

TYPES NOT MAPPED YET January 17, 2025 | TTR not mapped yet | Tres Cleveland, Lorrie Hargrove

A Dogfight of a Removal Battle: A Supreme Court Decision with Higher Ed Impact

In a decision that could have a significant effect on Higher Ed litigation, the Supreme Court rules that a post-removal amended complaint destroyed federal question subject matter jurisdiction.

The U.S. Supreme Court issued a landmark, unanimous decision this week holding that a plaintiff's post-removal amendment of a complaint to remove federal questions destroyed federal subject matter jurisdiction. *See Royal Canin U.S.A., Inc., et al. v. Wulfschleger*, No. 23-677, 2025 WL 96212 (U.S. Jan. 15, 2025). The decision abrogates the law of five circuits going back nearly 35 years.

While the decision is based on "federal question" jurisdiction, it uses some sweeping language that could affect cases removed based on diversity jurisdiction as well. It could impact a Higher Ed case currently pending that previously was successfully removed to federal court.

As is often with cases reaching the Supreme Court, the case had a protracted "procedural back-and-forth" history. The plaintiff brought a putative class action in a Missouri state court against a prescription dog food company, claiming that the company engaged in deceptive sales practices because its dog food is ordinary dog food, and the prescription "fool[s] consumers into paying a jacked-up price." *Id.* at *4. The original complaint made claims only under state law, but alleged violations of the Federal Food, Drug, and Cosmetic Act (FDCA) in support of the state law claims. Defendants removed the case to federal court based on federal question jurisdiction related to the FDCA allegations, and the district court granted the plaintiff's motion to remand. On appeal, the Eighth Circuit vacated that decision and remanded the case to the district court, ruling that federal question jurisdiction was satisfied.

Once back in the district court, the plaintiff immediately filed an amended complaint to "delete its every mention of the FDCA, leaving her state law claims to stand on their own." *Id.* at *4. She filed a second motion remand the same day. The district court denied the remand motion, and later granted defendants' 12(b)(6) motion to dismiss the case on the merits. The Eighth Circuit vacated and ordered remand to state court. The Supreme Court granted certiorari.

The Court's Opinion

"Federal courts . . . are courts of limited jurisdiction," the Justice Kagan-written opinion begins. *Id.* at *3. It concludes that "[w]hen a plaintiff amends her complaint following her suit's removal, a federal court's jurisdiction depends on what the new complaint says. If (as here) the plaintiff eliminates the federal-law claims that enabled removal, leaving only state-law claims behind, the court's power to decide the dispute dissolves." *Id.* at *5.

The decision reasons that with regard to cases *originally* filed in federal court (as opposed to being removed), Supreme Court precedent already instructs a court to look at an amended complaint to determine whether it still has jurisdiction, *Id.* at *6 (citing *Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 473-74, 127 S. Ct. 1397, 167 L.E.2d 190 (2007)), and that the language in 28 U.S.C. § 1367 "draws no distinction between" original and removed cases. Thus, the rule for the two should be the same: "jurisdiction follows from (and only from) the operative pleading." *Id.* at *7.

The opinion states that such a rule "parallels a slew of other, mainly judge-made procedural rules linking jurisdiction to the amended, rather than original complaint," such as the fact that "[a]dding federal claims [in an original or removed suit] can create federal jurisdiction where it was once wanting." *Id.* (citations omitted). Similarly, it reasons, for both original and removed cases, "the addition of a non-diverse party" can destroy diversity jurisdiction. *Id.* (citations omitted).

The decision could create forum manipulation. Original and removed cases *are* different in that in the former, the plaintiff wants to be there, and in the latter, the plaintiff does not. In *Royal Canin*, the plaintiff filed the second motion to remand and the amended complaint the same day, clearly seeking a state forum. Since subject matter jurisdiction can be raised at any time, a plaintiff could take a “wait and see” approach and seek to amend the complaint and remand months or even years after the case was removed. The decision nonetheless concludes that any “forum manipulation benefit” will be “marginal,” partially because “plaintiffs can usually forum shop without resort to amendments.” *Id.* at *10, n. 9.

The court rejected as “inapposite” Royal Canin’s argument that in both original and removed cases, an amendment reducing the alleged amount-in-controversy to below the statutory threshold will usually not destroy jurisdiction, because the amount-in-controversy “concerns a fact on the ground” and not “the plaintiff’s decision, as the master of her complaint, to add or subtract claims or parties.” *Id.* at *8, n. 8. This “inapposite” language and reasoning should help fend off any argument for remand based on a post-removal amount-in-controversy amendment in a diversity-based case.

What's Next?

Particularly after *Royal Canin*, defendants should evaluate whether a purported class action, even if stating a federal question, can be removed under the Class Action Fairness Act (CAFA), 28 U.S.C. § 1332(d), which only requires minimal diversity, at least 100 unnamed class members, and \$5 million in amount-in-controversy. Royal Canin did originally remove based on CAFA diversity jurisdiction and on federal question, but the federal district court held that minimal diversity was not met where the alleged class was “Missouri citizens,” and Royal Canin, a Delaware company, had its principal place of business in Missouri.

Some are lauding the decision as reaffirming a plaintiff’s right to be masters of their complaints and to dictate their forum. There is no doubt we will see an increase in plaintiffs amending their complaints post-removal in an effort to destroy federal subject matter jurisdiction based on this decision.

This decision has an immediate impact on Higher Ed litigation. Frequently in cases against Higher Ed institutions, plaintiff’s counsel cites to federal statutes, regulations and rules that are embedded in and may even be the basis of their state law claims. After *Royal Canin*, they have more of an opportunity to manipulate their claims not only in an original complaint, but now in an amended complaint, and even after the denial of a motion to remand, to avoid federal court.

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