

# INTERPLEADER AS A VEHICLE FOR CHALLENGING THE CONSTITUTIONALITY OF PRIVATE CITIZEN ACTION STATUTES

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*The rise of vigilante-esque statutes creates obstacles for litigants seeking to challenge a statute’s constitutionality. State legislatures in Texas and California enacted laws regulating constitutionally protected activity (abortion and firearm possession, respectively) through statutes enforced solely by private actors. The state legislatures cleverly crafted Texas S.B. 8, as well as other copycat statutes, as bounty-hunter statutes to block litigants’ usual path to pre-enforcement adjudication—filing a claim against the state to enjoin its actors from enforcing the improper provisions.*

*The Texas and California state legislatures attempted to forbid constitutionally protected conduct by granting enforcement power to an infinite number of individuals. This grant, in turn, generated a risk of multiple liability for noncomplying individuals. This Note considers whether interpleader, an archaic procedural device designed to protect against multiple liability, can be invoked in a new way—to challenge the validity of bounty-hunter statutes by establishing a right to adjudication in federal court.*

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## INTRODUCTION

Elizabeth Weller’s pregnancy crisis began and ended weeks before the U.S. Supreme Court struck down a constitutional right to abortion<sup>1</sup> in *Dobbs v. Jackson Women’s Health Organization*.<sup>2</sup> Although Elizabeth never believed that she would have an abortion, she suffered a premature membrane rupture at eighteen-weeks pregnant, and the “protective cushion of amniotic fluid was gone,” meaning that the chance of fetus survival was abysmally low.<sup>3</sup> Attempting to carry the pregnancy to term created a severe risk of complications for Elizabeth, including severe infections, sepsis, and

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1. Carrie Feibel, *Because of Texas Abortion Law, Her Wanted Pregnancy Became a Medical Nightmare*, NPR (July 26, 2022, 5:04 AM), <https://www.npr.org/sections/health-shots/2022/07/26/1111280165/because-of-texas-abortion-law-her-wanted-pregnancy-became-a-medical-nightmare> [<https://perma.cc/F5VH-D9BW>]; see also *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2284 (2022).

2. 142 S. Ct. 2228 (2022).

3. Feibel, *supra* note 1.

even death.<sup>4</sup> The complications, coupled with the extremely low probability of fetus viability, resulted in Elizabeth making the extremely difficult choice to request an abortion.<sup>5</sup> Despite, at the time, Elizabeth's constitutional right to abortion care, doctors at Houston Methodist Hospital in Houston, Texas, refused to treat her.<sup>6</sup> Doctors at the hospital feared liability under the Texas Heartbeat Act<sup>7</sup> ("Texas S.B. 8"), forcing Elizabeth to undergo the physical, mental, and emotional tolls that carrying an unviable pregnancy to term inevitably brings.<sup>8</sup> Hours into labor, Elizabeth's "daughter, as expected, was stillborn."<sup>9</sup>

Initially, Elizabeth was enraged at the hospital's decision to deny her necessary medical care.<sup>10</sup> Later, Elizabeth realized her anger was misplaced when she learned that Texas S.B. 8 forced healthcare providers to make the impossible decision between granting medical care or becoming liable for providing medical care.<sup>11</sup> Unfortunately, Elizabeth's story was not unique; it was the norm for women seeking to exercise their right to abortion healthcare in Texas for at least eight months before the federal right to an abortion was overruled.<sup>12</sup>

When Alan Braid, a then-recent graduate of the Long School of Medicine at the University of Texas Health Science Center at San Antonio, began his obstetrics and gynecology residency at a San Antonio hospital in July 1972, abortion was effectively illegal in Texas.<sup>13</sup> For women in Texas at the time, there were only two viable options to terminate an unwanted pregnancy.<sup>14</sup> Women with the financial capacity could travel to California, Colorado, or New York; however, this option was costly and inaccessible to most.<sup>15</sup> Alternatively, women could risk their health and safety by undergoing an illegal abortion.<sup>16</sup> Dr. Braid witnessed three young women die from illegal abortions during his first year of residency.<sup>17</sup> The suffering that Dr. Braid witnessed has had a profound impact on his perception of reproductive healthcare.<sup>18</sup> In one particularly disturbing encounter, a young woman came

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4. *Id.* ("For the women, expectant management after premature rupture of membranes comes with its own health risks. One study showed they were four times as likely to develop an infection and 2.4 times as likely to experience a postpartum hemorrhage, compared with women who terminated the pregnancy.").

5. *See id.*

6. *See id.*

7. 2021 Tex. Gen. Laws 125 (codified at TEX. HEALTH & SAFETY CODE ANN. §§ 171.201–.212 (West 2023)).

8. *See Feibel, supra* note 1.

9. *See id.*

10. *See id.*

11. *See id.*

12. *See id.*

13. *See Alan Braid, Why I Violated Texas's Extreme Abortion Ban*, WASH. POST (Sept. 18, 2021, 4:01 PM), <https://www.washingtonpost.com/opinions/2021/09/18/texas-abortion-provider-alan-braid/> [<https://perma.cc/VM9Q-8X66>].

14. *See id.*

15. *See id.*

16. *See id.*

17. *See id.*

18. *See id.*

into the emergency room with rags stuffed into her vaginal cavity after undergoing an illegal abortion.<sup>19</sup> The young woman, only a teenager then, died a few days later from complications from the procedure, which resulted in organ failure from a septic infection.<sup>20</sup>

A year later, in 1973, the Court recognized abortion as a constitutionally protected right in *Roe v. Wade*.<sup>21</sup> Following that decision, Dr. Braid provided abortion and gynecology care for forty-five years in Texas.<sup>22</sup> Dr. Braid's ability to provide healthcare was restricted, however, when Texas S.B. 8 was enacted because the statute rendered Dr. Braid liable for around 80 percent of the abortion services he provided.<sup>23</sup> Dr. Braid commented, "[f]or me, it is 1972 all over again."<sup>24</sup>

In an effort to circumvent an individual's right to reproductive healthcare, the Texas Legislature passed a law that violated well-established federal constitutional law.<sup>25</sup> The legislature thought it could get away with this brazenly unconstitutional act by cleverly designing the law so that private citizens rather than state actors enforced it.<sup>26</sup> Thus, the statute evaded the usual path for challenging constitutionality.<sup>27</sup> Texas S.B. 8 turned the clock back fifty years, undoing decades of reproductive freedom for women.<sup>28</sup>

Attempting to prohibit the Texas Legislature from eliminating established constitutional protections, litigants (including the U.S. government)<sup>29</sup> sought judicial relief. Ultimately, however, the statute's challengers failed and were unable to receive a judicial mandate deeming the statute unenforceable or invalid.<sup>30</sup> The Texas Legislature, empowered by the shortcomings of the American legal system, denied Texas citizens access to abortion well before the *Dobbs* decision.<sup>31</sup> Moreover, the Court denied injunctive relief<sup>32</sup> and declined to grant a writ of mandamus.<sup>33</sup> The Court's actions left supporters

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19. *See id.*

20. *See id.*

21. 410 U.S. 113, 166 (1973) ("The abortion decision in all its aspects is inherently, and primarily, a medical decision, and basic responsibility for it must rest with the physician."), *overruled by Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

22. *See Braid, supra* note 13.

23. *See id.*; 2021 Tex. Gen. Laws 125 (codified at TEX. HEALTH & SAFETY CODE ANN. §§ 171.201–.212 (West 2023)).

24. *See Braid, supra* note 13.

25. *See id.*

26. *See id.*

27. *See Edelman v. Jordan*, 415 U.S. 651, 665 (1974) (discussing *Ex parte Young*, 209 U.S. 123 (1908)).

28. *See Braid, supra* note 13.

29. *See id.*; *United States v. Texas*, No. 21-50949, 2021 WL 4786458 (5th Cir. Oct. 14, 2021), *cert. denied*, 595 U.S. 74 (2021).

30. *Whole Woman's Health v. Jackson*, 141 S. Ct. 2494, 2495 (2021) ("The applicants now before us have raised serious questions regarding the constitutionality of the Texas law at issue. But their application also presents complex and novel antecedent procedural questions on which they have not carried their burden. For example, federal courts enjoy the power to enjoin individuals tasked with enforcing laws, not the laws themselves.")

31. *See id.*

32. *See id.*

33. *See id.*

of legal stability and constitutional rights without a viable option for pre-enforcement adjudication.

Dr. Braid, however, decided—in a pre-*Dobbs* legal landscape—to violate Texas S.B. 8 by performing an abortion, in an effort to challenge the statute’s validity.<sup>34</sup> After making this decision, Dr. Braid published an opinion piece, commenting, “I fully understood that there could be legal consequences—but I wanted to make sure that Texas didn’t get away with its bid to prevent this blatantly unconstitutional law from being tested.”<sup>35</sup> Shortly after this piece was published, three individuals filed suit against Dr. Braid, including an Illinois resident.<sup>36</sup>

Although abortion advocates have had difficulty seeking relief in court,<sup>37</sup> Dr. Braid’s clinics, represented by the Center for Reproductive Rights, attempted to leverage the suits against Dr. Braid to declare Texas S.B. 8 constitutionally invalid.<sup>38</sup> By challenging the statute through affirmative violation, Dr. Braid created an avenue into court to argue that Texas S.B. 8 impermissibly violated constitutionally protected rights, as a defense to the actions brought against him.<sup>39</sup>

Texas S.B. 8 is a private citizen action statute, meaning only private citizens have the authority to bring an enforcement proceeding.<sup>40</sup> Notably, Texas S.B. 8 is solely enforced by private citizens and *expressly* prohibits enforcement by government officials.<sup>41</sup> Under Texas S.B. 8, each abortion performed in violation of the statute entitles a plaintiff to statutory damages if they are the *first* to successfully bring a claim and receive damages *in full* against the defendant.<sup>42</sup> Professor Steve Vladeck, a professor at the University of Texas School of Law, noted, “nothing that happens in [Dr. Braid’s case] can prevent future lawsuits from being brought—that’s the whole point of transferring enforcement authority from a single state to a limitless class of potential private plaintiffs.”<sup>43</sup>

Consequently, Texas S.B. 8 creates the possibility of multiple competing claims and never-ending litigation because if Plaintiff A fails to obtain money damages, Plaintiff B can file identical claims, and so on. Although Texas S.B. 8 alone is problematic, it has sparked copycat statutes, both from other

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34. See Braid, *supra* note 13.

35. See *id.*

36. Tierney Sneed & Ariane de Vogue, *Texas Doctor Who Says He Performed Abortion Sued in First Known Challenges Under New Law*, CNN (Sept. 20, 2021, 10:36 PM), <https://www.cnn.com/2021/09/20/politics/texas-abortion-doctor-lawsuit/index.html> [<https://perma.cc/5CBJ-CEKT>] (“S.B. 8 says that ‘any person’ can sue over a violation, and we are starting to see that happen, including by out-of-state claimants.”).

37. See *id.*

38. See *id.*

39. Complaint for Interpleader & Declaratory Judgment, *Braid v. Stilley*, No. 21-CV-5283 (N.D. Ill. Sept. 16, 2022), ECF No. 1.

40. 2021 Tex. Gen. Laws 125 (codified at TEX. HEALTH & SAFETY CODE ANN. § 171.201–212 (West 2023)).

41. *Id.* § 171.208(a).

42. *Id.* § 171.208(c).

43. See Sneed & de Vogue, *supra* note 36.

states seeking to severely restrict abortion care<sup>44</sup> and from California, which passed a gun control bill modeled on Texas S.B. 8's language.<sup>45</sup>

The rise of private citizen action statutes with an aspect of vigilantism generates obstacles for opponents seeking to challenge a statute's validity in court.<sup>46</sup> There is no certainty of what state legislatures will use private citizen action laws to regulate next. Although only abortion and gun control private citizen action statutes have been enacted, similar laws could extend to other areas of the law unable to be directly legislated under the Court's current precedent. Because private citizens, without interference from state agents, have the sole authority to enforce the statute, there is immense difficulty in establishing jurisdiction in federal court.<sup>47</sup> These statutes were explicitly designed to be an unchallengeable violation of an individual's constitutional rights, unless an individual was affirmatively sued under the statute.<sup>48</sup> When only private citizens can enforce a statute, an individual cannot establish jurisdiction in federal court due to the lack of state action.<sup>49</sup> Moreover, because the state is prohibited from enforcing Texas S.B. 8, individuals harmed by the statute cannot seek relief in federal court.<sup>50</sup> Texas S.B. 8 was carefully designed to block pre-enforcement judicial review because without the existence of state action, there is no apparent means of adjudicating whether the statute is legally enforceable, other than enforcement suits.<sup>51</sup>

Some individuals seeking to challenge these laws, including Dr. Braid, have used or attempted to use interpleader as a vehicle for establishing federal jurisdiction.<sup>52</sup> This Note will address whether interpleader, an archaic procedural device, can be invoked in a new way—to challenge the validity of vigilante-type statutes by establishing a right to adjudication in federal court.<sup>53</sup>

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44. See Alison Durkee, *Idaho Enacts Law Copying Texas' Abortion Ban — and These States Might Be Next*, FORBES (Apr. 14, 2022, 02:03 PM), <https://www.forbes.com/sites/alisondurkee/2022/03/23/idaho-enacts-law-copying-texas-abortion-ban---and-these-states-might-be-next/?sh=4f7e24be25c0> [<https://perma.cc/AB2X-PG65>].

45. See 2022 Cal. Stat. 3551 (codified at CAL. BUS. & PROF. CODE §§ 22949.60–71 (West 2023) and CAL. CIV. PROC. CODE § 1021.11 (West 2023)).

46. See *id.*; see also Durkee, *supra* note 44.

47. See Sneed & de Vogue, *supra* note 36 (“Abortion rights advocates have so far failed to get a federal court to block the law, as the ban's supporters designed it with the goal of evading judicial review. Rather than task government officials with enforcing the ban, via criminal or regulatory punishments, the Texas state legislature essentially deputized private citizens with the ability to bring private civil litigation in state courts against abortion providers or anyone else who facilitates an abortion that violates the law.”).

48. See Sneed & de Vogue, *supra* note 36.

49. *Whole Woman's Health v. Jackson*, 595 U.S. 30, 43 (2021) (“While *Ex parte Young* authorizes federal courts to enjoin certain state officials from enforcing state laws, the petitioners do not direct this Court to any enforcement authority the attorney general possesses in connection with S. B. 8 that a federal court might enjoin him from exercising.” (citing *Ex parte Young*, 209 U.S. 123 (1908))).

50. See *id.*

51. See *id.*

52. See Braid, *supra* note 13.

53. Many states have interpleader mechanisms, designed similarly to federal interpleader, that provide another path for litigants to challenge the constitutionality of statutes. See, e.g., IND. R. TRIAL P. 22(A) (“Persons . . . may be . . . required to interplead when their claims are

Interpleader is a procedural device that permits a party filing for relief to have the court adjudicate competing claims to a single commodity, such as a sum certain (e.g., insurance proceeds), property, or artwork, in a single suit.<sup>54</sup> Generally, interpleader is used to settle claims to insurance proceeds or items which cannot be split (e.g., artwork or property). An interpleading plaintiff may request interpleader relief under Rule 22 of the Federal Rules of Civil Procedure (“Rule Interpleader”); they may also seek relief under 28 U.S.C. § 1335 (“Statutory Interpleader”), which expanded the availability of interpleader relief.<sup>55</sup> The interpleading plaintiff is required to establish jurisdictional requirements under either Rule or Statutory Interpleader.<sup>56</sup>

Private citizen action statutes create the possibility of multiple competing claims—the hallmark of interpleader relief. Under Texas S.B. 8, for example, any individual can be sued for providing or aiding and abetting a noncompliant abortion, but the structure of the statute poses obstacles to challengers seeking to establish jurisdiction in federal court.<sup>57</sup> Establishing jurisdiction under interpleader brings a claim into federal court, which in turn permits challenges to the constitutionality or legality of the statute itself.<sup>58</sup> This Note will address whether Statutory<sup>59</sup> or Rule<sup>60</sup> interpleader can be used to establish a right to adjudication in federal court for challengers of private citizen action statutes, like Texas S.B. 8.

Part I of this Note will discuss the mechanics of both interpleader and private citizen action statutes, including how interpleader actions are adjudicated, how private citizen action statutes are enforced, and the impact that vigilante-esque laws have had on the legal system. Part II will address how private citizen action statutes affect interpleader application, including how the district court analyzed the motion for interpleader relief in Dr.

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such that the plaintiff is or may be exposed to double or multiple liability.”); CAL. CIV. PROC. CODE § 386(b) (“Any person . . . against whom double or multiple claims are made, or may be made . . . may bring an action against the claimants to compel them to interplead and litigate their several claims.”); N.Y. C.P.L.R. § 1006(A) (“A stakeholder may commence an action of interpleader against two or more claimants.”); WIS. STAT. § 803.07 (2023) (“Persons . . . may be . . . required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability.”).

54. See *Madison Stock Transfer, Inc. v. Exlites Holdings Int’l, Inc.*, 368 F. Supp. 3d 460, 472 (E.D.N.Y. 2019).

55. See *id.* at 472–73 (“The two types of interpleader serve the same purpose and perform the same function, and differ only in their requirements for subject matter jurisdiction, venue, and service of process.” (quoting *Great Wall de Venez. C.A. v. Interaudi Bank*, 117 F. Supp. 3d 474, 483 (S.D.N.Y. 2015))).

56. See *id.* at 473.

57. TEX. HEALTH & SAFETY CODE ANN. § 171.208 (West 2023). Shockingly, aiding and abetting a noncompliant abortion under Texas S.B. 8 may even include a for-hire vehicle driver, like taxi and Uber drivers, taking an individual to a doctor’s appointment if they have the requisite knowledge under the statute. See Shannon Bond, *Lyft and Uber Will Pay Drivers’ Legal Fees if They’re Sued Under Texas Abortion Law*, NPR (Sept. 3, 2021, 5:11 PM), <https://www.npr.org/2021/09/03/1034140480/lyft-and-uber-will-pay-drivers-legal-fees-if-theyre-sued-under-texas-abortion-la> [<https://perma.cc/A4WE-6GQQ>].

58. See *infra* Part I.A.3.

59. 28 U.S.C. § 1335.

60. FED. R. CIV. P. 22.

Braid's case. Part III will argue that interpleader is an effective solution to the challenges that private citizen action statutes pose to pre-enforcement adjudication, including how the statutes create a risk of multiple liability and vexatious litigation.

#### I. THE INTERSECTION AND IMPACT OF INTERPLEADER AND PRIVATE CITIZEN ACTION STATUTES

Part I.A will analyze how interpleader actions are litigated, starting with when interpleader relief is proper, including prerequisites to granting Rule Interpleader or Statutory Interpleader. Next, Part I.B will consider how the equitable nature of interpleader relief affects adjudication. Finally, Part I.C will describe bounty-hunter-type statutes and their impact on the legal system, including the threat such statutes pose to constitutional protections and the rule of law.

##### A. *Mechanics of Interpleader*

Interpleader is a procedural device primarily used to adjudicate conflicting claims to a sum of money, property, or item in one action.<sup>61</sup> Interpleader enables the party in possession of the disputed commodity (the interpleading plaintiff or “stakeholder”) to join two or more individuals claiming an interest in the commodity (“claimants”) so that the court can determine who is entitled to the commodity (or “stake”).<sup>62</sup> Interpleader jurisdiction is proper when claims to the stake are mutually exclusive, meaning that granting relief to claimants separately would result in a risk of multiple liability or inconsistent judgments.<sup>63</sup> Interpleader is primarily used to settle claims to indivisible property such as artwork, real property, artifacts, or fixed-rate insurance proceeds.<sup>64</sup>

Central to the need for interpleader relief is a dispute regarding a sum certain or a single item.<sup>65</sup> Furthermore, courts “have uniformly held that a single, identifiable fund is a prerequisite” to granting interpleader relief.<sup>66</sup> Interpleader is appropriate when the claims involve a tangible, identifiable stake and jurisdictional requirements are satisfied.<sup>67</sup> Consequently, when two or more claimants assert or *may assert* “mutually exclusive claims to that

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61. *Madison Stock Transfer*, 368 F. Supp. 3d at 472.

62. *See id.*

63. *See id.*

64. *See* 44B AM. JUR. 2D *Interpleader* § 15 (2023) (“To justify interpleader, there needs to be either some specific property or some amount of money to which different parties may have claims. Rival claims against an insurer for insurance proceeds present a classic candidate for interpleader.”).

65. *See, e.g.,* *Wausau Ins. Cos. v. Gifford*, 954 F.2d 1098, 1100–01 (5th Cir. 1992).

66. *See id.* at 1100 (citing *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 530 (1967)).

67. *See id.* at 1100–01.



stake,” courts have the authority to grant interpleader relief if jurisdictional requirements are satisfied.<sup>68</sup>

Take a classic insurance dispute as an illustrative example. In a typical insurance claim, if the insurer denies payment to a policyholder, the policyholder may sue the insurer for the proceeds. In an interpleader action, however, the insurer typically concedes that they owe insurance proceeds to some individual or entity when filing for interpleader relief.<sup>69</sup> For example, say a policyholder of Parker Plaza Fire Insurance dies in an automobile accident. At the time of the accident, the decedent has a spouse, two children, an unpaid mortgage on their home, unpaid federal taxes, and student loan debt. Parker Plaza Fire Insurance has received several claims for the single insurance proceeds of \$1 million. It does not contest that it owes the money to at least one of the claimants, but it is unsure who is the proper beneficiary.

Furthermore, Parker Plaza Fire Insurance wants to ensure that the proper beneficiary receives the proceeds so that it can avoid additional liability down the road. Thus, Parker Plaza Fire Insurance files for interpleader relief, asking the court to adjudicate the competing claims to the stake of \$1 million, which ensures both that the proper beneficiary is paid and that Parker Plaza Fire Insurance does not suffer multiple or inconsistent liabilities.

Alternatively, Parker Plaza Fire Insurance is entitled to interpleader relief even if it asserts that it does not owe any entity the insurance proceeds. Perhaps, for example, the decedent has not made payments for six months and defaulted on their policy. In this instance, Parker Plaza Fire Insurance still faces a risk of duplicative litigation because even if it wins against the decedent’s spouse, the decedent’s children may still bring a lawsuit. Thus, the court may grant interpleader relief and adjudicate Parker Plaza Fire Insurance’s claim along with the other claimant-defendants.<sup>70</sup>

The simple example above conveys how interpleader is routinely used to protect stakeholders from duplicative litigation “and the risk of multiple liability or inconsistent” judgments.<sup>71</sup> Moreover, as the illustration conveys, granting interpleader relief does not settle claims; instead, it grants courts the authority to adjudicate conflicting claims by determining which claimant is entitled to the disputed stake.<sup>72</sup>

In a “true” interpleader action,<sup>73</sup> or an action in which the interpleading plaintiff concedes liability, once the court determines that jurisdictional requirements are satisfied, the stakeholder may request to be dismissed from

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68. *Madison Stock Transfer*, 368 F. Supp. 3d at 472 (quoting 4 JAMES WM. MOORE, MOORE’S FEDERAL PRACTICE § 22.02 (3d ed. 2019)).

69. *See* 44B AM. JUR. 2D *Interpleader* § 15 (2023).

70. *See id.* (“Interpleader may also be used where there is adversity between claimants to a limited award of personal injury damages.”).

71. *See Madison Stock Transfer*, 368 F. Supp. 3d at 472 (quoting *Great Wall de Venez. C.A. v. Interaudi Bank*, 117 F. Supp. 3d 474, 482 (S.D.N.Y. 2015)).

72. *See* 44B AM. JUR. 2D *Interpleader* § 20 (2023) (“After a court determines that the suit is one in which interpleader is proper, appropriate pleadings between the parties may be ordered, making the suit, in effect, a new and independent proceeding among the parties.”).

73. *Airborne Freight Corp. v. United States*, 195 F.3d 238, 240 (5th Cir. 1999).

the lawsuit or granted any relief the court deems proper.<sup>74</sup> Alternatively, in an “action in nature of interpleader,”<sup>75</sup> or an action in which the interpleading plaintiff does not concede liability, the interpleading plaintiff remains a party to litigation and is permitted to adjudicate their interest in the stake against other claimants.<sup>76</sup> Interpleader relief is still proper if a “plaintiff denies liability in whole or in part to any or all of the claimants.”<sup>77</sup> Moreover, the requirements for interpleader relief are not fundamentally altered by the interpleading plaintiff’s claim to the stake.<sup>78</sup>

### 1. Rule Interpleader

Rule Interpleader supplements permissive party joinder governed by Federal Rule of Civil Procedure 20, which permits the joinder of plaintiffs in civil suits. Rule Interpleader provides a right to interpleader relief when a party *may* be exposed to “double or multiple liability.”<sup>79</sup> Interpleader shifts the roles of plaintiffs and defendants because plaintiffs typically seek relief, monetary or otherwise, from defendants.<sup>80</sup> Moreover, in an interpleader action, the interpleading plaintiff possesses the commodity that the claimant-defendants seek to obtain through adjudicating their competing claims.<sup>81</sup>

A court may still grant interpleader relief when claims of claimant-defendant “lack a common origin,” are “adverse,” or are “independent rather than identical.”<sup>82</sup> And notably, as illustrated in the above example, interpleader relief is still proper when a “plaintiff denies liability in whole or in part to any or all of the claimants.”<sup>83</sup>

Because Rule Interpleader “is merely a procedural device,”<sup>84</sup> a plaintiff “invoking rule interpleader . . . must plead and prove an independent basis for subject-matter jurisdiction.”<sup>85</sup> Consequently, to invoke Rule Interpleader, there must be an alternative or independent basis for subject

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74. *Metro. Life Ins. Co. v. Mitchell*, 966 F. Supp. 2d 97, 103 (E.D.N.Y. 2013). Courts often grant attorney’s fees to truly disinterested stakeholders when granting interpleader relief. *See, e.g., id.*

75. *Fresh Am. Corp. v. Wal-Mart Stores, Inc.*, 393 F. Supp. 2d 411, 414 (N.D. Tex. 2005) (quoting *Airborne Freight Corp.*, 195 F.3d at 240 n.3).

76. *See id.*

77. *Mitchell*, 966 F. Supp. 2d at 103.

78. *See id.*

79. FED. R. CIV. P. 22.

80. *See* 44B AM. JUR. 2D *Interpleader* § 1 (2023) (“A party who is confronted with conflicting claims from various alleged creditors . . . should not be forced to take the personal risk of evaluating the claims.”).

81. *Id.*

82. FED. R. CIV. P. 22.

83. *Id.*

84. *Madison Stock Transfer, Inc. v. Exlites Holdings Int’l, Inc.*, 368 F. Supp. 3d 460, 473–74 (E.D.N.Y. 2019) (quoting *Metro. Life Ins. Co. v. Carey*, No. 16-CV-3814, 2017 WL 4351512, at \*3 (E.D.N.Y. Sept. 29, 2017)).

85. *Id.*

matter jurisdiction outside of Rule 22, such as a federal question or diversity of citizenship.<sup>86</sup>

Establishing diversity jurisdiction in interpleader actions requires the interpleading plaintiff to fulfill the requirements of 28 U.S.C. § 1332.<sup>87</sup> Moreover, the interpleading plaintiff must meet the amount in controversy minimum of \$75,000.<sup>88</sup> The plaintiff must also establish complete diversity between the interpleading plaintiff and defendant claimants, as well as among defendant claimants.<sup>89</sup> Complete diversity is destroyed when the United States is a party, as § 1332 measures diversity “between . . . citizens of different states.”<sup>90</sup> But jurisdiction requirements under Rule Interpleader can be met even when an interpleading plaintiff does not wish to deposit the disputed stake into the court’s registry prior to the adjudication of competing claims.<sup>91</sup>

Alternatively, federal question jurisdiction can establish subject matter jurisdiction in federal interpleader cases.<sup>92</sup> Federal question jurisdiction, under 28 U.S.C. § 1331, establishes “original jurisdiction in federal courts of all civil actions arising under the Constitution, laws, or treaties of the United States.”<sup>93</sup> Federal jurisdiction is properly invoked when plaintiffs either plead “a cause of action created by [or that arises out of] federal law” or when state law claims “implicate significant federal issues.”<sup>94</sup> Meeting federal question jurisdiction standards requires that the plaintiff’s cause of action, not merely an anticipated defense,<sup>95</sup> involves a substantial, contested federal issue and that the exercise of jurisdiction is consistent with “congressional judgment” regarding the division between state and federal power.<sup>96</sup>

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86. See *CF 135 Flat LLC v. Triadou SPV S.A.*, No. 15-CV-5345, 2016 WL 1109092, at \*2 (S.D.N.Y. Mar. 18, 2016).

87. See 44B AM. JUR. 2D *Interpleader* § 32 (2023) (“[C]omplete diversity of citizenship is necessary for jurisdiction in a rule interpleader action—that is, diversity between the stakeholder on the one hand and all the claimants on the other. The presence of unknown claimants to the fund is destructive of complete diversity.”).

88. Under 28 U.S.C. § 1332, for an interpleader action to establish diversity jurisdiction, the stake must exceed \$75,000.

89. See *id.*

90. *Allstate Indem. Co. v. Collura*, No. 15-CV-5047, 2017 WL 1076328, at \*4 (E.D.N.Y. Mar. 22, 2017) (quoting 28 U.S.C. § 1332(a)(1)).

91. See *id.*

92. See, e.g., *Madison Stock Transfer, Inc. v. Exlites Holdings Int’l, Inc.*, 368 F. Supp. 3d 460, 473–74 (E.D.N.Y. 2019).

93. 28 U.S.C. § 1331.

94. *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 312 (2005); see *Gunn v. Minton*, 568 U.S. 251, 258 (2013) (holding requirements for federal question jurisdiction over state law claim satisfied when the federal issue is necessarily raised, actually disputed, substantial, and capable of resolution without disrupting separation of powers).

95. See *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 152 (1908) (“It is not enough that the plaintiff alleges some anticipated defense to his cause of action, and asserts that the defense is invalidated by some provision of the Constitution of the United States. Although such allegations show that very likely, in the course of the litigation, a question under the Constitution would arise, they do not show that the suit, that is, the plaintiff’s original cause of action, arises under the Constitution.”).

96. *Grable & Sons Metal Prods.*, 545 U.S. at 312.

## 2. Statutory Interpleader

Statutory Interpleader, drawn from the Federal Interpleader Act,<sup>97</sup> reduces the standards required to establish subject matter<sup>98</sup> and personal jurisdiction<sup>99</sup> in federal interpleader cases.

Under 28 U.S.C. § 1335, “district courts shall have original jurisdiction of any civil action of interpleader or *in the nature of interpleader* filed by any person, firm, . . . corporation, association, or society having in his or its custody or possession money or property of the value of \$500 or more” if *two or more claimants are diverse* and the interpleading plaintiff has deposited the disputed sum of money “into the registry of the court.”<sup>100</sup> Satisfying “the requirements of statutory interpleader” establishes subject matter jurisdiction.<sup>101</sup> Some courts interpret the deposit requirement as a necessary step to establish jurisdiction.<sup>102</sup>

This provision specifically reduces the standard for establishing diversity jurisdiction in federal court.<sup>103</sup> As opposed to Rule Interpleader, which requires complete diversity, § 1335 permits diversity when there is minimal diversity between defendant claimants and the stake meets the minimum threshold value of \$500.<sup>104</sup>

28 U.S.C. § 2361 governs service of process in Statutory Interpleader cases. 28 U.S.C. § 2361 establishes nationwide service of process for Statutory Interpleader, so long as process and orders are “addressed to and served by the United States marshals for the respective districts where the claimants reside or may be found.”<sup>105</sup> Additionally, the statute provides that “a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in *any State* or United States court affecting the property, instrument or obligation involved in the interpleader action until further order of the court.”<sup>106</sup>

Moreover, Statutory Interpleader is “one of the exceptions to the Anti-Injunction Act’s broad prohibition against federal courts’ enjoining state courts.”<sup>107</sup> The adjudicating federal court in Statutory Interpleader cases “is expressly empowered to enter orders controlling related cases in

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97. 28 U.S.C. §§ 1335, 1397, 2361.

98. *See id.* § 1335.

99. *See id.* § 1397.

100. *Id.* § 1335 (emphasis added).

101. *Madison Stock Transfer, Inc. v. Exlites Holdings Int’l, Inc.*, 368 F. Supp. 3d 460, 473–74 (E.D.N.Y. 2019).

102. *See* 153 AM. JUR. *Trials* 489 § 23 n.2 (2023) (citing *In re Sinking of M/V Ukola*, 806 F.2d 1, 5 (1st Cir. 1986); *U.S. Fire Ins. Co. v. Asbestospray, Inc.*, 182 F.3d 201, 210 (3d Cir. 1999); *Smith v. Widman Trucking & Excavating, Inc.*, 627 F.2d 792, 798 (7th Cir. 1980)).

103. *See supra* Part I.A.1.

104. *See supra* Part I.A.1.

105. 28 U.S.C. § 2361.

106. *Id.* (emphasis added).

107. 153 AM. JUR. *Trials* 489 § 24 (2023) (“Rule Interpleader does not provide the adjudicating federal court with either national service of process or an exception from the Anti-Injunction Act . . . . Some courts have issued injunctions regarding related existing or potential lawsuits while adjudicating a federal Rule Interpleader.”).

both federal and state courts” under 28 U.S.C. § 2361.<sup>108</sup> Notably, while an interpleader action is pending, the district court may suspend all pending cases related to the interpleader fund.<sup>109</sup> Issuing an injunction against cases “only tangentially related to the interpleaded stake,” however, would be an impermissible abuse of the court’s discretion.<sup>110</sup>

28 U.S.C. § 1397 establishes special venue rules for Statutory Interpleader: “Any civil action of interpleader or in the *nature of interpleader* under 28 U.S.C. § 1335 . . . may be brought in the judicial district in which one or more of the claimants reside.”<sup>111</sup>

The Supreme Court has noted that “the present [interpleader] statute . . . is remedial and to be liberally construed.”<sup>112</sup> Interpleader has also been extended in cases in which “the plaintiff is not wholly disinterested.”<sup>113</sup> Furthermore, the Court has held that neither Statutory Interpleader nor corresponding case law limits the availability of interpleader relief when an interpleading plaintiff does not concede liability to claimant-defendants.<sup>114</sup> Recently, Dr. Braid, an interpleading plaintiff, sought relief under Statutory Interpleader while arguing that he was not liable because the statute itself was unconstitutional.<sup>115</sup>

The Rules Enabling Act<sup>116</sup> prescribes that the Federal Rules of Civil Procedure “shall not abridge, enlarge, or modify any substantive right.”<sup>117</sup> Through judicial interpretation, this provision has been interpreted to require that federal courts sitting in diversity jurisdiction apply state substantive law.<sup>118</sup> The line between a substantive right and procedural rule, however, is murky, as courts have disagreed on how to distinguish between substance and procedure.<sup>119</sup>

108. *Id.*; see also *Ill. Emps. Ins. of Wausau v. Mihalcik*, 801 F.2d 949, 950 (7th Cir. 1986) (affirming grant of an injunction blocking a party from suing in another jurisdiction issued pursuant to federal Statutory Interpleader).

109. 28 U.S.C. § 2361 (“In any civil action . . . under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action until further order of the court.”).

110. 153 AM. JUR. *Trials* 489 § 24 (2023).

111. 28 U.S.C. § 1397 (emphasis added).

112. *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 533 (1967); see also *Ashton v. Josephine Bay Paul & C. Michael Paul Found., Inc.*, 918 F.2d 1065, 1069 (2d Cir. 1990).

113. *State Farm*, 386 U.S. at 532 n.9; see *Ashton*, 918 F.2d at 1069.

114. See *Ashton*, 918 F.2d at 1069.

115. Complaint for Interpleader & Declaratory Judgment, *supra* note 39.

116. 28 U.S.C. §§ 2072–2077.

117. *Id.* § 2072; see *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 456–57 (2010) (Ginsburg, J., dissenting) (“The Rules Enabling Act, 28 U.S.C. § 2072, not *Erie*, controls the validity of a Federal Rule of Procedure . . . . [A] Rule must ‘really regulat[e] procedure,—the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them.’” (third alteration in original) (quoting *Sibbach v. Wilson & Co.*, 312 U.S. 1, 14 (1941))).

118. See, e.g., *id.* at 457.

119. See *id.* at 456–57 (“As this case starkly demonstrates, if federal courts exercising diversity jurisdiction are compelled by Rule 23 to award statutory penalties in class actions

### 3. Adjudication of Interpleader Claims

Interpleader actions are adjudicated in two stages: first, determining whether jurisdictional requirements are met and, second, adjudicating conflicting claims to the stake.<sup>120</sup> Notably, “the interpleader statute is ‘remedial and to be liberally construed,’ particularly to prevent races to judgment and the unfairness of multiple and potentially conflicting obligations.”<sup>121</sup> In determining whether an interpleading plaintiff may face multiple liability or duplicitous litigation, courts “continue to hold interpleading stakeholders to a good faith standard.”<sup>122</sup> Thus, if an interpleading plaintiff has a “good faith belief” that they may face multiple liability, they fulfill this requirement.<sup>123</sup> Granting interpleader relief does not settle claims; instead, it grants courts the authority to adjudicate conflicting claims to determine which claimant is entitled to the disputed sum.<sup>124</sup>

Interpleader is commonly used to settle disputes regarding insurance proceeds, property, and tangible items. In a “‘true’ interpleader action”<sup>125</sup> once the court determines that jurisdictional requirements are satisfied, the stakeholder may request to be dismissed from the lawsuit and granted relief.<sup>126</sup> Alternatively, in an “action in nature of interpleader,”<sup>127</sup> the plaintiff remains a party to litigation and is permitted to adjudicate their interest against other claimants.<sup>128</sup>

Interpleader relief is not limited to when the interpleading plaintiff does not concede liability or claims an interest in the stake.<sup>129</sup> Rather, since its enactment in 1936, interpleader jurisdiction has been extended to actions “in the nature of interpleader” when the interpleading plaintiff is not disinterested or when they claim an active interest in the stake.<sup>130</sup>

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while New York courts are bound by § 901(b)’s proscription, ‘substantial variations between state and federal [money judgments] may be expected.’ The ‘variation’ here is indeed ‘substantial.’ Shady Grove seeks class relief that is ten thousand times greater than the individual remedy available to it in state court . . . . It is beyond debate that ‘a statutory cap on damages would supply substantive law for *Erie* purposes.’” (alteration in original) (quoting *Gasperini v. Ctr. for Humans, Inc.*, 518 U.S. 415, 428, 430 (1996)).

120. See *Madison Stock Transfer, Inc. v. Exlites Holdings Int’l, Inc.*, 368 F. Supp. 3d 460, 472 (E.D.N.Y. 2019).

121. *Hapag-Lloyd Aktiengesellschaft v. U.S. Oil Trading LLC*, 814 F.3d 146, 151 (2d Cir. 2016) (quoting *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 533 (1967)).

122. *Michelman v. Lincoln Nat’l Life Ins. Co.*, 685 F.3d 887, 893 (9th Cir. 2012).

123. *Id.* at 893 (“The threshold to establish good faith is necessarily low so as not to conflict with interpleader’s pragmatic purpose, which is ‘for the stakeholder to “protect itself against the problems posed by multiple claimants to a single fund.”’” (quoting *Mack v. Kuckenmeister*, 619 F.3d 1010, 1024 (9th Cir. 2010))).

124. *Airborne Freight Corp. v. United States*, 195 F.3d 238, 240–41 (5th Cir. 1999).

125. *Id.*

126. *Metro. Life Ins. Co. v. Mitchell*, 966 F. Supp. 2d 97, 103 (E.D.N.Y. 2013).

127. *Fresh Am. Corp. v. Wal-Mart Stores, Inc.*, 393 F. Supp. 2d 411, 414 (N.D. Tex. 2005).

128. See *id.*

129. *Ashton v. Josephine Bay Paul & C. Michael Paul Found., Inc.*, 918 F.2d 1065, 1069 (2d Cir. 1990).

130. *Id.*

When an interpleading plaintiff files for interpleader relief along with a request for declaratory relief, district courts have broad discretion to abstain from adjudicating a particular issue.<sup>131</sup> Furthermore, because interpleader is rooted in equity, the court “by the nature of its jurisdiction proceeds with broad discretion.”<sup>132</sup>

#### 4. Default Judgment Against Nonappearing Claimants

Default judgment is commonly granted against properly served, nonappearing claimants.<sup>133</sup> Entering default judgment against a claimant-defendant does not establish liability, but rather forfeits a claimant’s right to subsequently seek relief or claim an interest in the stake.<sup>134</sup> Default judgment can be granted against individuals who have a potential claim to the stake and fail to appear.<sup>135</sup>

The standards for default judgment in an interpleader action are less stringent because granting default judgment does not assign liability; it merely precludes a potential claimant from bringing a claim asserting an interest in the stake.<sup>136</sup> Moreover, “[i]n interpleader actions, ‘[t]he failure of a named interpleader defendant to answer the interpleader complaint and assert a claim to the res can be viewed as forfeiting any claim of entitlement that might have been asserted.’”<sup>137</sup> Granting default judgment “must remain a weapon of last, rather than first, resort.”<sup>138</sup> Nevertheless, courts have broad discretion when granting default judgment, such that “the decision to grant default judgment remains in the ‘sound discretion of the trial court.’”<sup>139</sup>

#### 5. Complete and Inchoate Interpleader

This Note introduces novel terminology for how to distinguish interpleader actions with ascertained claimant-defendants and interpleader actions with unknown claimant-defendants. Furthermore, distinguishing and defining

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131. *Great Lakes Ins. SE v. Dunklin*, 510 F. Supp. 3d 1091, 1098 (S.D. Ala. 2021) (“That is to say, federal courts have persuasively recognized that where, as here, a Rule Interpleader claim is paired with a claim for declaratory relief, the broad *Wilton / Brillhart* standard of discretion is properly applied in the abstention analysis.”).

132. *Id.* at 1098 (quoting *NYLife Distrib., Inc. v. Adherence Grp., Inc.*, 72 F.3d 371, 380 (3rd Cir. 1995)).

133. *See, e.g., Nationwide Mut. Fire Ins. Co. v. Eason*, 736 F.2d 130, 132–33 (4th Cir. 1984).

134. *See id.* at 133 n.4 (“If all but one named interpleader defendant defaulted, the remaining defendant would be entitled to the fund”).

135. *Sun Life Assurance Co. of Can., (U.S.), v. Conroy*, 431 F. Supp. 2d 220, 226 (D.R.I. 2006) (“A named interpleader defendant who fails to answer the interpleader complaint and assert a claim to the res forfeits any claim of entitlement that might have been asserted.”).

136. *See id.*

137. *Liberty Mut. Fire Ins. Co. v. CitiMortgage, Inc.*, No. 20-CV-5839, 2022 WL 5424790, at \*2 (E.D.N.Y. July 21, 2022) (second alteration in original) (quoting *Hawkins v. Boyd*, No. 16-CV-1592, 2016 WL 7626577, at \*4 (E.D.N.Y. Nov. 18, 2016)), *report and recommendation adopted*, No. 20-CV-5839, 2022 WL 4483396 (E.D.N.Y. Sept. 27, 2022).

138. *Meehan v. Snow*, 652 F.2d 274, 277 (2d Cir. 1981).

139. *Liberty Mut. Fire Ins. Co.*, 2022 WL 5424790, at \*2 (quoting *Wells Fargo Bank, N.A. v. Krenzen Auto Inc.*, No. 19-CV-5329, 2021 WL 695122, at \*3 (E.D.N.Y. Feb. 23, 2021)).

complete and inchoate interpleader enables litigants to conceptualize how interpleader may be used in private citizen action statutes.

Complete interpleader uses interpleader as a necessary shield against claims that have already been filed against the stakeholder—i.e., to protect the stakeholder from multiple liability or inconsistent judgments. However, plaintiffs can also use complete interpleader to challenge the constitutionality of private citizen action statutes. This is analogous to the way in which a defendant can challenge the constitutional validity of a law “within proceedings enforcing the challenged law.”<sup>140</sup>

Inchoate interpleader uses interpleader as a preemptive measure to avoid multiple liability or inconsistent judgments before claims have actually materialized against the stakeholder. Inchoate interpleader resembles offensive litigation that occurs when “a rights holder initiates litigation to prevent ongoing and future enforcement or to remedy past enforcement.”<sup>141</sup> In the context of interpleader relief, this would mean filing for interpleader relief prior to two or more individuals filing a claim in the stake, arguing a property interest or right to statutory damages. Inchoate interpleader is proper when the interpleading plaintiff has a good faith belief that two or more individuals will claim ownership to all or part of the disputed stake.<sup>142</sup>

### B. *Interpleader as an Equitable Remedy*

Interpleader is an equitable remedy designed to protect individuals from inconsistent obligations or multiple liability.<sup>143</sup> Statutory and Rule Interpleader are designed to avoid wasted resources from needless or duplicative litigation by granting good faith actors a right to interpleader relief.<sup>144</sup> “[T]he trend, both with regard to statutory revision and judicial interpretation, has been directed toward increasing the availability of interpleader and eliminating those technical restraints on the device that are not founded on adequate policy considerations.”<sup>145</sup> Although interpleader is primarily used in monetary or insurance disputes, it can be used whenever there is a “protectable property interest.”<sup>146</sup> Thus, “interpleader seldom will be rendered inappropriate because of the nature of the stake.”<sup>147</sup> As an equitable remedy, however, courts may analyze whether “equitable concerns prevent the use of interpleader.”<sup>148</sup> This requires a consideration of whether

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140. See Howard M. Wasserman & Charles W. “Rocky” Rhodes, *Solving the Procedural Puzzles of the Texas Heartbeat Act and Its Imitators: The Limits and Opportunities of Offensive Litigation*, 71 AM. U. L. REV. 1029, 1049 (2022).

141. See *id.* at 1048.

142. See *supra* notes 119–23 and accompanying text.

143. *United States v. High Tech. Prods., Inc.*, 497 F.3d 637, 641 (6th Cir. 2007).

144. 44B AM. JUR. 2D *Interpleader* § 44 (2023) (“A life insurer, acting in good faith, has the right to interplead, whenever it is faced with competing claims and the threat of multiple liability, regardless of its opinion about the merits of the conflicting claims.”).

145. 7 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1704 (3d ed. 2023).

146. See *id.*

147. See *id.*

148. *High Tech. Prods.*, 497 F.3d at 641.



the stakeholder acted in good faith, whether the stakeholder has “unclean hands,” and laches.<sup>149</sup> Furthermore, “the present [interpleader] statute . . . is remedial and to be liberally construed.”<sup>150</sup>

### 1. Legislative History

Statutory Interpleader has undergone linguistic changes since its conception, indicating a trend toward its liberal application.<sup>151</sup> Currently, the text which governs the requirements for establishing diversity jurisdiction in interpleader actions is “[t]wo or more adverse claimants, of diverse citizenship . . . [who] are claiming or *may claim* to be entitled” to the disputed stake.<sup>152</sup>

The modern wording, which includes “may claim” in addition to “are claiming” is the language used in the original Federal Interpleader Act of 1917.<sup>153</sup> The 1936 Interpleader Act<sup>154</sup> altered the phrasing to exclude “may claim,” which may have signified a desire to limit the scope of Statutory Interpleader by requiring tangible, materialized claims.<sup>155</sup> In 1948, however, the Judicial Code restored the “may claim” language.<sup>156</sup> The restoration of original language “removed the requirement that [a stakeholder] . . . wait until at least two claimants” affirmatively asserted their claims.<sup>157</sup> Although the “Reviser’s Note did not refer to the statutory change or its purpose,”<sup>158</sup> the Court found the provision intended to overrule a holding that prohibited “invo[king] interpleader to protect against unliquidated claims.”<sup>159</sup> Thus, the Court found the 1948 revision *substantively* changed the availability of interpleader relief.<sup>160</sup> Courts have universally accepted this interpretation, extending interpleader jurisdiction to both potential and actual claims.<sup>161</sup>

### 2. Interpleader in Action

Litigants primarily use interpleader to adjudicate competing claims to an indivisible stake.<sup>162</sup> Moreover, the purpose of interpleader is to protect the stakeholder, who may or may not have an interest in the stake, from injustices arising out of competing claims to the stake.<sup>163</sup> Such injustices could include being subject to multiple actions for recovery of a single fund, multiple

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149. *See generally* *Primerica Life Ins. Co. v. Woodall*, 38 F.4th 724 (8th Cir. 2022).

150. *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 533 (1967).

151. *See id.*

152. 28 U.S.C. § 1335 (emphasis added).

153. Pub. L. No. 64-346, 39 Stat. 929.

154. Pub. L. No. 74-422, 49 Stat. 1096.

155. *State Farm*, 386 U.S. at 532.

156. *See id.*

157. *See id.*

158. *See id.* at 540.

159. *Id.* at 532 n.11.

160. *Id.*

161. *See id.* (citing *Ex parte Collett*, 337 U.S. 55 (1949)).

162. *See, e.g., Sotheby’s, Inc. v. Garcia*, 802 F. Supp. 1058 (S.D.N.Y. 1992); *Murphy v. Travelers Ins. Co.*, 534 F.2d 1155 (4th Cir. 1976).

163. *See generally Sotheby’s*, 802 F. Supp. 1058.

liability, and inconsistent judgments.<sup>164</sup> The following two cases exemplify typical uses of interpleader actions in federal court.

In one case, an art dealer brought an action against Sandra Garcia and the Republic of the Philippines to determine who the rightful owner of six oil paintings was.<sup>165</sup> Ms. Garcia claimed that she lent the paintings to Imelda Marcos, the wife of the former President of the Philippines, Ferdinand Marcos, for “\$1 million at an interest rate of ten percent per annum.”<sup>166</sup> The Philippines claimed that they were the rightful owners of the paintings because the artwork was purchased with funds “illegally obtained through bribery, extortion, embezzlement . . . and other breaches of public trust while Mr. Marcos was President of the Philippines.”<sup>167</sup> Prior to litigation, the paintings were in the art dealer’s possession.<sup>168</sup> The court found interpleader could be used to adjudicate the competing claims of ownership and ensure effective relief.<sup>169</sup> This action shows how interpleader can be used to adjudicate mutually exclusive claims because both the Philippines and Ms. Garcia could not possibly be the rightful owners of the paintings.<sup>170</sup> Thus, when relief to one claimant may effectively deny another claimant relief, interpleader is proper to avoid unduly burdening a stakeholder.<sup>171</sup>

In a second case, Donald Murphy’s life was insured by Travelers Insurance Company for \$48,000 at the time of his death.<sup>172</sup> After his death, several individuals made claims to the policy, including Donald’s children, spouse, and former spouse.<sup>173</sup> Although Donald’s current spouse was listed as the beneficiary under the policy, there were several disputes regarding whether and how much each party should be granted under the insurance policy.<sup>174</sup> For example, there was a dispute regarding child support payments to Donald’s former spouse.<sup>175</sup> The court used interpleader to adjudicate the competing claims to the life insurance policy and to guarantee Traveler’s Insurance Company would not be subject to liability beyond \$48,000.<sup>176</sup>

### 3. Granting Interpleader Relief

Although interpleader has traditionally been used in predictable ways, such as determining disputes over insurance proceeds, courts have used interpleader to address novel disputes.<sup>177</sup> For example, the Second Circuit

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164. *See N.Y. Life Ins.*, 730 F. App’x at 50.

165. *Sotheby’s*, 802 F. Supp. at 1061.

166. *Id.*

167. *Id.* at 1062.

168. *Id.*

169. *Id.* at 1066.

170. *See id.*

171. *Id.*

172. *See Murphy v. Travelers Ins. Co.*, 534 F.2d 1155, 1157–58 (4th Cir. 1976).

173. *See id.*

174. *See id.*

175. *See id.*

176. *See id.*

177. *See, e.g., Hapag-Lloyd Aktiengesellschaft v. U.S. Oil Trading LLC*, 814 F.3d 146, 151–52 (2d Cir. 2016) (“Though this matter presents a novel factual situation, we think the

used interpleader in a case in which the town of Watertown, Connecticut sought to determine whether they owed money to an equipment supplier or a general contractor.<sup>178</sup> Judge Henry J. Friendly, writing for the court, noted that “nothing could be more palpably unjust than to permit two recoveries against [the interpleader plaintiff] for the same enrichment.”<sup>179</sup> When disputes arise over who should be paid a singular sum of money, interpleader is a suitable method to adjudicate competing claims.<sup>180</sup>

Judges have broad discretion in cases involving equitable remedies. For example, “a court may remand a case to state court based on abstention principles when a court is sitting in equity or jurisdiction is otherwise discretionary.”<sup>181</sup> In rare cases, a federal district court sitting in equity jurisdiction “may dismiss or remand a matter to state court” when jurisdiction was sufficiently established.<sup>182</sup> Likewise, a federal court sitting in equity jurisdiction has the power to “stay the action based on abstention principles,” decline to exercise jurisdiction, or remand a case to state court.<sup>183</sup>

Furthermore, because a single, identifiable stake is a prerequisite to interpleader jurisdiction, a federal court will not exercise jurisdiction when the stake is ill-defined.<sup>184</sup> Importantly, “[w]here a statute protects from the risk of double recovery, interpleader jurisdiction does not lie.”<sup>185</sup> Thus, the discretionary powers of federal judges, the requirement of an identifiable stake, and other jurisdictional preconditions all pose obstacles to interpleader relief.<sup>186</sup> The obstacles are counteracted, however, both by the Court’s longstanding principle that the interpleader statute should be “liberally construed” and principles of equity.<sup>187</sup> A court should, for example, consider issues of fundamental fairness when granting interpleader relief.<sup>188</sup>

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case before us fits squarely within the language and purpose of the interpleader statute.”); *Ashton v. Josephine Bay Paul & C. Michael Paul Found., Inc.*, 918 F.2d 1065, 1070 (2d Cir. 1990) (“[B]y converting this action into an interpleader proceeding, the R.I. Paul executors may have shifted the burden of proof—and the risk of loss . . . [however,] the possibility of a marginal improvement in the litigating position . . . [is insufficient] for us to deny access to the interpleader mechanism.”).

178. *Royal Sch. Lab’ys, Inc. v. Watertown*, 358 F.2d 813 (2d Cir. 1966).

179. *Id.* at 815.

180. *Hapag-Lloyd*, 814 F.3d at 151–52.

181. *Brigham Oil & Gas, L.P. v. N.D. Bd. of Univ. & Sch. Lands*, 866 F. Supp. 2d 1082, 1087–88 (D.N.D. 2012).

182. *See id.* at 1089.

183. *See id.*; 44B AM. JUR. 2D *Interpleader* § 44 (2022) (“Because interpleader is an equitable remedy, it is within the district court’s discretion to determine whether the equities warrant interpleader relief. Thus, acceptance of an interpleader action is not mandatory, and may be denied for equitable reasons.”).

184. *See Braid v. Stillely*, No. 21-CV-5283, 2022 WL 4291024, at \*3 (N.D. Ill. Sept. 16, 2022), *appeal docketed*, No. 22-2815 (7th Cir. Oct. 13, 2022).

185. *Id.*

186. 44B AM. JUR. 2D *Interpleader* §§ 1, 5.

187. *Ashton v. Josephine Bay Paul & C. Michael Paul Found., Inc.*, 918 F.2d 1065, 1069 (2d Cir. 1990) (quoting *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 533 (1967)).

188. *See id.*

Additionally, courts generally dismiss claims for interpleader relief if they are brought in bad faith.<sup>189</sup> Bad faith may be found if a party uses interpleader to engage in impermissible forum shopping, if the interpleading plaintiff does not have a good-faith fear of multiple liability, or if the evidence conveys improper use of interpleader.<sup>190</sup>

### C. Impact of Private Citizen Action Statutes

Because the newly devised private citizen action statutes are enforced *solely* by private citizens, as opposed to government officials, individuals seeking to challenge these statutes' constitutionality face immense procedural hurdles.<sup>191</sup> Establishing jurisdiction under Statutory or Rule Interpleader establishes a right to relief in federal court,<sup>192</sup> which in turn could permit litigants to challenge these statutes' legality. Dr. Braid, discussed above, used this method of adjudication to challenge Texas S.B. 8 after providing an abortion in violation of the law.<sup>193</sup>

Statutes that create a private right of action empower “private plaintiffs to sue alleged violators” and recover damages, including statutory damages, actual damages, and litigation costs.<sup>194</sup> Permitting the recovery of statutory damages and costs incurred—including “civil fines, punitive damages, injunctions, and attorneys’ fees”—can have a “chilling” effect on private conduct.<sup>195</sup> High fines and the risk of litigation “can exert a tremendous deterrent effect” on actions otherwise within an individual’s constitutional right.<sup>196</sup> Private citizen action statutes put individuals in an impossible dilemma of either complying with the unconstitutional statute or risking subsequent liability for noncompliance.<sup>197</sup>

Private citizen action statutes may prescribe enforcement exclusively through private actors seeking relief against an alleged violator.<sup>198</sup> In Texas S.B. 8, for example, the enforcement mechanism is “unusually explicit” because enforcement is exclusively permitted through private civil action.<sup>199</sup> This provision disarms potential challengers from suing government entities by creating standing and jurisdictional hurdles given that a private citizen is the sole enforcement mechanism.<sup>200</sup>

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189. *Indianapolis Colts v. Mayor of Balt.*, 733 F.2d 484, 487 (7th Cir. 1984).

190. *See id.*

191. *See* Complaint for Interpleader & Declaratory Judgment, *supra* note 39.

192. *See supra* Part I.A.3.

193. *See supra* Part I.A.3.

194. Michael T. Morley, *Constitutional Tolling and Preenforcement Challenges to Private Rights of Action*, 97 NOTRE DAME L. REV. 1825, 1828 (2022).

195. *See id.*

196. *Id.*

197. *Id.*

198. *Braid v. Stille*, No. 21-CV-5283, 2022 WL 4291024, at \*1–2 (N.D. Ill. Sept. 16, 2022), *appeal docketed*, No. 22-2815 (7th Cir. Oct. 13, 2022).

199. Georgina Yeomans, *Ordering Conduct yet Evading Review: A Simple Step Toward Preserving Federal Supremacy*, 131 YALE L.J.F. 513, 526 (2021).

200. *See id.* at 515–16.

### 1. Enforcement Regimes

Texas S.B. 8 and other private citizen action statutes designed to evade constitutional protections are solely enforced through private action.<sup>201</sup> Some statutes, including the Racketeer Influenced and Corrupt Organizations Act<sup>202</sup> (RICO), have enforcement provisions for government entities and private citizens. However, laws such as Texas S.B. 8 explicitly bar governmental enforcement.<sup>203</sup> Thus, these statutes can only be enforced by private citizens<sup>204</sup> who presumptively become aware that an individual may have acted in a manner inconsistent with the statute and decide to bring a lawsuit.

The Texas Legislature did not randomly decide to prohibit government enforcement; instead, it expressly designed these statutes to circumvent judicial review by creating a roundabout method of enforcement.<sup>205</sup> Thus, private citizen action statutes designed this way “effectively chill” individuals from exercising their constitutional rights while providing no clear avenue to challenge the law’s validity.<sup>206</sup>

For example, the broad scope of conduct covered by Texas S.B. 8 can significantly impede an individual’s ability to perform employment duties.<sup>207</sup> An Uber or Taxi driver does not typically demand to know why their passenger is taking the current trip. However, under Texas S.B. 8, even a taxi driver could be liable for “aiding and abetting” an abortion procedure if they took a rider to their doctor’s appointment.<sup>208</sup> Moreover, doctors may be hesitant to perform lifesaving procedures when they fear liability for performing a noncompliant abortion.<sup>209</sup> Regardless of how often private citizens enforce these statutes through litigation, the potential for liability has a widespread effect on individual conduct.<sup>210</sup>

### 2. The Erosion of Constitutional Rights

Some private citizen action statutes, including Texas S.B. 8<sup>211</sup> and similarly modeled legislation,<sup>212</sup> regulate activity otherwise protected under

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201. *See Whole Woman’s Health v. Jackson*, 142 S. Ct. 522, 543 (2021) (Roberts, C.J., concurring) (discussing the Texas state legislature’s attempt at evading judicial review).

202. 18 U.S.C. §§ 1961–1968.

203. TEX. HEALTH & SAFETY CODE ANN. § 171.208 (West 2023); CAL. BUS. & PROF. CODE § 22949.65 (West 2023).

204. *Id.*

205. *Whole Woman’s Health*, 142 S. Ct. at 543 (Roberts, C.J., concurring).

206. *Id.*

207. *See Braid*, *supra* note 13.

208. *See id.*

209. *See id.*

210. *See Wasserman & Rhodes*, *supra* note 140, at 1034–35.

211. TEX. HEALTH & SAFETY CODE § 171.208 (West 2021). The statute was enacted when abortion was a constitutionally protected right under *Roe v. Wade*, 410 U.S. 113 (1973).

212. *See Durkee*, *supra* note 44 (“Tennessee lawmakers are considering a bill in committee that includes an amendment that copies the Texas law—but it bans all abortions, not just those after six weeks. Bills are also pending in Alabama, Louisiana, and Ohio, with Ohio’s bill prohibiting all abortions, even before six weeks.”); Michael Smith & Johnathan Levin, *Florida*

the Court's interpretation of constitutionally guaranteed rights.<sup>213</sup> By prohibiting governmental enforcement, these statutes threaten an individual's ability to exercise established constitutional rights, as relying on private actors for enforcement creates justiciability issues such as lack of standing.<sup>214</sup> Actors invoking the statutes may either do so for political reasons or because of monetary incentives from statutory damages.<sup>215</sup> But without government enforcement, individuals cannot affirmatively sue state actors to bar the state from enforcing contested provisions.

In *Whole Woman's Health v. Jackson*,<sup>216</sup> in which the Court reviewed Texas S.B. 8, Chief Justice Roberts noted in concurrence that "Texas has employed an array of stratagems designed to shield its unconstitutional law from judicial review."<sup>217</sup> Moreover, Texas S.B. 8 imposes a minimum liability of \$10,000 plus costs and fees while denying defendants the ability to recover the cost of defending the suit if they prevail.<sup>218</sup> Chief Justice Roberts found "[t]he clear purpose and actual effect of S. B. 8 has been to nullify this Court's rulings."<sup>219</sup> Further, a statute designed in this fashion fundamentally opposes traditional norms of constitutional law and actively seeks to evade judicial review.<sup>220</sup> Chief Justice Roberts cautioned that "[t]he nature of the federal right infringed does not matter; it is the role of the Supreme Court in our constitutional system that is at stake."<sup>221</sup>

In enacting Texas S.B. 8, the Texas Legislature "substantially suspended a constitutional guarantee . . . . In open defiance of this Court's precedents, Texas enacted [S.B. 8], which bans abortion starting approximately six weeks after a woman's last menstrual period, well before the point of fetal viability."<sup>222</sup> The statute "threatened abortion care providers with the prospect of essentially unlimited suits for damages, brought anywhere in Texas by private bounty hunters, for taking any action to assist women in exercising their constitutional right to choose."<sup>223</sup>

Furthermore, because the Court does not recognize "an unqualified right to pre-enforcement review of constitutional claims in federal court," statutes like Texas S.B. 8 threaten the court system's ability to guarantee individuals the right to engage in constitutionally protected activities.<sup>224</sup> Without a

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*Lawmaker Proposes Abortion Ban That Mimics Texas SB-8 Law*, TIME (Sept. 22, 2021, 11:24 PM), <https://time.com/6100983/florida-abortion-bill-texas-sb8/> [<https://perma.cc/DCY7-LUPT>] ("The [Florida] bill appeared to be a clear example of a Texas copycat law in another large, GOP-controlled state."); see also CAL. BUS. & PROF. CODE §§ 22949.60–71 (West 2023).

213. See Wasserman & Rhodes, *supra* note 140, at 1034–35.

214. See *id.*

215. See *id.* at 1036.

216. 142 S. Ct. 522 (2021).

217. *Id.* at 543 (Roberts, J., concurring).

218. *Id.* at 544.

219. *Id.* at 545.

220. *Id.*

221. *Id.*

222. *Id.* at 552 (Sotomayor, J., concurring).

223. *Id.*

224. *Id.* at 537–38 (majority opinion).

guaranteed route for judicial review pre-enforcement, individuals impacted by private citizen action statutes may avoid engaging in impermissibly regulated conduct out of fear of being held liable for noncompliance.<sup>225</sup> Nevertheless, the Court found that the “chilling effect” from regulating constitutionally protected conduct was “insufficient to ‘justify federal intervention’ in a pre-enforcement suit.”<sup>226</sup>

The Court’s stance is especially dangerous when a legislature does not adequately represent the population that it serves or when a legislature is politically polarized. It is impossible to determine if there are areas in which a legislature would not enact vigilante-type statutes because there are endless opportunities to evade judicial review using private citizen action statutes. The Court’s precedent regarding privacy rights is inherently vulnerable; private citizen action statutes might be enacted to regulate transgender healthcare and familial services such as birth control and marriage.<sup>227</sup>

### 3. Legal Instability

Statutes structured like Texas S.B. 8 are designed to deny affected parties the right to a hearing.<sup>228</sup> By preventing government officials from enforcing the statute, the legislature sought to minimize the ability of impacted parties to challenge the statute’s constitutionality. This can impair legal stability by creating uncertainty over which law should be followed, weighing the enacted laws of a state legislature against the Supreme Court’s precedent.<sup>229</sup>

The Texas Legislature nullified the Court’s then-standing precedent by enacting a statute inconsistent with the Court’s interpretation of the then-constitutionally protected right to an abortion.<sup>230</sup> Justice Sotomayor contended that the majority betrayed “not only the citizens of Texas but also our constitutional system of government.”<sup>231</sup> Justice Sotomayor warned that the decision reached was a “disaster for the rule of law.”<sup>232</sup> Two scholars described the case as follows:

[Texas S.B. 8] prohibits abortions after detection of a fetal heartbeat. This effectively prohibits abortions after five-to-six weeks of pregnancy (often before a person is aware of the pregnancy), a category comprising as much as ninety percent of abortions in the state. The law is clearly constitutionally invalid under the Supreme Court’s prevailing

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225. See Wasserman & Rhodes, *supra* note 140 at 1034–35.

226. *Whole Woman’s Health*, 142 S. Ct. at 538 (quoting *Younger v. Harris*, 401 U.S. 37, 50 (1971)) (“The Court has consistently applied these requirements whether the challenged law in question is said to chill the free exercise of religion, the freedom of speech, the right to bear arms, or any other right. The petitioners are not entitled to a special exemption.”).

227. See *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2302 (2022) (Thomas, J., concurring) (“Moreover, apart from being a demonstrably incorrect reading of the Due Process Clause, the ‘legal fiction’ of substantive due process is ‘particularly dangerous.’” (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 811 (2010) (Thomas, J., concurring))).

228. *Whole Woman’s Health*, 142 S. Ct. at 552 (Sotomayor, J., concurring).

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

reproductive-freedom jurisprudence, under which states cannot prohibit abortions prior to fetal viability, at twenty-three to twenty-six weeks. Unless the Supreme Court overrules *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey* or modifies the scope of reproductive freedom, this is not a close question as a matter of judicial precedent.<sup>233</sup>

Nevertheless, the majority in *Whole Woman's Health* found these concerns insufficient to justify judicial intervention.<sup>234</sup> This is troubling because without safeguards to ensure individuals can exercise constitutionally protected rights, there are no guarantees over how the Court's precedents should be interpreted.<sup>235</sup> Likewise, the incentives for legislatures to follow the Court's rulings are significantly diminished if the Court fails to avoid the outright nullification of its own precedent.

## II. THE AVAILABILITY OF INTERPLEADER RELIEF IN PRIVATE CITIZEN ACTION LITIGATION

Interpleader protects against both multiple liability and the vexation of conflicting claims.<sup>236</sup> When a statute generates a limitless number of potential claimants by permitting anyone (even individuals wholly unaffected) to bring an enforcement action, there is generally a risk of inconsistent judgments or multiple liability.<sup>237</sup>

This part will discuss the intersection of legal doctrine concerning interpleader and private citizen action statutes, using Texas S.B. 8 and RICO as models. In Texas S.B. 8, the legislature designated minimum statutory damages for each noncompliant act (the provision of an abortion or the aiding or abetting of an abortion) at \$10,000.<sup>238</sup> In California's vigilante gun-control statute the legislature also prescribed minimum statutory damages of \$10,000 for each noncompliant weapon or firearm owned (or aiding and abetting noncompliant possession of a firearm).<sup>239</sup> In both statutes, a court cannot grant relief if a defendant "previously paid the full amount" of prescribed statutory damages for the specific act in question.<sup>240</sup>

In *Braid v. Stilley*,<sup>241</sup> the U.S. District Court for the Northern District of Illinois found that there was a risk of multiple liability or inconsistent judgments under the plain text of Texas S.B. 8 because, in the time lapse between relief granted and full payment, a second individual can achieve

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233. Wasserman & Rhodes, *supra* note 140, at 1032.

234. *Whole Woman's Health*, 142 S. Ct. at 538.

235. See generally Wasserman & Rhodes, *supra* note 140.

236. See, e.g., *Wash. Elec. Co-op., Inc. v. Paterson, Walke & Pratt, P.C.*, 985 F.2d 677, 679 (2d Cir. 1993).

237. See *Braid v. Stilley*, No. 21-CV-5283, 2022 WL 4291024, at \*3 (N.D. Ill. Sept. 16, 2022) ("Where a statute protects from the risk of double recovery, interpleader jurisdiction does not lie."), *appeal docketed*, No. 22-2815 (7th Cir. Oct. 13, 2022).

238. TEX. HEALTH & SAFETY CODE ANN. § 171.208(b)(2) (West 2023).

239. CAL. BUS. & PROF. CODE § 22949.65(b)(2)(A)(i) (West 2023).

240. *Id.* § 171.209(c); TEX. HEALTH & SAFETY CODE ANN. § 171.208(c).

241. No. 21-CV-5283, 2022 WL 4291024 (N.D. Ill. Sept. 16, 2022), *appeal docketed*, No. 22-2815 (7th Cir. Oct. 13, 2022).



judgment against a noncompliant person.<sup>242</sup> Moreover, *only* if an individual has been previously sued, lost the lawsuit, and paid the statutory damages provision in full can they be dismissed from the litigation on the basis of statute's plain text.<sup>243</sup>

Furthermore, under both statutes, non-mutual issue preclusion and non-mutual claim preclusion cannot be raised as a defense in an enforcement proceeding.<sup>244</sup> Claim preclusion allows a party to assert that the court has already granted judgment on a particular claim when a party is attempting to relitigate the same claim in court. For claims to be precluded, the same claim must be raised after there has been a valid and final judgment on the merits that involved the same parties.<sup>245</sup> “Actually litigated and determined” means that the parties had a full and fair opportunity to litigate the issue, there was a valid and final judgment on the merits, and the determination of the issue was essential to the judgment; thus, an issue is deemed precluded from being subsequently litigated.<sup>246</sup> Issue preclusion can be invoked defensively, such as when a defendant attempts to protect themselves from relitigating whether they were liable,<sup>247</sup> or offensively, such as when an individual party seeks to use issue preclusion to stop a party from relitigating their defense in a subsequent trial.<sup>248</sup>

In effect, issue preclusion prevents individuals from arguing that they are not liable for the specific act in question when defending a claim brought by a different party for the same action. Thus, the only means of avoiding subsequent litigation for the same act is to be found liable and pay awarded damages fully.

#### A. Using Interpleader in RICO Actions

Under RICO, “any person injured in his business or property” from a violation of 18 U.S.C. § 1962 “may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.”<sup>249</sup> In addition to criminal offenses, RICO creates a private right of action for individuals affected by unlawful activities, such as racketeering, to sue in federal court.<sup>250</sup> Courts have noted that interpleader would be an appropriate method

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242. *Id.* at \*3 (“This Court, though, reads that statute as leaving room for double recovery. For if one claimant obtains a judgment against Dr. Braid but Dr. Braid does not pay the judgment, then another (and another) claimant could obtain a judgment. Only the payment of the statutory damages (as opposed to a mere judgment therefor) bars a subsequent court from awarding damages. So, this Court is not convinced the statute protects Dr. Braid from the risk of multiple liability.”).

243. *See id.*

244. *Id.*

245. *See generally* Taylor v. Sturgell, 553 U.S. 880 (2008).

246. *See id.*

247. *See* Guggenheim Cap., LLC v. Birnbaum, 722 F.3d 444, 445–46 (2d Cir. 2013).

248. *See generally* Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979).

249. 18 U.S.C. § 1964(c).

250. *See* City of Almaty v. Ablyazov, 226 F. Supp. 3d 272, 277 (S.D.N.Y. 2016).

of adjudicating competing claims involving cases brought under the private right of action provision of RICO.<sup>251</sup>

Litigants have attempted to use interpleader in unconventional ways when adjudicating claims arising under RICO.<sup>252</sup> In *O'Hagin's, Inc. v. UBS AG*,<sup>253</sup> the interpleading plaintiff filed for interpleader relief against several defendants, including the Internal Revenue Service (IRS), after the IRS “served notices of its intent to levy” the interpleading plaintiff’s property for unpaid taxes resulting from a transaction with other claimant-defendants.<sup>254</sup> The interpleading plaintiff alleged that they were misled regarding the final source of money being transferred in routine business transactions and consequently failed to withhold the requisite taxes prior to transferring funds.<sup>255</sup> Once the interpleading plaintiff was alerted to the tax withholding requirement, they suspended payment to the account.<sup>256</sup> Further, after the IRS served the interpleading plaintiff notice of back taxes owed, the plaintiff filed an action under RICO and a corresponding request for interpleader relief.<sup>257</sup> Because the interpleading plaintiff would have to pay back taxes to the IRS, owed back pay to former business partners, and was concerned about the involvement of financial institutions, interpleader could be an effective mechanism to prevent multiple liability or inconsistent judgments.<sup>258</sup>

Furthermore, courts have used interpleader in RICO settlement cases to determine who is owed what share of the funds.<sup>259</sup> Interpleader is particularly useful in RICO actions because, after a settlement has been reached, there is a sum certain that provides the basis for the identifiable stake required in interpleader actions.<sup>260</sup>

### *B. Using Interpleader in Texas S.B. 8 Actions*

In both Texas S.B. 8 and California S.B. 1327, there is an identifiable stake of \$10,000 imbedded into the laws themselves.<sup>261</sup> Because this is an equity-based remedy, an interpleading plaintiff must convey that they are in danger of being exposed to multiple liability or “vexation of conflicting

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251. *See O'Hagin's, Inc. v. UBS AG*, No. CV-160716, 2016 WL 11774033, at \*8 (C.D. Cal. Oct. 11, 2016) (declining to exercise interpleader jurisdiction because interpleading plaintiff did not deposit the disputed funds).

252. *See id.* at \*2; *Munson Hardisty, LLC v. Legacy Pointe Apartments, LLC*, 359 F. Supp. 3d 546, 552 (E.D. Tenn. 2019).

253. No. CV-160716, 2016 WL 11774033 (C.D. Cal. Oct. 11, 2016).

254. *See id.* at \*2.

255. *See id.*

256. *See id.*

257. *See id.* at \*8.

258. *See id.* (denying interpleader relief for failure to deposit requisite funds into court registry).

259. *See Royce v. Michael R. Needle P.C.*, 950 F.3d 939, 950 (7th Cir. 2020) (affirming a lower court holding in which interpleader was used to determine which parties were entitled to what portion of the settlement funds).

260. *See id.*

261. TEX. HEALTH & SAFETY CODE ANN. § 171.208(b)(2) (West 2023); CAL. BUS. & PROF. CODE § 22949.65(b)(2)(A)(i) (West 2023).

claims.”<sup>262</sup> Furthermore, the interpleading plaintiff must “have a real and reasonable fear of double liability or vexatious, conflicting claims to justify interpleader.”<sup>263</sup> The *Braid* court found that Dr. Braid met this requirement because the structure of the Texas S.B. 8 statute did not adequately protect against multiple liability.<sup>264</sup> Although Texas S.B. 8 purports to protect against multiple liability, it only protects plaintiffs who have in fact paid their statutory damages in full.<sup>265</sup> The statute’s relevant provision states that “a court may not award relief under this section . . . if the defendant demonstrates that the defendant *previously paid* the full amount of statutory damages . . . in a previous action for that particular abortion performed.”<sup>266</sup> In *Braid*, the court interpreted “previously paid” as “leaving room for double recovery.”<sup>267</sup> For example, if an individual were to seek enforcement of the statute against Dr. Braid and successfully obtain a judgment against him but Dr. Braid had not yet paid that judgment, another claimant could still obtain a judgment, and so on. With no definitive end to this cycle, individuals who do not comply with Texas S.B. 8 face unlimited liability. The only mechanism to stop this cycle is the successful payment of statutory damages.<sup>268</sup> Thus, as an individual who did not comply with Texas S.B. 8, Braid sought interpleader relief to ensure that if he were to owe some entity statutory damages, it would only be paid once.<sup>269</sup>

“[T]he sole ground for equitable relief is the danger of injury because of the risk of multiple suits when the liability is single.”<sup>270</sup> Dr. Braid initiated this interpleader action after he was sued by three separate individuals for performing a singular, nonconforming abortion procedure.<sup>271</sup> The court found Dr. Braid’s fear of multiple lawsuits and potential multiple liability sufficient to satisfy the requirements for interpleader relief.<sup>272</sup>

Texas S.B. 8 awards statutory damages “in an amount not less than \$10,000” to a prevailing enforcer under the private right of action provisions.<sup>273</sup> Each individual violation—in this context, a nonconforming abortion procedure—can be challenged under Texas S.B. 8, which entitles a prevailing challenger to \$10,000 along with costs and fees incurred from the litigation.<sup>274</sup> The statutory damages provision creates an identifiable stake.<sup>275</sup> Here, Dr. Braid was sued by three different individuals under the

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262. *Braid v. Stilley*, No. 21-CV-5283, 2022 WL 4291024, at \*3 (N.D. Ill. Sept. 16, 2022) (quoting *Indianapolis Colts v. Mayor of Balt.*, 741 F.2d 954, 957 (7th Cir. 1984)), *appeal docketed*, No. 22-2815 (7th Cir. Oct. 13, 2022).

263. *Id.*

264. *Id.*

265. *See id.*

266. TEX. HEALTH & SAFETY CODE ANN. § 171.208(c) (West 2023).

267. *Braid*, 2022 WL 4291024, at \*3.

268. TEX. HEALTH & SAFETY CODE ANN. § 171.208.

269. *Braid*, 2022 WL 4291024, at \*3.

270. *Texas v. Florida*, 306 U.S. 398, 406 (1939).

271. *Braid*, 2022 WL 4291024, at \*1.

272. *Id.* at \*3.

273. TEX. HEALTH & SAFETY CODE ANN. § 171.208(b)(2).

274. *Id.*

275. *Braid*, 2022 WL 4291024, at \*3.

\$10,000 statutory damages provision, under which he could only be liable, if at all, to one individual.<sup>276</sup> The court rejected the notion that claimants have a right to recover “against Dr. Braid’s personal assets,” as opposed to recovery against the \$10,000 stake.<sup>277</sup> Although the court noted that Dr. Braid created the stake by depositing the \$10,000 into the court’s registry himself, the court found that this did not negate the availability of interpleader relief.<sup>278</sup>

Additionally, the court discussed whether the defendant-claimants had standing in this case and considered whether those seeking enforcement of the statute were injured by Dr. Braid’s actions.<sup>279</sup> Courts “occasionally dismiss interpleader claims for lack of standing”<sup>280</sup> because even claimants to a fund must show a “realistic likelihood of injury in order to have standing.”<sup>281</sup> In a traditional interpleader action, claimants may suffer similar injuries, such as the denial of insurance proceeds.<sup>282</sup> Moreover, usually at least one claimant-defendant has standing.<sup>283</sup> The court noted, however, that dismissing claims for lack of standing contravenes the equitable principles of interpleader because it fails to protect the stakeholder from future litigation.<sup>284</sup> The court concluded that “three non-justiciable claims can add up to one justiciable interpleader case.”<sup>285</sup> Because the sole purpose for equitable relief in interpleader actions is to protect the stakeholder from multiple liability or “the vexation of conflicting claims”—and Dr. Braid had a “reasonable fear” of such claims—the court concluded that “jurisdiction [was] secure.”<sup>286</sup>

Nevertheless, “[b]ecause an interpleader suit lies in equity, a district court has discretion not to exercise jurisdiction over a statutory interpleader case.”<sup>287</sup> The Supreme Court has noted that a district court exercising its jurisdiction over other equitable suits, such as those brought under the Declaratory Judgment Act,<sup>288</sup> is “under no compulsion to exercise that jurisdiction.”<sup>289</sup> In *Braid*, the court stated that the “claims of the claimants

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276. *Id.*

277. *Id.*

278. *Id.*

279. *Id.* at \*4.

280. *Id.*

281. *Id.* (quoting *In re Coho Energy Inc.*, 395 F.3d 198, 203 (5th Cir. 2004)).

282. *Id.*

283. *Id.*

284. *Id.*

285. *Id.*

286. *Id.*

287. *Id.* at \*5 (noting district court has “the discretion to dismiss an action in Statutory Interpleader on grounds of equity and comity, when the interests of the stakeholder and all claimants will be adequately protected in a pending state court proceeding” (quoting *Koehring Co. v. Hyde Const. Co.*, 424 F.2d 1200, 1202 (7th Cir. 1970))).

288. 28 U.S.C. §§ 2201–2202.

289. *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491, 494 (1942); see also *Braid*, 2022 WL 4291024, at \*5 (“[A] district court ‘should ascertain whether the questions in the controversy between the parties to the federal suit, and which are not foreclosed by the applicable substantive law, can better be settled in the proceeding pending in state court. This

can *only* be settled in state court,” as the district court lacks the means of adjudicating the conflicting claims.<sup>290</sup> Moreover, the court noted that the “plain language of the Texas statute” would require the court to either grant judgment to all three claimants or to Dr. Braid.<sup>291</sup> The court concluded that “because the Texas statute does not provide a basis to choose among the three claimants,” granting interpleader relief could not resolve the conflicting claims.<sup>292</sup>

In *Braid*, the court found that this reality frustrated the purpose of granting interpleader relief, which is to decide which claimant is legally entitled to the stake.<sup>293</sup> The three claimant-defendants each filed suit against Dr. Braid in Texas state court.<sup>294</sup> The district court found that the best way to resolve the conflicting claims was for Dr. Braid to defend each claim individually.<sup>295</sup> Furthermore, “[o]nce one claimant obtains a judgment and collects, the other claimants will be barred.”<sup>296</sup> The court held that this was the “only means of selecting one winner among the three claimants” unless Braid prevailed in his defenses against each claimant.<sup>297</sup>

Although Dr. Braid argued that the statute violated his “constitutional rights under the Equal Protection Clause, the Due Process Clause, and the First Amendment” as defenses against the claimants, the court held that Texas state courts should adjudicate the federal defenses.<sup>298</sup> Following this judgment, Braid appealed to the Seventh Circuit, but his appeal was dismissed.<sup>299</sup>

Statutory Interpleader claims, like those filed in *Braid*, “ordinarily arise from diversity jurisdiction and, therefore, are subject to the *Erie* mandate to apply the substantive law of the forum state.”<sup>300</sup> There is an exception to this general rule, however, because the *Erie* doctrine “is not controlling when the interpleader action involves federal law or the United States is a party.”<sup>301</sup> Nevertheless, if this exception does not apply, federal courts have a duty to apply “substantive” state law when sitting in diversity jurisdiction.<sup>302</sup>

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may entail inquiry into the scope of the pending state court proceeding and the nature of defenses open there.” (second alteration in original) (quoting *id.* at 495)).

290. *Braid*, 2022 WL 4291024, at \*5.

291. *Id.*

292. *Id.*

293. *Id.* at \*6.

294. *Id.*

295. *Id.*

296. *Id.*

297. *Id.*

298. *Id.*

299. Plaintiff’s Notice of Appeal, *Braid v. Stilley*, No. 22-2815 (7th Cir. Oct. 13, 2023), ECF No. 1.

300. *Soutullo v. Smith*, 519 F. Supp. 3d 365, 373 (N.D. Miss., 2021).

301. *Id.* (quoting 7 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1713 (3d ed. 2019)).

302. *See generally* *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2010).

### III. HOW LITIGANTS CAN USE INTERPLEADER TO CHALLENGE THE LEGALITY OF PRIVATE CITIZEN ACTION STATUTES

Private citizen action statutes with a vigilante or bounty-hunter component are new legal creatures, devised by state legislatures as a shortcut to the onerous process of constitutional amendment or impact litigation.<sup>303</sup> In passing such laws, these legislatures weaponized a loophole in the American legal system by regulating constitutionally protected conduct through a statute prohibiting state action.<sup>304</sup> Their efforts have been met with opposition from the U.S. government, private citizens, and legal scholars alike who fear the implications of state legislatures effectively granting themselves veto power over the Supreme Court's interpretation of constitutional protections.<sup>305</sup> This untethered power, when combined with judicial roadblocks to pre-enforcement adjudication that come from the justiciability and standing doctrines, permits the legislature to discourage legally protected conduct. This tyrannical action is incompatible with even basic notions of federalism, like the separation of powers between federal and state institutions, because a state legislature has no authority to dictate how the Court should interpret the Constitution.<sup>306</sup> Interpleader provides litigants who seek to engage in constitutionally protected activity with an opportunity to both challenge the statute's legitimacy and avoid endless litigation.<sup>307</sup>

First, this part will balance the costs and benefits of both Rule Interpleader and Statutory Interpleader, arguing the standards for Statutory Interpleader are more easily met for most litigants seeking to test the constitutionality of private citizen statutes. Second, this part will argue that interpleader relief should be afforded to individuals in private citizen action statutes, including Texas S.B. 8 and similarly structured statutes, to avoid improperly exposing individuals to multiple liability or inconsistent judgments. Third, this part will argue that complete and inchoate interpleader is appropriate when there is a good-faith concern of multiple liability or inconsistent judgments, stemming from noncompliance with the relevant bounty-hunter statute.

#### *A. Requesting Interpleader Relief*

A litigant seeking to adjudicate the constitutionality of a private citizen action statute through interpleader faces unique hurdles. Interpleader is an archaic procedural device encountered by few practicing lawyers and even fewer individuals affected by these statutes on a daily basis.<sup>308</sup> Admittedly, interpleader was not designed to bring a constitutional challenge to a private citizen enforcement statute.<sup>309</sup> Yet, at its core, interpleader relief conveys

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303. *See supra* Part I.C.2.

304. *See supra* Part I.C.1.

305. *See supra* Part II.B.

306. *See supra* Part I.C.3.

307. *See supra* Part I.A.3.

308. *See supra* Part II.B.2.

309. *See supra* Part I.B.2.

the legal system's desire to protect individuals from inconsistent judgments, multiple liability, and the risk of endless litigation.<sup>310</sup> Interpleader protects litigants from the same threats that these vigilante statutes pose<sup>311</sup>—threats stemming from the boundless class of individuals who can bring a claim under the statute.

Ironically, despite the Texas Legislature's attempted to exploit a weakness in the legal system, they still left a loophole in the statute that enables litigants to use interpleader to establish jurisdiction. As the court in *Braid* pointed out, the statute permits multiple claimants to obtain relief under the text of Texas S.B. 8; so long as the first claimant has not received payment in full from the defendant, a second claimant can be granted relief.<sup>312</sup>

This section argues that Statutory Interpleader is a less burdensome standard for most interpleading plaintiffs and is more easily met in the context of bounty-hunter-type statutes. Although there are benefits to Rule Interpleader, if the primary goal of filing an interpleader action is to render the statute invalid or unenforceable, Statutory Interpleader is likely a more effective procedural device.

### 1. Superior Mechanisms for Adjudication

Although both Statutory and Rule Interpleader are available to individuals facing potential multiple liability or incessant litigation,<sup>313</sup> Statutory Interpleader may be a superior mechanism to establish jurisdiction because it imposes lower standards for diversity jurisdiction. Moreover, Rule Interpleader requires the interpleading plaintiff to establish a separate basis for subject matter jurisdiction (diversity or federal question jurisdiction).<sup>314</sup>

In both the Texas and California private citizen action statutes, the amount in controversy is \$10,000,<sup>315</sup> which fails to meet the requisite \$75,000 requirement of 28 U.S.C. § 1332. Furthermore, Rule Interpleader requires complete diversity, which is a heightened requirement from the minimum diversity needed to invoke Statutory Interpleader.<sup>316</sup> Nevertheless, even if complete diversity is established, the requirements for diversity jurisdiction are likely not met if the suit filed concerns one action resulting in a \$10,000 stake.

Alternatively, federal question jurisdiction can satisfy Rule Interpleader's requirements.<sup>317</sup> The path to establishing federal question jurisdiction under a privately implemented state statute is difficult.<sup>318</sup> Thus, Statutory Interpleader is the better mechanism to foster adjudication.

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310. *See supra* Part II.B.3.

311. *See supra* Part II.B.3.

312. *See supra* Part II.B.

313. *See supra* Parts I.A.1–2.

314. *See supra* Part I.A.1.

315. *See* CAL. BUS. & PROF. CODE § 22949.65(b)(2)(A)(i) (West 2023); TEX. HEALTH & SAFETY CODE ANN. § 171.208(b)(2) (West 2023).

316. *See supra* Part I.A.1.

317. *See supra* Part I.A.3.

318. *See supra* notes 94–96 and accompanying text.

Federal question jurisdiction could be established under an argument that the state law claim has an embedded federal issue because these vigilante-type statutes implicate significant constitutional concerns.<sup>319</sup> Under *Grable & Sons Metal Products v. Darue*,<sup>320</sup> a state law claim sufficient to establish federal question jurisdiction requires that the plaintiff's right to relief depends on a substantial question involving national interests appropriate for a federal court, that there is a serious controversy regarding the interpretation of federal law, and that exercising jurisdiction maintains Congress's preferred division of responsibility between state and federal courts.<sup>321</sup> Moreover, in *Gunn v. Minton*<sup>322</sup> the Court found that for a state law claim to give rise to federal question jurisdiction the federal issue must be substantial, necessarily raised, and actually disputed, and that exercising jurisdiction must not disturb notions of federalism or the separation of powers between federal and state institutions.<sup>323</sup>

In the context of private citizen action statutes, the legislature encroached on the power of federal courts by rejecting the Supreme Court's constitutional precedents to enact a glaringly unconstitutional law.<sup>324</sup> These laws deeply offend historic notion of federalism.<sup>325</sup> Although claims under a private citizen action statute do not arise under federal law, they do implicate important federal issues, including the enforceability of constitutional protections, Supreme Court precedent, and the right to engage in protected activity.<sup>326</sup>

These concerns may be sufficient to invoke federal question jurisdiction under the *Grable* test.<sup>327</sup> Issues regarding individual constitutional protections are substantial concerns under federal law, which are necessarily raised from the potential enforcement of private citizen action statutes that deny people rights guaranteed by the constitution. On one hand, the enforcement of these statutes is the sort of embedded federal question that this exception considers.

On the other hand, the constitutionality of the statute is an anticipated defense, which may fail to establish federal question jurisdiction because it is not "necessarily raised" in the request for interpleader relief.<sup>328</sup> Technically, the dispute over constitutionality is an anticipated defense, because—although it might be contained in the original complaint—for the constitutionality to be adjudicated it must first be answered by a potential

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319. *See supra* notes 94–96 and accompanying text.

320. 545 U.S. 308 (2005).

321. *Id.* at 310.

322. 568 U.S. 251 (2013).

323. *Id.* at 258.

324. *See supra* Part I.C.2.

325. *Whole Woman's Health v. Jackson*, 595 U.S. 30, 62 (2021) (Roberts, C.J., concurring) (cautioning that it is "the role of the Supreme Court in our constitutional system that is at stake").

326. *See supra* Part I.C.2.

327. 545 U.S. 308 (2005).

328. *Louisville & Nashville R.R. v. Mottley*, 211 U.S. 149, 152 (1908).



claimant-defendant.<sup>329</sup> Notably, the enforcement of the private citizen action itself may implicate concerns sufficient to establish federal question jurisdiction; indeed, these concerns, coupled with considerations of equity, may convince a court to find federal question jurisdiction.<sup>330</sup> This argument, however, is not overwhelmingly strong considering that private individuals, rather than state actors, are enforcing the statute, and the federal judiciary is generally skeptical in exercising jurisdiction over private conduct.<sup>331</sup>

To invoke Statutory Interpleader, an interpleading plaintiff must deposit the disputed sum into the court's registry or give a "bond payable to the clerk of the court" in an amount the court deems proper.<sup>332</sup> This requirement may pose an extra hurdle for individuals seeking to challenge vigilante-type legislation via interpleader, particularly for challengers with lesser financial means. This requirement does not, however, impact an interpleading plaintiff's ability to seek relief. If an interpleading plaintiff prevails in the litigation, the court will return the deposited funds back to them.<sup>333</sup>

Nevertheless, pleading federal question jurisdiction may be beneficial because, if federal question jurisdiction is established, it eliminates the requirement for minimal diversity and the requirement of depositing the disputed stake in the court registry. When filing a motion for interpleader relief, litigants are permitted to request relief under Rule *and* Statutory Interpleader; this allows the court to use Statutory Interpleader as an alternative basis for jurisdiction.<sup>334</sup> This may be an effective strategy for litigants who are concerned about meeting the statutory requirements for interpleader jurisdiction.

In using interpleader as a mechanism to establish jurisdiction, an interpleading plaintiff must assert that they acted in violation of the private citizen action statute. If the plaintiff does not admit noncompliance, there is no tangible stake that results in conflicting claims to a singular stake. This is distinct, however, from conceding that an interpleading plaintiff is liable to claimant-defendants because the interpleading plaintiff's main defense is the unconstitutionality of the underlying statute. Naturally, if the underlying statute is unconstitutional, a court cannot grant relief under that provision.

## 2. Protection Against Multiple Liability

Interpleader is an equitable remedy, designed in part, to prevent a stakeholder from being subject to multiple liability or inconsistent judgments.<sup>335</sup> When a stakeholder possesses a sum of money that they have a good faith belief could result in multiple liability or inconsistent judgments, they are entitled to request interpleader relief and ask the court to adjudicate

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329. *See supra* Part II.B.

330. *See supra* Parts I.B.1–3, II.B.

331. *See supra* Parts I.C.2–3.

332. 28 U.S.C. § 1335.

333. *See supra* Part I.A.3.

334. *See supra* Part I.A.3.

335. *See supra* Part I.B.

the competing claims.<sup>336</sup> Texas S.B. 8 and copycat legislation expose noncompliant individuals to the risk of multiple liability sufficient to warrant interpleader relief.

The court in *Braid* noted that the Texas S.B. 8 statute *does not* protect noncompliant individuals from the risk of multiple liability.<sup>337</sup> The wording of Texas S.B. 8 (and that of similarly modeled legislation) protects individuals from subsequent lawsuits and liability *only when* they have been found liable and have paid their judgments *in full* under the relevant statute.<sup>338</sup> This wording leaves open the possibility of more than one plaintiff successfully suing an individual who has violated the statute—if follow-up litigation occurs before judgment in the initial case is paid in full. Interpleader was designed to protect against this specific harm; it was designed to shield an individual from being held liable more than once for a single, distinct event or controversy.<sup>339</sup> Thus, interpleader is an appropriate method to determine who, if anyone, is owed the prescribed statutory damages of \$10,000 in Texas S.B. 8 cases.<sup>340</sup>

### 3. Protection Against Vexatious Litigation

Interpleader affords relief whenever an individual may be subject to duplicitous litigation or multiple liability. Because the statute includes both actual claims and potential claims, an individual claiming interpleader relief need not be sued before filing the action. Rather, interpleader can be used to prevent multiple filings that would result in the interpleading plaintiff facing vexatious litigation or potential multiple liability.

Both Texas S.B. 8 and California S.B. 1327 specify that once someone has successfully been awarded the \$10,000 fee in one action (based on one abortion or one illegally obtained gun, respectively), another suit cannot be brought.<sup>341</sup> One use of interpleader is to shield individuals from inconsistent judgments or multiple liability. Interpleader, however, serves a dual purpose. It also purports to protect individuals against “multiple or vexatious litigation.” Thus, the fear that an individual could be sued under these statutes, win, and then be repeatedly sued again creates a right to interpleader relief. By design, these statutes subject individuals to never-ending patterns of litigation.

#### *B. Complete Interpleader*

Because several competing claims had already been filed against Dr. Braid, his request for interpleader relief was a complete interpleader action.<sup>342</sup> The court declined to extend interpleader relief under discretionary

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336. *See supra* Part I.B.

337. *See supra* Part II.B.2.

338. *See supra* Part II.B.2.

339. *See supra* Part I.B.

340. *See supra* Part II.B.

341. *See supra* notes 238–40 and accompanying text.

342. Complaint for Interpleader & Declaratory Judgment, *supra* note 39.

principles of equity, finding that a federal court could not adjudicate the competing claims to the stake. District courts sitting in equity are afforded discretion over whether they should extend jurisdiction to parties seeking relief.<sup>343</sup> For example, if the district court finds that an interpleading plaintiff has requested interpleader relief improperly (e.g., to evade another court's sanctions),<sup>344</sup> it can decline to extend interpleader relief or dismiss the action. Moreover, if the threshold requirements for interpleader are not satisfied, the court can dismiss the interpleader action. Nevertheless, the requisite standards for interpleader jurisdiction should be "liberally construed."<sup>345</sup>

A federal court sitting in equity jurisdiction "may dismiss or remand a matter to state court" when jurisdiction is sufficiently established in only very limited circumstances.<sup>346</sup> However, as a general rule, a federal court sitting in equity jurisdiction has the power to "stay the action based on abstention principles," decline to exercise jurisdiction, or remand a case to state court.<sup>347</sup> Although district courts have the authority to deny interpleader relief, the rationale set forth in *Braid* was an improper application of a district court's discretionary power to dismiss interpleader actions.

In *Braid* the court held that they could not adjudicate the conflicting claims to the stake.<sup>348</sup> This belief may have arisen from two distinct analyses: either the court believed that they did not have the requisite understanding of the statute to apply Texas S.B. 8 or, in the more likely alternative, the wording of the statute promoted a race to judgment that the district court believed could not be adjudicated via interpleader.<sup>349</sup>

To the first interpretation, a federal court sitting in diversity jurisdiction must apply state substantive law.<sup>350</sup> In reaching his decision, Judge Jorge L. Alonso held that the court *could not* adjudicate the conflicting claims against the stake. But remanding the action to state court does not solve this issue.<sup>351</sup> The federal court has the same tools as a Texas state court in determining how to apply Texas S.B. 8.<sup>352</sup> The court left the constitutional issues up to the judiciary of Texas, rather than allowing the plaintiff to adjudicate their "claim" to the stake as a constitutional right to engage in the actions prohibited under an invalid *state* statute.<sup>353</sup> Thus, remanding the action to the state court in Texas on these grounds was inappropriate.

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343. *See supra* notes 287–89 and accompanying text.

344. *Indianapolis Colts v. Mayor of Balt.*, 733 F.2d 484, 487 (7th Cir. 1984).

345. *See supra* Part I.B.3.

346. *Brigham Oil & Gas, L.P. v. N.D. Bd. of Univ. & Sch. Lands*, 866 F. Supp. 2d 1082, 1089 (D.N.D. 2012) (citing *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 721 (1996)).

347. *Id.*

348. *Braid v. Stilley*, No. 21-CV-5283, 2022 WL 4291024, at \*5 (N.D. Ill. Sept. 16, 2022), *appeal docketed*, No. 22-2815 (7th Cir. Oct. 13, 2022).

349. *Id.*

350. *See supra* notes 94–96 and accompanying text.

351. *Braid*, 2022 WL 4291024, at \*5.

352. *See supra* notes 94–96 and accompanying text.

353. *See supra* notes 94–96 and accompanying text; *Braid*, 2022 WL 4291024, at \*5.

To the second interpretation, if Judge Alonso remanded the action to state court to promote the race to judgment created by Texas S.B. 8,<sup>354</sup> this was also an improper basis for remanding the claims. The court noted that either Dr. Braid would prevail or the claimant-defendants would prevail.<sup>355</sup> Still, the court found that if the claimant-defendants prevail, there are no judicially acceptable means of determining the rightful recipient of the stake.<sup>356</sup> Considering this, the court likely remanded the actions to Texas state court to permit the claims to run their course in state proceedings.<sup>357</sup> This decision, however, generates the exact harm interpleader seeks to remedy.<sup>358</sup>

Equitable principles oppose races to judgment, especially when the sole concern is who recovers first. Such races may result in multiple liability or incontinent rulings,<sup>359</sup> especially in the context of private citizen action statutes. In *Braid*, the court determined that the Texas S.B. 8 statute created a risk of multiple liability and inconsistent judgments,<sup>360</sup> yet it remanded individual cases to state court,<sup>361</sup> opting for vexatious litigation (sought to be avoided via interpleader) rather than finality and efficiency.<sup>362</sup> Moreover, the court found that the statute could enable more than one judgment against a single plaintiff for a single action or grant multiple parties a right to recover the same statutory damages.<sup>363</sup> Thus, remanding the action to state court on these grounds was erroneous because it opposed core principles of equitable and interpleader relief.

Although district courts have the discretion to deny interpleader relief if extending jurisdiction would be improper, in certain circumstances, plaintiffs are entitled to have the court adjudicate competing claims.<sup>364</sup> In instances in which the only available alternative to extending interpleader relief is to require the interpleading plaintiff to defend their claim against the stake in multiple actions that may result in inconsistent judgments, they are entitled to interpleader relief.<sup>365</sup>

Denying interpleader relief in such circumstances runs counter to the purpose of the Federal Rules of Civil Procedure, which is to “ensure the just, speedy, and inexpensive determination of every action and proceeding.”<sup>366</sup> The denial of interpleader relief in *Braid* unnecessarily increased time

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354. *Braid*, 2022 WL 4291024, at \*5.

355. *Id.*

356. *Id.*

357. *Id.*

358. *See supra* Parts I.B.1–3.

359. *See supra* Part I.B.

360. *Braid*, 2022 WL 4291024, at \*4–5.

361. *Id.*

362. *See supra* Part I.B.

363. *Braid*, 2022 WL 4291024, at \*3–4.

364. *See supra* Part I.A.3.

365. *See supra* Part I.A.3.

366. FED. R. CIV. P. 1.

expended on litigation and the number of proceedings, and the court failed to apply a rational alternative to promoting a race to state court judgment.<sup>367</sup>

### C. Inchoate Interpleader

Inchoate interpleader in the context of private citizen actions statutes involves a party who may be subject to multiple liability under the relevant statute for noncompliance, but who has not yet been sued.<sup>368</sup> An interpleader action that is wholly undetermined, or lacking any potential claimant-defendants, still may be filed in court. Individuals seeking relief, however, may be unsatisfied with the likely outcome in those situations, which is that the court may stay the proceeding until claimant-defendants can be ascertained.<sup>369</sup> A litigant seeking to invoke a constitutionality defense will be unable to argue their claims *against claimant-defendants* when such claimant-defendants are undefined, unserved entities. Thus, although it is theoretically possible for a court to grant interpleader relief and stay the adjudication of conflicting claims to the stake, as a matter of practicality, enumerating potential claimant-defendants is a better strategy for adjudicating constitutional issues.<sup>370</sup>

Inchoate interpleader was not attempted in *Braid* because Dr. Braid filed for interpleader relief after being sued in federal court, which would be deemed complete interpleader.<sup>371</sup> The analysis of whether interpleader jurisdiction is proper, however, is identical in complete and inchoate interpleader actions because the statutory history and corresponding precedent regarding interpleader suggest that there is no legal distinction between complete and inchoate interpleader.<sup>372</sup>

The interpleader statute's "may claim" provision permits parties to list potential claimants, so long as there is a good faith basis for believing such parties have an interest in the stake.<sup>373</sup> Although this could potentially include all U.S. citizens under Texas S.B. 8, a more reasonable strategy is to list individuals who have knowledge of the noncompliant action, particularly those who may intend to seek enforcement. For example, in California a litigant may list several neighbors who are aware that they possess a noncompliant weapon as claimant-defendants.<sup>374</sup> If an individual has

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367. The court could have also denied granting interpleader relief because the decision in *Dobbs* came out before the court published its opinion, but after the lawsuit was filed. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2284 (2022). This would also be an improper basis for denying interpleader relief. At the time Dr. Braid performed the abortion, *Roe* was still good law, thus the federal court had the means to adjudicate whether Dr. Braid had a defense under constitutional law. *Roe v. Wade*, 410 U.S. 113 (1973), *overruled by Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2284 (2022).

368. *See supra* Part I.A.5.

369. *See supra* Part I.A.3.

370. *See supra* Part I.A.3.

371. *See supra* Part II.B.

372. *See supra* Part I.B.1.

373. *See supra* Parts I.B.1–3.

374. *See Hapag-Lloyd Aktiengesellschaft v. U.S. Oil Trading LLC*, 814 F.3d 146, 151 (2d Cir. 2016) (citing *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 533 (1967)). Another

knowledge of such ownership and the statute provides them with an opportunity to obtain \$10,000 in statutory damages through enforcement mechanisms, there is a good-faith basis to find that the neighbors are potential claimant-defendants and that the interpleading plaintiff may be subject to multiple liability.

Interpleader relief is an equitable remedy, designed to empower litigants to seek adjudication that is complete, efficient, and final.<sup>375</sup> The core nature of interpleader, as an equitable remedy, favors using the procedural device in the context of private citizen action statutes. A central purpose of interpleader is the creation of equitable relief to protect individuals from relitigating the same concern in a potentially endless manner.<sup>376</sup> Moreover, because an individual is not required to wait for an organization or individual to file a lawsuit before bringing an interpleader action, an interpleader action can be filed offensively by anyone acting in violation of the statute in the expectation that they will be sued by more than one entity.<sup>377</sup> Both Texas S.B. 8 and the copycat California statute permit any individual (other than a government actor) to bring a suit against violators of the respective statutes, which creates unlimited potential claimants.<sup>378</sup> This makes diversity jurisdiction extremely accessible to interpleading plaintiffs seeking relief. Furthermore, nationwide service of process for interpleader actions squashes any personal jurisdiction concerns.<sup>379</sup>

Once jurisdiction is established in federal court, the interpleading plaintiff would remain a party to the litigation and litigate their defense to the statute against claimant-defendants. In some cases, like *Braid*, the interpleading plaintiff's defense may be that the statute itself is unconstitutional.<sup>380</sup> Moreover, when an interpleader action is pending in federal court, state courts and other federal courts are barred from adjudicating issues regarding the stake, which essentially protects the interpleading plaintiff from being held liable prior to the court analyzing the constitutionality of the statute in question.<sup>381</sup>

The Texas Legislature enacted legislation that denied individuals the right to engage in constitutionally protected behavior and purposefully constructed Texas S.B. 8 to prohibit judicial invalidation pre-adjudication.<sup>382</sup> When a

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good-faith basis for listing claimant-defendants includes entities that routinely seek enforcement under the relevant statute for political or monetary reasons. In the case of Texas S.B. 8, this might include pro-life groups. In the case of the California gun control statute, this might include anti-firearm lobbying groups.

375. *See supra* Parts I.B.1–3.

376. *See supra* Parts I.B.1–3.

377. *See supra* Part I.A.3.

378. *See supra* Part I.C.1.

379. *Braid v. Stillely*, No. 21-CV-5283, 2022 WL 4291024, at \*4 (N.D. Ill. Sept. 16, 2022) (“Generally, statutes that allow for nationwide service of process are ‘proper, as long as the defendants have adequate contacts with the United States as a whole.’” (quoting *Bd. of Trs., Sheet Metal Workers’ Nat’l Pension Fund v. Elite Erectors, Inc.*, 212 F.3d 1031, 1035 (7th Cir. 2000))), *appeal docketed*, No. 22-2815 (7th Cir. Oct. 13, 2022).

380. *Id.* at \*4.

381. *See supra* Part I.A.2.

382. *See supra* Part I.C.2.

state legislature unilaterally acts in concert to evade the Court's precedent and regulate constitutionally protected activity,<sup>383</sup> litigants should be empowered to seek innovative solutions to problems of standing, justiciability, and other hurdles imposed by unconstitutional statutes to obtain relief. Interpleader presents a solution to the problem that several litigants faced in their initial challenges to the constitutionality of Texas S.B. 8. Using interpleader, either inchoate or complete, can empower individuals who would otherwise be forced to comply with a state's unconstitutional vigilante-esque statute to seek relief in federal court.<sup>384</sup>

#### CONCLUSION

Interpleader presents an innovative solution to the novel legal questions concerning bounty-hunter statutes enacted to evade Supreme Court precedent. Interpleader relief is rooted in equity and protects litigants from injustices resulting from multiple liability, inconsistent judgments, or vexatious litigation. Private citizen action statutes effectively threaten noncomplying actors with endless, cyclical litigation until judgments are paid in full, or until they comply with the respective statute's unconstitutional mandate. At the same time, by barring state enforcement, these regulations nullify the usual mechanisms for pre-enforcement because of justiciability and standing concerns. Interpleader relief allows private citizens who are noncompliant to obtain review of a statute's constitutionality before being affirmatively sued in court. Thus, interpleader relief presents an alternative for litigants seeking to obtain an adjudication that the statute is legally invalid or unconstitutional.

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383. *See supra* Part I.C.2.

384. *See supra* note 53 and accompanying text. If a state has an analogous interpleader statute, this may provide another avenue for obtaining judicial review of the purportedly unconstitutional statute. Whether a litigant should seek relief in state or federal court is contextually dependent.