No. 14-857

In The Supreme Court of the United States

CAMPBELL-EWALD COMPANY,

Petitioner,

v.

JOSE GOMEZ,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF NATIONAL EMPLOYMENT LAWYERS ASSOCIATION AND NATIONAL EMPLOYMENT LAW PROJECT AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI CURIAE[1]

The National Employment Lawyers Association ("NELA") is the largest professional membership organization in the country comprised of lawyers who represent workers in labor, employment and civil rights disputes. Founded in 1985, NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. NELA and its 69 circuit, state, and local affiliates have a membership of over 4,000 attorneys who are committed to working on behalf of those who have been illegally treated in the workplace. NELA's members litigate daily in every circuit, affording NELA a unique perspective on how the principles announced by the courts in employment cases actually play out on the ground. NELA strives to protect the rights of its members' clients, and regularly supports precedent-setting litigation affecting the rights of individuals in the workplace.

The National Employment Law Project ("NELP") is a non-profit legal organization with over 45 years of experience advocating for the employment and labor rights of low-wage and unemployed workers.

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[1] Pursuant to this Court's Rule 37.3(a), both parties submitted letters to the Clerk granting blanket consent to amicus curiae briefs. Pursuant to this Court's Rule 37.6, amici state that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than amici, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

NELP's areas of expertise include the workplace rights of low-wage workers under federal employment and labor laws, with a special emphasis on wage and hour rights. Employment rights are virtually meaningless if workers cannot join together in a collective or class action to seek protections, and upholding the procedural rights for workers under these mechanisms is therefore paramount to ensuring those protections. NELP has litigated and participated as amicus in numerous cases addressing the rights of workers under the Fair Labor Standards Act and related state laws in most federal circuits and in the U.S. Supreme Court.

Amici have an abiding interest in the protection of the legal rights of working men and women. The artificial jurisdictional limits advanced by Petitioner would seriously impair the ability of employees – among others – to have their day in court. Amici submit this brief to explain why the Ninth Circuit's judgment should be affirmed.

SUMMARY OF ARGUMENT

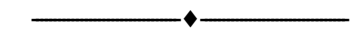
An offer of relief does not place a valid "case" or "controversy" beyond the reach of an Article III court. As this Court has repeatedly cautioned, "[a] case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Knox v. Service Employees International Union*, 132 S. Ct. 2277, 2287 (2012). An offer does not

render a court powerless to issue a judgment on liability and damages.

Petitioner's mootness-by-offer theory finds no support in the historical record. Instead, the theory finds its roots in now discredited circuit case law dating back only one generation. As more modern cases have since concluded, the mootness-by-offer theory rests on a series of mistaken assumptions about the nature of federal jurisdiction.

In the context of a class action, an offer of relief to the named plaintiff fails to defeat standing for an additional reason: a plaintiff in a class action asserts the common interests of a group. The historical record demonstrates that representative litigation – where a person stands in the shoes of a group and pursues the interests of that group – was well-established and understood at the time of the framing of the U.S. Constitution. In such cases, an offer to the named plaintiff does not satisfy the interests of the class validly asserted in the case or controversy.

Petitioner's theory, if accepted, would work a host of problems on courts, parties, and citizens. Allowing defendants to "pick off" class action plaintiffs would put a variety of illegal conduct beyond the reach of the law, with damaging consequences to various parties subjected to common harm. The Constitution does not contemplate such a result.



ARGUMENT

I. AN OFFER OF RELIEF DOES NOT DEFEAT A VALID CASE OR CONTROVERSY.

An offer of relief is just that: an offer. It does not operate as a light switch allowing defendants to choose when federal courts have the constitutional authority to act. The historical record, this Court's precedents, and common sense all confirm that an offer of relief does not render the case moot.

A. The Historical Context of Mootness and Offers of Relief.

The historical record in this case is of particular significance. After all, Petitioner's mootness-by-offer theory does not rely on any intervening change between 1789 and the present. Presumably, if a valid "case" or "controversy" could be negated by an offer, such a jurisdictional limitation would have been widely understood during the founding era of the Constitution. But the exact opposite is true: it was widely accepted that an unaccepted offer "leaves the matter as if no offer had ever been made." *Minneapolis & St. Louis R. Co. v. Columbus Rolling Mill*, 119 U.S. 149, 151 (1886).

This Court began to grapple with the concept of mootness as a jurisdictional limitation as far back as the mid-1800s. In *Lord v. Veazie*, the Court confronted a case where two litigants proceeded with a feigned dispute in pursuit of a judgment that would serve their aligned interests in the outcome of the case. 49

U.S. 251 (1850). The Court dismissed the action, pointing out that the courts were designed to resolve disputes featuring a "real and substantial controversy." *Id.* at 255.

The Court built upon that principle in *Lord* in *Cleveland v. Chamberlain*. There, the parties had litigated a dispute at the lower court level, with one obtaining judgment and the other appealing. 66 U.S. 419, 425 (1861). In the time between the judgment and the Supreme Court's hearing of the case, the appellant acquired the appellee's interest in the judgment, but nevertheless pressed forward with his appeal despite retaining interest in both sides of the dispute. *Id.* The Court, relying on *Lord*, dismissed the case, holding that while there was undoubtedly a "controversy" when the lower court's judgment was rendered, the appellee's subsequent transfer of his interest to the appellant ended the controversy and, by extension, mooted the case on appeal. *Id.* at 425-26.

Between the 1860s and 1891, this Court issued several "mootness" dismissals developing the precedent established by *Lord* and *Cleveland*. *See Paper Co. v. Heft*, 75 U.S. 333 (1869); *San Mateo Co. v. Southern Pac. R. Co.*, 116 U.S. 138 (1885); *Little v. Bowers*, 134 U.S. 547 (1890); *Manufacturing Co. v. Wright*, 141 U.S. 696 (1891).

However, it was not until 1893 that the Court entertained the notion that a case could be rendered moot by virtue of a defending party's unaccepted

provision of full relief. In *People of State of California v. San Pablo & T.R. Co.*, the state of California brought an action against a railroad company seeking recovery of unpaid taxes and, prior to the Supreme Court's hearing of the case, the railroad company tendered payment of the full amount owed. 149 U.S. 308, 314 (1893). Though California did not accept the tender, the railroad company nonetheless deposited the full amount owed into a state bank account. *Id.* In accordance with California law, such a deposit had the effect of extinguishing claims against the debtor. *Id.* The Supreme Court dismissed the case, ruling that California, having "received" full payment under state law despite its attempts to reject the railroad company's tender, had come to possess all that it could gain through litigation and therefore, retained no legally cognizable interest in further litigation. *Id.* Because California state law explicitly regarded the railroad company's deposit as the legal equivalent of the state accepting payment, the railroad company's "offer" was functionally immune from rejection. *Id.*

Between the 1890s and the present, the Court reaffirmed the collective principles established in *Lord*, *Cleveland*, and *San Pablo*. *See*, *e.g.*, *Powell v. McCormack*, 395 U.S. 486, 496-98 (1969) (reaffirming that a case remains live so long as the parties have a "concrete" interest in the litigation in which the court could provide some form of relief); *Chafin v. Chafin*, 133 S. Ct. 1017, 1023 (2013) (a plaintiff's claim is not moot "[a]s long as [he has] a concrete interest, however small, in the outcome of the litigation.").

Importantly, however, this Court applied a functional approach to determining jurisdictional limits. For example, in cases where there was not a "live" controversy in the traditional sense, but where the controversy was capable of repetition that would evade review, this Court reaffirmed the power of the judiciary to provide relief. *See Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911); *Roe v. Wade*, 410 U.S. 113, 125 (1973); *Franks v. Bowman Transp. Co., Inc.*, 424 U.S. 747, 756 (1976).

B. This Court Rejects the Mootness-by-Offer Theory in *Roper*.

The mootness-by-offer theory advanced by Petitioner made its debut in the circuit courts in 1977.

In *Winokur v. Bell Fed. Sav. & Loan Ass'n*, plaintiff depositors brought a class action suit against a savings and loan for alleged deceptive advertising. 560 F.2d 271, 273 (7th Cir. 1977). The defendant subsequently changed its disputed practices and tendered the claimed damages and court costs to each plaintiff. *Id.* On the basis of these actions, the district court determined that the plaintiffs ceased to have a stake in the controversy and dismissed the action as moot. *Id.* On appeal, the Seventh Circuit affirmed the ruling, finding that the tender of costs and damages to the plaintiffs and the abandonment of the disputed practices provided the plaintiffs with all that they could obtain in the course of litigation and that, as such, there was no live controversy left to resolve and

the court lacked jurisdiction to hear any further proceedings as to the individual claims of the named plaintiffs. *Id.* at 274. The court further held that, given the absence of a live controversy between the named plaintiffs and the defendant, the court did not have jurisdiction to review the district court's denial of class certification. *Id.*

Shortly after the Seventh Circuit issued its decision in *Winokur*, the Fifth Circuit reached the opposite conclusion in a similar case, holding that where defendants offer complete individual relief to named plaintiffs in a class action, those plaintiffs maintained an individual interest in sharing costs of litigation with other class members (and therefore standing to continue litigating). *See Roper v. Consurve, Inc.*, 578 F.2d 1106 (5th Cir. 1978).

This Court's 1980 decision in *Roper* was intended to resolve the circuit split as to the mootness issue. There, credit card holders brought a class action suit against a national bank, alleging violations of usury laws in Mississippi. *Deposit Guar. Nat. Bank, Jackson, Miss. v. Roper*, 445 U.S. 326, 328 (1980). After the named plaintiffs were denied class certification, the defendant bank offered to submit to an adverse judgment and provide the named plaintiffs with the maximum awards allowable by law. *Id.* at 329. On the basis of the bank's offer, the district court entered judgment in favor of the plaintiffs. *Id.* at 330. The Fifth Circuit reversed and remanded, holding that the case was not moot. *Id.* This Court affirmed, holding that neither the bank's tender nor the

district court's judgment mooted the plaintiff's case or controversy because each plaintiff maintained an individual interest as to the question of class certification, which, if granted, could allow for sharing of costs with fellow class members. *Id.* at 336. The Court further noted that "[t]o deny the right to appeal simply because the defendant has sought to 'buy off' the individual private claims of the named plaintiffs would be contrary to sound judicial administration." *Id.* at 339.

C. After *Roper*, Courts Continue to Hold that an Offer of Relief Only Moots an Individual Claim.

In the wake of *Roper*, some courts erroneously persisted in accepting defendants' theory an offer of relief could moot an individual claim.

In *Rand v. Monsanto*, the Seventh Circuit became the first circuit court to endorse the mootness-by-offer argument in conjunction with Rule 68. There, Judge Easterbrook held that an offer had the effect of ending the controversy between the parties because there was no longer a conflict over which to litigate. 926 F.2d 596, 598 (7th Cir. 1991). Nonetheless, Judge Easterbrook recognized that, under *Roper*, "the dispute about certification of the class survives." *Id.* Other circuits, relying on *Rand*, soon followed the Seventh Circuit's lead. *See McCauley v. Trans Union, L.L.C.*, 402 F.3d 340, 340 (2d Cir. 2005); *Colbert v. Dymacol*, 302 F.3d 155 (3d Cir. 2002); *Warren v.*

Sessoms & Rogers, P.A., 676 F.3d 365, 370 (4th Cir. 2012); *Sandoz v. Cingular Wireless LLC*, 553 F.3d 913, 919 (5th Cir. 2008); *O'Brien v. Ed Donnelly Enterprises, Inc.*, 575 F.3d 567 (6th Cir. 2009).

D. Following *Genesis*, Circuit Courts Acknowledge that an Offer of Relief Does Not Moot a Claim.

Although this Court's decision in *Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct. 1523 (2013) failed to resolve the first Question Presented here, the decision did move many circuit courts to re-examine their positions.

Most notably, Judge Easterbrook, writing for the Seventh Circuit, recently acknowledged the error of the mootness-by-offer theory, overruling *Rand*. *See Chapman v. First Index, Inc.*, Nos. 14-2773, 14-2775, 2015 WL 4652878 (7th Cir. Aug. 6, 2015). *Chapman*, like this case, involved a Rule 68 offer allegedly providing the named plaintiff total relief. *Id.* at *2. Noting that "[a] case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party[,]" the court had little trouble concluding the case was not moot. *Id.* After all, "[t]he district court could award damages and enter an injunction. [The plaintiff] began this suit seeking those remedies; he does not have them yet; the court could provide them." *Id.*

All other circuit courts that have examined the mootness-by-offer theory post-*Genesis* have rejected

the argument. *See, e.g.*, *Tanasi v. New Alliance Bank*, 786 F.3d 195 (2d Cir. 2015); *Gomez v. Campbell-Ewald Co.*, 768 F.3d 871 (9th Cir. 2014), *cert. granted*, ___ U.S. ___, 135 S. Ct. 2311, 191 L.Ed.2d 977 (2015); *Hooks v. Landmark Industries, Inc.*, No. 14-20496, 2015 WL 4760253 (5th Cir. Aug. 12, 2015); *Bais Vaakov of Spring Valley v. ACT, Inc.*, No. 14-1789, 2015 WL 4979406 (1st Cir. Aug. 21, 2015).

E. An Offer of Relief Does Not Moot a Plaintiff's Claim.

In light of the forgoing, there is now little question that an offer of relief, standing alone, does not deprive a court of its judicial power.

Petitioner's theory finds no support in the relevant constitutional history. There is simply no indication that, prior to circuit cases beginning in 1977, there was any understanding that an offer of relief removed a dispute from the categories of "cases" or "controversies." As this Court has recognized, "[l]ong settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions[.]" *N.L.R.B. v. Noel Canning*, 134 S. Ct. 2550, 2559 (2014). Indeed, "history and tradition offer a meaningful guide to the types of cases that Article III empowers federal courts to consider." *Sprint Commc'ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 274 (2008).

The absence of any credible historical indication that an offer eliminates Article III jurisdiction must

weigh heavily against the "discovery" of such a limitation 226 years after the Constitution was ratified. *See* Transcript of Oral Argument at 11, *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012) (No. 11-398) (when a constitutional claim is "unprecedented," there is a "heavy burden of justification") (Kennedy, J.).

This Court's decision in *San Pablo* is not to the contrary. *San Pablo* turned on the crucial fact that, under California law, the defendant's deposit into a state account eliminated the underlying dispute by operation of law. In that scenario, it would have been "impossible for a court to grant any effectual relief whatever to the prevailing party." *Knox*, 132 S. Ct. at 2287. *San Pablo* cannot be read so broadly as to hold that *any* offer of relief operates to moot the underlying claim.

As Justice Kagan emphasized dissenting in *Genesis*, Petitioner's argument fares no better examined as a matter of common sense. When a plaintiff rejects such an offer, "her interest in the lawsuit remains just what it was before. And so too does the court's ability to grant her relief. An unaccepted settlement offer – like any unaccepted contract offer – is a legal nullity, with no operative effect." *Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct. 1523, 1533 (Kagan, J., dissenting).

This Court should reject Petitioner's argument and hold that on offer of relief, standing alone, does not moot a plaintiff's claim.

II. AN OFFER OF RELIEF CANNOT MOOT A CLASS ACTION.

There are good reasons why the mootness-by-offer theory advanced by Petitioner in this case almost always arises in the context of class actions. In an individual case, defendants rarely offer to fall on their own sword and offer complete relief. It is even rarer for a plaintiff to reject all she could hope to recover.

Class actions are another matter. In a class action, an offer of full relief to the named plaintiff is no mea culpa. It is an attempt to evade classwide liability and damages. The price to be paid to a single plaintiff will usually pale in comparison to the measure of common harm.

In the class context, an offer of relief made solely to the named plaintiff cannot eliminate the underlying case or controversy. A named plaintiff assumes a fiduciary relationship with the class. When such a plaintiff files a complaint raising class allegations, he asserts an interest in serving as a representative of the group. That interest cannot be extinguished with an individual offer of relief.

A. The Historical Record Establishes that Representative Actions Are Firmly Rooted as Cases and Controversies.

Although Petitioner's mootness-by-offer theory finds no support in history, there is robust and long standing support for the prosecution of representative

actions in Anglo-American courts. Representative actions were understood to allow a single plaintiff to stand in the shoes of a distinct legal entity – the class – and assert the common interests of that class. The prevalence of this understanding demonstrates that the Constitution does not contemplate a mechanism by which any class action defendant can avoid liability by making an offer to the named plaintiff.

"[G]roup litigation has a remarkably deep history" dating back to medieval times. Stephen C. Yeazell, *The Past and Future of Defendant and Settlement Classes in Collective Litigation*, 39 Ariz. L. Rev. 687, 687 (1997); Stephen C. Yeazell, From Medieval Group Litigation to the Modern Class Action 21 (1987).

As this Court recognized more than 160 years ago: "[W]here the parties interested are numerous, and the suit is for an object common to them all, some of the body may maintain a bill on behalf of themselves and of the others; and a bill may also be maintained against a portion of a numerous body of defendants, representing a common interest." *Smith v. Swormstedt*, 57 U.S. (16 How.) 288, 298 (1853). The class action device "treats individuals falling within a class definition as members of a group rather than as legally distinct persons." *Neale v. Volvo Cars of North America, LLC*, No. 14-1540, 2015 WL 4466919 at *7 (3d Cir. July 22, 2015) (citing *Sosna v. Iowa*, 419 U.S. 393, 399 (1975)).

These authorities contemplate that when a plaintiff files a class action lawsuit, he asserts an

interest on behalf of the proposed class. The interests of the class cannot be rendered moot by an offer to the named plaintiff.

B. A Named Plaintiff Represents a Putative Class When the Class Action Is Filed.

Petitioner and its amici do not deny the representative character of class actions, but instead offer an evasion. According to Petitioner, a named plaintiff has no interest in representing a class until the district court has certified the class.

Once again, the argument runs afoul of history and this Court's precedent.

Petitioner's assertion that a class action does not exist before certification ignores the relevant history. Prior to the 1966 revisions to the Federal Rules, Rule 23 contained no certification requirement at all. *See* Fed. R. Civ. P. 23 (1964). The same is true of Equity Rule 38, which preceded the federal rules. *See* James Love Hopkins, The New Federal Equity Rules 231 (1930). Surely the named plaintiffs in cases filed before 1966 validly asserted the rights of the class.

The Advisory Committee notes accompanying the 1966 amendments reinforce the same point. A named plaintiff asserts the interests of a class when she files a class action complaint. A district court's order granting certification merely *ratifies* the class action character of the case. And when a court denies certification, "the action should be *stripped of its character*

as a class action." Fed. R. Civ. P. 23(c)(1) advisory committee's note to 1966 amendment (emphasis added).

This Court's precedents point in the same direction. Petitioner's argument cannot be squared with *Roper*. *Roper* held that neither the defendant's tender to each plaintiff of the maximum amount that each could have recovered nor the district court's entry of judgment in favor of plaintiffs over their objections mooted plaintiffs' case or controversy. The only difference between *Roper* and this case is the timing of the offer. Here, the offer was made before a ruling on certification, in *Roper*, after certification was denied. The distinction is of no consequence. If anything, the defendant in *Roper* was on stronger footing: a court had already entered an order denying certification, "strip[ing the case] of its character as a class action." Here, by contrast, the case retained its character as a class action, subject to later review by the court in certification proceedings. There is simply no sound basis to distinguish this case from *Roper*.

Petitioner's argument also runs counter to this Court's decision in *American Pipe & Const. Co. v. Utah*, 414 U.S. 538 (1974). *American Pipe* held that "the commencement of the original class suit tolls the running of the statute for all purported members of the class who make timely motions to intervene after the court has found the suit inappropriate for class action status." *Id.* at 553. Implicit in *American Pipe*'s holding is the precept that the *filing* of a class action – even absent eventual certification – affects the

rights and interests of unnamed class members. *American Pipe* cannot be reconciled with Petitioner's argument that the class is a legal nullity prior to certification.

Petitioner's heavy reliance on *Genesis Healthcare* is misplaced. It does not lend Petitioner support. In *Genesis*, the Court confronted the highly unusual situation of a sole named plaintiff in a collective action brought under the Fair Labor Standards Act. Plaintiff there *conceded* – unlike Respondent Gomez here – that his claim, asserted on behalf of himself and others similarly situated, was moot, due to an offer of individual relief only made under Rule 68. Under those circumstances, the Court concluded, the plaintiff had "no personal interest in representing putative, unnamed claimants." 133 S. Ct. at 1532. Moreover, the Court's ruling assumed, but did not decide, that an unaccepted Rule 68 offer can render a claim moot, *id.*, the very question at issue in this case. In fact, Justice Kagan found the circumstances of the case so incredulous that, in her dissent, she counseled practitioners to "[f]eel free to relegate the majority's decision to the further reaches of your mind: The situation it addresses should never again arise." *Genesis*, 133 S. Ct. at 1533 (Kagan, J., dissenting) (recognizing that the unique legal and procedural posture of *Genesis* made it "the most one-off of one-offs"). The *Genesis* plaintiff's concession that his individual claim was moot foreclosed in that case, which is not replicated here, valid arguments that a named plaintiff in a mass action maintains an

individual interest in class or collective treatment. *E.g.*, *Roper*, 445 U.S. at 336 (named plaintiff's individual interest in spreading costs sufficient to maintain Article III standing).

A plaintiff who asserts the rights of a class represents the interests of that class even before certification. It follows that an offer to provide only individual relief to the named plaintiff cannot satisfy that plaintiff's obligation to represent the interests of the class.

III. PETITIONER'S MOOTNESS-BY-OFFER THEORY UNDERMINES THE RULE OF LAW.

Petitioner's theory, if accepted, would create serious barriers to the vindication of substantive legal rights and undermine the established rule of law.

Suppose, for example, that an employer refused to hire women. The law provides a remedy. An aggrieved applicant can sue, stand in the shoes of other similarly-situated applicants, and obtain relief for the class. *See Teamsters v. United States*, 431 U.S. 324 (1977). Under Petitioner's theory, however, the employer could eviscerate a court's jurisdiction by offering the named plaintiff money and an injunction tailored only to her. The employer could continue its illegal practice (unless it was sued by every last victim or enjoined by an executive agency).

Suppose a group of corporate officers decided to steal from a public company and hide the fraud from shareholders. The law provides a remedy. *See, e.g.*, *Basic Inc. v. Levinson*, 485 U.S. 224 (1988). But if Petitioner's mootness-by-offer theory is accepted, the offending officers could simply pay off the named plaintiffs and go about their business, leaving hundreds or perhaps many thousands of other claimants without a remedy.

Or suppose that a group of insureds is collectively owed $1 million, but the common insurance company can only afford to pay a total of $500,000 in claims. Once again, the law affords a sensible remedy: a mandatory "limited fund" class, which is required "when claims are made by numerous persons against a fund insufficient to satisfy all claims." *County of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295, 1303 (2d Cir. 1990) (quoting Advisory Committee Notes to Fed. R. Civ. P. 23(b)(1)(B)). According to Petitioner, however, the Constitution requires what Rule 23 forbids: a full offer of relief to a single insured renders the court powerless to protect innocent class members whose claims are diluted or rendered worthless by the payoff to the named plaintiff.

Petitioner and its amici attempt to focus the Court's attention on burdens imposed by class actions that they deem frivolous. But make no mistake: the unprecedented constitutional mootness rule advanced by Petitioner would throw the baby out with the bathwater, rendering all manner of valid claims

immune from effective vindication. The Constitution does not require such a result.

In addition to undermining the rule of law, Petitioner's mootness-by-offer theory, if accepted, would work a serious hardship on courts, administrative agencies, and ultimately citizens. A principal purpose of Rule 23 class actions is to promote "efficiency and economy of litigation." *American Pipe*, 414 U.S. at 553. Under Petitioner's theory, courts' role would shift from resolving common disputes to presiding over endless rounds of whack-a-mole between plaintiffs and defendants in repetitive individual suits. And by removing private enforcement as a viable option to vindicate common harm, administrative agencies will be forced to fill the void, playing a far greater role in the resolving disputes.

This Court has always employed a functional understanding on the limits of a court's ability to grant relief. This Court adjudicates only genuine disputes between adverse parties, where the relief requested would have a real impact on the legal interests of those parties. *See Church of Scientology v. United States*, 506 U.S. 9, 12 (1992). When the dispute between the parties is genuine, this Court has consistently rejected the same kinds of formalistic arguments advanced by Petitioner here. *See Southern Pacific Terminal*, 219 U.S. at 515; *Roper*, 445 U.S. at 339.

That same functional understanding must inform the Court's decision here. Finding a constitutional

right to end disputes by offer would come with serious negative consequences.

This Court should reject Petitioner's plea for dismissal by pretending there is nothing left for the court to decide or do. An unaccepted offer of relief does not the end the case.

CONCLUSION

For the reasons stated above, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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August 31, 2015