

Jinks and its Implications for Federal Preemption of State Statutes of Limitations under CERCLA Section 309

Section 309 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) preempts state statutes of limitations for toxic tort actions that begin to run earlier than the date that the plaintiff knew or reasonably should have known that his injuries or damages were caused by toxic exposure.¹ However, in *Jinks v. Richland County*, the Supreme Court upheld the constitutionality of 28 U.S.C. §1367(d),² which requires state courts to toll the statute of limitations for state law claims during the period they were pending in federal court and for 30 days thereafter.³ In upholding the constitutionality of the federal tolling provision, the Court undercut challenges to section 309 using federalism doctrines.

Section 309 applies to all toxic tort actions brought under state law for personal injuries or property damages.⁴ It preempts state statutes of limitations if they begin to run earlier than the “federally required commencement date.”⁵ The federal commencement date is the date that the plaintiff knew or reasonably should have known that his injuries or damages were caused by toxic exposure.⁶

At least one commentator has questioned the constitutionality of section 309 on federalism grounds.⁷ In *He Who Pays the Piper Should Call the Time: Dual Sovereignty in U.S. Environmental Law*, Alfred R. Light argued that section 309 raises the same policy concerns discussed in

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1. 42 U.S.C. § 9658 (2000).
2. *Jinks v. Richland County* 538 U.S. 456, 465 (2003).
3. 28 U.S.C. § 1367(d) (2000).
4. 42 U.S.C. § 9658(a)(1) (2000).
5. *Id.*
6. § 9658(b)(4)(A).
7. Alfred R. Light, *He Who Pays the Piper Should Call the Time: Dual Sovereignty in U.S. Environmental Law*, 4 ENVTL. LAW 779, 816 (1998) [hereinafter *He Who Pays*] (stating “Congress, through section 309 of CERCLA, attempts to force state adoption of policies that arguably violate state constitutional protections “); see also Alfred R. Light, *New Federalism, Old Due Process, and Retroactive Revival Constitutional Problems with CERCLA’s Amendment of State Law*, 40 U. KAN. L. REV. 365, 368 (1992) [hereinafter *New Federalism*].

Printz v. United States.⁸ In *Printz*, the Supreme Court held that the Brady Act, which required state officials to implement a federal law regulating firearms,⁹ was unconstitutional because it violated the constitutional principle of dual sovereignty.¹⁰ The Court stated that allowing Congress to command state officers to execute federal law raised problems of political accountability, cost-shifting, and state protections of individual liberty.¹¹ In *He Who Pays the Piper*, Light argued that section 309 raises constitutional problems because it decreases political accountability, shifts costs of administration to states, and “thwart[s] protections of individual liberty by preempting state protections . . . against the retroactive revival of claims barred by a statute of limitations.”¹² Thus, Light maintains that *Printz* may have significant implications for section 309.¹³

Both the Second Circuit and the Alabama Supreme Court have also observed that section 309 may elicit constitutional challenges.¹⁴ In *ABB Industrial Systems, Inc. v. Prime Technology, Inc.*, the Second Circuit cited *Printz* in stating that section 309’s preemption of state law is of “questionable constitutionality” because it “appears to purport to change state law.”¹⁵ Similarly, in *Becton v. Rhone-Poulenc, Inc.*, the Supreme Court of Alabama stated that section 309 is vulnerable to constitutional challenges on federalism grounds.¹⁶ The court stated that the possibility of retroactive revival of state claims previously barred under otherwise applicable state statutes of limitations “would seem to create several federalism issues.”¹⁷ However, neither the Second Circuit nor the Alabama Supreme Court reached the constitutional issue, and instead resolved the cases on other grounds.¹⁸

As in section 309, the challenged statute in *Jinks* provides for the alteration of state statutes of limitations in certain circumstances.¹⁹ Specifically, 28 U.S.C. § 1367(d) affects state law claims that were filed in federal court using supplemental jurisdiction, then dismissed and re-filed in state court.²⁰ Under § 1367(d), state statutes of limitations are tolled during the period during which the claim was pursued in federal court

8. *He Who Pays*, *supra* note 8, at 816 (citing *Printz v. United States*, 521 U.S. 898 (1997)).

9. *Printz v. United States*, 521 U.S. 898, 903-04 (1997).

10. *Id.* at 935.

11. *See id.* at 920-22.

12. *He Who Pays*, *supra* note 8, at 816-17.

13. *Id.* at 816.

14. *ABB Indus. Systems, Inc. v. Prime Tech., Inc.*, 120 F.3d 351, 360 n.5 (2d Cir. 1997); *Becton v. Rhone-Poulenc, Inc.*, 706 So. 2d 1134, 1142 (Ala. 1997).

15. *ABB Indus.*, 120 F.3d at 360 n.5.

16. *Becton*, 706 So. 2d at 1142 (citing *United States v. Lopez*, 514 U.S. 549 (1995)).

17. *Id.*

18. *See id.*; *see also ABB*, 120 F.3d at 360 n.5.

19. 28 U.S.C. § 1367(d) (2000).

20. *Id.*

and for 30 days thereafter.²¹ In *Jinks*, Richland County, South Carolina, challenged the constitutionality of § 1367(d), claiming that the statute was facially invalid, infringed on state sovereignty, and was unconstitutional as applied to a state's political subdivisions.²²

In 1996, Susan Jinks sued Richland County in federal court after her husband died in the County's detention center.²³ She asserted a claim under 42 U.S.C. § 1983, as well as supplemental state law claims for wrongful death and survival, within the applicable statute of limitations.²⁴ In November 1997, the district court granted the defendant's motion for summary judgment on the § 1983 claim.²⁵ It declined to exercise supplemental jurisdiction over the state law claims and dismissed them without prejudice.²⁶

In December 1997, Jinks re-filed the wrongful death and survival claims in state court.²⁷ The jury returned a verdict in favor of Jinks for \$80,000.²⁸ The County appealed to the South Carolina Supreme Court, which reversed, holding that the state law claims had exceeded the statute of limitations.²⁹ Although the claims were timely under § 1367(d), the court held that the tolling provision under §1367(d) was unconstitutional as applied to a claim brought in state court against a state's political subdivisions.³⁰ Thus, the court held that Jinks's claims were time-barred.³¹ Jinks appealed to the United States Supreme Court, which granted certiorari.³²

The United States Supreme Court explicitly rejected the County's contention that § 1367(d) is facially invalid.³³ The Court reasoned that Congress's enumerated powers include the power "to constitute Tribunals inferior to the supreme court."³⁴ Citing *McCulloch v. Maryland*, the Court further stated that the Necessary and Proper Clause authorizes Congress to pass laws that are "plainly adapted"³⁵ for the "due administration of justice."³⁶ Accordingly, the Court reasoned that § 1367(d) promotes judicial efficiency, by allowing federal courts to

21. *Id.*

22. *Jinks v. Richland County*, 538 U.S. 456, 461-65 (2003).

23. *Id.* at 460.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* at 461.

34. *Id.* at 462 (quoting U.S. Const. art. I, § 8, cl. 9).

35. *Id.* (quoting *McCulloch v. Maryland*, 17 U.S. 316, 421 (1819)).

36. *Id.* (quoting *McCulloch*, 17 U.S. at 417).

determine whether or not to exercise supplemental jurisdiction without giving excessive consideration to state statutes of limitations.³⁷ Moreover, the Court found that § 1367(d) permits plaintiffs with intertwined federal and state law claims to pursue the state claims in federal court without running the risk of the state statute of limitations expiring.³⁸

The Court also rejected the argument that congressional alteration of state statutes of limitations is an unconstitutional infringement upon state sovereignty.³⁹ Instead, the Court stated that they did not think "state-law limitations periods fall into the category of 'procedure' immune from congressional regulation."⁴⁰ Thus, the Court held that § 1367(d) is not facially unconstitutional.⁴¹

The Court noted that Congress had previously altered state statutes of limitations in a number of other contexts.⁴² The Court cited both *Soldiers' and Sailors' Civil Relief Act of 1940* and section 309 of CERCLA as prior examples of federal preemption of state statutes of limitations.⁴³ Additionally, the Court observed that in *Stewart v. Kahn*, it upheld a federal statute that tolled statutes of limitations for criminal cases that could not be prosecuted due to the Civil War.⁴⁴

Finally, the Court rejected the claim that § 1367(d) violates sovereign immunity when applied to claims against a state's political subdivisions.⁴⁵ The Court stated that sovereign immunity applies only to states, not municipalities.⁴⁶ Thus, although Congress may not subject a state to a suit in its own courts, Congress may subject a municipality to suit in state court.⁴⁷

In upholding Congress's authority to enact 28 U.S.C. § 1367(d), the Supreme Court undercut federalism challenges to the constitutionality of section 309. This holding weakens the notion in *ABB Industrial Systems*, that section 309 is constitutionally problematic simply because it changes state law.⁴⁸ In *Jinks*, the Supreme Court explicitly stated that congressional legislation may affect state statutes of limitations without violating principles of state sovereignty,⁴⁹ strengthening the constitutional grounds for section 309.

37. *See id.* at 462-63.

38. *See id.* at 463-64.

39. *Id.* at 464-65.

40. *Id.*

41. *Id.*

42. *Id.* at 462 n.1.

43. *Id.*

44. *Id.* at 461-62 (citing *Stewart v. Kahn*, 78 U.S. 493 (1870)).

45. *Id.* at 465-67.

46. *Id.*

47. *Id.*

48. *ABB Indus. Systems, Inc. v. Prime Tech., Inc.*, 120 F.3d 351 (2d Cir. 1997).

49. *Jinks v. Richland County*, 538 U.S. 456, 462 (2003).

Jinks also undermines the idea that section 309 is unconstitutional because of its potential for retroactive revival of state law claims. In *Jinks*, the Court noted that it had previously upheld a federal statute tolling the statute of limitations during the civil war in *Stewart v. Kahn*.⁵⁰ The statute in *Stewart* arguably creates as much potential for retroactive revival as section 309, suggesting that the potential for retroactivity in section 309 is not sufficient to render it unconstitutional. *Jinks* suggests that federal preemption of state statutes of limitations, exemplified in section 309, is proper as long as it is enacted pursuant to a valid exercise of congressional power.

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50. *Id.* at 461.

