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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | [customerservice@law360.com](mailto:customerservice@law360.com)

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## Clock For State Claims Stops In Federal Court, Justices Say

By **Jimmy Hoover**

Law360, Washington (January 22, 2018, 1:51 PM EST) -- The U.S. Supreme Court held Monday that bringing state claims in federal court stops the clock on the statute of limitations for those claims, handing a victory to a fired D.C. health inspector attempting to sue the city for gender discrimination and retaliation.

Splitting 5-4, the court ruled that statutes of limitations for state claims are suspended while those claims are pending in federal court, a pro-plaintiff interpretation of the federal supplemental jurisdiction statute.

The case, *Artis v. District of Columbia*, deals with the tolling mechanism of the statute, Section 1367 of Title 28 of the U.S. Code, which authorizes federal courts to exercise supplemental jurisdiction over state law claims that arise from a case or controversy presented in a federal lawsuit.

Section 1367 states that the period of limitations for any [such] claim 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 Stephanie Artis argued that tolled means that the clock on a state's statute of limitations is suspended, or paused, during the pendency of a federal case and that plaintiffs enjoy an additional 30 days on top of the remaining limitations period.

The city, meanwhile, countered that tolled means that the statute of limitations is given no effect, but nevertheless continues to run during the federal case, and that plaintiffs only enjoy a 30-day grace period to refile the lawsuit in state court after the federal case is thrown out.

Writing for the majority, Justice Ruth Bader Ginsburg sided with Artis' interpretation.

The district's interpretation maps poorly onto the language of Section 1367(d), while Artis' interpretation is a natural fit, Justice Ginsburg said in the opinion, which was joined by Chief Justice John Roberts Jr. and Justices Stephen Breyer, Sonia Sotomayor and Elena Kagan.

Justice Ginsburg attacked the city's grace-period interpretation of Section 1367 as atypical.

Tellingly, the district has not identified any federal statute in which a grace-period meaning has been ascribed to the word 'tolled' or any word similarly rooted, the justice said.

Justice Neil Gorsuch issued a dissenting opinion, joined by fellow conservative Justices Samuel Alito Jr., Clarence Thomas and Anthony Kennedy. In it, the youngest and newest member of the court defended the city's grace-period interpretation as rooted in common law and principles of federalism or respect for state sovereignty.

The court's approach will require state courts to entertain state law claims that state law deems untimely not only by weeks or months but by many years, Justice Gorsuch said, citing amicus filings from various states and state groups.

It may only be a small statute we are interpreting, but the result the court reaches today represents no small intrusion on traditional state functions and no small departure from our foundational principles of federalism."

Artis' contract with the city was terminated in November 2010. Thirteen months later, the health inspector sued the city in federal court for employment discrimination. Importantly, Artis tacked on state law claims under D.C.'s Whistleblower Act and False Claims Act, which both had two years left on their applicable limitations period at the time of the filing.

In late June 2014, a federal judge dismissed Artis' lawsuit while declining to exercise jurisdiction over her state law claims. Artis refiled the suit in D.C. Superior Court 59 days later, but the trial court, adopting the 30-day grace period position, bounced the suit as time-barred.

Under the suspension approach, Artis had until June 2016 to refile her claim in the District of Columbia, as only 13 months had lapsed on the three-year statute of limitations for the state claims when she filed the suit — in other words, when the court declined to exercise jurisdiction over those claims in June 2014, she would have had 23 months left on the statute of limitations and an extra 30 days from Section 1367.

Chief Justice Roberts' decision to vote with the majority backing Artis comes as somewhat of a surprise after the top U.S. judge expressed concerns about the federalism issues **during oral arguments** in the case in November.

It's not a radical proposition to say it's a serious intrusion on the state when the state says, 'This is a state claim, these are our courts, we don't want our claim brought in our court if it's more than three years or whatever. And for the federal government to come in and say, 'Well, you may not like it, but you've got to do it,' I think that raises serious constitutional concerns,' the chief justice said at the time.

Adam Unikowsky of Jenner & Block LLP, who argued the case for Artis, welcomed the decision in a statement to Law360.

We are pleased by the Supreme Court's decision today, which ensures that plaintiffs refiling suits in state court have the benefit of all the time that was remaining on the limitations clock when they filed their federal suits, plus an additional 30 days, he said.

A spokesman for the D.C. attorney general's office said in an email to Law360, 'While we are of course disappointed in the result, and continue to agree with Judge Gorsuch's dissenting opinion that the statute is better interpreted to provide a 30-day grace period, we are ultimately thankful to have the court's clarity on the issue.'

The District of Columbia is represented by Loren L. Alikhan, Todd S. Kim and Sonia L. Lebsack of the D.C. attorney general's office and D.C. Attorney General Karl Racine.

Artis is represented by Adam G. Unikowsky, Matthew S. Hellman and Tassity S. Johnson of Jenner & Block LLP, and attorney Donald M. Temple.

The case is *Artis v. District of Columbia*, case number 16-460, in the U.S. Supreme Court.

*Update: This story has been updated with comments from the D.C. attorney general's office.*

*Correction: An earlier version of this story included incorrect counsel information for Artis. The error has been corrected.*

--Editing by Aaron Pelc.

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