No. 16-460

In the Supreme Court of the United States

STEPHANIE C. ARTIS, PETITIONER,

v.

DISTRICT OF COLUMBIA

On Writ of Certiorari to the
District of Columbia Court of Appeals

BRIEF OF THE STATE OF WISCONSIN AND 23 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Whether 28 U.S.C. § 1367 tolls the period of limitations to provide a disappointed federal litigant with 30 days to refile her state-law claim in state court free of an otherwise applicable limitations bar, or whether it stops the clock on the state statute of limitations until federal dismissal, then adds 30 days, so that she may delay refiling in state court for months or even years.

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INTEREST OF *AMICI CURIAE*

The *amici curiae* States of Wisconsin, Alabama, Arizona, Arkansas, Colorado, Hawaii, Idaho, Indiana, Kansas, Louisiana, Michigan, Montana, Nebraska, Nevada, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, West Virginia and Wyoming, have critical, sovereign interests in ensuring that state-law statutes of limitations are not unlawfully and unconstitutionally extended for many years pursuant to Petitioner's mistaken interpretation of 28 U.S.C. § 1367(d). State-law statutes of limitations, which the States regularly enact as part of their sovereign prerogatives, are "fundamental to a well-ordered judicial system." *Bd. of Regents v. Tomanio,* 446 U.S. 478, 487 (1980). "The period sufficient to constitute a bar to the litigation of stale demands, is a question . . . [that] belongs to the discretion of every government, consulting its own interest and convenience." *Sun Oil Co. v. Wortman*, 486 U.S. 717, 726 (1988) (citation omitted). In addition, the States have a core interest in this case because, under Petitioner's interpretation of Section 1367(d), state-created entities such as towns and cities, *see City of Trenton v. New Jersey,* 262 U.S. 182, 187 (1923), would be subject to stale state-law claims.

INTRODUCTION AND SUMMARY OF ARGUMENT

Section 1367(d) provides that the "period of limitations" for a supplemental state-law claim that has

been dismissed by a federal court "shall be tolled while the claim is pending [before the federal court] 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 States agree with the District's thorough, convincing argument that Section 1367(d) removes an otherwise applicable limitations bar "while the claim is pending and for a period of 30 days after it is dismissed." That is both consistent with the ordinary meaning of "toll" and the statutory context in which it appears. Resp. Br. 12–28.

Petitioner's contrary reading of Section 1367(d) would add months or *years* to state-law limitations periods, above and beyond the 30-day refiling window, needlessly raising grave constitutional, federalism-based concerns. *See* Pet. Br. 12. Specifically, under Petitioner's view, the state-law statute of limitations is extended not only "for a period of 30 days after [the federal] dismiss[al]," 28 U.S.C. § 1367(d), but also for potentially years more *in addition to those 30 days* depending upon how much time remained on the limitations period when the plaintiff filed in federal court. *See* Pet. Br. 12 ("A litigant who comes to federal court with one year left on the limitations period for her state-law claim will have one year remaining on that claim in the event it is dismissed, and that year begins running 30 days after the date of dismissal."). Petitioner's interpretation would also regularly displace state-law tolling periods for dismissed claims. Resp. Br. 22–25.

If this Court adopts Petitioner's erroneous interpretation of Section 1367(d)—which includes potentially years-long extensions of state-law limitations periods beyond the 30-day refiling window—this Court would need to address the grave constitutional, federalism-based implications of such a gratuitous provision. While this case involves the District, over which Congress has plenary authority, *see* U.S. Const. art. I, § 8, cl. 17; *see also United States v. Lopez*, 514 U.S. 549, 589 (1995) (Thomas, J., concurring), 28 U.S.C. § 1367 does not distinguish between claims brought under the District's laws and those brought under laws enacted by the States, *see* 28 U.S.C. § 1367(e). Indeed, the overwhelming majority of Section 1367(d)'s applications will involve state-law causes of action.

Contrary to Petitioner's argument, Pet. Br. 32–34, this Court's decision in *Jinks v. Richland County*, 538 U.S. 456 (2003), does nothing to resolve the serious constitutional, federalism-based issues with extending the 30-day refiling window by years. A review of the *Jinks* parties' briefing, the oral argument transcript, and the *Jinks* opinion itself reveals that the case was litigated and decided on the assumption that Section 1367(d) created only a "*de minimis* tolling period of 30 days in which the plaintiff could refile in state court if the limitations period had expired." Pet. Br., *Jinks v. Richland Cnty.*, 538 U.S. 456 (2003) (No. 02–258), 2002 WL 31769150, at *4–5. So far as the States have been able to determine, no party or Justice in *Jinks* ever suggested or considered Petitioner's

argument here that Section 1367(d) would, in addition to the 30-day refiling window, extend state limitations periods for months or years more.

Petitioner's interpretation of Section 1367(d) would render that provision in excess of Congress' authority under the Inferior Courts Clause and the Necessary and Proper Clause.

Petitioner's reading would fail the Necessary and Proper Clause's "necessary" component under the mandatory "means-end rationality" analysis. *See United States v. Comstock,* 560 U.S. 126, 134–35 (2010); *id.* at 150–53 (Kennedy, J., concurring in the judgment). As all parties agree, Section 1367(d), at a minimum, allows disappointed litigants to refile in state court "for a period of 30 days after [the federal] dismiss[al]." 28 U.S.C. § 1367(d). That 30-day window allows a plaintiff to refile her state-law claim in state court without those claims being "time barred." *Jinks*, 538 U.S. at 462. The only "ends" that Petitioner can articulate for her argument that Section 1367(d) adds months or years more to the 30-day refiling period is that this would give the plaintiff more time to mull her "strategic" options, in terms of what next steps (if any) to take in state court. Pet. Br. 14–15; *accord* Pet. Br. 28. But some plaintiffs' subjective desires for more time to make decisions regarding their state-law claims in state court is not meaningfully linked to any federal interest. And the "means" that Petitioner believes that Congress selected—adding potentially years to the 30-day refiling window—

would deeply disrupt state sovereign interests, especially given the common, well-known delays in modern federal litigation. Petitioner's means would thus needlessly require state litigants and state courts to deal with claims "too stale to be adjudicated certainly." *Sun Oil Co.,* 486 U.S. at 730.

Petitioner's understanding would also render Section 1367(d) an "[im]proper" means for carrying out Congress' authority under the Inferior Courts Clause. Under Petitioner's theory, Congress has the authority to rewrite state statutes of limitations, and displace state-law tolling periods for dismissed claims, to provide litigants with years more time to make certain "strategic decisions" regarding what to do with state-law claims in state court. That theory would permit Congress to extend for years, or even eliminate, state statutes of limitations without any meaningful federal interest. This would improperly interfere with the States' core, sovereign authority to set limitations periods, which authority "belongs to the discretion of every government, consulting its own interest and convenience." *Sun Oil Co.*, 486 U.S. at 726 (citation omitted).

For much the same reasons, to the extent that this Court were to conclude that Section 1367(d) is ambiguous as between the District's and Petitioner's interpretations, the constitutional avoidance doctrine, *Nat'l Fed'n of Indep. Bus. v. Sebelius* ("*NFIB*"), 567 U.S. 519, 562 (2012) (opinion of Roberts, C.J.), and the

federalism rule of clear statement, *see Gregory v. Ashcroft*, 501 U.S. 452, 460–61 (1991), would strongly favor the District's reading.

On the other hand, if this Court ultimately concludes that Petitioner's interpretation of Section 1367(d) is unambiguously correct, the proper answer to the Question Presented would be to sever off as invalid the portion that would be read as unconstitutionally extending the state limitations period for months or years, while leaving the "for a period of 30 days after [the federal] dismiss[al]" provision, 28 U.S.C. § 1367(d), undisturbed. This would be consistent with congressional intent, as it would keep state-law claims from automatically becoming "time barred." *Jinks*, 538 U.S. at 462.

Finally, the constitutional, federalism-based issues that the States discuss in this brief are fairly before this Court. While the District is not a State and thus cannot assert these arguments on its own behalf, *see supra* pp. 2–3; Resp. Br. 38 n.17, the District in its Brief in Opposition raised the serious federalism implications of Petitioner's interpretation for the States, analogizing to this Court's holding in *Raygor v. Regents of University of Minnesota*, 534 U.S. 533, 543 (2002), which also dealt with a constitutional, federalism-based challenge to an interpretation of Section 1367(d), Br. in Opp. 14 & n.4. The lower court also flagged the "federalism concerns" raised by Petitioner's position. Pet. App. 9a. And, of course, issues

of constitutional avoidance are inexorably intertwined with the merits of the constitutional argument itself. *See NFIB*, 567 U.S. at 562 (opinion of Roberts, C.J.) (applying constitutional avoidance only after concluding that a contrary reading of the statute would exceed Congress' Commerce Clause authority); *cf. Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 216 n.2 (1995) (where a "reading of [a] statute would avoid a constitutional question," and would favor affirmance, it is "prudent to entertain the argument," regardless of whether it was raised below). That is why Petitioner's brief extensively analyzed *Jinks*' Necessary and Proper Clause holding. *See* Pet. Br. 32–34.

ARGUMENT

I. This Court In *Jinks* Only Considered The Constitutionality Of The 30-Day-Window Interpretation Of Section 1367(d)

Petitioner attempts to evade the constitutional problems with her interpretation of Section 1367(d) by relying upon this Court's constitutional holding in *Jinks*. Pet. Br. 32–34. But *Jinks* did not consider whether Congress has the constitutional authority, under the Inferior Courts Clause and the Necessary and Proper Clause, to extend state statutes of limitations for months or years beyond a 30-day refiling window. To the contrary, all available evidence indicates that *Jinks* was decided under the assumption that Section 1367(d) provided for only a 30-day refiling period after a federal dismissal, preventing those

claims from becoming "time barred while pending in federal court." *Jinks*, 538 U.S. at 464.

The parties' briefing in *Jinks* rested upon the assumption that Section 1367(d) provided disappointed litigants with only a 30-day period to refile their claims after a federal dismissal. The petitioner in *Jinks*, who sought to defend Section 1367(d)'s constitutionality, argued that the provision created only a "*de minimis* tolling period of 30 days in which the plaintiff could refile in state court if the limitations period had expired." Pet. Br., *Jinks v. Richland Cnty.*, 538 U.S. 456 (2003) (No. 02–258), 2002 WL 31769150, at *4–5; *accord id.* at *33. The *Jinks* petitioner took the same position in her Petition for Certiorari, explaining that "Section 1367(d) merely saves—for a maximum excess period of 30 days—a preexisting lawsuit that must be refiled to allow the matter to be heard in a forum preferable to the State, namely, in its own courts," adding that "Congress conditioned the return of cases to state courts on the fact that there would be a small 30-day window in which those cases may be reasserted." Pet. for Writ of Cert., *Jinks v. Richland Cnty.*, 538 U.S. 456 (2003) (No. 02–258), 2002 WL 32101030, at *22–25. The *Jinks* respondent articulated the same view, describing Section 1367(d) as merely creating "a thirty-day tolling window." Resp. Br., *Jinks v. Richland Cnty.*, 538 U.S. 456 (2003) (No. 02–258), 2003 WL 145133, at *31. The United States, intervening to defend Section 1367(d)'s constitutionality, appeared to adopt the same reading: "[Section 1367(d)] ensur[es] that, if a plaintiff's

federal-court complaint (including a pendent state-law claim) is filed within the time period allowed by state law for asserting the state-law claim standing alone, the statute of limitations on the pendent claim *will not expire* during the pendency of the federal-court action." Br. of United States, *Jinks v. Richland Cnty.*, 538 U.S. 456 (2003) (No. 02–258), 2002 WL 31788564, at *22 (emphasis added).

This same understanding was on display at the *Jinks* oral argument. As one Justice observed, there did not appear to be any "significant difference" in terms of state courts being forced to entertain "stale claims" as between Section 1367(d) and in the "removal" context. Oral Arg. Tr. at 37–38, *Jinks v. Richland Cnty.*, 538 U.S. 456 (2003) (No. 02–258). But that would be true only if Section 1367(d) simply provided a 30-day refiling window, which would be roughly analogous to a federal district court remanding a removed case to state court. *See Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 351–52 (1988). Under Petitioner's reading of the statute, the consequences would be *entirely* different, given that Petitioner's interpretation would often extend the limitations period for *years*, leading to a deluge of additional stale claims in state court. *See infra* pp. 20–22.

When this Court in *Jinks* issued its decision holding that Section 1367(d) was within Congress' authority under the Necessary and Proper Clause, this Court gave no indication that it was addressing the

constitutionality of Congress adding years to the 30-day refiling period. The *Jinks* petitioner filed her state-law claims in state court 16 days after the federal court had dismissed those claims, 349 S.C. 298, 301, 563 S.E.2d 104, 105 (2002), within the 30-day window contemplated by the *Jinks* parties' understanding of Section 1367(d). This Court held that this 30-day provision fell within Congress' Necessary-and-Proper-Clause authority because, without such a provision, federal courts and plaintiffs would need to engage in unusual, duplicative, and costly stratagems to avoid the expiration of state-law claims immediately after a federal dismissal. *See* 538 U.S. at 463–64. As discussed in more detail below, the 30-day refiling period that the *Jinks* parties articulated comprehensively resolves all of these difficulties, *see infra* p. 15, by preventing supplemental claims from immediately becoming "time barred," 538 U.S. at 462. This Court gave no indication that Congress had the authority to gratuitously extend state-law statutes of limitations for additional periods of years, on top of the "period of 30 days" it expressly provided for.

II. Petitioner's Interpretation Of Section 1367(d) Would Render That Provision Unconstitutional

A. Congress' powers are "few and defined," while the powers of the States are "numerous and indefinite." *The Federalist No. 45*, p. 313 (James Madison) (J. Cooke ed. 1961). Article I, Section 8 of the Consti-

tution provides a list of specific areas over which Congress has authority, and this "enumeration presupposes something not enumerated." *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 195 (1824). The Tenth Amendment confirms where those unenumerated powers reside: "The powers not delegated to the United States by the Constitution . . . are reserved to the States respectively, or to the people." U.S. Const. amend. X. The reserved authority of the States extends "to all the objects . . . [that] concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State." *The Federalist No. 45*, p. 313 (James Madison) (J. Cooke ed. 1961); *see generally NFIB*, 567 U.S. at 535–36.

One of Congress' enumerated powers is the Inferior Tribunals Clause, which authorizes Congress "[t]o constitute tribunals inferior to the Supreme Court." U.S. Const. art. I, § 8, cl. 9. This Clause "plainly relates to" inferior *federal* courts only; "it has never been relied on for establishment of any other tribunals," including state courts. *Glidden Co. v. Zdanok,* 370 U.S. 530, 543 (1962) (opinion of Harlan, J.); *see* Anthony J. Bellia Jr., *Federal Regulation of State Court Procedures*, 110 Yale L.J. 947, 963 (2001) ("Congress has no corresponding power in the Constitution to constitute state courts qua state courts."). State courts "emanate from a different authority, and are the creatures of a distinct government," so they could not possibly be "inferior" to federal tribunals. *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 97 (1807).

Under the Necessary and Proper Clause, Congress has authority to "make all Laws which shall be necessary and proper for carrying into Execution" its enumerated powers. U.S. Const. art. I, § 8, cl. 18. This Clause is "'merely a declaration, for the removal of all uncertainty, that the means of carrying into execution those [powers] otherwise granted are included in the grant.'" *Kinsella v. U.S. ex rel. Singleton,* 361 U.S. 234, 247 (1960) (quoting VI *Writings of James Madison* 383 (G. Hunt ed. 1906)); *see also The Federalist No. 33*, p. 204 (Alexander Hamilton) (J. Cooke ed. 1961) (explaining that the Necessary and Proper Clause is "only declaratory of a truth, which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government, and vesting it with certain specified powers").

This Court regularly scrutinizes federal statutes for compliance with both the "necessary" and the "proper" components of the Necessary and Proper Clause. *See, e.g.*, *Comstock,* 560 U.S. at 134–35; *NFIB*, 567 U.S. at 558–61 (opinion of Roberts, C.J.). The "necessary" aspect of the Clause includes a "means-end rationality" analysis, which considers "whether the means chosen are reasonably adapted to the attainment of a legitimate end under the [enumerated power]." *Comstock,* 560 U.S. at 134–35 (citation omitted). "[M]eans-end rationality" does not invoke the minimal rationality analysis from some other areas of this Court's jurisprudence, such as substantive due process analysis of economic regulations.

See id. at 150–53 (Kennedy, J., concurring in the judgment). Rather, the Necessary and Proper Clause demands a meaningful inquiry into both the ends sought and means used to obtain those ends, including the federalism-related implications of those means. *See id.* Meanwhile, a law is "proper" if it is "consist[ent] with the letter and spirit of the constitution." *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 421 (1819). A statute is improper if that law "invade[s] state sovereignty or otherwise improperly limit[s] the scope of powers that remain with the States." *Comstock*, 560 U.S. at 144 (citation omitted); *see NFIB*, 567 U.S. at 559–60 (opinion of Roberts, C.J.).

This Court in *Jinks* applied this Necessary-and-Proper-Clause framework to the 30-day-refiling-period view of Section 1367(d). *See* 538 U.S. at 462–64; *see also supra* pp. 9–10. This Court held that Section 1367(d) was "necessary" to carrying out Congress' authority under the Inferior Courts Clause to protect the "due administration of justice in federal court[s]" by "promot[ing] [their] fair and efficient operation." 538 U.S. at 462–63. This Court explained that Section 1367(d) "provides an alternative to the unsatisfactory options that federal judges faced when they decided whether to retain jurisdiction over supplemental state-law claims that might be time barred in state court" and "eliminates a serious impediment to access to the federal courts on the part of plaintiffs pursuing federal" claims by no longer forcing them to choose between "run[ning] the risk that the federal court would

dismiss the state-law claims," "abandon[ing] their right to a federal forum," or filing actions in both federal and state court, thereby increasing their litigation costs. *Id.* at 462–64. Further, *Jinks* held that the 30-day refiling window is a "'proper' exercise of Congress' Article I powers." *Id.* at 464. In reaching that conclusion, this Court rejected the *Jinks* respondent's view that any congressional tolling of a state statute of limitations is improper because that would regulate "state-court 'procedure.'" *Id.* at 464–65.

B. Petitioner's reading of Section 1367(d) as extending state statutes of limitations not only for "a period of 30 days after [ ] dismiss[al]," 28 U.S.C. § 1367(d), but for months or years beyond those 30 days, goes far beyond what this Court considered and approved in *Jinks*, *see supra* Part I. All parties agree that Section 1367(d)'s text allows a disappointed plaintiff to refile her dismissed claim in state court for (at a minimum) "a period of 30 days after [its federal] dismiss[al]." 28 U.S.C. § 1367(d). Under Petitioner's interpretation, however, this refiling period lasts for *potentially years on top of that 30 days*. And Petitioner concedes that a 30-day period, standing alone, "guarantees" a plaintiff the right to refile in state court after a federal dismissal. Pet. Br. 27. The constitutional question is thus whether Petitioner's interpretation, which provides an additional and gratuitous extension of time to refile for months or even years in addition to the 30-day window (while also regularly overriding state-law tolling periods for dismissed claims, Resp. Br. 22–25), would be within

Congress' authority to enact. As explained below, Petitioner's reading renders Section 1367(d) neither "necessary" nor "proper."

1. *Necessary*. Plaintiff's reading of Section 1367(d) is not "tailored" to carrying out any enumerated power, and would fail the Necessary and Proper Clause's "means-ends" analysis. *See Comstock*, 560 U.S. at 134–35, 148; *see id.* at 150–52 (Kennedy, J., concurring in the judgment).

The "ends" that Petitioner claims that her interpretation forwards are not meaningfully connected to any interests under the Inferior Courts Clause. The allegedly salutary ends that Petitioner identifies as flowing from her interpretation are giving some plaintiffs whose state-law claims have been dismissed by federal courts additional time beyond the 30-day refiling period to mull certain "strategic decisions" regarding whether and how to proceed with their state-law claims in state court. Pet. Br. 14–15; *accord* Pet. Br. 28. But these speculative, non-federal ends are not meaningfully linked to any interest under the Inferior Courts Clause, such as protecting the "due administration of justice in federal court," by "promot[ing] fair and efficient operation." *Jinks*, 538 U.S. at 462–63. After all, simply permitting the plaintiff to refile "for a period of 30 days after [ ] dismiss[al]," 28 U.S.C. § 1367(d), already eliminates entirely the difficult choices that federal courts and plaintiffs previously faced, *Jinks*, 538 U.S. at 459, 463–65. At a minimum, any tangential federal ends

advanced by Petitioner's understanding would be insubstantial when compared to the serious sovereignty-based harms from mangling state limitations periods by extending those periods for years beyond "30 days after [ ] dismiss[al]." 28 U.S.C. § 1367(d).

The "means" that Petitioner believes Congress chose to achieve these insignificant, non-federal ends—extending state statutes of limitations potentially for years beyond the 30-day refiling window while also displacing the States' own tolling provisions for dismissed claims—are deeply disruptive to the States' sovereign interests. As discussed in more detail below, *see infra* pp. 22–25, setting state-law limitations periods is a core sovereign right, which "belongs to the discretion of every government, consulting its own interest and convenience." *Sun Oil Co.*, 486 U.S. at 726 (citation omitted). Statutes of limitations are "not simply technicalities"; they are "fundamental to a well-ordered [state] judicial system." *Tomanio*, 446 U.S. at 487. States enact limitations periods to protect litigants and their court systems. *See Sun Oil,* 486 U.S. at 730. Litigation that occurs too long after the disputed conduct concludes forces courts and litigants to deal with stale claims. *See Sun Oil Co.,* 486 U.S. at 730; *R.R. Telegraphers v. Ry. Express Agency, Inc.*, 321 U.S. 342, 348–49 (1944).

Petitioner's means are especially disruptive to the States' sovereign interests because common delays in

modern federal litigation often stall for years the refiling of claims in state court.[1]

"Disposition time for civil cases or, more specifically, undue delay endures as a problem that hamstrings the administration of civil justice." Michael Heise, *Justice Delayed?: An Empirical Analysis of Civil Case Disposition Time*, 50 Case W. Res. L. Rev. 813, 818 (2000); *see* Carrie E. Johnson, Comment, *Rocket Dockets: Reducing Delay in Federal Civil Litigation*, 85 Cal. L. Rev. 225, 264 (1997). This has led to "congested civil dockets in federal courts." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 56 (1993). "Despite [ ] recent rule changes, complaints about . . . delays . . . in [federal] civil litigation

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[1] Of course, the length of litigation is not a modern phenomenon. Charles Dickens' *Bleak House* famously describes a lawsuit that had "become so complicated, that no man alive knows what it means," and that, with its "legion" pleadings, "still drags its dreary length before the Court." Charles Dickens, *Bleak House* 5–6 (Wordsworth ed. 1993) (1853). Dickens was only "reworking long familiar themes." Neil M. Gorsuch, *Law's Irony*, 37 Harv. J.L. & Pub. Pol'y 743, 744 (2014). Before him, it was Hamlet who bemoaned "the law's delay." William Shakespeare, *Hamlet*, act 3, sc. 1. In Germany, Johann Wolfgang von Goethe gave up on the law "after witnessing thousands of aging cases waiting vainly for resolution in the courts of his time." Gorsuch, *supra*, at 744 (citation omitted). And "Demosthenes plied similar complaints 2000 years ago." *Id.* These accounts "resonate[ ] today . . . because the law's promise of deliberation and due process sometimes—ironically—invites the injustices of delay and irresolution." *Id.* at 743.

have persisted." Judicial Conference Advisory Committee on Civil Rules and the Committee on Rules of Practice and Procedure, *Report to the Chief Justice of the United States on the 2010 Conference on Civil Litigation* 1 (2010), *available at* https://goo.gl/5Y2qG9. The Judicial Conference of the United States thus held a symposium in 2010 to "consider[ ] ways to address the problems of costs and delays in the federal civil justice system," which prompted some reform. *Id*.

Still, long delays in federal civil litigation continue and increase. *See* Joe Palazzolo, *In Federal Courts, the Civil Cases Pile Up*, Wall St. J. (Apr. 6, 2015), *available at* https://goo.gl/5XMc25. In the spring of 2015, "[m]ore than 330,000 [federal civil] cases were pending as of [the prior fall]—a record—up nearly 20% since 2004." Palazzolo, *supra*. And "[t]he number of cases awaiting resolution for three years or more exceeded 30,000 for the fifth time in the past decade." *Id.*; *see also* American College of Trial Lawyers Task Force on Discovery and Civil Justice and the Institute for the Advancement of the American Legal System, *Reforming Our Civil Justice System: A Report on Progress & Promise* 13 (2015), *available at* https://goo.gl/Kpr2kt (reporting continued "delay and expense in our civil justice system"). Over the twelve-month period ending in March of 2017, for example, 61,011 civil cases pending in federal district courts—17 percent of the civil docket—were over 3 years old. U.S. Courts, *United States District Courts—National Judicial Caseload Profile* 1, *available at*

https://goo.gl/yFWgS6 (hereinafter "2017 District Court Dockets").

Supplemental state-law claims are common in these oft-long-running federal cases, a reflection of the "overlap between state . . . and federal" law. *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 663 (1978). In prisoner litigation—which has spiked since 1999, Palazollo, *supra*, *see 2017 District Court Dockets* 1 (26 percent of civil cases are "[p]risoner [p]etitions," and 13 percent are "[c]ivil [r]ights" actions, of which many are prisoner suits)—state-law claims are common. *See, e.g.*, *Lacour v. Duckworth*, No. 17-CV-00453, 2017 WL 3313702, at *1 (S.D. Ill. Aug. 3, 2017) (supplemental claim in prisoner case); *Wilson v. Barnes*, No. 07-5016, 2007 WL 3232572, at *4 (D.N.J. October 31, 2007) (same); Pet. App. 3a (supplemental civil-rights claim); *Pettis v. Brown Grp. Retail, Inc.*, 896 F. Supp. 1163, 1164 (N.D. Fla. 1995) (same). Likewise, litigants frequently plead supplemental claims in personal-injury and product-liability cases, *see, e.g.*, *In re Ford Motor Co. Ignition Switch Prod. Liab. Litig.*, 19 F. Supp. 2d 263, 266 (D.N.J. 1998); *Vidovic v. Losinjska Plovidba Oour Broadarstvo*, 868 F. Supp. 691, 695 (E.D. Pa. 1994), which categories of lawsuits make up 13 percent of federal civil cases, *2017 District Court Dockets* 1. The same is true of labor suits (6 percent of federal civil docket), other tort cases (7 percent), and intellectual-property litigation (almost 4 percent). *See 2017 District Court Dockets* 1; *Lindsay v. Gov't Emps. Ins. Co.*, 448 F.3d 416, 418 (D.C. Cir. 2006) (supplemental labor-law claims); *Ansoumana v.*

Gristede's Operating Corp., 201 F.R.D. 81, 89 (S.D.N.Y. 2001) (same); *Jinks*, 538 U.S. at 460 (supplemental tort claim); *Javid v. Scott*, 913 F. Supp. 223, 229 (S.D.N.Y. 1996) (same); *Marshall Tucker Band, Inc. v. M T Indus., Inc.*, No. CV 7:16-00420, 2017 WL 784761, at *5 (D.S.C. Mar. 1, 2017) (supplemental trademark claims); *Blakeman v. Walt Disney Co.*, 613 F. Supp. 2d 288, 315 (E.D.N.Y. 2009) (supplemental claims in copyright case).

In light of these realities, the "means," *Comstock*, 560 U.S. at 134–35, of Petitioner's interpretation of Section 1367(d) would impose extremely serious harms upon the sovereign States, undermining their authority to protect state litigants and courts from stale claims. Petitioner concedes that Section 1367(d)'s 30-day period "guarantees a plaintiff who is unsuccessful in federal court the opportunity to bring a claim in state court." Pet. Br. 27. Yet Petitioner's reading has often added *years* to this period in jurisdictions where that reading has prevailed. *See, e.g.*, *Turner v. Knight*, 957 A.2d 984, 985–86 (Md. 2008) (state-law statute of limitations is 3 years; limitations period extended to 6.9 years, including 2 years after federal dismissal); *Terrell v. Larson*, No. A07-870, 2008 WL 2168348, at *11 (Minn. Ct. App. May 27, 2008) (state-law statute of limitations is 3 years; limitations period extended to 6.6 years, including 2 years after federal dismissal). This same result would have obtained if Petitioner's approach had been applied in jurisdictions where the District's interpretation has controlled. *See, e.g.*, *Berke v. Buckley Broad.*

Corp., 821 A.2d 118, 121 (N.J. Super. Ct. App. Div. 2003) (state-law statute of limitations is 6 years; limitations period under Petitioner's view would have been 12 years, including 5.6 years after federal dismissal); *Krause v. Textron Fin. Corp.*, No. 42006CA219, 2007 WL 8054628, at *1–2 (Fla. Cir. Ct. May 9, 2007) (order granting motion to dismiss) (state-law statute of limitations is 5 years; limitations period under Petitioner's view would have been 10.7 years, including 4.1 years after federal dismissal); *Harter v. Vernon*, 532 S.E.2d 836, 840 (N.C. Ct. App. 2000) (state-law statute of limitations is 3 years; limitations period under Petitioner's view would have been 6.2 years, including 2.5 years after federal dismissal); *Norex Petroleum Ltd. v. Blavatnik*, 22 N.Y.S.3d 138 (Table), at *3–4, *14 (N.Y. Sup. Ct. 2015) (state-law statute of limitations is 2 years; limitations period under Petitioner's view would have been 11.1 years, including 2 years after federal dismissal); *Gottschalk v. Woods*, 766 S.E.2d 130, 132 & n.3 (Ga. Ct. App. 2014) (state-law statute of limitations is 2 years; limitations period under Petitioner's view would have been 4.2 years, including 1.8 years after federal dismissal). And the longer the state limitations period is extended, the greater the harm is to state interests in avoiding state courts finding themselves awash in claims "too stale to be adjudicated certainly." *Sun Oil Co.,* 486 U.S. at 730.

In all, given that Petitioner is unable to articulate how her interpretation is "tailored" to serving any meaningful "ends" under the Inferior Courts Clause,

Comstock, 560 U.S. at 148, and given the serious sovereignty-based harms that this interpretation's "means" would impose upon the States, *id.* at 134–35, Congress would have no authority to enact Petitioner's understanding of Section 1367(d).

2. *Proper*. Petitioner's reading would also make Section 1367(d) an "[im]proper" method for carrying out congressional powers because it would "invade state sovereignty [and] otherwise improperly limit the scope of powers that remain with the States." *Comstock*, 560 U.S. at 144 (citation omitted); *see NFIB*, 567 U.S. at 559–60 (opinion of Roberts, C.J.).

Under our constitutional system, States have a sovereign prerogative to control state-law litigation in state courts, *Ex parte Bollman*, 8 U.S. (4 Cranch) at 97; *Felder v. Casey*, 487 U.S. 131, 138 (1988), including setting—and providing for any tolling of—statutes of limitations for state-law causes of action. "[T]he time after which suits or actions shall be barred, has been from a remote antiquity fixed by every [government], in virtue of that sovereignty by which it exercises its legislation for all persons and property within its jurisdiction." *McElmoyle v. Cohen*, 38 U.S. (13 Pet.) 312, 327 (1839). Hence "'[t]he period sufficient to constitute a bar to the litigation of [stale] demands, is a question . . . which belongs to the discretion of every government, consulting its own interest and convenience.'" *Sun Oil Co.*, 486 U.S. at 726 (quoting 2 J. Kent, *Commentaries on American Law* 462–63 (2d ed. 1832)); *see also Rummel v. Estelle,* 445

U.S. 263, 303 (1980) (Powell, J., dissenting) ("[T]he Constitution recognizes and preserves the autonomy and independence of the States—independence in their legislative and independence in their judicial departments." (citation omitted)). "[L]aws limiting the time of bringing suit, constitute a part of the lex fori of every country: they are laws for administering justice; one of the most sacred and important of sovereign rights and duties: and a restriction which must materially affect both legislative and judicial independence." *Hawkins v. Barney's Lessee*, 30 U.S. (5 Pet.) 457, 466 (1831).

Far from "simpl[e] technicalities," limitations periods are "fundamental to a well-ordered [state] judicial system," *Tomanio*, 446 U.S. at 487, striking a critical balance between competing state policy interests, *see United States v. Marion,* 404 U.S. 307, 323 n.14 (1971) (statutes of limitations "represent a legislative judgment about the balance of equities"). Competing against their interest in keeping court doors open, States balance several other important goals. States have an interest in "determining when" claims created under their law are "too stale to be adjudicated certainly"; which interest alone "suffices to give [them] legislative jurisdiction to control the remedies available in [their] courts by imposing statutes of limitations." *Sun Oil Co.,* 486 U.S. at 730. Relatedly, States have a "substantive interest in giving individuals repose from ancient breaches of law." *Id.* at 736 (Brennan, J., concurring in part and concurring in the judgment).

States also craft statutes of limitations with an eye toward "regulating the work load of [their] courts." *Sun Oil Co.,* 486 U.S. 730; *see also id.* at 736 (Brennan, J., concurring in part and concurring in the judgment). As it is, state-court dockets are extremely overloaded. A recent study by the National Center for State Courts confirms "the longstanding criticism that the civil justice system [in the states] takes too long and costs too much," which means that "many litigants with meritorious claims and defenses are effectively denied access to justice in state courts because it is not economically feasible to litigate those cases." National Center for State Courts Civil Justice Initiative, *The Landscape of Civil Litigation in State Courts* v (2015), *available at* https://goo.gl/MiWoCB. Systemic delay, in turn, causes a decline in confidence in the state courts, further discouraging those with strong claims from seeking judicial redress in the first place. *See Interim Report on the Joint Project of the American College of Trial Lawyers Task Force on Discovery and the Institute for the Advancement of the American Legal System* A-6 (2008), *available at* https://goo.gl/UayLaU (reporting that over 80 percent of the American College of Trial Lawyers say that delay, in addition to discovery costs, prevents truly wronged parties from filing lawsuits). States have sovereign reasons to prevent this problem from worsening, including to ensure that stale cases do not increasingly crowd out meritorious ones.

Petitioner's theory in this case—that Congress' authority under the Inferior Courts Clause and the

Necessary and Proper Clause is capacious enough to allow it to adopt any measure that makes a former federal litigant's state-court-related "strategic decision-[making]" easier, Pet. Br. 14–15—would grant to Congress a plenary power over state statutes of limitations, undermining core state sovereignty interests. *See NFIB*, 567 U.S. at 559 (opinion of Roberts, C.J.) (the Necessary and Proper Clause should not be read to "license the exercise of any great substantive and independent powers" (citation omitted)). This would be "[im]proper" because it would "invade state sovereignty [and] otherwise improperly limit the scope of powers that remain with the States." *Comstock*, 560 U.S. at 144 (citation omitted). Put another way, if this Court were to hold that the fig leaf of giving plaintiffs additional time beyond the already provided 30-day refiling period to ponder their future state-court "strateg[y]" thereby permits Congress to extend state-law limitations periods for *years*, there would be no stopping point to what Congress could do to state statutes of limitations. Nothing would prevent Congress from extending state limitations periods by decades, or even from extinguishing them altogether, as that would obviously give former federal litigants even more time to consider their state-court strategies. The States would have lost an aspect of their "sovereignty," which has belonged to "every" government "from a remote antiquity." *McElmoyle*, 38 U.S. (13 Pet.) at 327. This "sacred and important [ ] sovereign right[ ] and dut[y]" could then be removed from States at unilateral congressional whim, *Hawkins*, 30 U.S. (5 Pet.) at 466, no matter how flimsy the reason.

Contrary to Petitioner's arguments, Pet. Br. 32–34, nothing in *Jinks* or *Stewart v. Kahn*, 78 U.S. (11 Wall.) 493 (1870), refutes the conclusion that Petitioner's interpretation would make that provision "[im]proper." *Jinks* rejected only the respondent's bright-line argument that it was improper for Congress ever to alter state-law statutes of limitations—even to create a *de minimis* 30-day refiling period—because that would regulate "state-court 'procedure.'" 538 U.S. at 464–65. The States' argument here is different in kind; it is improper for Congress to assert plenary authority over state-law statutes of limitations, gratuitously extending those limitations for additional years without any meaningful federal justification. And *Stewart* held that Congress had authority to extend state-law limitations periods in light of the special circumstances of the Civil War. 78 U.S. (11 Wall.) at 507. That statute was consistent with this Court's prior equitable holding that, even "independent of [any] Congress[ional] Act, . . . statutes of limitations were [equitably] tolled for 'the time during which the courts in the States lately in rebellion were closed to the citizens of the loyal States.'" *Stogner v. California*, 539 U.S. 607, 620 (2003) (citing *Hanger v. Abbott*, 73 U.S. (6 Wall.) 532, 539–42 (1868)). More generally, measures that may be "proper" because of the exigencies of war, to forward Congress' war powers, *Stewart*, 78 U.S. (11 Wall.) at 507, are not thereby automatically rendered "proper" when carrying out other congressional powers allegedly supported by entirely different justifications.

C. If this Court adopts Petitioner's interpretation of Section 1367(d), *but see supra* pp. 1–2; Resp. Br. 12–37, and then agrees with the States that this renders the operation of Section 1367(d) unconstitutional, this Court should still answer the Question Presented in the District's favor. In particular, the unconstitutionality of Petitioner's interpretation of Section 1367(d) should be resolved by invalidating the portion of the statute that would be read as extending the limitations period for additional months or years, while leaving in place the "period of 30 days after [federal] dismiss[al]" provision. This would carry out congressional intent to prevent the loss of state claims by giving plaintiffs a 30-day refiling window, *Jinks*, 538 U.S. at 462, and would thus be appropriate under this Court's severability doctrine, *see Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 684–85 (1987); *accord Free Enterprise Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 508–09 (2010); *see* Resp. Br. 28–32 (explaining that, in enacting Section 1367(d), Congress intended to adopt a 30-day period to refile after a federal dismissal).

III. For Many Of The Same Reasons, The Constitutional Avoidance Doctrine And Federalism Clear-Statement Rule Require The 30-Day-Window Interpretation

If this Court were to conclude that Section 1367(d)'s text is ambiguous as between the District's interpretation and Petitioner's reading, then the con-

stitutional, federalism-based considerations discussed above would require adopting the District's view that Section 1367(d) simply provides a 30-day refiling period.

A. This follows from two closely related canons of statutory construction. *See* Resp. Br. 37–49.

First, under the constitutional avoidance doctrine, "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988). This doctrine derives from the respectful understanding that, because "Congress, like this Court, is bound by and swears an oath to uphold the Constitution[,] [t]he courts will . . . not lightly assume that Congress intended to . . . usurp power constitutionally forbidden it." *Id.* at 575. The avoidance doctrine can be applied after finding that one of two possible constructions of a statute would, in fact, "violate[ ] the Constitution," *NFIB*, 567 U.S. at 562 (opinion of Roberts, C.J.) (citing *Blodgett v. Holden*, 275 U.S. 142, 148 (1927) (opinion of Holmes, J.)); *Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804), or to avoid "needlessly confronting" a difficult constitutional issue in the first place, *Edward J. DeBartolo*, 485 U.S. at 575; *accord Bartlett v. Strickland*, 556 U.S. 1, 21 (2009); *see generally* Adrian Vermeule, *Saving Constructions*, 85 Georgetown L.J. 1945, 1949 (1997) ("[T]he former [ap-

proach] requires the court to determine that one plausible interpretation of the statute would be unconstitutional, while the latter requires only a determination that one plausible reading might be unconstitutional.").

Second, under the federalism clear-statement rule, "it is incumbent upon the federal courts to be certain of Congress' intent before finding that federal law overrides the usual constitutional balance of federal and state powers." *Bond v. United States*, 134 S. Ct. 2077, 2089 (2014) (citation omitted). Under this rule, if Congress intends to intrude upon the States' sovereign powers, it must make that intent "clear and manifest," such that Congress' intention is "unmistakably clear in the language of the statute." *See Gregory*, 501 U.S. at 460–61. This rule embodies "an acknowledgment that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Id.* at 461.

This Court's decision in *Raygor v. Regents of University of Minnesota*, 534 U.S. 533, also dealing with Section 1367(d), illustrates the proper operation of these two principles, which are often inexorably intertwined when the constitutional problem relates to a federal intrusion upon the States' sovereign prerogatives. *Raygor* considered whether Section 1367(d) tolled state-law statutes of limitations for supplemental claims brought against nonconsenting States in federal court, where those federal lawsuits were thereafter dismissed under the Eleventh Amendment. In holding that Section 1367(d) does not apply

to claims against such nonconsenting States, this Court explained that "[w]hen 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." *Id.* at 543 (citation omitted). Linking this clear statement rule to the canon of constitutional avoidance, *Raygor* added that "allowing federal law to extend the time period in which a state sovereign is amenable to suit in its own courts at least affects the federal balance in an area that has been a historic power of the States" and may even "raise[ ] a serious constitutional doubt or problem." *Id.* at 544.

B. Both the constitutional avoidance doctrine and the clear statement rule require the District's interpretation of Section 1367(d).

With regard to the avoidance doctrine, there is (at the very least) serious constitutional doubt as to the constitutionality of Petitioner's reading of Section 1367(d), and that reading would, in fact, render the statute unconstitutional. As discussed in detail above, Petitioner's interpretation is not "necessary" to achieving any interests under the Inferior Courts Clause. The "ends" that Petitioner believes are served by her understanding—allowing plaintiffs more time, beyond a 30-day refiling period, to consider "strategic" options for future state-court litigation—are not grounded in any meaningful federal interests. *See supra* pp. 15–16. And the "means" that Petitioner believes Congress selected to carry out these non-federal ends—adding years beyond the 30-day refiling pe-

riod—would be disruptive to States' sovereign interests. *See supra* pp. 16–17, 20–22. Petitioner's interpretation would also render the statute unconstitutionally "[im]proper" because that interpretation would assign to Congress plenary authority over state statutes of limitations. *See supra* Part II.B.2. On the other hand, this Court in *Jinks* has already held that the District's understanding of Section 1367(d) as merely providing a 30-day refiling period is within Congress' authority under the Necessary and Proper Clause. *See supra* Part I.

Similar considerations require the District's interpretation under the federalism clear-statement rule. Each State has a vital sovereign interest in determining its own statutes of limitations. State-law limitations periods are not mere technical minutiae, but are the result of legislative policy judgments about the proper balance between competing fairness and efficiency interests. *Marion,* 404 U.S. at 322 n.14. They are integral parts of the causes of action to which they apply, and when a "cause of action is created by local law, . . . [i]t accrues and comes to an end when local law so declares." *Ragan v. Merchs. Transfer & Warehouse Co.*, 337 U.S. 530, 533 (1949). Enacting and enforcing the "limiting [of] the time of bringing suit . . . [is] *one of the most sacred and important of sovereign rights and duties*." *Hawkins*, 30 U.S. (5 Pet.) at 466 (emphasis added). For that reason, federal extension of state limitations periods for years, as Petitioner's interpretation would require, unquestionably "interfere[s]" with the States' "sover-

eign powers," thus requiring (at a minimum) "unmistakably clear . . . language [in] the statute." *Gregory*, 501 U.S. at 460–61 (citation omitted). On the other hand, the District's interpretation is respectful to state sovereignty, as it merely provides a refiling window no longer than necessary to keep state-law claims from automatically becoming "time barred." *Jinks*, 538 U.S. at 462.

CONCLUSION

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

Respectfully submitted,

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