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In City of Chicago v. International College of Surgeons,¹ the United States Supreme Court reversed a well-established rule in holding that federal district courts may exercise supplemental jurisdiction over state law claims for deferential review of local administrative agency decisions.²

I. FACTUAL AND PROCEDURAL BACKGROUND

North Lake Shore Drive in Chicago was once home to the wealthiest and most prominent Chicagoans. Today, however, only seven of the elegant homes that once lined Lake Shore Drive between North Avenue and Oak Street remain. The International College of Surgeons (“ICS”) owns two of these mansions—the Edward T. Blair House, which contains ICS’s administrative offices, and the Eleanor Robinson Countiss House, which contains the International Museum of Surgical Science.³

In July 1988 the Commission on Chicago Historical and Architectural Landmarks (“Commission”) preliminarily determined that the seven homes on Lake Shore Drive, including the Blair House and the Countiss House, qualified as a landmark district pursuant to the city’s landmarks ordinance. Seven months later, ICS contracted for the sale and redevelopment of the Blair House and the Countiss House. Under the contract, the developer was to demolish all but the facades of the two buildings and construct a high-rise condominium tower in their place. In June 1989, however, the city council enacted an ordinance (“designation ordinance”) officially designating these seven buildings as a landmark district. The landmarks ordinance required developers to

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2. Id. at 174.
obtain a permit from the Commission before demolishing a designated landmark. Accordingly, ICS applied for the necessary permits in October 1990.\(^4\)

The Commission denied ICS's permit applications, finding that demolition of the Blair House and the Countiss House would have a deleterious effect on the landmark district. Pursuant to the Illinois Administrative Review Act ("IARA"), which provides for judicial review of decisions of municipal landmarks commissions in the state's circuit courts, ICS filed a lawsuit in the Circuit Court of Cook County seeking review of the Commission's denial of its permit applications. The complaint alleged that the landmarks and designation ordinances violated, both facially and as applied, several federal constitutional provisions, including the Due Process and Equal Protection Clauses of the Fourteenth Amendment and the Takings Clause of the Fifth Amendment. The complaint also alleged similar violations of the Illinois Constitution and sought deferential, or on-the-record, administrative review of the Commission's decision.\(^5\)

Relying on federal question jurisdiction, the city removed the lawsuit to the United States District Court for the Northern District of Illinois.\(^6\) ICS moved to remand the case to the Circuit Court of Cook County, but the district court denied the motion.\(^7\) Without elaborating, the district court ruled that removal was proper because it had original jurisdiction over ICS's federal constitutional claims pursuant to 28 U.S.C. § 1331.\(^8\) The district court also exercised supplemental jurisdiction over the state constitutional claims and the request for administrative review.\(^9\)

In the meantime, ICS reapplied for the permits pursuant to a provision of the landmarks ordinance that allowed exceptions if the applicant demonstrated that denial of the permits would result in economic hardship. The Commission again denied the applications, finding that ICS would not suffer economic hardship as defined by the landmarks ordinance. Consequently, ICS filed another lawsuit in the Circuit Court of Cook County alleging substantially the same federal and state constitutional violations and seeking deferential administrative review of the Commission's denial of its permit applications based on economic hardship.\(^10\)

\(^4\) International College of Surgeons, 522 U.S. at 159-60.
\(^5\) Id. at 160.
\(^6\) Id. at 161.
\(^8\) Id. at *1.
\(^9\) International College of Surgeons, 522 U.S. at 161.
\(^10\) Id. at 160.
Again relying on federal question jurisdiction, the city removed the second lawsuit to the United States District Court for the Northern District of Illinois, and the district court consolidated the cases. The city then moved to dismiss the complaints for failure to state a claim upon which relief could be granted. As to the federal constitutional claims, the district court granted the city's motion to dismiss in part but reserved ruling on the state law claims until it resolved the remaining federal constitutional claims.

The district court did not formally address its jurisdiction over ICS's state law claims until January 1995, at which time it granted summary judgment sua sponte for the city. Despite granting summary judgment for the city on all remaining federal constitutional claims and acknowledging its discretion under 28 U.S.C. § 1367(c) to decline jurisdiction over the state law claims, the district court nevertheless continued to exercise supplemental jurisdiction over the state law claims in the interests of "economy, convenience, fairness and comity." In addition to expressing concern about increasing the burdens of the Illinois court system, the district court considered itself to be "in the best position to resolve the remaining [state law] issues expeditiously." After analyzing the state law claims, the district court granted summary judgment for the city on all state constitutional claims and affirmed the Commission's decisions denying ICS the permits.

ICS appealed, and the United States Court of Appeals for the Seventh Circuit unanimously reversed and remanded to the district court with instructions to remand to the Circuit Court of Cook County. The circuit court held that the district court lacked subject matter jurisdiction because complaints for deferential review of state administrative

11. Id. at 161.
12. International College of Surgeons v. City of Chicago, Nos. 91 C 1587, 91 C 5564, 1992 WL 6729, at *5-6 (N.D. Ill. Jan. 10, 1992) (unpublished decision). Of ICS's ten federal constitutional claims, the district court dismissed seven with prejudice and two without prejudice. Id. The only federal constitutional claim that survived was ICS's equal protection claim. Id. at *4.
13. Id. at *5 n.7.
15. Id. at *9. Contra Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 & n.7 (1988) (recognizing that when all federal law claims have been dismissed from a lawsuit, district courts should decline to continue exercising supplemental jurisdiction over the remaining state law claims because balancing judicial economy, convenience, fairness, and comity usually indicates that federal jurisdiction is inappropriate).
17. Id. at *32.
agency decisions\textsuperscript{19} are not "'civil action[s] ... of which the district courts ... have original jurisdiction' within the meaning of 28 U.S.C. § 1441(a).\textsuperscript{20} The circuit court reasoned that because the IARA required deferential review of administrative agency decisions, judicial review of the Commission's decisions denying ICS the demolition permits was actually an appellate proceeding "that [was] inconsistent with the character of a court of original jurisdiction" and the meaning of 28 U.S.C. § 1441(a).\textsuperscript{21}

The United States Supreme Court granted certiorari\textsuperscript{22} to decide whether federal district courts may exercise jurisdiction over cases that include both federal law claims and state law claims that require deferential review of local administrative agency decisions.\textsuperscript{23} The Court reversed the circuit court's decision and held that state law claims requiring deferential review of local administrative agency decisions are within the purview of supplemental jurisdiction.\textsuperscript{24} Because the circuit court failed to address section 1367(c) or abstention, the Court also remanded to allow the circuit court to consider those issues in the first instance.\textsuperscript{25}

\section*{II. LEGAL BACKGROUND}

A case may be removed from a state court to a federal district court only if it could have been brought in that federal district court originally.\textsuperscript{26} Thus, to remove a case the district court must have either

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\textsuperscript{19} Opinions involving cross-system appellate review often imprecisely refer to federal district court review of state or local administrative agency decisions. In fact, review of state administrative agency decisions by federal district courts seems to be prohibited by the Eleventh Amendment to the United States Constitution. The proper scope of cross-system appellate review (and of the Court's holding in \textit{International College of Surgeons}) is limited to federal district court review of local administrative agency decisions. See infra note 108.

\textsuperscript{20} \textit{International College of Surgeons}, 91 F.3d at 994 (quoting 28 U.S.C. § 1441(a) (1994)).

\textsuperscript{21} \textit{Id.} at 990. The circuit court noted that "in determining whether a state action seeking judicial review of a state administrative agency's decision is removable, the focus must be upon the character of the state proceeding and upon the nature of the review conducted by the state court." \textit{Id.} Thus, the court acknowledged that removal of a state action to federal district court is proper "if the state administrative review process provides for a trial de novo" because conducting a trial de novo is a proper district court function. \textit{Id.}

\textsuperscript{22} \textit{City of Chicago v. International College of Surgeons}, 520 U.S. 1164 (1997).

\textsuperscript{23} \textit{International College of Surgeons}, 522 U.S. at 163.

\textsuperscript{24} \textit{Id.} at 166.

\textsuperscript{25} \textit{Id.} at 174.

\textsuperscript{26} 28 U.S.C. § 1441(a).
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independent jurisdiction for each claim, founded on a federal question or diversity, or supplemental jurisdiction. Complications arise in cases in which nondiverse parties raise both federal law claims and state law claims over which the federal district court has no independent jurisdiction, but which may fall within the district court's supplemental jurisdiction. The scope of supplemental jurisdiction, which has proven to be difficult to ascertain despite numerous cases interpreting it, lies at the heart of the Court's opinion in International College of Surgeons. Accordingly, Part A summarizes the law regarding supplemental jurisdiction. Part B then discusses two decisions relied on by ICS and the Seventh Circuit which reflect the Supreme Court's disinclination, before International College of Surgeons, to allow federal jurisdiction over state law claims seeking deferential review of state or local administrative agency decisions.

A. Supplemental Jurisdiction

Historically, there was no express constitutional or statutory authority for a federal court to exercise jurisdiction over a case involving both federal law claims and state law claims over which it had no independent basis for jurisdiction. Chief Justice John Marshall, however, endorsed such jurisdiction when he declared:

We think, then, that when a question to which the judicial power of the Union is extended by the constitution, forms an ingredient of the original cause, it is in the power of congress to give the circuit courts

From this proclamation was born the doctrine of pendent jurisdiction. Although hailed as beneficial to the judicial process, the Supreme Court's early jurisprudence failed to articulate a coherent constitutional standard for applying pendent jurisdiction.

In United Mine Workers of America v. Gibbs, however, the Court attempted to end the "considerable confusion" that resulted from previous formulations of the constitutional standard for exercising pendent jurisdiction. The Court held that pendent jurisdiction was appropriate whenever a case involved at least one substantial claim that arose under federal law and a state law claim so related to that federal law claim that they constituted a single case in that they "derive[d] from a common nucleus of operative fact." However, the Court cautioned against indiscriminate application of pendent jurisdiction by observing that the "power need not be exercised in every case in which it is found to exist. It has consistently been recognized that pendent jurisdiction is a doctrine of discretion, not of plaintiff's right." The Court noted that federal courts should decline to exercise pendent jurisdiction (1) when "judicial economy, convenience and fairness to litigants" favor state court jurisdiction, (2) when the state law claims "substantially predominate," (3) when the federal law claims are dismissed prior to trial, or (4) when other considerations, such as jury confusion, warrant separate trials.

Carnegie-Mellon University v. Cohill, like International College of Surgeons, concerned the scope of supplemental and federal question jurisdiction in the context of removal. In that case the Court interpreted Gibbs "as conferring substantial discretion on the trial courts to assert or decline jurisdiction over pendent claims, guided only by the ultimate values of judicial economy, convenience and fairness to
litigants, and comity.” Indeed, the Court stated that the doctrine of pendent jurisdiction must be flexible enough to allow federal district courts to evaluate pendent claims in a way that “most sensibly accommodates” these values. The Court reminded the lower federal courts to consider and weigh these values throughout the course of litigation, not just when a case is filed. Thus, balancing these values may indicate that a case is properly in federal court when it is filed, but subsequent events may alter the balance such that the case no longer belongs there. For example, if a federal district court dismisses all federal law claims before final adjudication, the balance of these values normally indicates that it should decline to continue exercising jurisdiction over the remaining state law claims by dismissing the case without prejudice or by remanding the case to the state court from which it was removed.

Congress codified the doctrine of pendent jurisdiction in the Judicial Improvements Act of 1990. The new statute provides that federal district courts shall have “supplemental” jurisdiction over all state law claims transactionally related to claims properly within the courts’ original jurisdiction. The statute further provides circumstances under which federal district courts may decline to exercise supplemental jurisdiction. Because the statute essentially codified existing case law

42. 1 Harold S. Lewis, Jr., Litigating Civil Rights and Employment Discrimination Cases § 17.40, at 673 (1996).
43. Cohill, 484 U.S. at 350.
44. Id.
45. Id.
46. Id. at 350 & n.7, 357.
47. 1 Lewis, supra note 42, at 674.
48. 28 U.S.C. § 1367(a). This section provides that:
   [In any civil action of which the district courts have original jurisdiction, the
district courts shall have supplemental jurisdiction over all other claims that are
so related to claims in the action within such original jurisdiction that they form
part of the same case or controversy under Article III of the United States
Constitution.

Id.
49. 28 U.S.C. § 1367(c). This section provides that:
   The district courts may decline to exercise supplemental jurisdiction over a
claim under subsection (a) if—
   (1) the claim raises a novel or complex issue of State law,
   (2) the claim substantially predominates over the claim or claims over which
the district court has original jurisdiction,
   (3) the district court has dismissed all claims over which it has original
jurisdiction, or
   (4) in exceptional circumstances, there are other compelling reasons for
declining jurisdiction.
regarding pendent jurisdiction, the cases interpreting that doctrine remain important.50

B. The Tradition Against Allowing Cross-System Appeals

Since 1954 lower federal courts have relied on two Supreme Court cases, both analogous to International College of Surgeons, to prohibit federal district court review of decisions of state and local administrative agencies, boards, or commissions.51 The first, Chicago, Rock Island & Pacific Railroad v. Stude,52 involved a condemnation proceeding by the railroad against Stude.53 Unhappy with the assessment of damages, the railroad concurrently filed a complaint in the United States District Court for the Southern District of Iowa and appealed to the District Court for Pottawattamie County pursuant to Iowa law.54 After the railroad removed the state court appeal to the federal district court, the court denied Stude's motion to remand.55 In concluding that removal was improper and that the case should have been remanded, the Supreme Court held that federal district courts "do[] not sit to review on appeal action taken administratively or judicially in a state proceeding. A state 'legislature may not make a federal district court, a court of original jurisdiction, into an appellate tribunal or otherwise expand its jurisdiction . . . .'"56 Noting that neither Congress nor the Federal Rules of Civil Procedure authorized such an appeal, the Court explained that only after an appeal of local administrative action has been perfected in state court may a federal district court assume jurisdiction.57 Only when this occurs does the appeal become a civil action over which the federal district court has original jurisdiction.58

Id.

50. CHEMERINSKY, supra note 31.
51. See, e.g., Shamrock Motors, Inc. v. Ford Motor Co., 120 F.3d 196 (9th Cir. 1997); Armistead v. C & M Transp., Inc., 49 F.3d 43 (1st Cir. 1995); Fairfax County Redevelopment & Housing Auth. v. W.M. Schlosser Co., 64 F.3d 155 (4th Cir. 1995); Labiche v. Louisiana Patients' Compensation Fund Oversight Bd., 69 F.3d 21 (5th Cir. 1995); Frison v. Franklin County Bd. of Educ., 596 F.2d 1192 (4th Cir. 1979); Volkswagen de Puerto Rico, Inc. v. Puerto Rico Labor Relations Bd., 454 F.2d 38 (1st Cir. 1972); Trapp v. Goetz, 373 F.2d 380 (10th Cir. 1966). But see Range Oil Supply Co. v. Chicago, Rock Island & Pac. R.R., 248 F.2d 477 (8th Cir. 1957) (affirming the district court's assumption of jurisdiction over an appeal from an order of a state commission).
52. 346 U.S. 574 (1954).
53. Id. at 575.
54. Id. at 576-77.
55. Id. at 577.
56. Id. at 581 (quoting Burford v. Sun Oil Co., 319 U.S. 315, 317 (1943)).
57. Id.
58. Id. at 578.
Seven years later the Court modified Stude in Horton v. Liberty Mutual Insurance Co. In Horton Liberty Mutual appealed a decision of the Texas Industrial Accident Board to a federal district court pursuant to the Texas Workmen's Compensation Law, which provided for appeals to be conducted as trials de novo. Distinguishing Stude on the ground that a "suit to set aside an award of the board is in fact a suit, not an appeal," the Court held that federal district court jurisdiction was proper. Therefore, the determinative factor is how the state or local law upon which an appeal is based defines the "appellate" proceeding. If the state or local law provides for deferential review, the appellate proceeding will not be deemed a civil action of which the federal district courts have original jurisdiction. However, if the state or local law provides for de novo review, the appellate proceeding will be deemed a civil action within the original jurisdiction of the federal district courts.

Until International College of Surgeons, lower federal courts consistently refused to exercise supplemental or diversity jurisdiction, either originally or by removal, over state law claims for deferential review of state and local administrative agency decisions. The Ninth Circuit summarized the near-unanimous view of the circuits when it observed that "the prospect of a federal court sitting as an appellate court over state administrative proceedings is rather jarring and should not be quickly embraced as a matter of policy."

III. COURT'S RATIONALE

Writing for a seven to two majority, Justice O'Connor reversed the judgment of the circuit court and held that the district court properly

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60. Id. at 349.
61. Id. at 354 (quoting Booth v. Texas Employers' Ins. Ass'n, 123 S.W.2d 322, 328 (Tex. 1938)).
62. Id. at 355.
63. Id. at 354.
64. Id. at 354-55. See e.g., Howell v. Harden, 203 S.E.2d 206, 207 (Ga. 1974) (holding that "the judicial review contemplated [by the Georgia Administrative Procedure Act] is appellate in nature and is not such a 'pretrial, trial or post trial procedure' as is provided for by the Civil Practice Act").
65. 367 U.S. at 354-55. See e.g., Investors Syndicate of America, Inc. v. Hughes, 38 N.E.2d 754, 757 (Ill. 1941) ("A statute of this nature which designates the procedure as an 'appeal' but provides for a hearing 'de novo' ... does not confer appellate jurisdiction upon the court, but merely authorizes it to exercise its original jurisdiction.").
66. See supra note 51.
67. Shamrock Motors, 120 F.3d at 200.
exercised supplemental jurisdiction over ICS's state law claims despite their appellate nature. In reaching this conclusion, the Court held that the plain language of section 1367(a) does not indicate a congressional intention to prohibit federal jurisdiction over supplemental state law claims that require deferential review of local administrative agency decisions. However, the Court also acknowledged that while section 1367(a) authorizes federal district courts to exercise such jurisdiction, it does not require them to do so. Because the Court noted that section 1367(c) or an abstention doctrine may militate against exercising jurisdiction, it remanded the case for the circuit court to consider in the first instance whether the district court should have declined to exercise supplemental jurisdiction under section 1367(c) or an abstention doctrine.

The Court began by noting that a case filed in state court may be removed to federal court only if the appropriate federal district court has original jurisdiction. Original jurisdiction exists in the federal district courts if a plaintiff's well-pleaded complaint raises issues of federal law. The Court observed that ICS's complaints raised several federal constitutional challenges to the landmarks and designation ordinances and to the manner in which the Commission conducted the demolition permit hearings. The Court explained that although ICS raised its federal constitutional claims by way of a state cause of action, those claims "unquestionably" arose under federal law because ICS's well-pleaded complaint demonstrated that the relief it sought under state law

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69. Id. at 169.
70. Id. at 172.
71. Id. at 174.
72. Id. at 163.
73. Id. To satisfy the statutory requirement that a claim "aris[e] under" federal law, 28 U.S.C. § 1331, a well-pleaded complaint must demonstrate at a minimum that a federal law creates the cause of action or that a state law claim necessarily depends on an interpretation of a federal law. *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 13 (1983). It is insufficient for a question of federal law to be merely "lurking in the background," *id.* at 12 (quoting *Gully v. First Nat'l Bank in Meridian*, 299 U.S. 109, 117 (1936)), or for a complaint to refute an anticipated federal law defense; a federal law must be an essential element of the claim. *id.* at 10-12. Significantly, the Court's federal question jurisprudence has depended in large part on the nature of the federal interest involved. *Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804, 814 n.12 (1986). *Compare Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 201 (1921) (claims turning on federal constitutional issues deemed to arise under federal law), *with Moore v. Chesapeake & Ohio R.R.*, 291 U.S. 205, 216-17 (1934) (claims turning on federal statutory issues not deemed to arise under federal law).
74. *International College of Surgeons*, 522 U.S. at 164.
necessarily depended on an interpretation of a federal law.\textsuperscript{75} Thus, the Court concluded that the district court had original jurisdiction over the federal constitutional claims under to section 1331.\textsuperscript{76}

Despite admitting that some of its claims arose under federal law, ICS contended that the district court lacked jurisdiction because its state law claims for deferential review of the Commission’s decisions did not constitute a “‘civil action . . . of which the district courts of the United States have original jurisdiction.’”\textsuperscript{77} The Court rejected that argument because it was based on the erroneous premise that the original jurisdiction of federal district courts derives from state law claims.\textsuperscript{78} The proper inquiry was whether the federal law claims constituted “‘civil actions’ within the ‘original jurisdiction’ of the district courts for purposes of removal.”\textsuperscript{79} If so, the state law claims could rest on supplemental jurisdiction if they were transactionally related to the federal law claims that were within the district court’s original jurisdiction. But the presence of state law claims did not “alter[] the fact that ICS’s complaints, by virtue of their federal claims, were ‘civil actions’ within the federal courts’ ‘original jurisdiction.’”\textsuperscript{80}

Having established federal question jurisdiction, the Court then considered whether the state law claims were within the district court’s supplemental jurisdiction.\textsuperscript{81} Relying on Gibbs and section 1367(a), the Court held that the district court properly exercised supplemental jurisdiction over the state law claims because both the state and federal law claims derived from the same core of facts—the Commission’s denials of ICS’s demolition permit applications.\textsuperscript{82} ICS contended that supplemental jurisdiction is proper only when the state law claims fall within the district court’s original jurisdiction, but the Court rejected that argument because such an approach “would effectively read the supplemental jurisdiction statute out of the books.”\textsuperscript{83} The Court

\textsuperscript{75} Id. The Court distinguished \textit{Merrell Dow} on the ground that the federal law claim in that case was not sufficiently substantial to confer federal question jurisdiction. \textit{Id.} at 168. In accordance with \textit{Merrell Dow}’s distinction between federal statutory claims and federal constitutional claims, the Court apparently considered ICS’s federal law claims to be sufficiently substantial to establish federal question jurisdiction because they were based directly and solely on the United States Constitution. \textit{See supra} note 73.

\textsuperscript{76} \textit{International College of Surgeons}, 522 U.S. at 165-66.

\textsuperscript{77} Id. at 166 (quoting 28 U.S.C. § 1441(a)).

\textsuperscript{78} Id.

\textsuperscript{79} Id. (quoting 28 U.S.C. § 1441(a)).

\textsuperscript{80} Id. (quoting 28 U.S.C. § 1441(a)).

\textsuperscript{81} Id. at 164-65.

\textsuperscript{82} Id. at 165-66.

\textsuperscript{83} Id. at 167.
explained that ICS's logic was flawed because the very purpose of supplemental jurisdiction "is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking." 84

Turning next to ICS's argument that federal district courts may not exercise supplemental jurisdiction over state law claims that require deferential review of local administrative agency decisions, the Court held that nothing in the text of section 1367(a) indicated such an exception. 85 "Instead, the statute generally confers supplemental jurisdiction over 'all other claims' in the same case or controversy as a federal question, without reference to the nature of review." 86 Additionally, the Court held that its decisions in Stude and Horton do not suggest an exception to supplemental jurisdiction for state law claims that require deferential review of local administrative agency decisions. 87 The Court distinguished those cases as determining whether a state law claim for judicial review of state administrative agency action falls within the scope of the district courts' diversity jurisdiction, not whether such a claim falls within supplemental jurisdiction in a case founded on a federal question. 88 Nevertheless, assuming that Stude and Horton were relevant to the scope of supplemental jurisdiction in federal question cases, the Court held that those cases supported the district court's exercise of supplemental jurisdiction in this case. 89 Despite Horton's emphasis on the standard of review mandated by the statute or ordinance that governed appeals of state or local administrative action, the Court explained that reliance on the standard of review was misguided because neither Stude nor Horton "suggest[ed] that jurisdiction turned on whether judicial review of the administrative determination was deferential or de novo." 90 Moreover, the Court noted that "[a]ny negative inference that might be drawn" from those cases was insufficient to trump the plain language of section 1367(a), which does not suggest that supplemental jurisdiction depends on the applicable standard of review. 91

Finally, the Court emphasized the discretionary nature of supplemental jurisdiction and stated that federal district courts "should consider and weigh in each case, and at every stage of the litigation, the values

84. Id.
85. Id. at 168-69.
86. Id. at 169 (quoting 28 U.S.C. § 1367(a)).
87. Id.
88. Id.
89. Id.
90. Id. at 170.
91. Id. at 171.
of judicial economy, convenience, fairness, and comity” when deciding whether to exercise supplemental jurisdiction.\footnote{Id. at 173 (quoting Cohill, 484 U.S. at 350).} The Court also observed that an abstention doctrine might obligate a federal district court to refrain from adjudicating a state law claim when “‘denying a federal forum would clearly serve an important countervailing interest.’”\footnote{Id. at 174 (quoting Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 716 (1996)).} The district court refused to decline jurisdiction under section 1367(c),\footnote{International College of Surgeons, 1995 WL 9243, at *9.} but neither it nor the circuit court addressed the possibility of abstention. The Supreme Court, therefore, remanded to allow the circuit court to consider those issues in the first instance.\footnote{International College of Surgeons, 522 U.S. at 174. On remand, the circuit court held that the district court was not required to abstain from exercising jurisdiction under either the Burford or Pullman abstention doctrine. International College of Surgeons v. City of Chicago, 153 F.3d 356, 359-60 (7th Cir. 1998). Under the Burford abstention doctrine, “federal courts will abstain from deciding unsettled questions of state law that relate to a complex state regulatory scheme.” Id. at 361. The district court was not required to abstain under the Burford abstention doctrine because the law governing the only remaining state law claim was well settled and because the IARA did not provide for a specialized forum to litigate claims. Id. at 362-65. Under the Pullman abstention doctrine, “a court abstains in order to avoid unnecessary constitutional adjudication.” Id. at 361. Pullman abstention was not required because the law governing the only remaining state law claim was well settled and because the district court disposed of all federal constitutional claims via summary judgment. Id. at 365. The circuit court further held that ICS waived the argument that the district court should have declined to exercise supplemental jurisdiction under section 1367(c) because it failed to raise that argument in the district court. Id. at 366.} Justice Ginsburg, in a dissent joined by Justice Stevens, criticized the majority on four grounds. First, the dissent claimed that the majority departed from the overwhelming weight of precedent disfavoring cross-system appellate review by federal district courts.\footnote{International College of Surgeons, 522 U.S. at 176 (Ginsburg, J., dissenting). For the cases cited by Justice Ginsburg that the majority’s decision overruled, see supra note 51.} Indeed, Justice Ginsburg found only one circuit court opinion that had approved such review.\footnote{Id. at 191.} Moreover, given “the near-unanimous view of the Circuits that federal courts may not engage in cross-system appellate review,” Congress could not be said to have authorized cross-system appeals merely by providing for supplemental jurisdiction.\footnote{Id. at 179 (Ginsburg, J., dissenting) (citing Range Oil Supply Co., 243 F.2d at 478-79).} Thus, the dissent argued that cross-system appeals should be allowed only if Congress...
explicitly authorizes them.\(^9\) Second, the dissent expressed surprise at the majority's view that Stude and Horton did not differentiate between cross-system appeals that provide for de novo review of state or local administrative action and those that require deferential review.\(^{100}\) Third, the dissent criticized the majority for not respecting "the separateness of state and federal adjudicatory systems" and for "permit[ting] the federal court to supplant the State's entire scheme for judicial review of local administrative actions."\(^{101}\) Federal jurisdiction was particularly improper in this case, argued the dissent, because no Illinois appellate court had ever interpreted the landmarks ordinance or decided the state constitutional issues raised by ICS.\(^{102}\) Finally, the dissent opined that section 1367(c) and the various abstention doctrines were inadequate safeguards against such potential encroachments on state and local sovereignty.\(^{103}\) For example, because section 1367(c) is inapplicable to diversity cases, federal district courts have no discretionary power to decline jurisdiction over cross-system appeals brought under section 1332.\(^{104}\) Additionally, lower federal courts have found the abstention doctrines to be confusing and difficult to apply.\(^{105}\)

IV. IMPLICATIONS

The Supreme Court's holding in International College of Surgeons qualifies as a "watershed decision"\(^{106}\) and a "landmark result"\(^{107}\) because it delineates the breadth of the federal district courts' power to exercise supplemental jurisdiction. In holding that section 1367(a) "generally confers supplemental jurisdiction over 'all other claims' in the same case or controversy as a federal question, without reference to the nature of review,"\(^{108}\) the Court disturbed a deeply-rooted understand-

\(^{99}\) Id. at 176.
\(^{100}\) Id. at 182.
\(^{101}\) Id. at 180.
\(^{102}\) Id. at 187-88.
\(^{103}\) Id. at 189.
\(^{104}\) Id.
\(^{105}\) Id.
\(^{106}\) Id. at 175.
\(^{107}\) Id. at 180.
\(^{108}\) Id. at 169 (quoting 28 U.S.C. § 1367(a)). Although the Court implied that the federal district courts' power to exercise jurisdiction is plenary, section 1367(c) and the abstention doctrines somewhat limit that power. Also, the Eleventh Amendment to the United States Constitution prevents federal district court jurisdiction over cases involving review of state administrative decisions. Id. at 177 n.3 (Ginsburg, J., dissenting); see also Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89 (1984).
ing that federal district courts "do[] not sit to review on appeal action taken administratively or judicially in a state proceeding."\textsuperscript{109}

Justice Ginsburg warned that the majority's decision will enlarge federal jurisdiction by permitting litigants to routinely appeal decisions of local administrative agencies, boards, and commissions in federal district courts, irrespective of the basis for federal jurisdiction.\textsuperscript{110} Justice Ginsburg explained that the majority's decision permits access, either originally or by removal, to federal district courts for any litigant who is dissatisfied with a local agency's decision and who establishes diversity of citizenship or raises a federal question.\textsuperscript{111} Admittedly, diversity will seldom support federal district court jurisdiction in cross-system appeals because the complainant will usually be a citizen of the same state as the local agency. However, federal district court jurisdiction could almost always be based on a federal question because it is easy and common to allege a due process violation in the local agency's procedure or decision. Thus, cross-system appellate review may transform federal district courts into superintendents of local agencies.\textsuperscript{112}

Moreover, the majority's decision renders the \textit{Burford} abstention doctrine almost meaningless in the context of cross-system appeals of local administrative agency decisions. In \textit{Burford v. Sun Oil Co.}, the Supreme Court recognized the "'rightful independence of the state governments'" and the need for "'harmonious relation between state and federal authority'."\textsuperscript{113} The Court thus held that federalism counsels federal courts to abstain from exercising jurisdiction over issues involving complex state administrative procedures.\textsuperscript{114} In \textit{Quackenbush v. Allstate Insurance Co.}, the Court interpreted \textit{Burford} to require abstention only if the state interests in maintaining uniformity in the treatment of local problems and retaining control over its governmental processes outweigh the federal interests in exercising jurisdiction.\textsuperscript{115} The Court has observed that state interests rarely outweigh federal interests.\textsuperscript{116} Therefore, the \textit{Burford} abstention doctrine is an "extraordinary and narrow exception to the duty of [the district courts] to

\begin{thebibliography}{99}
\bibitem{109} Stude, 346 U.S. at 581.
\bibitem{110} \textit{International College of Surgeons}, 522 U.S. at 175 (Ginsburg, J., dissenting).
\bibitem{111} \textit{Id.} at 177.
\bibitem{112} \textit{Id.} at 175; see also \textit{TENTATIVE DRAFT NO. 2, supra} note 30, at \textit{xx}.
\bibitem{113} 319 U.S. at 332 (quoting \textit{Railroad Comm'n of Tex. v. Pullman Co.}, 312 U.S. 496, 500, 501 (1941)).
\bibitem{114} \textit{Id.}.
\bibitem{115} 517 U.S. at 726-28 (examining the justification for and the evolution of the \textit{Burford} abstention doctrine).
\bibitem{116} \textit{Id.} at 728.
\end{thebibliography}
adjudicate a controversy properly before [them]." In its remand decision in *International College of Surgeons*, the Seventh Circuit further restricted the Burford abstention doctrine by holding that abstention is appropriate only if the state provides a specialized forum in which claims may be litigated. Thus, without further guidance from the Supreme Court, application of the Burford abstention doctrine to the majority's decision is likely to cause conflicts among the circuits. To dispel this confusion, the Court may be forced to develop a "Chicago" abstention doctrine to govern cross-system appeals.

Although it is too soon to determine whether Justice Ginsburg's prophecy will be fulfilled, at least five subsequent cases have sanctioned cross-system appellate review based on *International College of Surgeons*. Carefully read, the majority's decision merely represents a grant of jurisdictional power, not a directive to exercise that power. Yet the disposition of these five cases illustrates the dangers inherent in the majority's decision. First, in four of these cases the courts ignored the majority's admonition to consider section 1367(c) or abstention doctrines before exercising jurisdiction over cross-system appeals. In the fifth, the district court refused to abstain from exercising jurisdiction under Burford because it felt bound to exercise the jurisdiction conferred on it by Congress. Regardless, relying on the Seventh Circuit's narrow interpretation of Burford in its *International College of Surgeons* decision on remand, the district court in that case ruled that defendant failed to satisfy either prong of the Burford abstention doctrine. Thus, as these five cases make clear, lower court decisions have been inconsistent in applying the Burford abstention doctrine.

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118. *International College of Surgeons*, 153 F.3d at 363-65. Currently there is a split among the circuits as to whether the Burford abstention doctrine requires the existence of a specialized forum. *Id.* at 364 n.9.
121. *International College of Surgeons*, 522 U.S. at 174 ("The District Court properly recognized that it could exercise supplemental jurisdiction . . . .") (emphasis added).
122. Lacks, 147 F.3d at 721; M & Z Cab Corp., 18 F. Supp. 2d at 945; Schullo, 1998 WL 417598, at *5-6; Cardenas, 990 F. Supp. at 646.
123. *Illinois Pollution Control Bd.*, 17 F. Supp. 2d at 806. Federal jurisdiction in *Illinois Pollution Control Bd.* was premised on 28 U.S.C. § 1345; therefore, the district court had no reason to consider declining jurisdiction under section 1367(c). *Id.* at 801.
124. See supra note 95; supra note 118 and accompanying text.
125. *Illinois Pollution Control Bd.*, 17 F. Supp. 2d at 806-07.
federal courts may interpret the majority's decision as a virtual requirement to exercise jurisdiction over cross-system appeals. Therefore, the majority's decision implicates federalism in several significant respects. In sanctioning cross-system appellate review of decisions of local administrative agencies, the Court upset the historical relationship between state and federal courts by applying a plain meaning interpretation of section 1367(a) that appears to be inconsistent with congressional intent. Specifically, *International College of Surgeons* threatens to expand the historical understanding of what constitutes a removable civil action by permitting removal of actions containing claims that are beyond independent or supplemental federal jurisdiction and are thus outside the realm of the original jurisdiction of federal courts. Moreover, federal district courts are virtually powerless to decline jurisdiction over cases properly brought unless section 1367(c) or an abstention doctrine applies. Because declining jurisdiction under section 1367(c) is completely discretionary and *Burford* abstention is rare, the majority's decision stands as a "startling . . . reallocation of power from state courts to federal courts." Cross-system appellate review further offends federalism because it allows federal district courts to subvert state mechanisms for reviewing local agency decisions. States and localities have an overriding interest in adjudicating disputes that arise from enforcement of their administrative law because that law "regulates the citizen's contact with state and local government" in all facets of life. As a general rule, state and federal courts are presumed equally competent to decide cases involving federal law, but state courts are deemed superior to federal courts

126. *But see* Nevares v. Morrissey, No. 95 Civ. 1135(JGK), 1998 WL 265119, at *4, *8 (S.D.N.Y. May 22, 1998) (unpublished decision) (acknowledging the authority to exercise jurisdiction under *International College of Surgeons*, but stating that doing so would be improper under section 1367(c)).
127. *Tentative Draft No. 2,* supra note 30, at 56. "Such a far-reaching change in the historic function of the district courts should flow from more than a semantic wrinkle in a statute utterly devoid of any apparent purpose to accomplish that end." *Id.* at xx.
129. *Quackenbush*, 517 U.S. at 716.
130. *International College of Surgeons*, 522 U.S. at 177 (Ginsburg, J., dissenting).
131. *Id.* at 180.
132. *Id.* at 185.
133. Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 274-76 (1997). This characterization represents the vast majority of cases, but there are some cases over which federal courts have exclusive jurisdiction. *See, e.g.,* 28 U.S.C. § 1251(a) (1994) (disputes
in adjudicating cases involving state law.\textsuperscript{134} Thus, the majority's decision jeopardizes the delicate balance of power contemplated by federalism by allowing excessive federal intrusion on state and local sovereignty.

Although it remains to be seen how vigorously the federal district courts will exercise this newfound jurisdiction and whether they will be reluctant to decline to exercise it under section 1367(c) or an abstention doctrine, \textit{International College of Surgeons} is significant because it has the potential to undermine historical understandings about the limits of federal judicial power.

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\textsuperscript{134} See \textit{Burford}, 319 U.S. at 327 ("Delay, misunderstanding of local law, and needless federal conflict with the state policy, are the inevitable product of this double system of review."); Ankenbrandt v. Richards, 504 U.S. 689, 703 (1992) (reaffirming the domestic relations exception to federal subject matter jurisdiction); \textit{Haiderman}, 465 U.S. at 122 n.32 ("[W]hen a federal decision on state law is obtained, the federal court's construction often is uncertain and ephemeral.").