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; EMERGENCY MEDICINE PHYSICIANS OF CINCINNATI, LTD.; SAMANTHA YELLEY, D.O.; AND LABORATORY CORP. OF AMERICA HOLDINGS,
Respondents.

On Petition for a Writ of Certiorari to the Ohio Court of Appeals for the Twelfth Judicial District

BRIEF IN OPPOSITION OF PETITIONER'S WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether 28 U.S.C. § 1367(d) tolls state-law statutes of limitations while claims are pending in federal court, or whether § 1367(d) tolls a statute of limitations from the moment a party files in any court, including first filing in state court, simply because a party could have brought the action in federal court or the claims may be hypothetically removed to federal court.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Appellee, Emergency Medicine Physicians of Cincinnati, Ltd ("EMP"), makes the following disclosure: EMP is a domestic for profit limited liability company registered in the State of Ohio. No publicly-held corporation owns 10% or more interest in EMP.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Other Authorities

INTRODUCTION

There is no question that 28 U.S.C. § 1367(d) promotes the fair and efficient operation of federal courts that is conducive to the administration of justice. *Jinks v. Richland County*, 538 U.S. 456, 463 (2003). Congress, in enacting Section 1367(d), provided a straightforward tolling rule to meet this end. *Id.* In fact, Section 1367(d) produces one clear-cut reading: state-law claims asserted under Section 1367(a) will not become time-barred while pending in federal court if the claims are brought in federal court before the expiration of the limitation. *Id.* at 463-64.

However, Congress did not create an unrestricted process that is capable of tolling all limitations periods. Section 1367(d) on its face shows that Congress approved only for limitations periods to be tolled if they are pending within federal court. Congress, aware of its abilities, does not have unlimited power to regulate practice and procedure in state courts. *Id.* at 465. Indeed, permitting "a plaintiff to refile in state court even if the limitations period on her claim had expired before she filed in federal court" would be an "absurdity." *Artis v. District of Columbia*, 583 U.S. 71, 84 (2018).

Congress enacted a precise remedy to ensure that while a case is pending in federal court, a litigant would retain their ability to pursue claims in state court in certain circumstances if asserted timely. It 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 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.

28 U.S.C. § 1367(d).

The parties disagree about the reach of Section 1367(d). Respondent reads it in a manner consistent with the prior readings of this Court: a claim is tolled only while the claim is pending in federal court. Petitioner, interpreting Section 1367(d) with a new, broad, and unsupported perspective, believes that despite her claim not appearing before a federal court until nearly three months after the statute of limitations had passed, all claims were tolled due simply to the federal character of the action. The state courts in Ohio, including the Ohio Supreme Court, all agreed with Respondent.

Petitioner now contends that this Court should grant review, arguing that the issue presents an "important federal question" which lower courts have routinely failed to properly interpret. Pet. 9-10, 14. However, this is not supported by lower courts or decisions of this Court. The absence of cases from either the states' highest courts or lower federal courts show that the limited interpretation is not incorrect, but well-settled law that needs no correction.

Regardless of the determination in this case, which inevitably will be to uphold the lower court's decision and the "in federal court" language applying Section 1367, Petitioner's claims fail. Even if the Court were to stretch Section 1367 to adopt Petitioner's newly created understanding, Petitioner refiled and dismissed the State Defendants multiple times, including from federal court. Applying Section 1367 in the most favorable light, Petitioner is incapable of benefiting from the prayer she has put forward.

Any federal interest in this question is minimal. Congress enacted Section 1367(d) to ensure litigants could continue to pursue state-law claims, not to bypass individual states' decisions about their own statute(s) of limitations. Without a contradictory indication that state courts and federal courts have wrongly applied Section 1367(d), the Ohio Appellate Court's decision to follow this Court's ruling should stand.

Lastly, Petitioner cannot invoke jurisdiction with this Court under 28 U.S.C. § 1257. Petitioner does not call into question the "validity" of 28 U.S.C. § 1367(d) nor does she question Congress' ability to pass it. Instead, Petitioner merely contests the interpretation made by the Ohio Appellate Court. Without questioning the "validity" of Section 1367, Petitioner does not meet the requirements granted by Congress for this Court to review. 28 U.S.C. § 1257.

This petition should be denied.

COUNTER-STATEMENT OF THE CASE

Petitioner Stephanie Smith was seen in the Emergency Department at Mercy Health-Clermont Hospital on October 26, 2019, for left knee pain. Pet. App. 3a. Five days later on October 31, Petitioner attempted to consult her primary-care physician Dr. Roger Chang at HealthSource of Ohio. Pet. App. 3a. During this appointment, an employee of Laboratory Corporation of America Holdings attempted to draw Smith's blood. Pet. App. 3a. Later that day, Smith experienced pain in the same arm where the blood draw was attempted and presented back to the emergency department at Mercy Health-Clermont where Dr. Samantha Yelley provided care and diagnosed injury to Smith's right brachial artery. Pet. App. 3a. On November 1, 2019, Dr. Yelley arranged the transfer of Smith to Mercy Health-Anderson Hospital where she underwent right brachial artery exploration and repair. Pet. App. 23a. Smith was discharged on November 9, 2019. Pet. App. 23a.

Just prior to the expiration of the one-year statute of limitations on October 21, 2020, knowing that Dr. Chang was a federal employee, Smith filed an administrative action against Dr. Chang and his employer, HealthSource of Ohio. Pet. App. 24a, 34a. As an employee of a Public Health Service (PHS) entity, the law allows for removal to district court and substitution by the United States. Pet 24a; 28 U.S.C. § 1346. The Public Health Services Act establishes that the Federal Tort Claims Act is the exclusive remedy against the United States for personal injuries resulting from medial services performed by PHS employees acting within the scope of employment. *See Bray v. Bon Secours Mercy Health, Inc.*, 97 F.4th 403, 406 (6th Cir. 2024) (citing 42 U.S.C. 233(a)). Pet. App. 4a. As such, the FTCA requires plaintiffs to exhaust these administrative remedies through the relevant federal agencies. 28 U.S.C. § 2675.

A few days later on October 23, 2020, Smith filed her original complaint (Case I) with the Clermont County Court of Common Pleas. Pet. App. 24a. While Petitioner was attempting to exhaust her administrative remedies, the United States invoked 42 U.S.C. § 233 and 28 U.S.C. § 1442(a)(1) to remove the action to the United States District Court for the Southern District of Ohio and substituted itself as a defendant on January 26, 2021. Pet. App. 24a. On September 3, 2021, after having properly exhausted federal administrative requirements, Smith filed a second complaint (Case II) asserting identical claims against the same defendants in federal court. Pet. App. 35a. On September 7, 2021, Smith filed her first amended complaint in Case II, dismissing each of the state-court defendants and narrowing the case to claims against only the United States. Pet. App. 5a.

Requiring a status conference to sort the proceedings, on November 17, 2021, the parties agreed that Case I would be dismissed and Smith would file an amended complaint in Case II to reintroduce the state-defendants who had been dismissed. Pet. App. 35a. As such, Case I was dismissed via a stipulated order on January 3, 2022 and Case II was amended a second time on January 14, 2022. Pet. App. 35a.

Well over a year later, Smith moved to dismiss the United States from Case II which was granted on May 1, 2023. Pet. App. 35a. The district court granted dismissal on May 1, 2023, leaving no federal defendants. Pet App. 35. Despite Smith asking the Court to retain jurisdiction, the court declined to exercise supplement jurisdiction and on June 20, 2023, the court dismissed Case II. Pet. App. 35a. Given that Case II originated in federal court, the action could not be remanded back to state court and the district court declined to do so. Pet. App. 35a.

On July 13, 2025, Smith filed a third complaint in the Clermont County Court of Common Pleas (Case III). Pet. App 35a. Various defendants moved for dismissal under both Ohio Civil Rule 12(B)(6) and Ohio Civil Rule 12(C) arguing that the statute of limitations had expired well before Smith filed Case III. Pet. App. 6a. The trial court agreed with the defendants and dismissed all of Smith's claims. Pet. App. 27a. The court concluded that the one-year statute of limitations had expired in November 2020, prior to the case being removed to federal court. Pet. App. 27a. As a result, 28 U.S.C. § 1367(d) had no applicability. Pet. App. 27a. Smith appealed this decision, along with other assignments of error, to the Ohio Twelfth District Appellate Court. Pet. App. 2a.

The Ohio Appellate Court affirmed the trial court's ruling, concluding as all before it, that Section 1367(d) applies only to claims pending in federal court. Pet.

App. 11a. Further, the Ohio Appellate Court concluded that upon removal, there is no retroactive reach back in time to toll any limitations period for the interval it was previously in state court. Pet. App. 11a. This is because doing so would disconnect the provision from its statutory context as nothing indicates that the case should be treated as originally filed in federal court. Pet. App. 11a.

Smith sought reconsideration of the Ohio Appellate Court's holding where it was confirmed that the analysis of Section 1367(d) remained sound. Pet. App. 45a. Smith moved the Appellate Court to reconsider its decision, as to a separate issue as well, but was again denied. Pet. App. 47a-51a. On March 3, 2026, after moving for discretionary review of the Ohio Appellate Court's decision, the Supreme Court of Ohio denied Smith's request. Pet. App. 21a.

REASONS TO DENY THE PETITION

Since Section 1367(d)'s enactment, there has been only one consistent understanding of where a claim must be brought to receive its benefits. Only a few times have courts had to opine on this widely understood and accepted standard. In fact, most instances have not involved a direct examination of the word "pending" in consideration of whether it exceeds its current reach. As it stands, the question recurs too infrequently to warrant this Court's review. At a minimum, further percolation would benefit this Court given that the current robust view on the issue holds a clear and unified understanding of Section 1367(d).

The question does not implicate an important federal interest. Currently, Section 1367(d) is being consistently interpreted and implemented as intended by Congress, as any statute of limitations period is tolled only while a claim is in pending in federal court. Section 1367(d) on its face makes this abundantly clear, and the decisions of lower courts reinforces Congress' intent to aid litigants in pursuing federal claims while protecting their state-law claims. Allowing state-law statutes of limitations to be paused the moment a litigant files in state court simply because they may have federal claims would radically change the understanding of Section 1367(d).

The opinions of the Ohio courts are correct on the merits. Petitioner, despite knowing the federal characteristic and defendants in her claims, chose to file the action in state court. As a result, no tolling mechanism existed, and her claims passed the one-year statute of limitations under Ohio law. When the case was removed to federal court, there was no period of limitations left to toll. Accordingly, the lower courts properly found the claims time barred.

I. The Question Is Objecting Only To A Misapplication Of Settled Law And No Genuine Conflict Exists.

Prior to adoption of Section 1367(d) in 1990, the ability of federal courts to exercise supplemental jurisdiction without potentially producing unsatisfactory results was significantly strained due to options in front of it. *See Jinks*, 538 U.S. at 462-63. Section 1367(d)'s enactment created an alternative to these unsatisfactory options by producing an option that is conducive to the administration of justice by allowing federal judges to be relieved of concern when deciding whether to retain jurisdiction over supplemental-law claims. *Id.* at 462. Nearly 36 years since its enactment, federal and state courts have produced but one interpretation that the word "pending" applies to claims brought in front of a federal court, reinforcing that this issue does not warrant this Court's attention.

A. Section 1367(d) does not extend its tolling provision to include claims initially filed in state court.

The plain language of 28 U.S.C. § 1367(d) requires any action attempting to invoke its tolling ability to be pending in federal court. As previously understood and explained by this Court:

> "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 at 74; 28 U.S.C. § 1367(d).

While Section 1367(d) may not directly state the words "in federal court," the understanding is, and always has been, that it applies to toll statute of limitations when claims are presented in front of federal courts, not state courts. Any contrary interpretation would invite perpetual abuse of state-law statutes of limitations by allowing claimants to evade time bars through repeated reliance on the tolling provision. Such a result would exceed the statute's intended scope and effectively nullify limitations periods. Under such an interpretation, a claim dismissed–whether voluntarily or involuntarily–would fail to suffer the consequences of becoming time-barred. A reading of Section 1367 in a manner that would permit plaintiffs to abuse state-law limitations is undoubtedly an absurdity. *Id.* at 85.

Despite this potential absurdity, Petitioner cites to a proposal by the American Law Institute as reason to explain Congress' decision to withhold "in federal court" from the text of Section 1367(d) as a desire to decline to limit its tolling to claims pending in federal court. Pet. 11. Yet, this point is unpersuasive as all aspects of the statute point to its federal character. Conducting statutory interpretation requires an understanding that Section 1367(d) is given contextualized meaning based on a broader interpretation of the statute.

As Justice Antonin Scalia explained, words, of course, are given meaning by their context, and context includes the purpose of the text. See Scalia & Garner, Reading Law: The Interpretation of Legal Texts, 56 (2012). Specifically,

> "The subject matter of the document is the context that helps to give words meaning–that might cause *draft* to mean a bank note rather than a breeze. And even beyond that, it can be said more generally that the resolution of an ambiguity or vagueness that achieves a

> statute's purpose should be favored over the resolution that frustrates its purpose."

Id.

This principle is not a novel idea, but one that has always governed statutory interpretation, as it is only given a fair construction if it is viewed in light of the whole instrument. *McCulloch v. Maryland*, 17 U.S. (4 Wheat) 316 (1819). It is a cardinal rule that a statute is to be read as a whole since the meaning of statutory language, plain or not, depends on context. *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991). See, e.g., *Shell Oil Co. v. Iowa Dept. of Revenue*, 488 U.S. 19, 26, 109 S. Ct. 278, 102 L. Ed. 2d 186 (1988).

A reading of Section 1367 in its entirety purports a plain and clear understanding: The statute is governing the ability of federal courts to hear additional claims without causing a controversy between federal and state courts. 28 U.S.C. § 1367(a). Petitioner's entire application rests on the principle that without the words "in federal court," lower courts are incorrectly interpreting Section 1367(d) because they are unable to ascertain its meaning. But the context of subsection(d) and its federal character is apparent in viewing the entirety of the Section. *Id.* The reference to "district courts" within subsection (a) plainly invokes federal courts, not state courts. *Id.*; *Smith v. Mercy Health-Clermont Hosp.*, 12th Dist. Clermont CA2024-02-10, 2025-Ohio-1590, ¶ 23. With subsection (d) directly referencing subsection (a), it only refers to claims properly within federal jurisdiction. *Id.* Any other interpretation would separate and isolate it from the rest of the Section. Pet. App. 11a. If Congress wished to include "pending" to mean any and all courts, the more prudent and logical option would have been to directly identify this option as such. A court must look to the particular statutory language at issue, as well as the language and design of the statue as a whole. *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988). The entirety of the Section 1367 thus provides context for each of its parts, including subsection (d).

Clearly in *Artis*, the interpretation throughout the opinion operates under the understanding that Section 1367(d) only applies while claims are pending "in federal court." *Artis*, 583 at 74, 86. This is because Section 1367(d) operates to preserve a plaintiff's timely filed state-court claims, but only if it is due to a plaintiff *choosing* to first pursue her federal claims or there is time remaining on-the-clock before the claim arrives in front of federal court. This is the entire purpose of the statute and the proper procedural execution of a plaintiff with intertwined claims in order to save a potential state claim. Further, Petitioner mistakenly attributes the understanding a claim must be pending "in federal court" solely to Justice Ginsburg's explanation in *Artis*. Pet. 11. However, this Court has included "in federal court" within its explanation before. See *Jinks*, 538 U.S. at 463-64 ("with the assurance that state-law claims asserted under Section 1367(a) will not become time barred while pending in federal court."); *Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533, 535 ("The supplemental jurisdiction statute purports to toll the period of limitations for supplemental claims while they are pending in federal court and for 30 days after they are dismissed.").

While Ginsburg's iteration of the understanding in *Artis* is correct, no singular Justice or lower court has ever read "in federal court" into Section 1367(d) because it has always existed within the statute and its context and purpose. If the Petitioner is correct that the question is recurring and an important federal question, other state courts of last resort and federal appellate courts will have the opportunity to grapple with it and produce a more unified consensus supporting Petitioners nascent viewpoint. Even if courts continue to interpret Section 1367(d) in its current unified understanding, the question will be more developed and supported by better facts if it comes back to this Court. This unique set of facts would not support the favorable result Petitioner seeks.

B. State courts are undivided and have correctly interpreted Section 1367(d) in conjunction with this Court's holdings.

To show an entrenched conflict, Petitioner cites to various courts, including federal courts, that have followed this Court's interpretation that Section 1367(d) tolls claims only when they are pending in federal court. Pet. 13. Instead of viewing this plethora of case law as evidence that her viewpoint is contradictory to the correct application of Section 1367(d), Petitioner states that the lower courts are instead confused by the question presented in front of this Court. Pet. 13. However, where only one person is confused, the rest do not lack clarity.

This view has unfortunately caused Petitioner's misinterpretation of her sole-supposed supporting case, *Murey v. City of Chickasaw,* 385 So. 3d 903 (Ala. 2023). As in this case, the Supreme Court of Alabama in *Murey* faced a complicated procedural history. This included two simultaneous appeals, multiple pending motions for summary judgment, tardy additions of defendants, and a removal of claims to the United States District Court for the Southern District of Alabama by federal defendants. *Id.* at 907-09. Eventually, the claim was dismissed from federal court and plaintiff attempted to refile back in Alabama state court. *Id.* at 908. However, the plaintiff, among other issues, attempted to assert new claims against new defendants. *Id.* The plaintiff then attempted to utilize 28 U.S.C. § 1367(d) to justify this action, claiming that the tolling provision allows for claims to be brought against these new defendants. *Id.* The Alabama Supreme Court did not address the statute of limitations issue because it did not need to. *Id.* at 913-18. The claims were dispensed well before this issue was raised due to the plaintiff's claims lacking merit for additional reasons. *Id.* Instead, the court asserted the dicta that "Murey properly invoked the trial court's jurisdiction with regard to the second action, *insofar* as the action asserts the same state-law claims that were asserted in the first action . . . ." *Id.* at 911. (emphasis added). This does not indicate a departure from the understanding by all other courts that a claim must be pending in federal court for tolling to apply. A review of previous Alabama Supreme Court decisions confirms this understanding. *See Rester v. McWane, Inc.*, 962 So.2d 183, 186 (Ala. 2007) ("Section 1367(d) thus tolls state-law claims when those same claims are pending in federal court.").

To reiterate, a plethora of case law, including various states, exists supporting Ohio lower court's conclusion that Section 1367(d) does not toll state-law statutes of limitations when timely filed in state court but before the case is pending in federal court, where supplemental jurisdiction might exist. See *Kim v. Dickenson Wright, PLLC*, 135 Nev. 161, 442 P.3d 1070 (Nev. 2019) ("Therefore, we conclude that, pursuant to § 1367(d), the statute of limitations for a state-law claim filed in federal court stops running only while the claim is pending in federal court and for 30 days after the state-law claim's dismissal."); *Morris v. Giovan*, 225 Ariz. 582, 242 P.3d 181 (Ariz. Ct. App. 2010) (holding in a case originally filed in state court that Section 1367(d) did not toll any state law claims because the federal court lacked jurisdiction and the claim was not pending before a federal court); *Goodman v. Best Buy*, 777 N.W.2d 755, 762 (Minn. 2010) (holding "The running of the limitations period was suspended during the time that the claim was pending in federal court and for 30 days after the federal district court dismissed the claim.")

Moreover, federal lower courts have produced this singular interpretation as well. *See Anderson v. Herbert*, 745 Fed. Appx. 63, 68-69 (10th Cir. 2018)

("But this argument is misplaced. Section 1367(d) preserves a state-law claim that is asserted in a federal proceeding and then is dismissed. It does not indefinitely suspend the limitations period for a state-law claim that first is brought in a state-court action."); *PHH Mortg. Corp. v. Stuber*, 766 F. Supp.3d 1162, 1174 (D. Kan, 2025); Pet. 13-14. The combined decisions of federal and state courts do not support the viewpoint that courts are misinterpreting the law, but instead that the law is being applied as intended without confusion.

Furthermore, the legal issue presented in this case arises in an atypical procedural context. If this Court wishes to address this issue, it should await a case presenting the question in a more conventional and procedurally appropriate posture. Put simply, granting review in this case would not provide Petitioner with the relief she seeks and instead would create considerable legal ramifications across federal and state courts.

Within this procedural tribulation, Petitioner would need not one but two uses of Section 1367(d). Instead, even assuming *arguendo* that Petitioner's baseless interpretation of Section 1367(d) is correct, the time to refile in state court would have been after the dismissal of Case I January 3, 2022. This means at the latest, Petitioner could have refiled in state court within 30 days, plus the remaining time on the statute of limitations, after the dismissal of Case I.[1]

In essence, Petitioner asserts that the statute of limitations for her state law claims be tolled throughout the pendency of Case I in state court including after the removal of Case I to federal district court. Then, she asserts that the tolling was transferred over to Case II when she refiled in federal district court with her Second Amended Complaint and Case I was entirely dismissed and not consolidated. This is despite that in Case II, which was voluntarily filed in federal court after the statute of limitations had run, Petitioner dismissed the state defendants in her First Amended Complaint. Instead, the state defendants were added to the Second Amended Complaint after the district court dismissed Case I. This expansive application of Section 1367(d) finds no support in the statutory text. Instead, for Petitioner's claims to survive in state court, the procedural remedy would require that both Case I and Case II be afforded the tolling effect of Section 1367(d). This would entirely upend and permanently change the understanding of Section 1367(d).

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[1] Respondent does not dispute that if Petitioner could use 28 U.S.C. § 1367(d), then she would have thirty days outlined in the statute plus the remaining time left in the statute of limitations to refile.

II. The Question Does Not Implicate Any Significant Federal Interest.

This Court reserves review for questions of considerable federal importance. *See* Sup. Ct. R. 10. The question presented here is not sufficiently important because Congress has made clear its intent and lower courts have continuously and correctly applied Section 1367(d).

The creation of Section 1367(d) eliminated a "serious impediment" to access the federal courts on the part of plaintiffs pursuing federal and state law claims. *Jinks*, 538 U.S. at 463. If a serious impediment existed in its implementation, more state courts would have addressed the question at higher frequency since the passage of Section 1367(d) in 1990. Additionally, this Court has already ruled on this issue within its decision in *Artis*. Although the precise issue presented in *Artis* was different, this Court, in rejecting the alternative interpretation, recognized that such a reading would lead to an absurd result because it "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. No clarification is needed because it has already been previously provided by this Court.

Further, despite Petitioner's assertions that *Artis* is providing groundwork for a continual misinterpretation by state courts, Congressional intent suggests otherwise. When examining statutory language, this Court looks for a clear statement of what the rule includes. *Raygor*, 534 U.S. at 546;

Gregory v. Ashcroft, 501 U.S. 452, 467 (1991). Petitioner cites nothing suggesting that Congress wished to intrude on state prerogatives as to state-law claims more than needed to promote the federal interest in the "fair and efficient operation of the federal courts." *Jinks*, 583 U.S. at 463. Neither, is there any indication that claims filed first in state-court should have all statutes of limitations tolled. Instead, Congress left that ability to the states. For example, in Tennessee, a litigant is afforded one year from the date of the federal-court dismissal to file a new action in local court. Tenn. Code Ann. § 28-1-115. In any event, a litigant has the option of choosing among several fora where she can consider tolling provisions, implications of statute of limitations, and any other aspect of her litigation strategy when bringing her claims. After all, the party who brings the suit is master of what law will be relied upon. *The Fair v. Kohler Die & Specialty, Co.*, 228 U.S. 22, 25 (1913).

Nonetheless, the assertion that the question presented here is important should be disregarded. No conflict exists and Section 1367(d) is being appropriately applied. Even so, state interest(s) in applying state law(s) in state court(s) predominates, not any marginal federal interest.

III. The Decision Below Is Correct.

Finally, review is not warranted because the lower court was correct on the merits. Petitioners argue that "pending" as written within Section 1367(d) tolls claims initially filed in state court before they are removed to federal court. Contrary to Petitioner's contentions, the Ohio Appellate Court followed well settled precedent and upheld principles laid out by this Court.

The Ohio Appellate Court explained that while federal original jurisdiction "exists in the abstract from the moment a claim triggering jurisdiction is commenced" (consistent with the time-of-filing), jurisdiction does not materialize until it arrives in federal court. Pet. App. 12a. This interpretation is consistent with this Court's removal jurisprudence which has held that when an underlying relevant condition exists, a federal courts' effort to assert jurisdiction only manifests at the time of removal. See *Wis. Dep't of Corr. v. Schacht*, 524 U.S. 381, 390 (1998); See *Maine v. Thiboutot*, 448 U.S. 1, 9, n. 7, 65 L. Ed. 2d 555, 100 S. Ct. 2502 (1980), The Ohio Appellate Court's example concerning the Federal Torts Claims Act (FTCA) is both relevant and convincing. Pet. App. 12a. The FTCA, the sole exclusive remedy in this case against the federal defendants, does not vest jurisdiction until removal to federal court. *Staple v. United States*, 740 F.2d, 766, 768 (9th Cir. 1984).

The procedural sequence is clear. Petitioner filed her original complaint in state court on October 23, 2020. Pet. App. 4a. Federal jurisdiction could not vest until January 26, 2021, when the case was removed to the Ohio Southern District. Pet. App. 5a. Before the subsequent removal, however, the one-year statute of limitations expired in November 2020. Pet. App. 13a. With no vested jurisdiction at the time the statute of limitations expired, Section 1367(d) has nothing to toll and cannot and does not apply.

Furthermore, the Ohio Appellate Court's opinions concerning when federal jurisdiction attaches are consistent with holdings by federal courts. "Federal jurisdiction commences when the defendant files the notice of removal with the district court, and filing the notice with the state clerk affects the state's jurisdiction rather than federal jurisdiction." *Nixon v. Wheatley*, 368 F.Supp.2d 635, 640 (E.D. Tex. 2005); *quoting Parker v. Malone*, 2004 U.S. Dist. LEXIS 1096, No. Civ. A. 7:03CV00742, 2004 WL 190430, at *2 (W.D. Va. Jan. 15, 2004) (citing *Peterson v. BMI Refractories*, 124 F.3d 1386, 1395 (11th Cir. 1997)); see *Linden v. Chase Manhattan Corp.*, 52 F. Supp. 2d 387, 388 (S.D.N.Y. 1999) (holding that "the jurisdiction of the federal court attaches as soon as the petition for removal is filed with it, and that both state and federal courts have jurisdiction until the process of removal is completed") (quoting *Berberian v. Gibney*, 514 F.2d 790, 792-93 (1st Cir. 1975)).

Additionally, Petitioner fundamentally misapplies Section 1367(d) by conflating the statute's tolling provision with the time-of-filing rule. Section 1367(d) does not begin tolling merely because a claim falls within a federal court's jurisdiction; rather, tolling begins only while the claim is pending before a federal court. Had Congress meant to include all state courts within a statute that is predominated by federal interests pertaining to federal courts, it would have clarified that claims seeking to be tolled and are "pending" includes claims pending in state court. A state, for obvious reasons, might believe a litigant whose federal suit had been pending for years before supplemental jurisdiction was declined should not be afforded more time when the state-law limitations expired while litigation was occurring in state court. Instead, all Congress meant to do was ensure that litigants could pursue all their claims without concern so long as they followed the proper procedural requirements.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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