* **Hypo #8**
	+ African-Americans who have been refused employment by a fire department are suing the city for racial discrimination in hiring

	they are asking for preferential treatment in hiring by the fire department as a remedy for past discrimination

	may the white firefighters (or white applicants to the fire department) who would be affected by this relief intervene of right? **Are they necessary parties?**
		- **could be so described under 19(a)(1)(B)**
		- that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may:
		            (i) as a practical matter impair or impede the person’s ability to protect the interest; or
		            (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.
		- eg Af-Am’s win and then white firefighters sue fire dept. and also win – fire dept is subject to inconsistent obligs
		- or could say that if second suit is dismissed because of judgment in 1st the white firefighters can’t vindicate their interest
	+ the idea of intervention of rights under 24(a) is similar – necessary party joins of own accord
		- BUT there is a tendency to say that the interest needed to be an intervenor of right is broader than the interest needed to be a necessary party – for an intervenor it might not be an interest that the intervenor could have sued on if he is not joined
	+ **If no one else mentions white applicants, then they can join the party on their own**
		- **Someone who is not party and joins the law suit, they have to have good reason**
			* **Reason: they are necessary party or something very close to necessary party**
			* **Only thing is that you won’t be able to intervene if “existing parties adequately represent that interest”**
			* **There’s the idea that someone has an interest in the law suit but it’s sufficiently important that they can intervene**
			* **If lawsuit proceeds without you, you might not be able to vindicate your interests**
	+ **Can court bring in necessary party *sua sponte*?**
		- **Yes, this is a way of providing adequate relief and they have an interest in doing so**
	+ What if white firefighters don’t intervene?
		- **1. They didn’t find out to intervene**
		- **2. They knew about it and decided not to intervene and no one else knew that they were necessary party**
		- It’s a tragedy b/c someone is going to be screwed over
	+ Green: for this particular example, there’s a statute that applies 🡪 42 U.S.C. § 2000e-2(n)
		- If you had actual notice of law suit (the white applicants), and you didn’t intervene, you’re going to be bound to the lawsuit
		- tied to civil rights actions
		- So you must join law suit if you find out about or else you’ll be bound
		- This is an EXCEPTION to the general rule that you cannot be bound by a judgment unless you were an actual party
		- SOME jurisdictions have introduced this general idea in their common law of issue preclusion
			* if you were a necessary party and knew about the lawsuit and did not intervene then you will be bound by the results
			* but this is a cutting edge doctrine
			* **This is unusual so if you remember anything, remember that you almost always cannot be bound by a lawsuit in which you were not a party**
* **Hypo #9**
	+ P wants to build a dump in some wetlands

	the Army Corp of Engineers refuses to issue a permit

	P sues the Army Corp of Engineers

	may people who live by the wetlands intervene on the side of the government?
	+ **Are they an intervener of right?**
		- **Yes they have an interest—they don’t want smelly dumps**
	+ **As practical matter, if they’re not joined, they may not be able to vindicate interests**
	+ **Is their interest adequately represented by gov’t?**
		- **Well maybe gov’t might settle b/c they have a lot of other things going on**
		- **It’s problematic when people intervene on side of gov’t, so it’s very common for their to be limitations of intervention**
			* **Via amicus brief b/c they are not bound**
		- **So then they say you can only intervene if it’s for purposes of bringing the appeal**
* Permissive Intervention
	+ **Very rare for ct to allow permissive intervention**
* **Supplemental jurisdiction**
* **Hypo #10**
	+ P (NY) sues D (NY) under federal securities law in federal court

	P joins under R 18(a) a state law fraud claim against D

	D impleads insurer I (NY) for state law contract claim

	D also brings compulsory counterclaim for breach of contract (P didn’t pay all the money he owes under the securities contract)
	+ 
	+ **idea that this is all one big case so the whole case can be sent to federal court as a CONSTITUTIONAL MATTER as long as it has the “arising under” hook**
	+ Pendant and ancillary
		- Together is the constitutional scope for their to be supplemental jurisdiction ASA A CONSTITUTIONAL MATTER
		- Pendant
			* applies to a plaintiff with an action that has its own source of SMJ who joins causes of action without their own source of SMJ but that arise from a *common nucleus of operative fact*
			* Green: “common nucleus of operative fact” shows that you are trying to show the constitutional scope
				+ Prefers for you to use this phrasing over “transaction or occurrence”, which is joinder-rule-talk
		- Ancillary
			* Two types:
				+ (1) Actions brought by someone other than the plaintiff that lack their own source of federal SMJ but have a common nucleus of operative fact with the action that does
				(compulsory counterclaims, cross claims)

still “common nucleus of operative facts” doing the work here

* + - * + (2) Joined cause of action, although not really arising out of the common nucleus of operative fact, asserts legal rights that were activated by the cause of action that has an independent source of federal SMJ actions
				- impleader
				- supplementary proceedings to effectuate P’s judgment

this one means if you bring action against someone and you win, you then have to collect that judgment you use state debt collection law

for those proceedings to continue in fed court, there must be supplemental jurisdiction for state law debt collection action

this has ancillary jurisdiction b/c trying to collect debt is started by fed judgment

**anything that has common nucleus of operative facts that gave rise to federal action, that’s still going to be constitutional case or controversy**

**and any action that is animated by the success of the action that has SMJ on its own, it will count in constitutional case or controversy**

Green: be sure to answer constitutional question separately

* **Hypo #11**
	+ P (NY) sues D1 (NJ) for brawl
	P joins D2 (NY) under R 20(a)
	+ **Supplemental jurisdiction has destroyed diversity**
	+ **So although this is constitutional (b/c P v. D2 is part of constitutional case or controversy with P v. D1)**
	+ Constitutional question is not the only question
		- Next step is if statute giving ct SMJ allows it?
		- in the past you looked to the particular statute at issue and you see is giving the action SMJ would frustrate its purpose
		- here it would because the requirement of complete diversity in 1332 would be frustrated
* after Finley….. the question is now answered by 28 U.S.C. §1367
	+ Supplemental jurisdiction
		- (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, 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. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.
		- (b) In any civil action of which the district courts have original jurisdiction founded **solely on section 1332 of this title**, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by **plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure**, or over **claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules**, when exercising supplemental jurisdiction over such claims would be **inconsistent with the jurisdictional requirements of section 1332**.
	+ **1367(b) is only a problem if original jurisdiction is *only* diversity case, and then only if it’s a claim by P, you might be in trouble because an exception to supplemental jurisdiction might apply**
		- *

Supplemental Jurisdiction Statute 28 U.S.C. § 1367 passed to override SCt decision in Finley, codified supplemental jurisdiction requirements

1st Step: Constitutional Analysis- is the action part of the same constitutional case or controversy as the action with original SMJ?

e.g. does it share have a **common core of operative fact?**

2nd Step (Only if Federal Action is based solely on Diversity): Statutory Analysis using §1367(b)

 (b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

notice these exceptions are a problem only for actions brought by a **plaintiff**

so –

* **Hypo #10**
	+ P (NY) sues D (NY) under federal securities law in federal court

	P joins under R 18(a) a state law fraud claim against D

	D impleads insurer I (NY) for state law contract claim

	D also brings compulsory counterclaim for breach of contract (P didn’t pay all the money he owes under the securities contract)



all of these actions have supplemental jurisdiction – they are all part of the same constitutional case or controversy and because the core action is federal question that is all that matters

what if the D is granted summary judgment on the federal securities action?

must the court dismiss the state common law fraud action?

it does not have to – they still have supplemental jur

what if the D gets the federal securities action dismissed for failure to state a claim?

they still have suppl jur

it can at its discretion dismiss the actions however

(c) 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.

- P(NY) and D(NY) wish to litigate their state law battery action in federal court before their friend, federal judge X, who is willing

- how to overcome the problem of SMJ?

- P sues D in federal court claiming that D’s hitting him was a violation of federal securities law

- P joins to the federal action a state law battery action

- when the federal securities law action is dismissed for failure to state a claim, there is still SMJ for the battery action

- should this work...?

NO – in this case the federal action is not colorable so it will be dismissed for lack of SMJ not failure to state a claim – as a result there cannot be suppl jur for the other actions

§1367(d) allows for claims dismissed under §1367(c) to be brought in State Courts, dictates a new tolling of the statute of limitations (possibly cuts into State’s authority over their courts)

§1367(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

* Jinks Case about the constitutionality of §1367(d), Court held that the statute helps encourage people to take claims to federal court without the fear of their state law claims being barred from state court on statute of limitations grounds if they are dismissed under 1367(c)
* it is constitutional even though Congress is regulating the procedure of state courts because the regulation is only to protect the jurisdiction of federal courts

Hypo #1- A (NY) sues B(NY) under fed securities laws

A joins state common law fraud claim against C (NY), an auditor for B who was also responsible for the fraud

* Permissible Joinder under Rule 20(a)
* Supplemental Jurisdiction exists because action A -> C concerns the same nucleus of operative facts as claim A->B which has original jurisdiction
* Since A->B is federal question, that is the only question
* This is incidentally similar to the pendant party jurisdiction which the SCt rejected in Finley and Aldinger – it was those two cases that motivated Congress to pass 1367

#1(b) Assume A also joins a state law action for a battery occurring a few weeks before the fraud against C

* Allowed under 14(a) but no supplemental jurisdiction, not the same nucleus of operate facts

Hypo #2- A (Cal.) sues E (Nev.) (B’s employer) under state law for a battery committed by B (Cal.)

* E impleads B

Acceptable under Rule 14 (E claiming B is liable to E for all or part of E’s liability to A)

* There is suppl jur for this impleader
* B then brings joins an action against A on the harm done to B in their fight
* This is allowed under R 14
* 

Supplemental Jurisdiction exists, even though B and A are not diverse

* same const’l case or controversy as A v. E and even though one might have to worry about the exceptions to suppl jur in 1367(b), because A v. E is solely a diversity case, B v. A is not brought by a plaintiff so the exceptions don’t apply
* What if you switch and it is A bringing an action against B?
* 

Acceptable joinder claim under Rule 14, but no supplemental jurisdiction because it falls under the exception of §1367(b) – it is a claim by a plaintiff against someone made a party under R 14, where exercising suppl jur would be inconsistent with the jurisdictional requirements of section 1332.

Hypo - P (Cal) sues D (Cal) under federal securities laws. D joins an action against P for battery, asking for $100k

 No supplemental jurisdiction, claim D🡪P is not within the same core of operate facts as the original action – not part of the same const’l case or controversy

Hypo - P (Cal) sues D (Ore) for state law breach of contract, asking for $100K. D joins an action against P for battery, asking for $25k.

* No supplemental jurisdiction, D🡪 P is a permissive counterclaim (Rule 13(b)), so claim D🡪P is not part of the same const’l case or controversy
* Majority of Courts say cannot aggregate counterclaim amounts with the original amount to reach amount in controversy

Hypo - P (NY) sues D (NJ) for battery asking for $100K. D impleads X (NY) a joint tortfeasor for contribution
X brings 14(a) claims against P from damages from same accident
P brings compulsory counterclaim against X for damages from the accident

* is there suppl jur?
* there should be: P is not using suppl jur to try to get around the requirements for complete diversity – is only bringing P v. X because D impleaded X and X joined an action against P
* BUT argument that there is not –
	+ Although part of same const’l case or controversy as P v. D, it falls under the exception to suppl jur in 1367(b)
		- Claim by P against someone made a party under R 14
	+ Some courts try to get around this by saying that P v. X is a claim by a counterclaim plaintiff not a simple plaintiff

Hypo - P (NY) sues D1 (NJ) for state law battery asking $100k and D2 (NJ) asking $25K.

 No supplemental jurisdiction, Exception applies because D2 made party under Rule 20, Claim P🡪D2 destroys diversity

Hypo - P1 (NY) sues D (NJ) under state law battery for $100k and joins with P2 (NY) who sues D for $25K.

 Supplemental Jurisdiction exists – P2 v. D does not fall under this language

**Claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure**, or over **claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules**,

* P2 v D is a claim by a person proposed to be joined as a plaintiff under **R 20**

This is what was held by the SCt in Allapattah