No. 12-1315

In the
# Supreme Court of the United States

PAULA PETRELLA,

*Petitioner*,

v.

METRO-GOLDWYN-MAYER, INC., ET AL.,

*Respondents*.

**On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## BRIEF FOR *AMICUS CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA SUPPORTING RESPONDENTS


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## INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. The Chamber represents some 300,000 direct members and indirectly represents the interests of more than three million businesses and organizations of every size and in every industry sector and region of the country. A principal function of the Chamber is to advocate for the interests of its members by filing *amicus curiae* briefs in cases involving issues of concern to the nation's business community. The Chamber has participated as an *amicus curiae* in other cases before this Court involving issues related to time limitations on the assertion of legal claims. *See*, *e.g.*, *Heimeshoff v. Hartford Life & Accident Ins. Co.*, No. 12-729, slip op. (U.S. Dec. 16, 2013); *Merck & Co. v. Reynolds*, 559 U.S. 633 (2010); *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007).

The Chamber and its members have a keen interest in the outcome of this case. In the decision below, the court of appeals properly held that petitioner's claims were barred by laches, a defense that "requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense." *Costello v. United States*, 365

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[1] Pursuant to this Court's Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part, and that no entity or person, aside from *amicus curiae*, its members, and its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Pursuant to this Court's Rule 37.3, the parties in this case have granted blanket consent to the filing of *amicus curiae* briefs.

U.S. 265, 282 (1961). The doctrine of laches has long provided protection against the assertion of stale and prejudicial claims. Nearly two centuries ago, Chief Justice Marshall wrote for this Court that "[f]rom the earliest ages, Courts of equity have refused their aid to those who have neglected, for an unreasonable length of time, to assert their claims." *Elmendorf v. Taylor*, 23 U.S. 152, 168 (1825). Petitioner's crabbed view of the laches defense contravenes this Court's precedent regarding its correct application. The Chamber has a strong interest in helping the Court avoid adopting the errors in petitioner's arguments so that this well-established defense remains available to its members who would be prejudiced by claims brought after unreasonable delays.

## SUMMARY OF THE ARGUMENT

Unless Congress provides otherwise, the doctrine of laches may be applied even though an applicable statute of limitations has not run, and it may be applied to claims for legal relief as well as claims for equitable relief. Petitioner, however, asks this Court to break new ground and hold that a federal court can never apply the doctrine of laches if Congress has enacted a statute of limitations for the claim at issue. Although this case involves a claim of alleged copyright infringement, petitioner's proposed rule would have ramifications far beyond the copyright context. If it were adopted, her rule would lay the groundwork for plaintiffs to seek reversal of this Court's precedents applying laches to a wide range of federal claims—including employment discrimination claims, antitrust claims, and some ERISA claims—governed by statutes of limitations.

Going still further, petitioner would also have this Court restrict the doctrine of laches (in those few areas where her rule would allow it) to claims for equitable relief—even though the wall of separation between law and equity was torn down long ago. This Court should reject both of petitioner's proposed limits on the doctrine of laches as lacking merit and contradicting precedent.

## ARGUMENT

### I. Congress' Enactment Of A Statute Of Limitations For A Federal Claim Is Not A *Per Se* Bar To Applying The Doctrine Of Laches To That Claim.

When Congress enacts a statute of limitations governing a federal claim, it does not simultaneously enact an unwritten, absolute ban on a federal court's applying the equitable doctrine of laches to that claim. This Court should reject petitioner's sweeping proposition that "[w]here Congress has enacted a statute of limitations, courts may not use laches to constrict that time period." Pet. Br. 28.

a. The Constitution vests the "judicial Power of the United States" in this Court and "such inferior Courts as the Congress may" establish, U.S Const. art. III, § 1, and that power "extend[s] to all Cases, in Law and Equity," *id.* § 2. Accordingly, when an Article III court sits to decide a case or controversy within its jurisdiction, it has inherent power to grant appropriate equitable relief—or to deny any relief based on a properly asserted equitable defense. "Unless otherwise provided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of [its

equity] jurisdiction." *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946). *See also Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.").

To be sure, Congress may by statute regulate the power of federal courts to dispense equity. "[I]t is well established that '[c]ourts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law.' " *INS v. Pangilinan,* 486 U.S. 875, 883 (1988) (quoting *Hedges v. Dixon Cnty.*, 150 U.S. 182, 192 (1893)). "Rather, 'courts of equity must be governed by rules and precedents no less than the courts of law.' " *Lonchar v. Thomas*, 517 U.S. 314, 323 (1996) (quoting *Missouri v. Jenkins*, 515 U.S. 70, 127 (1995) (Thomas, J., concurring)). *See also Guar. Trust Co. of N.Y. v. York*, 326 U.S. 99, 105 (1945) ("explicit Congressional curtailment of equity powers must be respected").[2]

Thus, this Court presumes that federal courts possess the powers of equity unless Congress has said otherwise in clear terms. *See Califano v. Yamasaki*, 442 U.S. 682, 705 (1979) ("Absent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue

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[2] Because Congress did not restrict the laches defense in cases under the Copyright Act, *see infra* pp. 7-8, this case raises no issue regarding constitutional limitations on Congress' ability to curtail the power of federal courts to grant equitable relief or to sustain an equitable defense.

injunctions in suits over which they have jurisdiction.").

As this Court explained in *Porter*, 328 U.S. at 398:

> Unless otherwise provided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of [its equitable] jurisdiction. … Power is thereby resident in the District Court, in exercising this jurisdiction, "to do equity and to mould each decree to the necessities of the particular case." *Hecht Co. v. Bowles*, 321 U.S. 321, 329 [(1944)]. It may act so as to adjust and reconcile competing claims and so as to accord full justice to all the real parties in interest; …. Moreover, the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied.

*See also Miller v. French*, 530 U.S. 327, 336 (2000) ("Like the Court of Appeals, we do not lightly assume that Congress meant to restrict the equitable powers of the federal courts ….").

b. Consistent with this Court's rule that a federal court may exercise the powers of equity absent a clear direction from Congress to the contrary, this Court's cases have expressly recognized that a federal court may entertain a laches defense—even though an applicable statute of limitations has not expired. In *Patterson v. Hewitt*, 195 U.S. 309 (1904),

this Court stated that "the weight of authority" provides and "the better rule" is that

> even if the statute of limitations be made applicable, in general terms to suits in equity, and not to any particular defense, the defendant may avail himself of the laches of the complainant, *notwithstanding the time fixed by the statute has not expired*. [*Id*. at 319 (emphasis added).]

*See also Russell v. Todd*, 309 U.S. 280, 288 n.1 (1940) ("Laches may bar equitable remedy before the local statute has run. … Federal courts of equity have not considered themselves obligated to apply local statutes of limitations when they conflict with equitable principles ….") (citations omitted); *Gardner v. Panama R. Co*., 342 U.S. 29, 30-31 (1951) ("[T]he existence of laches … should not be determined merely by a reference to and a mechanical application of the statute of limitations.").

To be sure, in *Holmberg v. Armbrecht*, 327 U.S. 392 (1946), this Court said that if Congress "puts a limit upon the time for enforcing a right which it created, there is an end of the matter. The Congressional statute of limitation is definitive." *Id*. at 395. But that was *dictum* since Congress gave the federal claim at issue no limitations period. And even the happy life of that *dictum* was short, for just two pages later this Court said that if Congress had put a time limit on the claim it would have been subject to equitable tolling on the facts of the case. *Id*. at 397.

In another case this Court stated: "Laches within the term of the statute of limitations is no defense at law." *United States v. Mack*, 295 U.S. 480, 489

(1935). But that came three years before the merger of law and equity. Now that law and equity are one, equitable doctrines such as laches may be asserted in any federal civil action unless Congress provides otherwise. *See* Part III *infra*.

c. Applying these principles to the Copyright Act lays plain the error in petitioner's argument. Congress has enacted a statute of limitations in the Copyright Act, which provides: "No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued." 17 U.S.C. § 507(b). But Congress did *not* restrict the power of federal courts to apply the doctrine of laches to copyright-infringement claims brought within that period. Indeed, nothing in Section 507(b)'s text limits, or is inconsistent with, the availability of a laches defense. On the contrary, Congress made filing within three years a necessary, but not sufficient, for suit. The statute states that an action *may not* be maintained *unless* it is commenced within the three-year period; it does not say that an action *may* always be maintained *if* brought within three years. In other words, the three-year period sets a deadline but does not create a safe harbor.[3]

The mere fact that Congress has enacted a statute of limitations does not by itself permit the conclusion that Congress ruled out laches as a possible defense. Indeed, this fact "could be used to support the opposite conclusion: a legislature that places no

[3] The availability of laches as a defense to copyright infringement claims is especially appropriate in light of the very plaintiff-friendly claim accrual rule posited by petitioner. *See G.D. Searle & Co. v. Cohn*, 455 U.S. 404, 411 (1982).

deadline on suits is presumably not worried about the consequences for defendants of having to defend against suits brought long after the alleged wrongdoing." *Martin v. Consultants & Admin'rs, Inc.*, 966 F.2d 1078, 1100 (7th Cir. 1992) (Posner, J., concurring). *See also* Vikas K. Didwania, *The Defense of Laches in Copyright Infringement Claims*, 75 U. Chi. L. Rev. 1227, 1257 (2008) ("[T]here is little reason to assume that in stipulating a three-year statutory period, Congress intended such period to serve as a maximum and minimum time for filing suit.").

As this Court very recently reiterated, "[s]tatutes of limitations establish the period of time within which a claimant *must* bring an action." *Heimeshoff*, slip op. at 4 (emphasis added). They do not guarantee that an action *may* be brought within the time period.

d. This Court has applied the doctrine of laches to other federal claims for which Congress has enacted time limits, including employment discrimination claims, antitrust claims, and certain ERISA claims. Under petitioner's proposed rule, however, those cases would have been wrongly decided, because the statutes of limitations for such claims would have precluded any possible application of laches. This Court should reject petitioner's proposed rule so as to maintain consistency with its precedents outside the copyright context.

It is well established that laches may bar stale employment discrimination claims brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a). *See Nat'l R.R. Passenger Corp. v.*

*Morgan*, 536 U.S. 101, 121 (2002) ("an employer may raise a laches defense" against a Title VII hostile work environment claim); *Occidental Life Ins. Co. of Cal. v. EEOC,* 432 U.S. 355, 373 (1977); *Smith v. Caterpillar, Inc.*, 338 F.3d 730, 732 (7th Cir. 2003) (defendant "presented a valid laches defense" to plaintiff's Title VII gender discrimination and retaliation claims); *Nat'l Ass'n of Gov't Emps. v. City Pub. Serv. Bd. of San Antonio, Tex.*, 40 F.3d 698, 708-712 (5th Cir. 1994); *Cleveland Newspaper Guild, Local 1 v. Plain Dealer Publ'g Co.*, 839 F.2d 1147, 1149-54 (6th Cir. 1988) (en banc); *see also Ledbetter*, 550 U.S. at 632. To bring a civil action under Title VII, the plaintiff must first file a charge with the EEOC within 180, or in some cases 300, days. *See* 42 U.S.C. §§ 2000e-5(e)(1), 5(f)(1).

In the antitrust context, this Court has indicated that a private action for injunctive relief under Section 16 of the Clayton Act, 15 U.S.C. § 26, may be barred by "equitable defenses such as laches." *California v. Am. Stores Co.*, 495 U.S. 271, 296 (1990). *See also Int'l Tel. & Tel. Corp. v. Gen. Tel. & Elecs. Corp.*, 518 F.2d 913, 927 (9th Cir. 1975) (holding that "the laches defense is available" in a private action under § 16), *disapproved of on other grounds*, *Am. Stores Co.*, 495 U.S. at 277-279. A four-year statute of limitations applies to antitrust claims. *See* 15 U.S.C. § 15b.

If petitioner's sweeping theory that laches cannot coexist with a limitations provision were to prevail, plaintiffs could argue that this Court's holding here abrogates *Morgan*, *Occidental Life*, and *American*

*Stores*, making the laches defense unavailable in Title VII and antitrust cases.

Petitioner's proposed rule would also immunize from dismissal unreasonably delayed claims for withdrawal liability under the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), 29 U.S.C. §§ 1381-1461. *See Bay Area Laundry & Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal., Inc.*, 522 U.S. 192, 205 (1997) (employer may raise laches as defense to MPPAA claim); *In re Centric Corp.*, 901 F.2d 1514, 1519-20 (10th Cir. 1990) (MPPAA claim barred by laches); 29 U.S.C. § 1451(f)(1) (six-year statute of limitations for MPPAA claims).

Indeed, because a default four-year statute of limitations now applies to all civil actions created by statute after December 1, 1990, *see* 28 U.S.C. § 1658(a), petitioner's theory means that laches would not be available for any civil action created since that date or in the future unless Congress affirmatively provides (1) that there is no statute of limitations for the civil action, or (2) that laches is available—the opposite of the presumption with which Congress now operates.

e. The overwhelming weight of other authority—including circuit court cases, state court cases, and treatises—similarly holds or recognizes that a party may raise a laches defense within the period of an applicable statute of limitations.

"[T]here is plenty of authority for applying laches in cases governed by a statute of limitations." *Martin*, 966 F.2d at 1100 (Posner, J., concurring). Such authority can be found in circuit court cases

presenting copyright-infringement claims. *See*, *e.g.*, *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 954 (9th Cir. 2001) ("We have … determined that laches may sometimes bar a statutorily timely claim.") (copyright case); *Jackson v. Axton*, 25 F.3d 884, 888 (9th Cir. 1994) ("[L]aches may apply whether or not any statutory limitations period runs.") (copyright case); *Hoste v. Radio Corp. of Am.*, 654 F.2d 11, 11-12 (6th Cir. 1981) (remanding to determine whether laches barred claims for damages accruing within the Copyright Act's statute of limitations). It also appears in other intellectual property contexts, such as cases raising patent-infringement claims. *See*, *e.g.*, *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1030 (Fed. Cir. 1992) (en banc) ("Aukerman is in error in its position that, where an express statute of limitations applies against a claim, laches cannot apply *within* the limitation period.") (patent case). And it is firmly established in many non-intellectual-property contexts. *See Pruitt v. City of Chicago*, 472 F.3d 925, 928 (7th Cir. 2006) (rejecting argument that laches "may not be used to shorten a statutory period of limitations") (claims under Title VII and 42 U.S.C. § 1981); *Hutchinson v. Spanierman*, 190 F.3d 815, 823 (7th Cir. 1999) ("[R]egardless of which statute of limitations should apply …, we conclude that the doctrine of laches bars Robert Hutchinson from establishing any claim he may have had to the art collection.") (applying Indiana law); *Ikelionwu v. United States*, 150 F.3d 233, 237-238 (2d Cir. 1998) (laches defense available as to claim for return of forfeited property even though applicable statute of limitations, 28 U.S.C. § 2401(a), had not run); *A.C. Aukerman Co.*, 960 F.2d

at 1030 ("In other areas of our jurisdiction, laches is routinely applied within the prescribed statute of limitations period for bringing the claim.") (citing *Cornetta v. United States*, 851 F.2d 1372, 1376 (Fed. Cir. 1988) (en banc) (military pay case)); *United States v. Matheson*, 532 F.2d 809, 820-821 (2d Cir. 1976) (laches barred executor of decedent's estate from raising issue of decedent's alleged expatriation in timely-filed suit for tax refund); *Young v. Bradley*, 142 F.2d 658, 662 (6th Cir. 1944) ("[T]he statute of limitations does not bar these claims; they are suspended during the pendency of reorganization proceedings. However, laches may exist irrespective of the statute of limitations") (citation omitted); *see also Schnack v. Valley Bank of Nev.*, 291 F. App'x 168, 173 (10th Cir. 2008) (rejecting argument "that laches cannot bar [plaintiff's] suit because the statute of limitations had not yet run") (diversity case). The decision below is no outlier.

Many state courts, too, have confirmed that laches may be asserted even if the statute of limitations has not yet run. *See Thomaston v. Thomaston*, 468 So.2d 116, 121 (Ala. 1985); *Schultz v. Rector-Phillips-Morse, Inc.*, 552 S.W.2d 4, 13 (Ark. 1977); *Travis Co. v. Mayes*, 36 So.2d 264, 267 (Fla. 1948); *Walker v. Ga. Farm Bureau Mut. Ins. Co.*, 429 S.E.2d 289, 291 (Ga. Ct. App. 1993); *Thomas v. Arkoosh Produce, Inc.*, 48 P.3d 1241, 1249 (Idaho 2002); *Sundance Homes, Inc. v. Cnty. of DuPage*, 746 N.E.2d 254, 262 (Ill. 2001); *Shafer v. Lambie*, 667 N.E.2d 226, 231 (Ind. Ct. App. 1996); *Plaza Condo. Ass'n v. Wellington Corp.*, 920 S.W.2d 51, 54 (Ky. 1996); *Ne. Harbor Golf Club, Inc. v. Harris*, 725 A.2d 1018, 1023 (Me. 1999) (portion of claim of usurpation of corporate opportunity not

barred by statute of limitations held barred by laches); *Hindelang v. Hindelang*, No. 295722, 2011 WL 1564626, at *2 (Mich. Ct. App. Apr. 26, 2011); *State ex rel. Gen. Elec. Co. v. Gaertner*, 666 S.W.2d 764, 767 (Mo. 1984); *In re Giacomini*, 842 A.2d 70, 75 (N.H. 2004); *Thirty-Four Corp. v. Sixty-Seven Corp.*, 474 N.E. 2d 295, 298 (Ohio 1984); *Short v. Am. Biomed. Grp., Inc.*, 60 P.3d 518, 520 (Okla. Civ. App. 2002) ("[A]n action may be barred on account of the laches of the complainant for a period shorter than the statutory period of limitation."); *Fitzgerald v. O'Connell*, 386 A.2d 1384, 1387 (R.I. 1978) ("[W]e … hold that the defense of laches may be asserted in civil actions seeking equitable relief notwithstanding the fact that the period fixed by the applicable statute of limitation has not expired."); *Sutton v. Davis*, 916 S.W.2d 937, 941 (Tenn. Ct. App. 1995) ("[L]aches may bar a claim before the running of the applicable statute of limitation."); *Caldwell v. Barnes*, 975 S.W.2d 535, 538-539 (Tex. 1998).

Some of these state courts articulated the rule to be that, if "the delay in bringing suit is less than the applicable limitation period, laches will constitute a bar to suit only if the delay was unreasonable and prejudicial." *In re Giacomini*, 842 A.2d at 75. Of course, those two elements—unreasonable delay and prejudice—are not extra conditions; they are the usual components of a laches defense. *See* Dan B. Dobbs, *Law of Remedies* § 2.4(4), at 103 (2d ed. 1993) ("In its most orthodox form, laches is unreasonable delay by the plaintiff in prosecuting a claim or protecting a right of which the plaintiff knew or should have known, and under circumstances causing prejudice to the defendant."); *Black's Law*

*Dictionary* (9th ed. 2009) (laches: "Unreasonable delay in pursuing a right or claim—almost always an equitable one—in a way that prejudices the party against whom relief is sought.").

The rule applied by these many state courts is also reflected in commonly consulted treatises. One such treatise states that

> whether a plaintiff asserts rights short of the statute of limitations is not itself determinative as to whether the defense of laches applies. Delay short of the statutory period could be held to be a sufficient delay if other elements of doctrine of laches are met. Thus relief may be denied, although the statutory period has not elapsed, where there has been an inexcusable delay and special circumstances exist which would render it inequitable to enforce the right ….

30A C.J.S. *Equity* § 165 (2013) (footnotes omitted).

Other treatises agree. *See* 27A Am. Jr. 2d *Equity* § 163 (2d ed. 2013) ("[T]here is authority holding that laches may apply regardless of whether an existing statutory limitation period has run. It has been stated that, just as various tolling doctrines can be used to lengthen the period for suit specified in a statute of limitations, so laches can be used to contract it.") (footnotes omitted); 31 Williston on Contracts § 79:11 (4th ed. 2013) ("The defense of laches is available quite apart and separate from the defense of the running of the statute of limitations. As a defense it does not arise merely because of lapse of time ….").

The leading copyright treatise states that "laches has an illustrious pedigree across the circuits as a defense to a charge of copyright infringement." 3 M. Nimmer & D. Nimmer, *Nimmer on Copyright,* § 12.06[A] (2013). And even the Patry treatise, which takes the position that laches is not available "within the limitations period," qualifies that statement with a "But see" citation to more than 20 contrary cases. 6 W.F. Patry, *Patry on Copyright* § 20:55 & n.1 (2013).

## II. This Court's Equitable Tolling Cases Further Support The Conclusion That Laches May Bar A Claim Even If A Statute Of Limitations Applies.

This Court's cases on the doctrine of equitable tolling confirm that there is no merit to petitioner's argument that, if Congress has enacted a time limit, equitable doctrines cannot adjust the limit. When a federal court applies equitable tolling to a statute of limitations, it permits a suit to go forward after the statute has run. Equitable tolling thus is "the mirror image" of laches. *Teamsters & Emp'rs Welfare Trust of Ill. v. Gorman Bros. Ready Mix*, 283 F.3d 877, 881 (7th Cir. 2002). Just as equitable tolling is "used to lengthen the period for suit specified in a statute of limitations, so laches can be used to contract it." *Id.*

Under a long line of this Court's cases, equitable tolling is presumed to be available to a plaintiff in a case subject to a statute of limitations. "Time requirements in lawsuits between private litigants are customarily subject to 'equitable tolling.' " *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95 (1990). *Accord Heimeshoff*, slip op. at 15. Indeed, this Court has observed it is "hornbook law" that equitable

tolling is available "unless tolling would be inconsistent with the text of the relevant statute. Congress must be presumed to draft limitations periods in light of this background principle." *Young v. United States*, 535 U.S. 43, 49-50 (2002) (quotations marks and citations omitted).

The fact that Congress has enacted a statute of limitations does not, of course, bar a federal court from applying equitable tolling—the whole point of the doctrine is to toll the statute. *See United States v. Brockamp*, 519 U.S. 347, 350 (1997) (tolling available unless there is "good reason to believe that Congress did *not* want the equitable tolling doctrine to apply"); *see also Holland v. Florida*, 130 S. Ct. 2549, 2560-62 (2010) (AEDPA's one-year statute of limitations for federal habeas claims subject to equitable tolling). Accordingly, this Court explained that its precedents

> fully support the conclusion that the mere fact that a federal statute providing for substantive liability also sets a time limitation upon the institution of suit does not restrict the power of the federal courts to hold that the statute of limitations is tolled under certain circumstances not inconsistent with the legislative purpose.

*Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 559 (1974).

This Court's presumption that equitable tolling is available applies equally to laches—tolling's doctrinal mirror image. Just as Congress may direct the federal courts not to apply equitable tolling to a particular limitations period, so may it instruct them not to apply laches to certain claims. Absent such

instruction, however, courts retain the power to apply either equitable doctrine in proper circumstances.

Realizing the implications of this Court's equitable tolling cases for her attack on laches, petitioner argues that Congress' enactment of a statute of limitations displaces laches but not equitable tolling. *See* Pet. Br. 32-33. But there is no principled basis for that distinction. If the fact that Congress has set a time limit bars laches, it should also bar tolling. Petitioner cannot have it both ways. "What is sauce for the goose (the plaintiff seeking to extend the statute of limitations) is sauce for the gander (the defendant seeking to contract it)." *Teamsters & Emp'rs Welfare Trust*, 283 F.3d at 882.

The application of laches to bar a claim for which Congress has enacted a statute of limitations thus raises no "separation of powers" issue. *Contra* Pet. Br. 24. Congress can regulate the laches defense. But where Congress has not done so, a court may exercise its inherent equitable power to apply laches to a claim when warranted. Each branch thus operates well within the proper limits of its authority, far from implicating the other's.

**III. Laches May Bar Claims For Legal Relief.**

Petitioner argues that "laches is categorically unavailable to bar legal remedies" because it is "an equitable doctrine." Pet. Br. 38. Petitioner is wrong. A meritorious laches defense may bar claims for legal relief just as it may bar claims for equitable relief.

Law and equity merged in 1938. There is only one form of action, the civil action, in federal practice today. *See* Fed. R. Civ. P. 2. The panoply of defenses

is available in such actions. *See* Fed. R. Civ. P. 8(c)(1) (including laches and statute of limitations on the list of affirmative defenses). Accordingly, "the equitable defenses are now generally available both at law and in equity." Douglas Laycock, *The Triumph of Equity*, 56 Law & Contemp. Probs. 53, 70 (1993).

With the unification of law and equity, a federal court may, in appropriate circumstances, bring its inherent equitable power to bear in any civil case. "Except in certain limited contexts, the civil action prescribed by the federal rules is the proper medium for exercising any civil power the district courts may possess." 4 Wright & Miller, Fed. Prac. & Proc. Civ. § 1042 (3d ed. 2013) (footnotes omitted). In the post-merger world, " 'the court must give the relief to which the parties are entitled on the facts, applying the rules of both law and equity as a single body of principles and precedents.' " *Id.* § 1041 (quoting *Groome v. Steward*, 142 F.2d 756, 756 (D.C. Cir. 1944)). Today, equity's "maxims may have an impact on civil actions that formerly would have been actions at law and therefore beyond their scope of application." *Id.* § 1043. *See also* Dobbs, *Remedies* § 2.6(1), at 149 (federal courts post-merger "enjoy both the powers of the old chancellors and the powers of the old law judges").

The doctrine of laches was not shut out when law and equity became one. On the contrary, "following the merger of law and equity," laches "became part of the general body of rules governing relief in the federal court system." *Envtl. Def. Fund, Inc. v. Alexander*, 614 F.2d 474, 478 (5th Cir. 1980). Thus,

laches is a possible defense in any civil action absent a contrary congressional directive.

> Laches is an equitable doctrine but one increasingly applied in cases at law as well. Not only is there a long tradition of applying equitable defenses in cases at law … but with the merger of law and equity there is no longer a good reason to distinguish between the legal and equitable character of defenses ….

*Maksym v. Loesch*, 937 F.2d 1237, 1247-48 (7th Cir. 1991) (parenthetical and citations omitted). As the Dobbs treatise states, the laches defense may "be applied in a purely 'legal' claim, such as one for money, provided it goes to the merits of the claim." Dobbs, *Remedies* § 2.6(2), at 152. *See also id.* § 2.4(4), at 105 (unreasonable delay giving rise to laches may qualify as estoppel or waiver, which "are substantive defenses that reach all remedies, both legal and equitable" and "may defeat the plaintiff's claim even when the plaintiff seeks purely legal relief").

Laches therefore can shorten a limitations period "regardless of whether the suit is at law or in equity, because, as with many equitable defenses, the defense of laches is equally available in suits at law." *Teamsters & Emp'rs Welfare Trust*, 283 F.3d at 881. *See also Pruitt*, 472 F.3d at 928 (rejecting the argument "that laches applies only to suits in equity") (Title VII and § 1981 claims); *Hot Wax, Inc. v. Turtle Wax, Inc.*, 191 F.3d 813, 822 (7th Cir. 1999) ("courts increasingly apply [laches] in cases at law in which plaintiffs seek damages") (trademark claim); *Cornetta*, 851 F.2d at 1376 (in the Federal Circuit, laches "has been applied to claims for back pay by

government personnel brought even before the limitations period has run, notwithstanding that these are actions at law, not equity"); *Gruca v. U.S. Steel Corp.*, 495 F.2d 1252, 1253-54 (3d Cir. 1974) (laches barred "veteran's claim for legal and equitable relief under the Military Selective Service Act of 1967, 50 App. U.S.C. § 459").[4]

Because laches may be applied to claims for legal relief and claims for equitable relief, consideration of

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[4] State courts have likewise rejected petitioner's contention that laches cannot bar claims for legal remedies. *See Massey v. Jackson*, 726 So.2d 656, 659 (Ala. Civ. App. 1998) ("[T]he Rules of Civil Procedure, having merged law and equity practice in this state, have empowered trial courts to consider not only legal defenses to ejectment claims, but equitable defenses as well."); *Dep't of Banking & Fin. v. Wilken*, 352 N.W.2d 145, 149 (Neb. 1984) ("The common-law rule is that equitable defenses cannot be used to defeat an action at law based upon contract; however, we have not accepted that position, but, on the contrary, we have held that any defense, whether it be legal or equitable, may be set up in any case."); *Fibreboard Paper Prods. Corp. v. E. Bay Union of Machinists*, 227 Cal. App. 2d 675, 728 (Dist. Ct. App. 1964) ("[A] defendant may set up as many defenses as he may have, regardless of the question as to whether they are of a legal or equitable nature, because the distinction which exists under the common law between actions at law and suits in equity, and the forms thereof, ha[s] been abolished."); *McDaniel v. Messerschmidt*, 382 P.2d 304, 307 (Kan. 1963) ("Although plaintiff contends the doctrine of laches does not apply to pure actions at law, which he claims this to be, and applies only to suits in equity, our cases do not support his theory."); *L.W. Wentzel Implement Co. v. State Fin. Co.*, 63 N.W.2d 525, 527-528 (N.D. 1954); *Kenny v. McKenzie*, 127 N.W. 597, 601 (S.D. 1910) ("By the great weight of authority and decision under Code systems similar to our own any facts constituting a defense under the rules of equity or at law may be pleaded in a civil action ….").

the doctrine should not, as the government contends, be held in abeyance for the remedies stage of a case. *See* U.S. *Amicus* Br. 28-29. In proper circumstances, a court may hold that a meritorious laches defense bars a claim in its entirety such that no relief is granted. Consideration of the doctrine therefore should occur along with other merits issues. *See* Dobbs, *Remedies* § 2.6(2), at 152 (the laches defense "often does go to the merits" of a claim).

It is true that in *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226 (1985), this Court commented in a footnote that applying "the equitable defense of laches in an action at law would be novel indeed." *Id.* at 244 n.16. But the comment was dictum. The Court did "not reach" the issue of laches because the issue had not been raised on appeal. *Id.* at 244-245. *See also id.* at 244 n.16 ("the issue of laches is not before us"). Furthermore, the Court offered better developed reasons for eschewing laches that had to do with the rights of, and statutes pertaining to, Indians and Indian tribes. *See id.*

Contrary to the *County of Oneida* dictum, applying an equitable doctrine in an action at law is not a novelty. In fact, it would be anomalous to hold that laches cannot apply to claims for legal relief simply because the doctrine derives from equity. Such a holding would contravene numerous opinions by this Court holding that equitable doctrines can apply whether the case or claim at issue sounds in law, equity, or a combination of the two. Such doctrines include abstention,[5] *forum non conveniens*,[6] the

[5] *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 718 (1996) ("Though we have thus located the power to abstain in

"unclean hands" defense,[7] the *in pari delicto* (in equal fault) defense,[8] the power to set aside fraudulent judgments,[9] the power to award attorney's fees for bad faith litigation conduct,[10] and the power to dismiss an action for failure to prosecute.[11]

These doctrines are not relegated to one side of the federal courthouse because they grew out of equity.

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the historic discretion exercised by federal courts 'sitting in equity,' … we have recognized that the authority of a federal court to abstain from exercising its jurisdiction extends to all cases in which the court has discretion to grant or deny relief. Accordingly, we have not limited the application of the abstention doctrines to suits for injunctive relief.") (citation omitted).

[6] *See Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 505 n.4 (1947) ("application [of *forum non conveniens*] does not depend on whether the action is at law or in equity") (citations omitted).

[7] *See Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814-820 (1945) (unclean hands defense barred both patent infringement claim and breach of contract claim).

[8] *See Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) ("a private action for damages [for securities fraud] may be barred on" *in pari delicto* grounds).

[9] *See Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248 (1944) ("Equitable relief against fraudulent judgments is not of statutory creation. It is a judicially devised remedy ….").

[10] *See Hall v. Cole*, 412 U.S. 1, 4-5 (1973) ("[F]ederal courts, in the exercise of their equitable powers, may award attorneys' fees when the interests of justice so require. Indeed, the power to award such fees is part of the original authority of the chancellor to do equity in a particular situation, and federal courts do not hesitate to exercise this inherent equitable power ….") (quotation marks and citations omitted).

[11] *See Link v. Wabash R.R.*, 370 U.S. 626, 629 (1962).

And there is no principled basis to carve out laches from that list, such that it alone among the equitable doctrines would be confined to claims for equitable relief.

## CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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