No. 16-460

IN THE

Supreme Court of the United States

STEPHANIE C. ARTIS,

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

ON WRIT OF CERTIORARI TO THE
DISTRICT OF COLUMBIA COURT OF APPEALS

BRIEF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, COUNCIL OF STATE GOVERNMENTS, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, U.S. CONFERENCE OF MAYORS, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

Amici are organizations that represent the interests of state and local governments.

The interests of *amici* in this proceeding are twofold. *First*, they represent state governments that pass the statutes of limitations that will be preempted by Petitioner's interpretation of 28 U.S.C. § 1367(d). States have a fundamental interest in enforcing their laws—and, as a result, the statutes of limitations that apply to state claims are matters of significant and historically-grounded interest to states. *Second*, *amici* organizations represent local governments who are defendants in the lawsuits subject to the statutes of limitations at issue in this proceeding. Those governments incur greater costs and burdens when statutes of limitations periods are functionally extended.

Amici organizations are:

The National Conference of State Legislatures ("NCSL") is a bipartisan organization that serves the legislators and staffs of the nation's 50 states, its commonwealths, and its territories. NCSL provides research, technical assistance, and opportunities for policymakers to exchange ideas on the most pressing state issues. NCSL advocates for the interests of state governments before Congress and federal agencies and regularly submits *amicus* briefs to this

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Petitioner and Respondent have consented to the filing of this brief. Letters reflecting such consent have been filed with the Clerk.

Court in cases, like this one, that raise issues of vital state concern.

The Council of State Governments ("CSG") is the nation's only organization serving all three branches of state government. CSG is a region-based forum that fosters the exchange of insights and ideas to help state officials shape public policy. This offers unparalleled regional, national, and international opportunities to network, develop leaders, collaborate, and create problem-solving partnerships.

The National Association of Counties ("NACo") is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,069 counties through advocacy, education, and research.

The National League of Cities ("NLC") is dedicated to helping city leaders build better communities. NLC is a resource and advocate for 19,000 cities, towns, and villages, representing more than 218 million Americans.

The U.S. Conference of Mayors ("USCM"), founded in 1932, is the official nonpartisan organization of all United States cities with a population of more than 30,000 people, which includes over 1,400 cities at present. Each city is represented in USCM by its chief elected official, the mayor.

The International City/County Management Association ("ICMA") is a non-profit professional and educational organization consisting of more than 11,000 appointed chief executives and assistants serving cities, counties, towns, and regional entities. ICMA's mission is to create excellence in local governance by advocating and developing the profes-

sional management of local governments throughout the world.

The International Municipal Lawyers Association ("IMLA") has been an advocate and resource for local government attorneys since 1935. Owned solely by its more than 2,500 members, IMLA serves as an international clearinghouse for legal information and cooperation on municipal legal matters. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the Supreme Court of the United States, the United States Courts of Appeals, and state supreme and appellate courts.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case concerns the proper interpretation of 28 U.S.C. § 1367(d), a provision of the Judicial Improvement Act of 1990. Section 1367(d) provides that:

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

Petitioner and Respondent agree that Section 1367(d) prevents the loss of state-law claims to stat-

utes of limitations when a federal court declines to exercise supplemental jurisdiction over those state-law claims. They disagree, however, on how Section 1367(d) accomplishes this purpose.

For the reasons explained in Respondent's brief and herein, Section 1367(d) prevents the loss of dismissed state-law claims to statutes of limitations by providing the litigant with 30 days to re-file them in state court. This comports with the text of the statute, Congressional intent, and this Court's jurisprudence. The Court should thus adopt this interpretation and affirm the judgment of the District of Columbia Court of Appeals.

Amici submit this brief to underscore two points. *First*, Petitioner's interpretation is not simply incorrect; the burdens it creates are of real practical consequence. By stopping the clock on the state statute of limitations period while the federal court case is pending and restarting it 30 days after dismissal, Petitioner implements in state courts a federal tolling scheme that burdens already overstretched public entities. Local governments are regularly defendants in cases where plaintiffs bring both federal and state-law claims, and are subject to the tolling period provided for in Section 1367(d). *Jinks v. Richland Cty.*, 538 U.S. 456, 466 (2003) (citing *Raygor v. Regents of Univ. of Minn.*, 534 U.S. 533 (2002)), remanded to 585 S.E.2d 281 (S.C. 2003). The longer local governments remain subject to suit, and the more that period of time varies case-by-case, the greater the costs and burdens on resource constrained local governments. Many local governments lack in-house counsel to handle protracted lawsuits. Even those that have in-house counsel must bear the increased cost of litigating old, potentially stale claims: costs associated with record retention and

the turnover of counsel, witnesses, and others with familiarity of the case. As a result, older cases are disproportionately expensive to litigate and impose steep opportunity costs on local governments that, as a result, cannot therefore devote their time to newer, less-stale cases.

Second, Petitioner's interpretation unnecessarily intrudes on and supplants both state statutes of limitations and state-law tolling periods. As this Court has recognized, state statutes of limitations schemes reflect careful balancing of competing policy concerns that are the province of state legislatures. But Petitioner's interpretation would extend those periods, potentially for years, distorting local preferences, values, and compromises. Moreover, most states already have state law tolling provisions that, consistent with centuries of practice, provide plaintiffs with longer than 30 days to re-file state-law claims in state court if a federal court declines to exercise supplemental jurisdiction over them. Petitioner's interpretation of Section 1367(d) would—contrary to the statute's express recognition of these "longer tolling period[s]"—displace these tolling statutes as well.

Ultimately, while Congress may displace state-law where it makes its intentions clear, an intent to do so in the manner argued by Petitioner—the touchstone of this Court's preemption jurisprudence—is nowhere present here. Congress's narrow purpose in enacting Section 1367(d) was to prevent the loss of state-law claims to statutes of limitations during the pendency of federal court proceedings, and to assure that disappointed federal litigants always have at least 30 days to re-file any state-law claims that the federal court declines to hear. This purpose, which Petitioner does not dispute, is critical

to the proper interpretation of Section 1367(d). Respondent's interpretation would preempt state law only when necessary to achieve this specific purpose, whereas Petitioner's interpretation would preempt state law in far broader circumstances and to a far greater extent. Nothing in the text or legislative history indicates any intention of Congress to implement that broader preemption.

When faced with a preemption clause that is susceptible to more than one plausible interpretation, this Court applies a presumption against preemption to support the narrower interpretation. Application of that principle is particularly appropriate here, where Petitioner's interpretation is qualitatively different from Respondent's and would alter *all* state statutes of limitations, not just those that would have expired during the pendency of federal proceedings. Likewise, it would displace even generous state-law tolling provisions. Thus, even if Section 1367(d) were susceptible to Petitioner's reading, the presumption against preemption requires its rejection.

The judgment of the District of Columbia Court of Appeals should be affirmed.

ARGUMENT

I. PETITIONER'S INTERPRETATION WOULD IMPOSE SIGNIFICANT BURDENS ON LOCAL GOVERNMENTS.

A. Petitioner's reading of Section 1367(d) could result in lengthy extensions of state statutes of limitations.

Petitioner's approach could result in unreasonably lengthy delays between the federal court's decision to decline to exercise supplemental jurisdiction and the time that the plaintiff must re-file in

state court. This is particularly true when the plaintiff files her state-law claims in federal court well before the end of the state-law limitations period, and where the federal court proceedings are lengthy.

In some situations, as in the instant case, this is almost guaranteed to occur—for instance, federal Title VII actions must be brought within 90 days after the Equal Opportunity Employment Commission issues a "right to sue" letter, 42 U.S.C. § 2000e-5(f)(1), at which time there will typically be significant time remaining on the limitations period for any related state-law claims.

It is almost certain to happen in other situations as well. For example, for a state-law claim with a statute of limitations of five years, some plaintiffs will bring their federal and state claims to federal court within two years. If the federal court takes three years to dispose of the case—by no means an unusual amount of time—under Respondent's interpretation, the statute of limitations for the state-law claims will have been extended to a full eight years plus 30 days: the two years the plaintiff originally took to file, the three years the case was pending in district court, plus the remaining three years on the original statute of limitations and the 30 days provided for by Section 1367(d).

These significant extensions would occur under Petitioner's interpretation even in situations in which the plaintiff was nowhere near losing her ability to re-file her claim in state court. Again consider a situation involving a state claim with a statute of limitations of five years and a plaintiff who brings this claim, along with a federal-law claim, two years after the cause of action accrues. But in this instance, the federal court dismisses the federal claim and declines to exercise supplemental jurisdiction

over the state-law claim after just one year. Petitioner's interpretation would add an additional year (plus 30 days) to the two years still remaining on the state statute of limitations—an entirely unnecessary delay and displacement of state law.

B. These delays will burden local governments.

Although Section 1367(d) does not apply to claims filed in federal court against nonconsenting states that are dismissed on Eleventh Amendment grounds, local governments are afforded no such protection. *Jinks*, 538 U.S. at 466. As a result, the outcome of this litigation will influence the operations of local governments across the country.

1. Local governments are frequent defendants in lawsuits containing both state and federal claims. First, local governments, which employ nearly 10% of nonfarm workers,[2] are often sued under both federal and state law in their capacity as employers.[3] Second, since 42 U.S.C. § 1983 creates a separate federal cause of action against state and local governments

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[2] U.S. Bureau of Labor Statistics, *Current Employment Statistics—CES (National)*, http://www.bls.gov/ces/ (follow "CES Tables and Charts" hyperlink; scroll down to "Tables from Employment and Earnings" section; view tbl.B-1a) (last visited Aug. 10, 2017).

[3] *See, e.g., Nowak v. St. Rita High Sch.*, 757 N.E.2d 471 (Ill. 2001); *Thomas v. Cty. of Camden*, 902 A.2d 327 (N.J. Super. Ct. App. Div. 2006); *Balik v. City of Bayonne*, No. A-1448-13, 2016 WL 3351942 (N.J. Super. Ct. App. Div. June 17, 2016); *Jackson v. City of Cleveland*, No. E2015-01279-COA-R3-CV, 2016 WL 4443535 (Tenn. Ct. App. Aug. 22, 2016); *Peacock v. Cty. of Orange*, No. G040617, 2009 WL 3184564 (Cal. Ct. App. Oct. 6, 2009).

acting pursuant to state law,[4] local governments are regularly sued under that statute and state law concurrently[5]—a burden that is unique to governmental entities. In fact, nearly one-third of cases citing Section 1367(d) involve suits against state or local governments—or 521 out of 1,659 total cases.[6]

2. These suits impose palpable burdens on resource-strapped local governments. As an initial matter, many local governments do not have in-house counsel to handle law suits that are protracted over a long period of time. According to data from the 2012 Census of Governments, over 60% of municipalities have no full-time employees serving legal functions; and fewer than 25% have more than one such employee.[7] Even local governments that have in-

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[4] *See Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658 (1978) (holding that municipalities are included within the term "person" to which 42 U.S.C. § 1983 applies).

[5] *See, e.g., Salazar v. City of Okla. City*, 976 P.2d 1056 (Okla. 1999); *Jinks v. Richland Cty.*, 538 U.S. 456, remanded to 585 S.E.2d 281 (S.C. 2003); *Williams v. City of Jacksonville Police Dep't*, 599 S.E.2d 422 (N.C. Ct. App. 2004); *Okoro v. City of Oakland*, 48 Cal. Rptr. 3d 260 (Cal. Ct. App. 2006); *Gooden v. City of Talledega*, 966 So. 2d 232 (Ala. 2007); *Est. of Belden v. Brown Cty.*, 261 P.3d 943 (Kan. Ct. App. 2011); *Willis v. Shelby Cty.*, No. W2008-01487-COA-R3-CV, W2008-01558-COA-R3-CV, 2009 WL 1579248 (Tenn. Ct. App. June 8, 2009); *Tallmann v. City of Elizabethtown*, No. 2006-CA-002542-MR, 2007 WL 3227599 (Ky. Ct. App. Nov. 2, 2007).

[6] As of June 14, 2017, using a report generated by LexisNexis.

[7] U.S. Census Bureau, *2012 Census of Governments: Employment*,
https://www.census.gov/govs/apes/historical_data_2012.html
(follow "All Downloadable Data" hyperlink; then access "Individual Unit File" directory for the data files; data on the number of Judicial and Legal employees (Data Function Code 025) of municipalities (Summary Total Code 2) are contained in file 12cempst.dat) (last visited July 24, 2017).

house counsel must deal with turnover—of counsel, of witnesses, and of those who have institutional knowledge of the facts underlying the suit—when there are long delays in re-filing state-law claims in state court.

Record retention policies, which are keyed to state law and already account for state-law limitations and tolling periods, would also require revision. Petitioner's interpretation of Section 1367(d) would require these policies to take into account suits that could reappear from many years previous.[8] Long delays between dismissal from federal court and re-filing in state court may also increase the cost to public entities of obtaining insurance.

The burdens associated with such delays translate into more public money spent on litigation. As one district court has explained:

> A statute of limitations naturally results in decreased expenditures both because it reduces the number of claims brought, by weeding out those that are time-barred, and because it lessens the fiscal burden of maintaining administrative records indefinitely.

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[8] As explained in more detail below, under Petitioner's interpretation of Section 1367(d), the amount of time for a plaintiff to re-file in state court will vary case-by-case. Under Respondent's interpretation, however, the time period (assuming that the state law statute of limitations otherwise would have expired while the claim was pending in federal court) will either be 30 days or the longer period provided by state law, which is nearly always a fixed length of time after dismissal by the federal court.

Withey v. Perales, 752 F. Supp. 569, 572 (W.D.N.Y. 1990), aff'd, 950 F.2d 156 (2d Cir. 1990). Local governments, which are resource-constrained and tax-revenue dependent, are inherently disadvantaged by extensions of state statute of limitations periods. And there is an opportunity cost to forcing local governments to litigate stale claims, as it leaves them with fewer resources to devote to more timely suits.

In short, Petitioner's reading of Section 1367(d) is not bloodless—it imposes real costs on defendants, particularly governmental defendants that already suffer from resource limitations. As discussed below, it also frustrates state policies that, in some cases, are meant specifically to mitigate the costs that long and uncertain limitations periods impose on local governments.

II. PETITIONER'S INTERPRETATION FRUSTRATES STATE POLICY CHOICES.

This Court has long recognized that whenever states craft statutes of limitations and related tolling provisions, they balance a range of fundamental and competing interests, from enabling plaintiffs to bring meritorious claims to protecting both defendants and courts from the burdens of litigating stale claims.

By extending the state statute of limitations period by the time the case was pending in federal court plus 30 days, and supplanting state-law tolling provisions, Petitioner's interpretation of Section 1367(d) intrudes unnecessarily on states' balancing of these interests and, ultimately, would do so unnecessarily. Respondent's interpretation, on the other hand, affects state policies only as necessary to allow plaintiffs to re-file in state court and only where the state itself has not "provide[d] for a longer tolling period."

A. States make considered policy choices when enacting statutes of limitations.

When states pass statutes of limitations, they engage in a calculated and deliberative balancing act, one that often varies considerably depending on the specific situation state lawmakers are examining. As a general matter, and as this Court has stated:

> Statutes of limitation are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence. They promote repose by giving security and stability to human affairs. An important public policy lies at their foundation. They stimulate to activity and punish negligence. While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary.

Wood v. Carpenter, 101 U.S. 135, 139 (1879).

Statutes of limitations are meant "to prevent potential plaintiffs from neglecting suits, and to suppress stale and fraudulent claims after the facts concerning them have become obscured by a lapse of time and memory." *Allen v. Greyhound Lines Inc.*, 656 F.2d 418, 422 (9th Cir. 1981). *See also Pashley v. Pac. Elec. Ry. Co.*, 153 P.2d 325, 326 (Cal. 1944) (explaining the "legislative policy in prescribing a period of limitation for the commencement of actions" and that "'[t]he underlying purpose of statutes of limitation is to prevent the unexpected enforcement of

stale claims concerning which persons interested have been thrown off their guard by want of prosecution.'") (quoting 1 Horace Gay Wood *et al.*, *A Treatise on the Limitation of Actions at Law and in Equity* at 8-9 (4th ed. 1916)). However, policymakers also recognize countervailing concerns, such as the preference for adjudicating matters on their merits and the desire not to dismiss valid claims.

Accordingly, this Court has acknowledged that "the length of the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones." *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 463–64 (1975). Statutes of limitations thus "represent a public policy about the privilege to litigate." *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945), reh'g denied, 325 U.S. 892 (1945). For state-law claims, state legislatures are responsible for making these value judgments and policy decisions.

Given the complex and often competing considerations behind statutes of limitations, it is not surprising that states have implemented specific and varied provisions that reflect different policy preferences and local contexts. Within a state, the statutes of limitations for different causes of action range considerably. For example, New York provides a 20-year statute of limitations to enforce any temporary order, permanent order, or judgment which awards support, alimony, or maintenance, compared with one year for an action upon an arbitration award. N.Y. C.P.L.R. §§ 211(e), 215(5). While New York provides four years for an action on a residential rent overcharge, it has a one-year statute of limitations for an action by a tenant against a landlord

for unlawful retaliation. N.Y. C.P.L.R. §§ 213-a, 215(7).

Statutes of limitations for similar causes of action vary widely among the states. For example, Tennessee provides a six-month statute of limitations for slander and one year for libel, whereas Vermont provides three years for each of these causes of action. Tenn. Code. Ann. §§ 28-3-103, 28-3-104(a)(1)(A); Vt. Stat Ann. tit. 12, § 512(3). South Carolina provides a three-year statute of limitations for an action upon a contract, express or implied, whereas Wyoming provides ten years for a contract in writing and eight years for a contract not in writing, either express or implied. S.C. Code Ann. § 15-3-530; Wyo. Stat. Ann. § 1-3-105(a).

Each statute of limitations represents a deliberate policy choice, and state legislatures frequently revise these statutes to respond to new information and changes in policy preferences. For example, New York created a statute of limitations for certain forms of professional malpractice that is shorter than the one for ordinary personal injury, which New York's highest court described as part of a response "to a crisis in the medical profession posed by the withdrawal and threatened withdrawal of insurance companies from the malpractice insurance market." *Bazakos v. Lewis*, 991 N.E.2d 847, 849 (N.Y. 2009) (quoting *Bleiler v. Bodnar*, 479 N.E.2d 230, 232 (N.Y. 1985)). The legislature was specific: the purpose of the legislation was to enable "health care providers to get malpractice insurance at reasonable rates." *Id.* at 635 (quoting Mem. of State Exec. Dep't, 1975 N.Y. Sess. Laws 1601, 1601–02.

State legislatures have also used statutes of limitations to promote certainty for potential defend-

ants. For instance, California has adopted a 90-day statute of limitations to challenge certain zoning decisions. The California Supreme Court, quoting the statute, summarized its purpose as follows: "'to provide certainty for property owners and local governments regarding decisions made pursuant to this division' . . . and thus to alleviate the 'chilling effect on the confidence with which property owners and local governments can proceed with projects' . . . created by potential legal challenges to local planning and zoning decisions." *Travis v. Cty. of Santa Cruz*, 94 P.2d 538, 541 (Cal. 2004) (internal citation omitted), remanded to 2004 WL 2801083 (Cal. Ct. App. Dec. 6, 2004), appealed after remand, 2007 WL 294132 (Cal. Ct. App. Feb. 2, 2007).

In other instances, states have lengthened statutes of limitations in an effort to ensure that plaintiffs have an opportunity to have their claims heard on the merits. For example, New York recently added Section 214-f to its Civil Practice Law and Rules, which allows plaintiffs to sue for personal injury caused by contact with substances in a Superfund site either (1) within the time period already provided for in Section 214-c or (2) within three years of the designation of an area as a Superfund site, whichever is later. N.Y. C.P.L.R. § 214-f. The bill's legislative history explained that it was prompted by "[t]he recent discovery of water contamination in Hoosick Falls, New York and Flint, Michigan" and the desire to address the possibility that "the statute of limitations to bring a personal injury action has long since run before any contamination was ever discovered."[9] Similarly, California has created grace

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[9] Memorandum from the N.Y. State Assembly in Support of Bill No. A09568A (2016),

period provisions that apply to civil actions brought by Holocaust victims,[10] braceros,[11] and victims of the terrorist attacks of September 11, 2001,[12] among others, in order to address the particular issues facing these groups regarding statutes of limitations.

Lastly, in crafting their systems of statutes of limitations, states give particular consideration to the burden that long limitations periods can impose on state and local governments. Numerous states have adopted statutes of limitations that apply specifically to state and local governments and provide for a shorter time period to bring suits against those entities.[13] Other states protect themselves with a no-

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http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A09568&term=2015&Summary=Y&Actions=Y&Memo=Y&Text=Y.

[10] Cal. Civ. Proc. Code § 354.5

[11] Cal. Civ. Proc. Code § 354.7.

[12] Cal. Civ. Proc. Code § 340.10.

[13] Ariz. Rev. Stat. § 12-821 ("[a]ll actions against any public entity or public employee shall be brought within one year after the cause of action accrues and not afterward"); Fla. Stat. Ann. § 768.28(6)(a) ("[a]n action may not be instituted on a claim against the state . . . unless the claimant presents the claim in writing . . . within 3 years after such claim accrues"); Me. Rev. Stat. Ann. tit. 14, § 8110 ("[e]very claim against a governmental entity or its employees permitted under this chapter is forever barred . . . unless an action . . . is begun within 2 years after the cause of action accrues"); Neb. Rev. Stat. Ann. § 25-218 ("[e]very claim . . . against the state shall be forever barred unless action is brought thereon within two years after the claim arose"); N.H. Rev. Stat. Ann. § 507-B:7 ("[n]o actions shall be maintained against the governmental unit under this chapter unless the same is commenced within 3 years after the time of injury or damage"); 9 R.I. Gen. Laws § 9-1-25 ("action shall be instituted within three (3) years from the effective date of the special act or within three (3) years of the accrual of any claim of tort"); S.D. Codified Laws § 21-32-2 ("[a]ction on any claim on contract or tort against the state shall be commenced within

tice requirement, by which the would-be plaintiff must supply notice to the state governmental entity within a specified period of time, usually less than a year.[14]

These are just a few examples of the ways in which state legislatures specifically craft statutes of limitations to address constantly evolving policy concerns and value judgments. The variation in statutes of limitations among states and over time demonstrates both the complexity of the states' analyses and the benefit of a federalist system. *Cf. New State*

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one year after same has arisen"); Utah Code Ann. § 78B-2-304 ("[a]n action may be brought within two years . . . in causes of action against the state and its employees, for injury to the personal rights of another if not otherwise provided by state or federal law."); Wyo. Stat. Ann. § 1-39-114 ("actions against a governmental entity . . . shall be forever barred unless commenced within one (1) year after the date the claim is filed . . . . ").

In addition, the courts of at least two states have ruled that certain statute of limitations tolling provisions only apply to claims against state and local governments if the relevant state law includes an express statement to that effect. *Craig v. Provo City*, 389 P.3d 423, 426 (Utah 2016) (holding that Utah's Governmental Immunity Act "speaks comprehensively on the procedure and requisite timing of a claim filed against the government, in a manner foreclosing the applicability of the Savings Statute"); *Sneed v. City of Red Bank*, 459 S.W.3d 17, 28 (Tenn. 2014) (noting the long line of Tennessee decisions holding that "general saving statutes do not apply to suits against the State or other governmental entities unless the statute waiving sovereign immunity expressly permits their application.").

[14] D.C. Code § 12-309 (notice requirement of six months); Ind. Code Ann. § 34-13-3-6 (notice requirement of 270 days). While these notice requirements inform potential defendants of the possible initiation of a lawsuit, they do not inform them of how long the plaintiff may take to re-file claims in state court if those were to be dismissed from federal court.

Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) ("It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."). These myriad state policy decisions should not be overturned lightly and not unless preempted explicitly by Congress.

B. States have considered—and responded to—the problem Section 1367(d) is intended to address.

1. State legislatures have long confronted the statutes-of-limitations problem that Section 1367(d) was intended to address. Congress recognized as much when it expressly instructed that a claim's period of limitations shall be tolled "while the claim is pending and for a period of 30 days after it is dismissed *unless State law provides for a longer tolling period*" (emphasis added). And, in fact, a majority of states—32 in total—*do* provide for a designated period of time to re-file in state court that is "longer" than 30 days,[15] reinforcing that Section 1367(d) was intended merely to provide a grace period to re-file for those several states that did not provide for such "tolling period[s]." Indeed, these state law tolling statutes, by and large, precede Section 1367(d); Congress was thus presumably well aware of them when it enacted Section 1367(d). *See Cannon v. Univ. of Chi.*, 441 U.S. 677, 696–98 (1979) (explaining that "[i]t is always appropriate to assume that our elected representatives, like other citizens, know the law,"

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[15] Attached to this Brief is an Appendix listing the various state law tolling statutes in each of the 50 states and the District of Columbia.

and that this is particularly true when Congress references certain laws), remanded to 605 F.2d 560 (7th Cir. 1979), appealed after remand, 648 F.2d 1104 (7th Cir. 1981), mandamus denied, 454 U.S. 811 (1981), cert. denied, 454 U.S. 1128 (1981), cert. denied, 460 U.S. 1013 (1983).

State law tolling statutes are essential elements of states' systems of limitations. As this Court has explained:

> Any period of limitation . . . is understood fully only in the context of the various circumstances that suspend it from running against a particular cause of action . . . [i]n virtually all statutes of limitations the chronological length of the limitation period is interrelated with provisions regarding tolling, revival, and questions of applicability.

Johnson, 421 U.S. at 463–64 (1975). The details of states' tolling provisions, such as their lengths and the circumstances in which they apply, again reflect the considered policy choices of the states.

Consistent with centuries of practice, state law tolling statutes nearly always "giv[e] to a plaintiff whose timely action is dismissed for procedural reasons such as improper venue a specified time in which to bring a second action." *Burnett v. N.Y. Cent. R.R. Co.*, 380 U.S. 424, 432 (1965). *See Gaines v. City of New York*, 109 N.E. 594, 595 (N.Y. 1915) (explaining that New York's tolling statute "has its roots in the distant past," specifically the English Limitations Act of 1623 (21 Jac. 1, c. 16, § 4)). As of 1965, this Court noted that 31 states had such statutes, *Bur-*

nett, 380 U.S. at 431–32 n.9,[16] and since that time several states that previously did not have relevant tolling statutes have enacted them.[17] Indeed, courts in the dozen states that do not have such state law tolling statutes—including, as relevant to this particular case, the District of Columbia[18]—acknowledge that they are in the minority.[19]

Both historically and currently, the principal way in which states have enabled plaintiffs to re-file claims in certain circumstances has been to provide plaintiffs with a set amount of time to re-file, rather than through suspending the statute of limitations. Nearly all—33 of 39—of state law tolling statutes provide that a second action may be brought during a fixed amount of time after the initial case is dis-

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[16] Although the Court in *Burnett* was focused on dismissals for improper venue, the statutes it cited generally address dismissals for a variety of reasons, including for lack of subject-matter jurisdiction.

[17] *See, e.g.*, Neb. Rev. Stat. Ann. § 25-201.01 (enacted by 2000 Neb. Laws, LB 55, § 1); Nev. Rev. Stat. Ann. § 11.500 (enacted by ch. 376, § 1, 2003 Nev. Stat. 2134; amended by ch. 89, § 1, 2005 Nev. Stat. 247); *Rader v. Greenberg Traurig, LLP*, 352 P.3d 465, 469 (Ariz. Ct. App. 2015) ("the Legislature enacted a general civil savings statute in 1986, currently codified at A.R.S. § 12-504.").

[18] The District of Columbia is included in the term "State" as used in Section 1367. 28 U.S.C. § 1367(e).

[19] *See, e.g.*, *East v. Graphic Arts Indus. Tr.*, 718 A.2d 153, 156 (D.C. 1998), answer conformed to 172 F.3d 919 (D.C. Cir. 1998) answer conformed to 172 F.3d 919 (D.C. Cir. 1998); *Eto v. Muranaka*, 57 P.3d 413, 427 (Haw. 2002); *HCA Health Servs. of Fla., Inc. v. Hillman*, 906 So. 2d 1094, 1098 (Fla. Dist. Ct. App. 2004), review denied, 904 So. 2d 430 (Fla. 2005).

missed.[20] The tolling periods provided by these statutes vary from as little as 30 days to as much as three years, but most states provide six months or one year.[21] As with statutes of limitations themselves, these differences reflect considered policy decisions by states. Longer tolling periods provide plaintiffs with more access to state courts, while short tolling periods better guard against the problems and costs associated with litigating stale claims. In addition, states have recognized the fact that these tolling statutes can increase the workloads, and thus costs, of government offices.[22] And just as with statutes of limitations in general, states periodically revise their tolling statutes to reflect updated policy preferences.[23]

Despite the variations among states' tolling statutes, they almost always cover the same situations addressed by 28 U.S.C. § 1367(d). Some states have a tolling statute that specifically addresses

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[20] A small minority of states take a different approach, such as not computing as part of the limitations period the time the claim was pending in the first case. *See* Appendix.

[21] *See* Appendix.

[22] *See* Howard Kensinger, *Fiscal note: Legislative Fiscal Analyst Estimate* (Jan. 7, 2000),

http://www.nebraskalegislature.gov/FloorDocs/96/PDF/FN/LB55.pdf (noting that the Nebraska "Attorney General advises this bill [establishing a state law tolling statute] would increase the workload in the Attorney General's Office. Cases that are currently dismissed could be re-filed even if the statute of limitations had passed.").

[23] For example, Oregon previously provided for a one-year saving period, but now provides for 180 days. Or. Rev. Stat. § 12.220 (as amended by 2003 Or. Laws ch. 296). Indiana previously provided a five-year state law tolling statute; currently it provides for three years. *Compare Burnett*, 380 U.S. at 431 n.9 *with* Ind. Code § 34-11-8-1.

state-law claims that are dismissed by a federal court and re-filed in state court. *See, e.g.*, Colo. Rev. Stat. § 13-80-111(2) ("[t]his section shall be applicable to all actions which are first commenced in a federal court as well as those first commenced in the courts of Colorado or of any other state"); Conn. Gen. Stat. Ann. § 52-592(d) (providing that this section shall apply "to any action brought to the United States circuit or district court for the district of Connecticut which has been dismissed without trial upon its merits or because of lack of jurisdiction in such court"); Ky. Rev. Stat. Ann. § 413.270(2) (defining "court," as used in Kentucky's tolling statute, to include "all courts . . . of the Commonwealth of Kentucky or of the United States of America."). Other states' statutes apply generally to claims that fail otherwise than upon the merits, which numerous courts have interpreted as applying to state-law claims dismissed by a federal court declining to exercise jurisdiction over them after dismissing related federal claims. *See, e.g.*, *Grider v. USX Corp.*, 847 P.2d 779, 788 n.7 (Okla. 1993) (explaining that although Oklahoma's saving statue applies when a federal court declines to exercise supplemental jurisdiction, it is "available *only* to those pendent claims that had *become barred during an action's pendency*"); *Liberace v. Conway*, 574 N.E.2d 1010, 1012 (Mass. App. Ct. 1991) (holding that Massachusetts' tolling statute "is applicable to pendent claims dismissed in a Federal court"), review denied, 411 Mass. 1102 (Mass. 1991); *Osborne v. AK Steel/Armco Steel Co.*, 775 N.E.2d 483 (Ohio 2002) (holding that the Ohio tolling statute applied to a state age-discrimination claim brought in state court after a federal court dismissed it after granting summary judgment for the defendant on the federal-law claims); *Vale v.*

Ryan, 809 S.W.2d 324 (Tex. App. 1991) (applying Texas's current tolling statute where a federal court refused to exercise jurisdiction over a pendent state claim); *Burford v. Sun Oil Co.*, 186 S.W.2d 306, 315 (Tex. Civ. App. 1944) (applying a prior version of Texas's tolling statute where "[t]he appellees brought their suit in the Federal court. It was dismissed because the State courts were the proper courts or courts of proper jurisdiction in which to bring suit."). As a general matter, state law tolling statutes are applicable to claims that began in federal court.[24]

2. The final clause of Section 1367(d)—"unless State law provides for a longer tolling period"—expressly recognizes these state-law "tolling period[s]," emphasizing that the modest purpose of the federal provision is to ensure that plaintiffs can bring related state-law claims to federal courts under Section 1367(a) without fear that statutes of limitations would bar them from re-filing those claims in state court. The plain language of Section 1367(d) demonstrates that at the time Section 1367(d) was enacted, Congress recognized that many states already provided for tolling periods longer than the one set forth in Section 1367(d). In those cases, Congress intended for the state tolling periods to apply.

Petitioner's interpretation, however, has precisely the opposite effect. It would result in federal law supplanting state tolling statutes, despite the fact that the text of Section 1367(d) demonstrates Congress's intention to respect these state statutes. Under Petitioner's approach, state tolling statutes

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[24] *Cf. e.g.,* 42 Pa. Stat. and Cons. Stat. Ann. § 5103(b) (providing a specific procedural mechanism for federal court dismissals); *Ferrari v. Antonacci*, 689 A.2d 320, 322–23 (Pa. Super. Ct. 1997), appeal denied, 548 Pa. 670 (Pa. 1997).

would not apply whenever the amount of time remaining on the state statute of limitations when a plaintiff files in federal court, plus 30 days, is longer than the amount of time provided in the state tolling statute. Even the most generous state tolling statute could thus be supplanted by a federal tolling period in certain circumstances. For example, in this very case, Petitioner's view that she is entitled to nearly two years to re-file her claims would supplant 32 state-law tolling statutes. This outcome is contrary to the language of Section 1367(d) calling for the use of state tolling periods. Such an interpretation of Section 1367(d) is not grounded in either the text or legislative history of the statute, and, as discussed below, it serves no recognized federal purpose.

III. RESPONDENT'S INTERPRETATION BEST BALANCES FEDERALISM CONCERNS.

A. Respondent's interpretation fulfills Congress's purpose in enacting Section 1367(d).

As the Court has often explained, "'[t]he purpose of Congress is the ultimate touchstone' in every pre-emption case." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (quoting *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103 (1963)). Petitioner acknowledges that "the purpose of the [Section 1367(d)] tolling rule is 'to prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations while a supplemental claim was pending in federal court.'" Pet. Br. at 6–7 (quoting H.R. Rep. No. 101-734, at 30 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, 6874). And indeed, the legislative history of Section 1367(d) underscores that "[t]he purpose is to prevent the loss of claims to statutes of limitations where state law

might fail to toll the running of the period of limitations while a supplemental claim was pending in federal court." H.R. Rep. No. 101-734, at 30, 1990 U.S.C.C.A.N. at 6874. In *Jinks*, the Court identified two ways in which eliminating the possibility of the statute of limitations on supplemental claims becoming time barred while pending in federal court was "conducive to the administration of justice in federal court." *Id.* at 463 (internal quotations omitted). *First*, it eliminated the unsatisfactory and inefficient options available to federal judges in the pre-Section 1367(d) world. That is, unless a defendant agreed to waive any statute of limitations defenses, federal judges might "retain jurisdiction over the state-law claim even though it would more appropriately be heard in state court" or "dismiss the state-law claim but allow the plaintiff to reopen the federal case if the state court later held the claim to be time barred." *Id.* at 463.

Second, prior to Section 1367(d)'s enactment, plaintiffs too faced unattractive options at the outset of their litigation in those states without an applicable tolling statute. Plaintiffs who brought both state- and federal-law claims together in federal court risked that the statute of limitations on the state-law claim would expire while the case was pending in federal court; if the federal court dismissed the federal-law claim and declined to exercise jurisdiction over the state-law claim, the plaintiffs would be unable to then bring the state-law claim in state court. Alternatively, plaintiffs could "file a single state-law action, which would abandon their right to a federal forum." *Id.* There was only one way for plaintiffs to ensure that both their state- and federal-law claims could be decided on the merits. They would have to bring separate actions in federal and state courts,

and bear increased litigation expenses. In states without their own tolling statutes, this pre-Section 1367(d) system acted as "a serious impediment to access to the federal courts on the part of plaintiffs pursuing federal- and state-law claims that 'derive from a common nucleus of operative fact.'" *Id.* (quoting *Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966)). Section 1367(d) removed these problems facing federal judges and plaintiffs. This Court accordingly concluded that it fell within Congress's authority under the Necessary and Proper Clause.

Respondent's interpretation completely fulfills Congress's purpose in enacting Section 1367(d). It provides a "straightforward tolling rule" in place of the "inefficient" and "unsatisfactory" options open to federal judges and plaintiffs in the pre-Section 1367(d) era. *Jinks*, 538 U.S. at 463–64. The scope of the preemption under Respondent's interpretation is precisely aligned with Congress's intention to remove the possibility a time-bar could prevent the claim from being re-filed in state court; it provides a federal tolling period where state law does not already address this problem through provision of "a longer tolling period."

In contrast, Petitioner's approach would vastly expand the applicability of Section 1367(d) well beyond the specific intent of Congress and for no federal jurisdictional purpose. Under Petitioner's interpretation, Section 1367(d) would alter the relevant state statute of limitations in *all* instances, even if the state statute of limitations would not have expired while the state-law claim was pending in federal court.[25] In that scenario, the problem that con-

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[25] The Court of Appeals of Maryland has suggested that the use of the word "shall" in Section 1367(d) indicates that it must ap-

cerned Congress and which was described in *Jinks* simply is not implicated, rendering the federal intrusion gratuitous.

Nothing in the text, the legislative history, or the Court's analysis in *Jinks* indicates any intention of Congress to preempt state law absent the need to prevent the loss of claims. As a result, only Respondent's interpretation of Section 1367(d) is consistent with the intent of Congress.

B. The presumption against preemption favors Respondent's interpretation.

This Court has explained that "when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily 'accept the reading that disfavors pre-emption.'" *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008) (quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005)). Similarly, where there are multiple plausible interpretations of a preemption provision, the Court uses the presumption against preemption "to support a narrow interpretation" of that provision. *Medtronic*, 518 U.S. at 485. Congress must speak clearly whenever it "intends to pre-empt the historic powers of the States" or when it legislates in "'traditionally sensitive areas' that 'affec[t] the federal balance.'" *Raygor v. Regents of Univ. of Minn.*, 534 U.S. 533, 543 (2002) (quoting

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ply in every case. *Turner v. Kight*, 957 A.2d 984, 991 (Md. 2008), cert. denied, 556 U.S. 1181 (2009). However, as other courts have explained, "shall be tolled" can be understood as meaning "the statute could abate the *expiration* of any period of limitations for as long as a claim was pending in federal court plus 30 days after dismissal." *City of Los Angeles v. Cty. of Kern*, 328 P.3d 56, 60 (Cal. 2014) (citing *Kolani v. Gluska*, 64 Cal. App. 4th 402, 409–11, 75 Cal. Rptr. 2d 257, 261–62 (1998)) (emphasis added).

Will v. Mich. Dep't of State Police, 491 U.S. 58, 65 (1989)).

This is such a case—"Section 1367(d) is . . . a balance-altering statute [(*Raygor*, 534 U.S. at 544)]; it preempts state law, supplanting to some extent state statutes of limitations that would otherwise apply to affected claims." *City of Los Angeles,* 328 P.3d at 64. And this affects real state interests—"states long have established, and have a uniquely strong interest in, the limitations periods that apply to their own state law claims in their own state courts." *Id.* (citing *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 353 (1988)).

Respondent's interpretation of Section 1367(d) provides for the minimal interference with states' limitations rules. It establishes a federal tolling period for state-law claims that is straightforward and ensures that plaintiffs' state-law claims will not expire while pending in federal court. And it does not supersede state-law tolling statutes that already provide plaintiffs with an amount of time to re-file claims in state court that is greater than 30 days, nor does it supplant state statutes of limitations unless the statute of limitations would have expired within 30 days of dismissal from federal court.

Petitioner's approach, on the other hand, wreaks havoc on states' carefully crafted systems of statutes of limitations and tolling statutes. It has the potential to alter the statutes of limitations applicable to state-law claims in every state. Critically, this interpretation would result in the preemption of state statutes of limitations and state-law tolling statutes even when it is entirely unnecessary to ensure that plaintiffs are able to re-file their state-law claims in state court.

Moreover, under Petitioner's approach, the amount of time that Section 1367(d) provides to plaintiffs beyond what is provided for by state law would vary case-by-case within a state, depending on how much time was remaining on a plaintiff's state-law claim when it was filed in federal court. This is a much greater disruption to states' statutes of limitations and tolling statutes than Respondent's approach, which instead establishes a uniform 30-day minimum for only those states that do not provide for a longer time.

Finally, under Petitioner's interpretation of Section 1367(d), states would have limited legislative tools to avoid preemption and the potential for long delays in the re-filing of state-law claims dismissed by a federal court. The only way that a state could limit the possibility of time extensions that it considers contrary to the public interest would be to reduce the statute of limitations for all plaintiffs, including for those who initially bring the claim in state court. Thus, Petitioner's approach undermines the carefully balanced policy considerations states have made in enacting their statutes of limitations and state law tolling statutes.

Petitioner's approach constitutes sweeping interference with state-law limitations rules; Respondent's approach, on the other hand, is minimally invasive, while guaranteeing against the loss of state-law claims initially brought in federal court. If the Court does not conclude that Respondent's interpretation is required by the plain language of the statute, the Court should apply the presumption against preemption when interpreting Section 1367(d).

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX
State Law Tolling Statutes

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Alaska—1 Year
Alaska Stat. § 9.10.240

If an action is commenced within the time prescribed and is dismissed upon the trial or upon appeal after the time limited for bringing a new action, the plaintiff or, if the plaintiff dies and the cause of action in favor of the plaintiff survives, the heirs or representatives may commence a new action upon the cause of action within one year after the dismissal or reversal on appeal. All defenses available against the action, if brought within the time limited, are available against the action when brought under this provision.

Arizona—6 Months
Ariz. Rev. Stat. § 12-504(A)

If an action is commenced within the time limited for the action, and the action is terminated in any manner other than by abatement, voluntary dismissal, dismissal for lack of prosecution or a final judgment on the merits, the plaintiff, or a successor or personal representative, may commence a new action for the same cause after the expiration of the time so limited and within six months after such termination. If an action timely commenced is terminated by abatement, voluntary dismissal by order of the court or dismissal for lack of prosecution, the court in its discretion may provide a period for commencement of a new action for the same cause, although the time otherwise limited for commencement has expired. Such period shall not exceed six months from the date of termination.

Arkansas—1 Year
Ark. Code Ann. § 16-56-126(a)(1)

If any action is commenced within the time respectively prescribed in this act, in §§ 16-116-101 -- 16-116-107, in §§ 16-114-201 -- 16-114-209, or in any other act, and the plaintiff therein suffers a nonsuit, or after a verdict for him or her the judgment is arrested, or after judgment for him or her the judgment is reversed on appeal or writ of error, the plaintiff may commence a new action within one (1) year after the nonsuit suffered or judgment arrested or reversed.

Colorado—90 Days
Colo. Rev. Stat. § 13-80-111

(1) If an action is commenced within the period allowed by this article and is terminated because of lack of jurisdiction or improper venue, the plaintiff or, if he dies and the cause of action survives, the personal representative may commence a new action upon the same cause of action within ninety days after the termination of the original action or within the period otherwise allowed by this article, whichever is later, and the defendant may interpose any defense, counterclaim, or setoff which might have been interposed in the original action.

(2) This section shall be applicable to all actions which are first commenced in a federal court as well as those first commenced in the courts of Colorado or of any other state.

Connecticut—1 Year
Conn. Gen. Stat. Ann. § 52-592

(a) If any action, commenced within the time limited by law, has failed one or more times to be tried on its merits because of insufficient service or return of the writ due to unavoidable accident or the default or neglect of the officer to whom it was committed, or because the action has been dismissed for want of jurisdiction, or the action has been otherwise avoided or defeated by the death of a party or for any matter of form; or if, in any such action after a verdict for the plaintiff, the judgment has been set aside, or if a judgment of nonsuit has been rendered or a judgment for the plaintiff reversed, the plaintiff, or, if the plaintiff is dead and the action by law survives, his executor or administrator, may commence a new action, except as provided in subsection (b) of this section, for the same cause at any time within one year after the determination of the original action or after the reversal of the judgment.

* * * *

(d) The provisions of this section shall apply . . . to any action brought to the United States circuit or district court for the district of Connecticut which has been dismissed without trial upon its merits or because of lack of jurisdiction in such court. If such action is within the jurisdiction of any state court, the time for bringing the action to the state court shall commence from the date of dismissal in the United States court, or, if an appeal or writ of error has been taken from the dismissal, from the final determination of the appeal or writ of error.

* * * *

Delaware—1 Year
Del. Code Ann. tit. 10, § 8118(a)

If in any action duly commenced within the time limited therefor in this chapter, the writ fails of a sufficient service or return by any unavoidable accident, or by any default or neglect of the officer to whom it is committed; or if the writ is abated, or the action otherwise avoided or defeated by the death of any party thereto, or for any matter of form; or if after a verdict for the plaintiff, the judgment shall not be given for the plaintiff because of some error appearing on the face of the record which vitiates the proceedings; or if a judgment for the plaintiff is reversed on appeal or a writ of error; a new action may be commenced, for the same cause of action, at any time within 1 year after the abatement or other determination of the original action, or after the reversal of the judgment therein.

Georgia—6 Months
Ga. Code Ann. § 9-2-61

(a) When any case has been commenced in either a state or federal court within the applicable statute of limitations and the plaintiff discontinues or dismisses the same, it may be recommenced in a court of this state or in a federal court either within the original applicable period of limitations or within six months after the discontinuance or dismissal, whichever is later, subject to the requirement of payment of costs in the original action as required by

subsection (d) of Code Section 9-11-41; provided, however, if the dismissal or discontinuance occurs after the expiration of the applicable period of limitation, this privilege of renewal shall be exercised only once.

* * * *

(c) The provisions of subsection (a) of this Code section granting a privilege of renewal shall apply if an action is discontinued or dismissed without prejudice for lack of subject matter jurisdiction in either a court of this state or a federal court in this state.

Illinois—1 Year
735 Ill. Comp. Stat. 5/13-217

(Text of Section WITHOUT the changes made by P.A. 89-7, which has been held unconstitutional [by *Best v. Taylor Mach. Works*, 689 N.E.2d 1057 (Ill. 1997)])

In the actions specified in Article XIII of this Act [735 ILCS 5/13-101 et seq.] or any other act or contract where the time for commencing an action is limited, if judgment is entered for the plaintiff but reversed on appeal, or if there is a verdict in favor of the plaintiff and, upon a motion in arrest of judgment, the judgment is entered against the plaintiff, or the action is voluntarily dismissed by the plaintiff, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court

for improper venue, then, whether or not the time limitation for bringing such action expires during the pendency of such action, the plaintiff, his or her heirs, executors or administrators may commence a new action within one year or within the remaining period of limitation, whichever is greater, after such judgment is reversed or entered against the plaintiff, or after the action is voluntarily dismissed by the plaintiff, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court for improper venue.

Indiana—3 Years
Ind. Code § 34-11-8-1

(a) This section applies if a plaintiff commences an action and:

(1) the plaintiff fails in the action from any cause except negligence in the prosecution of the action;

* * * *

(b) If subsection (a) applies, a new action may be brought not later than the later of:

(1) three (3) years after the date of the determination under subsection (a); or

(2) the last date an action could have been commenced under the statute of limitations governing the original action; and be considered a

continuation of the original action commenced by the plaintiff.

Iowa—6 Months
Iowa Code § 614.10

If, after the commencement of an action, the plaintiff, for any cause except negligence in its prosecution, fails therein, and a new one is brought within six months thereafter, the second shall, for the purposes herein contemplated, be held a continuation of the first.

Kansas—6 Months
Kan. Stat. Ann. § 60-518

If any action be commenced within due time, and the plaintiff fail in such action otherwise than upon the merits, and the time limited for the same shall have expired, the plaintiff, or, if the plaintiff die, and the cause of action survive, his or her representatives may commence a new action within six (6) months after such failure.

Kentucky—90 Days
Ky. Rev. Stat. Ann. § 413.270

(1) If an action is commenced in due time and in good faith in any court of this state and the defendants or any of them make defense, and it is adjudged that the court has no jurisdiction of the action, the plaintiff or his representative may, within ninety (90) days from the time of that judgment, commence a new action in the proper court. The time

between the commencement of the first and last action shall not be counted in applying any statute of limitation.

(2) As used in this section, "court" means all courts, commissions, and boards which are judicial or quasi-judicial tribunals authorized by the Constitution or statutes of the Commonwealth of Kentucky or of the United States of America.

Louisiana—Runs Anew
La. Civ. Code art. 3462

Prescription is interrupted when the owner commences action against the possessor, or when the obligee commences action against the obligor, in a court of competent jurisdiction and venue. If action is commenced in an incompetent court, or in an improper venue, prescription is interrupted only as to a defendant served by process within the prescriptive period.

La. Civ. Code Ann. art. 3466

If prescription is interrupted, the time that has run is not counted. Prescription commences to run anew from the last day of interruption.

Maine—6 Months
Me. Stat. tit. 14, § 855

When a summons fails of sufficient service or return by unavoidable accident, or default, or negligence of the officer to whom it was delivered or directed, or

the action is otherwise defeated for any matter of form, or by the death of either party the plaintiff may commence a new action on the same demand within 6 months after determination of the original action; and if he dies and the cause of action survives, his executor or administrator may commence such new action within said 6 months.

Maryland—30 Days
Md. R. 2-101

(a) Generally. A civil action is commenced by filing a complaint with a court.

(b) After Certain Dismissals by a United States District Court or a Court of Another State. Except as otherwise provided by statute, if an action is filed in a United States District Court or a court of another state within the period of limitations prescribed by Maryland law and that court enters an order of dismissal (1) for lack of jurisdiction, (2) because the court declines to exercise jurisdiction, or (3) because the action is barred by the statute of limitations required to be applied by that court, an action filed in a circuit court within 30 days after the entry of the order of dismissal shall be treated as timely filed in this State.

Cross reference: Code, Courts Article, § 5-115.

(c) After Dismissal by the District Court of Maryland for Lack of Subject Matter Jurisdiction. If an action is filed in the District Court of Maryland within the period of limitations prescribed by Maryland law and the District Court dismisses the action for lack of

subject matter jurisdiction, an action filed in a circuit court within 30 days after the entry of the order of dismissal shall be treated as timely filed in the circuit court.

Massachusetts—1 Year
Mass. Gen. Laws ch. 260, § 32

If an action duly commenced within the time limited in this chapter is dismissed for insufficient service of process by reason of an unavoidable accident or of a default or neglect of the officer to whom such process is committed or is dismissed because of the death of a party or for any matter of form, or if, after judgment for the plaintiff, the judgment of any court is vacated or reversed, the plaintiff or any person claiming under him may commence a new action for the same cause within one year after the dismissal or other determination of the original action, or after the reversal of the judgment; and if the cause of action by law survives the executor or administrator or the heir or devisee of the plaintiff may commence such new action within said year.

Michigan—Uncertain Tolling Effect
Mich. Comp. Laws § 600.5856

The statutes of limitations or repose are tolled in any of the following circumstances:

(a) At the time the complaint is filed, if a copy of the summons and complaint are served on the defendant within the time set forth in the supreme court rules.

(b) At the time jurisdiction over the defendant is otherwise acquired.

(c) At the time notice is given in compliance with the applicable notice period under section 2912b, if during that period a claim would be barred by the statute of limitations or repose; but in this case, the statute is tolled not longer than the number of days equal to the number of days remaining in the applicable notice period after the date notice is given.

Mississippi—1 Year
Miss. Code Ann. § 15-1-69

If in any action, duly commenced within the time allowed, the writ shall be abated, or the action otherwise avoided or defeated, by the death of any party thereto, or for any matter of form, or if, after verdict for the plaintiff, the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on appeal, the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit, or after reversal of the judgment therein, and his executor or administrator may, in case of the plaintiff's death, commence such new action, within the said one year.

Missouri—1 Year
Mo. Rev. Stat. § 516.230

If any action shall have been commenced within the times respectively prescribed in sections 516.010 to 516.370, and the plaintiff therein suffer a

nonsuit, or, after a verdict for him, the judgment be arrested, or, after a judgment for him, the same be reversed on appeal or error, such plaintiff may commence a new action from time to time, within one year after such nonsuit suffered or such judgment arrested or reversed; and if the cause of action survive or descend to his heirs, or survive to his executors or administrators, they may, in like manner, commence a new action within the time herein allowed to such plaintiff, or, if no executor or administrator be qualified, then within one year after letters testamentary or of administration shall have been granted to him.

Montana—1 Year
Mont. Code Ann. § 27-2-407

If an action is commenced within the time limited for the action and a judgment is reversed on appeal without awarding a new trial or the action is terminated in any other manner than by a voluntary discontinuance, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the plaintiff's representative may commence a new action for the same cause after the expiration of the time limited and within 1 year after a reversal or termination.

Nebraska—6 Months
Neb. Rev. Stat. § 25-201.01

(1) If an action is commenced within the time prescribed by the applicable statute of limitations but the plaintiff fails in the action for a reason other

than a reason specified in subsection (2) of this section and the applicable statute of limitations would prevent the plaintiff from commencing a new action, the plaintiff, or his or her representatives if the plaintiff has died and the cause of action survived, may commence a new action within the period specified in subsection (3) of this section.

(2) A new action may not be commenced in accordance with subsection (1) of this section when the original action failed (a) on the merits of the action, (b) as a result of voluntary dismissal by the plaintiff for a reason other than loss of diversity jurisdiction in a federal court, (c) as a result of the plaintiff's failure to serve a defendant within the time prescribed in section 25-217, or (d) as a result of any other inaction on the part of the plaintiff where the burden of initiating an action was on the plaintiff.

(3) A new action may be commenced in accordance with subsection (1) of this section within a period equal to the lesser of (a) six months after the failure of the action or (b) a period after the failure of the action equal to the period of the applicable statute of limitations of the original action.

Nevada—90 Days
Nev. Rev. Stat. § 11.500

1. Notwithstanding any other provision of law, and except as otherwise provided in this section, if an action that is commenced within the applicable period of limitations is dismissed because the court lacked jurisdiction over the subject matter of the

action, the action may be recommenced in the court having jurisdiction within:

(a) The applicable period of limitations; or

(b) Ninety days after the action is dismissed, whichever is later.

* * * *

3. An action may not be recommenced pursuant to paragraph (b) of subsection 1 more than 5 years after the date on which the original action was commenced.

New Hampshire—1 Year
N.H. Rev. Stat. Ann. § 508:10

If judgment is rendered against the plaintiff in an action brought within the time limited therefor, or upon a writ of error thereon, and the right of action is not barred by the judgment, a new action may be brought thereon in one year after the judgment.

New Mexico—6 Months
N.M. Stat. Ann. § 37-1-14

If, after the commencement of an action, the plaintiff fail therein for any cause, except negligence in its prosecution, and a new suit be commenced within six months thereafter, the second suit shall, for the purposes herein contemplated, be deemed a continuation of the first.

New York—6 Months
N.Y. C.P.L.R. § 205(a)

If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff, or, if the plaintiff dies, and the cause of action survives, his or her executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action and that service upon defendant is effected within such six-month period. Where a dismissal is one for neglect to prosecute the action made pursuant to rule thirty-two hundred sixteen of this chapter or otherwise, the judge shall set forth on the record the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation.

North Carolina—1 Year
N.C. Gen. Stat. § 1A-1, Rule 41

(a) Voluntary dismissal; effect thereof. --

(1) By Plaintiff; by Stipulation. -- . . . Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a

plaintiff who has once dismissed in any court of this or any other state or of the United States, an action based on or including the same claim. If an action commenced within the time prescribed therefor, or any claim therein, is dismissed without prejudice under this subsection, a new action based on the same claim may be commenced within one year after such dismissal unless a stipulation filed under (ii) of this subsection shall specify a shorter time.

(2) By Order of Judge. -- . . .If an action commenced within the time prescribed therefor, or any claim therein, is dismissed without prejudice under this subsection, a new action based on the same claim may be commenced within one year after such dismissal unless the judge shall specify in his order a shorter time.

(b) Involuntary dismissal; effect thereof. -- . . . If the court specifies that the dismissal of an action commenced within the time prescribed therefor, or any claim therein, is without prejudice, it may also specify in its order that a new action based on the same claim may be commenced within one year or less after such dismissal.

Ohio—1 Year
Ohio Rev. Code § 2305.19(A)

In any action that is commenced or attempted to be commenced, if in due time a judgment for the plaintiff is reversed or if the plaintiff fails otherwise than upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the plaintiff's representative may commence a new action within

one year after the date of the reversal of the judgment or the plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later. This division applies to any claim asserted in any pleading by a defendant.

Oklahoma—1 Year
Okla. Stat. tit. 12, § 100

If any action is commenced within due time, and a judgment thereon for the plaintiff is reversed, or if the plaintiff fail in such action otherwise than upon the merits, the plaintiff, or, if he should die, and the cause of action survive, his representatives may commence a new action within one (1) year after the reversal or failure although the time limit for commencing the action shall have expired before the new action is filed.

Oregon—180 Days
Or. Rev. Stat. § 12.220

(1) Notwithstanding ORS 12.020, if an action is filed with a court within the time allowed by statute, and the action is involuntarily dismissed without prejudice on any ground not adjudicating the merits of the action, or is involuntarily dismissed with prejudice on the ground that the plaintiff failed to properly effect service of summons within the time allowed by ORS 12.020 and the statute of limitations for the action expired, the plaintiff may commence a new action based on the same claim or claims against a defendant in the original action if the defendant had actual notice of the filing of the

original action not later than 60 days after the action was filed.

(2) If, pursuant to subsection (1) of this section, a new action is commenced in the manner provided by ORS 12.020 not later than 180 days after the judgment dismissing the original action is entered in the register of the court, the new action is not subject to dismissal by reason of not having been commenced within the time allowed by statute.

* * * *

Pennsylvania—Procedural Requirements
42 Pa. Cons. Stat. § 5103

(a) General rule.--If an appeal or other matter is taken to or brought in a court or magisterial district of this Commonwealth which does not have jurisdiction of the appeal or other matter, the court or magisterial district judge shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper tribunal of this Commonwealth, where the appeal or other matter shall be treated as if originally filed in the transferee tribunal on the date when the appeal or other matter was filed in a court of magisterial district of this Commonwealth. A matter which is within the exclusive jurisdiction of a court or magisterial district judge of this Commonwealth but which is commenced in any other tribunal or this Commonwealth shall be transferred by the other tribunal to the proper court or magisterial district of this Commonwealth where it shall be treated as if

originally filed in the transferee court or magisterial district of this Commonwealth on the date when first filed in the other tribunal.

(b) Federal cases.--

(1) Subsection (a) shall also apply to any matter transferred or remanded by any United States court for a district embracing any part of this Commonwealth. In order to preserve a claim under Chapter 55 (relating to limitation of time), a litigant who timely commences an action or proceeding in any United States court for a district embracing any part of this Commonwealth is not required to commence a protective action in a court or before a magisterial district judge of this Commonwealth. Where a matter is filed in any United States court for a district embracing any part of this Commonwealth and the matter is dismissed by the United States court for lack of jurisdiction, any litigant in the matter filed may transfer the matter to a court or magisterial district of this Commonwealth by complying with the transfer provisions set forth in paragraph (2).

(2) Except as otherwise prescribed by general rules, or by order of the United States court, such transfer may be effected by filing a certified transcript of the final judgment of the United States court and the related pleadings in a court or magisterial district of this Commonwealth. The pleadings shall have the same effect as under the practice in the United States court, but the transferee court or magisterial district judge may require that they be amended to conform to the practice in this Commonwealth.

Section 5535(a)(2)(i) (relating to termination of prior matter) shall not be applicable to a matter transferred under this subsection.

* * * *

Rhode Island—1 Year
9 R.I. Gen. Laws § 9-1-22

If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff, or if he or she dies and the claim survives, his or her executor or administrator, may commence a new action upon the same claim within one year after the termination.

Tennessee—1 Year
Tenn. Code Ann. § 28-1-105(a)

(a) If the action is commenced within the time limited by a rule or statute of limitation, but the judgment or decree is rendered against the plaintiff upon any ground not concluding the plaintiff's right of action, or where the judgment or decree is rendered in favor of the plaintiff, and is arrested, or reversed on appeal, the plaintiff, or the plaintiff's representatives and privies, as the case may be, may, from time to time, commence a new action within one (1) year after the reversal or arrest. Actions originally commenced in general sessions court and subsequently recommenced pursuant to this section in circuit or chancery court shall not be subject to the

monetary jurisdictional limit originally imposed in the general sessions court.

Tenn. Code Ann. § 28-1-115

Notwithstanding any applicable statute of limitation to the contrary, any party filing an action in a federal court that is subsequently dismissed for lack of jurisdiction shall have one (1) year from the date of such dismissal to timely file such action in an appropriate state court.

Texas—60 Days
Tex. Civ. Prac. & Rem. Code Ann. § 16.064

(a) The period between the date of filing an action in a trial court and the date of a second filing of the same action in a different court suspends the running of the applicable statute of limitations for the period if:

> (1) because of lack of jurisdiction in the trial court where the action was first filed, the action is dismissed or the judgment is set aside or annulled in a direct proceeding; and
>
> (2) not later than the 60th day after the date the dismissal or other disposition becomes final, the action is commenced in a court of proper jurisdiction.

(b) This section does not apply if the adverse party has shown in abatement that the first filing was

made with intentional disregard of proper jurisdiction.

Utah—1 Year
Utah Code Ann. § 78B-2-111(1)

If any action is timely filed and the judgment for the plaintiff is reversed, or if the plaintiff fails in the action or upon a cause of action otherwise than upon the merits, and the time limited either by law or contract for commencing the action has expired, the plaintiff, or if he dies and the cause of action survives, his representatives, may commence a new action within one year after the reversal or failure.

Vermont—1 Year
Vt. Stat. Ann. tit. 12, § 558(a)

The plaintiff may commence a new action for the same cause within one year after the determination of the original action, when the original action has been commenced within the time limited by any statute of this state, and the action has been determined for any of the following reasons:

* * * *

(2) Where the action is dismissed for lack of jurisdiction of the subject matter or person, improper venue, or failure to join an indispensable party;

* * * *

Virginia—Time Not Counted
Va. Code Ann. § 8.01-229(E)

Dismissal, abatement, or nonsuit.

1. Except as provided in subdivision 3, if any action is commenced within the prescribed limitation period and for any cause abates or is dismissed without determining the merits, the time such action is pending shall not be computed as part of the period within which such action may be brought, and another action may be brought within the remaining period.

* * * *

3. If a plaintiff suffers a voluntary nonsuit as prescribed in § 8.01-380, the statute of limitations with respect to such action shall be tolled by the commencement of the nonsuited action, regardless of whether the statute of limitations is statutory or contractual, and the plaintiff may recommence his action within six months from the date of the order entered by the court, or within the original period of limitation, or within the limitation period as provided by subdivision B 1, whichever period is longer. This tolling provision shall apply irrespective of whether the action is originally filed in a federal or a state court and recommenced in any other court, and shall apply to all actions irrespective of whether they arise under common law or statute.

West Virginia—1 Year
W. Va. Code § 55-2-18(a)

For a period of one year from the date of an order dismissing an action or reversing a judgment, a party may re-file the action if the initial pleading was timely filed and (i) the action was involuntarily dismissed for any reason not based upon the merits of the action or (ii) the judgment was reversed on a ground which does not preclude a filing of new action for the same cause.

Wisconsin—Uncertain Tolling Effect
Wis. Stat. § 893.13(1)

In this section and ss. 893.14 and 893.15 "final disposition" means the end of the period in which an appeal may be taken from a final order or judgment of the trial court, the end of the period within which an order for rehearing can be made in the highest appellate court to which an appeal is taken, or the final order or judgment of the court to which remand from an appellate court is made, whichever is latest.

Wis. Stat. § 893.15

(1) In this section "a non-Wisconsin forum" means all courts, state and federal, in states other than this state and federal courts in this state.

(2) In a non-Wisconsin forum, the time of commencement or final disposition of an action is determined by the local law of the forum.

(3) A Wisconsin law limiting the time for commencement of an action on a Wisconsin cause of action is tolled from the period of commencement of the action in a non-Wisconsin forum until the time of its final disposition in that forum.

(4) Subsection (3) does not apply to an action commenced on a Wisconsin cause of action in a non-Wisconsin forum after the time when the action is barred by a law of the forum limiting the time for commencement of an action.

(5) If an action is commenced in a non-Wisconsin forum on a Wisconsin cause of action after the time when the Wisconsin period of limitation has expired but before the foreign period of limitation has expired, the action in the non-Wisconsin forum has no effect on the Wisconsin period of limitation.

Wyoming—1 Year
Wyo. Stat. Ann. § 1-3-118

If in an action commenced in due time a judgment for the plaintiff is reversed, or if the plaintiff fails otherwise than upon the merits and the time limited for the commencement of the action has expired at the date of the reversal or failure, the plaintiff, or his representatives if he dies and if the cause of action survives, may commence a new action within one (1) year after the date of the failure or reversal. This provision also applies to any claim asserted in any pleading by a defendant.