No. 16-460

IN THE
Supreme Court of the United States

STEPHANIE C. ARTIS,
Petitioner,
v.
DISTRICT OF COLUMBIA,
Respondent.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the court below properly interpreted 28 U.S.C. § 1367(d) to provide a 30-day "grace period" for the filing of otherwise time-barred state-law claims in local court after a federal court has declined to exercise supplemental jurisdiction over them, or whether the court instead should have interpreted the provision to suspend the state statute of limitations and then add 30 days to whatever additional time remained on the limitations period when the federal suit was filed, thereby extending the limitations period years beyond that designated by state law.

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INTRODUCTION

"A State's interest in regulating the work load of its courts and determining when a claim is too stale to be adjudicated certainly suffices to give it legislative jurisdiction to control the remedies available in its courts by imposing statutes of limitations." *Sun Oil Co. v. Wortman*, 486 U.S. 717, 730 (1988). Congress may alter a state-law limitations period where "'conducive to the due administration of justice' in federal court," *Jinks v. Richland Cty.*, 538 U.S. 456, 462 (2003) (quoting *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 417 (1819)), but it does not have "unlimited power to regulate practice and procedure in state courts," *id.* at 465.

To promote the federal interest in the "fair and efficient operation of the federal courts," *id.* at 463, Congress enacted 28 U.S.C. § 1367 as part of the Judicial Improvements Act of 1990. Pub. L. No. 101-650, § 310, 104 Stat. 5089, 5113-14. As relevant here, it codified the federal courts' exercise of supplemental jurisdiction over state-law claims "that are so related to the claims in the [federal] action . . . that they form part of the same case or controversy." 28 U.S.C. § 1367(a). The statute provides that the exercise of supplemental jurisdiction is discretionary, and a federal court may decline to exercise jurisdiction over pendent state-law claims once it has resolved the federal claims in the case. 28 U.S.C. § 1367(c)(3).

Mindful that the statute of limitations could run on the pendent state-law claims while a case is pending in federal court, only to have the court decline to exercise supplemental jurisdiction over them, Congress enacted subsection (d). It provides:

> The period of limitations for any claim asserted under [supplemental jurisdiction] . . . 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.

28 U.S.C. § 1367(d).

The parties here disagree about how Section 1367(d) works. Respondent reads it to provide a disappointed federal litigant 30 days after the federal-court dismissal to file otherwise time-barred pendent state-law claims in local court (the "grace-period" approach). Petitioner believes that Section 1367(d) not only stops the state statute of limitations from ticking down at all during the pendency of the federal suit, but also tacks 30 days onto whatever time remained on the state limitations period when the federal suit was filed—however old the state-law claims by then (the "suspension" approach). The lower court agreed with respondent and adopted the grace-period approach.

Petitioner now contends that this Court should grant review, arguing that the issue presents a "recurring" and "important" question on which the lower courts are "entrenched" and "stark[ly]" divided. Pet. 4, 7, 13. But only a few state courts of last resort and one federal appellate court have interpreted Section 1367(d)'s tolling effect and, while there is a nascent disagreement between courts adopting the two approaches, it is hardly entrenched. The paucity of cases from the states' highest courts also shows that the question is not frequently recurring and, at a minimum, requires further percolation.

Nor can the question be considered important when a litigant can take advantage of Section 1367(d),

regardless of which approach the particular jurisdiction employs, by proceeding diligently and re-filing the state-law claims in local court within 30 days after the federal court declines to exercise supplemental jurisdiction. Any federal interest in standardizing a particular approach is minimal, as Congress enacted Section 1367(d) just to ensure that litigants could continue pressing state-law claims, not to override individual states' choices about their own statutes of limitations.

Indeed, the statute on its face shows that Congress meant only to set a minimum period in which state-law claims could be re-filed while allowing states to adopt longer periods as they wished. Such compelling indicia of Congress's intent demonstrate that, in any event, the court below was correct to adopt the grace-period approach.

The petition should be denied.

STATEMENT OF THE CASE

Petitioner Stephanie Artis was terminated from her position with the District of Columbia Department of Health on November 15, 2010. Pet. App. 2a. Thirteen months later, on December 16, 2011, she filed suit in the United States District Court for the District of Columbia, claiming gender discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5. Pet. App. 2a-3a. She also asserted three pendent state-law claims: retaliatory termination under the District of Columbia False Claims Act, D.C. Code § 2-381.01; retaliation under the District of Columbia Whistleblower Protection Act, D.C. Code § 1-615.54; and wrongful termination against public policy. *See* Complaint, *Artis v. District of Columbia*, No. 11-2241 (D.D.C. Dec. 16, 2011), ECF Record Document 1; Pet. App 3a.

On June 27, 2014, the district court found that "no reasonable jury could conclude that Artis was subjected to gender discrimination while employed by the District" and entered judgment against her on the Title VII claim. *Artis v. District of Columbia*, 51 F. Supp. 3d 135, 137 (D.D.C. 2014); Pet. App. 3a. Having resolved the only federal claim in the case, the district court declined to exercise supplemental jurisdiction over petitioner's state-law claims under 28 U.S.C. § 1367(c)(3). *Artis*, 51 F. Supp. 3d at 141-42; Pet. App. 3a.

Fifty-nine days later, on August 25, 2014, petitioner re-filed her state-law claims in the Superior Court of the District of Columbia. Pet. App. 3a. Respondent moved for dismissal, or in the alternative summary judgment, arguing, *inter alia*, that her state-law claims were time-barred because the three-year statute of limitations on them had run during the pendency of her federal case and she had not re-filed them in local court within the 30-day grace period provided by Section 1367(d). Pet. App. 12a. Petitioner countered that Section 1367(d) operated to suspend the state statute of limitations from running at all during the pendency of her federal litigation, such that she had 30 days from the dismissal of her federal case, plus the 23 months that were remaining on the state limitations period when she filed her federal suit. Pet. App. 12a-13a. Under this approach, petitioner would have had until July 2016 to bring the state-law claims arising from her November 2010 termination, despite the District's legislative decision to place a three-year limit on bringing these claims.

The trial court agreed with respondent and, on January 29, 2015, dismissed petitioner's state-law claims as time-barred. Pet. App. 12a-18a.

Petitioner appealed and, on April 7, 2016, the District of Columbia Court of Appeals affirmed in a unanimous opinion. Pet. App. 1a-11a. It concluded that the appropriate reading of Section 1367(d) was that it provided a 30-day "'grace period' to allow litigants to re-file claims that otherwise would have become barred in Superior Court." Pet. App. 11a. The court reached this result after considering—and rejecting—petitioner's argument that Section 1367(d) suspended the state-law limitations period during the pendency of the federal suit and for an additional 30 days thereafter. Pet. App. 5a-11a.

Petitioner sought rehearing and rehearing en banc. After no judge called for a vote on the petition, the court denied it on July 20, 2016. Pet. App. 19a.

REASONS FOR DENYING THE PETITION

Nothing about the short, unanimous opinion below warrants this Court's review. In the 26 years since Section 1367(d) was enacted, only a handful of courts have weighed in on the question presented, and very few of them were state courts of last resort. The question thus recurs too infrequently to warrant this Court's review. At minimum, further percolation is advisable given that consensus may emerge as more courts eventually address the question, and given that the Court would benefit from robust views on the issue in the event it ultimately wishes to take it up.

The question presented also does not implicate an important federal interest. Under the grace-period approach, a disappointed federal litigant has at least 30 days to re-file her state-law claims in local court. This serves Congress's goal of preventing the loss of state-law claims to statutes of limitations after a federal court declines to exercise supplemental jurisdiction

over them. Section 1367(d) on its face makes clear that Congress intended only to guarantee a minimum re-filing period to allow the supplemental-jurisdiction process to function smoothly, not to keep states from taking different approaches on the length of time to re-file.

In any event, the opinion below is correct on the merits. Petitioner failed to re-file her state-law claims in local court within Section 1367(d)'s 30-day grace period and, accordingly, the court properly found them barred. Congress allowed states to extend the period for re-filing beyond that grace period, but did not require them to do so.

I. The Question Is Not Sufficiently Recurring To Warrant Review, Nor Is There An Entrenched Split.

Before Section 1367 was adopted in 1990, the ability of federal courts to exercise supplemental jurisdiction over pendent state-law claims, and the consequences of their declining to do so after resolving federal claims, engendered significant dispute. *See, e.g.*, *Jinks*, 538 U.S. at 462-63 (discussing the problems with the "pre-§ 1367(d) world" and citing cases). As part of a long-awaited and landmark supplemental-jurisdiction statute, Section 1367(d) provided a "straightforward tolling rule in place of [the former] regime." *Id.* at 463. In the quarter-century since its enactment, only a few state high courts and one federal appellate court have passed on the question presented here, which shows that it is not the kind of frequently recurring issue warranting this Court's attention.

To be sure, there is a nascent disagreement on the tolling effect of Section 1367(d), with two state high courts taking the view that the statute of limitations on the state-law claims is suspended during the

pendency of the federal-court action and for 30 days thereafter. *Turner v. Kight*, 957 A.2d 984 (Md. 2008), *cert. denied*, 556 U.S. 1181 (2009); *Goodman v. Best Buy, Inc.*, 777 N.W.2d 755 (Minn. 2010). The United States Court of Appeals for the Sixth Circuit also applied the suspension approach to find supplemental state-law claims timely filed in a follow-on federal class action. *In re Vertrue Inc. Mktg. & Sales Practices Litig.*, 719 F.3d 474, 480-81 (6th Cir. 2013).

Meanwhile, the Supreme Court of California, the Supreme Court of the Northern Mariana Islands, and the court below have held that Section 1367(d) provides a 30-day grace period for the filing of otherwise time-barred state-law claims after the federal court declines to exercise supplemental jurisdiction over them. *City of L.A. v. Cty. of Kern*, 328 P.3d 56 (Cal. 2014); *Juan v. Commonwealth*, 6 N. Mar. I. 322 (2001)[1]; Pet. App. 1a-11a. But this disagreement among a scant number of courts—out of the nearly 70 state high courts and federal courts of appeals that could pass on the issue—demonstrates that this question does not recur frequently.

To try to show an "entrenched" conflict, petitioner cites a smattering of decisions from state intermediate appellate courts. Pet. 13. They are not decisions of state courts of last resort, *see* Sup. Ct. R. 10, and many intermediate appellate court decisions are not even binding statewide. For example, petitioner cites a case in which the Ohio Court of Appeals, Sixth District, followed the grace-period approach. Pet. 13 (citing

[1] The Northern Mariana Islands, like the District of Columbia, is considered a "state" for purposes of Section 1367. *See* 28 U.S.C. § 1367(e) ("As used in this section, the term 'State' includes the District of Columbia . . . and any territory or possession of the United States.").

Smith v. Erie Cty. Sheriff's Dep't, 59 N.E.3d 725 (Ohio Ct. App. 2016)). She contends that "[i]t is unlikely [the] question would reach the Ohio Supreme Court, given that future plaintiffs in Ohio state court would likely acquiesce to *Smith* and file suit within 30 days of a federal dismissal." Pet. 14 n.4. That speculation is unfounded. If the decision of one appellate district were so influential, one would have expected the plaintiff in *Smith* to have acquiesced and filed her claim within 30 days because, ten years earlier, the Ohio Court of Appeals, Eighth District, had adopted the grace-period approach. *See Harris v. O'Brien*, Nos. 86218, 86323, 2006 WL 73452, at *2-3 (Ohio Ct. App. Jan. 12, 2006). The decisions of one Ohio district's appellate court are not binding on another, and thus the question remains an open one in most of the state. Accordingly, it stands to reason that the issue will continue to percolate over time through the Ohio Courts of Appeals and to its Supreme Court.[2]

Indeed, this type of percolation is precisely what happened in California, where, in *Kern*, the California Supreme Court resolved a conflict between its local courts on how to interpret Section 1367(d). *See* 328 P.3d at 59 (discussing earlier state cases). More states' high courts should have the opportunity to weigh in on

[2] So too in North Carolina. There, the decision of one panel of its Court of Appeals is binding on future panels until overturned by a higher court. *State v. Jones*, 598 S.E.2d 125, 133-34 (N.C. 2004). The North Carolina Court of Appeals has considered the tolling question, but its Supreme Court has not yet taken it up. *See Harter v. Vernon*, 532 S.E.2d 836, 840 (N.C. Ct. App.), *disc. rev. denied*, 546 S.E.2d 97 (N.C. 2000), *and cert. denied*, 532 U.S. 1022 (2001); *see also Glynne v. Wilson Med. Ctr.*, 762 S.E.2d 645, 649-52 (N.C. Ct. App. 2014); *Huang v. Ziko*, 511 S.E.2d 305, 308 (N.C. Ct. App. 1999).

the limitations question, and perhaps reach consensus, before this Court considers review.

At minimum, further percolation is warranted because the analysis of the different approaches is not yet fully developed. The courts following the suspension approach have done so for different reasons—the Maryland Court of Appeals found Section 1367(d)'s language "[u]nquestionably . . . ambiguous," *Turner*, 957 A.2d at 989, whereas the Minnesota Supreme Court found it "unambiguous," *Goodman*, 777 N.W.2d at 761; *see also id.* ("[T]he tolling language of section 1367(d) has a plain meaning and is subject to only one reasonable interpretation."). These courts have not considered whether Section 1367(d) needs to be construed narrowly because it displaces an area that is traditionally the subject of state regulation. *Cf. Kern*, 328 P.3d at 64-65 (discussing presumption against preemption); Pet. App. 9a-10a (same). And no high court to adopt the suspension approach has grappled with the legislative history later discussed in *Kern* or the opinion below. *Cf. Turner*, 957 A.2d at 992 (finding "nothing in the legislative history").

If petitioner is correct that the question is recurring, other state courts of last resort and federal appellate courts will have the opportunity to grapple with it and consensus may emerge. Even if it does not, the question will be more developed when it comes back to this Court.

II. The Question Is Not Important Enough To Warrant Review And Does Not Implicate Any Significant Federal Interest.

This Court reserves review for questions of considerable federal importance. *See* Sup. Ct. R. 10. The question presented here is not sufficiently important because, regardless of the approach any particular jurisdiction employs, a disappointed federal litigant has at least 30 days after the federal court declines to exercise supplemental jurisdiction to file her local-court suit. Thus, no diligent plaintiff will be deprived of her ability to proceed on her state-law claims.

Filing the state-law claims in local court after the federal court declines to exercise supplemental jurisdiction is not an onerous task. The complaint asserting the state-law claims has already been drafted and filed in federal court. The plaintiff need only change the caption, omit the federal claims, and file it in the local court. Thirty days provides more than ample time to do so. Were this not so, more state high courts would have addressed the question since the passage of Section 1367(d) in 1990, especially given the frequency with which federal courts decline to exercise supplemental jurisdiction. *See, e.g.*, *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 351 (1988) ("When the single federal-law claim in the action was eliminated at an early stage of the litigation, the District Court had a powerful reason to choose not to continue to exercise jurisdiction."); *Enochs v. Lampasas Cty.*, 641 F.3d 155, 161 (5th Cir. 2011) ("'Our general rule is to dismiss state claims when the federal claims to which they are pendent are dismissed.'" (quoting *Parker & Parsley Petroleum Co. v. Dresser Indus.*, 972 F.2d 580, 585 (5th Cir. 1992))).

Petitioner argues that a plaintiff needs more than 30 days because she must decide whether to appeal the federal dismissal.[3] Pet. 19. She also asserts that a plaintiff might need "to find a new lawyer admitted to appear in state court and to adjust her litigation strategy or assess the evidence in light of the opinion issued by the federal court." Pet. 19. But 30 days is sufficient for all of this. Moreover, the question is not whether a plaintiff must be prepared to proceed to trial within that 30-day period, but whether she can file a complaint—a short, plain statement of why she is entitled to relief, which should be virtually identical to what she filed in federal court.

Petitioner also contends that the difference of opinion between the Maryland Court of Appeals and the court below will lead to forum shopping. Pet. 15. These claims, by their very nature, arise under state law, and thus it would be curious for a plaintiff like Artis to bring her supplemental District-law claims in a Maryland court in the hope that it would apply the suspension approach in assessing whether the District's statute of limitations had run, especially when she could file a timely suit in the District's Superior Court within 30 days of the federal dismissal.

Moreover, even if forum shopping were an issue, it is one that Section 1367(d) expressly contemplates. The statute sets the time for filing in state court at 30 days "unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d). Tennessee, for example,

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[3] A federal appeal would further extend the time for filing any claims in local court. *See, e.g.*, *Turner*, 957 A.2d at 996-97 (explaining that Section 1367(d)'s tolling extends to "issuance of an order of the U.S. Court of Appeals dismissing the appeal or a mandate affirming the dismissal of those claims by the District Court").

affords litigants one year from the date of federal-court dismissal to file a new action in local court. Tenn. Code Ann. § 28-1-115. In the event a disappointed federal-court litigant has the option of choosing among several fora, she can consider the timing of their tolling provisions in the way she assesses any other aspect of litigation strategy.

Even if the question presented could be considered important, the text of Section 1367(d) shows that the interest here is a state-by-state interest, rather than a federal one. *Cf. Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 545 (1974) ("grant[ing] certiorari to consider a seemingly important question affecting the administration of justice in the federal courts"). Congress manifestly had no intent to ensure uniformity between the states. Instead, Section 1367(d) merely serves as a default rule "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), *as reprinted in* 1990 U.S.C.C.A.N. 6860, 6876. Petitioner cites nothing suggesting that Congress surprisingly, and gratuitously, wished to intrude on state prerogatives as to state-law claims more than needed to promote the federal interest in the "fair and efficient operation of the federal courts." *Jinks*, 538 U.S. at 463.

Petitioner nonetheless argues that the question is important because it "goes to a basic issue of federal jurisdiction." Pet. 14. But these cases arise almost exclusively after a federal court has *declined* to exercise supplemental jurisdiction and the disappointed federal litigant resorts to local court. *See, e.g.*, *Kern*, 328 P.3d at 59; *Turner*, 957 A.2d at 985-86. Thus, unlike in *Jinks*, where South Carolina's invalidation

of Section 1367(d) interfered with federal litigation, 538 U.S. at 463, the decision below has no effect on how federal courts adjudicate federal or supplemental state-law claims. In this context, it is the state interest in applying state law in state courts that predominates, not any vestigial federal interest.

III. The Decision Below Is Correct.

Finally, review is not warranted because the lower court was correct on the merits. Petitioners argue that "tolled" always means "suspended." Pet. 4, 16, 19. But, as this Court has recognized, the effect of a tolling provision can vary widely. *See, e.g.*, *Chardon v. Soto*, 462 U.S. 650, 660 n.13 (1983) ("Although some federal statutes provide for suspension, other statutes establish a variety of different tolling effects." (citation omitted)).

Indeed, when Congress intends to "suspend" a limitations period, it says so. Thus, Title 26 contains several provisions directing that "running of the period of limitations . . . shall . . . be suspended [pending another event] and for 60 days thereafter." 26 U.S.C. § 6503(a)(1); *see also, e.g.*, 26 U.S.C. §§ 6234(e)(2), 6255(f)(1)-(2). The same is true of Title 50. *See, e.g.*, 50 U.S.C. §§ 4000(c), 4308(c). That Congress chose a different word in Section 1367(d) indicates that it intended the tolling effect to be different.

Congress's intent to enact a grace-period approach is further confirmed by the statute's history. Section 1367(d) "implements in specific context a general recommendation of the American Law Institute [("ALI")] in its 1969 *Study of the Division of Jurisdiction Between State and Federal Courts*." Thomas M. Mengler, *et al.*, *Congress Accepts Supreme Court's Invitation to Codify Supplemental Jurisdiction*, 74 Judicature 213, 216 n.28 (1991). The ALI tolling

proposal provided for a grace period, not a suspension of the underlying limitations period. *Id.* at 216 & n.28; *see also Kern*, 328 P.3d at 63 (quoting ALI, *Study of the Division of Jurisdiction Between State and Federal Courts* § 1386(b), at 65 (1969)).

Finally, as the court below acknowledged, the grace-period approach "better accommodates federalism concerns." Pet. App. 9a; *see also Kern*, 328 P.3d at 64-65. When "'Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute.'" *Raygor v. Regents of Univ. of Minn.*, 534 U.S. 533, 543 (2002) (quoting *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989)). "This principle applies when Congress 'intends to pre-empt the historic powers of the States' or when it legislates in 'traditionally sensitive areas' that 'affect[t] the federal balance.'" *Id.* (quoting *Will*, 491 U.S. at 65) (alteration in quotation). Just as this Court in *Raygor* construed Section 1367(d)'s tolling provision not to apply to dismissals of claims against non-consenting states on Eleventh Amendment grounds because the statute lacked a clear statement of intent to do so, the court below was correct to adopt the narrower grace-period approach because it "hazards significantly less impact on local statutes of limitation than the suspension approach." Pet. App. 9a (internal quotation marks omitted).[4]

That conclusion is reinforced by the statutory text allowing for "State law [to] provide[] for a longer

[4] While Congress treats the District as a "state" for purposes of Section 1367, and many other purposes, the difference in the federalism analysis between the District and the states renders this a non-ideal vehicle for deciding the question presented.

tolling period." 28 U.S.C. § 1367(d). Congress thereby expressly allowed for state-by-state variation and showed that it intended to promote, not limit, each state's ability to make its own choices. Moreover, the fact that Congress contemplated that states might want "longer" periods, but not shorter ones, itself shows that the grace-period approach is the correct one. Had Congress meant to adopt the suspension approach, it would have wanted to give states flexibility to establish shorter periods as long as doing so would not compromise the federal interest in the administrability of the supplemental-jurisdiction process. After all, a state for obvious reasons might believe a litigant whose federal suit had been pending for years before supplemental jurisdiction was declined should not be allowed to wait the additional years potentially remaining on the state statute of limitations—and certainly would not need an inexplicable, *additional* 30 days to re-file. Instead, all Congress meant to do was ensure that litigants would have a chance to re-file state-law claims. In other words, Congress established a grace period.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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