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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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RAYGOR ET AL. *v.* REGENTS OF THE UNIVERSITY OF MINNESOTA ET AL.

CERTIORARI TO THE SUPREME COURT OF MINNESOTA

No. 00–1514. Argued November 26, 2001—Decided February 27, 2002

Petitioners each filed complaints in Federal District Court against respondent university (hereinafter respondent), an arm of the State of Minnesota, alleging a federal cause of action under the Age Discrimination in Employment Act (ADEA) and a state law discrimination action under the federal supplemental jurisdiction statute, 28 U. S. C. §1367, which purports to toll the limitations period for supplemental claims while they are pending in federal court and for 30 days after they are dismissed, §1367(d). Respondent's answers included the affirmative defense that the suits were barred by the State's Eleventh Amendment immunity. The District Court subsequently dismissed the claims, and petitioners withdrew their federal appeal after this Court held that the ADEA does not abrogate the States' sovereign immunity, see *Kimel* v. *Florida Bd. of Regents,* 528 U. S. 62, 92. In the meantime, petitioners had refiled their state law claims in state court. Respondent contended that the claims were barred by the applicable state statute of limitations and that the federal supplemental jurisdiction statute did not toll the limitations period on those claims because the Federal District Court never had subject matter jurisdiction over the ADEA claims. Agreeing, the State District Court dismissed the suit, but the Minnesota Appeals Court reversed. Reversing, in turn, the State Supreme Court held §1367(d) unconstitutional when applied to claims against nonconsenting state defendants, such as respondent.

Held: Section 1367(d) does not toll the limitations period for state law claims asserted against nonconsenting state defendants that are dismissed on Eleventh Amendment grounds. Pp. 5–14.

(a) Petitioners sought to have their state law claims heard in federal court as supplemental claims under §1367(a). That grant of ju-

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risdiction does not extend to claims against nonconsenting state defendants, see *Blatchford* v. *Native Village of Noatak,* 501 U. S. 775, but the question remains whether §1367(d) tolls the limitations period for state law claims asserted under §1367(a) but subsequently dismissed on Eleventh Amendment grounds. Pp. 5–7.

(b) Because §1367(d), on its face, purports to apply to dismissals of "any claim asserted under subsection (a)," it could be broadly read to apply to any such claim regardless of the reason for dismissal. But reading subsection (d) to apply when state law claims are dismissed on Eleventh Amendment grounds raises serious doubts about the provision's constitutionality given state sovereign immunity principles. Such a reading would require a State to defend against a claim in state court that had never been filed in that court until some indeterminate time after the original limitations period had elapsed. There is a rebuttable presumption that equitable tolling under federal law applies to waivers of the United States' immunity. However, this Court has never held that waivers of a State's immunity presumptively include federal tolling rules, nor is it obvious that such a presumption would be a realistic assessment of legislative intent. Moreover, a state sovereign prescribes the terms and conditions on which it consents to be sued in its own courts, *Beers* v. *Arkansas,* 20 How. 527, 529, and only the sovereign's consent can qualify the absolute character of its immunity from suit in those courts, *Nevada* v. *Hall,* 440 U. S. 410, 414. The notion that federal tolling of a state limitations period constitutes an abrogation of state sovereign immunity as to claims against state defendants at least raises a serious constitutional doubt. Thus, this Court has good reason to rely on the statutory construction principle that Congress must make its intention to alter the constitutional balance between the States and the Federal Government unmistakably clear in the statute's language, *Will* v. *Michigan Dept. of State Police,* 491 U. S. 58, 65. Section 1367(d)'s lack of clarity is apparent in two respects. With respect to the *claims* covered, §1367(d) reflects no specific or unequivocal intent to toll the limitations period for claims asserted against nonconsenting States, especially considering that such claims do not fall within §1367(a)'s scope. With respect to the *dismissals* covered, §1367(d) occurs in the context of a statute that specifically contemplates only a few grounds for dismissal, none based on the Eleventh Amendment. Section 1367(d) may not clearly exclude tolling for claims against nonconsenting States dismissed on Eleventh Amendment grounds, but this Court is looking for a clear statement of what the rule includes, not what it excludes. Pp. 8–12.

(c) Petitioners argue that the tolling provision should be interpreted to apply to their claims because it was enacted to prevent due

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process violations caused by state claim preclusion and anti-claim-splitting laws. However, since it is far from clear whether Congress intended tolling to apply when claims against nonconsenting States were dismissed on Eleventh Amendment grounds, it is not relevant whether Congress acted pursuant to §5 of the Fourteenth Amendment. And there is no merit to petitioners' claim that respondent consented to suit in federal court, since it raised its Eleventh Amendment defense at the earliest opportunity by including that defense in its answers to the complaints. Pp. 12–13.

620 N. W. 2d 680, affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, KENNEDY, and THOMAS, JJ., joined. GINSBURG, J., filed an opinion concurring in part and concurring in the judgment. STEVENS, J., filed a dissenting opinion, in which SOUTER and BREYER, JJ., joined.