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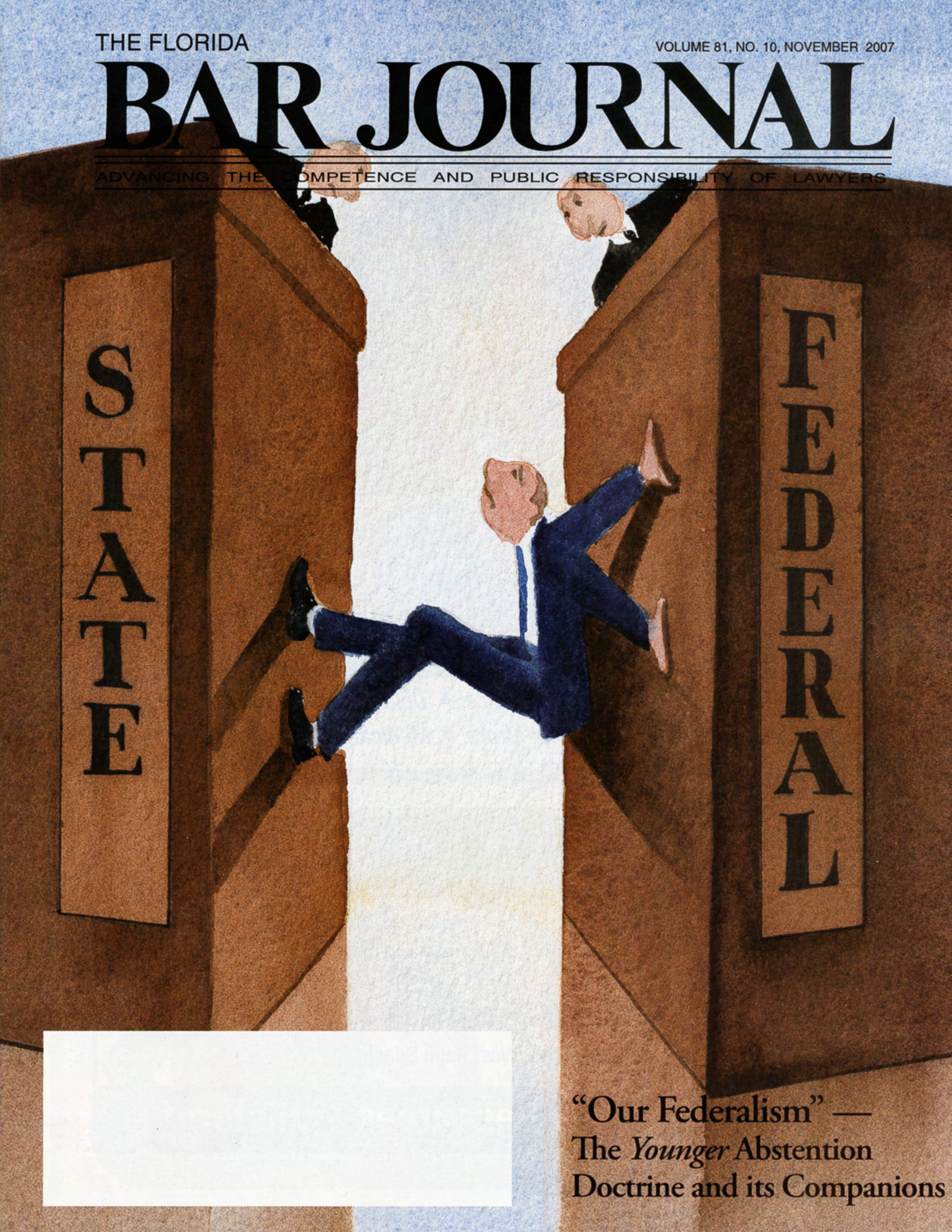


## "Our Federalism" — The *Younger* Abstention Doctrine and its Companions

# "Our Federalism": The *Younger* Abstention Doctrine and its Companions

by Beth Shankle Anderson

In the United States, our legal system incorporates two parallel judicial processes, consisting of a federal and a state court system — each state having its own separate structure. Since 1941, there has been significant recognition of circumstances under which a federal court may decline to proceed though it has jurisdiction under the Constitution and federal statutes.[1] These circumstances give rise to what is commonly referred to as the "abstention doctrine," which "prohibits a federal court from deciding a case within its jurisdiction so that a state court can resolute some or all of the dispute."[2] The purpose of this doctrine is to "preserve the balance between state and federal sovereignty."[3] This balance between state and federal courts is often referred to as federalism or comity, and the cases involving federal court abstention embody complex considerations designed to avoid friction between federal and state courts.[4]

Although a plethora of criticism exists, the abstention doctrines are essential to our parallel court systems in those cases where the interests of the states outweigh federal adjudication of those interests.[5] This article seeks to explore the various abstention doctrines and their application, expansion, and curtailment.

### The *Younger* Abstention Doctrine

The *Younger* abstention doctrine has its roots in the concept of "Our Federalism" which grew out of the case of *Younger v. Harris*, 401 U.S. 37 (1971). This doctrine instructs federal courts to refrain from hearing constitutional challenges to state action when federal action would be regarded as an improper intrusion on the state's authority to enforce its laws in its own courts.[6] The abstention doctrine derives from the longstanding concepts of comity and federalism. The coexistence of state and federal powers embodies a system in which there must be respect by both sovereigns to protect the other's legitimate interests.[7] Justice Black emphasized that while the federal government may be anxious to protect federal rights and interests, it must "always endeavor to do so in ways that will not unduly interfere with the legitimate activities of the [s]tates."[8] This gave rise to the concept of "Our Federalism" which, the Supreme Court explained, "does not mean blind deference to '[s]tates' [r]ights,' anymore than it means centralization of control over every important issue in our [n]ational [g]overnment and its courts."[9]

In *Younger*, Harris, an advocate for communism, was indicted in a California state court and charged with violation of the California Criminal Syndicalism Act. He filed a complaint in the district court seeking an order to enjoin Younger, the district attorney, from prosecuting him any further under the California statute. Harris alleged that the statute violated his right to free speech and press as guaranteed under the First and 14th amendments.[10] The district court agreed, and held that the California Criminal Syndicalism Act was "void for vagueness and overbredth in violation of the First and [14]th [a]mendments."[11] The court issued an injunction restraining Younger from further prosecuting Harris under the act.[12] Younger then appealed the decision to the U.S. Supreme Court.

The U.S. Supreme Court, in an opinion delivered by Justice Black, reversed the decision of the district court and held that the federal relief sought by Harris was barred because of the "fundamental policy against federal intervention with state criminal proceedings." The Court noted that Congress, since its early beginnings, had emphasized the importance of deference to state court proceedings, leaving them free from federal court interference, specifically citing the "Anti-Injunction Act."[13] Justice Black maintained

that the primary sources for prohibiting federal intervention in state prosecutions were readily apparent in the "basis doctrine of equity jurisdiction" and comity, both of which comprise the notions found in "Our Federalism."

The *Younger* abstention doctrine derived from these longstanding concepts of comity and federalism, which are unique to this country. This foundation creates a federal judiciary without blind deference to the states or centralized control over each and every national issue. *Younger* abstention is distinguished from other abstention doctrines because it is based on considerations of comity and equity jurisprudence. A court sitting in equity should not interfere with the ongoing proceedings of state criminal prosecutions.[14] The *Younger* court expressly noted that its decision was based on notions of comity and "Our Federalism," not the Anti-Injunction Act.[15]

### Exceptions to the *Younger* Abstention Doctrine

*Younger* implied that a federal court may act to enjoin a state court proceeding when certain extraordinary circumstances exist that involve traditional considerations of equity jurisprudence.[16] Although these exceptions are implicit in *Younger*, many scholars argue that these exceptions are virtually nonexistent in their application.[17] These three principal exceptions include bad faith and harassment, patently unconstitutional statutes, and the lack of an adequate state forum.[18]

The bad faith and harassment exception was specifically mentioned in the opinion as the kind of extraordinary circumstances that would justify federal intervention in the state proceeding. If the state prosecution was brought in bad faith and used to harass the criminal defendant, the Court stated that injunctive relief would be available. Generally, the Court has defined bad faith as prosecuting an individual without a reasonable expectation of obtaining a valid conviction. The Court further defined the "bad faith and harassment" exception to include "a combination of impermissible motive, multiple prosecutions, and improbability of success."[19] However, since the *Younger* decision, the Court has never invoked this exception to find that state action constituted a bad faith prosecution.[20]

There is not a single instance in which the Court has invoked the patently unconstitutional exception to justify federal intervention.

The second exception to *Younger* abstention is the patently unconstitutional exception. This exception is derived from Justice Black's declaration that "there may, of course, be extraordinary circumstances in which the necessary irreparable injury can be shown even in the absence of the usual prerequisites of bad faith and harassment."[21] To illustrate this point, Justice Black stated that "[i]t is of course conceivable that a statute might be flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." However, this exception has proven to be almost useless because it is difficult to contemplate a statute so wholly unconstitutional as to meet these requirements. Indeed, there is not a single instance in which the Court has invoked the patently unconstitutional exception to justify federal intervention.[22]

Specifically, in *Trainor v. Hernandez*, 431 U.S. 434, 447 (1977), the Court found the statute at issue to be patently unconstitutional. The Court, however, declined to apply this exception to the case before it because the statute in question was not unconstitutional "in every clause, sentence and paragraph."[23] Justice Stevens noted in his dissent that the patently unconstitutional exception would be "unavailable whenever a statute has a legitimate title, or a legitimate severability clause, or some other equally innocuous provision."[24] Accordingly, the Court's interpretation of this exception has completely voided it of any meaning and rendered it practically useless.

The third exception to federal court abstention that derived from *Younger* is one premised on the "lack of an adequate state forum."[25] Unlike the other two exceptions, the Court has actually used this exception in practice. In *Gibson v. Berryhill*, 411 U.S. 564 (1973), for example, the Court found that federal intervention is appropriate under this exception if the state courts are biased and unable to be trusted on a particular issue. In *Gibson,* the Court found that a board of optometrists was incapable of fairly adjudicating a particular suit because every member had a financial stake in its outcome.

The Court has been far more restrictive in its holdings in other cases, especially ones involving the judiciary. In *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 435-37 (1982), the Court found that the state bar was an adequate forum for raising First Amendment objections to state bar disciplinary rules because nothing in the record indicated that the bar committee would have refused to hear a First Amendment challenge to its disciplinary rules. Therefore, the Court declined to recognize that a *Younger* exception existed, instead finding that the state bar was adequate to address the First Amendment challenges. And, in *Kugler v. Helfant*, 421 U.S. 117, 125-29 (1975), the Court found that the availability of recusal provisions in New Jersey courts substantially undermines any claim of bias surrounding the judiciary. Moreover, even when bias can be shown on the part of a judiciary, a litigant must also demonstrate that the bias is so systematic and pervasive that recusal provisions are either unavailable or ineffective.[26]

In sum, the opportunities to invoke a *Younger* exception are rare, and when opportunities do arise, these exceptions are very seldom used by the federal courts. The bad faith and harassment exception and the patently unconstitutional exception have never been invoked by the Court because the definitions of these exceptions have been so narrowly construed as to exclude almost every imaginable scenario. Therefore, the *Younger* exceptions have rendered themselves practically useless.

## Expansion of the *Younger* Abstention Doctrine

The *Younger* abstention doctrine mandates that federal courts must abstain from hearing cases involving federal issues already being litigated in state forums. In its original version, the doctrine only applied when the federal courts were asked to intervene on federal issues in cases already being litigated in an ongoing state criminal proceeding. However, the doctrine quickly expanded to further limit a litigant's access to federal courts.

The facts of *Samuels v. Mackell*, 401 U.S. 66 (1971), were similar to *Younger* and was in fact decided by the Court on the same day. Again, Justice Black delivered the opinion which was based on similar policy considerations as those emphasized in *Younger*. The *Younger* abstention doctrine was immediately expanded to include federal declaratory relief that interferes with state prosecutions. The Court explained that a declaratory judgment may "result in precisely the same interference with, and disruption of, state proceedings that the long-standing policy limiting injunctions seeks to avoid."[27]

In 1975, the Court extended the *Younger* abstention doctrine to include state civil proceedings. In *Huffman*, 420 U.S. 592 (1975), the state sought to enforce its public nuisance statute by closing a theater that featured pornographic films. The state court, applying state law, held that the theater was a nuisance and ordered its closing for one year. The defendant filed an action in federal district court seeking declaratory and injunctive relief claiming that Ohio's public nuisance statute was unconstitutional.[28]

Although this case was civil in nature and the *Younger* doctrine would not have applied, the Supreme Court found that the same principles of comity and "Our Federalism" that were expressed in *Younger* warranted abstention in this case.[29] The Court declared that the state civil enforcement proceeding was analogous to a criminal prosecution. The *Younger* abstention doctrine was expanded to apply to civil proceedings which are "both in aid of and closely related to criminal statutes." Additionally, the Court disapproved of the theater owner's attempts to bypass the state appellate process and explained that the owner could have continued with the appeal which may have reached the U.S. Supreme Court. The Court was careful to limit this extension to the facts of this case and expressly refused to extend the *Younger* doctrine to all civil litigation. With this extension, the *Younger* abstention applied to proceedings that are "quasi-criminal" in nature.[30]

Just a month after *Huffman*, the Court again expanded the *Younger* doctrine to include criminal proceedings that are not pending at the time the federal suit is filed, as long as state court proceedings are initiated prior to any hearings on the merits in federal court. In *Hicks v. Miranda*, 422 U.S. 332, 349 (1975), Justice White wrote in the majority opinion that no case under *Younger* required that a state criminal proceeding be pending on the day that the federal action is filed. The effect of this ruling was to create a "reverse removal power" for the state to defeat a plaintiff's choice of the federal forum.[31]

The Court quickly expanded the *Younger* abstention doctrine to apply to all civil enforcements actions brought by the state. In *Trainor v. Hernandez*, 431 U.S. 434, 437-38 (1977), the director of the Illinois Department of Public Aid sought to recover fraudulently-received welfare funds. The defendants filed an action in federal court and did not appear in state court to challenge the allegations. The Court held that the principles of comity and "Our Federalism" expressed in *Younger* and *Huffman* are "broad enough to apply to interference by a federal court with an ongoing civil enforcement action such as this, brought by the [s]tate in its sovereign capacity."[32] In reaching its decision, the Court eliminated the implied requirement expressed in *Huffman* that civil proceedings must resemble a criminal prosecution.

The Supreme Court took a more expansive view of the notion of comity in *Juidice v. Vail*, 430 U.S. 327 (1977), holding that abstention was proper in cases where the pending state court proceeding was civil, but neither quasi-criminal nor quasi-judicial. For the first time, the Court applied the *Younger* doctrine to cases in which state governments were not a party. The defendants were a class of judgment debtors who challenged the use of statutory contempt procedures in state courts as unconstitutional violations of the 14th Amendment.

The Supreme Court held that *Younger* abstention was proper because it was not limited to state actions involving, or similar to, criminal proceedings.[33] In reaching its decision, the Court noted that the "more vital consideration" behind the *Younger* doctrine of abstention is not whether a state criminal proceeding was involved, but rather in "the notion of comity."[34] The opinion reiterated that *Younger* required deference not only to state judicial proceedings, but also to state functions, such as the contempt power, which lie "at the core of the administration of a [s]tate judicial system." The Court declared that labels such as civil, quasi-criminal, or criminal in nature that had been placed on state proceedings were not the "salient fact" in the *Younger* analysis.[35] Instead, the critical factor was the federal court interference with the state's interest in enforcing its contempt power. Thus, the Court unequivocally stated that the scope of the *Younger* abstention doctrine was not limited to criminal or quasi-criminal cases.[36]

In its original form, the *Younger* abstention doctrine was limited to criminal law proceedings because the state's interest in exercising its power in state court absent federal interference is strongest in the criminal law

context. However, *Juidice* declared that *Younger* abstention applies when a federal court is asked to interfere with a pending state proceeding that implicates a state interest, regardless of whether the case is civil or criminal.[37]

Two years later, the Supreme Court again modified the *Younger* analysis in *Moore v. Sims*, 442 U.S. 415 (1979). In *Moore*, a Texas couple's three children had been removed from their custody during a state court proceeding. The children were held in state custody for six weeks without a hearing.[38] The couple filed a federal suit challenging the constitutionality of certain statutes of the Texas Family Code, and sought a preliminary injunction enjoining any further prosecutions under the statutes. The Supreme Court held that federal court abstention was proper in this case. The Court looked not only to Texas' interest in litigating this matter in its own courts, but also to the fact that the state proceedings provided the couple with an opportunity to raise their constitutional claims. In writing for the majority, Justice Rehnquist stated:

> The price exacted in terms of comity would only be outweighed if state courts were not competent to adjudicate federal constitutional claims — a postulate we have repeatedly and emphatically rejected. In sum, the only pertinent inquiry is whether the state proceedings afford an adequate opportunity to raise the constitutional claim, and Texas law appears to raise no procedural barriers.[39]

This standard is quite different from the original foundations of abstention that were articulated in *Younger* only eight years earlier. In *Younger*, the Court explicitly stated that the holding did "not mean blind deference to '[s]tates' [r]ights,'" but only a "sensitivity" to the interests of both the state and the federal government.[40]

*Moore* marked a significant shift in the Supreme Court's *Younger* abstention analysis because the Court asserts that the "only pertinent inquiry" is the adequacy of the state forum. *Moore* suggests that the state interest is secondary, and the merits of the claim no longer need consideration. It further suggests that the only way comity concerns will be outweighed in federal courts is when the state forum is inadequate.[41]

The Supreme Court has further required federal court abstention when the state action is an administrative proceeding that is judicial in nature. For example, in *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982), a lawyer brought an action in federal court alleging that the state bar's disciplinary rules violated the First Amendment. At the time, the rules for disciplining attorneys did not specifically provide for constitutional challenges to the disciplinary process. However, the state's interest in licensing and disciplining its own attorneys is clearly sufficient to invoke the state interest requirement for *Younger* abstention. In finding that attorney licensing and disciplining procedures are significant state interests, the Court stated:

> The State of New Jersey has an extremely important interest in maintaining and assuring the professional conduct of the attorneys it licenses …. The judiciary as well as the public is dependent upon professionally ethical conduct of attorneys and thus has a significant interest in assuring and maintaining high standards of conduct of attorneys engaged in practice.[42]

According to the Court, the only pertinent issue was whether the administrative proceedings of the state bar and the available review by the state court afforded the lawyer the opportunity to raise his constitutional claims. The Court considered the adequacy of the state forum that was first articulated in *Moore*.[43] The Court established a three-prong test that has been applied by numerous cases since this decision. The Court found that abstention is proper when 1) the state action is an ongoing state proceeding 2) that implicates important state interests, and 3) the plaintiff has an adequate opportunity to raise his or her constitutional claim in the state proceeding. The *Middlesex* test is recognized as the current standard for *Younger* abstention.[44] Since the *Middlesex* test, there have been numerous questions concerning the precise boundaries of *Younger* abstention, and the Supreme Court has not provided much guidance in clarifying its exact limits and parameters.[45]

The Supreme Court further expanded the *Younger* doctrine to include "quasi-judicial" and administrative proceedings. In *Ohio Civil Rights Commission v. Dayton Christian School*, 477 U.S. 619 (1986), a pregnant teacher's contract at a religious school was terminated because of a policy requiring mothers to stay home with their young children. In response to the teacher's termination, the Ohio Civil Rights Commission began administrative proceedings against the school.[46] The school filed suit in federal district court seeking an injunction against the pending administrative action claiming that any sanctions imposed would violate the establishment or free exercise of religion clauses of the First Amendment. The Supreme Court applied the *Middlesex* test and determined abstention was proper, even though the judicial nature of the proceedings was not obvious. Writing for the majority, Justice Rehnquist reasoned that because the administrative proceeding provided the school with an opportunity to raise its constitutional claims, abstention was appropriate.[47] The Court held that *Younger* abstention was required even if a constitutional issue could only be raised through state court judicial review of the administrative proceeding.[48] With its holding, the Court expanded the *Younger* abstention to encompass quasi-judicial proceedings.

In its origin, *Younger* abstention rested in the notions of comity, equity, and federalism. The doctrine has now evolved and expanded to include inquiries into the sufficiency of the state interest in its proceedings and the adequacy of the state forum. Some scholars have argued that Justice Rehnquist has played a critical role in expanding the federalism element of the *Younger* abstention doctrine beyond that which was contemplated by *Younger*.[49]

### Restriction and Curtailment of the Abstention Doctrine

Although the Court has expanded the *Younger* doctrine since its inception, there have been a few cases in which the Court has declined to abstain, finding that the case was appropriate for federal review. These

cases are noteworthy because they provide a basis for determining when abstention is proper, and a framework for determining where the *Younger* abstention doctrine stands today.

As early as 1974, the Court acted to limit the application of the *Younger* abstention doctrine. In *Steffel v. Thompson*, 415 U.S. 452 (1974), decided three years after *Younger*, the Court held that deference to the state's criminal proceedings was only required when actual proceedings were pending in the state court.[50] In both *Younger* and *Samuels*, the federal plaintiffs were actually facing prosecution in the state courts. In *Steffel*, the federal plaintiff was seeking declaratory and injunctive relief based on the state's threat of arrest and prosecution. The Supreme Court reversed the district court's dismissal of the case under the *Younger* doctrine. The Court held that in the absence of pending state proceedings there was no risk of federal intrusion with the state's criminal justice system. However, this holding was quickly overturned in 1975 with the Court's expansion of the *Younger* doctrine to include criminal proceedings that were not pending at the time federal suit is filed.

In *New Orleans Public Service, Inc.* (NOPSI) *v. Council of the City of New Orleans*, 491 U.S. 350 (1989), the Supreme Court limited the extent to which *Younger* abstention applies in civil cases. To briefly summarize the complicated fact pattern presented in this case, the New Orleans City Counsel brought suit in state court seeking a declaration to establish a rate order. NOPSI, a local utility company, filed suit in federal court seeking an injunction against the council challenging the constitutionality of the rate order.[51]

The Supreme Court held that a federal court should not abstain when the ongoing state proceeding involves a state court engaged in an "essentially legislative act." In its opinion, the Supreme Court emphasized the importance of the federal courts' role in exercising the jurisdiction granted to them to protect and enforce individual rights. The Court stated that "our cases have long supported the proposition that federal courts lack the authority to abstain from the exercise of jurisdiction that has been conferred."[52] The Court reiterated that abstention is the "exception, not the rule," and further declared that the circumstances in which federal court abstention is appropriate have been "carefully defined" by the Court.[53]

The Court determined that the issue in the *NOPSI* case was a legislative action, and that *Younger* abstention was inappropriate because "it has never been suggested that *Younger* requires abstention in deference to a state judicial proceeding reviewing legislative or executive action."[54] Thus, the Court declared that while the *Younger* doctrine had been extended "beyond criminal proceedings, and even beyond proceedings in courts," it has never been extended to proceedings that are "not judicial in nature."[55]

### The *Pullman* Abstention Doctrine

The *Pullman* abstention doctrine instructs federal courts to avoid issues of federal constitutional questions when the case may be decided on questions of state law. This doctrine came from the famous 1941 Supreme Court case, *Railroad Commission v. Pullman Co.*, 312 U.S. 496 (1941). This case involved an order by the Texas Railroad Commission that no sleeping car could be operated on any railroad line in Texas unless the cars were in the charge of an employee who held the rank of conductor.[56] This order contained strong racial overtones because the trains that carried only one sleeping car were usually in the charge of a porter, all of whom were African-American. However, in 1941, all trains that carried more than one sleeping car were in the charge of a conductor, all of whom were white. The Pullman Company brought an action in federal district court to enjoin Railroad Commission's order.[57] The Pullman Company "assailed the order as unauthorized by Texas law[,] as well as violative of" equal protection, the due process clause, and the commerce clause of the Constitution. The Pullman porters, through their union, intervened in the suit and objected to the order on the ground that it discriminated against African-Americans in violation of the 14th Amendment of the U.S. Constitution.[58]

After a decree was issued by a three-judge panel convened by the federal district court, the case was appealed directly to the Supreme Court. The Court conceded that the Pullman porters presented a substantial constitutional issue yet held that the issue presented was related to "social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open."[59] The Supreme Court found that even though the three-judge panel had examined the Texas law related to discrimination, the federal courts could not be the final word on Texas law. In other words, the last word on the authority of the Railroad Commission belonged to the Texas Supreme Court. The Court reasoned that the "reign of law" was not "promoted if an unnecessary ruling of a federal court" could be "supplanted by a controlling decision of a state court."[60]

The Court remanded the case to the district court with directions to retain the case pending a determination of the state proceedings. The Court reasoned that if state law did not authorize the commission's assumption of authority, then there would be an end to the litigation and the constitutional issue would not arise. The Court held that "in the absence of any further showing that these methods for securing a definitive ruling in the state courts cannot be pursued with the full protection of the constitutional claim, the district court should exercise its wise discretion by staying it."[61] This classic case dictates that the federal court should stay, but not dismiss, the action while the state court resolves the issue of state law.

### The *Burford* Abstention Doctrine

The *Burford* abstention doctrine is recognized by federal courts and used "to avoid needless conflict with the administration by a state of its own affairs."[62] This doctrine grew from the case *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), which was similar to *Pullman* in that it was a Texas case involving the Texas Railroad Commission.[63] In this case, "Sun Oil attacked the validity of an order of the Texas Rail-

road Commission granting petitioner Burford a permit to drill four [oil] wells on a small plot of land [in East Texas]."[64] This action was brought in federal court and based on diversity of citizenship. Sun Oil contended that "the order denied them due process of law." While the district court refused to enjoin the order of the Railroad Commission, the Fifth Circuit Court of Appeals reversed the finding. On appeal to the U.S. Supreme Court, the district court's refusal to enjoin the order of the Railroad Commission was affirmed. Justice Black, in delivering the opinion of the Court, reasoned that abstention would be appropriate because "questions of regulation of the industry by the [s]tate administrative agency, whether involving gas or oil prorating programs or Rule 37 cases, so clearly involves basic problems of Texas policy that equitable discretion should be exercised to give the Texas courts the first opportunity to consider them."[65]

The Court further held that the "state provides a unified method for the formation of policy and determination of cases by the Commission and by the state courts…if the state procedure is followed from the Commission to the [s]tate Supreme Court, ultimate review of the federal questions is fully preserved…."[66] The Court concluded that "under such circumstances, a sound respect for the independence of state action requires the federal equity court to stay its hand." Distinct from *Pullman*, which allows the federal district court to stay the proceedings while the state action is pursued, the federal action is dismissed entirely under *Burford*.[67]

## The *Colorado River* Abstention Doctrine

The *Colorado River* abstention doctrine is invoked to avoid duplicative proceedings, either in two different federal courts or in parallel state and federal court proceedings.[68] In *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), the United States brought suit in federal district court on its own behalf and on behalf of two Native American tribes seeking a declaratory judgment to water rights and their tributaries in Colorado Water Division No. 7.[69] Shortly after the federal action was commenced, one of the defendants filed an application for Division No. 7 in state court seeking an order directing service of process on the United States to make it a party to the state court proceedings "for the purpose of adjudicating all of the government's claims — both state and federal." The district court dismissed the action citing the abstention doctrine and deference to state court proceedings, but the 10th Circuit reversed this ruling on appeal.

The Supreme Court, in an opinion written by Justice Brennan, stated the general rule that "pendency of an action in the state court is no bar to proceedings concerning the same matter in the federal court having jurisdiction." In evaluating the district court's dismissal of the action on abstention doctrine grounds, the Court found that the circumstances presented in *Colorado River* did not fit into any of the recognized abstention doctrines.[70] However, the Court also found that "the circumstances permitting the dismissal of a federal suit due to the presence of a concurrent state proceeding for reasons of wise judicial administration are considerably more limited than the circumstances appropriate for abstention. The former circumstances, though exceptional, do nevertheless exist."[71]

The exceptional circumstances that the Court felt justified federal abstention are "(a) the apparent absence of any proceedings in the federal district court, other than the filing of the complaint prior to the motion to dismiss, (b) the extensive involvement of state water rights occasioned by this suit naming 1,000 defendants, (c) the 300-mile distance between the district court in Denver and the [state] court in Division No. 7, and (d) the existing participation by the [g]overnment" in other state court proceedings concerning other water divisions.[72] The Court cautioned that this factual situation was very unusual; therefore, the rule that only "exceptional circumstances" permit dismissal in parallel proceedings "argues against, rather than for, the use of this type of abstention in routine cases."[73]

## Conclusion

Despite the abundance of criticism and drawbacks, the abstention doctrines are essential to the parallel judicial systems in the United States. Abstention is crucial when the interests of the states outweigh the federal adjudication of the matter. To preserve the balance between state and federal sovereignty, the federal courts should continue to abstain from cases to avoid friction between federal and state courts.❑

[1] CHARLES ALAN WRIGHT, LAW OF FEDERAL COURTS §52 at 325 (6th ed. 2002).
[2] James C. Rehnquist, *Taking Comity Seriously: How to Neutralize the Abstention Doctrine*, 46 STAN. L. REV. 1049 (1994).
[3] Matthew D. Staver, *The Abstention Doctrine: Balancing Comity with Federal Court Intervention*, 28 SETON HALL L. REV. 1102, 1102 (1998).
[4] WRIGHT, LAW OF FEDERAL COURTS §52.
[5] Leonard E. Birdsong, *Comity and Our Federalism in the Twenty-First Century: The Abstention Doctrines Will Always Be With Us — Get Over It!*, 36 CREIGHTON L. REV. 375 (2003).
[6] *Younger*, 401 U.S. at 44.
[7] *Id.* at 44-45.
[8] *Id.* at 44.
[9] *Id.* at 39.
[10] *Id.*
[11] *Id.* at 40.
[12] *Id.* at 43.
[13] *Id*. at 46.
[14] *Id.* at 55-56.
[15] *Id.* at 54 (noting the Court had "no occasion to consider" whether the Anti-Injunction Act applies to the instant case).
[16] *Id.* at 53-54.
[17] William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 498 (1977) (concluding that showings of extraordinary circumstances under the exceptions are "probably impossible to make"); Brian Stagner, *Avoiding Abstention: The Younger Exceptions*, 29 TEX. TECH. L. REV. 137, 141 (1998) (describing the *Younger* exceptions as an "escape hatch that rarely opens").
[18] *Younger*, 401 U.S. at 53-54.
[19] *Dombrowski v. Pfiter*, 380 U.S. 479 (1965).
[20] ERWIN CHEMERINSKY, FEDERAL JURISDICTION §13.4 at 751 (2d ed. 1994).
[21] *Younger*, 401 U.S. at 53-54.
[22] *See* CHEMERINSKY, FEDERAL JURISDICTION §13.4 at 753.
[23] *Trainor,* 431 U.S. at 447 (1977).
[24] *Id.* at 463 (Stevens, J., dissenting).
[25] *See* Stagner, *Avoiding Abstention: The Younger Exceptions*, 29 TEX. TECH. L. REV. 137, 163 (1998).
[26] *Brooks v. N.H. Supreme Court*, 80 F.3d 633, 640 (1st Cir. 1996) (stating the "biased" exception to the *Younger* abstention doctrine is inappropriate if a litigant fails to employ available procedures for the

recusal of biased judges).

[27] *Samuels*, 401 U.S. at 72 (1971).

[28] *Huffman*, 420 U.S. at 598 (1975).

[29] *Id.* at 604; *See also* Kevin Beck, *The Ninth Circuit's Message to Nevada: You're Not Getting Any* Younger, 3 NEV. L. J. 592, 597 (2003).

[30] *See* Staver, *The Abstention Doctrine: Balancing Comity with Federal Court Intervention*, 28 SETON HALL L. REV. at 1169 (1998).

[31] Bryce M. Baird, *Federal Court Abstention in Civil Rights Cases: Chief Justice Rehnquist and the New Doctrine of Civil Rights Abstention*, 42 BUFF. L. REV. 501, 531 (1994).

[32] *Trainor*, 431 U.S. at 444.

[33] *See also* Baird, *Federal Court Abstention in Civil Rights Cases: Chief Justice Rehnquist and the New Doctrine of Civil Rights Abstention*, 42 BUFF. L. REV. at 536 (1994).

[34] *Juidice*, 430 U.S. 327, 333-34 (1977).

[35] *Id.* at 334.

[36] *Id.* at 335-36.

[37] *Id.* at 334.

[38] *Moore*, 442 U.S. at 419-420.

[39] *Id.* at 430.

[40] *Younger*, 401 U.S. at 44.

[41] *Moore*, 442 U.S. at 430.

[42] *See Middlesex*, 457 U.S. at 434.

[43] *See Moore*, 442 U.S. at 425-26.

[44] *See* Daniel Jordan Simon, *Abstention Preemption: How the Federal Courts Have Opened the Door to the Eradication of "Our Federalism,"* 99 NW. U. L. REV. 1355, 1360 (2005).

[45] *See* Charles R. Wise & Robert K. Chistensen, *Sorting Out Federal and State Judicial Roles in State Institutional Reform: Abstention's Potential Role*, 29 FORDHAM URB. L. J. 387, 389 (2001).

[46] *Ohio Civil Rights Comm'n*, 477 U.S. at 623-24.

[47] *Id.* at 626-27.

[48] *Id.* at 629.

[49] *See*, Baird, *Federal Court Abstention in Civil Rights Cases: Chief Justice Rehnquist and the New Doctrine of Civil Rights Abstention*, 42 BUFF. L. REV. 501, 531 (1994).

[50] *Steffel*, 415 U.S. at 462.

[51] *New Orleans Pub. Serv., Inc.*, 491 U.S. at 353-58.

[52] *Id.* at 358.

[53] *Id.* at 359.

[54] *Id.* at 358.

[55] *Id.* at 369-370.

[56] *R.R. Comm'n v. Pullman Co.*, 312 U.S. at 497.

[57] *Id.* at 497-98.

[58] *Id.* at 498.

[59] *Id.* at 498-99.

[60] *Id.* at 500.

[61] *Id.* at 501.

[62] WRIGHT, LAW OF FEDERAL COURTS §52 at 325.

[63] *Burford v. Sun Oil Co.,* 319 U.S. at 316.

[64] *Id.* at 316-17.

[65] *Id.* at 332.

[66] *Id.* at 333-34.

[67] *See* Birdsong, *Comity and Our Federalism in the Twenty-First Century: The Abstention Doctrines Will Always Be With Us — Get Over It!*, 36 CREIGHTON L. REV. at 380 (2003).

[68] *See id*.

[69] *Colorado River*, 424 U.S. at 805.

[70] *Id.* at 813-17.

[71] *Id.* at 818.

[72] *Id.* at 820.

[73] WRIGHT, LAW OF FEDERAL COURTS at 339.

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