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## COMMENT

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### CATCH RULE 22: WHEN INTERPLEADER ACTIONS VIOLATE STATUTORY AND CONSTITUTIONAL DIVERSITY JURISDICTION REQUIREMENTS

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KRISTEN DEWILDE<sup>†</sup>

*Since the time of the Founding, actions in strict interpleader have allowed parties in possession of a fund or other asset to sue claimants who have competing claims to that asset. The party in possession of the asset or stake, also referred to as the “stakeholder,” has no ownership interest itself. Instead, it seeks only to hand off the stake to the rightful party and avoid any future liability.*

*Today, interpleader actions can be brought in federal courts in one of two ways. They can be brought under Congress’s Federal Interpleader Act, which confers jurisdiction on the federal courts to hear interpleader actions in which at least one claimant is diverse from another adverse claimant and \$500 is at stake. Alternatively, interpleader actions can be brought pursuant to Rule 22 of the Federal Rules of Civil Procedure. Because the Rules do not on their own confer jurisdiction on the federal courts, any action brought under Rule 22 must be brought under one of Congress’s general jurisdictional statutes, such as 28 U.S.C. § 1331, which requires a federal question in the lawsuit, or 28 U.S.C. § 1332, which requires in one instance a controversy between citizens from different states. Although the Federal Interpleader Act requires diversity between adverse claimants, many federal courts exercise jurisdiction over strict interpleader actions pursuant to Rule 22 and § 1332 merely when the stakeholder is completely diverse from the claimants.*

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<sup>†</sup> Comments Editor, Volume 168, *University of Pennsylvania Law Review*; J.D. Candidate, 2020, University of Pennsylvania Law School; B.A. & B.B.A, 2017, University of North Texas. On the first day of law school, Professor Tobias Barrington Wolff told my civil procedure class that he hoped we would, and encouraged us all, to fall in love with the law over the course of our next three-year intensive journey. I am forever grateful for his words, advice, and the role he has played in ensuring that I did, indeed, fall in love with the law. Additional thanks go to the editors of the *University of Pennsylvania Law Review*, especially Molly Wolfe and Lavi M. Ben Dor for their contributions throughout the editing process.

*This Comment argues that anytime an interpleader action is brought in a federal court pursuant to Rule 22 and § 1332, there must be diversity between adverse claimants—not just diversity between the stakeholder and the claimants—in order to satisfy Congress’s and the Constitution’s controversy and diversity requirements. When the stakeholder hands off an asset or fund, it admits that the stake belongs to someone else—it just is not quite sure which claimant should have the stake. The only controversy, then, is the dispute between the claimants over who is the rightful receiver. The Supreme Court appeared to confirm in the mid-twentieth century that the existing controversy in strict interpleader actions is the one between claimants, not the one between the stakeholder and the claimants. Further, Congress’s diversity jurisdiction statute and, arguably, the Constitution’s Diversity Clause require courts to realign parties to a lawsuit and determine their jurisdiction based on which parties the “actual” controversy is between. Finally, in addition to Supreme Court precedent and the realignment doctrine, this Comment argues that, based on the text and history of Article III’s Diversity Clause, the Constitution requires that claimants be diverse before federal courts may exercise jurisdiction over strict interpleader actions. The solution to this problem is simple: these actions can be brought and heard in state courts.*

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## INTRODUCTION

Richard and Mary Smith's divorce suit was pending for only three months when Mr. Smith unexpectedly died.<sup>1</sup> In the three months between Mr. Smith's Montgomery County divorce filing and his death, he changed the designated beneficiary of his State Farm life insurance policy from Ms. Smith to a man named Alejandro Plascencia.<sup>2</sup> This new life insurance designation, which occurred unbeknownst to Ms. Smith, violated a Montgomery County, Texas Standing Order which prohibits parties in a divorce proceeding from changing the beneficiary on a life insurance policy.<sup>3</sup> After Mr. Smith's death, both Ms. Smith and Mr. Plascencia submitted claims to the life insurance proceeds totaling \$120,000.<sup>4</sup>

When State Farm, an Illinois corporation, could not decide to whom the \$120,000 belonged, it filed a Rule 22 interpleader action in the Southern District of Texas against Ms. Smith and Mr. Plascencia, both Texas citizens.<sup>5</sup> Rule 22 interpleader actions allow parties, like State Farm, who are holders of some stake of money or property to go to court, admit that the stake belongs to *someone*, and "interplead" all competing claimants. The stakeholder can then deposit the stake with the court, be dismissed from the lawsuit, and allow competing claimants like Ms. Smith and Mr. Plascencia to battle it out in court who the proper claimant to the stake at issue is.<sup>6</sup>

As is typical in any interpleader action, the Southern District of Texas issued an order that so long as State Farm deposited the insurance proceeds with the registry of the court, it would be discharged from the lawsuit.<sup>7</sup> With State Farm gone, the federal district court was left to decide whether Texas law gave effect to a Texas county standing order that was violated during Texas divorce proceedings and, if so, whether insurance proceeds should be

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<sup>1</sup> Original Complaint in Interpleader ¶¶ 3.2, 3.4, *State Farm Ins. Co. v. Smith*, No. 17-2950 (S.D. Tex. Oct. 3, 2017). Smith admitted to both of these allegations. *See* First Amended Answer and Cross-Claim by Defendant Mary Louise Coley Smith ¶¶ 8, 10, *Smith*, No. 17-2950 (S.D. Tex. Feb. 12, 2018).

<sup>2</sup> *See* Original Complaint in Interpleader, *supra* note 1, ¶¶ 3.2-3.3. Smith admitted to these allegations. *See* First Amended Answer, *supra* note 1, ¶¶ 8, 9.

<sup>3</sup> *See* Montgomery County First Amended Standing Order Regarding Children, Pets, Property and Conduct of the Parties ¶ 6.2 (Dec. 13, 2013), [https://www.mctx.org/document\\_center/Courts/Standing%20Order%20-%20TRO%20StandingOrderpetschildprop.pdf](https://www.mctx.org/document_center/Courts/Standing%20Order%20-%20TRO%20StandingOrderpetschildprop.pdf) [<https://perma.cc/YP8N-MABD>].

<sup>4</sup> Original Complaint in Interpleader, *supra* note 1, ¶ 3-5.

<sup>5</sup> *Id.* ¶¶ 1.1, 1.2, 1.3, 3.8. Smith and Plascencia admitted to being Texas citizens. First Amended Answer, *supra* note 1, ¶2; Original Answer by Defendant Alejandro Plascencia ¶ 3, *Smith*, No. 17-2950 (S.D. Tex. Mar. 21, 2018).

<sup>6</sup> *See infra* text accompanying notes 48–51.

<sup>7</sup> *Smith*, No. 17-2950, slip. op. at 1-2 (S.D. Tex. Feb. 14, 2018) (order to deposit interpleader fund into registry of the court and dismiss with prejudice).

given to one Texas resident over the other. But if all roads lead to Texas, how did this case end up in federal court?

Although many civil procedure topics leave learned scholars grasping for clarity, this is not one of them. There is unanimous consensus that if a federal court hears a case between citizens of the same state presenting only questions arising out of state law, something has gone astray. As Part I of this Comment discusses, Article III of the Constitution extends federal judicial power to hear cases arising out of federal law. Alternatively, if no federal question exists, Article III also grants power to federal courts to hear controversies between diverse parties, in particular, “[c]ontroversies . . . between Citizens of different States,” as expressed in a provision known as the Diversity Clause.<sup>8</sup> Historical analyses posit that the Diversity Clause was intended to avoid potential state bias that may arise from a lawsuit being litigated in one citizen’s state courts over the other’s. Further, the Diversity Clause may have been intended to provide federal court jurisdiction when states themselves could not resolve disputes implicating issues of “national harmony.” Part I also discusses Congress’s similar concerns when it passed its first diversity statute granting federal courts jurisdiction to hear suits between citizens from different states.

Taking this to its logical conclusion, if Texas-based Ms. Smith is left to argue with Texas-based Mr. Plascencia about who is entitled to insurance policy proceeds under Texas state law, the federal judicial power has not been triggered by federal law. Nor can there be any fear that a Texas state judge would be biased against one Texas citizen over another Texas citizen—the only adverse parties in the lawsuit. Further, a state-law claim to insurance proceeds arising from a dispute between citizens of the same state appears to present an issue sitting squarely within the competence of state courts. It seems, then, that someone took a wrong turn into federal court.

This is not to say that parties like State Farm should not get to bring their interpleader actions somewhere. As Part I continues, interpleader has always been a needed, equitable solution to ensure justice and prevent competing claimants from dragging a stakeholder into multiple trials. However, interpleader was never intended to overstep the bounds of the federal judicial power under the U.S. Constitution. Congress had these concerns in mind when it passed the 1917 Federal Interpleader Act to provide a statutory vehicle for bringing interpleader actions in federal court. It required that all interpleader actions have at least one claimant be diverse from another claimant. But when the Federal Rules of Civil Procedure went into effect in 1938, lawyers began bringing actions under Rule 22 interpleader, not the Federal Interpleader Act. As is typical of the federal rules, Rule 22 did not speak to jurisdictional requirements such as the requirement that there be a federal question or that

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<sup>8</sup> U.S. CONST. art. III, § 2, cl. 1.

the “controversy” in the lawsuit be between diverse citizens. Because of this, lower federal courts held that Rule 22 interpleader actions had to meet the requirements of Congress’s general statutes granting federal courts jurisdiction over cases arising under federal law or in which complete diversity existed between the parties to a controversy—codified as 28 U.S.C §§ 1331 and 1332 today. And gradually, a phenomenon occurred among the lower federal courts in which most judges began to accept, without discussion, that as long as the stakeholder initiating the lawsuit was diverse from all the state claimants on the other side, Congress’s statutory and the Constitution’s “controversy” requirements between citizens from different states were met—regardless of whether the claimants themselves were diverse from each other.

As Part II of this Comment argues, when no federal question is at issue, the statutory and constitutional requirement that a “controversy” exist between diverse parties should be interpreted to require that some issue exists in which diverse parties stand in opposition. And when an insurance company or any other stakeholder admits its liability to *someone*, it has no controversy with competing claimants—it simply seeks a solution in equity to be dismissed from a lawsuit, having no concern for the ultimate outcome. Thus, this Comment posits that in order for strict interpleader actions to satisfy the statutorily- and constitutionally-based jurisdiction requirements, at least one claimant must be diverse from the other when no federal question is at issue and no other congressional grant of jurisdiction applies.

Although interpleader is a procedural device meant to prevent an innocent party from the injustice of experiencing multiple lawsuits, federal courts are not the only place where justice is available. Part III of this Comment explores the implications for federal courts that decide to dismiss cases with nondiverse claimants and no federal question like the one involving Mr. Plascencia and Ms. Smith. In particular, Part III takes note of the interpleader tools available in state courts and the various situations to which this Comment’s thesis would extend.

#### I. HISTORY OF THE ARTICLE III DIVERSITY CLAUSE, STATUTORY INTERPLEADER, AND RULE 22 INTERPLEADER ACTIONS

Today, insurance companies and other stakeholders frequently sue competing claimants for the proceeds of an insurance policy or other fund of money using some form of interpleader. It has become standard practice for these stakeholders to admit liability and leave the lawsuit behind using Rule 22 of the Federal Rules of Civil Procedure. It has also become standard practice for the federal courts to move the litigation forward in their courts, without questioning their jurisdiction, so long as the stakeholder is diverse from the claimants. But how did federal courts get to this point of routinely

hearing cases that they have no judicial power to hear? This Part examines the history of Article III's diversity jurisdiction requirement and Congress's similar statutory grant of jurisdiction. It explains the suggested purposes for the Constitution's Diversity Clause and touches on the history of Congress's statutory grants of diversity jurisdiction under the Clause.

This Part then traces the development of interpleader actions against the backdrop of the Diversity Clause. Although interpleader actions were available in federal courts from the judiciary's establishment to the enactment of the Federal Rules of Civil Procedure, diversity requirements for interpleader actions were rarely, if ever, discussed. In fact, many interpleader actions were brought in state courts.<sup>9</sup> Congress had no need to act in the interpleader arena until it realized that personal jurisdiction requirements were keeping interpleader actions with claimants from different states out of federal *and* state courts. Congress decided to remedy any potential double vexation in these situations by passing the Federal Interpleader Act in 1917. Then, when the Advisory Committee for the Federal Rules of Civil Procedure decided to accept a drafted interpleader rule in 1937, they explicitly debated the need for a rule that seemed duplicative of Congress's interpleader statute. The Committee did not intend to create a rule that would allow interpleader actions to get into federal courts with nondiverse, adverse claimants—beyond what Congress's interpleader statute permitted. Rather, they decided it would be convenient for lawyers to have the rule for interpleader actions stated amongst the other joinder rules. These blips in history reveal that scholars and Congress in the early twentieth century believed that to stay within Article III's bounds, interpleader actions filed in federal courts required diversity between adverse claimants, not diversity between the stakeholder and the claimants.

#### A. *History of Diversity Jurisdiction Under Article III of the Constitution*

Article III, Section 2 of the United States Constitution provides that the federal "judicial Power shall extend . . . to Controversies . . . between Citizens of different States . . ."<sup>10</sup> There is limited historical insight available as to what

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<sup>9</sup> A simple Westlaw search will reveal that between 1789 and 1917, close to 5000 state cases concerned interpleader in some way, compared to 302 federal cases. Similarly, Lexis Advance reveals 4381 state cases and 300 federal cases.

<sup>10</sup> U.S. CONST. art. III, § 2, cl. 1. It is widely understood and accepted that Congress cannot extend the jurisdiction of the federal courts beyond what the Constitution provides. See James E. Pfander, *The Tidewater Problem: Article III and Constitutional Change*, 79 NOTRE DAME L. REV. 1925, 1936-37 (2004) (explaining that despite the outcome of Supreme Court's decision in *Nat'l Mutual Insurance Co. v. Tidewater Transfer Co.*, 337 U.S. 582 (1949), which extended the federal courts' jurisdiction to reach disputes between a citizen of a state and a citizen of the District of Columbia, a majority of Justices in that case voted in favor of the principle that jurisdiction cannot be expanded by Congress beyond the scope of Article III).

the Framers and those who ratified the Constitution were thinking when they respectively wrote, and adopted, the clause granting federal courts power to hear cases between diverse citizens, even when no federal law question is at issue.

Despite the limited historical record, Judge Friendly, after conducting a thorough historical analysis, revealed several intentions and reservations that surrounded the Diversity Clause.<sup>11</sup> For instance, one intent was “to preserve the harmony of states and that of the citizens thereof.”<sup>12</sup> However, the Framers of the Constitution were mostly interested in *limiting* federal judicial power over such actions rather than enlarging it. James Madison described the “cognizance of disputes between citizens of different states” as a matter of little importance.<sup>13</sup> Other Diversity Clause opponents worried that “the state courts would be absorbed by those of the Federal Government.”<sup>14</sup> Some were concerned about the burden of costs and travel that would be placed on a person sued miles away from where they live.<sup>15</sup>

Despite opposition, the Diversity Clause was ratified, and since then the Supreme Court has long recognized the Diversity Clause’s existence as a way to meet the Constitution’s apprehension towards the states’ ability to be impartial when administering justice between citizens of different states.<sup>16</sup> Judge Friendly also revealed that although the Supreme Court has traditionally described the purpose of diversity jurisdiction as preventing bias in state courts against out-of-state citizens, the supporters of the Clause at the time of ratification were more worried about state legislatures.<sup>17</sup> Namely, they were worried about cases in which an out-of-state citizen would have to bring their property into a state and thus subject the property to the laws of that state.<sup>18</sup> Whether supporters feared state bias through their laws or their courts, Judge Friendly explained that the Diversity Clause’s ratification was ultimately made possible, despite its large body of opponents, because “there had been frequent assurances that Congress

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<sup>11</sup> See generally Henry J. Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 HARV. L. REV. 483 (1928).

<sup>12</sup> *Id.* at 485-86 (quoting 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 238 (Max Farrand ed., 1911) (Yates’s Notes, June 13, 1787) [hereinafter RECORDS OF THE FEDERAL CONVENTION]).

<sup>13</sup> *Id.* at 487 (citation omitted).

<sup>14</sup> *Id.* at 489.

<sup>15</sup> *Id.* at 491.

<sup>16</sup> *Id.* at 492 (citing *Bank of the U.S. v. Deveaux*, 9 U.S. (5 Cranch) 61, 87 (U.S. 1809)); see also, e.g., *Exxon Mobil Corp. v. Allapattah Servs.*, 545 U.S. 546, 553-54 (2005) (“The complete diversity requirement is not mandated . . . The Court, nonetheless, has adhered to the complete diversity rule in light of the purpose of the diversity requirement, which is to provide a federal forum for important disputes where state courts might favor, or be perceived as favoring, home-state litigants.”); *Guar. Tr. Co. v. York*, 326 U.S. 99, 111 (1945) (“Diversity jurisdiction is founded on assurance to non-resident litigants of courts free from susceptibility to potential local bias.”).

<sup>17</sup> Friendly, *supra* note 11, at 495.

<sup>18</sup> *Id.*

would prevent the dire consequences which the Anti-Federalists had seen arising from the judiciary clause.”<sup>19</sup> The Framers believed that “[t]he Supreme Court could hardly interpret the section in such a way as to render all these promises nugatory,” because “[t]here was no reason for taking over business which the state courts could handle without serious prejudice to any national interest.”<sup>20</sup>

One scholar, Professor Cross, has recently argued that Article III’s Diversity Clause cannot purely be understood by the “stock rationale” that the Framers wanted to prevent local bias.<sup>21</sup> As Professor Cross notes, the Constitutional Convention approved and sent to the Committee of Detail a drafted Diversity Clause that extended federal court jurisdiction over controversies that “involve the National peace and harmony.”<sup>22</sup> And when Edmond Randolph was left to draft the details of this “principle,” he was guided by the idea that the Convention wanted “to preserve the harmony of states and that of the citizens thereof.”<sup>23</sup> After a thorough historical analysis, Professor Cross concludes that the term “harmony” at the time of the Founding “emerge[d] from a conceptual effort by the Founders to identify matters that would produce entanglements of interests that would spill across state lines.”<sup>24</sup> Professor Cross concludes that in addition to the traditionally-asserted purpose of preventing state bias, the Diversity Clause was also “broadly designed to prevent state boundaries from impeding judicial efforts to dispose of controversies in the most fair and efficient manner possible.”<sup>25</sup> Professor Cross emphasizes that a “national harmony” understanding of the Diversity Clause reveals that the clause was not just meant to prevent state bias, but rather, it was intended to reach situations involving interstate matters that no single state government could meet on its own due to territorial constraints.<sup>26</sup>

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<sup>19</sup> *Id.* at 508.

<sup>20</sup> *Id.*

<sup>21</sup> Jesse M. Cross, *National “Harmony”: An Inter-Branch Constitutional Principle and Its Application to Diversity Jurisdiction*, 93 NEV. L. REV. 139, 148 (2014) (quoting Edward A. Purcell, Jr., *The Class Action Fairness Act in Perspective: The Old and the New in Federal Jurisdiction Reform*, 156 U. PA. L. REV. 1823, 1847 (2008)).

<sup>22</sup> *Id.* at 155 (quoting 2 RECORDS OF THE FEDERAL CONVENTION, *supra* note 12, at 39 (Journal, July 18, 1787)).

<sup>23</sup> *Id.* at 157 (quoting 1 RECORDS OF THE FEDERAL CONVENTION, *supra* note 12, at 238 (Yates’s Notes, June 13, 1787)). Professor Cross also notes that Madison and Hamilton referred to “harmony” of the states when describing the Constitution’s Diversity Clause in *The Federalist Papers*. *Id.* (citing THE FEDERALIST NO. 42, at 235 (James Madison) (Clinton Rossiter ed., 1999); THE FEDERALIST NO. 80, at 445-46 (Alexander Hamilton) (Clinton Rossiter ed., 1999)).

<sup>24</sup> *Id.* at 169.

<sup>25</sup> *Id.* at 186.

<sup>26</sup> *Id.*



### B. *History of Statutory Diversity Jurisdiction*

Using the Constitution as an outline for the reach of the federal judicial power, Congress has passed statutes since 1789 conferring jurisdiction to federal courts within the Constitution's bounds.<sup>27</sup>

Soon after the Constitution's ratification, the First Congress worked to pass an act establishing a federal judiciary and defining its jurisdiction. Similar to the objections coming from the ratifiers of the Constitution, several congressional members voiced dissent over the need for the establishment of a federal judiciary and the extent of its concurrent power with the states. One member, Thomas Tudor Tucker, wanted to strike the entirety of an act that would establish "inferior Federal courts" because he thought that "the State Courts were fully competent to the purposes for which these courts were to be created, and they would be a burthensome and useless expense."<sup>28</sup> Another member, Samuel Livermore, also argued against establishing federal courts, stating that "[t]here is already in each State a system of jurisprudence . . ."<sup>29</sup>

Despite concerns, the First Judiciary Act was passed by both houses in 1789.<sup>30</sup> It provided in part that the "circuit courts shall have original cognizance . . . of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, \$500, and "the suit is between a citizen of the State where the suit is brought, and a citizen of another state."<sup>31</sup>

Congress has always retained some form of its statute granting diversity jurisdiction to the lower federal courts; however, the statute has not gone without modification. In 1875, Congress amended the statute to grant jurisdiction to the circuit courts to hear suits where the "matter in dispute" exceeded \$500 and "in which there shall be a controversy between citizens of different States . . ."<sup>32</sup> This amendment not only used the word "controversy" instead of "suit," but it also allowed for actions to be brought in federal courts by citizens of two (diverse) non-forum states.<sup>33</sup>

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<sup>27</sup> See Honorable Diane P. Wood, *The Changing Face of Diversity Jurisdiction*, 82 *TEMPLE L. REV.* 593, 594-95 (2009) (explaining that it has been understood that Congress can restrict the jurisdiction of the lower federal courts to less than what the Constitution would permit).

<sup>28</sup> 1 *ANNALS OF CONG.* 813 (1789) (Joseph Gales ed., 1834).

<sup>29</sup> *Id.*

<sup>30</sup> First Judiciary Act of 1789, § 11, 1 *Stat.* 73.

<sup>31</sup> *Id.* at 78.

<sup>32</sup> Jurisdiction and Removal Act of 1875, ch. 137, § 1, 18 *Stat.* 470, 470.

<sup>33</sup> See RICHARD H. FALLON, JR. ET. AL., *HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM* 1420 (7th ed. 2015) (explaining that from 1789 to 1875, diversity jurisdiction only extended to cases between citizens of the forum state and a citizen of another state under Congress's diversity statute). The word "controversy" first appeared in the diversity statute in 1867; Congress did seem to have intended a difference in word choice, but not in meaning, when it introduced the term. See 2 *CONG. REC.* 4303 (1874).

The current diversity statute, 28 U.S.C. § 1332, resembles the 1875 amendments to the diversity statute. It now requires that the “matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs” and be between “citizens of different states.”<sup>34</sup>

As interpreted by the Supreme Court, Congress’s general diversity jurisdiction statute requires what has come to be known as “complete diversity,” meaning that all plaintiffs must be diverse from all defendants.<sup>35</sup> The Supreme Court has clarified that although Congress can require by statute complete diversity between adverse parties, the Constitution only requires minimal diversity, in which it is sufficient to have only one adverse party diverse from the other.<sup>36</sup> Although the Supreme Court has interpreted Congress’s general diversity jurisdiction statute as a narrower grant of jurisdiction than what the Constitution permits, Congress has exercised its ability to grant jurisdiction to the full extent permitted by the Constitution in certain contexts—namely, in cases of interpleader.<sup>37</sup>

### C. History of Interpleader Actions Before Statutory and Rule Interpleader

Interpleader has long been a part of American jurisprudence, and its form has remained more or less the same for the past 200 years. Interpleader developed to address situations in which two or more persons had competing claims to some stake of money, property, or other interest, and the person who was obligated to give that stake away did not know which claimant was the proper one.<sup>38</sup> Despite not knowing which claimant was the rightful owner of the stake, the stakeholder admitted liability and was “wholly indifferent” as to who actually received the stake.<sup>39</sup> Because interpleader bills were created

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<sup>34</sup> 28 U.S.C. § 1332(a) (2018).

<sup>35</sup> *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267, 267-68 (1806); *see also* *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 530 (1967) (“In [*Strawbridge*], this Court held that the diversity of citizenship statute required ‘complete diversity’ . . .”).

<sup>36</sup> *Id.* at 530-31.

<sup>37</sup> Wood, *supra* note 27, at 595 (“For a long time, with the exception of statutory interpleader, Congress made almost no use of its broader constitutional power to open the doors of the federal courts to suits involving the more expansive notion of minimal diversity.” (footnote omitted)).

<sup>38</sup> CHARLES EDWARDS, A PRACTICAL TREATISE ON PARTIES TO BILLS AND OTHER PLEADINGS IN CHANCERY: WITH PRECEDENTS 71 (1832); *see also* WILLIAM WILLIAMSON KERR, A TREATISE ON THE LAW AND PRACTICE OF INJUNCTIONS IN EQUITY 118-19 (William A. Herrick ed., 1871) (1867) (explaining that interpleader actions are brought when “there is a conflict between two or more persons severally claiming the same debt, duty, or obligation by different or separate interests, and [when] the person who is liable to discharge the debt, duty, or obligation does not know which of the claimants is in fact entitled,” and the person liable is “threatened with double vexation by having two or more processes going on against him at the same time in respect of a subject-matter in which he claims no interest, and in relation to which he has not incurred any independent liability to either of the claimants”).

<sup>39</sup> EDWARDS, *supra* note 38, at 71.

as a device solely to remedy the situation in which a stakeholder was threatened with two lawsuits by competing claimants<sup>40</sup>—also known as “double vexation”—interpleader originated in equity.<sup>41</sup> Interpleader allowed for competing claimants to be pitted against each other to “settle the contest between themselves, without involving the [stakeholder] in a dispute in which he is not interested . . . .”<sup>42</sup> The wisdom of the interpleader device is unquestioned because it prevents two or more trials from proceeding against one person for the same stake and instead allows for one proceeding to encompass multiple claimants at the same time.<sup>43</sup>

Although interpleader actions today are brought under statutes or rules of procedure in state and federal courts, interpleader originated in equity and was later recognized by common law courts due to the legal claims at issue.<sup>44</sup> And while modern interpleader routinely concerns cases where there are rival claimants to insurance proceeds,<sup>45</sup> interpleader is not limited to the insurance context. Nineteenth-century American interpleader actions were brought for many commercial transactions.<sup>46</sup> In Renaissance England, when bailees held chattels as security for the performance of one bailor’s promise to another, interpleader allowed the bailee to sue when he was “in doubt

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<sup>40</sup> 4 WILLIAM WAIT, A TREATISE UPON SOME OF THE GENERAL PRINCIPLES OF THE LAW, WHETHER OF A LEGAL, OR OF AN EQUITABLE NATURE: INCLUDING THEIR RELATIONS AND APPLICATION TO ACTIONS AND DEFENSES IN GENERAL, WHETHER IN COURTS OF COMMON LAW, OR COURTS OF EQUITY AND EQUALLY ADAPTED TO COURTS GOVERNED BY CODES 150 (1879) (“The proper remedy, therefore, of a person sued, or who is in danger of being sued, by several claimants of the same property, is to file a bill to compel them, by the authority of a court of equity, to interplead, either at law or in equity.”).

<sup>41</sup> KERR, *supra* note 38, at 118-20.

<sup>42</sup> *Id.* at 119; *accord* Wells, Fargo, & Co. v. Miner, 25 F. 533, 533 (D. Cal. 1885) (“This is an application for a preliminary injunction, in a suit on the equity side of the court . . . to compel [claimants] to interplead with one another respecting a certain certificate of deposit . . . .”); La. State Lottery Co. v. Clark, 16 F. 20, 21 (E.D. La. 1883) (“When . . . another person, not knowing to which of the claimants he ought of right to render a debt or duty, or to deliver property in his custody, fears that he may be hurt by some of them, he may exhibit a bill of interpleader against them.” (citation omitted)); City Bank of N.Y. v. Skelton, 5 F. Cas. 747, 748 (S.D.N.Y. 1846) (“I should feel no difficulty in declaring, upon the general principles of equity jurisprudence, that a bank may be entitled to relief by bill of interpleader against separate and adversary parties who claim title to moneys therein deposited.”).

<sup>43</sup> See Zechariah Chafee, Jr., *Modernizing Interpleader*, 30 YALE L.J. 814, 815, 818 (1921) (“The fundamental purpose of interpleader is simple and just. The applicant has incurred one obligation, but is subjected to two or more claims. If one claim is right, the rest must be wrong. An efficient and fair-minded system of justice ought not to subject a citizen to double vexation . . . .”).

<sup>44</sup> WAIT, *supra* note 40, at 149 (describing how interpleader was used at common law in cases where a person had come into accidental possession of another’s chattel and in which the chattel’s owner was contested or in cases of joint bailment).

<sup>45</sup> See Geoffrey C. Hazard, Jr. & Myron Moskovitz, *An Historical and Critical Analysis of Interpleader*, 52 CALIF. L. REV. 706, 706-07 (1964) (“Today, the standard case of interpleader is the insurance company confronted by rival claimants to the proceeds of a life insurance policy.”).

<sup>46</sup> *Id.* at 706.

whether the promise had been performed, and therefore in doubt as to whom to make redelivery.”<sup>47</sup>

Interpleader has traditionally been viewed as involving two stages: “The first stage relieves the [stakeholder] from double vexation and liability in a dispute foreign to him; in the second stage, the controversy is settled by the [claimants] directly concerned.”<sup>48</sup> In the first stage, the “most essential fact to be established . . . is that [the stakeholder] claims no interest in or to the property or thing in dispute.”<sup>49</sup> After the stakeholder establishes that he has “money in his hands which is claimed by two or more persons,” that he is “indifferent” between those claimants, and that he has “incurred no independent liability,” the stakeholder deposits the stake with the court.<sup>50</sup> The court in the second stage then discharges the stakeholder from the lawsuit while the claimants continue to litigate over the proper owner of the stake.<sup>51</sup>

This pure, “strict” form of interpleader, in which there is a disinterested stakeholder, should be distinguished from another kind of interpleader known as “nature of interpleader.”<sup>52</sup> In strict bills of interpleader, the stakeholder has no claim against either claimant and seeks nothing more than to leave the stake with the court and be discharged from the lawsuit.<sup>53</sup> Likewise, neither claimant seeks anything more from the stakeholder.<sup>54</sup> In contrast, bills in “nature of interpleader” (to which this Comment’s thesis does not apply) occur when the stakeholder also has some interest in, or claim to, the fund.<sup>55</sup> Courts in equity traditionally only recognized strict interpleader,<sup>56</sup> but, as discussed next, statutory and rule interpleader would eventually come to cover both types.

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<sup>47</sup> *Id.*

<sup>48</sup> Chafee, *supra* note 43, at 816.

<sup>49</sup> WAIT, *supra* note 40, at 151.

<sup>50</sup> Hayward & Clark v. McDonald, 192 F. 890, 892-93 (5th Cir. 1912).

<sup>51</sup> *Id.*

<sup>52</sup> 4 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE § 22.02 (Matthew Bender ed., 3d ed. 2019).

<sup>53</sup> Hayward & Clark, 192 F. at 892-93.

<sup>54</sup> *Id.*; see also Zechariah Chafee, Jr., *Interpleader in the United States Courts*, 41 YALE L.J. 1134, 1136 (1932) (“[W]hen interpleader is granted, the decrees discharging the stakeholder and ordering the claimants to interplead with respect to the deposit in court also enjoins the claimants from bringing or pressing any suits against the stakeholder.”).

<sup>55</sup> Sherman Nat’l Bank of N.Y. v. Shubert Theatrical Co., 238 F. 225, 230 (S.D.N.Y. 1916); see also Chafee, *supra* note 54, at 1138 (“Bills in the nature of interpleader lie when the applicant shows that in addition to multiple vexation he has some other reason for coming into equity, for instance, the administration of a trust, the enforcement of a lien, or cancellation of an instrument.”).

<sup>56</sup> MOORE ET AL., *supra* note 52, § 22.02; see also 2 JOSEPH STORY, COMMENTARIES ON EQUITY JURISPRUDENCE: AS ADMINISTERED IN ENGLAND AND AMERICA 506 (W.H. Lyon ed., 14th ed. 1918) (“[I]f the party himself seeking the aid of the court by bill of interpleader claims an interest in the subject-matter as well as the other parties, there is no foundation for the exercise of the jurisdiction; for in such a case he has other appropriate remedies.”).

#### D. *History of Statutory Interpleader Actions Under Federal Law*

Although interpleader actions were brought in federal courts throughout the nineteenth century, limitations on personal jurisdiction often prevented federal and state courts from hearing cases in which the claimants were from different states.<sup>57</sup> In response, Congress passed its first interpleader statute in 1917.<sup>58</sup>

This Federal Interpleader Act granted U.S. district courts jurisdiction over interpleader suits filed in equity by insurance companies or fraternal beneficiary societies when: (1) one or more of the claimants resided within the jurisdiction of the court in which the action was filed; (2) the insurance company or society had issued an insurance policy that provided a sum payment of at least \$500 to a beneficiary or legal representative; (3) “two or more adverse claimants, citizens of different States, [claimed] to be entitled to such insurance or benefits”; and (4) the insurance company deposited the amount of the policy with the clerk of the court.<sup>59</sup> After receiving a deposit from the insurance company, the court could discharge the company from the lawsuit and any further liability.<sup>60</sup>

The legislative history provides some insights into Congress’s reasons for passing the bill. The House Report asserts that the “purpose” of the Federal Interpleader Act was to solve the situation in which two or more people living in different states made competing claims to life insurance proceeds.<sup>61</sup> Because courts in equity did not have power to order personal service on defendants residing outside of their territorial jurisdiction, it was formerly impossible to bring interpleader actions against claimants living in different states.<sup>62</sup> When the claimants resided in different jurisdictions, “frequently two or more suits [were] brought against the company in different States,” resulting in “expensive and troublesome litigation” that “generally

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<sup>57</sup> See Chafee, *supra* note 54, at 1167 (explaining that there was little controversy in Congress enacting the Federal Interpleader Act and taking cases away from the state courts because it was normally impossible to serve out-of-state claimants, preventing litigation of cases involving claimants from different states); see also Developments in the Law, *Multiparty Litigation in the Federal Courts*, 71 HARV. L. REV. 874, 914 (1958) (“When claimants to be interpleaded are citizens of different states, there may be no one state court which is able to assert in personam jurisdiction over all the claimants because of the limitations imposed by the due-process clause of the fourteenth amendment.”).

<sup>58</sup> Federal Interpleader Act of 1917, Pub. L. No. 64-346, ch. 113, 39 Stat. 929, 929. This was later amended with changes that are not pertinent for the scope of this Comment. See Federal Interpleader Act of 1926, Pub. L. No. 68-465, ch. 317, 43 Stat. 976, 976-77. For a discussion on the differences between the Federal Interpleader Acts of 1917 and 1926, see Chafee, *supra* note 54, at 1163-64.

<sup>59</sup> Federal Interpleader Act of 1917, Pub. L. No. 64-346, ch. 113, 39 Stat. 929, 929.

<sup>60</sup> *Id.*

<sup>61</sup> H.R. REP. NO. 64-677, at 1 (1916).

<sup>62</sup> *Id.* at 2. This problem occurred because insurance proceeds were not considered “property” within the district. *Id.* However, for stakes that were considered property within the district, service could be effected on defendants outside the district. *Id.*

prevent[ed] a fair trial of the issues between the conflicting claimants.”<sup>63</sup> The Judiciary Committee similarly presented to the Senate that the reason for the Act was to “cure [the] evil” that existed when there was no tribunal in which the holder of an insurance fund could bring an interpleader action against claimants residing in different states.<sup>64</sup>

Because the Federal Interpleader Act of 1917 only provided an interpleader method for insurance companies and fraternal beneficiary societies, federal courts continued to exercise jurisdiction over interpleader actions at equity and under the common law that did not involve such companies.<sup>65</sup> This practice mostly stopped by 1936, when the Federal Interpleader Act was repealed and replaced with an amendment to the Judiciary Code that provided U.S. district courts with original jurisdiction over interpleader actions not exclusive to insurance company stakeholders.<sup>66</sup> The amendment allowed for bills of interpleader or in the nature of interpleader to be “filed by any person, firm, corporation, association, or society having in his custody or possession money or property of the value of \$500 . . . or being under any obligation written or unwritten to the amount of \$500 or more . . . .”<sup>67</sup> Congress kept the requirement that there be “[t]wo or more adverse claimants, citizens of different States . . . .”<sup>68</sup> The current interpleader statute, 28 U.S.C. § 1335, has essentially the same requirements.<sup>69</sup> The fact that Congress enacted such a broad statute granting jurisdiction to district courts over any bill of interpleader with \$500 at stake and at least one diverse claimant begs the question: Why was the Federal Rule of Civil Procedure for interpleader actions ever drafted? After all, could it really cover anything more?

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<sup>63</sup> *Id.* at 1.

<sup>64</sup> S. REP. NO. 64-660, at 2 (1916).

<sup>65</sup> See *Levinson v. United States*, 258 U.S. 198, 199 (1922) (adjudicating a case between competing claimants to a yacht being sold by the Secretary of the Navy); see also *Multiparty Litigation in the Federal Courts*, *supra* note 57, at 918 (“The Federal Interpleader Act was interpreted as not supplanting, but merely supplementing the pre-existing equity jurisdiction in interpleader.”).

<sup>66</sup> Act of Jan. 20, 1936, Pub. L. No. 74-422, 49 Stat. 1096, 1096-97 (amending section 24 of the Judicial Code). Only a few courts maintained that interpleader actions could be brought when a stakeholder was diverse from co-citizen claimants, and because the Federal Rules of Civil Procedure did not exist yet, these courts could only justify these actions as interpleader in equity or under the common law instead of interpleader under the Federal Interpleader Act. See *Sec. Tr. & Sav. Bank of San Diego v. Walsh*, 91 F.2d 481, 483 (9th Cir. 1937); *Penn Mut. Life Ins. Co. v. Meguire*, 13 F. Supp. 967, 971-72 (W.D. Ky. 1936).

<sup>67</sup> 49 Stat. at 1096.

<sup>68</sup> *Id.*

<sup>69</sup> 28 U.S.C. § 1335(a) (2018) (requiring that adverse claimants be of diverse citizenship “as defined in . . . section 1332 of this title” and that the amount in controversy be at least \$500).

### E. History of Rule Interpleader

In 1938, the Federal Rules of Civil Procedure went into effect pursuant to the Rules Enabling Act.<sup>70</sup> Whereas the Federal Interpleader Act and its subsequent amendments were meant to supplement interpleader actions in equity, the Federal Rules of Civil Procedure were meant to be “a merger of law and equity.”<sup>71</sup> Included in the new body of rules was Rule 22, which provided a method for interpleader for any lawsuit brought in federal court. It currently reads:

(a) GROUND(S).

(1) *By a Plaintiff.* Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:

(A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the plaintiff denies liability in whole or in part to any or all of the claimants.

(2) *By a Defendant.* A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

(b) RELATION TO OTHER RULES AND STATUTES. This rule supplements—and does not limit—the joinder of parties allowed by Rule 20. The remedy this rule provides is in addition to—and does not supersede or limit—the remedy provided by 28 U.S.C. §§ 1335, 1397, and 2361. An action under those statutes must be conducted under these rules.<sup>72</sup>

The Advisory Committee’s 1937 report containing the proposed rule sheds little light as to why it included Rule 22 when Congress had already enacted the Federal Interpleader Act.<sup>73</sup> The report only explained that the rule “allows

<sup>70</sup> Rules Enabling Act, Pub. L. No. 73-415, 48 Stat. 1064 (1934) (codified as amended at 28 U.S.C. § 2072 (2018)); see also Stephen B. Burbank, *The Rules Enabling Act of 1934*, 130 U. PA. L. REV. 1015, 1028 (1982) (discussing history of Rules Enabling Act and noting that the Rules became effective in 1938).

<sup>71</sup> *Multiparty Litigation in the Federal Courts*, *supra* note 57, at 918.

<sup>72</sup> FED. R. CIV. P. 22. The current rule is substantially the same as the one originally promulgated in 1937 and made effective the following year, and only differs from it in minor technical ways such as changes in the statutory numbers referenced. See MOORE ET AL., *supra* note 52, § 22.01.

<sup>73</sup> See Donald L. Doernberg, *What’s Wrong with This Picture?: Rule Interpleader, the Anti-Injunction Act, In Personam Jurisdiction, and M.C. Escher*, 67 U. COLO. L. REV. 551, 561 n.37 (1996) (asking if “the Federal Rules provided a different form of interpleader at all” and suggesting that “[i]t may have been to take advantage of a diversity pattern different from that authorized by the statute (i.e., one where all of the claimants were from the same state and the stakeholder was diverse from them)”).

an action to be brought under the recent interpleader statute when applicable,” and that “all remedies under the statute are continued, but the manner of obtaining them is in accordance with these rules.”<sup>74</sup> Despite the lack of explanation provided by the report, the Advisory Committee’s meeting minutes do show what the Rule drafters were up to when they entertained and then enshrined the idea of a federal rule for interpleader actions.

When the Advisory Committee first began to review the drafted interpleader rule in 1935, the committee members themselves were confused as to its purpose and function. One committee member, Warren Olney Jr., a former Supreme Court Justice of California, admitted that he “never had any interpleader experience in the Federal court, as it happens.”<sup>75</sup> He wondered whether the right of interpleader in the federal courts was in question insofar as a rule would be required for it, suggesting that the statute be left alone and that the committee should not deal with a rule.<sup>76</sup> In deciding how to properly craft the rule, one committee member suggested that the rule should simply state that a Texas claimant suing a New York corporation should be able to sue that corporation for a stake, and then the New York corporation could bring in other claimants to the fund.<sup>77</sup> However, immediately upon this suggestion William D. Mitchell, the Chairman of the Advisory Committee and former U.S. Solicitor and Attorney General, noted that in a “good many cases” that situation could go up against the question of “diversity of citizenship.”<sup>78</sup>

Another committee member, Yale Law School Dean Charles Edward Clark, suggested that even if the rule added little to the Federal Interpleader Act, it should be included because an interested lawyer might “try to look to find it” in the Rules.<sup>79</sup> The committee members then proceeded to have the Federal Interpleader Act of 1926 read aloud to them.<sup>80</sup> The members ended their discussion with a motion that the reporter would draft a rule on interpleader and then confirm with a professor the extent to which interpleader was not already covered by existing law.<sup>81</sup>

When the Advisory Committee met again in 1936 to discuss the rule, Congress had just passed the 1936 amendment to the Federal Interpleader Act, which expanded interpleader to any association or person, and not just

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<sup>74</sup> ADVISORY COMM. ON RULES FOR CIVIL PROCEDURE, REPORT CONTAINING PROPOSED RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS OF THE UNITED STATES 56 (1937).

<sup>75</sup> 2 ADVISORY COMM. ON RULES FOR CIVIL PROCEDURE, MEETING MINUTES 518 (Nov. 1, 1935), <https://www.uscourts.gov/rules-policies/archives/meeting-minutes/advisory-committee-rules-civil-procedure-november-1935-vol> [<https://perma.cc/L2QE-C6G8>].

<sup>76</sup> *Id.* at 518-19.

<sup>77</sup> *Id.* at 521-22.

<sup>78</sup> *Id.* at 522.

<sup>79</sup> *Id.* at 523.

<sup>80</sup> *Id.* at 525.

<sup>81</sup> *Id.* at 527-28.



insurance companies.<sup>82</sup> With the passage of the new amendment, the Committee remained unsure as to how their rule would differ from the statute.<sup>83</sup> Again, the Committee emphasized that the reason for the rule was “so that lawyers would know where to look for it.”<sup>84</sup> But then, Chairman Mitchell announced to the group that he had helped draft the 1917 Federal Interpleader Act.<sup>85</sup> He “remember[ed] putting in that clause about diversity of citizenship so as to be sure [he] had a constitutional statute,” referring specifically to the requirement that at least one claimant be diverse from the other.<sup>86</sup> The Chairman explained that he was not aware of “any authority of that kind which justifies our dragging in an interpleader statute where no question arising under the Constitution and laws of the United States is involved, in a case where there is a controversy between two persons who are not citizens of different states.”<sup>87</sup> Responding to the Chairman’s concerns, Dean Clark said that the rule would be subject to “existing jurisdiction,” and that if the Committee chose to adopt the rule, it would not be affirming or rejecting Congress’s requirement that there be diverse claimants—it would be leaving the matter to be “worked out.”<sup>88</sup> The Chairman stood by his claim:

I have not studied this; but if your provision or your act provides for depositing the money in court, so that there is no controversy as far as the deposit is concerned, between the plaintiff and either claimant, your only controversy is between the conflicting claimants. The result is that it is not necessary, under that kind of bill, to have the plaintiff [be] a citizen of a different State than both of the defendants.<sup>89</sup>

Coming to the Chairman’s aid was a memorandum prepared by Professor Chafee, which stated that “[t]he [diversity] clause [of the Federal Interpleader Act] is very important because it describes the necessary diversity of citizenship which gives Federal jurisdiction.”<sup>90</sup>

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<sup>82</sup> See *supra* text accompanying notes 66–68.

<sup>83</sup> 3 ADVISORY COMM. ON RULES FOR CIVIL PROCEDURE, MEETING MINUTES 588 (Feb. 22, 1936), <https://www.uscourts.gov/rules-policies/archives/meeting-minutes/advisory-committee-rules-civil-procedure-february-1936-vol-o> [<https://perma.cc/255A-ZSW4>].

<sup>84</sup> *Id.* at 591.

<sup>85</sup> *Id.* at 593.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 593–94.

<sup>88</sup> *Id.* at 594.

<sup>89</sup> *Id.* at 597. Chairman Mitchell did believe, however, that if a nature of interpleader action was filed in which the plaintiff did contest his own liability, then diversity of citizenship would be needed between the plaintiff and at least one of the claimants, which is a belief that is not at odds with the thesis of this Comment. *Id.* He specifically stated that “[t]he moment you . . . allow [a plaintiff] to contest his own liability as between himself and the man who is a citizen of the same State as himself, you are running squarely afoul of the Federal Constitution.” *Id.*

<sup>90</sup> *Id.* at 597–98.

These meeting minutes show that when the Advisory Committee decided to include a Federal Rule of Civil Procedure for interpleader actions: (1) at least some of the members did think any action brought under Rule 22 interpleader would still require diversity between claimants in order to comply with the Constitution; (2) the members decided to put these jurisdictional concerns to the side because the courts could work out the diversity requirements of the rule, which was not meant to confer jurisdiction; and (3) that the main purpose of including a rule—that the Committee itself struggled to distinguish from the statute—was simply to make it easier for lawyers to find it.

## II. NONDIVERSE CLAIMANTS IN STRICT BILLS OF INTERPLEADER VIOLATE STATUTORY AND CONSTITUTIONAL DIVERSITY REQUIREMENTS

Chairman Mitchell of the first Advisory Committee for the Federal Rules of Civil Procedure worried about a procedural rule's potential to open federal court doors for actions that would not have been allowed under Congress's statutory scheme. Specifically, the Chairman wondered if the creation of Rule 22 would "run[] afoul of the idea that we are enlarging the jurisdiction as [then] defined by law."<sup>91</sup> As anticipated, plaintiff-stakeholders began to bring actions in interpleader using Rule 22 that would not satisfy the jurisdiction requirements under Congress's interpleader statute. Courts promptly held that, because Rule 22 was not a jurisdiction-conferring rule, any action brought under Rule 22 needed to comply with Congress's jurisdictional statutes.<sup>92</sup> These included § 1332, requiring a controversy exceeding \$75,000 between citizens of different states and § 1331, requiring an action involving a question of federal law.<sup>93</sup> However, it is unclear why so many courts assumed that the requirements of § 1332, in addition to those of the Constitution, were met merely because a plaintiff-stakeholder was diverse from co-citizen claimants and the amount in controversy was proper—especially in light of the fact that this view was not supported by scholars of interpleader actions at the time.<sup>94</sup> In other words, it is

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<sup>91</sup> *Id.* at 596.

<sup>92</sup> *E.g.*, *Danville Bldg. Ass'n of Danville, Ill. v. Gates*, 66 F. Supp. 706, 709 (E.D. Ill. 1946) ("Nor did the [Federal Interpleader] Act abrogate the right to bring suits of interpleader under general provisions of [an earlier version of § 1331], which confers general jurisdiction over actions based on diversity or a federal question."); *Harris v. Travelers Ins. Co.*, 40 F. Supp. 154, 156 (E.D. Pa. 1941) ("Rule 22(1) adopts the jurisdictional rule for ordinary actions . . . Thus, altho [sic] under the Interpleader Act there must be diversity between the claimants, such is not required under . . . Rule 22.").

<sup>93</sup> 28 U.S.C. §§ 1331, 1332(a)(1) (2018).

<sup>94</sup> *See, e.g.*, Chafee, *supra* note 54, at 1168 (stating that "[i]f there are only two claimants, it is certain that their co-citizenship would be a bar to relief").

not clear why courts assumed that a “controversy” existed between a stakeholder and claimants in strict interpleader actions.

Today, federal courts adjudicate interpleader actions between claimants of the same state almost biweekly.<sup>95</sup> But as this Part presents, when a disinterested stakeholder brings claimants into a federal court to battle out the ownership of a certain stake, the claimants are set up as adverse parties to each other, not to the stakeholder. When no federal issue exists and federal courts instead rely on state-based party diversity for their subject-matter jurisdiction, diversity between the claimants must be required in order to prevent an exercise of jurisdiction beyond Congress’s statutory grant and the Constitution.

As this Part presents, the Supreme Court has consistently interpreted the meaning of “controversy” in the context of congressional statutory grants of jurisdiction to require disputes between parties with colliding interests. Because claimants in strict interpleader actions have colliding interests but the stakeholder and claimants do not, any Rule 22 interpleader action brought under § 1332 goes beyond Congress’s grant of statutory jurisdiction if it does not include diverse claimants.

This Part also proposes that any exercise of jurisdiction over nondiverse claimants when no federal question exists violates Article III’s Diversity Clause in addition to § 1332. This Part reaches this conclusion by first interpreting what Article III’s “controversy” requirement entails based on its history and text. Next, it argues that the Supreme Court’s interpretation of “controversy” in the context of congressional statutory grants of jurisdiction should also be understood as one grounded in the Constitution. Finally, this Part discusses how two Supreme Court opinions in the mid-twentieth century already appear to offer an interpretation of what kinds of interpleader actions may be heard in federal court within the bounds of the Constitution. Both of

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<sup>95</sup> At the time of this writing, multiple interpleader cases involving nondiverse claimants have been litigated in federal courts in just the last three months. For examples, see *Principal Life Ins. Co. v. Noble*, No. 18-4576, 2019 WL 1651750, at \*2 (N.D. Ill. Apr. 17, 2019) (Iowa plaintiff-stakeholder and Illinois defendant-claimants); *Primerica Life Ins. Co. v. Frantz*, 371 F. Supp. 3d 960, 963 n.1 (D. Kan. 2019) (Tennessee and Georgia plaintiff-stakeholder and Kansas defendant-claimants); *In re \$323,647.60 in Funds Belonging to Cal. Valley Miwok Tribe*, No. 18-01194, 2019 WL 687832, at \*4 (D.N.M. Feb. 19, 2019) (plaintiff-stakeholder diverse from all California claimant-defendants); *Transamerica Life Ins. Company’s Complaint-in-Interpleader at 1, Rabadi v. Lysaght Law Group LLP*, 753 F. App’x 463 (9th Cir. Feb. 20, 2019) (No. 17-55570) (Iowa plaintiff-stakeholder and California defendant-claimants); *Complaint for Interpleader at 1, United of Omaha Life Ins. Co. v. Seay*, 2019 WL 1338406 (S.D. Ga. Mar. 25, 2019) (No. 1-00010) (Nebraska stakeholder and Georgia claimants); *Complaint for Interpleader at 1, Metro. Life Ins. Co. v. Prewitt*, 2019 WL 917430 (S.D. Fla. Feb. 25, 2019) (No. 18-81402) (New York plaintiff-stakeholder and Florida defendant-claimants); *Complaint in Interpleader at 1, Am. Fidelity Assurance Co. v. Humphreys*, 2019 WL 486317 (D. New Mex. Feb. 7, 2019) (No. 17-979) (Oklahoma plaintiff-stakeholder and New Mexico defendant-claimants); *Complaint in Interpleader at 1, Hailey v. Waller*, 363 F. Supp. 3d 605 (D. Md. Feb. 4, 2019) (No. 18-00436) (New York plaintiff-stakeholder and Maryland defendant-claimants).

these cases seemed to hold that diversity must exist between adverse claimants to meet Congress's and the Constitution's controversy requirement.

A. *The Controversy Required by Congress's Diversity Jurisdiction Statute*

Since 1789, Congress has granted jurisdiction to the lower federal courts over "suits,"—later described as "controversies"—between citizens of different states so long as a specified amount in dispute is met.<sup>96</sup> With over 200 years of building precedent, the Supreme Court has spoken a multitude of times as to the meaning of "controversy" under Congress's diversity statute. As described below, the Supreme Court has consistently held that in order to satisfy the "controversy" requirement under statutory diversity jurisdiction, courts must ascertain which parties the "real" dispute exists between—looking beyond who is merely deemed the "plaintiff" or the "defendant." This Comment argues that under this long-established interpretation of Congress's diversity jurisdiction statute, strict interpleader actions where no federal question arises requires diversity between competing claimants—the parties to which a real "controversy" is between—when the interpleader action is brought under Rule 22 and § 1332 instead of Congress's interpleader statute.

As early as *Strawbridge v. Curtiss*,<sup>97</sup> the Supreme Court placed an emphasis on looking at distinct and joint interests when deciding if a controversy existed between citizens from different states. The Court interpreted the early diversity jurisdiction statute as meaning

that each distinct interest should be represented by persons, all of whom are entitled to sue, or may be sued, in the federal courts. That is, that where the interest is joint, each of the persons concerned in that interest must be competent to sue, or liable to be sued, in those courts.<sup>98</sup>

The Court built upon the need to look at the "interests" of the parties involved when it began interpreting Congress's 1875 diversity statute—which granted jurisdiction to federal courts and allowed for removal when "a controversy between citizens of different States," existed with a matter in dispute exceeding \$500.<sup>99</sup> In deciding if a controversy existed between citizens from the different states, the Court in the *Removal Cases* determined it had

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<sup>96</sup> See *supra* text accompanying notes 27–35.

<sup>97</sup> 7 U.S. (3 Cranch) 267, 267 (1806), *overruled in part* by *Louisville, Cincinnati, & Charleston R.R. Co. v. Letson*, 43 U.S. 497 (1844).

<sup>98</sup> *Id.* Note that the first diversity jurisdiction statute referred to a "suit" instead of a "controversy." See *supra* text accompanying notes 32–33.

<sup>99</sup> The *Removal Cases*, 100 U.S. 457, 457 (1879), *superseded by statute as recognized in* *Rothner v. City of Chi.*, 879 F.2d 1402 (7th Cir. 1989) (citing *Jurisdiction and Removal Act of 1875*, ch. 137, § 1, 18 Stat. 470 (1875)).

the “power to ascertain the real matter in dispute, and arrange the parties on one side or the other of that dispute,” “without regard to the position the parties occupied in the pleadings as plaintiffs or defendants.”<sup>100</sup> Applying this in *Corbin v. Van Brunt*, the Court had to determine if removal was proper in a case concerning a land possession dispute.<sup>101</sup> Although diverse citizens were procedurally against each other in the lawsuit, the Court determined that the “real controversy” over the land only existed between the parties to the lawsuit that were from the same state.<sup>102</sup> Therefore, removal was not proper.<sup>103</sup>

The Supreme Court subsequently applied these principles for determining “controversy” in non-removal suits originally filed in federal courts. In *Dawson v. Columbia Avenue Savings Fund*, the Court held that a case should have been dismissed for lack of subject-matter jurisdiction when the technical defendant-company had “[n]o difference or collision of interest or action [] alleged or even suggested” between it and the plaintiff.<sup>104</sup> The Court determined that the defendant-company’s interest was aligned with that of the plaintiff, which really placed it at odds with another defendant in that case—a city of the same citizenship.<sup>105</sup> Thus diversity jurisdiction was destroyed.<sup>106</sup> In another case, when deciding whether a lower federal court had indeed properly re-aligned parties based on the controversy in dispute, the Court held that what constitutes a controversy is determined by whether or not an interest of one party is “adverse” to the interest of another.<sup>107</sup> It explained that the determination of adverse interests should be based on the attitude of the parties “towards the actual and substantial controversy.”<sup>108</sup>

The Supreme Court’s interpretation of the controversy required between diverse citizens under Congress’s diversity jurisdiction statute culminated in *City of Indianapolis v. Chase National Bank of N.Y.*, which provided the “greatest guidance” for what has come to be known as the realignment doctrine.<sup>109</sup> When deciding if jurisdiction existed under an earlier version of § 1332, the Court explained that “[t]o sustain diversity jurisdiction there must exist an actual, substantial controversy between citizens of different states,” and that

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<sup>100</sup> *Pac. R.R. v. Ketchum*, 101 U.S. 289, 298 (1879) (discussing the *Removal Cases*).

<sup>101</sup> 105 U.S. 576, 577 (1881).

<sup>102</sup> *Id.* at 578.

<sup>103</sup> *Id.*; see also *Evers v. Watson*, 156 U.S. 527, 532 (1895) (“In such case, it would have been perfectly competent for the court to ascertain the real matter in controversy, and to have rearranged the parties to the suit upon the opposite sides of such controversy, and thus sustain the jurisdiction of the court.”).

<sup>104</sup> 197 U.S. 178, 180-81 (1905).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Sutton v. English*, 246 U.S. 199, 204 (1918).

<sup>108</sup> *Id.*

<sup>109</sup> 314 U.S. 63 (1941); see also Debra Lyn Bassett & Rex R. Perschbacher, *Realigning Parties*, 2014 UTAH L. REV. 109, 114 (citing *Chase Nat’l Bank*, 314 U.S. at 68-70).

it is the duty of federal courts “to look beyond the pleadings and arrange the parties according to their sides in the dispute.”<sup>110</sup> As the Court held, in determining whether there is a “necessary collision of interest,” it must be “ascertained from the principal purpose of the suit and the primary and controlling matter in dispute.”<sup>111</sup>

Applying this doctrine to interpleader actions, anytime a strict interpleader action is brought between a stakeholder and claimants under Rule 22 and § 1332, the “actual” controversy seems to only exist between the claimants. The stakeholder makes no claim to the stake at issue and has no interest in which claimant ultimately receives it. The primary purposes of interpleader actions are to release a disinterested stakeholder from future liability and to determine which claimant holds proper title to a stake. As to the purpose of releasing the stakeholder from future liability, the stakeholder has no “adverseness” or “collision of interests” with the claimants because all parties agree that the stakeholder is liable, should release the stake, and can then leave the lawsuit. As to the primary purpose of deciding title, the stakeholder is not opposed to either claimant receiving the stake at issue. Because the “real” and only controversy, or “collision of interests,” appears to only be between the claimants, this means that any strict interpleader action brought under Rule 22 and § 1332 must have completely diverse claimants in order to satisfy the requirements of Congress’s general diversity jurisdiction statute.

Not only does an application of the realignment doctrine lead to the conclusion that Rule 22 and § 1332 strict interpleader actions necessitate diverse claimants, the Supreme Court appears to have already confirmed this. In *Treimies v. Sunshine Mining Co.*, the Sunshine Mining Company, a Washington corporation, filed a bill of interpleader under the Federal Interpleader Act of 1936 against claimants to the Sunshine Mining Company’s stocks.<sup>112</sup> The adverse claimants were from Washington and Idaho.<sup>113</sup> At the time, the Court had not yet determined if the Constitution’s Diversity Clause required complete diversity between all plaintiffs and all defendants like the

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<sup>110</sup> *Chase Nat’l Bank*, 314 U.S. at 69 (internal citations and quotation marks omitted).

<sup>111</sup> *Id.* at 69 (internal citations and quotation marks omitted). In following the Supreme Court’s realignment doctrine as articulated in *Chase Nat’l Bank*, the Circuit Courts are split in applying one of two tests. Bassett & Perschbacher, *supra* note 109, at 118. Several circuits apply the “substantial-controversy” test, which requires a federal court to realign the parties if there is no “actual or substantial conflict between adverse litigants . . .” *Id.* Other circuits apply the “principal-purpose” test, in which the “federal court must sort through the issues within the lawsuit, determine the lawsuit’s principal purpose, and align the parties according to their positions with respect to that particular issue.” *Id.*

<sup>112</sup> 308 U.S. 66, 66-68, 70 (1939) (citation and quotations omitted).

<sup>113</sup> *Id.* at 68.

requirement under Congress's diversity jurisdiction statute.<sup>114</sup> Because the plaintiff-stakeholder was not completely diverse from all of the defendant-claimants, the Court raised on its own motion the question of its jurisdiction to hear the case.<sup>115</sup> The Court held that it need not decide whether the stakeholder needed to be diverse from the claimants under the possibly mandated complete diversity requirement because the "real controversy" at issue existed "between the adverse claimants,"—not between the stakeholder and claimants.<sup>116</sup> The Court explained that when the complainant-stakeholder deposits money or property involved in the dispute and seeks to be discharged from further liability, it demonstrates its "disinterestedness as between the claimants and as to the property in dispute, an essential in interpleaders."<sup>117</sup>

Although the Supreme Court did not clearly specify in *Treimies* the statutory or constitutional source of its "controversy" interpretation, the Supreme Court seemed to be saying that at a minimum, under Congress's jurisdictional statutes, the "real" controversy in a strict interpleader action is only the dispute that exists between the claimants. This Comment later poses that the *Treimies* Court's understanding of what constitutes a real controversy in interpleader actions should also be the understanding of the "controversy" that is required by the Constitution.<sup>118</sup> However, it can at least be fairly ascertained that in any strict interpleader action brought under Rule 22 or Congress's § 1332 diversity statute, the Supreme Court would interpret the only "real" controversy as that between the claimants. Thus, any strict interpleader action brought pursuant to Federal Rule of Civil Procedure 22 and under § 1332 that does not have completely diverse claimants contravenes Congress's statutory grant of jurisdiction to hear cases between citizens from different states.

### B. *The Controversy Requirement of Article III*

Article III extends federal judicial power to hear "controversies" between citizens of different states.<sup>119</sup> However, the Supreme Court has only interpreted the meaning of the "controversy" requirement between diverse citizens against the backdrop of congressional diversity jurisdiction statutes and has never specified if its interpretation applies to both the diversity statute and the Constitution's Diversity Clause. Importantly, the Supreme Court has articulated that the real "controversy" in a strict interpleader action

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<sup>114</sup> See *id.* at 71 ("For the determination of the validity of the Interpleader Act we need not decide whether the words of the Constitution, 'Controversies . . . between Citizens of different States,' have a different meaning from that given by judicial construction to similar words in the Judiciary Act.").

<sup>115</sup> *Id.* at 70.

<sup>116</sup> *Id.* at 71-72.

<sup>117</sup> *Id.* at 72.

<sup>118</sup> See *infra* Section II.B.

<sup>119</sup> U.S. CONST. art. III, § 2, cl. 1.

exists only between the claimants but has not explicitly specified whether it came to this conclusion based on an interpretation of Congress's jurisdictional statutes, or the Constitution itself. Despite the Supreme Court's lack of specificity, this Comment argues that the *constitutional* "controversy" in strict interpleader actions must also be interpreted to encompass only the dispute between the claimants.

Beginning with the text of Article III, Webster's dictionary defined "controversy" near the time of ratification as a "dispute," "debate," and "agitation of contrary opinions."<sup>120</sup> It also described a "controversy" as a "suit in law; a case in which opposing parties contend for their respective claims before a tribunal."<sup>121</sup> Further, the text of Article III is notable overall because in some instances it extends the judicial power to "all Cases," while in other instances, it only extends the judicial power to "Controversies."<sup>122</sup> Webster's Dictionary near the time of ratification provided a much broader definition for "case" than "controversy," defining it as "that which falls, comes, or happens; an event."<sup>123</sup> Similarly, in a 1792 dictionary, "case" was defined as "state of a legal question."<sup>124</sup> It would seem, then, that if the Constitution's textual distinction between "Cases" and "Controversies" is to be given any importance that "Controversy" must have some adversarial meaning that is narrower than "Cases" in which legal questions are presented to the courts.<sup>125</sup>

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<sup>120</sup> *Controversy*, WEBSTER'S DICTIONARY 1828, <http://webstersdictionary1828.com/Dictionary/controversy> [https://perma.cc/PT7L-4PVG] (last visited July 31, 2019) [hereinafter *1828 Controversy*]. Merriam-Webster similarly defines controversy today as "a discussion marked especially by the expression of opposing views." *Controversy*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/controversy> [https://perma.cc/AR9C-TFEW] (last visited July 31, 2019).

<sup>121</sup> *1828 Controversy*, *supra* note 120.

<sup>122</sup> U.S. CONST. art. III, § 2, cl. 1 ("The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties . . . under their Authority;—to all Cases affecting Ambassadors . . . ;—to Controversies to which the United States shall be a Party . . .").

<sup>123</sup> *Case*, WEBSTER'S DICTIONARY 1828, <http://webstersdictionary1828.com/Dictionary/case> [https://perma.cc/KLK5-J4TZ] (last visited July 31, 2019).

<sup>124</sup> SAMUEL JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE: CASE (10th ed. 1792), <https://books.google.com/books?id=j-UIAAAAQAAJ&printsec=frontcover#v=onepage&q&f=false> [https://perma.cc/2A3S-UCWG].

<sup>125</sup> See Akhil Reed Amar, *The Two-Tiered Structure of the Judiciary Act of 1789*, 138 U. PA. L. REV. 1499 (1990) (analyzing the related distinction in Article III between "all cases" and just "controversies" in assessing whether Congress has power to strip federal courts of jurisdiction over certain cases). Professors Bassett and Perschbacher point out that while "[t]here is support in both case law and legal commentary for the notion that 'case' is a broader term than 'controversy,'" the distinction may not be significant because "three-hundred-years of legal practice and tradition" have established that both require an adversarial suit. Bassett & Perschbacher, *supra* note 109, at 126-27.



The Federalist Papers provide little insight as to how people at the time of ratification thought about the meaning of “controversy.”<sup>126</sup> However, it is widely understood that the Constitution’s requirement of diverse citizens was meant to (1) prevent state court bias by state judges in controversies between citizens of different states where there is a potential for the judge to favor the local party or (2) prevent state-based bias from the legislature in controversies between citizens of different states where there is a potential for state laws to favor the local party.<sup>127</sup> It has also recently been posited that the Constitution’s Diversity Clause had the purpose of providing jurisdiction to federal courts when no single state government could address matters of national interest on its own due to territorial constraints.<sup>128</sup> Even so, the grant of diversity jurisdiction to federal courts was hotly contested and viewed as unnecessary by many. Diversity jurisdiction was ultimately ratified but under promises and understandings that it would not extend too far.<sup>129</sup>

Thus, the Diversity Clause and its “controversy” requirement can be construed in one of two ways. First, it could be interpreted broadly to include any instance in which a citizen from one state is procedurally placed against a citizen of another state in litigation. If the Diversity Clause’s controversy requirement is interpreted in this first, broader fashion, then it is clear that when a disinterested stakeholder of State *A* brings State *B* claimants to court, federal courts have diversity jurisdiction to hear the case because the stakeholder is on one side of the case and is diverse from the claimants placed on the other side. However, it is questionable whether Article III’s controversy requirement was written so that it could be easily disposed by litigation devices that place one party before the *v.* and the other parties after it.<sup>130</sup>

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<sup>126</sup> All mentions of “controversy” throughout the Federalist Papers use it in passing to discuss different provisions of the Constitution without discussing how people at the time viewed the meaning of a “controversy.” See generally THE FEDERALIST NOS. 78, 79, 80, 81, 82, 83 (Alexander Hamilton).

<sup>127</sup> See *supra* text accompanying notes 16–17; see also *Burford v. Sun Oil Co.*, 319 U.S. 315, 336 (1943) (Frankfurter, J., dissenting) (“[Congress] believed that, consciously or otherwise, the courts of a state may favor their own citizens. Bias against outsiders may become embedded in a judgment of a state court and yet not be sufficiently apparent to be made the basis of a federal claim.”).

<sup>128</sup> See *supra* text accompanying notes 21–26.

<sup>129</sup> See *supra* text accompanying note 20. Many scholars have since argued to either limit or abolish diversity jurisdiction altogether in federal courts. See, e.g., 20 CHARLES A. WRIGHT & MARY KAY KANE, FEDERAL PRACTICE & PROCEDURE DESKBOOK § 25 n.17 (2d ed. 2018) (listing numerous articles arguing for abolishment or constraint of diversity jurisdiction in federal courts); Adrienne J. Marsh, *Diversity Jurisdiction: Scapegoat of Overcrowded Federal Courts*, 48 BROOK. L. REV. 197 (1982) (arguing for restrictions to be placed on diversity jurisdiction).

<sup>130</sup> This issue does raise an interesting question regarding Congress’s ability to define by statute the citizenship of corporations. 28 U.S.C. § 1332(c) (2018). Although this in essence gives Congress some authority in defining who is “diverse,” and thus what satisfies the Constitution’s Diversity Clause, this Comment’s author believes that this authority is not unrestrained—that is, Congress could only define the citizenship of a corporation within reasonable limitations. After all,

The second possible interpretation is that the Constitution's Diversity Clause only allows federal jurisdiction in cases when there is a state-law-based legal issue in dispute between at least two parties from different states. This interpretation honors the definition of "controversy" near the time of ratification, which entailed an actual "dispute" in which the parties on each side of the controversy stood in opposition. Further, the latter interpretation better honors the suggested purposes of the Diversity Clause. If the purpose was meant to prevent the potential for any state-based bias against out-of-state parties, this interpretation allows courts to focus on the parties to which a material controversy exists where state bias could creep in. Additionally, if the Diversity Clause's purpose was to provide for jurisdiction over national matters which state governments could not resolve themselves, the narrower interpretation allows courts to assess if the matter in question is really one in which a controversy implicates national interests.

Thus, this Comment argues that the proper interpretation of the Diversity Clause's controversy requirement should require adverse parties, not procedurally opposing parties, to be diverse—similar to how the Court has interpreted the "controversy" requirement against the backdrop of Congress's diversity jurisdiction statutes.<sup>131</sup> And when a stakeholder comes to court asking to leave its fund behind and be discharged from any future liability, that stakeholder is not adverse to either claimant of the fund. It is adverse solely to the possible injustice of double vexation. Interpleader is equitable relief, not a recognition that a controversy has been established between the stakeholder and the claimants of the fund. To interpret "controversy" to encompass the disinterested stakeholder versus the adverse claimants would allow Article III to encompass any case, not just controversy, that contains some diverse party even if no genuine legal dispute between citizens of different states exists.

This second, narrower interpretation is also supported by the Supreme Court's holdings about the meaning of "controversy" in jurisdictional contexts. As discussed earlier, the Court has only spoken on the meaning of "controversy" when interpreting jurisdictional statutes. There, a "controversy" requires adverse parties to an actual or substantial controversy in which the

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the Constitution's mandate that diversity jurisdiction be based in part on citizens from "different States" should have some limiting meaning. U.S. CONST. art. III, § 2, cl. 1.

<sup>131</sup> See *United States v. Johnson*, 319 U.S. 302, 305 (1943) (ordering the district court to dismiss a lawsuit in which collusion between the defendant and the plaintiff caused there to be no "genuine adversary issue" and the lawsuit lacked the "honest and actual antagonistic assertion of rights" to be adjudicated—a safeguard . . . which we have held to be indispensable to adjudication of constitutional questions by this Court" (quoting *Chicago & Grand Trunk Ry. Co. v. Wellman*, 143 U.S. 339, 345 (1892))).

parties' interests collide.<sup>132</sup> However, these holdings should be understood as also saying something about the meaning of “controversy” under the Constitution. As recently argued by Professors Bassett and Perschbacher, these decisions should be understood as grounded in the Constitution for several reasons, including that: (1) what is known as the “realignment doctrine” has been applied in contexts besides those concerning only diversity jurisdiction;<sup>133</sup> (2) “realignment serves an important constitutional purpose in ensuring the adversity necessary to the constitutional case-or-controversy requirement”;<sup>134</sup> (3) it has long been accepted that a “controversy” must be more narrowly defined than a “case”;<sup>135</sup> and, finally, (4) “[t]he Court has repeatedly emphasized that the adversarial context is crucial to satisfying the case-or-controversy requirement” of the Constitution.<sup>136</sup>

If any question remained as to whether the Court's realignment doctrine requiring diversity between adverse legal interests spoke to an exclusively statutory or constitutional requirement, the Supreme Court spoke more clearly about Article III's outer constitutional limits in another context: The Federal Declaratory Judgment Act.<sup>137</sup> The Declaratory Judgment Act grants power to the United States courts to “declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”<sup>138</sup> In *Aetna Life Insurance Co. v. Haworth*, the Supreme Court held that the Declaratory Judgment Act is a procedural device created by Congress that can provide relief to the extent that it is “consonant with the exercise of judicial function in the determination of controversies to which under the Constitution the judicial power extends.”<sup>139</sup> In *Aetna*, an insurance company brought an action against an insured seeking a declaration that the insured was not entitled to disability benefits due to the insured's non-payment of premiums.<sup>140</sup> The Court held that a controversy existed because the parties faced each other in an adversary proceeding contesting the “legal rights and obligations arising from the contracts of insurance.”<sup>141</sup> Specifically, the parties took “adverse positions with respect to

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<sup>132</sup> See *supra* text accompanying notes 99–111.

<sup>133</sup> Bassett & Perschbacher, *supra* note 109, at 113.

<sup>134</sup> *Id.* at 114.

<sup>135</sup> *Id.* at 126.

<sup>136</sup> *Id.* at 128.

<sup>137</sup> Federal Declaratory Judgment Act of 1934, Pub. L. No. 343, 48 Stat. 955 (codified at 28 U.S.C. § 2201 (2018)).

<sup>138</sup> 28 U.S.C. § 2201(a) (2018).

<sup>139</sup> 300 U.S. 227, 240 (1937).

<sup>140</sup> *Id.* at 238.

<sup>141</sup> *Id.* at 242.

their existing obligations.”<sup>142</sup> While the insured believed he was entitled to be paid benefits, the insurance company believed no right existed.<sup>143</sup>

The Court’s general description of what constitutes a “controversy” does not appear to be based only on statutory interpretation, but also on general principles of diversity jurisdiction—constitutional and statutory alike. Thus, this Comment proceeds with the claim that a *constitutional* “controversy” between diverse citizens must include a collision of legal interests.

Using this interpretation, then, every time a stakeholder brings a strict interpleader action using Rule 22 of the Federal Rules of Civil Procedure against claimants who are citizens of the same state, and where no federal question is at issue, any exercise of federal power over that case contravenes the Constitution. When the stakeholder deposits the stake with the court and is discharged from the lawsuit, leaving the claimants to battle out the question of the stake’s title, federal courts are repeatedly left deciding legal questions between the claimants, the true adverse parties.

While some may claim that the stakeholder has an interest in the dispute between the claimants being resolved,<sup>144</sup> its interest is much like a spectator at a sports game. It may watch to see who wins, but the spectator would never be considered a member of the team playing the game. This is not to say that the stakeholder presents no question to the court when it files suit. The stakeholder very clearly says to the court: “Can you please confirm that I am liable and take my money?” But neither claimant is at odds or adverse to this question. This stands in stark contrast to cases brought under the Declaratory Judgment Act in which plaintiffs routinely bring actions in advance of being sued themselves because they seek declaration on an answer to a legal question for which the defendant would seek the opposite answer.<sup>145</sup> Rather, in an interpleader action, the claimants are aligned and on the same team when it comes to convincing the court that the answer is yes: the stakeholder

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<sup>142</sup> *Id.*

<sup>143</sup> *Id.* Note that some stakeholders do in fact claim some interest in the stake at issue but those cases are actions in the “nature of interpleader” for which this Comment’s thesis does not extend. See *supra* text accompanying note 55.

<sup>144</sup> See *Penn Mut. Life Ins. Co. v. Meguire*, 13 F. Supp. 967, 971-72 (W.D. Ky. 1936) (arguing that the stakeholder-insurance company in the interpleader action at issue was not a nominal party to the lawsuit because there was a substantial risk the insurance company would have multiple lawsuits brought against it otherwise).

<sup>145</sup> *E.g.*, *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 120-22 (2007) (noting that the plaintiff below sought a declaration that a patent was invalid so that it would not be required to pay royalties to the patent holder and that the defendant was opposed to such a declaration because it sought to receive those very royalties); *Wilton v. Seven Falls Co.*, 515 U.S. 277, 279-80 (1995) (noting that the insurance company sought a declaration that its policies did not cover the insured but the insured opposed it).

is indeed liable to one of the claimants—which is the only legal question the stakeholder hopes the court will answer.<sup>146</sup>

Despite statutory and persuasive constitutional understandings of the meaning of “controversy” in the state-based diversity context, federal courts have almost robotically accepted that if the stakeholder bringing the interpleader action under Rule 22 and § 1332 is diverse from the claimants on the other side, and the amount in controversy is greater than \$75,000, the court has subject-matter jurisdiction. And they have held onto this conclusion despite Supreme Court holdings concerning interpleader actions that may point to a contrary conclusion.

### *C. Supreme Court Precedent Requiring Diverse Claimants in Strict Interpleader Actions*

Before Rule 22 went into effect, early cases brought under the Interpleader Act or in equity rarely discussed or raised the question of diversity jurisdiction.<sup>147</sup> When the question was raised, state and lower federal courts had mixed views about whether the Constitution required diversity between claimants, as well as whether the Constitution required diversity between the stakeholder bringing the interpleader suit and the claimants.

When courts did hold that diverse claimants are constitutionally necessary, they focused on the question of which parties the “real” controversy was between in the interpleader action. In 1883, an interpleader suit in Massachusetts state court was not granted removal to a U.S. district court because “the claimants were both citizens of Massachusetts and the stakeholder was a New York corporation.”<sup>148</sup> Similarly in 1902, the District of Connecticut disregarded the stakeholder in determining whether diversity jurisdiction existed over an interpleader action, asserting that it “leaves the [claimants] to fight their own battles.”<sup>149</sup> The court held that it was “without doubt” that the claimants in the case were on the opposite sides of the controversy at issue, and because they were diverse from each other, the court maintained subject-matter jurisdiction.<sup>150</sup> In 1921, the Southern District of California also asserted that, for purposes of establishing diversity jurisdiction,

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<sup>146</sup> See *supra* text accompanying notes 41–43.

<sup>147</sup> See Chafee, *supra* note 54, at 1142–43 (“This [diversity between the claimants] objection, however, does not appear to have been raised in any of the reported cases in the United States courts . . . [T]he question whether complete diversity of citizenship is necessary for original bills of interpleader has not yet been satisfactorily adjudicated.”).

<sup>148</sup> *Id.* at 1142 (citing *Mutual Life Ins. Co. v. Allen*, 134 Mass. 389 (1883)).

<sup>149</sup> *First Nat’l Bank v. Bridgeport Trust Co.*, 117 F. 969, 970 (D. Conn. 1902).

<sup>150</sup> *Id.* at 971.

in an interpleader action the “real and seemingly only controversy in the case is between the claimants.”<sup>151</sup>

Not all courts believed diverse citizenship between adverse claimants was required. In *Turman Oil Co. v. Lathrop*, the Northern District of Oklahoma held that even though all the claimants were residents of Oklahoma, the court had jurisdiction because the stakeholder-plaintiff was diverse from the claimants.<sup>152</sup> The court reached its conclusion because it defined a “controversy” as any instance in which “any property or claim of the parties of diverse citizenship, capable of pecuniary estimation, in the amount of \$3,000 exclusive of interest and costs, is the subject of litigation and is presented by the pleadings for a judicial determination.”<sup>153</sup> Not only does this definition of “controversy” seem to be a circular restatement of congressional requirements for diversity jurisdiction, but it also extends controversies to include any instances in which some question is presented by the pleadings to the court between two parties that are diverse.

Although the state and lower federal courts differed in their opinions as to how to treat the diversity of claimants as required by the Constitution, it appears that the Supreme Court has given a direct answer more than once. Both times, its answers have gotten lost in the wind. As discussed earlier,<sup>154</sup> in *Treinius*, the Supreme Court had to decide if complete diversity was present in a strict interpleader case in which the adverse claimants were diverse (Idaho and Washington) but not wholly diverse from the disinterested stakeholder (Washington).<sup>155</sup> The action was properly brought under the Federal Interpleader Act—as opposed to Rule 22 and Congress’s diversity jurisdiction statute—which only required at least one diverse claimant; however, at the time, the Supreme Court had not decided yet if complete diversity was a constitutional requirement or a requirement under Congress’s general diversity jurisdiction statute.<sup>156</sup> If the Court found that complete diversity did not exist due to the stakeholder’s citizenship, it would have had to decide whether complete diversity was a constitutional requirement that would be imposed on interpleader suits despite the “minimal diversity” that the Federal Interpleader Act requires.

The Supreme Court expressly recognized that the Interpleader Act’s requirement of diversity between claimants was “based upon the clause of Section Two, Article III, of the Constitution which extends the judicial

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<sup>151</sup> *Mutual Life Ins. Co. of N.Y. v. Lott*, 275 F. 365, 372 (S.D. Cal. 1921).

<sup>152</sup> 8 F. Supp. 870, 872 (N.D. Okla. 1934).

<sup>153</sup> *Id.* at 872-73.

<sup>154</sup> See *supra* text accompanying notes 112-117.

<sup>155</sup> *Treinius v. Sunshine Mining Co.*, 308 U.S. 66, 68, 70 (1939) (citation and quotation marks omitted).

<sup>156</sup> *Id.* at 71.

power of the United States to controversies ‘between citizens of different States.’”<sup>157</sup> The Court then reasoned that complete diversity was present in this case—despite the stakeholder being nondiverse from one of the claimants—because the “real controversy” at issue was between “the adverse claimants.”<sup>158</sup> Thus, it viewed the only controversy at issue in the entirety of the case as the controversy between the claimants. The Court’s holding is best understood as interpreting the *constitutional*—and not merely a statutory—“controversy” requirement in strict interpleader actions to entail only the dispute between the claimants, not between the stakeholder and claimants. It would be hard to read the case as interpreting any statutory “controversy” requirement because the case was brought under the Federal Interpleader Act, which does not contain the word “controversy” itself. Further, the Court expressly seemed to recognize that the Federal Interpleader Act’s adverse claimant requirement was based on the “controversy” required by the Constitution’s Diversity Clause.

In a Harvard Law Review article analyzing multiparty litigation in the late 1950s, the author noted that in light of the *Treinies* precedent, which treated the disinterested stakeholders “as a nominal party,” it would seem that “a case in which all the claimants are citizens of one state and the [stakeholder] is a citizen of another state would seem to lack even . . . minimal diversity . . .”<sup>159</sup> Yet, the article noted a strange occurrence that despite *Treinies*, the lower federal courts continued to entertain interpleader actions under Rule 22 “on the ground that the usual test of diversity between all the plaintiffs and all the defendants had been met.”<sup>160</sup>

Perhaps the fact that *Treinies* presented an issue under the Federal Interpleader Act provides the historical reason for why the case became overlooked by judges and their clerks when deciding if lower federal courts had jurisdiction over interpleader actions in which no claimants were diverse. However, the Supreme Court spoke a second time on this issue in *State Farm Fire & Cas. Co. v. Tashire*,<sup>161</sup> which is well-known for the very reason that it held for the first time that minimal diversity, not complete diversity, is all that Article III requires.<sup>162</sup> Nonetheless, courts seem to have forgotten that

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<sup>157</sup> *Id.* at 71.

<sup>158</sup> *Id.* at 71-72.

<sup>159</sup> *Multiparty Litigation in the Federal Courts*, *supra* note 57, at 922.

<sup>160</sup> *Id.*

<sup>161</sup> 386 U.S. 523 (1967).

<sup>162</sup> See, e.g., Willy E. Rice, *Allegedly “Biased,” “Intimidating,” and “Incompetent” State Court Judges and the Questionable Removal of State Law Class Actions to Purportedly “Impartial” and “Competent” Federal Courts: A Historical Perspective and an Empirical Analysis of Class Action Dispositions in Federal and State Courts, 1925–2011*, 3 WM. & MARY BUS. L. REV. 419, 494 (2012) (citing *Tashire*, 386 U.S. at 530-31 (1967)) (“In 1967, the Court decided *State Farm Fire & Casualty Co. v. Tashire*, explaining its decision in *Strawbridge* and declaring that the ‘complete diversity’ rule is a statutory rather than

the case was about constitutional, jurisdictional requirements over interpleader actions. In *Tashire*, an insurance company deposited into the court the proceeds of an insurance policy after its insured was in an accident and asked the Court to decide to whom the insurance proceeds belonged among multiple claimants.<sup>163</sup> Only two of the multiple claimants were diverse from each other.<sup>164</sup> The Court decided to address on its own motion whether it had subject-matter jurisdiction over the dispute.<sup>165</sup> It recognized that the action was brought under Congress's interpleader statute, which provides that there must be "[t]wo or more adverse claimants, of diverse citizenship," but that the statutory language itself did not require that all adverse claimants be diverse.<sup>166</sup> The question the Court had to answer was whether this "minimal diversity" between adverse parties was constitutional or if the Constitution itself required complete diversity in that all the parties adverse to each other had to be from different states.<sup>167</sup> The Court answered that Congress's statutory requirement that only two or more claimants be diverse was all that the Constitution required.<sup>168</sup> Here, and in light of *Treimies*, it seems that the Court was saying that two or more adverse claimants is enough to establish "minimal diversity" in an interpleader suit—but not less.

It is curious that the Supreme Court seems to have spoken as to which parties a constitutional "controversy" exists between in strict interpleader actions yet no lower federal courts have been applying its precedent. The best explanation seems to be that because *Treimies* and *Tashire* were both addressing interpleader actions under the Federal Interpleader Act, they were overlooked as precedent when deciding jurisdiction requirements under Rule 22. Some may argue that perhaps lower federal courts have developed a sort of "protective jurisdiction" in the diversity jurisdiction context over interpleader actions. This argument can be disposed of as follows.

It has long been understood that the Constitution provides the outer bounds of subject-matter jurisdiction for federal courts, with some of those bounds being cases arising from federal questions or controversies between

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a constitutional requirement."); Alan M. Trammell, *Jurisdiction Sequencing*, 47 GA. L. REV. 1099, 1127 n.132 (2013) (citing *Tashire* for the proposition that Article III only requires minimal diversity); see also John J. Watkins, *The "Other" Diversity: Federal Alienage Jurisdiction*, 1997 ARK. L. NOTES 77, 86 & n.68 (1997) ("Every first year law student learns that diversity of citizenship must be complete; that is, every plaintiff must be of diverse citizenship from every defendant. This principle, which dates to the venerable case of *Strawbridge v. Curtiss*, is a matter of statutory construction; for its part, Article III requires only 'minimal' diversity." (citing *Tashire*, 386 U.S. at 530-31 (1967))).

<sup>163</sup> 386 U.S. at 526-27.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 530.

<sup>166</sup> *Id.* (citing 28 U.S.C. § 1335 (2018)).

<sup>167</sup> *Id.* at 530-31.

<sup>168</sup> *Id.*



diverse parties.<sup>169</sup> However, beginning in the mid-twentieth century Professor Wechsler introduced an articulated theory of “protective jurisdiction.”<sup>170</sup> He argued that if Congress had the power to enact rules of decision over a subject matter, it could also grant federal courts jurisdiction to hear cases concerning the subject matter.<sup>171</sup> Professor Mishkin took this theory a step further and opined that Congress could extend the federal courts’ jurisdiction to hear any cases “implicating federal powers or interests, even though the legal claims at issue rest on state law.”<sup>172</sup> The thrust of protective jurisdiction is that, if endorsed, it allows Congress to use its Article I powers to go beyond the bounds of judicial power articulated in Article III.<sup>173</sup>

Although the Supreme Court has never explicitly endorsed a theory of protective jurisdiction, its decision in *Verlinden B.V. v. Central Bank of Nigeria*<sup>174</sup> is viewed by many as implicitly applying some form of it.<sup>175</sup> At issue in *Verlinden* was the Article III constitutionality of the Foreign Sovereign Immunities Act of 1976, which “authoriz[ed] a foreign plaintiff to sue a foreign state in a United States district court on a nonfederal cause of action . . . .”<sup>176</sup> Prior to the Act, the question of sovereign immunity of foreign states in federal and state courts was decided on a case-by-case basis. In response, the Act was passed “in order to free the Government from the case-by-case diplomatic pressures, to clarify the governing standards, and to assure litigants that decisions are made on purely legal grounds and under procedures that

<sup>169</sup> See *supra* text accompanying note 10.

<sup>170</sup> FALLON, *supra* note 33, at 800-01 (citing Herbert Wechsler, *Federal Jurisdiction and the Revision of the Judicial Code*, 13 L. & CONTEMP. PROBS. 216, 224-25 (1948)).

<sup>171</sup> *Id.*

<sup>172</sup> See Ernest A. Young, *Stalking the Yeti: Protective Jurisdiction, Foreign Affairs Removal, and Complete Preemption*, 95 CALIF. L. REV. 1775, 1775 (2007) (citing Paul J. Mishkin, *The Federal “Question” in the District Courts*, 53 COLUM. L. REV. 157, 184-96 (1953)).

<sup>173</sup> See Eric J. Segall, *Article III as a Grant of Power: Protective Jurisdiction, Federalism and the Federal Courts*, 54 FLA. L. REV. 361, 364 (2002) (“[T]he theory of protective jurisdiction allows Congress to further Article I interests by creating federal jurisdiction for nonfederal cases.”). For a more thorough discussion on the theories of protective jurisdiction, see James E. Pfander, *Protective Jurisdiction, Aggregate Litigation, and the Limits of Article III*, 95 CALIF. L. REV. 1423, 1428-30 (2007).

<sup>174</sup> 461 U.S. 480 (1983).

<sup>175</sup> See, e.g., Linda S. Mullenix, *Complex Litigation Reform and Article III Jurisdiction*, 59 FORDHAM L. REV. 169, 205 (1990) (“What is remarkable about *Verlinden* . . . is that the Court rejected the theory of protective jurisdiction while pragmatically embracing its concrete application. The Supreme Court seems to be saying ‘do what I do, not what I say.’”); Segall, *supra* note 173, at 380-81 (“*Verlinden* is incomplete and unpersuasive. . . . There was nothing federal about the lawsuit other than the [issue of] sovereign immunity. The FSIA, however, clearly denotes this question as jurisdictional, not substantive . . . and the legislative history shows that is exactly what Congress intended.” (footnotes omitted)); Carlos M. Vázquez, *The Federal Claim in the District Courts: Osborn, Verlinden, and Protective Jurisdiction*, 95 CALIF. L. REV. 1731, 1740 (2007) (“In any given case it may be so clear that a foreign state is not entitled to immunity under the FSIA’s immunity provisions that a foreign state would be highly unlikely to raise a claim of immunity.”).

<sup>176</sup> *Verlinden*, 461 U.S. at 482.

insure [sic] due process.”<sup>177</sup> Because of the “potential sensitivity of actions against foreign states and the importance of developing a uniform body of law in this area,” the Act also provided that foreign states could “remove any civil action from a state to federal court.”<sup>178</sup>

The Court had to decide whether the Act exceeded the scope of the federal courts’ judicial power permitted by the Constitution when a civil action between foreign plaintiffs and foreign sovereigns concerned only a rule of decision based on state law. The Court first explained that “Congress may not expand the jurisdiction of the federal courts beyond the bounds established by the Constitution.”<sup>179</sup> Because diversity jurisdiction under the Constitution was not written broadly enough to cover actions by foreign plaintiffs, the Court had to turn to deciding whether the Act could be considered a grant of jurisdiction under the Constitution’s clause permitting jurisdiction for all cases “arising under this Constitution, the Laws of the United States, and Treaties made . . . .”<sup>180</sup> The Court unanimously viewed the case as one arising under the Constitution and laws of the United States “[b]y reason of [Congress’s] authority over foreign commerce and foreign relations . . . .”<sup>181</sup> The Court held that the question that would arise in each case was whether a foreign sovereign was immune from suit, which was a “question[] of substantive federal law” that “clearly ‘arises under’ federal law.”<sup>182</sup> The Court held that Congress could enact a statute “comprehensively regulating the amenability of foreign nations to suit in the United States” under its Article I powers.<sup>183</sup>

A generous reading of *Verlinden* would have no implications for this Comment. A generous reading would lead one to conclude that clearly the decision of foreign sovereign immunity is a substantive one; it is a decision that Congress can address under its Article I powers. And because that decision is a substantive question of federal law, the *Verlinden* Court said nothing new about the judicial power and the inability of Congress to transgress those bounds no matter its federal interest. Anything less than a generous reading would lead one to conclude that really the question of immunity is jurisdictional. If the question is jurisdictional, the only way the *Verlinden* opinion can be squared is if the Court is really endorsing the theory that Congress can pass jurisdictional rules and grant jurisdiction to the federal courts based on the mere fact that the case arises under that jurisdictional rule so long as Congress has some proper

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<sup>177</sup> *Id.* at 488 (quotations, citations, and alterations omitted).

<sup>178</sup> *Id.* at 489 (citation and quotations omitted).

<sup>179</sup> *Id.* at 491 (citing *Hodgson v. Bowerbank*, 9 U.S. (5 Cranch) 303 (1809); *Kline v. Burke Constr. Co.*, 260 U.S. 226, 234 (1922)).

<sup>180</sup> *Id.* at 492; U.S. CONST. art. III, § 2, cl. 1.

<sup>181</sup> *Verlinden*, 461 U.S. at 493.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

Article I federal interest in the subject matter—even if that jurisdictional rule brings cases into the ambit of judicial power that involve only state law questions between nondiverse parties.<sup>184</sup> Although some prefer this broader reading of *Verlinden* and the implications it has for expanding federal jurisdiction over cases merely through Congress’s ability to act on its Article I authority,<sup>185</sup> this reading goes beyond *Verlinden*’s facts<sup>186</sup> and such a reading would seem to create an empty shell out of Article III.

Although this author believes that Congress should not be able to create jurisdiction by the mere fact that it enacts federal jurisdictional statutes when it has a federal interest, a question lingers based on the *Verlinden* line of scholarship with implications for this Comment: Is every interpleader case that arrives in federal courts under Rule 22 really just a case that Congress has granted federal jurisdiction over because of some federal interest in seeing these case adjudicated—even if, as this Comment argues, such a case transgresses the normal scope of Article III judicial power?

If the answer is yes, then that would mean that even if the Article III Diversity Clause in strict interpleader cases requires minimally diverse claimants, as this Comment argues, Congress could still have granted federal courts jurisdiction to hear these interpleader cases if it had some federal interest in the subject matter to be adjudicated. Luckily, interpleader is not currently an area where this question can be implicated. Even if *Verlinden* is taken at its worst—standing for the proposition that Congress’s federal interest in creating jurisdiction over certain cases gives it authority to enact jurisdictional statutes expanding Article III jurisdiction itself—Congress has not yet expanded jurisdiction over interpleader cases in this way. And if there is anything that is clear about the theory of protective jurisdiction, it is that the theory is implicated only if Congress has passed some statute seeming to grant jurisdiction beyond normal Article III limitations in the first place. Congress has acted twice in the interpleader context. It first acted by passing the Federal Interpleader Act, in which it clearly limited interpleader to cases where claimants were minimally diverse—which this Comment argues is the level of diversity required by Article III of the Constitution.<sup>187</sup> Congress then enacted Rule 22 of the Federal Rules of Civil Procedure, but it was made clear

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<sup>184</sup> See Mullenix, *supra* note 175, at 174-75 & n.21 (1990) (citing George T. Conway III, Comment, *The Consolidation of Multistate Litigation in State Courts*, 96 YALE L.J. 1099, 1113-16 (1987)) (discussing how Conway has read *Verlinden* to stand for this proposition in order to support access to multidistrict litigation cases in federal court based on this theory of protective jurisdiction).

<sup>185</sup> *Id.* at 176 (citations omitted) (discussing Federal District Judge Jack Weinstein’s support for the theory that Congress can grant jurisdiction over non-federal law cases using its commerce powers).

<sup>186</sup> *Id.* at 201 (“*Verlinden* is a poorly articulated and unfortunate decision for protective jurisdiction enthusiasts because it provides little support for theories of expansive article III jurisdiction.”).

<sup>187</sup> See *supra* text accompanying notes 65–69.

that the Rules were supposed to be no source of jurisdiction themselves,<sup>188</sup> which meant that jurisdiction for cases using the Rules had to conform with Congress's other, much more restrictive, jurisdictional statutes such as § 1331 and § 1332.<sup>189</sup> Thus, because Congress has not tried to pass a statute broadening jurisdiction in an interpleader context in a way that would permit suits between nondiverse claimants, no protective jurisdiction theory can be invoked as a possible reason for these suits being permitted in federal court.

Of course, hypothetically Congress could try to pass a broader interpleader statute in the future that only requires diversity between stakeholders and claimants. And if there is no federal question arising in that case and there are nondiverse claimants, then Congress could claim it has some commercial interest in seeing the matter adjudicated even though the case would go beyond Article III jurisdiction.

In many instances, Congress will have little interest in ensuring that federal courts can hear lawsuits that involve only state-law questions of title among that state's citizens.<sup>190</sup> However, one could envision Congress seeking to provide a mechanism for dispute resolution that prevents stakeholders from being subjected to multiple, burdensome lawsuits that might arrive at inconsistent results. For example, imagine the scenario in which a defeated claimant of a strict interpleader action brings a second suit in state court against the stakeholder. The proper response of the state court would be to dismiss the lawsuit not only because it would have discharged the stakeholder from all future liability in the original interpleader action, but also because it would have already issued a judgment against the defeated claimant. Congress's interest in acting preemptively to prevent possible cases in which multistate parties could be subject to state abuse certainly seems valid; however, this Comment's author strongly believes that no matter Congress's Article I interest at issue, Congress may not use its Article I powers to violate the bounds of Article III.

Although it appears that the Supreme Court has been moving away from endorsing any theory of protective jurisdiction,<sup>191</sup> and this Comment's author

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<sup>188</sup> Rule 82 states "[t]hese rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts." FED. R. CIV. P. 82.

<sup>189</sup> See *infra* text accompanying note 212.

<sup>190</sup> If strict interpleader cases between nondiverse claimants involve only questions of state law between claimants, should Congress care? The idea that federal courts should be in the business of helping create uniform state law was dispelled long ago in *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938).

<sup>191</sup> Several years after its *Verlinden* decision, the Supreme Court had to address whether U.S. Postal Service employees could remove state criminal prosecutions to federal court for on-duty traffic violations under a jurisdictional statute, 28 U.S.C. § 1442(a)(1) (2018). *Mesa v. California*, 489 U.S. 121, 123 (1989). The statute seemed to broadly authorize removal by federal employees such as those of the U.S. Postal Service, but the Court interpreted the statute to require a "colorable federal defense." *Id.* at 124-25, 129. In considering the broader interpretation the Court held that the statute

believes that endorsing such a theory would void Article III of its purpose,<sup>192</sup> the constitutionality of such an act is a question that will have to be answered another day. Further, it is a question that does not have any bearing on the conclusion of this Comment as interpleader currently stands. Nor does the possibility that the Supreme Court could one day accept a theory of protective jurisdiction say anything about the meaning of Article III as proposed in this Comment, because such a theory allows Congress to use its Article I powers to go beyond Article III's express limitations.

There is one remaining way that Congress could try to grant federal court jurisdiction over strict interpleader actions between stakeholders and co-citizen claimants that is grounded in an interpretation of what Article III itself permits. Congress could argue that Article III diversity jurisdiction extends to any case in which a controversy “might” arise between citizens from different states even if the case does not begin that way. In every interpleader action, there is a possibility that a dispute could arise between the co-citizen claimants and the stakeholder. This dispute would most likely take the form of a claim alleging that the stakeholder had not delivered the full amount of the stake that the claimants believed they were entitled to receive. Thus, a strict interpleader action always has the potential to be transformed into an action in the nature of interpleader, in which the claimants and stakeholder stand on opposing sides of a legal issue to be resolved. Whether the judicial power extends to cases that could at some point involve “controversies between citizens from different States” is a question that has never been addressed by the Supreme Court. Understanding Article III as encompassing the potential for courts to hear Article III diversity cases prophylactically, rather than through traditional methods such as a removal, is an expansive view of Article III's bounds. But it seems at least more plausible than the idea that Congress could use its Article I powers to extend jurisdiction beyond what Article III expressly permits.

As the Supreme Court recognized in *Verlinden*, Chief Justice Marshall originally interpreted Article III *federal question* jurisdiction in *Osborn v. Bank of the United States*<sup>193</sup> as permitting “Congress [to] confer on the federal courts jurisdiction over any case or controversy that might call for the application of

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was “a pure jurisdictional statute, seeking to do nothing more than grant district court jurisdiction over cases in which a federal officer is a defendant” and “therefore, cannot independently support Article III ‘arising under’ jurisdiction.” *Id.* at 136. The Court reasoned that it would not “abandon a longstanding reading” of the statute’s requirement that there be a federal defense sufficient for Article III in light of an alternative, broader reading that would not arise under Article III and thus “raise[] serious constitutional doubt.” *Id.* at 137.

<sup>192</sup> *But see* Gil Seinfeld, *Article I, Article III, and the Limits of Enumeration*, 108 MICH. L. REV. 1389, 1392 (2010) (arguing for a revival of the theory that Congress can permit federal court jurisdiction over cases that advance its Article I interests despite Article III limitations).

<sup>193</sup> 22 U.S. (9 Wheat.) 738 (1824).

federal law.”<sup>194</sup> Noting that “[t]he breadth of that conclusion has been questioned,” the *Verlinden* Court did not decide to affirm or reject whether the Constitution extends federal question jurisdiction over cases in which there is “a mere speculative possibility that a federal question may arise at some point in the proceeding.”<sup>195</sup> Even if the Court decided one day to cut against the legal scholarship questioning the permissibility of the breadth of this kind of jurisdiction,<sup>196</sup> it does not mean that this interpretation should be stamped onto the Diversity Clause. Therefore, it seems unlikely that the Supreme Court would interpret the federal judicial power to extend to cases in the diversity context in which controversy *might* happen between citizens from different states but has not occurred at the outset of litigation.

To summarize, the following principles have now been established. First, a “controversy” under the Constitution and Congress’s diversity statutes entails a necessary collision of interests. Furthermore, Supreme Court holdings in *Tashire* and *Treinius* both seem to establish that for interpleader cases, the necessary collision of interests is between the adverse claimants. However, Congress has not granted federal courts any statutory authority to hear strict interpleader claims in federal courts when there are no diverse claimants, and *Verlinden* should not be interpreted as permitting Congress to use its Article I powers to extend jurisdiction beyond what Article III permits. Finally, Article III diversity jurisdiction should not yet be interpreted to involve any case in which diversity might arise at some point in the lawsuit. This leaves only one question: what is happening in the lower federal courts?

D. *The Persistent Impermissible Use of Rule 22 to Hear Strict Interpleader Actions Between Nondiverse Claimants in Federal Courts*

Even though the Supreme Court appears to have spoken on the issue of whether the Constitution and Congress’s diversity jurisdiction statute requires at least two adverse and diverse claimants in a strict interpleader action, federal district and appellate courts have adopted standard, recycled language to the contrary. The jurisdictional boilerplate language explains that there are two kinds of interpleader in federal courts which have different diversity requirements, and that under Rule 22, all that is needed is diversity between the plaintiff-stakeholder and the defendant-claimants along with at least \$75,000 at stake. An example of the oft-repeated explanation goes like this:

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<sup>194</sup> *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 492 (1983).

<sup>195</sup> *Id.* at 492-93.

<sup>196</sup> For a list of dissenting scholarship, see Anthony J. Bellia, Jr., *The Origins of Article III “Arising Under” Jurisdiction*, 57 DUKE L.J. 263, 266 n.8 (2007).

Interpleader may be brought in federal court under either the Federal Interpleader Act, 28 U.S.C. § 1335 (1988), or under Rule 22 of the Federal Rules of Civil Procedure. Rule interpleader “in no way supersedes or limits” the remedy available under the Act. . . .

The central distinction between statutory interpleader and rule interpleader is the basis for a federal court’s subject matter jurisdiction under each. The Act requires that two or more of the adverse claimants to a contested fund be “of diverse citizenship as defined in section 1332 of this title.” Rule 22, however, “is merely a procedural device; it confers no jurisdiction on the federal courts.” Thus, an interpleader brought under Rule 22 must fall within one of the general statutory grants of federal jurisdiction. This, of course, may include diversity jurisdiction, 28 U.S.C. § 1332; thus, in contrast to section 1335, which focuses on the diversity of the claimant-defendants, Rule 22 (per section 1332) requires diversity between the plaintiff-stakeholder and the claimants.<sup>197</sup>

Although there have been hundreds of cases in the federal district courts using Rule 22 to interplead parties in a lawsuit,<sup>198</sup> there have been few instances in which a court has explained why it believed diverse claimants are not required in a Rule 22 action brought under § 1332. The majority of cases that have raised the subject-matter jurisdiction question have simply presented circular arguments. They explain that federal courts can exercise jurisdiction over instances in which the claimants are co-citizens because the stakeholder is diverse, making the parties on one side of the litigation diverse from the parties on the other side of the litigation. But they fail to explain why the setup of the case is enough to satisfy constitutional and § 1332 requirements.<sup>199</sup>

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<sup>197</sup> *Commercial Union Ins. Co. v. United States*, 999 F.2d 581, 583-84 (D.C. Cir. 1993) (emphasis and internal citations omitted).

<sup>198</sup> A search of federal dockets on Bloomberg Law for all interpleader actions based on diversity jurisdiction under § 1332 reveals over 1,000 results. What is telling, however, is how few of these cases actually discuss their jurisdiction. Searches on Westlaw for cases discussing diversity jurisdiction under FED. R. CIV. P. 22 reveal far fewer results.

<sup>199</sup> See *In re* §323,647.60 in Funds Belonging to Cal. Valley Miwok Tribe, No. 18-01194, 2019 WL 687832, at \*4 (D.N.M. Feb. 19, 2019) (“Here, none of the representatives of the Plaintiff Class are citizens of California, and the Defendants-in-Interpleader are all citizens of California.”); *Primerica Life Ins. Co. v. Montoya*, No. 18-00109, 2018 WL 3068059, at \*2 (D.N.M. June 21, 2018) (“Primerica’s rule interpleader properly invoked diversity jurisdiction because at the time of filing its complaint [the stakeholder] was of diverse citizenship from each [claimant] . . . . [T]he remaining claimants['] . . . citizenship is immaterial as long as complete diversity exists between them and Primerica.”); *Transamerica Life Ins. Co. v. Maas*, No. 16-4419, 2017 WL 4891528, at \*2 (D.N.J. Oct. 30, 2017) (“In Rule 22 interpleader actions, it is well-settled that . . . the stakeholder must be diverse from the claimants, but the claimants need not be diverse from each other . . . . Thus, the Court retains subject matter jurisdiction over this action.” (internal citations and quotation marks omitted)); *Regions Bank v. Lamb*, No. 16-00078, 2017 WL 780575, at \*1 & nn.1-2 (E.D. Ark. Feb. 28, 2017) (describing it as “undisputed” that the court would have jurisdiction when claimants were all co-citizens as long as stakeholder was diverse and amount in controversy exceeded \$75,000); *Sanchez v. Prudential Inv. Mgmt.*, No. 15-00982, 2016 WL 5416546, at \*2

Only two recent cases have been found in which (1) parties have argued to the courts that claimants must be diverse in Rule 22 and § 1332 strict interpleader actions in order to be constitutionally or statutorily sound and (2) the court presented a form of reasoning beyond reiterating the oft-quoted language that all plaintiffs must be diverse from all defendants.

In 2017, American National Life Insurance, a resident of Texas, filed a Rule 22 and § 1332 interpleader action against five claimants, all residents of Florida, to a \$1,000,000 insurance policy.<sup>200</sup> Having no interest in which claimant the money went to, American National deposited the life insurance proceeds into the court's registry and the court discharged the insurance company from the lawsuit.<sup>201</sup> The court denied the motion to dismiss for lack of subject-matter jurisdiction for three reasons. First, the court held that "it is well-established that the Court must assess the existence of diversity jurisdiction at the time an action is filed."<sup>202</sup> Because there was complete diversity between American National and the five claimants when the insurance company filed its complaint, the court held that complete diversity existed at the time the action was filed.<sup>203</sup> Second, the court held that "even

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(W.D. Tex. Sept. 28, 2016) ("The Court also has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because Prudential is citizen of the State of New Jersey . . . , the Third-Party Defendants are all citizens of Texas, and the amount in controversy exceeds \$399,000."); *Life Ins. Co. of N. Am. v. Wagner*, No. 15-00505, 2016 WL 1494711, at \*2 n.2 (D. Utah Apr. 14, 2016) (plaintiff-stakeholder of Pennsylvania and defendant-claimants from Utah); *Prudential Ins. Co. of Am. v. Wells*, No. 15-08170, 2016 WL 687135, at \*3 n.2 (D. Ariz. Feb. 19, 2016) (plaintiff-stakeholder of New Jersey and defendant-claimants all from Arizona); *Transamerica Life Ins. Co. v. Talley*, No. 14-01412, 2015 WL 5093206, at \*7 (D. Colo. Aug. 31, 2015) (stakeholder diverse from co-citizen claimants); *Allstate Assignment Co. v. Cervera*, No. 13-096, 2014 WL 12496902, at \*2 n.3 (W.D. Tex. Dec. 8, 2014) (citation omitted) (finding jurisdictional requirements satisfied because "citizenship of the claimants" does not have to be diverse as long as "the stakeholder is diverse from all the claimants"), *report and recommendation adopted*, 2015 WL 11705061 (W.D. Tex. Mar. 23, 2015); *Federated Mut. Ins. Co. v. Moody Station & Grocery*, No. 11-3457, 2014 WL 12616797, at \*2 (W.D. Mo. Nov. 5, 2014) ("[The stakeholder-plaintiff] is a citizen of Minnesota, and [claimants-defendants] Moody Station and The Big Store are citizens of Missouri."); *Lincoln Nat'l Life Ins. Co. v. Ruybal*, No. 12-02413, 2014 WL 3560293, at \*2 (D. Colo. July 18, 2014) (Indiana stakeholder and Colorado claimants); *Woodcrest United Methodist Church v. Allianz Life Ins. Co. of N. Am.*, No. 10-194, 2010 WL 11530298, at \*3 (E.D. Tex. Sept. 16, 2010) (two Texas claimants diverse from the stakeholder); *Primerica Life Ins. Co. v. Hicks*, No. 10-052, 2010 WL 11619670, at \*1 (N.D. Tex. Feb. 8, 2010) (citations omitted) ("Primerica relies on complete diversity to establish jurisdiction, alleging that it is a Massachusetts corporation with its principal place of business in Georgia, and that [claimants] are all citizens of Texas . . . . Based on Primerica's allegations, complete diversity exists [sic] and, therefore, the Court has diversity jurisdiction."); *Conn. Gen. Life Ins. Co. v. Porter*, No. 09-02058, 2010 WL 11571217, at \*2 (E.D. Cal. Jan. 21, 2010) (Connecticut stakeholder and claimants from California); *Reliastar Life Ins. Co. v. Esparza*, No. 09-332, 2009 WL 10669143, at \*3 (W.D. Tex. Nov. 6, 2009) (all Texas claimants diverse from Minnesota stakeholder).

<sup>200</sup> *Am. Nat'l Life Ins. Co. v. Hansen*, No. 17-341-30, 2017 WL 2348856, at \*1 (M.D. Fla. May 30, 2017).

<sup>201</sup> *Id.*

<sup>202</sup> *Id.* at \*2 (citing *Freeport-McMoRan, Inc. v. K N Energy, Inc.*, 498 U.S. 426, 428 (1991)).

<sup>203</sup> *Id.*



if discharging American National did divest the Court of its diversity jurisdiction, the Court would still have supplemental jurisdiction over the claimants' remaining claims."<sup>204</sup> Last, it held that if it accepted the claimants' argument, it "would lead to results wholly inconsistent with the policies underlying the interpleader remedy."<sup>205</sup> Specifically, the court stated "[i]f courts dismissed an interpleader action after it discharged the stakeholder but before the adverse claimants had litigated their competing claims, the claimants would be left to assert their claims in separate actions, once again exposing the stakeholder to numerous lawsuits and multiple liability."<sup>206</sup> The second case, *Americo Financial Life and Annuity Insurance Co. v. Bonner*, only presented one argument for why diversity was not required between adverse claimants, which was that "diversity existed at the time the case was filed."<sup>207</sup>

These three main arguments for why diversity jurisdiction is satisfied are insufficient. They fail to consider that the interpleader action *as filed* with plaintiff-stakeholder versus nondiverse claimants itself contravenes the meaning of "controversy" under § 1332 and the Constitution.<sup>208</sup> A "controversy" is determined not by the setup of the parties in the lawsuit, but by looking at the principal purpose of the suit and deciding which parties have a collision of interests.<sup>209</sup> Thus, the case as filed in a Rule 22 interpleader action violates diversity jurisdiction requirements when the stakeholder has only the desire to admit liability to a claimant and be dismissed. This understanding remains valid even if interpleader is thought of as two stages, with the first stage being the mere opportunity for the stakeholder to recognize it is liable to someone, deposit the money, and leave, and the second stage being the chance for opposing parties to battle out their claims to the stake, showing that the legal issues that exist are truly between them. Under this two-stage model, in a bill of strict interpleader where the stakeholder readily admits liability without need for further litigation as to whether it is indeed liable, the first stage is merely incidental.<sup>210</sup> Moreover, the claim that the policies of interpleader will be undermined if diversity is required between claimants is also faulty. This argument fails to take judicial notice of the fact that federal courts are not the only judicial bodies capable of

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<sup>204</sup> *Id.* (citing 28 U.S.C. § 1367 (2018); 7 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE § 1710 (3d ed. 2017)).

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> No. 05-0255, 2006 WL 8434116, at \*3 (N.D. Ga. Apr. 25, 2006).

<sup>208</sup> This is true whether the stakeholder initiates the lawsuit against claimants or a claimant initiates a lawsuit against the stakeholder. In both situations, the stakeholder in a strict interpleader action is not adverse to what the claimant seeks: which is the stakeholder's disinterest in the fund at stake.

<sup>209</sup> See *supra* Section II.A.

<sup>210</sup> See Chafee, *supra* note 54, at 1141 ("If we regard the second stage of the interpleader as the real controversy and the first stage as merely incidental, it is sufficient if the claimants are citizens of different states, and the citizenship of the stakeholder is immaterial.").

providing justice and fairness. All states have methods available for interpleader actions<sup>211</sup>—methods that should be fairly easy to take advantage of when disinterested stakeholders sue co-citizen claimants in the co-citizens' state.

In contrast to the arguments presented for why diverse claimants are not constitutionally or statutorily required, there have been at least three recent federal district court cases that simply assume that there must be diversity between adverse claimants under Rule 22. These cases proceed without citing the boilerplate language that congressional diversity requirements are satisfied so long as all plaintiffs are diverse from all defendants. Judge McNulty of the District of New Jersey noted briefly in a footnote that because the interpleader action at issue in a recent case was brought under rule interpleader, and not statutory interpleader, jurisdiction had to be established either based on federal question jurisdiction or diversity jurisdiction under 28 U.S.C. § 1332.<sup>212</sup> Without explanation, Judge McNulty assumed that because all the claimants were from New Jersey, jurisdiction clearly could not be established under § 1332 when “even minimal diversity is absent.”<sup>213</sup> However, a different judge in the same district assumed that § 1332 requirements *were* met so long as the stakeholder was diverse from the claimants, even if the claimants were co-citizens.<sup>214</sup> This judge did not reference Judge McNulty's decision coming out of the same district a month earlier. More recently, the Eastern District of Wisconsin simply claimed that “[f]or both the statute and the rule, the plaintiff must show diversity exists between at least two claimants to the fund” without citing any authority for the proposition.<sup>215</sup> Similarly the Southern District of Alabama assumed that when establishing jurisdiction over an action in which the claimants were diverse from each other, diverse claimants were needed to satisfy 28 U.S.C. § 1332.<sup>216</sup>

What is most puzzling is that some federal appellate courts at least started out recognizing that the true controversy in an interpleader action for purposes of jurisdiction was that between the claimants, not the claimants and the stakeholder. The Eighth Circuit went from asserting that the citizenship of the disinterested stakeholder was only nominal and “does not affect the question of federal jurisdiction,”<sup>217</sup> in 1937 to holding in 2016, without any cited authority, that under Rule 22 jurisdiction was established so long as the

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<sup>211</sup> See *infra* text accompanying notes 225-229 (discussing state interpleader actions).

<sup>212</sup> *Metro. Life Ins. Co. v. Teixeira through Sarto*, No. 16-07486, 2017 WL 3951597, at \*1 n.2 (D.N.J. Sept. 8, 2017).

<sup>213</sup> *Id.*

<sup>214</sup> *Transamerica Life Ins. Co. v. Maas*, No. 16-4419, 2017 WL 4891528, at \*2 (D.N.J. Oct. 30, 2017).

<sup>215</sup> *Trustmark Ins. Co. v. Spruill*, No. 17-1808, 2018 WL 2431854, at \*1 (E.D. Wis. May 30, 2018).

<sup>216</sup> *Univalor Tr., SA v. Columbia Petroleum LLC*, No. 15-00414, 2017 WL 2306491, at \*4 (S.D. Ala. May 25, 2017).

<sup>217</sup> *Cramer v. Phoenix Mut. Life Ins. Co.*, 91 F.2d 141, 146 (8th Cir. 1937).

claimants were diverse from the stakeholder.<sup>218</sup> Similarly in 1957, the Fifth Circuit, when deciding whether complete diversity was required between adverse claimants, cited to *Treinies* and recognized its holding that the Constitution requires no diversity between a stakeholder and claimant due to the fact that the controversy does not exist between them in strict interpleader actions.<sup>219</sup> Yet without explanation or reference back to its previous decision, the Fifth Circuit in 1980 stated that interpleader actions brought under Rule 22 required complete diversity between the stakeholder and defendant-claimants.<sup>220</sup> Other circuit courts eventually just held that diversity requirements were satisfied by a plaintiff-stakeholder diverse from defendant claimants without any reference to *Treinies* or *Tashire* and often with little legal reasoning. In 1952, the Third Circuit, without citing *Treinies*, simply stated that in strict interpleader actions “the diversity need only be between the plaintiff stakeholder and the individual claimants. Diversity among these individual claimants is not required.”<sup>221</sup> And in 1953, 1960, 1982, 1987, 1988, and 1993, the Second, Tenth, Ninth, Fourth, Seventh, and D.C. Circuits respectively held the same without acknowledging *Treinies* or *Tashire*.<sup>222</sup>

### III. IMPLICATIONS

The lower federal courts have consistently heard, and continue to hear, strict interpleader actions between a stakeholder and nondiverse claimants under Rule 22 and § 1332. If the Supreme Court’s traditional understanding of “controversy” between citizens of different states is taken seriously and its precedent is given a closer look, then the federal courts have consistently heard, and continue to hear, cases that go beyond what is permitted by Congress’s general diversity jurisdiction statute and Article III of the Constitution. Yet one must wonder if it would wreak havoc and seem unduly unfair if federal courts switched course and began denying to hear such cases on the basis of a lack of subject-matter jurisdiction. To that, there are several responses.

First, as the Supreme Court has recognized, “interpleader was never intended . . . to be an all-purpose ‘bill of peace.’”<sup>223</sup> As stated in *Tashire*,

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<sup>218</sup> *Federated Mut. Ins. Co. v. Moody Station & Grocery*, 821 F.3d 973, 977 (8th Cir. 2016).

<sup>219</sup> *Haynes v. Felder*, 239 F.2d 868, 871 (5th Cir. 1957).

<sup>220</sup> *Lummis v. White*, 629 F.2d 397, 400-01 (5th Cir. 1980), *rev’d on other grounds sub nom. Cory v. White*, 457 U.S. 85 (1982).

<sup>221</sup> *Kerrigan’s Estate v. Joseph E. Seagram & Sons, Inc.*, 199 F.2d 694, 697 (3d Cir. 1952).

<sup>222</sup> *Commercial Union Ins. Co. v. United States*, 999 F.2d 581, 584 (D.C. Cir. 1993); *Principal Mut. Life Ins. Co. v. Juntunen*, 838 F.2d 942, 943 (7th Cir. 1988); *Prudential Ins. Co. of Am. v. Coffman*, 1987 U.S. App. LEXIS 19276, at \*2 (4th Cir. Sept. 18, 1987); *Gelfgren v. Republic Nat’l. Life Ins. Co.*, 680 F.2d 79, 81 n.1 (9th Cir. 1982); *Brisacher v. Tracy-Collins Trust Co.*, 277 F.2d 519, 525 (10th Cir. 1960); *John Hancock Mut. Life Ins. Co. v. Kraft*, 200 F.2d 952, 953-54 (2d Cir. 1953).

<sup>223</sup> *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 535 (1967).

“[n]one of the legislative and academic sponsors of a modern federal interpleader device viewed their accomplishment as a ‘bill of peace,’ capable of sweeping dozens of lawsuits out of the various state and federal courts in which they were brought into a single interpleader proceeding.”<sup>224</sup> While it should always be preferred that our systems of procedure are also systems of justice, they must operate within the bounds that the Constitution has provided and cannot always be used to solve every vexation. Luckily, justice does not have to be sacrificed in the case of strict interpleader actions with co-citizen claimants: the state court doors are open.

Every single state within the United States has a state rule of procedure permitting interpleader actions, and each rule establishes requirements similar to federal interpleader.<sup>225</sup> For example, the Georgia statute for interpleader provides that in cases when “a person is possessed of property or funds or owes a debt or duty, to which more than one person lays claim of such a character as to render it doubtful or dangerous for the holder to act, he may apply to equity to compel the claimants to interplead.”<sup>226</sup> The Hawaii interpleader rule uses virtually the same language as the federal rule, providing that “[p]ersons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability,” and that “[i]t is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another . . . .”<sup>227</sup>

The largest differences between state and federal interpleader are only slight variations in the language that is used. For example, the Illinois statute providing for interpleader states that “[p]ersons having claims against the plaintiffs *arising out of the same or related subject matter* may be joined as defendants and required to interplead when their claims may expose plaintiff to double or multiple

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<sup>224</sup> *Id.* at 536.

<sup>225</sup> See GA. CODE ANN. § 23-3-90; 735 ILL. COMP. STAT. 5/2-409; KAN. STAT. ANN. § 60-222; NEB. REV. STAT. § 25-325; N.H. REV. STAT. ANN. § 382-A:7-603; N.J. STAT. ANN. § 12A:7-603; OKLA. STAT. tit. 12, § 2022; S.D. CODIFIED LAWS § 15-6-22; VA. CODE ANN. § 8,301-364; WIS. STAT. § 803.07; ALA. R. CIV. P. 22; ALASKA R. CIV. P. 22; ARIZ. R. CIV. P. 22; ARK. R. CIV. P. 22; CAL. CIV. PROC. CODE § 386; COLO. R. CIV. P. 22; CONN. R. CIV. P. §§ 23-43, 23-44; DEL. R. CIV. P. 22; FLA. R. CIV. P. 1.240; HAW. R. CIV. P. 22; IDAHO R. CIV. P. 22; IND. R. TRIAL P. 22; IOWA R. CIV. P. 1.251; KY. R. CIV. P. 22; LA. CODE CIV. PROC. ANN. art. 4652; ME. R. CIV. P. 22; MD. R. § 3-221; MASS. R. CIV. P. 22; MICH. CT. R. 3.603; MINN. R. CIV. P. 22; MISS. R. CIV. P. 22; MO. R. CIV. P. 52.07; MONT. R. CIV. P. 22; NEV. J. CT. R. CIV. P. 22; N.M. R. CIV. P. 1-022; N.Y. C.P.L.R. 1006; N.C. R. CIV. P. 22; N.D. R. CIV. P. 22; OHIO R. CIV. P. 22; OR. R. CIV. P. 31; 231 PA. CODE §§ 2301-2318; R.I. DIST. CT. R. 22; S.C. R. CIV. P. 22; TENN. R. CIV. P. 22.01-22.02; TEX. R. CIV. P. 43; UTAH R. CIV. P. 22; VT. R. CIV. P. 22; WASH. SUPER. CT. CIV. R. 22; W. VA. R. CIV. P. 22; WYO. R. CIV. P. 22; see also D.C. R. CIV. P. 22.

<sup>226</sup> GA. CODE ANN. § 23-3-90(a).

<sup>227</sup> HAW. R. CIV. P. 22.

liability.”<sup>228</sup> And Louisiana, while mirroring the same interpleader requirements of the federal rule, calls the interpleader suit a “concursum proceeding.”<sup>229</sup> It would seem that co-citizen claimants should have little issue with having their claims adjudicated in state court, especially because state courts are better suited to answer questions about state law in complicated legal situations in which it is unclear to whom certain money or property belongs. It would also seem difficult to imagine a situation in which an insurance company or other stakeholder admitting to liability would care whether they were in a state court or a federal court. Further, questions such as venue and personal jurisdiction should rarely prevent these cases from being brought into state court because the claimants are all from the same state. Justice and peace still exist for the potentially vexed stakeholder—they simply exist in state courts, not federal ones.

It is important to clarify that this Comment stands for one limited proposition: that the controversy requirement, under both Congress’s statutes granting jurisdiction and the Constitution, means that the jurisdiction of federal courts in strict interpleader actions only extends to suits in which at least one claimant is diverse from another adverse claimant. This does not mean that Rule 22 or § 1332 on their own are unconstitutional—but merely that the jurisdiction requirements under Rule 22 interpleader actions have been interpreted and applied incorrectly.

The question remains, however,—if federal district courts begin to agree with this Comment’s proposition—can they start dismissing cases between nondiverse citizens for lack of subject-matter jurisdiction despite that their federal appellate circuit courts have ruled that federal district courts *do* have jurisdiction over such cases? If one takes the *Treinius* and *Tashire* precedent to seriously stand as Supreme Court holdings that diverse claimants are needed in interpleader actions, then it would seem that lower federal district courts may be able to dismiss the cases for lack of jurisdiction regardless of what their circuit courts have said on the issue. While the scholarship is filled to the top with commentary on how precedent should and does work in the federal district courts,<sup>230</sup> it appears that the question of whether district courts should be bound by appellate opinions that are contrary to Supreme Court opinions has gone unanswered and unexamined. It is well established that lower courts must

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<sup>228</sup> 735 ILL. COMP. STAT. 5/2-409 (emphasis added).

<sup>229</sup> LA. CODE CIV. PROC. ANN. art. 4652.

<sup>230</sup> E.g., Joseph W. Mead, *Stare Decisis in the Inferior Courts of the United States*, 12 NEV. L.J. 787 (2012); Richard M. Re, *Narrowing Supreme Court Precedent from Below*, 104 GEO. L.J. 921 (2016); Norman E. Williams, *The Failings of Originalism: The Federal Courts and the Power of Precedent*, 37 U.C. DAVIS L. REV. 761 (2004); Colin E. Wrabley, *Applying Federal Court of Appeals’ Precedent: Contrasting Approaches to Applying Court of Appeals’ Federal Law Holdings and Erie State Law Predictions*, 3 SETON HALL CIR. REV. 1 (2006).

“follow a precedent established by a court ‘superior’ to it,”<sup>231</sup> but if *Treimies* and *Tashire* stand for the need of diverse claimants for diversity jurisdiction to be established, then the two superior courts to the district court (the Supreme Court and the federal appellate court) are at odds with each other.<sup>232</sup> Although the Supreme Court has not addressed this exact scenario, it has stated that “unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.”<sup>233</sup>

### CONCLUSION

When the Federal Rules of Civil Procedure were promulgated and went into effect in 1938, Rule 22 began walking federal courts outside the diversity jurisdiction door. On the one hand, it seemed clear to the Supreme Court that the requirement under Congress’s interpleader act that there be diversity between adverse claimants sounded in statutory and constitutional requirements. On the other hand, appellate and lower federal district courts have been hearing cases between nondiverse claimants in strict interpleader actions for years. To ensure actions under Rule 22 do not continue to contravene the Constitution, its jurisdictional requirements—as understood to be conferred by § 1332—must be reeled in. Such reeling will not lead all insurance companies and similar stakeholders astray, but will instead lead them to state courts, where interpleader is alive and well. The result will be that state courts get to hear state-law disputes between claimants of that state, allowing state courts to be the master of their own law. This result aligns with the historical underpinnings of Article III that federal courts should not intrude in the business of state courts where no such intrusion is needed.

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<sup>231</sup> Evan H. Caminker, *Why Must Inferior Courts Obey Superior Court Precedents?*, 46 STAN. L. REV. 817, 818 (1994).

<sup>232</sup> Not only would this seem to be the most logical choice for federal district courts, but also some scholars have argued against hierarchical following of precedents at all. *Id.* at 820 & nn.9-10 (citing Charles J. Cooper, *Stare Decisis: Precedent and Principle in Constitutional Adjudication*, 73 CORNELL L. REV. 401, 402 n.6 (1988); Michael Stokes Paulsen, *Accusing Justice: Some Variations on the Themes of Robert M. Cover’s Justice Accused*, 7 J.L. & RELIGION 33, 85 (1990)).

<sup>233</sup> *Hutto v. Davis*, 454 U.S. 370, 375 (1982).