

EXECUTIVE SOFTWARE NORTH AMERICA, INC.
v. UNITED STATES DISTRICT COURT

United States Court of Appeals for the Ninth Circuit, 1994.
24 F.3d 1545.

D.W. NELSON, CIRCUIT JUDGE:

Executive Software North America, Inc., Craig Jensen, and Sally Jensen ("Petitioners") petition this court for a writ of mandamus to compel the United States District Court for the Central District of California to retain jurisdiction over certain pendent state law claims filed in an employment discrimination suit against them by the plaintiff-real-party-in-interest, Donna Page. Petitioners¹ contend that, in remanding the plaintiff's pendent state law claims, the district court misapprehended the scope of the supplemental jurisdiction statute, and failed to undertake the case-specific analysis required by that statute. In addition, Petitioners contend that, on a proper application of section 1367, a remand of their state law claims cannot be justified. Finally, Petitioners assert that mandamus is their only means of remedying this asserted error. For the reasons stated below, we grant the writ, but on narrower grounds than urged by the parties.

Factual and Procedural Background

On April 8, 1993, Donna Page filed a complaint in state court against the petitioners. She claimed to have experienced several acts of discrimination during her employment with Executive Software. Specifically, Page, a black female, alleged that the company required all of its employees to study the teachings of the Church of Scientology written by L. Ron Hubbard. Page contends that when she refused to comply, she was charged with having made a number of errors in her work, and that when she attempted to contest the charges she was denied an opportunity to do so and was terminated. Page further asserts that the charges and subsequent termination were a mere "subterfuge for illegal discrimination against non-believers in the Church of Scientology, women and racial minorities."

In her complaint, Page alleged two federal causes of action, (1) a claim under Title VII, 42 U.S.C. § 2000(e) and (2) a claim under 42 U.S.C. § 1983, as well as three state-law causes of action, including (1) a claim for unlawful religious and racial discrimination under the California Fair Employment and Housing Act, (2) a claim of wrongful termination in violation of the California Constitution, and (3) a claim for negligent supervision.

Based on the two federal claims, the defendants removed the action to federal court. Subsequently, on May 20, 1993, the district court issued an order *sua sponte* to show cause why the three state-law claims should not be remanded to state court. The court stated that "jurisdiction over the state claims depends upon whether this Court exercises its discretion to retain [them]," and admonished the parties to consider that "the Supreme Court defined the parameters of a federal court's supplemental jurisdiction in *United Mine Workers v. Gibbs*." After noting the requirements set forth in *Gibbs* for exercising supplemental jurisdiction, the Court added:

Even if [the *Gibbs* test is] met, however, a federal court has discretion to decline jurisdiction over state law claims if, for instance, the state claims substantially predominate, the state claims involve novel or complex issues of state law, trial of the state and federal claims together is likely to result in jury confusion, or retention of the state claims requires the expenditure of substantial additional judicial time and effort. * * *

The district court thereafter remanded the three state law claims, but provided no reasons.

¹ Because the parties are in substantial agreement in their arguments, we use "Petitioners" to refer to arguments advanced by both the petitioners and the plaintiff.

Analysis

This petition presents several issues. First, we must determine whether we may review the district court's order in this case and if mandamus properly is invoked. Second, we must determine whether the district court clearly erred in its interpretation and application of the supplemental jurisdiction statute and if other factors counsel in favor of issuing the writ.

* * *

II. Should Mandamus Issue?

Mandamus is an extraordinary remedy that may be obtained “only ‘to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.’” To issue the writ, the court must be “‘firmly convinced that the district court has erred,’” and that “the petitioner’s right to the writ is ‘clear and indisputable.’” Consequently, we review for clear error and not abuse of discretion.

This circuit has adopted five “objective principles,” for guiding determinations concerning when mandamus should issue: “(1) The party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief he or she desires”; “(2) The Petitioner will be damaged or prejudiced in a way not correctable on appeal”; “(3) The district court’s order is clearly erroneous as a matter of law”; “(4) The district court’s order is an oft-repeated error, or manifests a persistent disregard of the federal rules”; and “(5) The district court’s order raises new and important problems, or issues of law of first impression.”

Although we have written of these five factors that “no single [one] is determinative,” and that “all five factors need not be satisfied at once,” it is clear that the third factor, the existence of clear error as a matter of law, is dispositive. Accordingly, we first examine whether the district court clearly erred. After this discussion, we examine whether the other factors in the mandamus calculus point in favor of granting the writ.

A. Did the District Court Commit Clear Error?

The district court provided no reasons for its remand. However, in its Show Cause Order, the court stated that it did not “interpret Section 1367 as restricting the discretionary factors set forth in *Gibbs*. Rather, this court interprets Section 1367 as merely allowing this Court, at its discretion, to exercise jurisdiction over supplemental parties, which was previously foreclosed * * *.” In addition, the district court listed a number of factors that it took as illustrative of permissible bases for remanding pendent state law claims under *Gibbs* and its progeny, including whether “retention of the state claims requires the expenditure of additional judicial time and effort.”

We find this interpretation of section 1367 erroneous. It is clear that, once it is determined that the assertion of supplemental jurisdiction is permissible under sections 1367(a) and (b), section 1367(c) provides the only valid basis upon which the district court may decline jurisdiction and remand pendent claims. Moreover, we conclude that although subsections (c)(1)-(3) appear to codify most preexisting applications of the *Gibbs* doctrine, subsection (c)(4), which also permits a court to decline jurisdiction when, “in exceptional circumstances, there are other compelling reasons,” channels the district court’s discretion to identify new grounds for declining jurisdiction more particularly than did preexisting doctrine. Accordingly, we conclude the district court erred to the extent that it relied on a basis for remanding pendent claims not permitted under section 1367(c). Finally, we conclude that, because the district court failed to articulate reasons for its remand of the pendent claims, we cannot determine whether the district court relied on a statutory ground and exercised its discretion in a permissible manner. Consequently, we conclude that the district court clearly erred.

1. *The Gibbs Test and the Origins of Section 1367*

United Mine Workers v. Gibbs broadly authorized the federal courts to assert jurisdiction over state law claims when “[t]he state and federal claims * * * derive from a common nucleus of operative fact,” the claims are such that a plaintiff “would ordinarily be expected to try them all in one judicial proceeding,” and the federal issues are “substantial[.]” These three factors conferred power on the federal courts under Article III to hear the entire “constitutional” case. The Court added critically, however, that:

[Such] 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. Its justification lies in considerations of judicial economy, convenience and fairness to litigants; if these are not present a federal court should hesitate to exercise jurisdiction over state law claims * * *. Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law.

The Court then described several scenarios in which declining to exercise power to entertain pendent state-law claims would be appropriate: (1) when “the federal claims are dismissed before trial”; (2) when “it appears that the state issues substantially predominate, whether in terms of proof, of the scope of the issues raised, or of the comprehensiveness of the remedy sought”; and (3) when separation of the state and federal claims is justified by “reasons independent of jurisdictional considerations, such as the likelihood of jury confusion.”

Although some courts referred to these scenarios as the *Gibbs* “factors,” it is clear that they constituted merely illustrative applications of *Gibbs*’s animating values and were not meant to be exhaustive. As the Supreme Court emphasized:

Under *Gibbs*, a federal court should consider and weigh in each case, at every stage of the litigation, *the values of judicial economy, convenience, fairness, and comity in order to decide whether to exercise jurisdiction over a case brought in that court involving pendent state law claims*. When the balance of *these factors* indicates that a case properly belongs in state court, *as when the federal claims have dropped out of the lawsuit in its early stages*, the federal court should decline the exercise of jurisdiction * * *. As articulated in *Gibbs*, the doctrine of pendent jurisdiction thus is a doctrine of flexibility, designed to allow courts to deal with cases involving pendent claims in the manner that *most sensibly accommodates a range of concerns and values*.⁴

Indeed, the Court * * * noted that *Gibbs* did not “directly address” the issue it faced: whether a court has discretion to remand, instead of dismiss, state law claims when it has determined that retaining jurisdiction is inappropriate. The Court found such an extension of the pendent jurisdiction doctrine justified by *Gibbs*’s underlying values:

[*Gibbs*] establishes that pendent jurisdiction doctrine is designed to enable courts to handle cases involving state law claims in the way that *will best accommodate the values of economy, convenience, fairness, and comity*, and *Gibbs* further establishes that the Judicial Branch is to shape and apply the doctrine in that light. [Emphasis added.]

Similarly, the Supreme Court’s directive to test the appropriateness of pendent jurisdiction against the values of “economy, convenience, fairness, and comity” and its emphasis that

⁴ The * * * Court reiterated this point in explaining why the statement in *Gibbs* that “if the federal claims are dismissed before trial * * * the state claims should be dismissed as well,” should not be taken as “a mandatory rule to be applied inflexibly in all cases”

The statement simply recognizes that in the usual case in which all federal-law claims are eliminated before trial, *the balance of factors to be considered under the pendent jurisdiction doctrine-judicial economy, convenience, fairness, and comity* -will point toward declining to exercise jurisdiction over the remaining state law claims. [Emphasis added.]

the doctrine is one of “flexibility” led a number of courts to decline pendent jurisdiction in situations not mentioned specifically in *Gibbs*. * * * This application of *Gibbs*’s underlying values was discussed approvingly by the Supreme Court.⁵

Of course, even when called upon to evaluate the propriety of pendent jurisdiction in one of the three scenarios set forth by the *Gibbs* Court, courts almost uniformly found that the district court’s discretion must be guided by the principle that the goal of pendent jurisdiction is to “ ‘best accommodate the values of economy, convenience, fairness, and comity.’ ”

Therefore, * * * whether pendent jurisdiction should be exercised in a given circumstance depended on the district court assessing whether doing so “would most sensibly accommodate” the values of “economy, convenience, fairness, and comity.” Although the specific examples given in *Gibbs* informed the determination of *when* the particular balance of these factors was likely to point against (or in favor) of retaining jurisdiction, courts by no means found these specific illustrations to exhaust *Gibbs*’s underlying values.

The very flexibility of this approach led to the doctrine’s most severe criticism. As noted by many commentators, the primary deficiency of the *Gibbs* regime was that it blurred the question of the *power* of the federal courts to entertain pendent claims under Article III with the question of congressional statutory *authorization* of such jurisdiction. The Supreme Court’s subsequent decision in *Finley* highlighted the problems of an absence of firm statutory authority, for the Court refused to find the assertion of jurisdiction over pendent *parties* permissible absent congressional authorization even when federal jurisdiction was exclusive.

Prior to *Finley*, a number of lower federal courts had permitted pendent-party jurisdiction as long as Congress had not “expressly or by implication negated its existence.” *Finley*, however, appeared to articulate the *opposite* presumption: that unless Congress affirmatively *conferred* pendent-party jurisdiction, it would not be permitted. Indeed, a number of courts interpreted *Finley* “as putting an end to [pendent-party] jurisdiction,” as well as threatening aspects of ancillary jurisdiction. As a result, *Finley* evoked severe criticism. In response, the Federal Court Study Committee, established by Congress in 1988, made an express recommendation to provide a statutory basis for pendent, ancillary, and pendent-party jurisdiction in a “supplemental” jurisdiction statute.

2. *The Relationship of Section 1367(c) to Gibbs*

Initially, we must determine whether, as Petitioners contend, the section 1367(c) factors are the exclusive means by which supplemental jurisdiction, if permitted by sections 1367(a) and (b), can be declined. In addition, we must ascertain whether the scope of the section 1367(c) categories is coextensive with the *Gibbs* regime, or if, as Petitioners contend, section 1367 has altered the analysis.

a.

Section 1367 retains the basic division, reflected in *Gibbs*, between the power of a court to entertain a pendent claim and the authority of a court, in its discretion, to decline to exercise that power. However, Congress, in codifying supplemental jurisdiction, has chosen to codify as well the discretionary factors that warrant declining jurisdiction. Section 1367(a), providing that “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,” (emphasis added), confers power to entertain supplemental jurisdiction in mandatory terms. By use of the word “shall,” the statute makes clear that if power is conferred under section

⁵ The *Gibbs* values also have been applied in new contexts to find the assertion of pendent jurisdiction especially *appropriate*.

1367(a), and its exercise is not prohibited by section 1367(b),⁸ a court can decline to assert supplemental jurisdiction over a pendent claim only if one of the four categories specifically enumerated in section 1367(c) applies. * * *

By selecting this statutory structure, it is clear that Congress intended section 1367(c) to provide the exclusive means by which supplemental jurisdiction can be declined by a court. Not only is this conclusion supported by the legislative history, but a contrary reading of the statute would appear to render section 1367(c) superfluous. Accordingly, unless a court properly invokes a section 1367(c) category in exercising its discretion to decline to entertain pendent claims, supplemental jurisdiction must be asserted.

b.

A consequence of the statutory structure chosen by Congress is that section 1367(c) somewhat changes the nature of the *Gibbs* discretionary inquiry. Although, as discussed above, *Gibbs* and its progeny identified a number of concrete instances in which declining pendent jurisdiction normally would be appropriate, the ultimate inquiry for the courts remained whether the assertion of pendent jurisdiction “best accomodate[s] the values of economy convenience, fairness and comity.” Application of these underlying values to circumstances not identified in prior cases was not only contemplated, but demanded.

The statute, however, channels the application of the underlying values to a greater degree than the *Gibbs* regime, although section 1367(c) continues to recognize the doctrine’s dynamic aspects. Subsections (c)(1)-(c)(3) appear to codify concrete applications of the underlying *Gibbs* values recognized in preexisting case law. Subsection (c)(2) (state law claim “substantially predominates”) and (c)(3) (district court has dismissed all claims over which it had original jurisdiction), are derived directly from *Gibbs* itself, while subsection (c)(1), permitting a remand when “the claim raises a novel or complex issue of State law,” implicates the subsequently developed line of cases tacitly approved [by the Court] * * * .

By codifying preexisting applications of *Gibbs* in subsections (c)(1)-(3), however, it is clear that Congress intended the exercise of discretion to be triggered by the court’s identification of a factual predicate that corresponds to one of the section 1367(c) categories. Once that factual predicate is identified, the exercise of discretion, of course, still is informed by whether remanding the pendent state claims comports with the underlying objective of “most sensibly accommodat[ing]” the values of “economy, convenience, fairness, and comity.”

We believe that the “catchall,” provided by subsection (c)(4) should be interpreted in a similar manner. Subsection (c)(4) permits a discretionary remand of pendent claims when “*in exceptional circumstances, there are other compelling reasons for declining jurisdiction.*” ([E]mphasis added). Congress’s use of the word “other” to modify “compelling reasons” indicates that what ought to qualify as “compelling reasons” for declining jurisdiction under subsection (c)(4) should be of the same nature as the reasons that gave rise to the categories listed in subsections (c)(1)-(3). Because, as discussed above, the subsection (c)(1)-(3) fact patterns constitute situations in which the underlying *Gibbs* values ordinarily will “point toward” declining jurisdiction, we believe that “compelling reasons” for the purposes of subsection (c)(4) similarly should be those that lead a court to conclude that declining jurisdiction “best accommodate[s] the values of economy, convenience, fairness, and comity.”⁹

⁸ Section 1367(b) prohibits the assertion of supplemental jurisdiction when the policies behind the limitations on diversity jurisdiction would be defeated. None of the concerns embodied in § 1367(b) are raised by this case. In addition, the *proviso* to § 1367(a), that supplemental jurisdiction cannot be asserted if expressly prohibited by a federal statute, similarly does not apply.

⁹ We therefore reject the interpretation, suggested by some courts and commentators, that “compelling” in § 1367(c)(4) should be read *back* into § 1367(c)(1)-(3) in the sense that an exercise of discretion under those categories should be made only in narrower circumstances than permitted under their *Gibbs* counterparts. The

We do not believe, however, that Congress has replicated unaltered the command of the Court that the “Judicial Branch is to shape and apply [the doctrine of pendent jurisdiction] in [light of this objective].” By providing that an exercise of discretion under subsection 1367(c)(4) ought to be made only in “exceptional circumstances” Congress has sounded a note of caution that the bases for declining jurisdiction should be extended beyond the circumstances identified in subsections (c)(1)-(3) only if the circumstances are quite unusual. In short, although we find that “other compelling reasons” clearly refers the district court back to the subsection (c)(1)-(3) categories, and thus requires the court to balance the underlying values that they embody, we think “exceptional circumstances” requires an additional inquiry.

Of course, when the balance of the *Gibbs* values indicates that there are “compelling reasons” to decline jurisdiction, the underlying circumstances that inform this calculus usually will demonstrate how the circumstances confronted are “exceptional.” We do not believe, however, this always will be the case. Even when a court’s balancing of the *Gibbs* values provides, in its judgment, “compelling reasons” for declining jurisdiction, it might still be the case that the differences between the case it is confronting and the case in which supplemental jurisdiction is appropriate are not sufficient to justify the conclusion that the court would, in fact, be applying subsection (c)(4) properly. We think that it clear from the language chosen by Congress, however, that declining jurisdiction outside of subsection (c)(1)-(3) should be the exception, rather than the rule. Courts therefore must ensure that the reasons identified as “compelling” are not deployed in circumstances that threaten this principle. The inquiry is not particularly burdensome. A court simply must articulate why the circumstances of the case are exceptional in addition to inquiring whether the balance of the *Gibbs* values provide compelling reasons for declining jurisdiction in such circumstances.

We think this interpretation is compelled not only by our understanding of the meaning of the term “other” in subsection (c)(4) and a common-sense understanding of “exceptional,” but also by the statutory structure of section 1367(c). As discussed above, the subsection (c)(1)-(3) categories require both the presence of a factual predicate that triggers the exercise of discretion and a case-specific analysis of whether the *Gibbs* values would be best served by declining jurisdiction. Our interpretation of subsection (c)(4) carries forward this structure into that subsection: the court must identify the predicate that triggers the applicability of the category (the exceptional circumstances), and then determine whether, in its judgment, the underlying *Gibbs* values are best served by declining jurisdiction in the particular case (the compelling reasons).

We also think this result is mandated by the plain language of the statute—that “*in exceptional circumstances, there are other compelling reasons for declining jurisdiction.*” ([E]mphasis added). To deprive “in exceptional circumstances” of all meaning would unnecessarily conflate distinct statutory terms, a result that we are reluctant to embrace. Moreover, there is no clear pre-section 1367(c) definition of the term that would lead us to conclude that Congress intended otherwise.

Therefore, to the extent that *Gibbs* and *Carnegie-Mellon* were interpreted as permitting courts to extend the doctrine’s underlying values beyond previously recognized applications *whenever* doing so was consistent with those values, we believe that section 1367(c)(4) more carefully channels courts’ discretion by requiring the court to identify how the circumstances that it confronts, and in which it believes the balance of the *Gibbs* values provides “compelling reasons” for declining jurisdiction, are “exceptional.”¹¹

§ 1367(c)(1)-(3) categories are instead best characterized as describing circumstances that ordinarily present “compelling” reasons in and of themselves for remanding pendent claims.

¹¹ Of course, we do not mean to suggest that the result in * * * cases that declined jurisdiction on grounds not included within § 1367(c)(1)-(3), would be impermissible under § 1367(c)(4). We do believe, however, that

* * *

c.

With the above analysis providing the necessary conceptual foundation, we conclude that the district court clearly erred. The court, although acknowledging section 1367(c), stated that it did not rely on the statute, but *Gibbs*. Although this might be insignificant if the Show Cause Order indicated that the court considered only the codified applications of *Gibbs* enumerated therein, the court further intimated that *Gibbs* permitted it to decline jurisdiction when “retention of the state claims [would] require[] the expenditure of substantial judicial time and effort.” If this statement was intended to go beyond preexisting applications of *Gibbs* by invoking its underlying values, it was an impermissible attempt.¹⁵ More fundamentally, as discussed above, subsection (c)(4) requires the district court not only to determine if consideration of the *Gibbs* values provides compelling reasons for a remand, but also to articulate how the circumstances that warrant declining jurisdiction are exceptional. Even if we were confident that the district court balanced the *Gibbs* values, there is no indication that it undertook this latter inquiry. Therefore, the district court clearly erred by articulating a basis for declining jurisdiction that is unauthorized by statute.

3. *The District Court’s Failure to Provide Reasons Explaining its Remand Order Prevents this Court From Ascertaining Whether the Reasons Relied Upon were Permissible.*

The district court’s error might be harmless if it could fairly be discerned from the record that it *did* rely upon one of the codified *Gibbs* factors that it listed in the Show Cause Order and that it undertook the requisite analysis. Petitioners contend, however, that the need to apply a specific section 1367(c) category makes it “*incumbent* upon the district court to explain the basis for remand and explain the statutory grounds relied upon.” ([E]mphasis added). In short, Petitioners maintain that the district court’s failure to provide written reasons for its remand order constituted a *per se* violation of the statute.

Although we disagree that failure to state reason in itself is reversible error, in this particular case, we conclude that the failure to provide written reasons renders it impossible to determine whether the district court relied on permissible factors. As discussed above, the district court listed some applications of *Gibbs* now codified in subsections 1367(c)(1)-(3) in the Show Cause Order as well as a factor that appeared an incomplete attempt to invoke the underlying *Gibbs* values. We cannot discern whether the district court relied upon the former or the latter. Under these circumstances, we cannot say that the district court exercised its discretion in an appropriate manner; accordingly, we conclude that the district court committed clear error.

* * *

E. *The Scope of Relief*

Accordingly, we conclude that the issuance of the writ in this case is appropriate. We hold that the district court clearly erred by misapprehending the proper source of its discretion, thereby possibly relying on a basis for exercising its discretion not authorized by statute, and by failing to provide sufficient reasons that would permit this court to ascertain that its decision, in fact, was based upon permissible factors. Thus, we vacate the remand order entered by the district court. We wish to make clear, however, that nothing in the above analysis is meant to indicate whether or not supplemental jurisdiction in this case is inappropriate; it remains the duty of the district court to consider the propriety of pendent jurisdiction “at every stage of the litigation,” after proper consideration of section 1367.

¹⁵ § 1367(c)(4) requires a district court both to consider how the circumstances of the case are exceptional and to determine why declining jurisdiction best serves the *Gibbs* values.

¹⁵ The district court’s statement implies that it might have remanded the state law claims solely to ease docket congestion. This clearly is impermissible.

Conclusion

We hold that the district court erred by failing to recognize that section 1367(c) provides the exclusive means by which supplemental jurisdiction over pendent claims may be declined if its assertion is permitted by sections 1367(a) and (b). Furthermore, to the extent that the district court relied on a ground for declining jurisdiction not codified in subsections (c)(1)-(3), the court committed clear error by failing to articulate how the “exceptional circumstances” and “compelling reasons” required by subsection (c)(4) were present. Finally, because the district court failed to provide reasons for its decision to decline supplemental jurisdiction, and the basis is not apparent from the record, we are unable to determine whether the court relied upon permissible grounds when it remanded the pendent claims.

For the above reasons, the writ of mandamus is **GRANTED**, and the remand order entered by the district court shall be **VACATED**.