The Codification of Pendent and Ancillary Jurisdiction: Supplemental Jurisdiction

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THE CODIFICATION OF PENDENT AND ANCILLARY JURISDICTION: SUPPLEMENTAL JURISDICTION

I. INTRODUCTION

Federal court practitioners will find 28 U.S.C. § 1367,1 entitled Supplemental Jurisdiction, an essential new tool of the trade that "broadly authorizes the district courts to exercise supplemental jurisdiction over additional claims."2 Section 1367 enables the federal court practitioner to join a nonfederal claim with a federal jurisdiction worthy claim when the claims are "so related . . . that they form part of the same case or controversy under Article III of the United States Constitution."3 The new statute promotes judicial efficiency by eliminating the need for trials at both the state and federal levels. Furthermore, section 1367 codifies three judicially efficient case law doctrines that have perplexed many students, practitioners, courts, and even scholars: pendent claim,4 pendent party,5 and ancillary5 jurisdiction. Section 1367 merges the three doctrines into one codified heading, supplemental jurisdiction. The openings

4. Pendent claim jurisdiction permits a plaintiff to attach state law claims to federal claims, even though diversity is absent, if the "state and federal claims . . . derive from a common nucleus of operative fact." United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966).
5. Pendent party jurisdiction allows the attachment of a nonfederal claim against a nonparty to a federal claim when the federal claim is within the jurisdiction of the federal courts only. Stewart v. United States, 716 F.2d 755 (10th Cir. 1982), cert. denied, 469 U.S. 1018 (1984). Stewart was superseded by Finley v. United States, 490 U.S. 545 (1989). Finley was superseded by 28 U.S.C.A. § 1367 (West Supp. 1990).
6. Ancillary jurisdiction is a judicially developed concept based on the premise that a district court acquires jurisdiction over a case or controversy in its entirety and, as an incident to the disposition of a dispute that is properly before it, may exercise jurisdiction to decide other matters raised by the case over which it would not have jurisdiction.


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to federal jurisdiction that a practitioner can carve with supplemental jurisdiction provide the focus of this paper.

II. INDEPENDENT FEDERAL JURISDICTION

The topic of supplemental jurisdiction requires an understanding of independent federal jurisdiction. Federal jurisdiction technically demands two things, a constitutional basis and statutory authorization from Congress.\(^7\)

The constitutional basis originates in Article III, Section 2, of the United States Constitution. Section 2 specifies what types of cases the federal courts are permitted to hear.\(^8\) The three most common areas of federal jurisdiction under Article III, Section 2 are: cases arising under the Constitution, laws, and treaties of the United States (federal questions); controversies in which the United States is a party; and controversies between citizens of different States (diversity of citizenship).\(^9\)

Various statutory underpinnings exist for these three types of cases. Statutory authorization for federal question jurisdiction\(^10\) and diversity of citizenship jurisdiction\(^11\) is found in title 28, the Judiciary Code. The Federal Tort Claims Act,\(^12\) supplemented by various other statutes, governs when the United States may be sued.\(^13\) In theory, if a claim fitting one of the constitutionally-provided categories lacks statutory support for federal jurisdiction, it will not proceed in federal court.\(^14\)

In reality, the development of the case law doctrines of pendent claim and ancillary jurisdiction demonstrates an erosion of the strict statutory requirement for attaining federal jurisdiction.\(^15\) Pendent claim jurisdiction permits a plaintiff to join state law claims with federal claims,


15. See Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 375 (1978) (concept of ancillary jurisdiction includes compulsory counterclaims, cross-claims, and impleader); United Mine Workers v. Gibbs, 383 U.S. 715 (1966) (federal courts allowed discretion to invoke pendent jurisdiction of state claims if they are brought together with substantial federal claims and are derived from a
even though the complete diversity of citizenship requirement\textsuperscript{16} has not been met for the state claims, if the "state and federal claims . . . derive from a common nucleus of operative fact."\textsuperscript{17} Numerous pendent claim holdings have been upheld by the United States Supreme Court.\textsuperscript{18} The concept of ancillary jurisdiction has operated similarly to weaken the requisite of statutory authority.\textsuperscript{19} \textit{Finley v. United States}\textsuperscript{20} rekindled a strict reliance on statutory authorization and struck down the doctrine of pendent party jurisdiction.\textsuperscript{21} Therefore, the post-\textit{Finley} federal court practitioner had to rely on the doctrines of pendent claim or ancillary jurisdiction to attach a supplemental claim to an independent federal claim when statutory authority was absent.

III. PRE-SECTION 1367 CASE LAW RESTRICTIONS ON PENDENT AND ANCILLARY JURISDICTION

Through the years, numerous Supreme Court cases have defined and refined the notions of pendent and ancillary jurisdiction.\textsuperscript{22} In some instances, the Court expanded the boundaries of pendent and ancillary jurisdiction.\textsuperscript{23} The boundary line for pendent jurisdiction was significantly increased with the United States Supreme Court's decision in

\textsuperscript{16}. Diversity of citizenship requirement is addressed in Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806).
\textsuperscript{19}. \textit{JAMES & HAZARD, supra note 7, § 2.7, at 61-62} ("[T]he concept of ancillary jurisdiction is that the federal court, having jurisdiction of the action between the original parties, may hear and determine claims between those parties and other parties when the other claims are closely related to those already before the court. The concept is the product of decisional law rather than statute . . . .")
\textsuperscript{20}. 490 U.S. 545 (1989).
\textsuperscript{21}. \textit{Id.} at 549, 553-55.
\textsuperscript{23}. \textit{See Freeman}, 65 U.S. (24 How.) 450. Plaintiff from New Hampshire filed suit in a Massachusetts federal court to recover damages from defendant railroad company incorporated in Massachusetts. In accordance with attachment procedures, Federal Marshall Freeman seized a number of railroad cars as security for a potential judgment. A second Massachusetts plaintiff, Howe, was a mortgagee of the defendant. He secured a writ of replevin for the same railroad cars from a state court. While the railroad cars were still in the possession of the federal marshall, Howe removed them under the writ of replevin. The court held that Howe was not without remedy in the federal courts even though he and the defendant were both citizens of Massachusetts. The court reasoned
United Mine Workers v. Gibbs.\textsuperscript{24} At other times, the Court has tightened the boundaries.\textsuperscript{25} Two dramatic tightenings occurred with the Supreme Court's decisions in Owen Equipment & Erection Co. v. Kroger\textsuperscript{26} and Finley v. United States.\textsuperscript{27}

The plaintiff in Owen Equipment brought a wrongful death action in federal court basing jurisdiction on diversity of citizenship. The original defendant impleaded Owen Equipment and Erection Company as a third-party defendant and then the plaintiff filed her own claim against Owen Equipment.\textsuperscript{28} The original defendant was granted summary judgment and Owen Equipment was left the sole defendant. It was subsequently discovered that the plaintiff and defendant, Owen Equipment, were citizens of the same state.\textsuperscript{29} The Supreme Court held that 28 U.S.C. § 1332(a)(1) requires complete diversity of citizenship.\textsuperscript{30} Therefore, a federal court in a diversity case may not assume ancillary jurisdiction when the third-party defendant's citizenship is identical with the plaintiff's.\textsuperscript{31} As outlined in the analysis of section 1367 that follows, section that Howe could have filed a bill in equity in the court that issued attachment. Such a bill would not have been an original suit, “but ancillary and dependent, supplementary merely to the original suit out of which it had arisen, and is maintained without reference to the citizenship or residence of the parties.” Id. at 460. The claim would therefore have been within the jurisdiction of the court. In Gibbs, plaintiff brought an action in federal court, asserting both a federal claim, under the Management Relations Act, and a state claim, conspiracy to interfere with a contract. The court held that federal courts have jurisdiction to assume pendent jurisdiction of state claims if they are brought together with substantial federal claims and are derived from a common nucleus of operative facts.
1367(b) codifies Owen Equipment's protection of the complete diversity of citizenship requirement. 32

A dramatic tightening of pendent jurisdiction came in Finley 33 where the plaintiff brought a claim under the Federal Tort Claims Act 34 against the United States. One year later she attempted to amend her federal complaint against the United States to include additional defendants. 35 Independent federal jurisdiction did not exist as to the claims against the additional defendants because the claims were based on state law, and diversity of citizenship was lacking. 36 Finley held that pendent jurisdiction would not be extended to the pendent party field. 37

The Finley decision motivated Congress to react to the clear unwillingness of the Supreme Court to carry the concepts of pendent and ancillary jurisdiction any further. 38 Congress responded with section 1367, entitled Supplemental Jurisdiction, which superceded Finley by allowing pendent party jurisdiction. 39

Id. at 375-76.

32. Evidence of congressional intent to codify Owen Equipment is found in H.R. REP. No. 101-734, supra note 2, at 29 n.16. “The net effect of subsection (b) is to implement the principal rationale of Owen Equipment . . . .” Id.


35. Finley, 490 U.S. at 546.

36. Id. at 550-52.

37. Id. at 556. Finley overruled a line of cases upholding pendent party jurisdiction. See Lykins v. Pointer Inc., 725 F.2d 645 (11th Cir. 1984); Stewart v. United States, 716 F.2d 755 (10th Cir. 1984). But see Ayala v. United States, 550 F.2d 1196 (9th Cir. 1977) (categorically rejected pendent party jurisdiction under the Federal Tort Claims Act), cert. dismissed, 435 U.S. 982 (1978).

38. Finley, 490 U.S. at 556 (Justice Scalia stressed that “[w]hat is of paramount importance is that Congress be able to legislate against a background of clear interpretive rules, so that it may know the effect of the language it adopts.”).

39. Convincing evidence of congressional intent to erase Finley appears in the legislative history of 28 U.S.C. § 1367. H.R. REP. NO. 101-734, supra note 2, at 28 (demonstrating Congressional awareness that some lower courts read Finley as prohibiting previously accepted examples of pendent or ancillary jurisdiction). “Already, for example, some lower courts have interpreted Finley to prohibit the exercise of supplemental jurisdiction in formerly unquestioned circumstances.” Id. The enactment of section 1367 eliminated this confusion by providing statutory authority for pendent and ancillary jurisdiction. “Legislation, therefore, is needed to provide the federal courts with statutory authority to hear supplemental claims.” Id. The statutory authority provided by 28 U.S.C. § 1367 in essence removed the need for the case law doctrines of pendent and ancillary jurisdiction, allowing for more than the simple restoration of pre-Finley rulings.
IV. ANALYSIS OF 28 U.S.C. § 1367

A. 28 U.S.C. § 1367(a)

Section 1367(a) governs supplemental jurisdiction for cases gaining original federal jurisdiction from the involvement of a federal question.\(^{40}\) Section 1367(a) states:

Except as provided in subsection (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.\(^{41}\)

Most of section 1367(a) leaves little room for interpretation. The first few words of subsection (a) outline when subsection (a) is not triggered: \"[e]xcept as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute . . . .\" Subsection (b) governs original actions founded solely on diversity of citizenship. Therefore, subsection (a) is not applicable to actions founded solely on diversity of citizenship.

The use of the word \"shall\" in subsection (a) demonstrates the affirmative duty Congress intended to place on the courts to exercise supplemental jurisdiction. The last sentence of subsection (a) unquestionably dispels the Finley rule prohibiting joinder of additional parties.\(^{42}\)

One murky area exists in subsection (a) due to the following phrase: \"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.\"\(^{43}\) Whether a given dependent claim forms \"part of the same case or controversy\" may dominate many of the arguments regarding the application of section 1367(a).\(^{44}\)

\(^{40}\) 28 U.S.C. § 1331 provides federal question jurisdiction. Section 1367(a) applies to all cases gaining original federal jurisdiction based in part on the constitutional foundations outlined in Article III, Section 2 of the United States Constitution, except diversity cases. Section 1367(b) controls original federal jurisdiction founded on diversity.


\(^{42}\) Id.

\(^{43}\) Id. (emphasis added).

\(^{44}\) See infra notes 70-99 and accompanying text for analysis of cases decided under § 1367's \"case or controversy\" language.
B. 28 U.S.C. § 1367(b)

Section 1367(b) governs supplemental jurisdiction for cases basing original federal jurisdiction solely upon diversity of citizenship. Section 1367(b) states:

In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

The application of subsection (b) is a rather mechanical one. Original jurisdiction founded solely on diversity of citizenship automatically triggers subsection (b). In such a case, a supplemental claim may be denied supplemental jurisdiction if it falls into any one of the following categories:

1. The dependent claim is made by a plaintiff against someone made a party under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure.

2. The dependent claim is made by someone proposed to be joined as a plaintiff under Rule 19 of the Federal Rules of Civil Procedure.

3. The dependent claim is made by someone seeking to intervene as a plaintiff under Rule 24 of the Federal Rules of Civil Procedure.

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47. Fed. R. Civ. P. 14 (entitled Third-Party Practice, covering impleaders). Rule 14(a) governs when a defendant may bring in a third party. Rule 14(b) governs when a plaintiff may bring in a third party. Rule 14(a) was utilized by the original defendant in Owen Equipment to join Owen as a third party. See supra notes 28-32 and accompanying text.
48. Fed. R. Civ. P. 19 (entitled Joinder of Persons Needed for Just Adjudication, providing for compulsory joinder of parties). Rule 19(a) governs persons to be joined if feasible. Rule 19(b) governs determinations by the court whenever joinder is not feasible.
49. Fed. R. Civ. P. 20 (entitled Permissive Joinder of Parties). The first sentence of Rule 20(a) governs the permissive joinder of persons as plaintiffs. The second sentence of Rule 20(a) governs the permissive joinder of persons as defendants. Section 1367(b) only exempts from supplemental jurisdiction claims asserted by plaintiffs against defendants joined under Rule 20. Section 1367 does not exempt from supplemental jurisdiction the permissive joinder of parties as plaintiffs under Rule 20(a).
Even if the supplemental claim fits into one of the above pigeon holes, it is not automatically denied supplemental jurisdiction. Supplemental jurisdiction will only be denied if the supplemental claim fits into one of the pigeon holes and "when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332." In other words, jurisdiction will fail where inclusion of the claim would destroy diversity of citizenship.

The House Report pertaining to section 1367 reflects congressional desire to safeguard the diversity requirement in section 1367(b), preventing the manipulation of diversity of citizenship requirements. Section 1367(b) was intended to prevent parties who have gained original jurisdiction based on diversity of citizenship from later adding non-diverse parties under a claim of supplemental jurisdiction.

Section 1367(b)'s treatment of permissive joinder of parties under Rule 20 of the Federal Rules of Civil Procedure is puzzling. The second sentence of Rule 20(a) addresses the joinder of parties as defendants: "All persons... may be joined in one action as defendants if there is asserted against them... any right to relief in respect of or arising out of the same transaction..." Section 1367(b)(a) addresses this Rule 20 provision by expressly prohibiting supplemental claims that are asserted by plaintiffs against defendants who are joined under Rule 20 if diversity will be destroyed.

Interestingly, section 1367(b) does not address the first sentence of Rule 20 which allows for the joinder of parties as plaintiffs: "All persons may join in one action as plaintiffs if they assert any right to relief... in respect of or arising out of the same transaction..." Therefore, a literal reading of section 1367(b) would allow supplemental claims by nondiverse plaintiffs that are joined under the first sentence of Rule 20(a)

53. Id.
54. H.R. REP. NO. 101-734, supra note 2, at 29, which states in pertinent part:
   In diversity-only actions the district courts may not hear plaintiffs' supplemental claims
   when exercising supplemental jurisdiction would encourage plaintiffs to evade the jurisdictional
   requirement of 28 U.S.C. § 1332 by the simple expedient of naming initially only
   those defendants whose joinder satisfies section 1332's requirements and later adding
   claims not within original federal jurisdiction against other defendants who have inter-
   vened or been joined on a supplemental basis.

55. Charles W. Adams, Recent Amendments Affecting Federal Jurisdiction and Venue, 62
57. 28 U.S.C.A. § 1367(b)(a) (West Supp. 1991) ("claims by plaintiffs against persons made
    parties under Rule... 20 of the Federal Rules of Civil Procedure") (emphasis added).
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to proceed in federal court, but would deny claims by plaintiffs against nondiverse defendants made parties under Rule 20.\textsuperscript{59}

Additionally, section 1367(b) has a significant effect on a landmark case decided by the Supreme Court in 1860, \textit{Freeman v. Howe}.\textsuperscript{60} \textit{Freeman} permitted ancillary jurisdiction of claims by an additional nondiverse plaintiff based on intervention as of right.\textsuperscript{61} It appears that section 1367(b)’s refusal to permit an additional nondiverse plaintiff’s intervention of right supercedes \textit{Freeman}.\textsuperscript{62} Under section 1367(b), intervention of right, governed by Rule 24(a) of the Federal Rules of Civil Procedure, will be denied if original jurisdiction is founded on diversity of citizenship and the addition of the supplemental claim would destroy the required diversity.\textsuperscript{63}

C. 28 U.S.C. § 1367(c)

The duty of the district courts to exercise supplemental jurisdiction in the appropriate circumstances appears mandatory under subsections (a) and (b). However, the courts are awarded some discretion under subsection (c). Section 1367(c) states:

The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if:

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.\textsuperscript{64}

Subsection (c) codifies the factors courts currently recognize as providing a basis for discretionary rejection of supplemental jurisdiction

\textsuperscript{59} See Adams, supra note 55, at 2370.
\textsuperscript{60} 65 U.S. (24 How.) 450 (1860). See Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 375 n.18 (1978) ("The ancillary jurisdiction of the federal courts derives originally from cases such as Freeman v. Howe . . . .").
\textsuperscript{61} Freeman, 65 U.S. (24 How.) at 460. Intervention as of right is today provided for by Rule 24(a) of the Federal Rules of Civil Procedure.
\textsuperscript{62} Section 1367(b) states in pertinent part:

"In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims . . . by persons . . . seeking to intervene as plaintiffs under Rule 24 [of the Federal Rules of Civil Procedure] . . . ."
\textsuperscript{63} Id.
\textsuperscript{64} 28 U.S.C.A. 1367(c) (West Supp. 1991).
claims. The catchall language of subsection (c)(4) provides for exceptional cases requiring dismissal for other compelling reasons.

D. 28 U.S.C. § 1367(d)

Section 1367(d) prevents the extinguishment of claims while parties await a supplemental jurisdiction determination. Section 1367(d) states:

The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

This subsection precludes the destruction of claims when a state's statute of limitations does not toll the running of the period of limitations while a supplemental claim is pending in federal court. The tolling effect applies not only to the supplemental claim, but to any other claims in the action as well. This provides a plaintiff who has suffered the dismissal of their supplemental claim with the option of pursuing all the claims in state court.

V. JUDICIAL APPLICATION OF SECTION 1367

Although appellate level cases interpreting section 1367 are limited due to its recent enactment, a few district court and appellate cases from around the country provide some insight into issues the courts will confront when applying section 1367. Thus far, courts have faced several issues, including the interpretation of “same case or controversy,” whether section 1367 provides the pendent plaintiff with supplemental jurisdiction, and whether section 1367 allows the attachment of a state claim to a 42 U.S.C. § 1983 federal civil rights claim.

67. Id. Oklahoma has a savings statute allowing the tolling of statutes of limitations for one year following the dismissal of an action other than on its merits. OKLA. STAT. tit. 12, § 100 (1981). Thus, 28 U.S.C. § 1367(d) would not be needed in Oklahoma under most circumstances. See Adams, supra note 55, at 2370. If previous dismissal occurred or the first action was filed outside of Oklahoma, Oklahoma’s savings statute may not be used. Therefore, section (d) would provide an added benefit under these situations.
A. Interpretation of "Same Case or Controversy"

As pointed out earlier, supplemental jurisdiction under 28 U.S.C. § 1367 requires that the supplemental claims be "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."\(^7\) Prior to the enactment of section 1367, the same transaction test, established in *United Mine Workers v. Gibbs*,\(^7\) governed the requisite relationship between the federal and nonfederal claim for purposes of exercising pendent jurisdiction.

*Gibbs* held that pendent jurisdiction exists whenever the relationship between the federal and state claim is such "that the entire action before the court comprises but one constitutional 'case.'"\(^7\) According to *Gibbs*, the relationship between the federal and nonfederal claims is sufficient when they "derive from the same nucleus of operative fact" and are such that a plaintiff "would ordinarily be expected to try them all in one judicial proceeding."\(^7\) Courts have interpreted *Gibbs* as meaning that pendent jurisdiction is available only when each and every claim arises from the same transaction.\(^7\)

Technically, section 1367 could expand the limits of the *Gibbs* same transaction test by merely requiring that the nonfederal and federal claims constitute part of the same "case."\(^7\) The Federal Rules of Civil Procedure make it acceptable for a case to involve more than one transaction.\(^7\) According to the Federal Rules of Civil Procedure's view of "case," it could be argued that section 1367's use of the word "case" enlarges the supplemental jurisdiction arena by allowing the attachment of a state claim even though it did not arise from the same transaction as the federal claim.\(^7\) Such an argument is bolstered by the fact that Congress chose the word "case" in spite of a proposal by the Federal Courts Study Subcommittee which limited supplemental jurisdiction to "all other claims arising out of the same transaction or occurrence."\(^7\)

73. *Id.* at 725.
74. *Id*.
77. *Fed. R. Civ. P.* 18(a) and 13(b). Rule 18(a) permits the joinder of unrelated claims involving the same parties. Rule 13(b) allows a defendant to assert counterclaims which do not arise from the same transaction as the plaintiff's claim.
78. *See* Adams, supra note 55, at 2369.
79. Subcommittee on the Role of Federal Courts and Their Relation to the States, Report to
Despite the fact that section 1367's use of "case" could technically include unrelated transactions, courts thus far have clung to the Gibbs' same transaction test when applying section 1367.\(^\text{80}\) For example, in \textit{Rosen v. Chang},\(^\text{81}\) which involved the attachment of a Rhode Island wrongful death claim to a federal civil rights claim,\(^\text{82}\) the court interpreted section 1367(a)'s "case or controversy" language by applying the Gibbs' same transaction test.\(^\text{83}\) The \textit{Rosen} court even went as far as concluding that "the doctrine of pendent jurisdiction delineated in Gibbs has recently been codified . . . at 28 U.S.C. § 1367."\(^\text{84}\)

The Gibbs' test was utilized by another court in a subsequent application of section 1367, \textit{Arnold v. Kimberly Quality Care Nursing Service}.\(^\text{85}\) \textit{Arnold} involved the attachment of a Pennsylvania loss of consortium claim asserted by an additional plaintiff to a federal Title VII claim of retaliatory discharge.\(^\text{86}\) The court recognized section 1367(a) as controlling and proceeded to make a determination whether the loss of consortium claim was sufficiently related to the Title VII claim that it formed part of the same case or controversy.\(^\text{87}\) The court found that the requisite relationship existed, stating that "such a determination can be

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\(^{80}\) See H.R. REP. No. 101-743, supra note 2, at 29 n.15 (stating that section 1367(a) "codifies the scope of supplemental jurisdiction first articulated [in] . . . Gibbs . . . .").


\(^{82}\) Id. The complaint alleged three distinct theories of liability. Count I asserted a claim against the defendants in their individual and official capacities pursuant to 42 U.S.C. § 1983. Count II requested recovery against all defendants, except the State, pursuant to Rhode Island's Wrongful Death Act. Count III claimed the State was liable for the wrongful conduct of its employees due to respondeat superior. Each count was addressed individually by the court. The court dismissed Count I as to the defendants in their official capacities only. Dismissal was warranted because states and state officials acting in their official capacities simply are not "persons" within the meaning of 42 U.S.C. § 1983. However, the defendants, except for the State, were not awarded dismissal in their individual capacities. Thus, plaintiff's 42 U.S.C. § 1983 claim, although confined to defendants' individual capacities, provided original federal jurisdiction.

\(^{83}\) Id. at 802.

\(^{84}\) Id.


\(^{86}\) Id. Arnold and her husband filed a lawsuit based upon alleged sexual harassment by defendant Parks, an employee of defendant Kimberly Quality Care Nursing Service. Original federal jurisdiction was based on a Title VII claim for retaliatory discharge, while the supplemental jurisdiction claim derived from a state law claim for loss of consortium. The Title VII claim damages were allegedly suffered by plaintiff-wife. The loss of consortium claim damages were allegedly suffered by plaintiff-husband. The court found that facts which the husband would be required to show in his loss of consortium claim shared a common nucleus with the operative facts of the wife's Title VII claim. Id. at 1186.

\(^{87}\) Id. at 1185.
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made under the standard set forth in United Mine Workers v. Gibbs . . . ,"88

While Rosen and Arnold are both district court cases, a Third Circuit case, Sinclair v. Soniform, Inc., 89 demonstrates that federal appellate courts may also follow the trend of performing the Gibbs' test when applying section 1367. The Sinclair court permitted the attachment of state claims to federal admiralty jurisdiction claims. 90 Sinclair held that claims are part of the same constitutional case if they pass the Gibbs' common nucleus of operative facts test. 91 When required to make the "case" determination under section 1367, courts simply do not appear willing to forfeit the familiar Gibbs' test that they have applied for the last two decades.

B. Pendent Plaintiff Jurisdiction under Section 1367

A second issue regarding the application of section 1367 was encountered by the Arnold court. 92 The defendants in Arnold argued that section 1367 was not intended to support pendent plaintiff jurisdiction. In other words, the defendants asserted that section 1367 does not allow supplemental jurisdiction for a plaintiff, such as Arnold's husband, who lacked independent federal jurisdiction. 93

The court disagreed, explaining that the language of section 1367(a) "is broad enough to include a pendent plaintiff who is named in the original complaint, not just one, as the defendants argue, who may subsequently be joined, or seek to join, or who intervenes." 94 Arnold and her husband were both named as plaintiffs in the original Title VII complaint. The husband was allowed to assert pendent plaintiff status for his loss of consortium claim. 95 The Arnold court supported its interpretation with reference to Brown v. Grabowski 96 and Rosen, 97 which both held that section 1367(a) provides for pendent party jurisdiction over defendants named in the original complaint. 98 Arnold reasoned that the result

88. Id. at 1186 (citing United Mine Workers v. Gibbs, 383 U.S. 715 (1966)).
89. 935 F.2d 599 (3rd Cir. 1991).
90. Id. at 600.
91. Id.
93. Id. at 1185.
94. Id.
95. Id.
should be the same for pendent plaintiff jurisdiction.\textsuperscript{99}

C. Attaching a State Claim to a 42 U.S.C. § 1983 Federal Civil Rights Claim

A third issue in the judicial application of section 1367 is the use of supplemental jurisdiction to attach a state law claim against a state to a federal 42 U.S.C. § 1983 civil rights action.\textsuperscript{100} The \textit{Rosen} court faced this issue.\textsuperscript{101} The plaintiff in \textit{Rosen} attempted to attach a claim against Rhode Island for the wrongful conduct of its employees (based on the doctrine of respondeat superior) to a § 1983 civil rights action.\textsuperscript{102} \textit{Rosen} acknowledged that prior case law forbade such an exercise of pendent jurisdiction.\textsuperscript{103} The \textit{Rosen} court held that such prior case law was nullified by section 1367(a)'s grant of pendent party jurisdiction.\textsuperscript{104}

VI. CONCLUSION

Supplemental jurisdiction allows federal courts to prevent the duplication of efforts between federal and state courts. \textit{Arnold} and \textit{Rosen} provide examples of federal district courts seizing the opportunity to exercise judicial economy by keeping the entire "case" in one court. The statutory overruling of \textit{Finley}'s prohibition against pendent party jurisdiction represents a solid step towards judicial efficiency. The following quote demonstrates the desperate need in the federal court system for reform:

\begin{quote}
Joinder of parties was pretty well cleaned up in the 1966 revisions of the Federal Rules. But, substantial difficulties remain in dealing with controversies that have multistate elements or questions of both state and federal law, for the rules of jurisdiction over person and over subject matter have not been fully systematized. That is, in various circumstances the system still cannot accomplish the objective of
\end{quote}

\textsuperscript{99} \textit{Id.}\textsuperscript{100} 42 U.S.C. § 1983 (1988) (civil rights actions) which states in pertinent part: "Every person who . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . . ." (emphasis added).
\textsuperscript{101} \textit{Rosen}, 758 F. Supp. at 803-04.
\textsuperscript{102} \textit{Id.} at 803
\textsuperscript{103} \textit{Id.} (referring to \textit{Aldinger} v. \textit{Howard}, 427 U.S. 1 (1976) and \textit{Clark} v. \textit{Taylor}, 710 F.2d 4 (1st Cir. 1983)). According to the \textit{Rosen} court, "Both cases stated that in consideration of the fact that there was no Congressional grant of jurisdiction, Congressional intent to bar § 1983 actions against the states must be read to indicate that pendent jurisdiction should not be used to allow similar state law claims." \textit{Id.} at 803 (citations omitted).
\textsuperscript{104} \textit{Id.} at 803-04. 28 U.S.C. § 1367(a) states, "Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties."
determining all aspects of an ordinary civil controversy in one action. There is simply no reason why a multiple-claim, multiple-party controversy arising within the United States should not be submissible to a single tribunal for a consistent adjudication of the various claims and liabilities. Failure in this objective has the consequences of multiplying and prolonging litigation, multiplying private and public legal costs, and bringing the system of justice into unnecessary disrepute. Only a legal technician could admire the system as it is.\(^{105}\)

The enactment of section 1367 takes some of the sting out of the outrage expressed above. Supplemental jurisdiction alone will not cure judicial inefficiency. However, section 1367 moves us closer to a system that can be admired by both the legal technician, and more importantly, the federal court litigant.

_Cami Rae Baker_

105. JAMES & HAZARD, _supra_ note 7, § 10.24, at 582.