclaims.¹⁶⁸ However, a brief examination of lending and debt collection law—a familiar topic in the cases already discussed—may provide some guidance. An analysis of these cases demonstrates how exercising jurisdiction over permissive counterclaims with a “loose factual connection” to the main claim may affect other areas of the law. It also provides an opportunity to consider the importance of § 1367(c), which grants courts the discretion to decline jurisdiction over a claim that would otherwise be supported by supplemental jurisdiction.

Both *Channell* and *Jones* dealt with similar factual situations. In each, a borrower defaults on a loan and then files a complaint against the lender on the terms of the contract.¹⁶⁹ The lender then files a counterclaim for the unpaid balance on the loan.¹⁷⁰ The courts in *Channell* and *Jones* found such a counterclaim to be permissive under § 1367.¹⁷¹ Even though it would not have been allowed under the independent basis test,¹⁷² these courts found that the counterclaim was sufficiently related to the main claim such that supplemental jurisdiction could be exercised.¹⁷³

This new reading of § 1367 could be a significant deterrent to suit in cases involving unfair lending and debt collection.¹⁷⁴ Plaintiffs who might otherwise bring suit for unfair lending or debt collection practices may hesitate if doing so would expose them to a counterclaim for debt they are unable to pay.¹⁷⁵ While many states undoubt-

168. The Supreme Court did not rely on the Class Action Fairness Act (“CAFA”), Pub. L. 109-2, 119 Stat. 4 (2005), in its decision in *Exxon*, nor did it consider the ramifications of its decision in light of CAFA’s enactment. “CAFA . . . has no impact, one way or the other, on our interpretation of § 1367.” *Exxon*, 125 S. Ct. at 2627. The effect of CAFA on § 1367 is beyond the scope of this article. For an in-depth look at the possible effects of *Exxon* on CAFA, see Gregory P. Joseph, *Federal Class Action Jurisdiction After CAFA*, *Exxon Mobil and Grable*, 8 DEL. L. REV. 157 (2006).

169. See *Jones v. Ford Motor Credit Co.*, 358 F.3d 205, 207–208 (2d Cir. 2004); *Channell v. Citicorp*, 89 F.3d 379, 381 (7th Cir. 1996).

170. See *Jones*, 358 F.3d at 207–208; *Channell*, 89 F.3d at 384.

171. See *Jones*, 358 F.3d at 208; *Channell*, 89 F.3d at 385.

172. See *supra* Part II.A for a discussion of the independent basis test.

173. See *Channell*, 89 F.3d at 385; *Jones*, 358 F.3d at 213–214.

174. *Sparrow v. Mazda Am. Credit*, 385 F. Supp. 2d 1063, 1071 (E.D. Cal. 2005).

175. *Id.*

edly have fair lending and collection laws,¹⁷⁶ and many retain a means to enforce these laws independent of private suit,¹⁷⁷ decisions such as those in *Channell* and *Jones*, which allow creditors to counterclaim for the underlying debt, could keep plaintiffs from bringing their claims in federal court.¹⁷⁸

However, the post-*Exxon* interpretation of § 1367 does not mandate such a result. Even if the counterclaim has the requisite “loose factual connection” to the underlying claim in order to sustain jurisdiction under § 1367(a), the trial court still has discretion under § 1367(c) to decline to hear the claim.¹⁷⁹ For example, under § 1367(c)(2), a court can decline to hear a counterclaim that “substantially predominates” over the claim over which the district court has original jurisdiction.¹⁸⁰ Also, § 1367(c)(4) allows a court to decline jurisdiction in “exceptional circumstances.”¹⁸¹

The appellate courts in both *Channell* and *Jones* remanded their respective cases so that the trial court could examine the counterclaim under § 1367(c). Both courts stated that § 1367(c)(2) and § 1367(c)(4) may apply, and both left instructions for the trial court on how to apply these sections.¹⁸² The court in *Jones* expressed doubt that the trial court should decline jurisdiction, stating that under § 1367(c)(2), it should “take into account [other] methods by which the class action might be managed in order to prevent the state law counterclaims from predominating.”¹⁸³ The same court also stated that under § 1367(c)(4), in order to decline jurisdiction over the counterclaim, the trial court must “identify truly compelling circumstances that militate against exercising jurisdiction.”¹⁸⁴ The court in *Channell* admitted that the case presented exceptional circumstances, and opined that a compelling argument for declining to hear the claim may exist.¹⁸⁵ On the other hand, it stated that “[i]t may turn out

176. See, e.g., CAL. FIN. CODE §§ 4970–4978.6 (West 2006) (regulating predatory lending practices in home mortgage lending).

177. *Id.* § 4975 (granting a licensing agency power to enforce the law).

178. The court in *Channell* discussed the reasons it exercised jurisdiction over the creditor’s counterclaim. *Channell*, 89 F.3d at 386–87 (“Plaintiffs cannot expect a court to tolerate evasion of lawful debts.”).

179. See discussion *supra* Part I.D.

180. 28 U.S.C. § 1367(c)(2) (2000).

181. *Id.* § 1367(c)(4).

182. See *Jones v. Ford Motor Credit Co.*, 358 F.3d 205 (2d Cir. 2004); *Channell*, 89 F.3d at 387.

183. *Jones*, 358 F.3d at 215–16.

184. *Id.* at 215.

185. *Channell*, 89 F.3d at 387.

that entry of judgment on the counterclaim requires little more than a mechanical calculation; if so, § 1367(c) would not justify relinquishing jurisdiction.”¹⁸⁶

Other jurisdictions have approached the issue differently and expanded the scope of such judicial discretion. *Sparrow v. Mazda American Credit*¹⁸⁷ offers an example of a court declining to exercise supplemental jurisdiction over a permissive counterclaim for “compelling reasons” under § 1367(c)(4).¹⁸⁸ In *Sparrow*, the plaintiff sued a debt collection company for unfair debt collection practices under the FDCPA.¹⁸⁹ The company counterclaimed for the amount of the unpaid debt under state law.¹⁹⁰ Prior to *Exxon*, it had been established that in FDCPA actions, a counterclaim for the unpaid debt was permissive, and therefore required an independent jurisdictional basis in order to be brought in federal court.¹⁹¹ The court followed this established law and, citing *Channell*, considered whether it should exercise supplemental jurisdiction over the counterclaim.¹⁹²

The court found that there was a loose factual connection between the claims, and that the counterclaim could therefore be supported under a *Channell* approach to supplemental jurisdiction.¹⁹³ However, it declined to exercise such jurisdiction under § 1367(c)(4).¹⁹⁴ It stated that “strong policy reasons favor declining to exercise [supplemental] jurisdiction” in suits for unfair debt collection practices, since allowing the counterclaims would deter litigants from pursuing their rights under the FDCPA.¹⁹⁵ Quoting well-established debt collection law, the court found that

[t]o allow a debt collector defendant to seek to collect the debt in the federal action to enforce the FDCPA might well have a chilling effect on persons who otherwise might and should bring suits such as this. Moreover, it would involve this Court in questions of no federal significance. Given the remedial nature of the FDCPA “and the broad public policy which it serves, federal courts should be loath to become immersed in the debt collection suits of . . . the

186. *Id.*

187. 385 F. Supp. 2d 1063 (E.D. Cal. 2005).

188. *Id.* at 1070–71.

189. *Id.* at 1065.

190. *Id.* at 1068.

191. *Leatherwood v. Universal Bus. Serv. Co.*, 115 F.R.D. 48 (W.D.N.Y. 1987).

192. *Sparrow*, 385 F. Supp. 2d at 1066–67.

193. *Id.* at 1070.

194. *Id.* at 1070–71.

195. *Id.* at 1071.

target of the very legislation under which" a FDCPA plaintiff states a cause of action.¹⁹⁶

The court went on to state that "[a] major purpose of the FDCPA is to protect individuals from unfair debt collection practices regardless of whether the individual actually owes a debt."¹⁹⁷ On this basis, the court declined to exercise supplemental jurisdiction over the company's counterclaim under § 1367(c)(4).¹⁹⁸

While the Supreme Court's decision in *Exxon* strongly supports the exercise of supplemental jurisdiction over permissive counterclaims, the lower federal courts are by no means locked into the § 1367(c) discretionary rule set forth in *Jones*. Indeed, it seems that courts applying § 1367(c), at least in debtor/creditor cases, can still use their discretion to decline exercise of jurisdiction over these claims.¹⁹⁹

V. Conclusion

After examining the Supreme Court's analysis of § 1367 in *Exxon*, it seems clear that the literalist interpretation of the statute as expressed in *Channell* and in other circuits must be followed. *Exxon* held that § 1367, by its plain language, overruled *Zahn* and allowed plaintiffs who did not meet the amount in controversy requirement to join a suit. Likewise, as stated in *Channell*, the plain language of § 1367 also overruled the independent basis doctrine. Permissive counterclaims are supported by supplemental jurisdiction so long as they are so related to the original claim that they make up the same case or controversy under Article III.

196. *Id.* (citing *Leatherwood*, 115 F.R.D. at 50).

197. *Id.*

198. *Id.*

199. *Id.* at 1070-71.