No. 25-1352

IN THE

Supreme Court of the United States

DEBORAH KOLLMAN, AS EXECUTOR OF THE ESTATE OF STEPHANIE A. SMITH,

Petitioner,

v.

MERCY HEALTH-CLERMONT HOSPITAL, LLC, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF OHIO, CLERMONT COUNTY

BRIEF FOR RESPONDENT MERCY HEALTH-CLERMONT HOSPITAL, LLC, IN OPPOSITION

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QUESTION PRESENTED

When a claim over which the federal district court has supplemental jurisdiction under 28 U.S.C. §1367(a) is dismissed, Subsection (d) provides: "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's writ for certiorari presents the Question on the basis that the dismissed claim comes from a case that is timely filed in state court but is removed to federal district court after the statute of limitations has expired, and asks whether the tolling in subsection (d) takes effect when a state law claim with potential related state law claims against federal actors is filed in state court, <u>or</u> is it tolled when upon removal the case is first pending in the district court under its supplemental jurisdiction?

Due to the complicated procedural history below, Petitioner's Question Presented for Review mistakenly identifies how this appeal will be resolved. As applied to the procedural history of this case, the Question Presented for Review is whether Section 1367(d) rescues a voluntarily dismissed state law claim asserted by the plaintiff in an amended complaint filed after the statute of limitations has already expired on that state law claim.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Appellee, Mercy Health-Clermont Hospital, LLC ("Mercy"), makes the following disclosure: Mercy is a domestic nonprofit limited liability company registered in the State of Ohio. Bon Secours Mercy Health, Inc. (hereinafter "BSMH"), a tax-exempt Maryland non-stock corporation, is the parent company for, and sole member of, Mercy Health Cincinnati, LLC (hereinafter "MHC"). MHC, a domestic nonprofit limited liability company registered in the State of Ohio, is the parent company for, and sole member of, Mercy. No publicly-held corporation owns 10% or more interest in BSMH, MHC or Mercy.

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RESPONDENT'S STATEMENT OPPOSING PETITIONER'S STATEMENT OF JURISDICTION

Respondent disagrees with Petitioner that jurisdiction is properly invoked under 28 U.S.C. § 1257. This Court is a court of limited jurisdiction, and its appellate jurisdiction is governed by U.S. Const. Art. III, § 2, Cl. 2 and such acts of Congress authorizing the Court's appellate jurisdiction. *Ex parte McCardle*, 74 U.S. 506, 513 (1869). The statute cited by Petitioner provides that a final judgment rendered by the highest court of a State may be reviewed by the Supreme Court by writ of certiorari, *inter alia*, "where the *validity* of a treaty or statue of the United States is drawn into question." 28 U.S.C. § 1257. (Emphasis added.) In considering whether jurisdiction had been properly invoked under Section 1257, this Court held that "'the validity of a statute,' as these words are used in this act of Congress, refers to the power of Congress to pass the particular statute at all, and not to mere judicial construction as contradistinguished from a denial of the legislative power." *Balt. & P. R. Co. v. Hopkins*, 130 U.S. 210, 226 (1889).

Petitioner does not call into question the power of Congress to pass a statute which tolls a limitations period when supplemental jurisdiction is exercised under 28 U.S.C. § 1367. Rather, Petitioner argues in the "Questions Presented" that the Ohio state appellate court improperly interpreted the language of Section 1367 to limit the period of tolling to commence when the claim is pending in federal court rather than when a plaintiff initially files the claim in state court. Petitioner does not contest the "validity" of the statute but rather raises a matter of "mere judicial construction" of a statute. Such a question does not invoke this Court's jurisdiction under Section 1257.

By contrast, this Court had jurisdiction over a case involving the same statute, 28 U.S.C. § 1367, in *Artis v. District of Columbia*, 583 U.S. 71 (2018). In that case, the validity of Section 1367 was drawn into question by the respondent, District of Columbia, which raised a constitutional question that Congress exceeded its authority:

> [W]e turn to the District's contention that the stop-the-clock interpretation of § 1367(d) raises a significant constitutional question: Does the statute exceed Congress' authority under the Necessary and Proper Clause, Art. I, § 8, cl. 18, because its connection to Congress' enumerated powers is too attenuated or because it is too great an incursion on the States' domain?

Id. at 89. Petitioners raise no such question of the power or authority of Congress to pass the tolling statute in question. Hence, there is no basis under 28 U.S.C. § 1257 upon which the Ohio Supreme Court decision may be reviewed by this Court. "'Jurisdiction is power to declare the law,' and '[w]ithout jurisdiction the court cannot proceed at all.'" *A.A.R.P. v. Trump*, 605 U.S. 91, 100 (2025) citing *McCardle*, 74 U.S. 506 (1869).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1367 provides:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental

jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

> (1) the claim raises a novel or complex issue of State law,
>
> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) 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.

(e) As used in this section, the term “State“ includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Ohio Rev. Code § 2305.19(A) provides:

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.

INTRODUCTION

The path to this Court's doorstep has been nothing if not tortuous. Petitioner Deborah Kollman, as executor of the Estate of Stephanie Smith ("Petitioner"), has filed three separate actions, each based on the very same facts and including the very same allegations of medical negligence. Petitioner amended her pleadings on multiple occasions, dismissing and reasserting her claims against the various defendants along the way.

The courts below found that the tolling provision in 28 U.S.C. § 1367(d) did not toll the statute of limitations as to the first case, which was timely filed in state court, because the one-year limitations period expired prior to the removal of the action to federal court. There was, as the Twelfth Judicial District of Ohio Court of Appeals concisely stated, "quite simply, no limitations period left to toll under Section 1367(d)." Pet. App. at 13(a). And because the limitations period expired before removal of the first case, neither of the two subsequent cases were timely filed.

Contrary to Petitioner's suggestion to the Court that "clarification" of the tolling provision is necessary, this Court has clearly articulated the operation of the statute in *Artis v. District of Columbia*, 583 U.S. 71 (2018). Petitioner was not rendered "out of luck" through the straightforward application of Section 1367 by the courts below. Petitioner had a state law remedy to timely refile had she not dismissed the original action and pursued claims in a second action also filed after the limitations had expired. The result here turns entirely on the singular and convoluted procedural circumstances of this case, driven entirely by Petitioner's own litigation strategy and desire to forum shop. Petitioner now seeks certiorari and disingenuously asks that the Court re-write the plain language of Section 1367 to solve a problem of her own making. There is no compelling reason for the Court to grant the petition for certiorari.

COUNTER-STATEMENT OF THE CASE

Petitioner created a morass of pending state and federal cases and complaints, all of which highlight the unsuitable nature of her petition for grant of certiorari. Stephanie Smith ("Smith") was seen in the Emergency Department at Mercy Health-Clermont Hospital ("Mercy" or "Respondent") on October 26, 2019, for left knee pain. Smith claims she sustained injury to the brachial artery in her right arm while having her blood drawn by Roger Chang, M.D. ("Chang") at Healthsource of Ohio Family Practice ("Healthsource"), both of which are unrelated to Respondent. The totality of the care in question spanned from October 26, 2019, through the completion of her surgery and related hospitalization on November 9, 2019. Thus, the latest date on which she could have asserted a medical claim under Ohio law for these facts was November 9, 2020. *See* Ohio Rev. Code § 2305.113(A).

<u>Federal Tort Claims Act Filing.</u> On October 21, 2020, knowing that her state law negligence-based claims against Healthsource and Chang (the "Federal Actors") were subject to and governed by the Federal

Tort Claims Act (28 U.S.C. § 2671, *et seq.*, and 28 U.S.C. §§ 1346(b) and 2401(b)) since they were deemed employees of the United States Public Health Service under the Federally Supported Health Centers Act, Smith filed an administrative claim (the "SF-95 Claim") with the The Department of Health and Human Services. The SF-95 Claim was filed weeks before the expiration of the operative statute of limitations. By April 15, 2021, the SF-95 Claim was constructively denied by virtue of the failure of the HHS to timely respond to the same.

First Complaint in State Court. On October 23, 2020, a mere two days after the filing of the SF-95 Claim and just prior to the expiration of the applicable statute of limitations, Smith filed the first of her three actions ("Case 1") in the Clermont County, Ohio, Common Pleas Court, against Respondent Mercy, US Acute Care Solutions d/b/a Acute Care Specialist, Inc. ("Acute Care"),[1] Samantha Yelley, DO ("Yelley"), Labcorp Dublin ("Labcorp") (collectively the "State Defendants"), *and* the two Federal Actors. In her Complaint, Petitioner asserted claims for negligence, lack of informed consent, and negligent infliction of emotional distress, all under applicable Ohio state law (collectively the "State Claims") against all defendants. The one-year limitations period for the State Claims expired (at the latest) on November 9, 2020, while Case 1 was pending in state court.

Removal. On January 26, 2021, the United States filed a Notice of Substitution, substituting itself as the party defendant in place of Chang and HealthSource, and

1. Acute Care subsequently merged into Emergency Medicine Physicians of Cincinnati, Ltd ("EMP").

removed Smith's Complaint to the United States District Court for the Southern District of Ohio (Case No. 1:21-cv-00057-DRC – "Case 1") pursuant to 28 U.S.C. § 1442(a)(1).

Second Federal Case. While Case 1 was still pending, Plaintiff filed *another* complaint ("Case 2 Complaint") on September 3, 2021, in the United States District Court for the Southern District of Ohio (Case No. 1:21-cv-00573-SJD – "Case 2") in which she asserted the exact same claims against the exact same defendants in Case 1. With respect to the claims against the United States, Smith alleged that her SF-95 Claim was deemed denied, allowing her to pursue those claims in the District Court. At the time Smith filed the Case 2 Complaint, the Ohio statute of limitations for her claims had expired by approximately eight months.

Interplay of Case 1 and Case 2 and the Dismissal of Case 1. Once the Case 2 Complaint was filed, Smith had two cases pending at the same time against the same defendants. Smith then initiated a series of amended pleadings and dismissals. On September 7, 2021, four days after Case 2 was filed, Smith filed her First Amended Complaint in Case 2, in which she only asserted claims against the United States as the representative for Healthsource and Chang. No claims were asserted against this Respondent or any of the other State Defendants in the First Amended Complaint, effectively dismissing the State Claims from Case 2.

While the Motion to Dismiss filed by the United States was pending in Case 1, the District Court entered an Agreed Stipulated Order of Dismissal pursuant to Fed. R. Civ. Pro. 41(a)(1)(ii) on January 3, 2022, through which

Case 1 was dismissed without prejudice. On January 14, 2022, eleven days after the entry of the Case 1 Dismissal Order, Smith filed her Second Amended Complaint in Case 2, in which she reintroduced the state-law claims against the State Defendants (Mercy, Acute Care, Yelley, and Labcorp). Notably, from September 7, 2021, until January 14, 2022, no claims against State Defendants were pending in Case 2. Further, from January 3, 2022, until January 14, 2022, no claims were pending in any court against the State Defendants, including Respondent Mercy.

Dismissal of Case 2. With only Case 2 remaining, on March 30, 2023, Smith filed a Motion to Dismiss the claims against the United States (as representative for Healthsource and Chang), pursuant to Fed.R.Civ.Pro. 21, which the District Court granted on May 1, 2023. Only State Defendants remained in Case 2. Smith then attempted to remand Case 2 back to the state court, but was unsuccessful because she originated Case 2 in federal court. Since the remaining causes of action were all state-law claims, the District Court declined to exercise its discretion to maintain supplemental jurisdiction, and the District Court dismissed the claims against the remaining defendants, including Respondent, on June 20, 2023.

Case 3 Filed in State Court. Finally, Smith filed a third action in Clermont County, Ohio, Common Pleas Court on July 13, 2023 against the State Defendants only ("Case 3"). All remaining Defendants filed motions to dismiss or for judgment on the pleadings citing the expiration of the statute of limitations. The Common Pleas Court dismissed the action with prejudice, finding that the Case 3 Complaint was filed beyond the applicable statute of limitations and that neither the Ohio "savings statute," Ohio Rev. Code § 2305.19(A) ("Ohio Savings Statute"), nor 28 U.S.C. § 1367(d) operated to toll or extend the limitations period. The matter was thereafter appealed by Smith to the Twelfth District Court of Appeals, which unequivocally affirmed the Trial Court's judgment(s). Pet. App. at 1a.

State Court Appeals. In its determination of Smith's appeal of Case 3, the Twelfth District Court of Appeals affirmed the Trial Court's finding that the claims she initiated against the State Defendants on July 13, 2023, were untimely and legally barred by application of Ohio's one-year statute of limitations for medical claims. The Appellate Court correctly reasoned that, because the statute of limitations applicable to Smith's State Claims had expired prior to their removal to or any exercise of supplemental jurisdiction over them by the U.S. District Court in Case 1, she was effectively barred from reasserting them in Case 3. In light of that determination, neither the Ohio Saving Statute, nor the proper application of 28 U.S.C. § 1367(d), could save Smith's claims.

In rendering its decision, the Twelfth District Court of Appeals rejected Smith's request to apply a novel and retroactive interpretation of 28 U.S.C. § 1367 to the highly singular facts of this case—which, not surprisingly, was the only means by which Smith could effectively breathe new life into her expired potential State Claims. Specifically, Smith contended below, as she does here, that the tolling provision set forth in 28 U.S.C. §1367(d) should have applied to her State Claims from the moment that they were first filed in state court, as opposed to when the federal court actually exercised supplemental jurisdiction over them. In reaching its decision on Smith's appeal, the Twelfth District Court of Appeals applied the plain language of 28 U.S.C. § 1367 to the facts of this case in accordance with logic and accepted rules of statutory construction. Its determination is also validated by and consistent with established precedent of this Court addressing the application of the tolling provision of 28 U.S.C. § 1367. *See Artis*, 583 U.S. 71.

Because Smith could not credibly distinguish the holding of *Artis* from this matter, she sought instead to upend the case by characterizing the language at issue as mere "judicial encrustment." As she does now, Smith argued unpersuasively that the interpretation of 28 U.S.C. § 1367 by this Court in *Artis* served as an illegitimate restriction on the statute's tolling provision, which she contends should not be limited to the period when state law claims are pending in federal court and subject to federal supplemental jurisdiction.

In rejecting Smith's argument, the Twelfth District Court of Appeals observed that Smith's "novel conception of when federal jurisdiction attaches" was inconsistent with a plain reading of the statute and wholly lacking in credible support. Pet. App. at 12a. It also correctly noted that Smith had produced no authority to support her retroactive interpretation of 28 U.S.C. § 1367, which absence of authority is repeated in the present Petition. *Id.*

Smith filed her first Application for Reconsideration in the Ohio Appellate Court on May 16, 2025. On November 3, 2025, the Twelfth District Court of Appeals granted the application but confirmed its judgment that Section 1367(d) did not toll Smith's claims. Pet. App. 32a, 45a. Smith then filed a second Application for Reconsideration on November 13, 2025, which raised the narrow issue that the Twelfth District Court of Appeals erred, with regard to the application of the Ohio Savings Statute, in rejecting her argument that the Second Amended Complaint in Case 2 which added the state-court defendants back into the case, was a timely refiling of her State Claims under the Ohio Savings Statute. Despite the pending Second Application for Reconsideration, on November 18, 2025, Smith filed her Notice of Appeal and Memorandum in Support of Jurisdiction in the Supreme Court of Ohio. On March 3, 2026, the Ohio Supreme Court denied discretionary jurisdiction to review the intermediate appellate court decision. *See* Pet. App. 21a. On the same date, the Twelfth District denied the second Application for Reconsideration. Pet. App. at 47a. Petitioner did not appeal from that denial to the Ohio Supreme Court.

ARGUMENT AGAINST GRANTING THE PETITION

Petitioner selectively parses complaints and cases to create the impression that certiorari should be granted to "clarify" when the statute of limitations should be tolled in removed actions. The procedural history underlying this matter is singular, idiosyncratic, and convoluted. Despite her protestations to the contrary, Petitioner is not an innocent victim of the removal of her case to federal court. The operative case from which the State Claims against Respondent were dismissed by Petitioner (Case 2) was not removed at all, but was filed by Petitioner in federal District Court, *after* the expiration of the statute of limitations.

Even more confounding, Petitioner set in motion the events giving rise to dismissal of the State Claims against Respondent when she voluntarily dismissed the claims in Case 1 and thereby lost the opportunity to use the Ohio Savings Statute. Petitioner now demands that this Court fashion a rule for an event which is the result of Petitioner's own (failed) attempt to forum shop as part of her litigation strategy.

Petitioner's attempt to couch this appeal as one seeking "clarification" of Section 1367(d) is misguided as this Court has already held in *Artis* exactly how Section 1367(d) should be applied. Undaunted, Petitioner attacks the Court's opinion as the "majority's bracket-laden *rewrite* of Section 1367(d) over the text Congress chose." Pet. at 4-5. (Emphasis added.) It is deeply ironic that Petitioner demands that the Court replace one "bracket-laden rewrite" of Section 1367(d) with another. Petitioners' grievance is with Congress not the judiciary. Given the complex nature of the proceedings below, and the recent pronouncement of this Court in *Artis*, Respondent respectfully submits that there is no compelling reason for the Court to accept certiorari.

A. Petitioner presents no compelling reason for the Court to accept certiorari.

Supreme Court Rule 10 cautions that a petition for writ of certiorari is granted "only for compelling reasons." *City & Cty. of S.F. v. Sheehan*, 575 U.S. 600, 619 (2015) (Thomas, J. dissenting). While not exhaustive, the considerations set forth in Supreme Court Rule 10 speak to situations where compelling reasons exist for Supreme Court review: conflicting decisions among federal circuit courts, or between federal circuit courts and state court of highest resort, or between different state courts of last resort. None of these situations apply here.

Amazingly, Petitioner fails to cite *any* authority adopting her reading of Section 1367(d). Petitioner reviewed two federal district court cases and a number of state court cases, mostly from Ohio, that apply the tolling under Section 1367(d) while the claim is in federal court. Pet. at 13-14. But Petitioner cites no decisions where there is a conflict between or among United States Courts of Appeal on the application of Section 1367(d); nor does Petitioner cite a federal court decision conflicting with a decision of a state court of last resort. Although there is scant authority on the tolling provisions in Section 1367(d), there is no indication that the state or lower federal courts are struggling to understand or apply the framework set forth by this Court in *Artis*, 583 U.S. 71.

The question presented by Petitioner has already been settled by this Court. The "question presented" in *Artis* was:

> Does the word "tolled," as used in § 1367(d), mean the state limitations period is suspended *during the pendency of the federal suit*; or does "tolled" mean that, although the state limitations period continues to run, a plaintiff is accorded a grace period of 30 days to refile in state court post dismissal of the federal case?

Artis, 583 U.S. at 74. (Emphasis added.) This Court answered the question with the oft-cited restatement of Section 1367(d):

> The period of limitations for any [state] claim [joined with a claim within federal-court competence] shall be tolled while the claim is pending [in federal court] and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

Artis, 583 U.S. at 74. (Brackets original.)

Petitioner's request for review of this case rests entirely upon Petitioner's unique misreading of both 28 U.S.C. § 1367 and this Court's decision in *Artis*. Petitioner claims that this Court "rewrote § 1367(d) to align with" the theory that tolling begins when a case is pending in federal court, including removal to federal court. Pet. at 4. Petitioner argues that the bracketed language appended to the word "pending" is a judicially added limitation upon the time that tolling takes place, and that without the limiting language, the tolling of a statute of limitations would commence when a state claim joined with a federal claim is filed in state court. But the bracketed language adds nothing that is not already in the statute by virtue of Section 1367(a), which is expressly incorporated into Section 1367(d).

Specifically, Section 1367(d) tolls the "period of limitations for any claim asserted under subsection (a)…" In Section 1367(a), the statute distinguishes between cases in which the federal district courts have "original jurisdiction" and where "supplemental jurisdiction" shall exist over claims so related to the original jurisdiction claims that they form part of the same case or controversy. As the Twelfth District Ohio Court of Appeals observed:

> The reference to "district courts" plainly invokes federal courts, not state courts. When section 1367(d) refers to tolling for "any claim asserted under subsection (a)," it necessarily refers to claims properly within federal jurisdiction.

Pet. App. at 11a. Hence, the Court in *Artis* addressed the meaning of "tolling," and the majority decision established that the tolling was to be "suspended during the pendency of the federal suit." *Artis*, 583 U.S. at 74. There is nothing that this highly idiosyncratic case can add to this Court's opinion in *Artis*.

1. Petitioner does not identify any cases adopting her reading of Section 1367(d).

That there is no controversy outside of this one case is evident by the simple fact that Petitioner has not presented a single case where a court has addressed the tolling of limitations as occurring when the claim is presented in state court. There is no compelling reason why this Court should be the first court to do so.

Petitioner discusses a decision of the Alabama Supreme Court, *Murey v. City of Chickasaw*, 385 So. 3d 903 (Ala. 2023), as if it conflicts with the Ohio Supreme Court denying discretionary jurisdiction to appeal from the Ohio Twelfth Judicial District. Pet. App. 21a. But there is no conflict. The Ohio Supreme Court's denial of discretionary review is a one-sentence Entry. It is not a "decision." And the decision by the Alabama Supreme Court cannot properly be characterized as "deciding" whether Section 1367(d) tolls the limitations period while the claim is pending in state court. Petitioner states that in *Murey*, the Alabama Supreme Court "recognized" that Section 1367(d) does not impose a pending-in-federal court requirement, Pet. at 14, but that characterization distorts the actual holding of the Alabama Supreme Court.

In *Murey*, as here, the timely-filed state law case was removed after the limitations had expired. And the Alabama Supreme Court stated that plaintiff complied with Section 1367(d) when he commenced a second action in state court "within 30 days of the federal court's dismissal of the state law wrongful death claims in the first action." *Murey*, 385 So.3d at 911. However, the Alabama Supreme Court never addressed or discussed the *Artis* holding regarding tolling of claims pending in federal court. Indeed, the Alabama Supreme Court cited *Roden v. Wright*, 611 So.2d 333 (Ala. 1992), a case where the plaintiff originally *sued in federal court* and *within the limitations period*, making both federal and state law claims. *Murey*, 385 So.3d at 911. The Alabama Supreme Court in *Murey* was interested in a different question: whether the specific state law claims in the second action had been pleaded in the original action, or were new claims. *Murey*, 385 So.3d at 911. The issue of whether the tolling can occur only when pending in federal court was apparently never raised, hence the Alabama Supreme Court never addressed it.

There is no authority clearly holding that the statute of limitations for claims over which the federal court has jurisdiction through Section 1367(a) begins to toll on the date that the underlying state court action is filed. Petitioner seems to admit that every state court examining this issue has followed *Artis* lockstep, save and except *Murey*, which can hardly be read as favoring Petitioner's interpretation of Section 1367(d). The dearth of authority and lack of any true split weigh against granting certiorari.

2. Petitioner provides no basis for this Court, rather than for Congress, to rewrite the language of the Section 1367(d).

Without decisional authority, Petitioner suggests that Congress omitted language from an American Law Institute ("ALI") proposed statute regarding tolling which would have expressly limited the tolling provision to "any claim timely commenced in a federal court." Pet. at 11. Petitioner further suggests that such omission indicates that Congress opted for a broader application so that tolling applies when a claim is pending in state courts as well, simply because Congress referred in the enacted statute to cases that are "pending." But that circumstance is too speculative to draw such inferences. *See Artis* 583 U.S. at 85-86. As this Court noted in its discussion in *Artis* of the ALI *Study of the Division of Jurisdiction between State and Federal Courts* (1969) (the "1969 ALI Study"), the House Report did not even reference the 1969 ALI Study with regard to the portion of the Judicial Improvements Act of 1990, 104 Stat. 5089, which became Section 1367.

It is telling that Petitioner provides little in the way of legislative history, as the substantive discussion of Section 1367(d) that actually appears in the House Report goes against Petitioner's proffered reading of Section 1367(d):

> Subsection 114(d) provides a period of tolling of statutes of limitations for any supplemental claim that is dismissed under this section and for any other claims in the same action voluntarily dismissed at the same time or after the supplemental claim is dismissed. The 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.*

Federal Courts Study Committee Implementation Act of 1990, H.R. No. 101-734, p. 30 of 59. (Emphasis added.) The House Report on the legislation indicates what the Committee thought the final codified language was intended to do. Like the majority opinion in *Artis*, the Committee interpreted the language to limit tolling to the time that the supplemental claim was "pending in federal court."

Petitioners raise multiple questions about the operation of Section 1367 which they assert should be resolved by the Court. *See* Pet. at 2-3. Even if the question presented in this Petition could be considered as not "settled," it should not be settled by another decision of this Court attempting to correct what Petitioner asserts to be a "rewriting" of that statute. *See* Pet. at 4. This Court should not rewrite the rewrite. If tolling is to be extended under Section 1367 *before* the time the claim was filed in federal court, the resolution of Petitioner's questions should be left to Congress. As Petitioner notes, it was Congress that "enacted 28 U.S.C. § 1367(d) to answer these questions." Pet. at 3. Amending the statute is properly the function of Congress, and this Court should decline the Petition to review.

3. The highly singular procedural facts leading to Petitioner's claim being time-barred are the result of Petitioner's own choices in prosecuting her claim.

This case is a confluence of facts, claims, and procedure which may never be repeated. Even though Petitioner argues that this case presents the Court an opportunity to clarify an "important question of federal law" that was decided by a state court, Pet. at 2, 14-16, it is doubtful that the question is "important" on a national scale. It is important to Petitioner's case, but only because of the unusual procedural background of her case, and because Petitioner failed to properly use the Ohio Savings Statute to preserve her State Claims. But it has not been a matter of controversy in lower state and federal courts, which have followed the plain language of the Section 1367 as interpreted by the Court in *Artis*.

a. Petitioner was on notice that her claims could be removed to federal court and the implications of such removal.

Petitioner's predicament is a trap of her own making. Petitioner knew that the Federal Actors could remove the original action (Case 1) pursuant to 28 U.S.C. §1442(a), yet she still named them as co-defendants in Case 1 on October 23, 2020 – just days before the expiration of the statute of limitations. It should not have been unexpected that Case 1 would be removed to the United States District Court for the Southern District of Ohio on January 26, 2021, or that the removal would take place after the expiration of the statute of limitations.

Artis was decided in 2018, three years before Petitioner's state court action was removed to federal court on January 26, 2021. *Artis* unambiguously provides that the state law claims "shall be tolled while the claim is pending [in federal court] and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." *Id.* at 74. (Brackets original.) Petitioner was on constructive notice that the application of Section 1367(d) tolling was limited to the period her claim was pending in federal court. Even more, *Artis* was not the first time this Court reached this holding. In *Jinks v. Richland Cnty.*, 538 U.S. 456, 463-64 (2003), Justice Scalia, explaining the practical application of Section 1367, stated, "Section 1367(d) replaces this selection of inadequate choices with the assurance that state-law claims asserted under 1367(a) will not become time barred while *pending in federal court*." (Emphasis added.)

b. Petitioner disrupted the continuity of her state court claims by voluntarily dismissing them.

Petitioner should have realized the effect of *Artis* on her removed State Claims, that is, that there was nothing left to toll because the statute of limitations expired before the case was removed. But that was just the beginning of the twists and turns this otherwise ordinary negligence case would take. On September 3, 2021 – ten months after the expiration of the Ohio statute of limitations – Petitioner filed a second complaint (Case 2) against the same defendants asserting the exact same claims in the

United States District Court for the Southern District of Ohio, and for four days, both Case 1 and Case 1 had the same claims against all of the same defendants.

A few days later, Petitioner inexplicably filed an Amended Complaint in Case 2 on September 7, 2021, naming as defendants only the Federal Actors, effectively remaking the parties and claims in Case 2 such that the claims against the state actors (including Respondent) were dismissed. *See Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 25 (2025) (recognizing that an amended complaint supersedes all prior pleadings and controls the subsequent course of action). Case 1 was dismissed on January 3, 2022, and for eleven days there were *no claims asserted in any action* against Respondent and the other State Defendants, until a Second Amended Complaint was filed in Case 2 on January 14, 2022.

Even if Section 1367(d) had been applicable to toll Petitioner's claims from the date that Case 1 was first filed in state court (as Petitioner contends), the statute of limitations would have expired when Petitioner dismissed the state actors by filing the First Amended Complaint in Case 2 on September 7, 2021. There were no State Claims in Case 2 for over four (4) months. Additionally, for a period of eleven days after Case 1 was dismissed, there were no State Claims against any of the State Defendants (including Respondent) in either case. If it were argued that Section 1367(d) operated to toll the statute during the period there were no State Claims in Case 2 but while Case 1 was still pending, those claims expired when there was no state law claim pending in either court pursuant to *Royal Canin.*

c. Petitioner's own oversight is the reason Case 3 was untimely filed.

Petitioner is the master of the complaint and, thus, controls much about her suit. *Royal Canin*, 604 U.S. at 35. Lost in Petitioner's analysis was the legal effect of refiling the dismissed claims from Case 1 into Case 2, another federal action. Undeniably, the limitations period expired before either Complaint was filed in Case 2. In essence, Smith argues that the statute of limitations for her State Claims was tolled throughout the pendency of Case 1, transferred to Case 2 with the filing of her Second Amended Complaint in that matter, and carried forward to also cover Case 3 (after Case 2 was dismissed by the U.S. District Court).

No authority is provided for this highly tenuous application of 28 U.S.C. § 1367. Nor does Smith provide an iota of legal support for her contention that she was entitled to more than one 30-day grace period under the federal statute. In fact, federal courts have uniformly interpreted 28 U.S.C. § 1367 as applying solely to cases refiled in state, as opposed to federal, courts. *Parrish v. HBO & Co.*, 85 F.Supp.2d 792, 796 (S.D. Ohio 1999) (holding "the Court finds no evidence that 1367 was intended to act as a savings statute, allowing a plaintiff to refile in *federal court*." (Emphasis in original.)); *see also Malone v. Bayerische Hypo-Und Vereinsbank, AG*, 425 F.App'x 43, 44 (2d Cir. 2011) (explaining Section 1367(d) "applies only to state claims dismissed from federal court and subsequently re-filed in state court").

Following the District Court's order entered on May 1, 2023, granting Petitioner's motion to dismiss the claims against the Federal Actors, Petitioner attempted to remand Case 2 to state court. While that would have been effective in Case 1 (which had been removed), the Court declined to remand Case 2 because it had originally been filed by Petitioner in federal court and dismissed the claims against the remaining State Defendants on June 20, 2023. Petitioner attempted another bite at the apple by filing yet another complaint against the State Defendants in the Clermont County (Ohio) Common Pleas Court on July 13, 2023 (Case 3). As with the complaint filed in Case 2, the complaint in Case 3 was filed well beyond the expiration of the statute of limitations.

But even though Petitioner did not get the benefit of federal tolling, she was not "out of luck" when the District Court declined to exercise jurisdiction over her state claim in Case 1. Section 1367(d) specifically references state law potentially providing a post dismissal period of tolling. The Ohio Savings Statute provides that after an action fails otherwise than on the merits the plaintiff "may commence a new action within one year after . . . the plaintiff's failure otherwise than upon the merits." Ohio Rev. Code § 2305.19(A). "The saving statute allows plaintiffs to refile lawsuits in certain situations after the applicable statute of limitations expires, R.C. 2305.19(A). 'It acts as an exception to the general bar of the statute of limitations' and is 'intended to provide a litigant an adjudication on the merits.'" *McCullough v. Bennett*, 2024-Ohio-2783, ¶ 11, 177 Ohio St. 3d 102, 104, 251 N.E.3d 15, 18-19, quoting *Wilson v. Durrani*, 164 Ohio St. 3d 419, 2020-Ohio-6827, ¶ 11, 173 N.E.3d 448.

Had Petitioner refiled her action in state court within one year after Case 1 was dismissed, she would have been protected under the Ohio Savings Statute. Case 1 was dismissed January 3, 2022, but Case 3 was not filed in state court until July 12, 2023, more than a year after the Case 1 dismissal and outside of the one-year savings period in Ohio Rev. Code § 2305.19(A). Petitioner could also have asked the Court to remand Case 1 to state court since it had been removed from state court. These remedies would have preserved Petitioner's claims.

Instead, Petitioner took the convoluted course of filing a second action in federal court, that had multiple amended pleadings trading federal and state defendants in and out of the lawsuit. Case 2 was filed September 3, 2021 (while Case 1 was still pending) almost a year after the limitations had expired in November 2020. Thus, the Ohio Savings Statute was ineffective to save the claims dismissed as time barred. Even ignoring the four-month period when no state claim was pending in Case 2, Section 1367 was not effective to toll the claims because the statute of limitations had expired before Case 2 was filed, and there was, therefore, no limitations period remaining to toll. Case 3 was simply untimely. Petitioners' own course of action in prosecuting the claim, not the asserted misreading of 28 U.S.C. § 1367(d), was the reason that Case 3 was untimely filed.

All of this underscores a critical point. The language of Section 1367(d) necessarily invites application of non-uniform state savings or tolling statutes to dismissed claims creating an intersection of state and federal law varying from state to state. In this case, the dismissed claims were analyzed under Section 1367(d) *and* the Ohio Savings Statute. Granting certiorari to answer the question presented by Petitioners only concerns one half of the equation. The courts of the individual States are best positioned to interpret their own savings or tolling statutes, rather than this Court.

B. The Twelfth Judicial District Court of Appeals of Ohio correctly applied the language of 28 U.S.C. §1367 and this Court's holding in *Artis*, so certiorari should be denied.

Smith argues that Section 1367(d) tolls the period of limitations of any state law claim that *might potentially* be subject to federal supplemental jurisdiction as soon as that claim is asserted in state court and prior to any potential removal of the action to federal court. Pet. at 17-18. This broad rewriting of Section 1367, if adopted, would drastically change federal law. It would also alter existing Ohio (and other states') law by unnaturally suspending the limitations period for affected state law claims even before there has been any actual exercise of federal supplemental jurisdiction over those claims and while the action is confined to state court.

Smith proposes that this tolling would apply without any involvement of or exercise of authority by the federal court over such state law claims. When federal jurisdiction first attached to Appellant's claims on January 26, 2021, upon their removal to federal court, the statute of limitations had already expired and "there was, quite simply, no limitations period left to toll under section 1367(d)." Pet. App. at 12a-13a. Questions of comity and federalism are raised if the federal courts are authorized to resurrect a state law claim which is already time barred prior to the exercise of supplemental jurisdiction, simply by the removal of a state court case to federal district court. But if such a bold extension of federal jurisdiction were to occur, it should be by act of Congress amending Section 1367 rather than by the proposed reinterpretation of a statute which plainly does not authorize it.

Because Smith has no legal support for her contention that Section 1367(d) tolling should apply to her State Claims at any point before those claims are in federal court, she instead attempts to delegitimize the authority which most materially contradicts her imaginative application of this statute. Smith contends that the *Artis* majority's restatement of Section 1367(d) finds no textual support in the statute itself and, therefore, must be ignored as mere dicta. Pet. at 10.

This Court in *Artis* was clear about when and how tolling under Section 1367(d) should apply. It determined first the "how," holding that "tolling" as used in the statute referred to a "stop-the-clock" type of suspension of any applicable state statute of limitations. *Artis*, 583 U.S. at 74-75. It then proceeded to address the "when," finding under the language of the statute that tolling should only apply "while the claim is pending in federal court." *Id*. at 74.

Smith contends that the *Artis* majority's restatement of Section 1367(d) including the phrase "in federal court" is a judicial addition to the statutory language which "turns the point of 1367(d) on its head." Pet. at 12. However, contrary to Smith's notably unsubstantiated assertion, the *Artis* majority was adding nothing to the statute. The Court was simply referencing the obvious and necessary application of Section 1367(a), which addresses supplemental jurisdiction of federal courts over state law claims—*something which can only occur in federal courts*. As the Ohio Twelfth District Court of Appeals noted, Smith's proposed interpretation of Section 1367 "disconnects the provision from its statutory context." Pet. App. at 11a.

Under Petitioner's reading of the statute, Section 1367(c), addressing circumstances where the district court can decline to exercise supplemental jurisdiction over a Section 1367(a) claim, would be rendered nonsensical if it applied to claims pending in state court. For example, under Section 1367(c)(3), the district court may "decline to exercise jurisdiction over a claim under subsection (a) if … the district court has dismissed all claims over which it has original jurisdiction." The district court can only decline to exercise supplemental jurisdiction under this circumstance, if the state law claims are already and actually pending in federal court. All of Section 1367(c) and (d) contemplate that the claims which would be tolled or where the court would decline to exercise supplemental jurisdiction are those which are already pending in federal court.

Petitioner also suggests that the *Artis* majority is divided against itself and its rationale is inclined toward tolling in state court. If so, how could the majority recognize that it would be an "absurdity" to interpret Section 1367(d) in a manner that could "permit a plaintiff to refile in state court even if the limitations period on her claim had expired before she filed in federal court." *Artis*, 583 U.S. at 85. Nevertheless, Petitioner points to the majority's discussion of stop-the-clock tolling that occurs "while the claim is pending elsewhere." Pet. at 12, citing *Artis* at 80 and n.4. But in those instances of such legislation discussed by this Court in note 4, the language varies between applying the tolling in an earlier forum, e.g., 21 U.S.C. § 1604, and applying the tolling while pending in federal court, e.g., 28 U.S.C. § 1332. *Artis*, at 80, n.4. That part of the case was mainly concerned with a discussion of the two types of tolling rather than the time it attached. Petitioner has not established that the *Artis* majority departed from its rationale in recognizing that the statute addressed tolling of claims pending in federal court.

The *Artis* majority did not invalidly add language to the supplemental jurisdiction statute. The majority simply restated and applied the plain meaning of the statute in the logical manner it was intended. Smith's invitation to reinterpret and apply with potentially perilous effect a settled matter of federal law is unavailing. Smith provides no legal authority for her contention that Section 1367(d) should toll state statutes of limitation prior to any removal to or exercise of jurisdiction over them by a federal court.

CONCLUSION

Distilled to its core, the Petition offers no grounds for a grant of certiorari. The Petition is conspicuously devoid of any reference to the criteria usually applied by the Court in granting certiorari. This matter is restricted to private parties, litigating state law claims with an application of 28 U.S.C. § 1367(d) that is based on unusual factual circumstances particular to this case. Accordingly, the Petition for Writ of Certiorari should be summarily denied.

Respectfully submitted,

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