Chapter 1

Subject-Matter Jurisdiction

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1-1 INTRODUCTION

Unlike state courts, federal courts are courts of limited jurisdiction and cannot exercise their jurisdiction unless the Constitution and Congress expressly have granted them the power to do so.[1] Consequently, federal courts must examine the issue of subject-matter jurisdiction even when it is not challenged or when the parties concede it.[2] Lack of subject-matter jurisdiction cannot be waived,[3] and it can be questioned for the first time on appeal.[4]

A federal district court may have subject-matter jurisdiction if a federal question is raised[5] or because of the diversity of citizenship of the parties.[6] In general, the defendant may remove civil actions brought in state court to federal district court if the federal district court has subject-matter

1. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 418 (3d Cir. 2010). *See generally Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) ("Subject-matter limitations on federal jurisdiction . . . keep the federal courts within the bounds the Constitution and Congress have prescribed.").

2. *Nuveen Mun. Tr. ex rel. Nuveen High Yield Mun. Bond Fund v. WithumSmith Brown, P.C.*, 692 F.3d 283, 293 (3d Cir. 2012) ("Indeed, a district court has an independent obligation to determine whether subject matter jurisdiction exists, even if its jurisdiction is not challenged.").

3. *E.g., United States v. Cotton*, 535 U.S. 625, 630 (2002); *Brown v. Philadelphia Hous. Auth.*, 350 F.3d 338, 346 (3d Cir. 2003).

4. *E.g., Benchoff v. Colleran*, 404 F.3d 812, 815, 820 (3d Cir. 2005) (deciding sua sponte that district court lacked subject-matter jurisdiction). "'[T]he presumption . . . is that the court below was without jurisdiction' unless 'the contrary appears affirmatively from the record.'" *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546 (1986) (quoting *King Bridge Co. v. Otoe Cnty.*, 120 U.S. 225, 226 (1887)); *see also Kontrick v. Ryan*, 540 U.S. 443, 455 (2004) (noting that litigants may raise issues with subject-matter jurisdiction "even initially at the highest appellate instance").

5. *See* § 1-3.

6. *See* § 1-4.

jurisdiction.[7] A federal district court does not have "original" subject-matter jurisdiction "to exercise appellate jurisdiction over state-court judgments, which Congress has reserved to [the Supreme Court]."[8] The burden of demonstrating subject-matter jurisdiction is on the party asserting it.[9]

Generally, jurisdiction is determined as of the commencement of the suit, based upon the facts, as they exist at that time.[10] If a federal court determines that it does not have subject-matter jurisdiction, the case either will be dismissed, if it was originally filed in federal court, or remanded, if it was removed from state court.[11] The court can dismiss for lack of subject-matter jurisdiction on its own at any time.[12] A dismissal for lack of subject-matter jurisdiction is not an adjudication on the merits and does not preclude a subsequent lawsuit on res judicata or collateral

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7. 28 U.S.C. §§ 1441, *et seq. See* Chapter 4 (Removal) for a discussion of removal and its relationship to the issues discussed in this chapter.

8. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 292 (2005) (quoting *Verizon Md. Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635, 644 n.3 (2002)), *rev'g*, 364 F.3d 102 (3d Cir. 2004). *See generally District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) (interpreting 28 U.S.C. § 1257 to bar direct review of state court decisions except to the United States Supreme Court); *Rooker v. Fidelity Tr. Co*., 263 U.S. 413 (1923) (same); *see also Schatten v. Weichert Realtors, Inc.*, 406 Fed. Appx. 589, 591 (3d Cir. 2010). *But see Skinner v. Switzer*, 562 U.S. 521, 532 (2011) ("A state-court decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal action."); *Great W. Mining & Min. Co. v. Fox Rothschild, LLP*, 615 F.3d 159, 173 (3d Cir. 2010) (holding *Rooker-Feldman* doctrine inapplicable where plaintiff challenged actions of defendants and the Pennsylvania judiciary, not the state court decision itself, and thus state court decision would not have to be rejected for plaintiff to prevail); *cf. Cycle Chem, Inc. v. Jackson*, 465 Fed. Appx. 104, 109 (3d Cir. 2012) (although district court erred in dismissing the action on the basis of the *Rooker-Feldman doctrine*, res judicata barred plaintiff's action).

9. *E.g., Brown v. Jevic*, 575 F.3d 322, 326 (3d Cir. 2009); *Packard v. Provident Nat'l Bank*, 994 F.2d 1039, 1045 (3d Cir. 1993). *See Gould Electronics, Inc. v. United States*, 220 F.3d 169, 176-79 (3d Cir. 2000), *United States v. Pennsylvania Shipbuilding Co*., 473 F.3d 506, 514 (3d Cir. 2007) and *Pue v. New Jersey Dep't of Labor*, No. 23-855, 2023 WL 5671561, at *3 (D.N.J. Sept. 1, 2023) for a discussion of the nature of the burden to establish subject-matter jurisdiction, as distinguished between a factual and facial challenge.

10. *State Farm Mut. Auto. Ins. Co. v. Powell*, 87 F.3d 93, 97 (3d Cir. 1996); *see also* Chapter 4, § 4-3:2 (Removal) (noting that jurisdiction in removed action is determined also as of time of removal).

11. *In re Orthopedic Bone Screw Prods. Liab. Litig.*, 132 F.3d 152, 155 (3d Cir. 1997). ("If a court then determines that it lacks subject matter jurisdiction, it cannot decide the case on the merits. It has no authority to do so. A federal court can only exercise that power granted to it by Article III of the Constitution and by the statutes enacted pursuant to Article III); *Mohamed v. Bagolie*, No. 22-3172, 2023 WL 3881371, at *2 (D.N.J. Jan. 13, 2023), *report and recommendation adopted*, 2023 WL 3224939 (D.N.J. May 3, 2023).

12. *See Green v. Green*, 899 F. Supp. 2d 291, 302 n.2 (D.N.J. 2012) ("The court may raise the issue of subject matter jurisdiction on its own pursuant to Rule 12(h)(3), Fed. R. Civ. P., which provides: 'If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.'").

estoppel grounds.[13] Note that federal appellate courts may only review a district court order remanding a case to state court if certain enumerated exceptions apply.[14]

The Federal Courts Jurisdiction and Venue Clarification Act of 2011 (the "Clarification Act"),[15] effective January 6, 2012, affects several areas of federal civil procedure, including subject-matter jurisdiction (such as the standard for determining the amount in controversy and corporate citizenship), venue, and removal procedure.

Section 103(c)(2) of the Clarification Act amended 28 U.S.C. § 1446(c)(2)(A)-(B) to clarify that the amount in controversy for purposes of removal is established by the amount demanded in the complaint unless (a) the plaintiff seeks non-monetary relief, or (b) state law does not permit a demand for a specific sum or allows recovery in excess of the amount demanded, and the defendant can prove by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional limit.[16]

Section 102 of the Clarification Act amended 28 U.S.C. § 1332(c) to clarify that all corporations, foreign and domestic, are regarded as citizens of both their place of incorporation and their principal place of business. Under prior law, there had been confusion about the effect of foreign

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13. *Sutton v. Sutton*, 71 F. Supp. 2d 383, 389 (D.N.J. 1999), *aff'd*, 216 F.3d 1077 (3d Cir. 2000); *see also Chemical Leaman Tank Lines, Inc. v. Aetna Cas. & Sur. Co.*, 177 F.3d 210, 219-20 (3d Cir. 1999) (noting that if subject-matter jurisdiction is not challenged, a final judgment in the matter would have res judicata effect in a subsequent proceeding, and a collateral attack cannot be brought based on the lack of subject-matter jurisdiction in the subsequent proceeding). *See generally* Chapter 6 (Responding to the Complaint) (discussing challenges to subject-matter jurisdiction); Chapter 23 (Estoppel Principles) (discussing res judicata issues).

14. 28 U.S.C. § 1447(d); *see also BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. 230 (2021) (holding that a federal appellate court has jurisdiction to review an entire remand order, and not only the part of the order concerning one of the exceptions listed in 28 U.S.C. § 1447(d) as a basis for federal jurisdiction); *M&T Bank v. Arsenis*, No. 23-2324, 2024 WL 1171081, at *1 (3d Cir. Mar. 19, 2024) ("'An order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise,' unless the case was removed pursuant to 28 U.S.C. § 1442 or 1443.") (internal citations omitted).

15. Pub. L. 112-63, 125 Stat. 758-64. Changes in the Clarification Act affecting venue and removal jurisdiction and procedure are discussed in Chapters 3 and 4.

16. *Bosco v. Compass Grp. USA, Inc.*, No. 22-06909, 2023 WL 6158702, at *4 (D.N.J. Sept. 21, 2023), *report and recommendation adopted*, No. 22-06909, 2023 WL 6795085 (D.N.J. Oct. 13, 2023) ("'the *challenger* to subject matter jurisdiction [must] prove, to a legal certainty, that the amount in controversy *could not exceed* the statutory threshold'") (quoting *Samuel-Bassett v. Kia Motors Am., Inc.*, 357 F.3d 392, 397-98 (3d Cir. 2004)) (emphasis in original). If a plaintiff pleads an amount in controversy less than the jurisdictional limit, the defendant must establish that the amount in controversy exceeds the jurisdictional limit to a "legal certainty." *Frederico v. Home Depot*, 507 F.3d 188, 196 (3d Cir. 2007).

contacts on the citizenship of corporations, with some courts ignoring foreign contacts for diversity jurisdiction purposes.[17]

1-2 CASE OR CONTROVERSY

The Constitution grants federal courts authority to exercise jurisdiction only where there is a live "case or controversy."[18] If the matter before the court does not present an actual controversy, the court merely would be informing the parties of their rights based on a set of facts that is not legally relevant. Such an advisory opinion is prohibited by Article III, Section 2 of the Constitution.[19] The U.S. Supreme Court also has rejected the concept of "hypothetical jurisdiction" and instructed courts to decide subject-matter jurisdiction first and then address the merits only if the court finds that it has jurisdiction.[20]

The U.S. Supreme Court has described the case or controversy requirement as follows:

> The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.[21]

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17. According to the House Judiciary Committee report, the change in the law will "result in a denial of diversity jurisdiction in two situations: (1) where a foreign corporation with its principal place of business in a state sues or is sued by a citizen of that same state, and (2) where a citizen of a foreign country (alien) sues a U.S. corporation with its principal place of business abroad." H.R. Rep. No. 112-10, at 9 (2011).

18. U.S. Const. art. III, § 2, cl. 1.

19. *E.g., MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (holding that for declaratory judgment action, question is "whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant issuing declaratory judgment") (quoting *Maryland Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941)); *Nextel Partners, Inc. v. Kingston Twp.*, 286 F.3d 687, 693 (3d Cir. 2002); *Eisai R&D Mgmt. Co., Ltd. v. Dr. Reddy's Lab'ys, Inc.*, No. 22-5950, 2023 WL 7331272 (D.N.J. Nov. 7, 2023).

20. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998) ("Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause."); *Love v. LLT Mgmt. LLC*, No. 24-6320, 2024 WL 3226883 at *5 (D.N.J. June 28, 2024). A court may decide, however, other non-merits issues before addressing subject-matter jurisdiction. *See Sinochem Int'l Co. v. Malay. Int'l Shipping Corp.*, 549 U.S. 422, 435-36 (2007) (approving dismissal on forum non conveniens grounds prior to jurisdictional inquiry); *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 587-88 (1999) (holding that court did not abuse discretion by addressing personal jurisdiction before subject-matter jurisdiction).

21. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41 (1937) (internal citations omitted).

The case or controversy requirement has been judicially interpreted to require: (1) the parties have standing to litigate;[22] and (2) the issues are not moot.[23] Additionally, a case must be ripe for adjudication.[24] The case or controversy requirement generally must be satisfied at all stages of litigation, including at trial and appellate proceedings.[25]

One area that has engendered some confusion with respect to the case or controversy requirement is the confirmation of arbitration awards pursuant to the Federal Arbitration Act.[26] Specifically, the courts of appeal are split on whether a live case or controversy continues to exist permitting a federal court to confirm an arbitration award where the party that lost the arbitration agrees that it will abide by the award. In 2020, the Third Circuit held that district courts may confirm arbitration awards even if the losing party agrees to abide by the arbitration decision, reasoning that a live case or controversy exists until a court order is entered.[27]

1-2:1 Standing

The U.S. Supreme Court and Third Circuit have observed that standing is perhaps the most important aspect of the case or controversy requirement.[28] "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues."[29] Plaintiffs bear the burden of establishing standing.[30]

The Third Circuit has identified three elements necessary to establish constitutional standing:

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22. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *see also* § 1-2:1; *Lutter v. JNESO*, 86 F.4th 111, 124 (3d Cir. 2023).

23. *North Carolina v. Rice*, 404 U.S. 244, 246 (1971); *see also* § 1-2:2.

24. *Artway v. Attorney Gen. of New Jersey*, 81 F.3d 1235, 1246-47, *reh'g denied*, 83 F.3d 594 (3d Cir. 1996); *see also* § 1-2:3.

25. *E.g., Nextel Partners, Inc. v. Kingston Twp.*, 286 F.3d 687, 693 (3d Cir. 2002).

26. 9 U.S.C. §§ 1, *et seq.*

27. *Teamsters Loc. 177 v. United Parcel Serv.*, 966 F.3d 245, 250-52 (3d Cir. 2020). *But see Derwin v. Gen. Dynamics Corp.*, 719 F.2d 484, 490-92 (1st Cir. 1983) (reaching opposite conclusion).

28. *Allen v. Wright*, 468 U.S. 737, 750-51 (1984), *abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014); *Federal Kemper Ins. Co. v. Rauscher*, 807 F.2d 345, 350 (3d Cir. 1986). Constitutional standing is distinct from both "prudential" and statutory standing, although all may go to subject-matter jurisdiction. Whereas constitutional (case or controversy) standing is about the constitutional power of a federal court to resolve a dispute, prudential standing concerns the wisdom of so doing. "Statutory standing is simply statutory interpretation . . . ." *Graden v. Conextant Sys. Inc.*, 496 F.3d 291, 295 (3d Cir. 2007).

29. *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

30. *Berg v. Obama*, 586 F.3d 234, 238 (3d Cir. 2009).

(1) the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical;

(2) there must be a causal connection between the injury and the conduct complained of; and

(3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.[31]

Nonetheless, courts often are willing to interpret standing broadly, especially when issues of public importance are raised. For example, individuals may have standing to challenge laws on First Amendment grounds even when the individuals have not attempted to exercise any First Amendment right.[32] Similarly, male employees may have standing to assert claims under Title VII as indirect victims of sex discrimination against women.[33] Physicians also generally have standing to challenge abortion laws on behalf of their female patients.[34] In 2019, the U.S. Supreme Court held that states had standing to challenge a proposed census question regarding citizenship where the question might have resulted in undercounting of residents and the loss of federal funding.[35] However, in some instances, the Third Circuit has declined to hear constitutional claims brought on behalf of a third party.[36]

Public interest groups may have standing to sue, ostensibly on behalf of their members, thereby allowing numerous suits that raise a wide variety

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31. *Taliaferro v. Darby Twp. Zoning Bd.*, 458 F.3d 181, 188 (3d Cir. 2006) (quoting *United States v. Hays*, 515 U.S. 737, 742-43 (1995)); *see also Reilly v. Ceridian Corp.*, 664 F.3d 38, 42-44 (3d Cir. 2011) (holding plaintiffs lacked standing where the risk of future injury was dependent on entirely speculative, future actions of unknown "hackers"); *Coastal Outdoor Advert. Grp., LLC v. Township of Union*, 676 F. Supp. 2d 337, 349-50 (D.N.J. 2009) (dismissing First Amendment and Equal Protection claims where plaintiff could not demonstrate redressability), *aff'd*, 402 Fed. Appx. 690 (3d Cir. 2010); *Clemens v. ExecuPharm Inc.*, 48 F.4th 146, 155-56 (3d Cir. 2022) (holding that, "in the data breach context," a plaintiff "can satisfy concreteness as long as he alleges that the exposure to that substantial risk caused additional, currently felt concrete harms," such as emotional distress or spending money on credit monitoring).

32. *Gannett Satellite Info. Network, Inc. v. Berger*, 894 F.2d 61, 65 (3d Cir. 1990).

33. *Anjelino v. New York Times Co.*, 200 F.3d 73, 92 (3d Cir. 1999).

34. *Planned Parenthood of Cent. New Jersey v. Farmer*, 220 F.3d 127, 147 (3d Cir. 2000).

35. *Department of Com. v. New York*, 588 U.S. 752, 768 (2019); *see also Pennsylvania v. President U.S.*, 930 F.3d 543, 565 (3d Cir. 2019) (holding states have standing to challenge religious exemption to Affordable Care Act requirement that employers provide no-cost contraceptive coverage), *rev'd on other grounds sub nom. Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657 (2020).

36. *E.g., Hannah v. City of Dover*, 152 Fed. Appx. 114, 116-17 (3d Cir. 2005) (holding that parents could not bring Equal Protection and Fourth Amendment claims on behalf of their son given that they were not the recipients of the injury alleged).

of public issues. An organization or group has standing to sue on behalf of its members if: (1) the members would have standing to sue if they brought their own suit; (2) the organization is seeking to protect interests that are germane to its purpose; and (3) participation of the individual members is not required by either the relief requested or the claim itself.[37]

Plaintiffs must, however, allege a concrete and particularized injury to state an Article III case or controversy. The U.S. Supreme Court has consistently held that a party raising only a general grievance about government and seeking relief that benefits the party no more than the public-at-large does not have standing.[38] Similarly, a plaintiff lacks standing to sue for a "bare procedural violation" of a consumer protection statute unless the violation causes a concrete injury.[39] In the class action context, where all members of a class seek damages, the plaintiffs must show that all members suffered a concrete harm.[40] If only a small number of class members actually suffered a concrete harm, the U.S. Supreme Court has suggested that courts consider whether class action treatment (at least as to damages) is warranted.[41]

1-2:2 Mootness

The doctrines of standing and mootness are closely related. A claim becomes moot when a change in circumstances after the commencement of the litigation precludes the court from granting any meaningful relief.[42] If the requested relief is unavailable, then the court's opinion would be merely advisory and will not be rendered.[43] Generally, a case is moot when:

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37. *Public Int. Rsch. Grp. of N.J., Inc. v. Magnesium Elektron, Inc.*, 123 F.3d 111, 119 (3d Cir. 1997).

38. *E.g., Hollingsworth v. Perry*, 570 U.S. 693, 707 (2013) ("Article III standing is not to be placed in the hands of 'concerned bystanders,' who will use it simply as a 'vehicle for the vindication of value interests.'" (quoting *Diamond v. Charles*, 476 U.S. 54, 62 (1986)). The U.S. Supreme Court held that the official proponents of Proposition 8, a voter-enacted ballot initiative that would have amended the California state constitution to provide that only marriage between a man and a woman was valid, had no "personal stake" in the enforcement of the initiative, and therefore lacked standing to challenge the district court's ruling of unconstitutionality. *Hollingsworth v. Perry*, 570 U.S. 693, 707 (2013); *see also Gill v. Whitford*, 585 U.S. 48, 65 (2018); *Lance v. Coffman*, 549 U.S. 437, 439 (2007); *Berg v. Obama*, 586 F.3d 234, 239 (3d Cir. 2009).

39. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341-42 (2016); *see also Long v. Southeastern Pennsylvania Transp. Auth.*, 903 F.3d 312, 325 (3d Cir. 2018) (holding violation of the Fair Credit Reporting Act was a bare procedural violation insufficient to confer standing); *Rodriguez-Ocasio v. Midland Credit Mgmt., Inc*., No. 17-3630, 2024 WL 1507672, at *3 (D.N.J. Apr. 8, 2024).

40. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 429-40 (2021).

41. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 442 (2021).

42. *Surrick v. Killion*, 449 F.3d 520, 526 (3d Cir. 2006).

43. *Wilmington Firefighters Loc. 1590 v. City of Wilmington Fire Dep't*, 824 F.2d 262, 266 (3d Cir. 1987).

(1) the specific alleged violation has ceased and it is not reasonably likely that it will occur again; and (2) the effects of the alleged violation have been eliminated by other interim relief or events.[44] There is, however, no precise test for ascertaining whether a claim has become moot, as the analysis is intensely factual.[45] Resolving a split among the circuit courts, the U.S. Supreme Court has ruled that an unaccepted settlement offer or offer of judgment is a legal nullity that cannot moot a case.[46]

A defendant may demonstrate that a challenged statute has been amended[47] or that the conduct complained of has ceased and its effects eliminated.[48] As a result, various exceptions to the mootness doctrine have arisen to allow a court to maintain jurisdiction.[49]

1-2:2.1 Capable of Repetition, Yet Evading Review

One exception to the mootness doctrine—where the dispute between the parties is "capable of repetition, yet evading review"—is triggered when the challenged action is too short in duration to be fully litigated before the action ceases and there is a reasonable expectation or demonstrated probability that the action will recur.[50] The Third Circuit has been clear: this exception is narrow and available only in exceptional situations.[51] There "must be a reasonable expectation or a demonstrated probability" of the action occurring against the complaining party again.[52] The plaintiff bears the burden of demonstrating that this exception applies.[53]

A typical example of this exception can be found in disputes involving pregnancy, such as challenges to abortion laws, where the female plaintiff often will no longer be pregnant by the time the dispute is ultimately

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44. *New Jersey Tpk. Auth. v. Jersey Cent. Power & Light*, 772 F.2d 25, 31 (3d Cir. 1985).

45. *International Bhd. of Boilermakers v. Kelly*, 815 F.2d 912, 915 (3d Cir. 1987).

46. *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 162, 165-66 (2016); *Lutter v. JNESO*, 86 F.4th 111, 133 (3d Cir. 2023).

47. *Nextel Partners, Inc. v. Kingston Twp.*, 286 F.3d 687, 693 (3d Cir. 2002) (holding a claim is mooted when the challenged features of a statute are removed or significantly altered by amendment).

48. *Salovaara v. Jackson Nat'l Life Ins. Co.*, 246 F.3d 289, 296-97 (3d Cir. 2001) (holding appeal moot where settlement reached).

49. *International Bhd. of Boilermakers v. Kelly*, 815 F.2d 912, 916 n.5 (3d Cir. 1987).

50. *E.g., Roe v. Wade*, 410 U.S. 113, 125 (1973), *overruled on other grounds by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215(2022).

51. *County of Butler v. Governor of Pa.*, 8 F.4th 226, 231 (3d Cir. 2021).

52. *County of Butler v. Governor of Pa.*, 8 F.4th 226, 231 (3d Cir. 2021).

53. *County of Butler v. Governor of Pa.*, 8 F.4th 226, 231 (3d Cir. 2021).

heard.[54] Other situations where this exception has been applied include challenges to: (1) election laws or rules where the election has occurred;[55] (2) state policy where the implementing orders were no longer in effect;[56] (3) access to sealed information regarding a proceeding after the information becomes publicly available or the proceeding is concluded;[57] (4) discriminatory admission policies where the applicant was subsequently admitted;[58] (5) an immigration law requiring common carriers, which bring into the country immigrant stowaways seeking asylum, to detain and pay for the stowaways during the pendency of the asylum application, which typically takes less time than it would take to challenge the law in court;[59] (6) actions by a school despite the plaintiff's graduation or the end of the school year;[60] and (7) the release of personal information pursuant to a FOIA or OPRA request.[61] This exception has also been applied to challenges by prisoners whose terms have expired,[62] although not uniformly.[63]

1-2:2.2 Other Exceptions

Other general exceptions to the mootness doctrine include wrongs that voluntarily have ceased but could resume,[64] wrongs to a class that continue

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54. *Roe v. Wade*, 410 U.S. 113, 125 (1973), *overruled on other grounds by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215(2022).

55. *Davis v. Federal Election Comm'n*, 554 U.S. 724, 735-36 (2008); *Patriot Party v. Allegheny Cnty. Dep't of Elections*, 95 F.3d 253, 257 (3d Cir. 1996). *But see Belitskus v. Pizzingrilli*, 343 F.3d 632, 648-49 (3d Cir. 2003) (finding inability to meet second prong of test because plaintiff-voter left the jurisdiction).

56. *Waste Mgmt. of Pennsylvania v. Shinn*, 938 F. Supp. 1243, 1252 (D.N.J. 1996).

57. *United States v. Preate*, 91 F.3d 10, 12 (3d Cir. 1996) (sentencing documents); *United States v. A.D.*, 28 F.3d 1353, 1355 n.1 (3d Cir. 1994) (juvenile records); *United States v. Simone*, 14 F.3d 833, 836 (3d Cir. 1994) (access to closed post-trial proceeding); *United States v. Raffoul*, 826 F.2d 218, 222 (3d Cir. 1987) (closure of courtroom during defendant's testimony); *United States v. Criden*, 675 F.2d 550, 553-54 (3d Cir. 1982) (pretrial hearing and transcript). *But see United States v. Smith*, 123 F.3d 140, 145-46 (3d Cir. 1997) (sentencing memorandum).

58. *Wagner v. Fair Acres Geriatric Ctr.*, 49 F.3d 1002, 1008 n.7 (3d Cir. 1995).

59. *Dia Nav. Co. v. Pomeroy*, 34 F.3d 1255, 1258 (3d Cir. 1994).

60. *Brody by and through Sugzdinis v. Spang*, 957 F.2d 1108, 1113-15 (3d Cir. 1992).

61. *Does v. City of Trenton Dep't of Pub. Works-Water Div.*, 565 F. Supp. 2d 560, 565-66 (D.N.J. 2008).

62. *Yeskey v. Pennsylvania Dep't of Corr.*, 118 F.3d 168, 170 n.3 (3d Cir. 1997), *aff'd*, 524 U.S. 206 (1998); *see also Hubbard v. Taylor*, 399 F.3d 150, 168 n.27 (3d Cir. 2005).

63. *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975); *Abdul-Akbar v. Watson*, 4 F.3d 195, 206-07 (3d Cir. 1993).

64. *City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 284 n.1 (2001) ("[T]he general rule that voluntary cessation of a challenged practice rarely moots a federal case . . . traces to the principle that a party should not be able to evade judicial review, or to defeat a judgment, by temporarily altering

though the named plaintiffs no longer suffer from such wrongs,[65] and circumstances in which a trial court's order would have possible collateral legal consequences.[66] When it comes to wrongs that have voluntarily ceased, the Third Circuit has emphasized it must be "absolutely clear" that the wrong "could not reasonably be expected to recur."[67]

In addition, a case generally is not moot if the plaintiff is able to establish a viable claim for money damages.[68] The U.S. Supreme Court has clarified that, in at least some circumstances, this includes a claim for nominal damages stemming from a harm that has already ceased.[69] A claim for money damages may be moot, however, where the defendant is judgment proof.[70]

1-2:3 Ripeness

A case is not ripe for adjudication if it involves "contingent future events that may not occur as anticipated, or indeed may not occur at all."[71] In deciding whether a case is ripe, a court will consider whether the issues are fit for its determination and whether there would be hardship to the

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questionable behavior." (internal citations omitted)); *United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953) ("The defendant is free to return to his old ways.").

65. *E.g., Sosna v. Iowa*, 419 U.S. 393, 401 (1975); *Winston v. Children & Youth Servs.*, 948 F.2d 1380, 1384 (3d Cir. 1991); *see also Weiss v. Regal Collections*, 385 F.3d 337, 348 (3d Cir. 2004), *abrogated in part by Campbell-Ewald Co. v. Gomez*, 577 U.S. 153 (2016); *Richardson v. Bledsoe*, 829 F.3d 273, 286 (3d Cir. 2016) (holding that where an individual plaintiff's claim is "acutely susceptible to mootness, and it is clear from the complaint that the plaintiff is seeking to represent a class, [courts] may relate such a claim back to the date of the filing of the class complaint"). *But see Brown v. Philadelphia Hous. Auth.*, 350 F.3d 338, 346 (3d Cir. 2003) (denying attempt to overcome mootness with claim of "implied class certification").

66. *E.g., Sibron v. New York*, 392 U.S. 40, 53-54 (1968); *National Iranian Oil Co. v. Mapco Int'l, Inc.*, 983 F.2d 485, 490 (3d Cir. 1992) (holding district court's finding relating to applicable statute of limitations would have collateral estoppel effects on actions in other districts). *But see Spencer v. Kemna*, 523 U.S. 1, 7-8 (1998) (retreating from broad interpretation of collateral consequences).

67. *Fields v. Speaker of the Pa. House of Representatives*, 936 F.3d 142, 161 (3d Cir. 2019) (quoting *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719 (2007)).

68. *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 377 (2019) ("For better or worse, nothing so shows a continuing stake in a dispute's outcome as a demand for dollars and cents."); *Harrow v. Prudential Ins. Co. of Am.*, 279 F.3d 244, 249 (3d Cir. 2002) (holding plaintiff's death mooted claims for injunctive and declaratory relief, but not claim for damages); *Doe v. Delie*, 257 F.3d 309, 314 (3d Cir. 2001) (holding former inmate's claim not moot where possibility existed for monetary damages).

69. *Uzuegbunam v. Preczewski* 141 S. Ct. 792, 801-02 (2021).

70. *See Public Int. Rsch. Grp. of N.J., Inc. v. Elf Atochem*, 817 F. Supp. 1164, 1171-72 (D.N.J. 1993). Conversely, the U.S. Supreme Court left open the possibility that payment of complete relief by a defendant to a plaintiff may moot a case. *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 166 (2016).

71. *Binker v. Pennsylvania*, 977 F.2d 738, 753 (3d Cir. 1992) (quoting 13A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3532 at 112 (1984)); *see also Dealmagro v. New Jersey Election Law Enf't Comm'n*, No. 10-4149, 2011 WL 255819, at *5-6 (D.N.J. Jan. 25, 2011) (holding gubernatorial candidate's First Amendment claims related to participation in election debates not ripe where candidate had not yet met other requirements for debate participation).

parties if consideration were withheld.[72] However, "[r]ipeness is a matter of degree whose threshold is notoriously hard to pinpoint."[73]

Some of the factors considered when determining whether the issues are fit for determination are: (1) whether the issue is purely legal or factual; (2) the extent "to which the challenged action is final"; (3) "whether the claim involves uncertain and contingent events"; (4) the extent to which the decision would be aided by further factual development; and (5) whether the parties are sufficiently adverse.[74] In examining hardship, the court will focus "on whether a plaintiff faces a direct and immediate dilemma," so that a lack of review by the court will put the plaintiff to costly choices.[75]

In assessing the ripeness of a declaratory judgment action, courts will examine the adverse interests of the parties and the conclusiveness and utility of a declaratory judgment.[76] The threat of future harm must be real and immediate throughout the litigation, and the declaration must change or clarify the legal status of the parties and be of some practical help to them.[77]

Courts have reached differing conclusions as to whether the ripeness doctrine is a constitutional requirement based on the case or controversy requirement, or simply a prudential limitation on jurisdiction that a court has the discretion to follow or not.[78] In 2006, the U.S. Supreme Court stated that the ripeness doctrine arises from Article III's case or controversy language, just as standing does.[79] Its purpose is to prevent

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72. *Binker v. Pennsylvania*, 977 F.2d 738, 753 (3d Cir. 1992).

73. *NE Hub Partners, L.P. v. CNG Transmission Corp.*, 239 F.3d 333, 341 (3d Cir. 2001).

74. *NE Hub Partners, L.P. v. CNG Transmission Corp.*, 239 F.3d 333, 341 n.8 (3d Cir. 2001).

75. *NE Hub Partners, L.P. v. CNG Transmission Corp.*, 239 F.3d 333, 341 n.8 (3d Cir. 2001); *see also Trump v. New York*, 592 U.S. 125, 131 (2020) (holding that plaintiffs lacked standing to challenge the President's policy memorandum regarding the census because plaintiffs had not suffered concrete, particularized or imminent harm).

76. *Travelers Ins. Co. v. Obusek*, 72 F.3d 1148, 1154 (3d Cir. 1995). The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, does not confer subject-matter jurisdiction but merely provides a remedy, permitting a court to consider requests for a declaratory judgment when subject-matter jurisdiction already exists. *Allen v. DeBello*, 861 F.3d 433, 444 (3d Cir. 2017).

77. *Travelers Ins. Co. v. Obusek*, 72 F.3d 1148, 1154-55 (3d Cir. 1995); *Step-Saver Data Sys. v. Wyse Tech.*, 912 F.2d 643, 647 (3d Cir. 1990) (setting forth three-part ripeness test).

78. *Armstrong World Indus. v. Adams*, 961 F.2d 405, 411 n.12 (3d Cir. 1992) (noting Supreme Court's differing characterizations); *see also Travelers Ins. Co. v. Obusek*, 72 F.3d 1148, 1154 (3d Cir. 1995) (recognizing that "the doctrine is at least partially grounded in the case or controversy doctrine").

79. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352-53 (2006). *But see Knick v. Township of Scott*, 588 U.S. 180, 204 (2019) (noting that some limited "ripeness" rules may be "prudential" and thus not jurisdictional).

courts from becoming entangled in abstract disagreements that are not ready for adjudication.[80]

1-3 FEDERAL QUESTION

Federal district courts have original jurisdiction over matters that raise federal questions, that is, "all civil actions arising under the Constitution, laws, or treaties of the United States."[81] Claims arising under federal common law also may invoke federal-question jurisdiction.[82] Even claims based on state law can raise a federal question when a right or immunity created by the Constitution or laws of the United States is an essential element of the cause of action[83] or where federal law preempts the state law claim.[84] An anticipated federal defense cannot create federal-question jurisdiction.[85] Likewise, a counterclaim based on federal law generally does not give rise to federal-question jurisdiction to make a case initially filed in state court removable.[86] However, the Leahy-Smith America Invents Act, passed in 2011, creates an exception to this rule for counterclaims brought under federal patent, plant variety protection, and copyright law.[87]

The most common federal questions involve alleged violations of federal statutes. A statutory requirement, while an element of a federal cause of action, is not a constraint on federal-question jurisdiction unless

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80. *Travelers Ins. Co. v. Obusek*, 72 F.3d 1148, 1154 (3d Cir. 1995); *Binker v. Pennsylvania*, 977 F.2d 738, 753 (3d Cir. 1992).

81. 28 U.S.C. § 1331. Particular federal claims or actions involving particular issues may also have a specific statutory grant of original jurisdiction. *E.g.*, 28 U.S.C. § 1330 (actions against foreign states); 28 U.S.C. §§ 1333, *et seq*.

82. *Bollman Hat Co. v. Root*, 112 F.3d 113, 115 (3d Cir. 1997), *abrogation on other grounds recognized by US Airways, Inc. v. McCutchen*, 663 F.3d 671 (3d Cir. 2011); *Bauchelle v. AT&T Corp*., 989 F. Supp. 636, 640 (D.N.J. 1997).

83. *E.g., City of Chicago v. International Coll. of Surgeons*, 522 U.S. 156, 164 (1997); *Christianson v. Colt Indus. Operating Corp*., 486 U.S. 800, 808 (1988); *see also Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314-15 (2005) (highlighting federal interest in federal forum for tax litigation).

84. *E.g., Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 66 (1987).

85. *E.g., Franchise Tax Bd. v. Construction Laborers Vacation Tr.*, 463 U.S. 1, 10-11 (1983); *accord, e.g., Pascack Valley Hosp. v. Local 464A UFCW Welfare Reimbursement Plan*, 388 F.3d 393, 399 (3d Cir. 2004); *United States Express Lines, Ltd. v. Higgins*, 281 F.3d 383, 389 (3d Cir. 2002); *see also Sullivan v. Novartis Pharms. Corp.*, 602 F. Supp. 2d 527, 530-37 (D.N.J. 2009) (discussing interplay between products liability punitive damages and FDA regulations, and rejecting jurisdiction).

86. *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc*., 535 U.S. 826, 831-32 (2002).

87. 28 U.S.C. § 1338(a); 28 U.S.C. § 1454(a).

Congress clearly states so or there are other indicia that the requirement is jurisdictional.[88]

Nonetheless, not all federal statutes confer a private, federal cause of action for their violation. Congress occasionally enacts statutes for which it elects not to provide a federal remedy, and a federal court will not have jurisdiction in a suit based on such a law.[89] For example, a provision of the Internal Revenue Code makes it unlawful for a "real estate reporting person" to separately charge customers for complying with certain reporting requirements,[90] but a customer so charged cannot bring a federal action for violation of that provision; instead, the customer must rely on various state law theories of liability.[91]

Similarly, the Federal Arbitration Act[92] is not an independent basis for federal-question jurisdiction as to domestic claims.[93] In addition, the fact that a corporation was incorporated by or under an act of Congress does not give rise to federal-question jurisdiction unless the United States government owns more than half of the corporation's capital stock.[94] However, diversity jurisdiction may nonetheless provide an independent jurisdictional basis, unless Congress provides to the contrary.[95]

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88. *See, e.g., Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 163-67 (2010); *Group Against Smog & Pollution, Inc. v. Shenango Inc.*, 810 F.3d 116, 122-25 (3d Cir. 2016).

89. *E.g., Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 813-17 (1986) (interpreting the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301, *et seq*.); *see also Rowland v. Bissell Homecare, Inc.*, 73 F.4th 177, 183 (3d Cir. 2023) (holding that the Class Action Fairness Act does not provide an independent basis for federal jurisdiction over Magnuson-Moss Warranty Act ("MMWA") claims, where MMWA jurisdictional elements are not met).

90. 26 U.S.C. § 6045(e)(3).

91. *Smith v. Indus. Valley Title Ins. Co.*, 957 F.2d 90, 93 (3d Cir. 1992).

92. 9 U.S.C. §§ 1, *et seq*.

93. Indeed, the Federal Arbitration Act ("FAA") presents a minefield of technicalities when it comes to federal question jurisdiction. In an action to *compel* arbitration of domestic claims, a court must look through to the underlying claims to determine if subject-matter jurisdiction exists. *Vaden v. Discover Bank*, 556 U.S. 49, 62-63 (2009). But, in an action to *confirm or vacate* an arbitration award, the look-through approach does not apply; *i.e.*, even if the underlying claims would have conferred federal question jurisdiction, that is insufficient for a federal court to entertain the action. *Badgerow v. Walters*, 142 S. Ct. 1310, 1317-18 (2022). However, the sections of Title 9 dealing with international arbitration rights based on treaties do contain specific grants of subject-matter jurisdiction. *See, e.g.*, 9 U.S.C. §§ 201 & 301, *et seq*.

94. 28 U.S.C. § 1349; *Hollus v. Amtrak Ne. Corridor*, 937 F. Supp. 1110, 1113 (D.N.J. 1996) (holding federal courts have subject-matter jurisdiction in cases involving Amtrak).

95. *France v. Bernstein*, 43 F.4th 367, 377 n.7 (3d Cir. 2022) (explaining that a district court still had jurisdiction based on diversity in a motion to vacate an arbitration award); *Landsman & Funk PC v. Skinder-Strauss Assocs.*, 640 F.3d 72, 83 (3d Cir. 2011) (holding diversity of citizenship jurisdiction available for private Telephone Consumer Protection Act claims), *rehearing en banc granted, then vacated as moot based on Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368 (2012).

1-3:1 Pleading Requirements

The federal question must be pleaded and appear on the face of the complaint.[96] However, a plaintiff's failure to reference, or its erroneous reference to, federal law is not dispositive.[97] A federal court will not countenance a plaintiff's attempt to avoid removal to a federal forum by including a federal claim in the complaint "artfully pled" as a state law claim.[98]

Although a plaintiff's complaint may ostensibly be based on state law, a federal court may nevertheless assert federal-question jurisdiction when "it appears that some substantial, disputed question of federal law is a necessary element of one of the well-pleaded state claims" or when plaintiff's claim "is 'really' one of federal law."[99] This issue arises most often in those areas that have been preempted by federal law.[100] The Third Circuit, however, has cautioned against an expansive application of this principle as it "could effectively abrogate the rule that a plaintiff is master of his or her complaint."[101] Thus, federal-question jurisdiction will not be invoked if a prima facie claim under state law is found in the complaint and the claim asserted under state law is compatible with, rather than displaced by, federal law.[102]

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96. *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 808 (1986); *Franchise Tax Bd. v. Construction Laborers Vacation Tr.*, 463 U.S. 1, 9-10 (1983); *see also, e.g., Virgin Islands Hous. Auth. v. Coastal Gen. Construction Servs. Corp.*, 27 F.3d 911, 915 (3d Cir. 1994).

97. *Club Comanche v. Government of V.I.*, 278 F.3d 250, 259-60 (3d Cir. 2002).

98. *United Jersey Banks v. Parell*, 783 F.2d 360, 367 (3d Cir. 1986); *Shapiro v. Middlesex Cnty. Mun. Joint Ins. Fund*, 930 F. Supp. 1028, 1032-33 (D.N.J. 1996).

99. *United Jersey Banks v. Parell*, 783 F.2d 360, 366 (3d Cir. 1986) (quoting *Franchise Tax Bd. v. Construction Laborers Vacation Tr.*, 463 U.S. 1, 13 (1983)).

100. For example, Section 301 of the Labor Management Relations Act displaces any state cause of action for alleged breaches of contract between a labor organization and an employer. 29 U.S.C. § 185; *see also Aetna Health Inc. v. Davila*, 542 U.S. 200, 221 (2004) (holding claims brought under state law preempted by ERISA); *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 10-11 (2003) (holding National Bank Act preempts state law usury claims); *Rowinski v. Salomon Smith Barney, Inc.*, 398 F.3d 294, 302 (3d Cir. 2005) (holding Securities Litigation Uniform Standards Act preempted state law securities claim). *But see Wyeth v. Levine*, 555 U.S. 555, 573-75 (2009) (holding federal food and drug statutes do not preempt state failure to warn laws); *Estate of Maglioli v. Alliance HC Holdings LLC*, 16 F.4th 393, 412-13 (3d Cir. 2021) (holding that state law negligence claims against nursing homes are not completely preempted by the federal Public Readiness and Emergency Preparedness ("PREP") Act, which immunizes covered persons from certain claims arising out of a declared public-health emergency, such as the COVID-19 pandemic).

101. *United Jersey Banks v. Parell*, 783 F.2d 360, 368 (3d Cir. 1986).

102. *United Jersey Banks v. Parell*, 783 F.2d 360, 368 (3d Cir. 1986).

1-3:2 Exclusive vs. Concurrent Jurisdiction

A federal district court's jurisdiction over a federal question may be either concurrent or exclusive.[103] That is, for many claims under federal statutes, jurisdiction lies in both the federal district and state courts;[104] other claims may be brought only in the federal district courts or a specialized federal court. For example, antitrust claims based on federal law must be brought in federal district court.[105] Generally, if the federal statute upon which a plaintiff's claim is based does not limit jurisdiction to the federal courts, jurisdiction will be concurrent.[106] In 2020, the U.S. Supreme Court affirmed that jurisdiction is concurrent unless the intent to displace state court jurisdiction is unmistakably clear.[107]

1-3:3 Amount in Controversy

There generally is no minimum amount in controversy for federal-question jurisdiction to apply.[108] However, a few federal statutes have their own amount in controversy requirements.[109]

1-4 DIVERSITY AND ALIENAGE

Absent a federal claim, federal courts still may have jurisdiction over disputes between citizens of different states, or citizens of a state and citizens or subjects of foreign states, provided the requirements of 28 U.S.C. § 1332 are satisfied.[110] More particularly, 28 U.S.C. § 1332(a) states:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—
>
> (1) citizens of different States;

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103. *See Palmore v. United States*, 411 U.S. 389, 400-02 (1973).

104. *See, e.g., Tafflin v. Levitt*, 493 U.S. 455, 458-59 (1990).

105. 15 U.S.C. § 15; *see also* 28 U.S.C. § 1333 (admiralty); 28 U.S.C. § 1334 (bankruptcy); 28 U.S.C. § 1338(a) (patent and copyright); 28 U.S.C. § 1346(b) (tort actions against the United States).

106. *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 507-08 (1962).

107. *Atlantic Richfield Co. v. Christian*, 590 U.S. 1, 15 (2020).

108. *See* 28 U.S.C. § 1331; *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 406 n.2 (1981) (Brennan, J., dissenting).

109. *See, e.g.*, Magnuson-Moss Warranty Act, 15 U.S.C. § 2310; Consumer Product Safety Improvement Act of 1990, 15 U.S.C. § 2072(a); 28 U.S.C. § 1335 (interpleader: $500).

110. However, diversity generally cannot be used as a means of obtaining federal jurisdiction in probate or domestic relations cases. *Marshall v. Marshall*, 547 U.S. 293, 308 (2006); *Three Keys Ltd. v. SR Util. Holding Co.*, 540 F.3d 220, 226-27 (3d Cir. 2008).

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.[111]

1-4:1 Amount in Controversy

The preliminary inquiry under diversity jurisdiction is whether the plaintiff has met the amount in controversy requirement of more than $75,000, exclusive of interest and costs.[112] The amount or value of the "matter in controversy" must exceed this threshold; exactly $75,000 is insufficient.[113] The burden of proof as to the amount in controversy is on the party asserting jurisdiction.[114] Therefore, when the plaintiff brings the action in federal court and the defendant challenges the amount in controversy, the plaintiff has the burden of demonstrating the jurisdictional amount. When a case is removed to federal court based on diversity, the removing party has the burden.[115] The party asserting jurisdiction must have a fair opportunity to present facts to support its position to the court,[116] but not to a jury.[117]

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111. 28 U.S.C. § 1332(a).

112. In 1996, the minimum amount in controversy was raised to in excess of $75,000 from $50,000. Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, § 205, 110 Stat. 3847, 3850 (1996). Consequently, many of the cases cited discuss a different amount. The relevant principles were not altered by that change.

113. *Valhal Corp. v. Sullivan Assocs., Inc.*, 44 F.3d 195, 209 (3d Cir. 1995); *Boardwalk Regency Corp. v. Karabell*, 719 F. Supp. 1254, 1255 (D.N.J. 1989).

114. *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); *Auto-Owners Ins. Co. v. Stevens & Ricci, Inc.*, 835 F.3d 388, 395 (3d Cir. 2016).

115. *Auto-Owners Ins. Co. v. Stevens & Ricci, Inc.*, 835 F.3d 388, 395 (3d Cir. 2016); *Penn v. Wal-Mart Stores, Inc.*, 116 F. Supp. 2d 557, 562-63 (D.N.J. 2000).

116. *Berardi v. Swanson Mem'l Lodge*, 920 F.2d 198, 200 (3d Cir. 1990).

117. *Nelson v. Keefer*, 451 F.2d 289, 293-94 (3d Cir. 1971).

1-4:1.1 Pleading the Amount in Controversy and the Legal Certainty Test

Because subject-matter jurisdiction generally is determined as of the commencement of suit (also at the time of removal in a removed case),[118] the amount in controversy is determined as of that time as well.[119] The plaintiff must allege in the complaint that the amount in controversy has been satisfied and show a basis for this allegation. If the amount alleged in the complaint exceeds $75,000, subject-matter jurisdiction exists unless the allegations were not made in good faith or it appears to a "legal certainty" that the plaintiff cannot recover a sum in excess of $75,000, exclusive of interest and costs.[120] Where the defendant asserts a counterclaim, rather than moving to dismiss for want of jurisdiction, the amount of the counterclaim may be considered in determining the amount in controversy in limited circumstances.[121]

A plaintiff who wants to litigate in state court is free to limit its claim to avoid federal jurisdiction.[122] However, a plaintiff's amendment of its complaint after removal will not succeed in destroying federal jurisdiction if it existed at the time of commencement.[123]

When there is a challenge to jurisdiction in an action originally filed in federal court, the court must determine, "from the face of the pleadings, [if] it is apparent, to a legal certainty, that the plaintiff cannot recover the [minimum jurisdictional] amount claimed or if, from the proofs, the court is satisfied to a like certainty that the plaintiff never was entitled to recover that amount . . . ."[124]

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118. *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 570-71 (2004); *Smith v. Allied Retail Props.*, 802 Fed. Appx. 734, 735 (3d Cir. 2020). *See generally* Chapter 4 (Removal).

119. *Auto-Owners Ins. Co. v. Stevens & Ricci, Inc.*, 835 F.3d 388, 395 (3d Cir. 2016).

120. *Auto-Owners Ins. Co. v. Stevens & Ricci, Inc.*, 835 F.3d 388, 395 (3d Cir. 2016); *In re Life U.S.A. Holding, Inc.*, 242 F.3d 136, 143 (3d Cir. 2001) (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938)).

121. *Spectacor Mgmt. Grp. v. Brown*, 131 F.3d 120, 121 (3d Cir. 1997); *cf. Windsor Mount Joy Mut. Ins. Co. v. Johnson*, 264 F. Supp. 2d 158, 164-65 (D.N.J. 2003) (holding both parties' claims could not be added together because it was not possible that both could recover); *Independent Mach. Co. v. International Tray Pads & Packaging, Inc.*, 991 F. Supp. 687, 693 (D.N.J. 1998) (holding counterclaim cannot be used to satisfy amount-in-controversy requirement for removal purposes).

122. *E.g., Morgan v. Gay*, 471 F.3d 469, 474 (3d Cir. 2006), *abrogated on other grounds recognized by Erie Ins. Exch. by Stephenson v. Erie Indem. Co.*, 68 F.4th 815, 818 (3d Cir. 2023).

123. *Angus v. Shiley, Inc.*, 989 F.2d 142, 145 (3d Cir. 1993).

124. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938). For a discussion of the nature of the burden when the question of jurisdiction is raised by the court sua sponte, *see Martin v. Wal-Mart Stores, Inc.*, 709 F. Supp. 2d 345, 346-48 (D.N.J. 2010), in which the court remanded after finding that the removing defendant had failed to satisfy the amount-in-controversy requirement by a preponderance of the evidence.

But, if the parties dispute the facts giving rise to jurisdiction, including the amount in controversy, the proponent of federal jurisdiction bears the burden of proving, by a preponderance of the evidence, any disputed facts on which jurisdiction depends.[125] After it makes these findings, the court must dismiss the case if it appears to a legal certainty that the plaintiff was never entitled to recover the jurisdictional amount.[126]

Generally, the "legal certainty" test requires dismissal even if the jurisdictional deficiency is discovered only after trial.[127] This does not mean that when a plaintiff is awarded less than $75,000, the case is automatically dismissed and the judgment vacated, but rather only that the case will be dismissed when the plaintiff could not, under any circumstances, have been awarded more than the required amount in controversy.[128] For example, if a plaintiff's claim exceeds $75,000 only if punitive damages are included, and the court determines that punitive damages were never available as a matter of law (as opposed to not being warranted), the claim will be dismissed.[129] This also should be distinguished from the situation where subsequent events change the amount in controversy; in that event, dismissal is not required.[130]

In *Dart Cherokee Basin Operating Co., LLC v. Owens,*[131] the U.S. Supreme Court considered the related issue regarding what a party must plead when removing a case to federal court. A removing defendant "need only include a plausible allegation that the amount in controversy exceeds the jurisdictional threshold."[132] Defendants removing cases styled as purported class actions may have additional considerations in establishing the requisite amount in controversy.[133].

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125. *Frederico v. Home Depot*, 507 F.3d 188, 194 (3d Cir. 2007); *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936).

126. *Auto-Owners Ins. Co. v. Stevens & Ricci, Inc.*, 835 F.3d 388, 395 (3d Cir. 2016).

127. *Packard v. Provident Nat'l Bank*, 994 F.2d 1039, 1046 (3d Cir. 1993).

128. *Kaufman v. Allstate N.J. Ins. Co.*, 561 F.3d 144, 151 (3d Cir. 2009) ("Under the legal-certainty test, federal jurisdiction exists unless it appears, to a legal certainty, that the plaintiff was never entitled to recover the jurisdictional amount.").

129. *E.g., Gray v. Occidental Life Ins. Co.*, 387 F.2d 935, 936-37 (3d Cir. 1968).

130. *See Huber v. Taylor*, 532 F.3d 237, 246 (3d Cir. 2008).

131. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81 (2014).

132. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014).

133. *Erie Ins. Exch. by Stephenson v. Erie Indem. Co*., 68 F.4th 815, 818-19 (3d Cir. 2023) (addressing removal jurisdiction in the context of a Class Action Fairness Act claims case); *see also* Chapter 4 (Removal).

1-4:1.2 Determining the Amount in Controversy

Not all complaints specify a liquidated sum as damages. Some claims for relief include a demand for an injunction or other equitable relief. In other cases, as required under New Jersey rules, a demand for unliquidated damages in a specific sum may not appear in the complaint.[134] In both situations, to satisfy the amount in controversy requirement, a "value" must be placed on the relief sought.[135] A reasonable estimate of the value is required, rather than either the high or low end of an open-ended claim.[136] Speculative estimates are insufficient.[137] For example, the amount in controversy in an action to remove a trustee is not the value of the trust, but rather the cost of keeping the trustee.[138] In contrast, when an action is solely to compel arbitration, the court may use the amount of the underlying claim.[139] Although money damages are measured by the amount a defendant must pay, injunctive relief must be measured from the perspective of the value of the relief to the plaintiff rather than the cost to the defendant.[140] In cases "[w]here a plaintiff brings a suit for payment of money as part of an ongoing and continually accruing obligation, [*e.g.*,] installment contract[s], the amount in controversy is generally . . . the amount . . . due and owing [as of the date suit is commenced], even if a judgment [might] have collateral estoppel effects."[141]

Prejudgment interest that represents a charge for delay in payment may not be considered in calculating the jurisdictional amount; however, interest

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134. L. Civ. R. 8.1; *see also* N.J. Ct. R. 4:5-2 (same).

135. *See Samuel-Bassett v. Kia Motors Am., Inc.*, 357 F.3d 392, 398-400 (3d Cir. 2004).

136. *Werwinski v. Ford Motor Co.*, 286 F.3d 661, 666 (3d Cir. 2002), *abrogated on other grounds by Earl v. NVR, Inc.*, 990 F.3d 310 (3d Cir. 2021); *see also Buchanan v. Lott*, 255 F. Supp. 2d 326, 331 (D.N.J. 2003) ("[W]here plaintiff's complaint does not specify an amount of damages, the Court must independently appraise the plaintiff's claims . . . and determine the amount in controversy 'by a reasonable reading of the value of the rights being litigated.'") (quoting *Angus v. Shiley, Inc.*, 989 F.2d 142, 145-46 (3d Cir. 1993)).

137. *Columbia Gas Transmission Corp. v. Tarbuck*, 62 F.3d 538, 543-44 (3d Cir. 1995); *Russ v. Unum Life Ins. Co.*, 442 F. Supp. 2d 193, 198 (D.N.J. 2006).

138. *In re Corestates Tr. Fee Litig.*, 39 F.3d 61, 65 (3d Cir. 1994) (holding cost if trustee remained, and thus amount in controversy, was excessive fees charged by trustee).

139. *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 877 (3d Cir. 1995).

140. *In re Corestates Tr. Fee Litig.*, 39 F.3d 61, 65 (3d Cir. 1994); *Packard v. Provident Nat'l Bank*, 994 F.2d 1039, 1050 (3d Cir. 1993).

141. *Dardovitch v. Haltzman*, 190 F.3d 125, 135 (3d Cir. 1999). If, however, the purpose of the suit is to establish the right to receive all potential payments because the defendant has repudiated the plaintiff's right entirely, the amount in controversy is the entire amount that could potentially come due. *Id*. at 135-36 (holding that a suit to establish an individual's status as beneficiary of a trust puts the entire amount of the individual's alleged interest in the trust in controversy).

that is an agreed-upon cost for borrowing money may be.[142] Arbitration costs where an arbitration was not pursued should not be included.[143]

The jurisdictional amount can be satisfied by including punitive damages claims, provided that punitive damages are available under local law for the circumstances alleged.[144] Additionally, attorneys' fees should be considered a part of the amount in controversy if they are "available to successful plaintiffs under the statutory cause of action" pled[145] or in a contract action, if the contract at issue specifies that attorneys' fees should be awarded to the prevailing party.[146] While both attorneys' fees and punitive damages claims may be added together, only claims for punitive damages may be unspecified and still meet the jurisdictional amount. A reasonable estimate of attorneys' fees is likely necessary to determine if the plaintiff has satisfied the jurisdictional amount with legal certainty.[147]

Where there are multiple plaintiffs, the amount in controversy requirement is satisfied if one of plaintiff's claims meets the minimum.[148] However, in the Third Circuit, claims for punitive damages and attorneys' fees must be apportioned on a pro rata basis in determining whether *any* plaintiff has met the jurisdictional limit.[149] Where multiple plaintiffs have claims under $75,000, the claims cannot be aggregated.[150]

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142. *Brainin v. Melikian*, 396 F.2d 153, 155 (3d Cir. 1968); *see Days Inn Worldwide, Inc. v. Bakers 26, LLC*, No. 21-1035, 2021 WL 3732885, at *3 n.2 (D.N.J. Aug. 23, 2021).

143. *State Farm Mut. Auto. Ins. Co. v. Powell*, 87 F.3d 93, 99 (3d Cir. 1996).

144. *Huber v. Taylor*, 532 F.3d 237, 244 (3d Cir. 2008); *Packard v. Provident Nat'l Bank*, 994 F.2d 1039, 1046 (3d Cir. 1993).

145. *Suber v. Chrysler Corp*., 104 F.3d 578, 585 (3d Cir. 1997).

146. *Auto-Owners Ins. Co. v. Stevens & Ricci, Inc.*, 835 F.3d 388, 396-97 (3d Cir. 2016) (citing *State Farm Mut. Auto Ins. Co. v. Powell*, 87 F.3d 93, 98 (3d Cir. 1996)).

147. *Zanger v. Bank of Am.*, No. 10-2480, 2010 U.S. Dist. LEXIS 105028, at *14 (D.N.J. Oct. 1, 2010) (relying on *Frederico v. Home Depot*, 507 F.3d 188, 199 (3d Cir. 2007)).

148. *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546, 566 (2005). Prior to *Exxon Mobil Corp.*, in the Third Circuit each individual plaintiff was required to meet the requisite amount in controversy; thus, even in class actions, each plaintiff's claim was required to exceed $75,000. *See, e.g., Meritcare Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 218 (3d Cir. 1999), *abrogated by Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005) ("[T]he claims of several plaintiffs, if they are separate and distinct, cannot be aggregated for purposes of determining the amount in controversy."). *Exxon Mobil Corp.* held that 28 U.S.C. § 1367 effectively overruled *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), the case upon which the *Meritcare* court relied.

149. *E.g., Bishop v. General Motors Corp.*, 925 F. Supp. 294, 301 (D.N.J. 1996). Note, however, that this is a pre-*Exxon Mobil Corp.* decision and relied on by pre-2005 Circuit cases.

150. *Snyder v. Harris*, 394 U.S. 332, 336-42 (1969).

1-4:2 Citizenship of the Parties

1-4:2.1 Complete Diversity

Assuming the jurisdictional amount in controversy is satisfied, the proponent of jurisdiction must demonstrate under 28 U.S.C. § 1332(a)(1) that there is diversity of citizenship among the parties. "[N]o plaintiff can be a citizen of the same state as any of the defendants"; that is, there must be complete diversity.[151]

The citizenship of a party in a diversity case normally is determined as of the time of commencement of the action (and at the time of removal in a removed case).[152] Consequently, plaintiffs must affirmatively plead the citizenship of all parties, and a failure to do so is fatal.[153] Generally, once the initial determination of subject-matter jurisdiction is made, changes in the citizenship of parties will not affect jurisdiction.[154] However, when a court erred in failing to remand a case for lack of diversity, but the parties subsequently became completely diverse prior to trial (as the result of a settlement with the non-diverse defendant), the U.S. Supreme Court held it would be inequitable to dismiss because extensive resources had been expended on the trial.[155] However, the U.S. Supreme Court has limited this exception to unusual situations involving changes to the parties themselves (*e.g.*, dismissal of a non-diverse defendant), as opposed to changes in the citizenship of an existing party.[156] Moreover, if there is an independent basis for subject-matter jurisdiction over the non-diverse party, courts will not dismiss because of lack of diversity.[157] When separate cases are

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151. *Midlantic Nat'l Bank v. Hansen*, 48 F.3d 693, 696 (3d Cir. 1995); *Strawbridge v. Curtiss*, 7 U.S. 267, 267 (1806), *overruled in part by Louisville, C. & C.R. Co. v. Letson*, 43 U.S. 497 (1844).

152. *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 570-71 (2004); *Midlantic Nat'l Bank v. Hansen*, 48 F.3d 693, 696 (3d Cir. 1995); *American Dredging Co. v. Atlantic Sea Con, Ltd.*, 637 F. Supp. 179, 181 (D.N.J. 1986); *Sidoti v. Housewares Am. Inc.*, No. 10-809, 2010 WL 2682849, at *3-4 (D.N.J. July 2, 2010) (applying change-in-parties exception to time-of-filing rule where state court's dismissal of only party diverse from plaintiff divested district court of diversity jurisdiction under the Class Action Fairness Act before defendant filed notice of removal), *report and recommendation adopted*, 2010 WL 4612568 (D.N.J. Sept. 10, 2010).

153. *Schultz v. Cally*, 528 F.2d 470, 473 (3d Cir. 1975).

154. *Freeport-McMoRan, Inc. v. K N Energy, Inc.*, 498 U.S. 426, 428 (1991).

155. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 75-76 (1996); *see also CGB Occupational Therapy, Inc. v. RHA Health Servs., Inc.*, 357 F.3d 375, 381 n.6 (3d Cir. 2004); *Iscar, Ltd. v. Katz*, 743 F. Supp. 339, 344-45 (D.N.J. 1990) (holding that despite lack of diversity at outset, statutory change during litigation "cured" defect).

156. *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 574-76 (2004) (holding that withdrawal of non-diverse partner from partnership did not cure jurisdictional defect).

157. *Shiffler v. Equitable Life Assur. Soc'y of U.S.*, 838 F.2d 78, 82 n.5 (3d Cir. 1988); *Iscar, Ltd. v. Katz*, 743 F. Supp. 339, 345 (D.N.J. 1990); *see also HB Gen. Corp. v. Manchester Partners, L.P.*, 95 F.3d

consolidated for discovery purposes, courts must analyze the jurisdictional basis for each action separately.[158]

An exception to the complete diversity requirement arises under the Multiparty, Multiforum Trial Jurisdiction Act of 2002 for mass disasters litigation.[159] Unlike 28 U.S.C. § 1332, the Act requires only minimal diversity between the adverse parties when there are multiple plaintiffs and/or defendants. There is minimal diversity between adverse parties when any plaintiff is a citizen of a state and any defendant is a citizen of another state or country.[160]

The Class Action Fairness Act of 2005 (CAFA) also created a minimal diversity requirement for certain class actions. The general rule under CAFA is that the federal courts have original jurisdiction over class actions in which there are at least 100 class members, the amount in controversy exceeds $5 million, and at least one member of the class is diverse from at least one defendant.[161] Otherwise, for non-CAFA class actions, the rule remains: there must be complete diversity of citizenship between the named representatives and each of the defendants.[162]

1-4:2.2 Citizenship of Individuals

An individual generally is deemed a citizen of the state of his or her domicile, which typically is the person's permanent home to which he or she intends to return whenever absent from that home.[163] Residency is not conclusive, although it is evidence of domicile and citizenship.[164] Other relevant factors include where one pays taxes, where one votes, one's place of business, location of bank and brokerage accounts, location of spouse and family, where one is a member of unions and other organizations,

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1185, 1197-98 (3d Cir. 1996) (holding court may exercise supplemental jurisdiction over a defendant's counterclaim against non-diverse parties in a case originally filed in federal court based on diversity).

158. *Cella v. Togum Constructeur Ensemleier en Industrie Alimentaire*, 173 F.3d 909, 912-13 (3d Cir. 1999); *Deluxe Bldg. Sys., Inc. v. Constructamax, Inc.*, 94 F. Supp. 3d 601, 607-08 (D.N.J. 2013).

159. 28 U.S.C. § 1369(a).

160. 28 U.S.C. § 1369(c)(1).

161. 28 U.S.C. § 1332(d)(2). CAFA provides that the claims of the prospective class members shall be aggregated in determining whether the amount in controversy exceeds $5 million. 28 U.S.C. § 1332(d)(6). *See generally* Chapter 21, § 21-4:1.1 (Class Actions).

162. *E.g., Snyder v. Harris*, 394 U.S. 332, 340 (1969); *Davis v. Union Pac. R.R. Co.*, 224 Fed. Appx. 190, 191-92 (3d Cir. 2007).

163. *McCann v. George W. Newman Irrevocable Tr.*, 458 F.3d 281, 286 (3d Cir. 2006).

164. *Krasnov v. Dinan*, 465 F.2d 1298, 1300 (3d Cir. 1972).

and where one's driver's license and vehicle registration are issued.[165] As with the other requirements of subject-matter jurisdiction, the burden of establishing domicile, by a preponderance of the evidence, is on the party asserting the jurisdiction of the court.[166]

A U.S. citizen who has established a domicile abroad is not a citizen of any state and is not a citizen or subject of a foreign state, for purposes of diversity analysis, unless he or she has renounced his or her U.S. citizenship, cannot sue or be sued in federal court based on diversity jurisdiction.[167] When an individual is a dual citizen of the United States and another country, the foreign citizenship will be ignored, and the state of citizenship will be considered for purposes of diversity jurisdiction.[168]

Diversity jurisdiction exists in suits between a citizen of any state and a citizen or subject of a foreign state,[169] even if the foreign citizen or subject temporarily resides in the same state as the U.S. citizen. However, diversity does not lie between a U.S. citizen and a permanent resident alien domiciled in the same state as the citizen.[170] Aliens who are "additional parties" in an action in which diversity jurisdiction would otherwise exist

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165. *McCann v. George W. Newman Irrevocable Tr.*, 458 F.3d 281, 286 (3d Cir. 2006); *see also Piero v. Kugel*, 386 Fed. Appx. 308, 309-10 (3d Cir. 2010) (a prisoner's citizenship is determined by the location of his domicile before his imprisonment, unless he can show a bona fide intent to remain in the state in which he is imprisoned upon release).

166. *McCann v. George W. Newman Irrevocable Tr.*, 458 F.3d 281, 289-90 (3d Cir. 2006) (change in domicile also must be established by a preponderance of the evidence, rejecting the practice within the Second Circuit of applying a clear and convincing evidence standard). *See Coulter v. Paulisick*, 778 Fed. Appx. 180, 182-83 (3d Cir. 2019) (affirming dismissal of action for lack of subject-matter jurisdiction where district court applied issue preclusion to domicile); *Bansal v. Chakrala*, No. 11-1287, 2011 WL 2148825, at *4-5 (D.N.J. May 31, 2011) (plaintiff failed to present evidence rebutting presumption she was no longer domiciled in New Jersey but had taken up residency in Pennsylvania when the complaint was filed).

167. *Swiger v. Allegheny Energy, Inc.*, 540 F.3d 179, 184 (3d Cir. 2008); *Pemberton v. Colonna*, 290 F.2d 220, 221 (3d Cir. 1961).

168. *Frett-Smith v. Vanterpool*, 511 F.3d 396, 399-400, 403 (3d Cir. 2008) (dismissing action). As a consequence, alienage jurisdiction under 28 U.S.C. § 1332(a)(2) cannot be invoked by a person with dual citizenship. *See Swiger v. Allegheny Energy, Inc.*, 540 F.3d 179, 185 (3d Cir. 2008).

169. 28 U.S.C. § 1332(a)(2).

170. Before the Clarification Act, the 1988 amendment to 28 U.S.C. § 1332(a) added a proviso that stated that "an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled." Though not intended by Congress, this provision expanded diversity jurisdiction by creating an avenue for diversity jurisdiction among resident aliens that had not existed before. For example, in *Singh v. Daimler-Benz AG*, 9 F.3d 303, 306-12 (3d Cir. 1993), the Third Circuit found that diversity existed between a permanent resident alien and a non-resident alien, even though they resided in the same state. The Clarification Act removed the deeming provision and added an exception to § 1332(a)(2) that now prohibits a federal court from having original jurisdiction over a case involving a U.S. citizen and a permanent resident alien who share the same domiciliary state. H.R. Rep. No. 112-10, at 6-7 (2011). Diversity does exist, however, between a U.S. citizen and a permanent resident alien domiciled in a different state. *Emekekwue v. Agwuegbo*, No. 12-1503, 2012 WL 5386279, at *3 n.2 (M.D. Pa. Nov. 1, 2012).

do not, however, defeat jurisdiction.[171] Residents of foreign territories are considered "subjects of a foreign state" within the meaning of the diversity statute even though they may not enjoy the same privileges as a citizen of the foreign state governing the territory.[172]

1-4:2.3 Citizenship of Corporations

A corporation is considered a citizen of both the state of its incorporation and the state of its principal place of business.[173] Consequently, a corporation may be a citizen of more than one state. Plaintiffs must, therefore, affirmatively plead both the state of the incorporation and the corporation's principal place of business.[174] Although a corporation may be incorporated in more than one state—and thus raise an issue of whether it is a citizen of all states in which it is incorporated[175]—it can have only one principal place of business. On the other hand, a corporation that is inactive, or conducts no business, is a citizen only of its state of incorporation.[176]

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171. 28 U.S.C. § l332(a)(3); *Dresser Indus., Inc. v. Underwriters at Lloyd's of London*, 106 F.3d 494, 495-96 (3d Cir. 1997) (aliens on both sides).

172. *JP Morgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd.*, 536 U.S. 88, 99-100 (2002) (a corporation organized under laws of the British Virgin Islands was a citizen of a foreign state).

173. 28 U.S.C. § 1332(c); *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 318 (2006) (national bank is located, for diversity purposes, in state designated in its articles of incorporation as locus of its main office, not in every state where it has branch offices); *see, e.g., Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 419 (3d Cir. 2010); *McLaughlin v. Arco Polymers, Inc.*, 721 F.2d 426, 428 (3d Cir. 1983); *cf. JP Morgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd.*, 536 U.S. 88, 91-92 (2002) (a corporation organized under laws of the British Virgin Islands was a citizen of a foreign state).

174. *S. Freedman & Co. v. Raab*, 180 Fed. Appx. 316, 320 (3d Cir. 2006).

175. Before the principal place of business was added to the diversity statute as a second basis for citizenship, some courts followed the "forum doctrine," which held that when a corporation was sued in one of the states in which it was incorporated, it was deemed a citizen of that state only. *Hines-Maloney v. Port Auth. of New York & New Jersey*, No. 07-6153, 2008 WL 4003998, at *2 (D.N.J. Aug. 25, 2008). Thus, a corporation sued in one of the states in which it was incorporated was considered diverse from a party that was a citizen of any other state, including one in which it was incorporated—*i.e.*, there was diversity when a citizen of State A sued in State B a corporation incorporated in States A and B, because the corporation was considered a citizen only of State B for the purpose of determining diversity. After the diversity statute was amended, at least one New Jersey federal court has held that the forum test should still be followed when there are multiple states of incorporation. *Kozikowski v. Delaware River Port Auth.*, 397 F. Supp. 1115, 1117 (D.N.J. 1975). However, in *Yancoskie v. Delaware River Port Authority*, 528 F.2d 722, 727 n.17 (3d Cir. 1975), decided later that same year, the Circuit held that the amendment "means that a multi-state corporation is deemed a citizen of every state in which it has been incorporated."

176. *Midlantic Nat'l Bank v. Hansen*, 48 F.3d 693, 696 (3d Cir. 1995) (because corporate activities determine a corporation's place of business, an inactive corporation, or one which does not engage in corporate activities, has no principal place of business).

An alien (non-U.S.) corporation with a domestic principal place of business is not diverse from an alien corporation.[177]

If it is alleged for diversity purposes that a corporation is a citizen of the state where the corporation has one of its principal places of business, the case may be dismissed because the plaintiff has not identified with specificity *the* principal place of business; the improper pleading leaves open the possibility that *the* principal place of business is in the same state as the adverse party's state of citizenship.[178]

Ending a conflict among the circuits, the U.S. Supreme Court adopted a "nerve center" test to identify a corporation's principal place of business.[179] The U.S. Supreme Court held that the principal place of business is where a company's officers "direct, control, and coordinate" its activities.[180] In so doing, the Court rejected the "business activities" test formerly applied by the Third Circuit.[181] The issue has been deemed a question of fact to be determined by the court.[182] Thus, assertions in pleadings have no intrinsic capacity to answer the question.[183]

A subsidiary generally has its own principal place of business distinct from that of its parent.[184] However, if a subsidiary runs virtually all of its operations from its parent corporation's offices by means of a service contract, the principal place of business of the subsidiary will be that of the parent rather than where the subsidiary has its nominal corporate offices.[185]

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177. *Caribbean Telecomm. Ltd. v. Guyana Tel. & Tel. Co.*, 594 F. Supp. 2d 522, 527-32 (D.N.J. 2009). This appears to be consistent with 28 U.S.C. § 1332(c), as amended Pub. L. 112-63. *See* H.R. Rep. No. 112-10, at 9-10 (2011).

178. *J & R Ice Cream Corp. v. California Smoothie Licensing Corp.*, 31 F.3d 1259, 1265 n.3 (3d Cir. 1994); *Hunt v. Acromed Corp.*, 961 F.2d 1079, 1080, 1082 n.7 (3d Cir. 1992).

179. *See Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010).

180. *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010); *see also Brooks-McCollum v. State Farm Ins. Co.*, 376 Fed. Appx. 217, 219 (3d Cir. 2010) (recognizing the "nerve center" test).

181. Prior to *Hertz*, the Third Circuit focused on the location of the corporation's actual business activities in determining a company's principal place of business. *See Kelly v. United States Steel Corp.*, 284 F.2d 850, 854 (3d Cir. 1960).

182. *Shahmoon Indus., Inc. v. Imperato*, 338 F.2d 449, 451 (3d Cir. 1964).

183. *Mennen Co. v. Atlantic Mut. Ins. Co.*, 147 F.3d 287, 293 (3d Cir. 1998).

184. *Quaker State Dyeing & Finishing Co. v. ITT Terryphone Corp.*, 461 F.2d 1140, 1142 (3d Cir. 1972).

185. *Mennen Co. v. Atlantic Mut. Ins. Co.*, 147 F.3d 287, 293 n.7 (3d Cir. 1998); *accord Johnson v. SmithKline Beecham Corp.*, 724 F.3d 337, 351 (3d Cir. 2013).

1-4:2.4 Citizenship of Unincorporated Associations/Partnerships/Trusts

Partnerships and unincorporated associations, including unions, are not considered "citizens" for diversity purposes.[186] Instead, courts look to the citizenship of all the partners or members of the entity to determine whether diversity exists, including both limited and general partners in a limited partnership.[187] The citizenship of a limited liability company is determined by the citizenship of its members.[188] Where a partnership has among its members another partnership or LLC, the citizenship of each unincorporated association "must be traced through however many layers of partners or members there may be," and the citizenship of each partner at each level must be considered in determining whether diversity exists.[189] If a partnership has among its partners an American citizen living abroad, diversity jurisdiction is not available.[190] Resignation of a partner before an action is filed may create diversity if it is not a collusive attempt to create diversity, *i.e.*, the resignation is legitimate.[191]

Additionally, the Third Circuit in 2018 clarified the test concerning citizenship when determining diversity in actions involving trusts.[192] The crux of the analysis turns on whether the trust is a "traditional" or "business" trust. Generally, a traditional trust facilitates a "donative transfer, whereas a business trust implements a bargained-for exchange."[193] A traditional trust's citizenship is "based solely on that of its trustee,"

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186. *Lincoln Benefit Life Co. v. AEI Life, LLC*, 800 F.3d 99, 104-05 (3d Cir. 2015) (citing *Swiger v. Allegheny Energy, Inc.*, 540 F.3d 179, 182 (3d Cir. 2008)).

187. *E.g., Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 569 (2004); *Carden v. Arkoma Assocs.*, 494 U.S. 185, 192, 195-96 (1990); *Lincoln Benefit Life Co. v. AEI Life, LLC*, 800 F.3d 99, 105 (3d Cir. 2015); *cf. Lowsley-Williams v. North River Ins. Co.*, 884 F. Supp. 166, 172 (D.N.J. 1995) (citizenship of the "names" governs rather than those of the underwriters in a Lloyds of London syndicate).

188. *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 420 (3d Cir. 2010); *Hessert Constr. New Jersey, LLC v. Garrison Architects, P.C.*, No. 06-5696, 2007 WL 2066355, at *2-4 (D.N.J. July 13, 2007) (treating limited liability companies like limited partnerships for purposes of diversity jurisdiction). To establish diversity jurisdiction, "a plaintiff need not affirmatively allege the citizenship of each member of a defendant LLC if it is unable to do so after a reasonable investigation." *Lincoln Benefit Life Co. v. AEI Life, LLC*, 800 F.3d 99, 110 (3d Cir. 2015). But, "[i]f the plaintiff is able to allege in good faith that the LLC's members are not citizens of its state of citizenship, its complaint will survive a facial challenge." *Id.* If the defendant thereafter challenges diversity jurisdiction, the plaintiff is entitled to limited discovery for the purpose of establishing complete diversity and must establish such diversity by a "preponderance of the evidence." *Id.* at 105.

189. *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 420 (3d Cir. 2010) (quoting *Hart v. Terminex Int'l*, 336 F.3d 541, 543 (7th Cir. 2003)).

190. *Swiger v. Allegheny Energy, Inc.*, 540 F.3d 179, 184 (3d Cir. 2008).

191. *Nobel v. Morchesky*, 697 F.2d 97, 101-02 (3d Cir. 1982) (partner resigned just prior to filing federal action).

192. *GBForefront, L.P. v. Forefront Mgmt. Grp., LLC*, 888 F.3d 29, 39-40 (3d Cir. 2018).

193. *GBForefront, L.P. v. Forefront Mgmt. Grp., LLC*, 888 F.3d 29, 40 (3d Cir. 2018).

and not the citizenship of the individual beneficiaries.[194] However, the citizenship of a business entity called a "trust" is based on "the citizenship of all its members."[195]

1-4:2.5 Citizenship of Insurance Companies in Direct Actions

As with all other corporations, an incorporated insurer is considered a citizen of: (1) every state or foreign state of incorporation; and (2) every state or foreign state where it has its principal place of business.[196] However, in a direct action against an insurer to which the insured is not joined as a party-defendant, the insurer is considered a citizen of: (1) every state or foreign state where the insurer is incorporated; (2) every state or foreign state where the insurer has its principal place of business; and (3) every state or foreign state of which the insured is a citizen—regardless of whether the insurer is incorporated or not.[197]

1-4:2.6 Applying Citizenship Rules to Parties

Generally, the citizenship of the real party in interest, any indispensable parties, and legal representatives[198] is considered when determining whether diversity jurisdiction exists.[199] Nominal or unnecessary parties may be disregarded for diversity purposes,[200] as may improperly or fraudulently joined parties,[201] who will be dismissed from the suit even after judgment has been entered.[202]

Fictitiously named defendants, such as "John Does," are not necessarily considered nominal parties for diversity purposes.[203] The Third Circuit has adopted a two-part test for determining whether the unidentified defendants will be considered: (1) whether there are sufficient allegations

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194. *GBForefront, L.P. v. Forefront Mgmt. Grp., LLC*, 888 F.3d 29, 39 (3d Cir. 2018).

195. *GBForefront, L.P. v. Forefront Mgmt. Grp., LLC*, 888 F.3d 29, 37 (3d Cir. 2018); *see also Americold Realty Tr. v. Conagra Foods, Inc.*, 577 U.S. 378, 384 (2016).

196. 28 U.S.C. § 1332(c)(1).

197. 28 U.S.C. § 1332(c)(1)(A)-(C). *See generally Myers v. State Farm Ins. Co.*, 842 F.2d 705, 707 (3d Cir. 1988) (finding no direct action), *abrogation on other grounds recognized by McAlister v. Sentry Ins. Co.*, 958 F.2d 550, 553 (3d Cir. 1992).

198. The citizenship of a legal representative of the estate of a decedent, an infant, or an incompetent shall be deemed to be the same as the decedent, infant, or incompetent. 28 U.S.C. § 1332(c)(2).

199. *E.g., Ramada Inns, Inc. v. Rosemount Mem'l Park Ass'n*, 598 F.2d 1303, 1306, 1310 (3d Cir. 1979).

200. *Brown v. Francis*, 75 F.3d 860, 865 (3d Cir. 1996).

201. *See In re Briscoe*, 448 F.3d 201, 215-16 (3d Cir. 2006).

202. *Publicker Indus., Inc. v. Roman Ceramics Corp.*, 603 F.2d 1065, 1069 (3d Cir. 1979).

203. *Abels v. State Farm Fire & Cas. Co.*, 770 F.2d 26, 29 n.3 (3d Cir. 1985).

on the face of the complaint "concerning their identity and conduct to justify consideration of their citizenship"; and (2) whether there is any evidence of fraudulent joinder.[204]

To an extent, the *Abels* test has been mooted by the Judicial Improvements and Access to Justice Act of 1988 and the Clarification Act, which amended 28 U.S.C. § 1441 to provide that the citizenship of defendants sued under fictitious names must be disregarded for purposes of removal.[205] However, the Third Circuit has not overruled *Abels*, and since on its face Subsection 1441(b)(1) applies only to removal, the two-part test may still be applicable to cases originally filed in federal court.[206] Note, however, that fraudulent joinder would rarely be an issue where a plaintiff invokes diversity jurisdiction to file an action in federal court, as fraudulent joinder is typically used to defeat diversity, not create it.

1-4:2.7 Realignment

Generally, the pleadings will govern party alignment—for example, which parties should be considered plaintiffs and which defendants—when determining diversity. The pleadings are not conclusive, however, and courts sometimes will realign the parties so that alignment more closely comports with the parties' real interests.[207] Appellate review of party alignment is plenary.[208]

1-5 SUPPLEMENTAL JURISDICTION

1-5:1 Pendent and Ancillary Jurisdiction

Federal courts traditionally have considered nonfederal claims under the judicial doctrines of "pendent" and "ancillary" jurisdiction, which permitted the court to exercise jurisdiction over an independent claim or party over which the court would otherwise not have jurisdiction. Pendent and ancillary jurisdiction are similar in concept, and both doctrines are intended to promote judicial economy and avoid piecemeal litigation.

Often, a court is confronted with a complaint that contains both federal and state law claims. The doctrine of pendent jurisdiction gives the court

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204. *Abels v. State Farm Fire & Cas. Co.*, 770 F.2d 26, 29 (3d Cir. 1985).
205. 28 U.S.C. § 1441(b)(1); Pub. L. No. 100-702, § 1016(a), 102 Stat. 4669 (1988).
206. *Salzstein v. Bekins Van Lines, Inc.*, 747 F. Supp. 1281, 1283 (N.D. Ill. 1990).
207. *E.g., Angst v. Royal Maccabees Life Ins. Co.*, 77 F.3d 701, 704 (3d Cir. 1996).
208. *E.g., Angst v. Royal Maccabees Life Ins. Co.*, 77 F.3d 701, 703 (3d Cir. 1996).

discretion to rule on the state claims over which it would otherwise lack subject-matter jurisdiction, provided the federal and state law claims are integrally related.[209] Pendent jurisdiction also may apply to parties over which the court would not otherwise have jurisdiction.[210]

Ancillary jurisdiction is an ill-defined doctrine that courts generally apply for one of two purposes: "(1) to permit disposition by a single court of claims that are . . . factually interdependent . . . and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees."[211] The U.S. Supreme Court has held, however, that a federal court does not have ancillary jurisdiction in a subsequent suit to enforce a settlement agreement that resulted in dismissal of a federal court case unless it retained jurisdiction in the order of dismissal.[212]

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

210. *See Dumansky v. United States*, 486 F. Supp. 1078, 1083-84 (D.N.J. 1980) (the *Gibbs* analysis applies in determining whether a federal court has pendant jurisdiction over an additional party not subject to the federal claim that is brought into the suit to answer a state-law claim).

211. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 379-80 (1994) ("The doctrine of ancillary jurisdiction can hardly be criticized for being overly rigid or precise."). Ancillary jurisdiction may extend to claims that factually and logically depend on the primary claim. *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 33 (2002). Federal courts also have ancillary enforcement jurisdiction over nonfederal claims when necessary to enforce the court's judgment. *Pfizer Inc. v. Uprichard*, 422 F.3d 124, 131 (3d Cir. 2005); *see National City Mortg. Co. v. Stephen*, 647 F.3d 78, 84-86 (3d Cir. 2011) (court's ancillary jurisdiction extended to subsequent claims arising from error occurring during a marshal's sale).

212. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 379-81 (1994); *see also Peacock v. Thomas*, 516 U.S. 349, 357 (1996) (courts "have never authorized the exercise of ancillary jurisdiction in a subsequent lawsuit to impose an obligation to pay an existing federal judgment on a person not already liable for that judgment"); *see also Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 932 F.3d 126, 138-39 (3d Cir. 2019) (The U.S. Supreme Court in *Peacock* gave no indication that district courts are precluded "from exercising ancillary enforcement jurisdiction over . . . [an] action because it seeks to 'shift liability for payment of an existing judgment to a third party that is not otherwise liable on the judgment.'); *Raab v. City of Ocean City, N.J.*, 833 F.3d 286, 294 (3d Cir. 2016). *But cf. Gambone v. Lite Rock Drywall*, 288 Fed. Appx. 9, 12-13 (3d Cir. 2008) (distinguishing *Peacock* on fraudulent conveyance claim); *Glaxo Grp. Ltd. v. Dr. Reddy's Lab'ys, Ltd.*, 325 F. Supp. 2d 502, 508 (D.N.J. 2004) (explaining that while a court is "authorized" to embody a private settlement contract in its dismissal order to preserve jurisdiction, nowhere in the *Kokkonen* decision is this made a requirement); *Wright v. Prudential Ins. Co. of Am.*, 285 F. Supp. 2d 515, 522 n.17 (D.N.J. 2003) (emphasizing that the court bears no obligation to exercise its ancillary jurisdiction to enforce its own order, and does so purely at its own discretion); *In re Community Bank of N. Va. Mortg. Lending Pracs. Litig.*, 911 F.3d 666, 672 (3d Cir. 2018) (holding that a federal court should not exercise ancillary jurisdiction in an attorney's fee dispute "where the court has no control over the funds and the fee-splitting dispute has no impact on the timing or substance of the litigants' relief in the underlying case over which the federal court has jurisdiction").

1-5:2 Requirements for Supplemental Jurisdiction

Congress codified and combined the doctrines of pendent and ancillary jurisdiction under what is termed "supplemental jurisdiction."[213] Section 1367 thus provides that, other than as specifically excepted,[214] once the district court has "original" subject-matter jurisdiction over a "civil action," it also shall have supplemental jurisdiction over other "claims" within the same case or controversy under the court's constitutional authority, including over qualified additional claims and parties.[215]

In the Third Circuit, unless the exceptions apply, the three requirements for the exercise of supplemental jurisdiction over additional state law claims are: (1) the federal court has subject-matter jurisdiction over the original claims; (2) the state and federal claims "derive from a common nucleus of operative facts"; and (3) it would ordinarily be expected that the claims be tried in one judicial proceeding.[216] Supplemental jurisdiction also has been invoked to permit the inclusion of additional parties,[217] unless prohibited,[218] but it cannot be used to overcome basic jurisdictional defects such as lack of standing and mootness.[219]

1-5:3 Diversity Cases and Pendent Party Jurisdiction: Subsection 1367(b)

Although supplemental jurisdiction also encompasses the doctrine of pendent party jurisdiction, which allows claims that require the joinder or intervention of additional parties,[220] Subsection 1367(b) recognizes limits to a court applying supplemental jurisdiction in actions that are based

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213. 28 U.S.C. § 1367. *But see Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 559 (2005) (noting that Section 1367 did not preserve any meaningful distinctions between the two former categories).

214. *See, e.g.*, §§ 1-5:3 & 1-5:4 (discussing Subsections (b) and (c) of statute).

215. 28 U.S.C. § 1367(a).

216. *MCI Telecomms. Corp. v. Teleconcepts, Inc.*, 71 F.3d 1086, 1102 (3d Cir. 1995); *accord Storino v. Borough of Point Pleasant Beach*, 322 F.3d 293, 299-300 (3d Cir. 2003); *see also Peter Bay Homeowners Ass'n, Inc. v. Stillman*, 294 F.3d 524, 533 (3d Cir. 2002) (noting that Section 1367 permits federal courts to "exercise subject matter jurisdiction over matters they would normally be precluded from entertaining so long as the supplemental matters are deemed to involve or relate to the same controversy as to matters properly before the federal court").

217. *E.g., Virgin Islands Hous. Auth. v. Coastal Gen. Constr. Servs. Corp.*, 27 F.3d 911, 914 n.2 (3d Cir. 1994).

218. *See* § 1-5:3.

219. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 359 (2006).

220. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 554 (2005) (explaining pendent party jurisdiction).

"solely" on diversity jurisdiction, where the exercise of jurisdiction would be "inconsistent with the jurisdictional requirements of section 1332."[221]

The subsection prohibits the exercise of supplemental jurisdiction in diversity cases over claims by plaintiffs against nondiverse persons made parties by impleader,[222] mandatory[223] or permissive[224] joinder, or intervention,[225] as well as claims by persons seeking to intervene[226] or to be joined under mandatory joinder.[227] Although the subsection initially refers to claims brought by plaintiffs,[228] an additional clause adds a limitation to adding parties under Federal Rules 19 and 24 without regard to who is seeking to add them. This limitation on supplemental jurisdiction does not apply when there is independent federal-question jurisdiction.[229]

For example, supplemental jurisdiction does not allow a plaintiff to sue one diverse and one non-diverse party, relying on supplemental jurisdiction for the non-diverse party.[230] However, supplemental jurisdiction has been held applicable to class actions as with other multiple party actions, not otherwise precluded by the complete diversity rule, where only one plaintiff satisfies the minimum amount in controversy requirement of the statute.[231]

Additionally, when a district court dismisses the federal claims that initially provided the basis for subject-matter jurisdiction, it may retain diversity jurisdiction over state law counterclaims if there is diversity between the counterclaiming defendants and the plaintiff—even if there is not complete diversity between the parties.[232]

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221. 28 U.S.C. § 1367(b); *see DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 350-52 (2006) (noting limits to applying *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966) and supplemental jurisdiction).

222. Fed. R. Civ. P. 14.

223. Fed. R. Civ. P. 19.

224. Fed. R. Civ. P. 20.

225. Fed. R. Civ. P. 24.

226. Fed. R. Civ. P. 24.

227. Fed. R. Civ. P. 19.

228. *Development Fin. Corp. v. Alpha Hous. & Health Care Inc.*, 54 F.3d 156, 159-61 (3d Cir. 1995) (where non-diverse intervening "plaintiff" was realigned by court to be defendant, court was not deprived of supplemental jurisdiction over claims by intervenor).

229. *See, e.g., Virgin Islands Hous. Auth. v. Coastal Gen. Constr. Servs. Corp.*, 27 F.3d 911, 914 n.2 (3d Cir. 1994).

230. *Virgin Islands Hous. Auth. v. Coastal Gen. Constr. Servs. Corp.*, 27 F.3d 911, 914 n.2 (3d Cir. 1994) (Section 1367 "does not affect the traditional rule of complete diversity").

231. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 559-66 (2005).

232. *Barefoot Architect, Inc. v. Bunge*, 632 F.3d 822, 836-37 (3d Cir. 2011).

1-5:4 Discretion to Decline Supplemental Jurisdiction: Subsection 1367(c)

A court is permitted, in its discretion, to decline to exercise supplemental jurisdiction in several circumstances even though the conditions for supplemental jurisdiction are present. The court may decline to exercise supplemental jurisdiction where:

> (1) the claim raises a novel or complex issue of State law; (2) the [state law] 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, [where] there are other compelling reasons for declining [supplemental] jurisdiction.[233]

Where the court elects to exercise supplemental jurisdiction over state law claims, objections must be made in a timely manner or they will be waived.[234] Absent special circumstances, the exercise of supplemental jurisdiction cannot be challenged for the first time on appeal.[235] Review is based on an abuse of discretion standard.[236]

1-5:4.1 Novel or Complex Issues of State Law: Subsection 1367(c)(1)

A court may decline to exercise supplemental jurisdiction over a claim that "raises a novel or complex issue of State law."[237] This limitation is analogous to, or at least overlaps with, *Pullman* abstention[238] and should

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233. 28 U.S.C. § 1367(c).

234. *See New Jersey Tpk. Auth. v. PPG Indus., Inc.*, 197 F.3d 96, 113 (3d Cir. 1999).

235. *New Jersey Tpk. Auth. v. PPG Indus., Inc.*, 197 F.3d 96, 113 (3d Cir. 1999). *See also Citizens Bank of Pa. v. Reimbursement Techs., Inc.*, 609 Fed. Appx. 88, 91 (3d Cir. 2015) (although the court did not define special circumstances, the Third Circuit recognized that it is something more than what must be shown if the challenge is made initially to the district court). *But see Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639-40 (2009) (in contrast to those situations in which a district court determines it lacks subject-matter jurisdiction and remand to state court is required, federal appellate review of a district court's discretionary decision to decline to exercise its statutory right of supplemental jurisdiction under Subsection 1367(c) is permissible pursuant to Subsections 1447(c) and (d)).

236. *Talley v. Wetzel*, 15 F.4th 275, 281 (3d Cir. 2021).

237. 28 U.S.C. § 1367(c)(1); *Rothman v. City of Northfield,* 716 F. Supp. 2d 369, 371 (D.N.J. 2010); *Freund v. Florio*, 795 F. Supp. 702, 710-11 (D.N.J. 1992) (novel issues of state law regarding legal status of state colleges).

238. *See* § 1-6:1 (discussing *Pullman* abstention); *Railroad Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496 (1941) (federal court stays action so that state court can interpret state law and potentially resolve the federal issue).

be applied in a manner compatible with it. However, this limitation is not intended to encourage a looser application of the abstention doctrine.[239]

1-5:4.2 State Claim Substantially Predominates: Subsection 1367(c)(2)

A court may decline to exercise supplemental jurisdiction when a state law claim substantially predominates over the claims over which the federal court has original jurisdiction.[240] Courts generally have found that a state law claim substantially predominates when the "state claim constitutes the real body of a case, to which the federal claim is only an appendage,"[241] and "where permitting litigation of all claims in the district court can accurately be described as allowing a federal tail to wag what is in substance a state dog."[242]

The "substantially predominates" standard is not satisfied by a numerical count of the state and federal claims the plaintiff has chosen to assert on the basis of the same set of facts. Rather, as the Third Circuit has found, there generally are three ways in which a state law claim may predominate for purposes of Subsection 1367(c)(2): (1) quantity of evidence; (2) comprehensiveness of remedy; and (3) scope of issues raised.[243]

This limitation on supplemental jurisdiction also overlaps with the abstention doctrines, most notably *Burford* abstention,[244] but it is not intended to encourage a looser application of that abstention doctrine.[245]

1-5:4.3 All Claims of Original Jurisdiction Dismissed by District Court: Subsection 1367(c)(3)

A court also may decline jurisdiction over supplemental claims after it has dismissed all claims over which it had original jurisdiction.[246] In

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239. Siegel, Practice Commentary, 28 U.S.C. § 1367, at 765 (2006). *See Lajoie v. Connecticut State Bd. of Labor Relations*, 837 F. Supp. 34, 38 (D. Conn. 1993) (relying on both Subsection 1367(c)(1) and *Pullman* abstention to decline interpreting state statute).

240. 28 U.S.C. § 1367(c)(2); *see, e.g., Manos v. United Food & Com. Workers Int'l Union*, 9 F. Supp. 3d 473, 482-83 (D.N.J. 2014) (plaintiffs' state law claims substantially predominate over the single federal ERISA claim).

241. *United Mine Workers v. Gibbs*, 383 U.S. 715, 727 (1966).

242. *De Asencio v. Tyson Foods, Inc.*, 342 F.3d 301, 309 (3d Cir. 2003) (quoting *Borough of W. Mifflin v. Lancaster*, 45 F.3d 780, 789 (3d Cir. 1995)).

243. *Borough of W. Mifflin v. Lancaster*, 45 F.3d 780, 788-89 (3d Cir. 1995).

244. *See* § 1-6:2 (discussing *Burford* abstention); *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943) (federal court will stay action to allow state regulators the opportunity to establish state policy).

245. Siegel, Practice Commentaries, 28 U.S.C. § 1367, at 765 (2006).

246. *See* 28 U.S.C. § 1367(c)(3); *United States ex rel. Paranich v. Sorgnard*, 396 F.3d 326, 331 (3d Cir. 2005); *Shaev v. Saper*, 320 F.3d 373, 384 (3d Cir. 2003); *Adam Techs. LLC v. Well Shin Tech. Co., Ltd.*, No. 18-10513, 2020 WL 2125007, at *4 (D.N.J. May 5, 2020).

making this determination, the court generally considers principles of "judicial economy, convenience and fairness to the litigants."[247]

Consequently, the earlier in the life of an action the federal claims are dismissed, the more likely the state law claim also will be dismissed; the later in the proceedings, the less likely it is to be dismissed.[248] A court, however, will not retain jurisdiction in the name of judicial efficiency based on hypothetical future federal litigation between the same parties.[249] Courts in the Third Circuit tend to decline supplemental jurisdiction when the federal claims are dismissed by way of summary judgment.[250]

1-5:4.4 Exceptional Circumstances and Compelling Reasons: Subsection 1367(c)(4)

Finally, a court may decline supplemental jurisdiction in exceptional circumstances for other compelling reasons.[251] Courts have declined supplemental jurisdiction on this basis when, for example, the tactics employed by the plaintiffs would defeat a "crucial policy decision" of a federal statute;[252] exercising supplemental jurisdiction would deprive a state court of jurisdiction to administer a common law remedy;[253] all state law claims could be heard in one forum where state law claims as to two of four defendants already had been dismissed for lack of personal jurisdiction;[254] and judicial economy would not be served because: (1) the court would have to hold one bench trial and one jury trial, as plaintiff was entitled to a jury trial for the state law claims, but not for the federal claim;

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247. *Estate of Ware v. Hospital of the Univ. of Pennsylvania*, 871 F.3d 273, 286 (3d Cir. 2017) (quoting *Kach v. Hose*, 589 F.3d 626, 650 (3d Cir. 2009)).

248. *See Freund v. Florio*, 795 F. Supp. 702, 710-11 (D.N.J. 1992) (dismissal of pendent state claims at early stage of litigation would result in neither waste of judicial resources nor prejudice to parties). *But see Annulli v. Panikkar*, 200 F.3d 189, 202-03 (3d Cir. 1999) (affirming dismissal of state claims under Subsection 1367(c)(3) despite being on eve of trial following two years of litigation), *overruled on other grounds*, *Rotella v. Wood*, 528 U.S. 549 (2000). *See, e.g., Serrano v. New Jersey*, No. 13-1911, 2013 WL 1412303, at *3 (D.N.J. Apr. 8, 2013).

249. *See, e.g., Robinson v. Hornell Brewing Co.*, No. 11-2183, 2012 WL 6213777, at *11 (D.N.J. Dec. 13, 2012) (declining supplemental jurisdiction in an improperly pled class action, despite the possibility that future state suit could be removed by defendants to federal court if the pleading infirmities were corrected).

250. *Hedges v. Musco*, 204 F.3d 109, 122-23 (3d Cir. 2000) (discussing dismissal of supplemental state law claims pursuant to 28 U.S.C. § 1367(a), (c)).

251. 28 U.S.C. § 1367(c)(4).

252. *Michelon v. FM Home Improvement, Inc*., No 09-466, 2010 WL 3614209, at *5 (D.N.J. Sept. 8, 2010. *But see Knepper v. Rite Aid Corp*., 675 F.3d 249, 261-62 (3d Cir. 2012); *Beauregard v. Hunter*, No. 16-5689, 2017 WL 1032780, at *2-3 (D.N.J. Mar. 16, 2017).

253. *J. Aron & Co. v. Chown*, 894 F. Supp. 697, 702-03 (S.D.N.Y. 1995).

254. *Dickerson v. Wyeth-Ayerst Lab'ys*, No. 92-7075, 1993 WL 153784, at *4 (E.D. Pa. Apr. 30, 1993).

and (2) the federal claim was against only the corporate defendant, but the state law claims would bring in five additional defendants.[255]

1-5:5 Tolling of State Law Claims: Subsection 1367(d)

Subsection 1367(d) provides that a claim for which the court has declined supplemental jurisdiction may be filed in a state court action within 30 days after its dismissal, notwithstanding the expiration of the state statute of limitations.[256] Subsection 1367(d) does not toll the statute of limitations for claims against nonconsenting states filed in federal court but dismissed on Eleventh Amendment grounds, as doing so would require a state to defend against a claim that had never been filed in state court until an indeterminate time after the original limitations period had lapsed.[257]

1-5:6 Special Consideration: New Jersey's Entire Controversy Doctrine

New Jersey's state court Entire Controversy Doctrine (ECD),[258] which requires that all claims and cross-claims arising out of a single transaction or a series of related transactions be brought in a single action,[259] causes unique concerns relating to supplemental jurisdiction. New Jersey state courts have used the ECD to bar actions that could have been brought in an earlier federal action via supplemental jurisdiction.[260] Similarly, when the first action was brought in state court, federal courts will apply the ECD by virtue of the Full Faith and Credit Clause to bar related claims in a later federal suit.[261] The Third Circuit has held, however, that the law of

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255. *Parker v. DPCE, Inc.*, No. 91-4829, 1992 WL 501273, at *16 (E.D. Pa. Nov. 3, 1992).

256. 28 U.S.C. § 1367(d); *County of Ocean v. Grewal*, 475 F. Supp. 3d 355, 386 (D.N.J. 2020).

257. *Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533, 541-42 (2002); *Graves v. Lanigan*, No. 13-7591, 2016 WL 4435673, at *3 (D.N.J. Aug. 17, 2016) (citing *Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533, 545-46 (2002)).

258. N.J. Ct. R. 4:30A. *See* Chapter 23 (Estoppel Principles); *Highland Lakes Country Club & Cmty. Ass'n v. Nicastro*, 201 N.J. 123, 125 (2009).

259. *Hurley v. Atlantic City Police Dep't*, No. 96-4928, 1998 WL 351781, at *10 (D.N.J. May 28, 1998) (noting that it is "far from clear that the entire controversy doctrine applies here where both actions at issue are ones in which the federal court has original jurisdiction over federal claims and supplemental jurisdiction over state law claims").

260. *See, e.g., McNeil v. Legislative Apportionment Comm'n*, 177 N.J. 364, 397-98 (2003).

261. *Rycoline Prods., Inc. v. C & W Unlimited*, 109 F.3d 883, 887-88 (3d Cir. 1997) (only when the state suit has been fully adjudicated; if the state suit is still pending, the Full Faith and Credit Clause may not preclude federal jurisdiction); *Jaye v. Oak Knoll Vill. Condo. Owners Ass'n*, No. 15-8324, 2016 WL 7013468, at *12 (D.N.J. Nov. 30, 2016) (citation omitted) ("The Court is also 'bound by New Jersey's Entire Controversy Doctrine' pursuant to the Full Faith and Credit Act, 28 U.S.C. § 1738, which requires federal courts to give 'the same preclusive effect to a state-court judgment as another court of that State would give.'").

the issuing court determines the preclusive effects of a prior judgment, so that where the prior judgment was not entered by a New Jersey state court, a federal court should not apply the ECD.[262]

Thus, as a general rule, it is prudent to join all related claims into a single suit whether suit is brought in federal or state court. If supplemental jurisdiction is declined or the federal court did not have the power to exercise jurisdiction over the claims, the ECD should not bar the later assertion of those claims in state court.[263]

1-6 ABSTENTION

Abstention is a discretionary doctrine that permits a federal court to decline to decide state law claims. A court may decline jurisdiction, that is, abstain from hearing a case, in limited circumstances when it would otherwise have subject-matter jurisdiction.[264] The three traditional types of abstention are commonly referred to as *Pullman*, *Burford*, and *Younger* abstention.[265] A fourth, *Colorado River* abstention, is even rarer.[266] Appellate review of abstention decisions is plenary, albeit under an abuse of discretion standard.[267]

1-6:1 *Pullman* Abstention

A court may apply *Pullman* abstention[268] when presented with a federal constitutional issue and an unsettled issue of state law the resolution of which might narrow or eliminate the constitutional issue.[269] *Pullman* abstention has two purposes: (1) to avoid the displacement of a federal constitutional adjudication by a later state court adjudication of state

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262. *Paramount Aviation Corp. v. Gruppo Agusta*, 178 F.3d 132, 144-45 (3d Cir. 1999).

263. *Blazer Corp. v. New Jersey Sports & Exposition Auth.*, 199 N.J. Super. 107, 112 (App. Div. 1985); *see also Halvajian v. Bank of N.Y., N.A.*, 191 B.R. 56, 59 (D.N.J. 1995).

264. *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996).

265. *Trent v. Dial Med. of Fla., Inc.*, 33 F.3d 217, 223 n.5 (3d Cir. 1994), *superseded by statute on other grounds as stated in National City Mortg. Co. v. Stephen*, 647 F.3d 78, 83 (3d Cir. 2011).

266. *Trent v. Dial Med. of Fla., Inc.*, 33 F.3d 217, 223 (3d Cir. 1994), *superseded by statute on other grounds as stated in National City Mortg. Co. v. Stephen*, 647 F.3d 78, 83 (3d Cir. 2011).

267. *Zahl v. Harper*, 282 F.3d 204, 208 (3d Cir. 2002) (court reviews decision to abstain for abuse of discretion, but exercises plenary review over the underlying legal determination as to the abstention requirements), *aff'd*, 403 Fed. Appx. 729 (3d Cir. 2010); *Nationwide Mut. Fire Ins. Co. v. George V. Hamilton, Inc.*, 571 F.3d 299, 307 (3d Cir. 2009).

268. This abstention doctrine was first recognized in *Railroad Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496 (1941).

269. *San Remo Hotel, L.P. v. City & Cnty. of S.F.*, 545 U.S. 323, 339 (2005); *Heritage Farms, Inc. v. Solebury Twp.*, 671 F.2d 743, 746 (3d Cir. 1982); *American Exp. Travel Related Servs. Co., Inc. v. Sidamon-Eritsoff*, 755 F. Supp. 2d 556, 594 (D.N.J. 2010).

law; and (2) to avoid unnecessary friction with state policies.[270] *Pullman* abstention is a narrow exception that is applied only in exceptional circumstances.[271]

Pullman abstention requires that: (1) uncertain issues of state law underlie the federal constitutional issue(s); (2) the state law issues are subject to interpretation by state courts, possibly either (a) obviating the need to adjudicate the federal issue or (b) substantially narrowing the scope of the federal issue; and (3) "an erroneous construction of [the] state law by [a] federal court would disrupt important state policies."[272] If these circumstances are present, the court must weigh factors such "as the availability of an adequate state remedy, the length of time the litigation has been pending, and the impact of [the] delay on the litigants" to determine, in its discretion, whether abstention is appropriate.[273]

1-6:2 *Burford* Abstention

Burford abstention[274] generally is applied to avoid interference with state administrative decisions, proceedings, and orders, when there are difficult questions of state law bearing on policy problems of substantial importance that transcend the case at bar. Alternatively, if federal review would disrupt state efforts to establish a coherent policy regarding a matter of substantial public concern, *Burford* abstention is appropriate.[275] Courts will consider whether: (1) the regulatory scheme raises matters of public concern; (2) the regulatory scheme is detailed and complex; and (3) the federal review of a plaintiff's claims would interfere with a state's efforts to establish a coherent regulatory policy.[276]

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270. *Planned Parenthood of Cent. New Jersey v. Farmer*, 220 F.3d 127, 149 (3d Cir. 2000); *accord Philadelphia City Council v. Schweiker*, 40 Fed. Appx. 672, 675 (3d Cir. 2002).

271. *Planned Parenthood of Cent. New Jersey v. Farmer*, 220 F.3d 127, 149 (3d Cir. 2000); *Artway v. Attorney Gen. of New Jersey*, 81 F.3d 1235, 1270, *reh'g denied*, 83 F.3d 594 (3d Cir. 1996).

272. *Presbytery of New Jersey of the Orthodox Presbyterian Church v. Whitman*, 99 F.3d 101, 106 (3d Cir. 1996); *Artway v. Attorney Gen. of New Jersey,* 81 F.3d 1235, 1270-71, *reh'g denied*, 83 F.3d 594 (3d Cir. 1996).

273. *Philadelphia City Council v. Schweiker*, 40 Fed. Appx. 672, 676 (3d Cir. 2002).

274. This abstention doctrine was recognized in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

275. *Heritage Farms, Inc. v. Solebury Twp.*, 671 F.2d 743, 746 (3d Cir. 1982).

276. *Culinary Serv. of Del. Valley, Inc. v. Borough of Yardley*, *PA*, 385 Fed. Appx. 135, 144 (3d Cir. 2010).

For a federal court to apply *Burford* abstention, the remedy sought cannot be solely legal, but must have equitable components.[277] A federal court may dismiss the case or may stay it.[278]

1-6:3 *Younger* Abstention

Younger abstention[279] generally is applied when the relief sought would interfere with an ongoing state proceeding through injunctive or declaratory relief, such as a request to enjoin the enforcement of a state court preliminary injunction.[280] While *Younger* involved a state criminal prosecution, the *Younger* doctrine has since been extended to civil judicial proceedings.[281]

Abstention is appropriate under *Younger* in "exceptional circumstances" existing in only "three types of proceedings": (1) "ongoing state criminal prosecutions," (2) "certain 'civil enforcement proceedings,'" and (3) "pending 'civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial function.'"[282]

Once the exceptional circumstances standard is satisfied, the court should then consider the additional *Middlesex* factors, invoking *Younger* abstention where: (1) "there [is an] ongoing state proceeding[ ] that [is] judicial in nature; (2) the state proceeding[ ] implicate[s] important state interests; and (3) the state proceedings afford an adequate" forum to raise the federal claims.[283] While *Younger* abstention generally precludes federal intervention in ongoing state proceedings, the state action is not required to have been filed first in order for *Younger* to apply.[284] *Younger* abstention

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277. *Feige v. Sechrest*, 90 F.3d 846, 850 (3d Cir. 1996) (discussing *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996)).

278. *Chavez v. Dole Food Co.*, 836 F.3d 205, 220 (3d Cir. 2016) ("Our own abstention jurisprudence has long directed district courts to stay, rather than dismiss, potentially duplicative federal suits."); *Feige v. Sechrest*, 90 F.3d 846, 847, 851 (3d Cir. 1996).

279. This abstention doctrine was recognized in *Younger v. Harris*, 401 U.S. 37 (1971).

280. *Port Auth. Police Benevolent Ass'n v. Port Auth. of N.Y. & N.J. Police Dep't*, 973 F.2d 169, 173 (3d Cir. 1992), *abrogated on other grounds recognized by Malhan v. Secretary U.S. Dep't of State*, 938 F.3d 453, 458-59 (3d Cir. 2019).

281. *Zahl v. Harper*, 282 F.3d 204, 208 (3d Cir. 2002); *accord Brooks-McCollum v. Delaware*, 213 Fed. Appx. 92, 94 (3d Cir. 2007); *ACRA Turf Club, LLC v. Zanzuccki*, 748 F.3d 127, 135 (3d Cir. 2014).

282. *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 78 (2013) (alteration in original) (quoting *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 368 (1989)).

283. *Malhan v. Secretary U.S. Dep't of State*, 938 F.3d 453, 462 (3d Cir. 2019); *see also Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 81-82 (2013); *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982); *Hamilton v. Bromley*, 862 F.3d 329, 337 (3d Cir. 2017).

284. *Tucker v. Ann Klein Forensic Ctr.*, 174 Fed. Appx. 695, 697 (3d Cir. 2006) (citing *For Your Eyes Alone, Inc. v. City of Columbus, Ga.*, 281 F.3d 1209, 1217 (11th Cir. 2002)).

does not prevent a plaintiff from pursuing parallel state and federal actions seeking consistent relief.[285]

Federal courts have broadly applied *Younger* abstention to avoid hearing claims even though those claims could be properly adjudicated in federal court.[286] However, the U.S. Supreme Court and Third Circuit reiterated that abstention should be the exception rather than the rule.[287] Only when a federal action would interfere with "(1) ongoing state criminal prosecutions . . . (2) certain [quasi-criminal] civil enforcement proceedings . . .; [or] (3) civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions" should a federal court invoke *Younger* abstention.[288] Although the *ACRA Turf Club* court declined to address whether prior Third Circuit cases broadly applying *Younger* abstention were overruled by its decision,[289] the court's intent to limit broad, mechanical application of *Younger* abstention is clear.

In determining whether a state civil enforcement proceeding is quasi-criminal, courts should consider whether "(1) the action was commenced by the State in its sovereign capacity, (2) the proceeding was initiated to sanction the federal plaintiff for some wrongful act, . . . (3) there are other similarities to criminal actions, such as a preliminary investigation that culminated with the filing of formal charges" and (4) "whether the State could have alternatively sought to enforce a parallel criminal statute."[290] Sanctions, imposed to punish a party for a wrongful act, are retributive in nature.[291] Negative consequences such as the plaintiff's forfeiture of licensing rights or a substantial financial deposit requirement are not analogous to quasi-criminal sanctions justifying *Younger* abstention.[292]

There are three exceptions to *Younger* abstention: (1) state proceedings brought in bad faith or for purposes of harassment; (2) cases involving

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285. *Marks v. Stinson*, 19 F.3d 873, 884-85 (3d Cir. 1994).

286. *See ACRA Turf Club, LLC v. Zanzuccki*, 748 F.3d 127, 135-36 (3d Cir. 2014).

287. *See Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 73 (2013); *ACRA Turf Club, LLC v. Zanzuccki*, 748 F.3d 127, 136 (3d Cir. 2014).

288. *ACRA Turf Club, LLC v. Zanzuccki*, 748 F.3d 127, 136-37 (3d Cir. 2014) (quoting *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77-78 (2013)).

289. *ACRA Turf Club, LLC v. Zanzuccki*, 748 F.3d 127, 136 n.7 (3d Cir. 2014).

290. *ACRA Turf Club, LLC v. Zanzuccki*, 748 F.3d 127, 138 (3d Cir. 2014); *see also Smith & Wesson Brands, Inc. v. Attorney Gen. of N.J.*, 27 F.4th 886, 891 (3d Cir. 2022).

291. *ACRA Turf Club, LLC v. Zanzuccki*, 748 F.3d 127, 140 (3d Cir. 2014); *see also Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 79 (2013).

292. *ACRA Turf Club, LLC v. Zanzuccki*, 748 F.3d 127, 140-41 (3d Cir. 2014).

a flagrant and patent violation of express constitutional prohibitions; or (3) when the need for immediate equitable relief is extraordinarily pressing.[293] These exceptions are narrowly construed.[294]

1-6:4 *Colorado River* Abstention

Colorado River abstention[295] is used in extremely limited circumstances[296] to avoid parallel or duplicative state and federal cases with the same parties and claims.[297] Generally, simultaneous actions in federal and state courts are permitted.[298]

In deciding whether to exercise their discretion and apply *Colorado River* abstention, courts will consider various factors, including: (1) "whether the state court assumed in rem jurisdiction over [the] property" involved, if any; (2) whether the federal forum is inconvenient; (3) "the desirability of avoiding piecemeal litigation"; (4) the order in which the courts obtained jurisdiction; (5) whether federal or state law applies; and (6) whether the state court proceedings would adequately protect the plaintiff's federal rights.[299] Courts will weigh these factors and abstain only if the balance overcomes the strong presumption in favor of exercising jurisdiction.[300] Since all parallel cases, to an extent, entail piecemeal litigation, "there must be a strongly articulated congressional policy against piecemeal litigation in the specific context of the case under review" for the court to abstain.[301]

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293. *Ocean Grove Camp Meeting Ass'n of United Methodist Church v. Vespa-Papaleo*, 339 Fed. Appx. 232, 236 (3d Cir. 2009); *W.K., Jr. v. New Jersey Div. of Developmental Disabilities*, 974 F. Supp. 791, 796 (D.N.J. 1997).

294. *Richardson v. New Jersey*, No. 16-1135, 2016 WL 5858983, at *5 n.6 (D.N.J. Oct. 5, 2016) (referencing *Cade v. Newman*, 422 F. Supp. 2d 463, 466 (D.N.J. 2006)).

295. This abstention doctrine was recognized in *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976).

296. *Nationwide Mut. Fire Ins. Co. v. George V. Hamilton, Inc.*, 571 F.3d 299, 304 (3d Cir. 2009); *CTF Hotel Holdings, Inc. v. Marriott Int'l, Inc.*, 381 F.3d 131, 139 (3d Cir. 2004) ("The task is to ascertain whether there exist exceptional circumstances, the clearest of justifications, that can suffice under *Colorado River* to justify the surrender of that jurisdiction.") (internal quotations omitted).

297. *Kelly v. Maxum Specialty Ins. Grp.*, 868 F.3d 274, 285 (3d Cir. 2017).

298. *Ryan v. Johnson*, 115 F.3d 193, 195 (3d Cir. 1997).

299. *BIL Mgmt. Corp. v. New Jersey Econ. Dev. Auth.*, 310 Fed. Appx. 490, 492-93 (3d Cir. 2008) (affirming district court's decision to abstain).

300. *Ryan v. Johnson*, 115 F.3d 193, 200 (3d Cir. 1997).

301. *Ryan v. Johnson*, 115 F.3d 193, 198 (3d Cir. 1997) (italics omitted).