No. 07-618

In the

Supreme Court of the United States

GOSS INTERNATIONAL CORP.,
Petitioner,

v.

TOKYO KIKAI SEISAKUSHO, LTD.
and TKS (USA), INC.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF OF *AMICI CURIAE* LAW PROFESSORS IN SUPPORT OF PETITIONER GOSS INTERNATIONAL CORP.

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QUESTIONS PRESENTED

The Court of Appeals reversed the issuance of an anti-suit injunction because it believed that the district court lacked jurisdiction to issue the injunction after satisfaction of the judgment and because, in the absence of such jurisdiction, international comity weighed against issuance of the injunction. *Amici* will address the following questions:

1. Whether the Court of Appeals' conclusion that the district court lacked jurisdiction is inconsistent with *Pacific Railroad of Missouri v. Missouri Pacific Railway Co.*, 111 U.S. 505 (1884), as well as the historic principle that a trial court possesses the ancillary jurisdiction to conduct further proceedings after satisfaction of judgment.

2. Whether the Court of Appeals' decision to give dispositive weight to concerns for international comity is inconsistent with this Court's decisions authorizing anti-suit injunctions and with the need to enforce Acts of Congress whose violations cause damage on American soil.

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INTEREST OF THE *AMICI CURIAE*[1]

Amici are scholars who write and teach in the areas of civil procedure, complex civil litigation, federal jurisdiction, and antitrust. The jurisdiction and authority of a federal court to enforce a judgment in light of a foreign "clawback" statute that seeks to nullify the judgment are important questions in the administration of the American legal system.

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[1] The parties have consented to the filing of this brief. Counsel of record for all parties received notice more than ten days before the due date of the intention of *amici curiae* to file this brief. Pursuant to Rule 37.6, *amici* state that no counsel for any party in this case authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The following non-party made an in-kind donation for the printing of this brief: Midwest Law Printing Company.

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INTRODUCTION AND SUMMARY OF ARGUMENT

1. This case presents issues of jurisdiction, equity, and international comity that require this Court's resolution. As we understand the facts, in 2003 the petitioner, Goss International, obtained a judgment under the Antidumping Act of 1916, 15 U.S.C. § 72 (2000) (repealed 2004), against the respondents, which are a Japanese corporation and its wholly-owned American subsidiary. The consonance between the Antidumping Act and the obligations of the United

States as a member of the World Trade Organization had been the subject of international friction. In 2004, after judgment in this case had been entered but before Congress prospectively repealed the Antidumping Act, the Government of Japan enacted a "clawback" statute known as the Special Measures Law. This law declared judgments rendered under the Antidumping Act to be invalid, and created a claim under which a Japanese corporation that had lost a case under the Antidumping Act could obtain from the plaintiff reimbursement for its damages, costs, or attorneys' fees. If successful, such an action would effectively deny a plaintiff the benefits of a judgment rendered by an American court.

In 2006, after unsuccessful appeals had run their course, the respondents indicated their intention to file an action in Japan under the Special Measures Law. On June 15, 2006, the district court that had entered judgment against the respondents preliminarily enjoined them from bringing such an action. Four days later, the respondents paid the judgment in full. Two days after that, without first asking the district court to reconsider its injunction in light of the judgment's satisfaction, the respondents filed an appeal from the preliminary anti-suit injunction.

2. In the decision now under review, the Court of Appeals for the Eighth Circuit vacated the preliminary injunction and remanded the case with instructions to dismiss Goss's motion for a permanent anti-suit injunction. According to the Court of Appeals, the case turned on a single critical fact: the respondents' satisfaction of the judgment on June 19, 2006. In the analysis of the Court of Appeals, the satisfaction had three important consequences.

First, the satisfaction deprived the district court of jurisdiction to issue an anti-suit injunction. (Pet. 19a-22a; 28a.) The Court of Appeals conceded that "[t]he district court retained ancillary enforcement jurisdiction *until* satisfaction of the judgment" (Pet. 21a; *see also* Pet. 22a, 28a), but that this jurisdiction ended once the respondents had satisfied the judgment. The Court of Appeals also stated that the All Writs Act, 28 U.S.C. § 1651 (2000), created no "independent source of federal jurisdiction." (Pet. 20a.)

In the Court of Appeals' judgment, the second consequence of the satisfaction was the elimination, or at least reduction, of international comity as a relevant concern in the context of foreign anti-suit injunctions. Unfortunately, the Court's discussion is not a model of clarity. It began by indicating its agreement with the "conservative approach" that afforded great weight to international comity when considering the propriety of an anti-suit injunction against foreign litigation. (Pet. 8a-11a.)[2] In a dizzying few paragraphs, however, the Court of Appeals then contended that:

- After satisfaction of the judgment, "the role of comity for antisuit injunction purposes essentially is moot because there is no longer tension with the foreign country over *concurrent* jurisdiction. Instead, the doctrine of res judicata should

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[2] The opinion of the Court of Appeals, as well as Goss International's Petition for a Writ of Certiorari (*see* Pet.16-26), recognized the deep and recurring division among the courts of appeals on the proper weight to accord international comity in requests for anti-suit injunctions.

apply as a defense to further litigation of the same issues." (Pet. 22a);

- The "doctrines of res judicata and collateral estoppel . . . are inapplicable here." (Pet. 23a.); and
- "Our consideration of international comity," which it had just described as "moot," nonetheless informed its judgment about the balance between American and Japanese interests in the case.

Logical consistency of this analysis aside, the Court of Appeals evidently regarded the satisfaction of the judgment as having a bearing on the outcome of the case (*see also* Pet. 28a).

Third, the Court of Appeals used the satisfaction of the judgment to free itself from the "abuse of discretion" standard under which courts of appeals are required to review the issuance of preliminary injunctions. The Court of Appeals admitted, as it had to, that abuse of discretion was the correct standard for reviewing the district court's decision in this case. (Pet. 15a.)[3] Nonetheless, in reversing the district

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[3] The "abuse of discretion" standard applies only to certain aspects of the decision to grant or deny a preliminary injunction. Whether the district court used the right factors in analyzing whether to issue a preliminary injunction is a question of law, reviewed *de novo*. Factual findings relevant to the issuance of the injunction are reviewed for clear error. The application of the facts to the factors is a matter of discretion, reviewed for abuse. *See* Gonzales v. O Centro Espirita Beneficente Uniao de Vegetal, 546 U.S. 418 (2006); St. John's United Church of Christ

(continued...)

court's judgment, it specifically refused to "decide whether the district court abused its discretion in issuing the preliminary injunction" (Pet. 28a) on June 15, 2006. Rather, because it believed that "the jurisdictional circumstances and comity considerations . . . changed" after the satisfaction on June 19, 2006 (Pet. 28a), the Court of Appeals decided *de novo*, without the benefit of any district court ruling on the effect of the satisfaction, that "under the facts of this case, the maintenance of the antisuit injunction on a satisfied judgment cannot be justified" (Pet. 29a).

3. Because the district court had jurisdiction to issue the injunction, and because the district court's balancing of American and international interests was not an abuse of discretion, the decision of the Court of Appeals was wrong. First, the Court of Appeals' conclusion that ancillary jurisdiction did not provide a post-satisfaction jurisdictional basis for the anti-suit injunction lacks any warrant. By the nineteenth century, it was commonplace for a court, whether sitting in law or equity, to entertain a motion or independent action to award relief after satisfaction. Indeed, this Court has long recognized that a court has ancillary jurisdiction to exercise its equitable powers to award appropriate post-satisfaction relief.

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[3] (...continued)
v. City of Chicago, 502 F.3d 616 (7th Cir. 2007). Here the Court of Appeals agreed with the district court's selection of relevant factors. (Pet. 12a n.4.) It did not disagree with any of the district court's factual findings. Its only disagreement concerned the district court's application of the facts to the factors (*see* Pet. 12 & 12a n.4) — a question to which the "abuse of discretion" standard applies.

Pacific Railroad of Missouri v. Missouri Pacific Railway Co., 111 U.S. 505 (1884); *Dietzsch v. Huidenkoper*, 103 U.S. 494 (1880); *United States v. Beggerly*, 524 U.S. 38 (1998).

Second, an anti-suit injunction was the appropriate relief to award in this case. Anti-suit injunctions enjoy a long pedigree. In such cases as *French v. Hay*, 89 U.S. 250 (1874), and *Dietzsch*, 103 U.S. 494, this Court affirmed the propriety — indeed, the necessity — of anti-suit injunctions to prevent efforts in state courts to "claw back" the fruits of a plaintiff's federal judgment. The only — albeit important — distinction between those cases and this one is the international context. But even here, the Court of Appeals failed to apply notions of international comity appropriately, by giving excessive weight to the interests of the Government of Japan and insufficient weight to the effect of clawback statutes on American law and policy.

ARGUMENT

I. CERTIORARI SHOULD BE GRANTED BECAUSE THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH THE DECISIONS OF THIS COURT AND OF THE SECOND CIRCUIT THAT A DISTRICT COURT HAS ANCILLARY JURISDICTION TO AWARD EQUITABLE RELIEF EVEN AFTER A JUDGMENT IS SATISFIED

The decision of the Court of Appeals turns on its belief that the district court lacked jurisdiction to enter an anti-suit injunction once the respondents had

satisfied the judgment. In fact, this attempt to confine a court's jurisdiction to award relief to the time before satisfaction has neither historical nor legal warrant. Because a federal court has jurisdiction to exercise its equitable powers after satisfaction, the decision of the Court of Appeals must be reversed.

It is likely true, as the Court of Appeals said, that the All Writs Act, 28 U.S.C. § 1651 (2000), creates no independent statutory basis for federal jurisdiction to award such relief. *See Syngenta Crop Prot. Corp. v. Henson,* 537 U.S. 28 (2002). It is also true that, after the satisfaction of the judgment, a district court no longer possesses ancillary enforcement jurisdiction, at least in the limited sense in which the Court of Appeals used that term: Once a judgment has been satisfied, a court no longer needs any power to enforce the defendant's obligation to pay.[4] But these two propositions tell far less than the whole story. Sometimes it is necessary for a federal court to award relief

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[4] It is in this light that the Court's statement in *Riggs v. Johnson County,* 73 U.S. 166, 187 (1867) — "that the jurisdiction of a court is not exhausted by the rendition of the judgment, but continues until that judgment shall be satisfied" — must be understood. In *Riggs,* a plaintiff had been unable to execute on a federal judgment. *Riggs* held that the federal court that had rendered the judgment possessed the ancillary jurisdiction to issue orders enforcing the judgment, despite a state-court injunction that sought to prevent enforcement. Nothing in the facts or holding of *Riggs* suggests that the Court was *limiting* the ancillary jurisdiction of a court to awarding pre-satisfaction relief. In any event, the cases cited in this Brief — *Pacific R.R. of Missouri v. Missouri Pacific Ry. Co.,* 111 U.S. 505 (1884); *Dietzsch v. Huidenkoper,* 103 U.S. 494 (1880); and *United States v. Beggerly,* 524 U.S. 38 (1998) — all postdate *Riggs.*

after a judgment is satisfied. In these situations, a federal court has the ancillary jurisdiction to do so.

To begin, both at common law and in equity, courts had the power to award further relief after a judgment's satisfaction. As one treatise explained:

> . . . [T]he mere fact that a judgment has been satisfied will not prevent the court which rendered it, under proper circumstances, from vacating it on motion. There would seem to be on principle no reason why a court of equity might not afford relief against such a judgment in a case calling for equitable relief.[5]

At common law, such post-satisfaction powers included the power to correct a judgment,[6] the power to amend a judgment to award additional monetary relief on related claims,[7] the power to reopen a judgment based on newly discovered evidence,[8] and the power to set a judgment aside.[9] Indeed, common-law pleading contained a series of writs now "shrouded in

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[5] *See* 3 A.C. FREEMAN, FREEMAN ON JUDGMENTS § 1187 (Edward W. Tuttle rev., 5th ed. 1925) (The Lawbook Exchange Ltd. 1993). *See also* 1 FREEMAN, *supra*, § 206 ("Generally, . . . the fact that a judgment may have been paid or discharged does not defeat the right to have it opened or vacated in furtherance of justice, where an otherwise proper case is made for such relief . . . .").

[6] Partridge & Co. v. Harrow, 27 Iowa 96 (1869).

[7] Hatch v. Cent. Nat'l Bank, 78 N.Y. 487 (1879).

[8] British & Am. Mortgage Co. v. Strait, 65 S.E. 1038 (S.C. 1909).

[9] Hogg v. Christenson, 149 N.W. 562 (N.D. 1914); Barker v. City of Seattle, 166 P. 1143 (Wash. 1917).

ancient lore and mystery"[10] — such as the various writs of scire facias,[11] the writ of audita querela,[12] and the related writs of coram nobis and coram vobis,[13] — that could be used after satisfaction of a judgment. Even more significant powers belonged to equity, which, after satisfaction, could set aside a judgment procured by fraud, mistake, or wrongful action.[14] In addition, "[r]elief may be had in a variety of forms,

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[10] Fed. R. Civ. P. 60 advisory committee's note (1946).

[11] For one use of this writ, see Cowles v. Bacon, 21 Conn. 451 (1852). In addition, the writ of scire facias *ad rehabendam terram* returned to a judgment debtor any lands taken in execution once the debtor otherwise satisfied the judgment. BLACK'S LAW DICTIONARY 1347 (Bryan A. Garner ed., 7th ed. 1999).

[12] On the history of this writ, see Ira P. Robbins, *The Revitalization of the Common-Law Civil Writ of Audita Querela as a Postconviction Remedy in Criminal Cases: The Immigration Context and Beyond*, 6 GEO. INT'L L.J. 643, 646-55 (1992); *id.* at 655 ("As to matters occurring after an otherwise valid judgment, the rationale for granting relief was that the defendant had fully satisfied the judgment.").

[13] The relief under these writs — to correct factual errors on which a prior judgment was based — was identical; they were differently named because they were directed to different common-law courts. *See* 1 W.S. HOLDSWORTH, A HISTORY OF ENGLISH LAW 224 (3d ed. 1922). In modern times, the writ of coram nobis has been most used as a post-conviction remedy, particularly after the judgment of conviction has been fully satisfied. Historically, the writ was also available in other civil actions. *See* United States v. Morgan, 346 U.S. 502, 506-08 (1954).

[14] *See* Gates v. Steele, 20 A. 474 (Conn. 1890); Tarrant Restoration v. TX Arlington Oaks Apartments, Ltd., 225 S.W.2d 721 (Tex. App. 2007).

when a judgment appears from the record to be satisfied, but the entry of satisfaction was induced by fraud, mistake, inadvertence, or any other cause not producing an actual satisfaction nor precluding the plaintiff from pursuing appropriate remedies to reinstate his judgment."[15] Coming forward to modern times, Rule 60 of the Federal Rules of Civil Procedure permits, by motion or independent action, a court to order relief from a judgment. The powers described in Rule 60 do not disappear upon a judgment's satisfaction; indeed, Rule 60(b)(5), which allows certain relief from a judgment that "has been satisfied," specifically contemplates that a court can award relief after satisfaction.

The lesson to draw from this history is that the satisfaction of a judgment does not terminate a court's power to award appropriate additional relief concerning that judgment. Admittedly, that fact is distinct from the jurisdictional question: Even assuming that a court has the ability to award post-satisfaction relief, does a *federal* court have the subject-matter *jurisdiction* to do so? Historically, however, the court that rendered the judgment was the court that awarded relief after satisfaction of the judgment. Unsurprisingly, therefore, this Court has held that, when a federal court renders a judgment, it has the ancillary jurisdiction to award appropriate post-

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[15] 2 FREEMAN, *supra* note 5, § 1166. *See* Borsheim v. O & J Props., 481 N.W. 590, 595-96 (N.D. 1992) ("[A] party who releases a judgment through mistake, fraud, or upon failure of the consideration for the release, is entitled to have the judgment reinstated if necessary to avoid unjust enrichment.").

satisfaction relief.[16]

The leading case is *Pacific Railroad of Missouri v. Missouri Pacific Railway Co.*, 111 U.S. 505 (1884). In *Pacific Railroad*, plaintiffs in a prior suit foreclosed on mortgaged property. The prior suit had been filed in federal court due to diversity of citizenship. *See Pacific Railroad v. Ketchum*, 101 U.S. 289 (1880). The defendant railroad, a Missouri citizen, lost the suit in June, 1876. In September, 1876, the property was sold pursuant to the federal court's decree. In October, 1876, the district court confirmed the sale. In April, 1880, this Court affirmed the decree. *Ketchum*, 101 U.S. 289.

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[16] Two types of ancillary jurisdiction exist: jurisdiction over claims that are "factually interdependent" on the principal claims in a case; and jurisdiction to take actions needed "to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." Peacock v. Thomas, 516 U.S. 349, 354 (1996); *see* Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 379-80 (1994). Jurisdiction in this case falls into the latter category.

It is an interesting, but ultimately academic, question, whether the district court's jurisdiction in this case is better styled as "ancillary" or "supplemental." In 28 U.S.C. § 1367 (2000), Congress granted "supplemental jurisdiction" over certain claims that had formerly fallen into the related categories of ancillary and pendent jurisdiction. *See* Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 559 (2005). But § 1367 particularly concerns the first type of ancillary jurisdiction — jurisdiction over factually interdependent claims — not the second type. Consequently, we believe that it is better to describe the district court's jurisdiction in this case as ancillary. But nothing of consequence turns on the label.

At that point, the judgment in *Ketchum* was final, and the plaintiffs were fully satisfied. Nonetheless, believing the judgment to have been infected with fraud, the railroad brought a bill in equity to "impeach and vacate" the decree. *Pacific Railroad*, 111 U.S. at 506. The railroad filed the bill in the federal court that had entered the original decree. Because the bill named Missouri citizens as defendants and presented no federal questions, the federal court had no independent jurisdiction to entertain the bill. This Court nonetheless held:

> Upon the question of jurisdiction there can be no doubt that the circuit court, as the court which made the *Ketchum* decree, and had jurisdiction of the *Ketchum* suit, as this court, in *Pacific R. R. v. Ketchum*, 101 U. S. 289, held it had, has jurisdiction to entertain the present suit to set aside that decree on the grounds alleged in the bill, if they shall be established as facts, and if there shall be no valid defense to the suit, although the plaintiff and some of the defendants are citizens of Missouri. The bill falls within recognized cases which have been adjudged by this court, and have been recently reviewed and reaffirmed in *Krippendorf v. Hyde*, 110 U. S. 276. On the question of jurisdiction the suit may be regarded as ancillary to the *Ketchum* suit, so that the relief asked may be granted by the court which made the decree in that suit, without regard to the citizenship of the present parties . . . . The bill, though an original bill in the chancery sense of the word, is a continuation of the former suit, on the question of the jurisdiction of the circuit court. [111 U.S. at 521-22.]

Similarly, *Dietzsch v. Huidenkoper*, 103 U.S. 494 (1880), held that a federal court has ancillary jurisdiction to award an anti-suit injunction. In *Dietzsch*, after a replevin action had been removed to federal court, the state court nonetheless proceeded to give judgment to the plaintiffs. The federal case came to the opposite conclusion. Ignoring the federal judgment and relying on the state judgment, the plaintiffs then commenced a state-court proceeding to collect the replevin bond, which had been given in the state-court replevin action to secure the value of the property. The federal court enjoined the plaintiffs from trying to collect on the bond. *Dietzsch* regarded the bill seeking an anti-suit injunction to be "ancillary" to the main proceeding. 103 U.S. at 497. In combination, *Pacific Railroad* and *Dietzsch* show that a federal court possesses the necessary jurisdiction to issue an anti-suit injunction even after all proceedings in the original action have concluded.

The rule in *Pacific Railroad* remains good law. In *United States v. Beggerly*, 524 U.S. 38 (1998), this Court relied on *Pacific Railroad* to find jurisdiction over a quiet title action in which the plaintiffs sought to set aside a prior federal judgment. The prior case, also a quiet title action, concluded after the Government paid the plaintiffs $208,000; the prior judgment was, in other words, satisfied. Twelve years later, based on newly discovered evidence of their ownership, the plaintiffs commenced a new quiet title action in the federal court that had decided the prior case. Because the Government had not waived its sovereign immunity, this action, seeking to reopen a satisfied judgment, lacked an independent basis of subject-

matter jurisdiction. Nonetheless, this Court held that the action lay within the district court's ancillary jurisdiction. As the Court stated, ancillary jurisdiction exists over an "independent action," an equitable proceeding that can be used "to prevent a grave miscarriage of justice," *id.* at 47. *See id.* at 46 ("The Government is therefore wrong to suggest that an independent action brought in the same court as the original lawsuit requires an independent basis for jurisdiction.") The exemplar of an independent action that the Court cited was *Pacific Railroad*. *Id.* at 45.

The jurisdictional analysis of the Court of Appeals fails to hold up against these precedents. Its analysis also conflicts with that of the Court of Appeals for the Second Circuit. In *Karaha Bodas Co. v. Perussahaan Pertambangan Minyak Dan Gas Bumi Negara*, 500 F.3d 111 (2d Cir. 2007), a judgment debtor sought to undermine federal judgments that confirmed and enforced an award in arbitration by filing a fraud action in a foreign country. That action would have forced "return of the funds that had been paid over pursuant to the award." *Id.* at 112. As in this case, the foreign proceedings sought to "claw back" the proceeds used to satisfy a judgment. The Court of Appeals held:

> . . . [W]e conclude that federal courts have continuing jurisdiction, grounded in the concepts of res judicata and collateral estoppel, to enjoin a party properly before them from relitigating issues in a non-federal forum that were already decided in federal court. This source of jurisdiction remains even after a judgment has been satisfied — regardless of whether (1) the judgment is one of

> dismissal or (2) the font of jurisdiction for such an injunction is characterized as "ancillary" or otherwise. [500 F.3d at 129.]

The Second Circuit cited, and specifically rejected, the narrow view of ancillary jurisdiction offered by the Court of Appeals in this case. *Id.* at 128.[17]

In short, the Court of Appeals' novel effort to deny federal courts their inherent post-satisfaction ancillary jurisdiction has no basis in history or in law. The Court of Appeals in this case neither cited nor considered *Pacific Railroad*, *Dietzsch*, and *Beggerly*. The first court of appeals to consider this distinction has now rejected it. In fact, the district court had, and has, the jurisdiction to grant appropriate post-satisfaction relief. Because the decision of the Court of Appeals turned on its erroneous view of ancillary jurisdiction, and because the issue is one of long-standing and recurring importance for the proper enforcement of federal judgments, this Court should grant the Petition for a Writ of Certiorari.

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[17] We understand that a petition for a writ of certiorari has also been filed in *Karaha Bodas*. *See* Petition for a Writ of Certiorari, No. 07-619.

II. CERTIORARI SHOULD BE GRANTED BECAUSE THE ANTI-SUIT INJUNCTION THAT THE COURT OF APPEALS OVERTURNED WAS AN APPROPRIATE REMEDY THAT BALANCED CONCERNS FOR INTERNATIONAL COMITY AND EFFECTIVE ENFORCEMENT OF ANTITRUST POLICY

As *Beggerly* recognizes, jurisdiction to revisit a satisfied judgment is a distinct question from the appropriateness of awarding relief respecting that judgment. *Beggerly*, 524 U.S. at 46. Weighing the relevant interests, the district court became convinced that an anti-suit injunction was the appropriate relief in this case. The Court of Appeals decided that the constellation of comity considerations and a satisfied judgment made the injunction an inappropriate form of relief. In doing so, the Court of Appeals disregarded the strong judicial interests, long recognized by this Court, favoring an anti-suit injunction against proceedings that nullify a federal judgment. It also failed to respect the balance of comity concerns that the district court had struck, or to consider the effects of its ruling on American antitrust law and policy.

A. The Decision of the Court of Appeals Ignored Decisions of This Court Recognizing the Propriety of an Anti-Suit Injunction as a Means of Preventing the Nullification of a Federal Judgment

The power of a federal court to issue an anti-suit injunction in the circumstance that Goss International faces is beyond cavil. For instance, in *French v. Hay*, 89 U.S. 250 (1874), and *Dietzsch v. Huidenkoper*, 103

U.S. 494 (1880), this Court affirmed anti-suit injunctions issued against parties who sought to avoid the consequences of federal judgments through proceedings in state court. In *French*, a Virginia state court issued a judgment against a debtor, and the creditor immediately sought to execute on the judgment by commencing a case in Pennsylvania. Before the Pennsylvania case was heard, the debtor removed the Virginia case to federal court and sought to vacate the Virginia judgment. The federal court in Virginia issued a preliminary anti-suit injunction forbidding the creditor from continuing to proceed with the Pennsylvania case while it considered the debtor's request. Subsequently, the federal court vacated the Virginia decree, and permanently enjoined the creditor from pursuing the Pennsylvania action. *French*, 89 U.S. at 251. This Court affirmed the anti-suit injunction, and spoke powerfully its importance:

> If [a preliminary and permanent injunction] could not be given in this case the result would have shown the existence of a great defect in our Federal jurisprudence, and have been a reproach upon the administration of justice. In that event the payment of the annulled decree may be enforced in Pennsylvania, and Hay, notwithstanding the final decree in that case, and in this case, would find himself in exactly the same situation he would have been if those decrees had been against him instead of being in his favor. They would be nullities as regards any protection they could have given him. Instead of terminating the strife between him and his adversary, they would leave him under the necessity of engaging in a

> new conflict elsewhere. This would be contrary to the plainest principles of reason and justice. [*Id.* at 253.]

Likewise, in *Dietzsch*, a federal court enjoined, first preliminarily and then permanently, certain parties from proceeding to collect on a replevin bond in state court. The parties' action on the replevin bond followed a state-court judgment in their favor on the underlying replevin action. Because the underlying replevin action had been removed to federal court before the state court issued its judgment, however, the state-court judgment was void; indeed, the federal court ultimately decided the case against the parties. Their action on the bond was, in effect, "equivalent to an actual return of the replevied property," 103 U.S. at 497, to which the federal court had determined that they were not entitled. As the Court recognized, the anti-suit injunction, which was "ancillary to the replevin suit," was necessary "in the Federal court to enforce its own judgment by preventing the defeated party from wresting the replevied property from the plaintiffs in replevin, who, by the judgment of the court, were entitled to it, or what was in effect the same thing, preventing them from enforcing a bond for the return of the property to them." *Id.* Echoing *French* that the failure to give an injunction "would be contrary to the plainest principles of reason and justice," *id.*, the Court held:

> As the bill in this case is filed for the purpose of giving to litigants on the law side of the court the substantial fruits of a judgment rendered in their favor, it is merely auxiliary to the suit at law, and the court has the right to enforce the judgment

> against the party defendant and those whom he represents, no matter how or when they may attempt to evade it or escape its effect, unless by a direct proceeding. [*Id.*]

Both *French* and *Dietzsch* involved attempts to "claw back," through state proceedings, property to which a federal judgment had deemed them not entitled. Both cases affirmed the district courts' decisions to enjoin such attempts. Of particular significance in both *French* and *Dietzsch* is the fact that the anti-suit injunctions were made permanent even after the federal judgments had become final and the federal cases had completely run their course — a fact that undercuts the Court of Appeals' erroneous view that the satisfaction of the judgment in this case made the district court's injunction unnecessary.

Indeed, the only way to distinguish this case from *French* and *Dietzsch* is to suggest that neither involved an injunction issued in the international context. As the following two sections show, however, a full consideration of international comity interests actually adds strength to the district court's decision to enjoin the respondents, weakens the Court of Appeals' reversal of that injunction, and provides further grounds for this Court to grant the Petition.

B. The Court of Appeals' Ruling Fails to Appreciate that Foreign Clawback Statutes Themselves Are an Affront to International Comity

This Court should review the Court of Appeals' decision to vacate the anti-suit injunction because it

was "contrary to principles of comity [for the Court of Appeals] to prevent TKS from seeking an action under the Special Measures Law in Japan." (Pet. 26a.) The Court of Appeals took an excessively narrow view of comity's demands. Specifically, it failed to appreciate that a clawback statute itself is an affront to comity.

The Court of Appeals mistakenly concluded that Japan's Special Measures Law was in some sense independent of the litigation under the 1916 Act.[18] However, the Special Measures Law is a classic clawback statute in the sense that it "enables a defendant who has paid judgment damages in an overseas country to recover that judgment from the successful plaintiff in the defendant home country." Joseph E. Neuhaus, *Power to Reverse Foreign Judgments: The British Clawback Statute Under International Law*, 81 COLUM. L. REV. 1097, 1097-98 (1981). The purpose of Japan's Special Measures Law is to reverse the judgment of a United States court.

A clawback statute like the Special Measures Law inherently damages the comity between courts and legislatures in Japan and the United States. It is of no use to pretend otherwise. The Court of Appeals' cramped view that comity concerns do not exist once the U.S. judgment is finalized — and that the matter now exclusively rests with Japanese judges — does

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[18] Pet. at 23a (noting that TKS "now seeks to litigate in Japan a cause of action solely available in Japan and not previously litigated in the antidumping litigation" and that "[t]he issues are not the same simply because TKS's cause of action under the Special Measures Law rests on the imposition of an adverse judgment against TKS under the 1916 Act").

not ring true. As Justice Story recognized over 140 years ago:

> [E]very nation must judge for itself what is its true duty in the administration of justice in its domestic tribunals. It is not to be taken for granted, that the rule of the foreign nation, which complains of a grievance, is right, and that its own rule is wrong.

JOSEPH STORY, COMMENTARIES ON THE CONFLICT OF LAWS § 34-35 (6th ed. 1865) (footnotes omitted). This concern is uniquely presented on the facts of this case, which involve the award of treble damages; American courts have an ongoing interest in ensuring the enforcement of punitive measures against those who commit acts that intentionally cause injury within the United States.

The Court of Appeals limited comity's application solely to parallel suit injunctions aimed at avoiding inefficient dual proceedings. However, comity informs many other international civil litigation issues such as discovery, service of process, and most relevantly here, recognition of judgments. Furthermore, legislative comity, "the respect sovereign nations afford each other by limiting the reach of their laws," is also relevant here. *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 817 (1993) (Scalia, J., dissenting). That comity "is exercised by legislatures when they enact laws, and courts assume it has been exercised when they come to interpreting the scope of laws their legislatures have enacted." *Id.* By so quickly deciding to vacate the anti-suit injunction, the Court of Appeals undermined Congress' own comity-informed judgment.

C. *The Court of Appeals' Ruling Threatens to Provide an End Run Around Settled International Consensus on the Use of the Effects Test in Antitrust*

The Court of Appeals effectively created an end run around the effects test in international antitrust cases. The principle, associated with the landmark *Alcoa* case, that antitrust laws apply to overseas acts with intentional domestic effect, *United States v. Aluminum Co. of America*, 148 F.2d 416, 444 (2d Cir. 1945) (L. Hand, J.), has become well-accepted by antitrust enforcers for many nations. *See, e.g, Hartford Fire Ins. Co. v. California*, 509 U.S. 764 (1993) ("[I]t is well established by now that the Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States"); *Ahlstrom-Osakeythio v. Comm'n (Wood Pulp)*, 1988 E.C.R. 5193, [1988] 4 C.M.L.R. 901 (asserting jurisdiction over an agreement by firms outside the then-European Community (EC) to fix prices of product sold to EC buyers on the grounds that conduct by firms outside the EC that 'has the object and the effect of restricting competition within' the EC violates article 85 of the Treaty of Rome (now article 81)); Japan Fair Trade Commission, *Notification System Concerning M&As by Companies outside Japan* (Jan. 1, 1999) (importing an effects doctrine into merger review).

While the 1916 Act is not an antitrust statute, there are clear commonalities between antidumping actions in trade law and antitrust cases, particular those based on predatory pricing allegations. Alan O. Sykes, *Countervailing Duty Law: An Economic Per-*

spective, 89 COLUM. L. REV. 199, 243 (1989) (observing the economic logic by which trade violations could be remedied either by countervailing duties or antitrust lawsuits). As a result, the Court of Appeals' decision creates costly uncertainty concerning whether international antitrust violations will be punishable. In particular, the Court of Appeals' decision may encourage foreign firms guilty of anticompetitive conduct aimed at the U.S. market to seek special home-country legislation unburdening them of their liability after the fact. Such a result would erode an important point of consensus that has been reached among global antitrust enforcers. This Court should consider the wisdom of an unnecessary holding that upsets this equilibrium.

CONCLUSION

We respectfully request the Court to grant the Petition for Writ of Certiorari.

Respectfully Submitted,

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