No. 12-815

In the
Supreme Court of the United States

SPRINT COMMUNICATIONS COMPANY, L.P.,
Petitioner,

v.

ELIZABETH S. JACOBS, et al.,
Respondents.

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

BRIEF FOR THE PETITIONER

CHRISTOPHER J. WRIGHT
COUNSEL OF RECORD
TIMOTHY J. SIMEONE
MARK D. DAVIS
WILTSHIRE & GRANNIS LLP
1200 18th St. N.W., Ste. 1200
Washington, D.C. 20036
(202) 730-1300
cwright@wiltshiregrannis.com

JUNE 28, 2013

QUESTION PRESENTED

Whether the Eighth Circuit erred by concluding, in conflict with decisions of nine other circuits and this Court, that *Younger* abstention is warranted not only when there is a related state proceeding that is "coercive" but also when there is a related state proceeding that is, instead, "remedial."

RULE 29.6 STATEMENT

Sprint Communications Company, L.P., ("Sprint") is a limited partnership organized under Delaware law that primarily provides telecommunications services to the public. Sprint's partners include U.S. Telecom, Inc., Utelcom, Inc., UCOM, Inc., and Sprint International Communications Corporation—all of which are direct or indirect wholly owned subsidiaries of Sprint Nextel Corporation. Sprint Nextel Corporation is the publicly traded company resulting from the merger of Sprint Corporation and Nextel Communications, Inc., which was consummated on August 12, 2005. Sprint Nextel is a publicly traded corporation with no parent company. No other public company owns 10 percent or more of Sprint Nextel's stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes and Other Legislative Authorities

Other Authorities

In the
Supreme Court of the United States

No. 12-815

SPRINT COMMUNICATIONS COMPANY, L.P.,
Petitioner,

v.

ELIZABETH S. JACOBS, et al.,
Respondents.

On Writ of Certiorari to The United States Court of Appeals for the Eighth Circuit

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Eighth Circuit (Pet. App. 1a-10a) is reported at 690 F.3d 864 (8th Cir. 2012). The order of the United States District Court for the Southern District of Iowa, Central Division, is reprinted at Pet. App. 11a-27a. The order of the Iowa Utilities Board (Pet. App. 60a-158a) is available at 2011 WL 459686, and the Board's order denying reconsideration (Pet. App. 28a-59a) is available at 2011 WL 1148175.

JURISDICTION

The judgment below was entered on September 4, 2012. A 30-day extension for filing this petition was granted on November 19, 2012, making the deadline January 2, 2013. *See* Application No. 12A499. The petition was granted on April 15, 2013. On April 30, 2013, this Court extended the time by which this brief is due to June 28, 2013. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Portions of the following relevant provisions are reprinted in the Appendix accompanying the Petition for a Writ of Certiorari at 159a-162a: 47 U.S.C. §§ 152 and 153; and 47 C.F.R. § 64.702.

STATEMENT

This case arises from Sprint's efforts to obtain federal-court review of complex issues of federal telecommunications law arising under the Telecommunications Act of 1996 ("1996 Act" or "Act"). The case began before the Iowa Utilities Board ("IUB") as a commercial dispute between Sprint and Iowa Telecom (now Windstream) over "access charges," a kind of "intercarrier compensation" or payment made between telephone companies. After the IUB construed the relevant provisions of the 1996 Act in Windstream's favor, Sprint sought review of the agency's interpretation of the Act in federal district court, while also making a protective filing in state court. The state filing was necessary only because existing Eighth Circuit law appeared to understand abstention under *Younger v.*

Harris, 401 U.S. 37 (1971), extremely broadly, raising a serious risk that Sprint would be barred from federal court *after* the time for appeal to state court had run. And, indeed, the district court—applying the Eighth Circuit's uniquely broad understanding of *Younger* abstention—did decline to review Sprint's 1996 Act claims in deference to the state court. The Eighth Circuit affirmed, resulting in a sharp departure from this Court's jurisprudence establishing the "primacy of the federal judiciary in deciding questions of federal law," *England v. Louisiana State Bd. of Med. Exam'rs*, 375 U.S. 411, 415-16 (1964), and a deep split in the circuits regarding the proper application of *Younger*.

A. Statutory and Regulatory Background.

Although the proper application of *Younger* is the only issue before this Court, understanding the procedural posture of this case requires some discussion of the statutory and regulatory background.

Telecommunications carriers whose customers make (or "originate") calls are sometimes required to pay "access charges" to the carriers that deliver (or "terminate") those calls to their customers. Access charges may be either intrastate or interstate, depending on whether the call traverses state lines. Traditionally—*i.e.*, for calls made over the Public Switched Telephone Network ("PSTN")—this distinction between "intrastate" and "interstate" calls dictated whether federal or state regulators had authority to regulate a call. State regulators regulated intrastate calls, while federal regulators regulated interstate calls.

This case, however, concerns "Voice over Internet Protocol" ("VoIP") calls rather than traditional telephone calls. The particular VoIP calls at issue here originated on the cable broadband network of a cable company with which Sprint had a business arrangement. During the initial Internet leg of this kind of VoIP call, the caller's voice is translated into digital packets and routed over an Internet Protocol ("IP") network. Subsequently, those packets are transformed by Sprint into a traditional telephone signal, which may be terminated over the PSTN by a telephone company (like Windstream) serving the called party.

For such VoIP calls, the question whether access charges apply is closely connected to the question of which regulators have authority to regulate the calls. Under the 1996 Act, authority to regulate no longer turns on whether calls are "interstate" or "intrastate." Instead, the issue is whether VoIP is an "information service" under the 1996 Act, 47 U.S.C. § 153(24), or a "telecommunications service," *id.* at § 153(53). Pet. App. 161a. Federal law—administered by the FCC—requires information services to remain largely unregulated,[1] while telecommunications services are subject to joint regulation by state and federal regulators.[2]

---

[1] *See* Pet. App. 162a.

[2] *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 965 (2005) ("The Act regulates telecommunications carriers, but not information-service providers, as common carriers."); 47 U.S.C. §§ 201-276 (regulating common carriers); Pet. App. 159a (state authority).

The question of what makes an offering an "information service" under the 1996 Act is often difficult. The FCC has proposed general guidelines for distinguishing information services from telecommunications services and, as particularly relevant to this case, has stated that a service is an information service if it "enables an end-user to send information into a network in one protocol and have it exit the network in a different protocol" (known as "net protocol conversion").[3] As noted above, the VoIP calls at issue in this case are made by end users with cable broadband Internet access. These calls are first carried over packet-switched networks, but later converted to traditional telephone signals and handed off by Sprint to local exchange carriers like Windstream for termination. Sprint initially paid access charges for these calls, but ultimately concluded that it was not required to do so because they enter the network in one protocol and exit the network in a different protocol, thus undergoing net protocol conversion.[4]

---

[3] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Commc'ns Act of 1934, As Amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21,905, 21,956-57 ¶¶ 104, 106 (1996).

[4] *Cf. Petition for Declaratory Ruling That Pulver.com's Free World Dialup is Neither Telecomms. nor a Telecomms. Serv.*, 19 FCC Rcd. 3307, 3314 ¶11 (2004) (finding that Pulver's Free World Dialup VoIP service was an information service); *Vonage Holdings Corp. v. Minnesota Pub. Utils. Comm'n*, 290 F. Supp. 2d 993, 1002 (D. Minn. 2003) (finding that Vonage's VoIP is an information service and that Congress has "occup[ied] the field of regulation of information services," so Minnesota

As explained above, federal law requires "information services" to remain largely unregulated by the states, so only the FCC—and not state regulatory commissions—could decide to impose access charges on these calls. Because the FCC had not done so, Sprint concluded that the calls at issue were not subject the traditional access-charge regime.

B. Procedural Background.

Upon concluding that the VoIP calls at issue here are an information service not subject to access charges, Sprint began disputing access charges assessed by Windstream for such calls and also withholding payment. In response, Windstream threatened to disconnect Sprint's service and effectively block calls to and from Sprint's customers. On January 6, 2010, Sprint filed a complaint with the IUB seeking a declaration that, under the terms of Windstream's tariff, it was proper for Sprint to dispute Windstream's imposition of access charges for terminating VoIP calls and to withhold disputed amounts. 8th Cir. J.A.4 ¶ 15. Sprint did *not* ask the IUB to resolve the underlying question whether VoIP

---

could not impose telecommunications regulation on VoIP). The FCC subsequently preempted the Minnesota PUC's efforts to regulate Vonage on alternate grounds, and that order was affirmed by the Eighth Circuit (without addressing the views of the *Vonage* district court). *See Vonage Holdings Corp. Petition for Declaratory Ruling re an Order of the Minnesota Pub. Utils. Comm'n*, Mem. Op. and Order, 19 FCC Rcd. 22,404 (2004); *Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570, 574-76 (8th Cir. 2007).

calls may properly be subjected to intrastate access charges, *id.* at 4 ¶ 16, but rather maintained that the issue is a fundamental question of federal law and policy that *only* the FCC may answer. The IUB disagreed, and issued a 50-page analysis both claiming authority to decide the issue and concluding that federal law *does* permit imposing access charges on VoIP calls. At the conclusion of the Board proceedings, Sprint repaid *all* monies to Windstream that it had disputed and withheld, and has likewise paid all of the invoices that Windstream has since issued.

But Sprint also filed a complaint in federal district court arguing that the IUB lacked authority under the Act to determine whether access charges apply to VoIP traffic, and that in any event the imposition of such charges is inconsistent with federal law. The district court had jurisdiction under 28 U.S.C. §§ 1331, 1332, 1651, 2201, and 2202.

Sprint's counsel determined, however, that prudence required *also* petitioning for review of the IUB order in Iowa District Court. The state-court filing was necessary because: 1) existing Eighth Circuit law already appeared to understand *Younger* abstention extremely broadly, *see, e.g. Night Clubs, Inc. v. City of Fort Smith*, 163 F.3d 475, 481 (8th Cir. 1998), so counsel recognized the danger that the federal district court might decline to hear Sprint's appeal; and 2) the Eighth Circuit had held—contrary to the Fifth Circuit—that "a party cannot avoid *Younger* by choosing not to pursue available state appellate remedies," *Alleghany Corp. v. McCartney*, 896 F.2d 1138, 1144 (8th Cir. 1990), even though other circuits would not require abstention in the absence of a pending state proceeding, *see Thomas v.*

Texas State Bd. of Med. Exam'rs, 807 F.2d 453, 456 (5th Cir. 1987) ("[M]ere availability of state judicial review of state administrative proceedings does not amount to the pendency of state judicial proceedings within the meaning of *Huffman*."). Taken together, these rules raised the risk that the federal court would abstain—but only after the statutory time period for filing in state court had expired, thus leaving Sprint with no forum in which to challenge the IUB's decision.

Sprint therefore filed for review in state court shortly after filing its federal complaint. In its state-court filing, Sprint appealed both state-law (tariff) issues and the federal-law issues on which the IUB had primarily focused. To allow the federal case addressing only the central federal issue in Sprint's dispute with Windstream to go forward without the risk of duplicative proceedings, Sprint filed a motion to stay the state case pending resolution of the federal case. Although that motion was never granted, the parties agreed to continue the hearing on it pending resolution of the abstention issues before the federal district court and later the Eighth Circuit. The effect of that agreement was similar to a stay during the lower federal court proceedings on abstention.

In federal court, Sprint argued that *Younger* does not apply to this case because—like all abstention doctrines—it is fundamentally about protecting a state's ability to administer, interpret, and enforce its *own* laws, while Sprint's federal case has nothing to do with any of those things. Rather, Sprint argued, this case is about Sprint's basic right to obtain review in *federal* court of an issue of *federal* law. The district court ruled against Sprint on very

broad grounds, finding that "Sprint's state court action … is properly characterized as an appeal from the IUB orders," and that "a state court's review" of a state agency decision is "an uninterruptible process under the *Younger* doctrine." Pet. App. 24a.

The district court's holding that state-court review of a state-agency decision—even review of issues of federal law arising in a civil dispute concerning the meaning of the 1996 Act—is an "uninterruptible process" was nothing short of alarming. The clear implication was that, under *Younger*, *all* state-agency adjudications of garden-variety commercial disagreements regarding the meaning of federal law must be appealed *only* through the state system—even where, as in this case, a federal district court unquestionably has *jurisdiction* to hear federal law issues presented to it.

Sprint accordingly appealed to the Eighth Circuit, arguing that the lower court's broad holding would allow *Younger* to defeat the district courts' "virtually unflagging obligation" to decide cases subject to their jurisdiction in a broad range of proceedings. *See Colorado River Water Conservation Dist. v. United States,* 424 U.S. 800, 817 (1976). Sprint urged the Eighth Circuit to construe its *Younger* test more narrowly than the district court had done. In particular, Sprint argued that the court should construe the "state interest" prong of its test for *Younger* abstention to mandate the kind of *coercive* state interest that other courts of appeals require. Sprint maintained that run-of-the-mill, *remedial* state-agency adjudications of commercial disputes, unlike state criminal and quasi-criminal proceedings, do not implicate the coercive state interests to which *Younger* applies.

After briefing on this case in the Eighth Circuit but before oral argument, the Eighth Circuit issued a decision in a different case expressly *rejecting* the coercive/remedial distinction advanced by Sprint here, but also acknowledging that other circuits find that distinction "outcome determinative" under *Younger*. *See Hudson v. Campbell*, 663 F.3d 985, 987 (8th Cir. 2011). *Hudson* thus suggested that the Eighth Circuit's *Younger* standard requires abstention in essentially all state-agency proceedings, but the court did leave open the possibility that abstention might not apply in cases involving a "pervasive federal regulatory scheme." *Id.* at 988. At oral argument, Sprint emphasized that this case *does* involve a pervasive federal regulatory scheme—the 1996 Act, under which state telecommunications regulators act as "deputized federal regulators." *Illinois Bell Tel. Co., Inc. v. Global NAPs Illinois, Inc.*, 551 F.3d 587, 595 (7th Cir. 2008). The IUB, in contrast, boldly proclaimed that *Younger* abstention applies to *all* of its proceedings regardless of the legal regime involved—*i.e.*, that review of IUB decisions is available only through the state court system.[5]

The Eighth Circuit's decision below reaffirmed *Hudson*, rejecting Sprint's claim that the state-interest prong of the Eighth Circuit's *Younger* test was not met because the IUB proceeding was not coercive. Pet. App. 6a. The court also closed the door

[5] The Eighth Circuit's recording equipment malfunctioned during argument so there is no record of the IUB's position. At the certiorari stage, however, the IUB did not deny having taken that position at argument before the Eighth Circuit.

left open by *Hudson*, finding that because the state here has a "substantial, legitimate interest in regulating intrastate retail [telecommunications] rates," it makes no difference that this case involves a "pervasive federal regulatory scheme." *Id.* at 7a. In short, the Eighth Circuit upheld abstention in this case as a run-of-the mill application of its *Younger* standard, now clearly construed never to require a coercive state proceeding.

SUMMARY OF ARGUMENT

This Court has long held that federal district courts have a "virtually unflagging obligation" to decide cases subject to their jurisdiction. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817, 821 (1976). Consistent with that principle, the Court has specifically allowed for federal courts to review the decisions of state telecommunications regulators on issues of federal law, just as Sprint seeks here. *See Verizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635 (2002). The Eighth Circuit failed to distinguish this case from *Verizon Maryland*.

The abstention doctrines are narrow *exceptions* to the general rule that the district courts should decide cases subject to their jurisdiction. The abstention doctrines reflect the fundamental principle that *state* courts should be allowed to interpret and administer *state* statutory, regulatory, and enforcement regimes without undue interference from *federal* courts. This case simply does not implicate those concerns—it is about the *federal* courts' authority (and, indeed, responsibility) to decide *federal* law issues. The Eighth Circuit failed to provide any reason why this

case implicates the policies underlying the abstention doctrine.

The Eighth Circuit's decision contains remarkably little discussion of this Court's *Younger* precedents, and the two lone cases upon which the court did rely—*New Orleans Pub. Serv. Inc. v. Council of the City of New Orleans ("NOPSI")*, 491 U.S 350 (1989), and *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982)—simply do not support its decision. Indeed, the court below failed even to mention the holding of *NOPSI*, which *rejected* abstention under either *Younger* or *Burford*. Moreover, *NOPSI* makes clear that *Younger* does *not* apply to judicial review of state-agency proceedings adjudicating garden-variety civil disputes between commercial parties, like the proceeding underlying this case. *Middlesex County* likewise does not support the decision below—the Eighth Circuit took the three-pronged *Younger* standard articulated there out of context, eliminating the critical threshold question (emphasized in *NOPSI*) whether the proceedings at issue are the *kind* of state proceeding to which *Younger* applies.

The coercion inquiry adopted by the vast majority of circuits serves to ensure that an administrative proceeding falls within the categories of cases described by *NOPSI* as potentially subject to *Younger*. *NOPSI* indicates that *Younger* applies only in certain kinds of cases that are akin to the criminal actions at the heart of the *Younger* doctrine—but the three-pronged *Middlesex County* test does not, on its face, impose such a limitation. The requirement of a state proceeding that is "coercive," as opposed to merely "remedial," harmonizes the limitations on *Younger* set forth in *NOPSI* with the *Middlesex*

County standard. That requirement is, moreover, consistent with this Court's clarification—in *Ohio Civil Rights Comm'n v. Dayton Christian Schs., Inc.,* 477 U.S. 619 (1986)—of the line between state administrative proceedings to which abstention applies and those to which it does not.

Finally, the decision below thoroughly confuses abstention law by conflating *Younger* and *Burford* into a new, unrecognizably broad kind of abstention. *Burford* abstention permits the states to administer their regulatory regimes without undue interference from the federal courts. And the *Younger* cases prevent federal-court interference with state criminal and similar civil-enforcement regimes. This case falls far closer to the *Burford* line of cases than to the *Younger* cases because the state interests identified by the IUB in the district court—"enforcing the terms of telephone company tariffs and otherwise regulating the telephone companies" and the "protection of … citizens" who make phone calls in Iowa (*see* 8th Cir. J.A.248-249)—were closely related to the *Burford* policy of non-intervention in state regulatory affairs. This Court's decision in *NOPSI*, however, clearly forecloses application of *Burford* to this case. As a result, the IUB carefully avoided *Burford* below, and instead convinced the Eighth Circuit to expand *Younger* beyond recognition.

ARGUMENT

I. THE DECISION BELOW IS INCONSISTENT WITH THIS COURT'S JURISPRUDENCE ESTABLISHING THE PRIMACY OF THE FEDERAL JUDICIARY IN DECIDING QUESTIONS OF FEDERAL LAW.

Sprint's federal complaint in this case presented *only* issues of federal law. J.A. 1a. Specifically, Sprint argued that the IUB lacked authority under the 1996 Act to determine whether access charges apply to VoIP traffic and that the IUB's finding that such charges do apply violated the Act. The Eighth Circuit's novel application of *Younger* to bar federal-court review of these federal law questions is inconsistent with this Court's longstanding general rule that "a state court determination may not be substituted, against a party's wishes, for his right to litigate his federal claims fully in the federal courts." *England*, 375 U.S. at 417. This Court applied that rule in *Verizon Maryland, Inc. v. Public Service Commission of Maryland*, 535 U.S. 635 (2002), to allow federal-court review of the decisions of state telecommunications regulators on issues of federal law under the 1996 Act, just as Sprint seeks here. The Eighth Circuit erred in ignoring *Verizon Maryland*.

This Court has, of course, long emphasized the district courts' "virtually unflagging obligation" to decide cases brought before them over which they have jurisdiction, noting that "[t]his obligation does not evaporate simply because there is a pending state court action involving the same subject matter." *Federated Rural Elec. Ins. Corp. v. Arkansas Elec. Coops., Inc.*, 48 F.3d 294, 297 (8th Cir. 1995)

(quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). The Court's decision in *England* set forth the relationship between this general obligation and the abstention doctrines' exceptions to it. The Court first set out the general rule that federal courts must hear cases within their jurisdiction:

> Congress, pursuant to constitutional authorization, has conferred specific categories of jurisdiction upon the federal courts, and . . . "[w]hen a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction ***. The right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied."

England, 375 U.S. at 415. (quoting *Willcox v. Consol. Gas Co.*, 212 U.S. 19, 40 (1909)). Abstention, the Court further observed, provides *exceptions* to this rule in certain limited circumstances involving *state* law:

> Abstention is a judge-fashioned vehicle for according appropriate deference to the "respective competence of the state and federal court systems." *Louisiana P. & L. Co. v. Thibodaux*, 360 U.S. 25, 29. Its recognition of the role of state courts as the final expositors of state law implies no disregard for the primacy of the federal judiciary in deciding questions of federal law.

England, 375 U.S. at 415-16 (citation omitted).

This Court applied the general rule set forth in *Willcox* and *England* to a case very similar to this in *Verizon Maryland*, 535 U.S. 635, which confirms the

federal courts' authority to review state utility commission orders under the 1996 Act. *Verizon Maryland* involved Section 252 of the 1996 Act, which confers on state commissions the authority to approve and interpret "interconnection" agreements between incumbent local exchange carriers ("ILECs") and the competitive local exchange carriers ("CLECs") that the 1996 Act sought to encourage in order to provide consumer choice. *See* 535 U.S. at 638. In the state proceeding there, the Maryland PUC had found that Verizon Maryland owed WorldCom a kind of intercarrier compensation ("reciprocal compensation") under the terms of the agreement between the carriers. *Id.* at 639.

Verizon sought review in federal district court, arguing that the Maryland PUC's ruling was preempted by federal law, just as Sprint argued below in this case. *Id.* The Maryland Commission took the position that Verizon had no right to federal-court review. *Id.* at 642. This Court squarely rejected that argument, finding that Verizon was entitled to district-court review for the simple reason that its claim "falls within 28 U.S.C. § 1331's general grant of jurisdiction[.]" *Id.* at 643. *Verizon Maryland* thus applied the general rule that federal courts should decide issues of federal law whenever their jurisdiction is properly invoked to the very context at issue here—review of state PUC decisions on issues of federal law.

The Eighth Circuit failed to distinguish *Verizon Maryland*. In fact, the decision below initially purported *not* to "disagree" with Sprint's argument "that it had the right to challenge the IUB's order in federal court." Pet. App. 4a. But plainly the Eighth Circuit *did* disagree, concluding in no uncertain

terms that "Plaintiff's complaint shall be dismissed." Pet. App. 27a. It is frankly unclear from the Eighth Circuit's decision, however, *why* it disagreed.

The district court had clearly—albeit incorrectly, *see infra* at 25-26—held that "a state court's review of administrative judicial action is an uninterruptible process under the *Younger* doctrine," Pet. App. 241, such that Sprint was not entitled to federal-court review regardless of whether it sought relief in state court. Parts of the Eighth Circuit decision suggest the same view, consistent with the court's earlier decision in *Alleghany*, 896 F.2d at 1144 ("[A] party cannot avoid *Younger* by choosing not to pursue available state appellate" review of state agency decisions.). For example, the decision below indicates that "once a party initiates state 'judicial' proceedings" (where the quotation marks around "judicial" are presumably intended to connote proceedings of a judicial nature *in a state agency*), the "party must follow the proceedings through to the end" (where "the end" is presumably the end of state appellate proceedings). But the Eighth Circuit offered no explanation at all for why it thought this was so—and none exists.

Other snippets of the Eighth Circuit's decision (from the same paragraph) suggest a different view. As noted above, the court stated that it did not disagree with Sprint's view that it had "the right to challenge the IUB's order in federal court." Pet. App. 4a. But it then found that Sprint's "decision to file a state court petition for review" affects the *Younger* analysis. *Id.* In other words, parts of the Eighth Circuit's opinion appear to suggest that Sprint *would* have been entitled to federal-court review *but for* the fact that it had also filed in state court. But Sprint

only filed in state court because *Alleghany* had held that state proceedings are "ongoing" for *Younger* purposes until completion of state appellate review, and a federal plaintiff therefore cannot proceed in federal court even if it chooses not to file in state court at all. Against this backdrop, the Eighth Circuit's opinion is simply incomprehensible—it appears to hold that Sprint's case somehow could have gone forward in federal court, *except* that Sprint also filed in state court, as it was *required* to do by Eighth Circuit precedent.

In sum, the bottom line is that the Eighth Circuit refused to apply the general rule of federal-court review advanced by Sprint and rebuffed Sprint's efforts to obtain such review under *Verizon Maryland*. But why it did so is less obvious—neither of the possible reasons why it refused to apply the rule makes any sense. Again, perhaps the lower court refused to apply the rule based on the view that state proceedings are always "uninterruptible" all the way up through the state appellate process—but that is squarely inconsistent with *Verizon Maryland* itself. Or perhaps the Eighth Circuit refused to apply the general rule of federal jurisdiction to decide federal issues because Sprint had also made a protective filing in state court—but the filing was required by Eighth Circuit precedent, and, in any event, abstention is supposed to protect *state* interests unrelated to the plaintiff's choice of forum. Either way, the court below offered no cogent reason not to follow *Verizon Maryland*, and its failure to do so is sufficient grounds for reversal.

II. THE EIGHTH CIRCUIT ERRED IN ABSTAINING UNDER *YOUNGER*.

A. This Case Does Not Implicate the Purposes of Abstention.

Quite apart from *Verizon Maryland*, the review Sprint seeks here implicates none of the concerns that the abstention doctrines were designed to address. Again, this case is about the *federal* courts' authority (and, indeed, responsibility) to decide *federal* law issues. By contrast, the abstention doctrines reflect the principle that *state* courts should be allowed to administer *state* statutory, regulatory, and enforcement regimes without undue interference from federal courts.

The heart of the various abstention doctrines is that while the federal courts are generally "bound to proceed to judgment and to afford redress … in every case to which their jurisdiction extends," *Chicot County Arkansas v. Sherwood*, 148 U.S. 529, 534 (1893), "there are some classes of cases" in which judges may exercise their common-law discretion to "withhold[] … authorized equitable relief because of undue interference with state proceedings." *NOPSI*, 491 U.S. at 359. These "classes of cases" raising the specter of undue interference with state proceedings divide roughly into three main categories.

This Court recognized the first such category in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), which involved a constitutional challenge to an order of the Texas Railroad Commission requiring that a Pullman conductor (rather than a porter) be present in any train car with a sleeper. A federal district court had enjoined the Texas law on the ground that the relevant Texas

statutes did not authorize the order, but this Court reversed. The Court pointed out that the lower court's view of Texas law was not authoritative, but merely a "forecast," and that the "reign of law is hardly promoted if an unnecessary ruling of a federal court is [soon after] supplanted by a controlling decision of a state court." *Id.* at 499-500. *Pullman* abstention, then, requires a federal court to stay its hand when the resolution of unsettled questions of state law by the state courts may make it unnecessary to decide a federal constitutional question. This allows the state courts to provide needed (and authoritative) answers to state law questions without undue federal interference. *Pullman* abstention is thus essentially a doctrine of non-interference with state court interpretation of state law.

Two years after *Pullman*, the Court in *Burford* recognized a second class of cases in which federal courts may decline to exercise their jurisdiction. There, the plaintiff sought federal-court review of a Texas Railroad Commission order granting a permit to drill oil wells on the basis of that commission's rules specifying minimum spacing between wells but allowing exceptions to those rules in certain circumstances. Under Texas law, review of Railroad Commission orders was concentrated in the courts of Travis County, Texas, such that "the Texas courts [were] working partners with the Railroad Commission in the business of creating a regulatory system for the oil industry." *Burford*, 319 U.S. at 326. This Court found that the federal plaintiff's case raised "questions of regulation of the [oil] industry by the State administrative agency," and that "[c]onflicts in the interpretation of state law,

dangerous to the success of state policies, are almost certain to result from the intervention of the lower federal courts" to review Railroad Commission orders. *Id.* at 332-34. Like *Pullman*, then, *Burford* abstention is a doctrine of non-interference with the state's administration of its own laws and regulations, reflecting a "reluctance to intrude into state proceedings where there exists a complex state regulatory system." *NOPSI*, 491 U.S. at 361 (quoting *NOPSI v. City of New Orleans*, 798 F.2d 858, 861-62 (5th Cir. 1986)).[6]

Younger is the third major category of abstention cases, first recognized by the Supreme Court decades after the *Pullman* and *Burford* cases in *Younger v. Harris*, 401 U.S. 37 (1971). The *Younger* case itself involved a state criminal prosecution that the defendant (the federal plaintiff) sought to enjoin on

---

[6] "*Thibodaux*" abstention is closely related to *Burford* abstention; under *Thibodaux*, federal courts sitting in diversity jurisdiction may choose to allow a state court to decide issues of state law that are of great public importance to that state, to the extent that a federal determination would infringe on state sovereignty. *See generally Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959). So-called *Colorado River* abstention, from *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), also bears brief mention here, although it is perhaps best considered not to be a doctrine of abstention at all—since it is prudential and discretionary—but rather a doctrine of "exceptional circumstances." In such circumstances—defined differently by different lower courts—it has been invoked where parallel litigation exists in federal and state courts to avoid wasteful duplicative litigation. It has not been raised in this case.

the ground that the state's criminal syndicalism law, under which he was charged, was unconstitutional. This Court held that Congress over the years has indicated that state courts should generally be permitted to "try state cases free from interference by federal courts," and indeed that to do otherwise would "unduly interfere with the legitimate [enforcement] activities of the States." *Younger,* 401 U.S. at 43-44.

This Court's subsequent cases have extended *Younger* to certain state civil proceedings akin to criminal cases. The opinion in *NOPSI*, 491 U.S. at 368, briefly reviews the *Younger* cases that extended the doctrine "to civil enforcement proceedings" and "even to civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." In the former category, *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975), extended *Younger* to a state action brought by a sheriff and prosecuting attorney to enforce a nuisance statute barring exhibition of obscene films; *Trainor v. Hernandez*, 431 U.S. 434, 444 (1977), found that an action "brought by the State in its sovereign capacity" to recover welfare payments was subject to *Younger* abstention because it was part of the state's role in administering its public assistance programs; and *Moore v. Sims*, 442 U.S. 415, 423 (1979), held that a state action for temporary custody of children was like *Huffman*, since civil enforcement by the state in the context of suspected child abuse was in aid of and closely related to criminal statutes. In the latter category, *Juidice v. Vail*, 430 U.S. 327, 336 (1977), found that federal-court interference with a contempt proceeding in a civil case would be "an offense to the

State's interest … every bit as great as it would be were this a criminal proceeding," (internal quotation marks omitted) and *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 13-14 (1987), found that a challenge to state bond and lien provisions used to "compel[] compliance with the judgments of [the state's] courts" was subject to *Younger*.

The central tenet underlying all of these *Younger* cases is a corollary of the non-interference principles underlying *Pullman* and *Burford*: Just as the federal courts should not unduly interfere with a state's administration of its own statutory and regulatory regimes, neither should the federal courts unduly interfere with a state's administration of its criminal and civil-enforcement mechanisms.

Against the backdrop of this overview of abstention law, it is clear that the Eighth Circuit's decision to abstain in this case outstripped the purposes of abstention doctrine. Abstention doctrine is about allowing states to interpret (*Pullman*) and administer (*Burford*) their statutory, regulatory, and enforcement (*Younger*) regimes without undue interference from the federal courts. Sprint's preemption challenge here is not about any aspect of how Iowa runs its internal affairs. It is a run-of-the-mill commercial dispute about the proper division of authority (under federal law) between the FCC and the states—and *that*, of course, is an entirely fitting question for a federal court to decide.

B. The Cases on Which the Eighth Circuit Relied Do Not Support Abstention Here.

Although Sprint's briefs to the Eighth Circuit analyzed more than a dozen of this Court's most significant abstention cases, the decision below contains remarkably little discussion of this Court's *Younger* precedents. Indeed, the decision cites *Younger* itself only *en passant*, Pet. App. 2a, and otherwise addresses and relies only on *NOPSI* and *Middlesex County*. Neither case supports the decision below.

1. *NOPSI*: As an initial matter, the decision below failed even to mention the most significant aspect of *NOPSI*: This Court in *NOPSI rejected* abstention under either *Younger* or *Burford*. The case accordingly does not support a broad abstention rule of the sort devised by the Eighth Circuit.

The circumstances of *NOPSI* were similar to this case. As here, *NOPSI* involved a claim that federal law preempted the decision of a state regulatory agency. Specifically, the claim was that a FERC order mandating that costs of planned nuclear reactors should be allocated to power companies in proportion to each company's share of overall demand preempted the New Orleans City Council's order denying a rate adjustment. *NOPSI,* 491 U.S. at 352-57. The Fifth Circuit affirmed abstention under both *Younger* and *Burford*, but this Court reversed.

In rejecting the argument for *Younger* abstention, the *NOPSI* Court began by describing the kinds of cases to which *Younger* does apply, noting that its "concern for comity and federalism has led [the Court] to expand the protection of *Younger* beyond state criminal prosecutions, to *civil enforcement*

proceedings … and even to *civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions*." 491 U.S. at 367-68 (emphasis added). The Court plainly implied that these *Younger* categories of cases are all *judicial* in nature, because it contrasted them with "proceeding[s] reviewing legislative or executive action," as to which "it has never been suggested that *Younger* requires abstention." 491 U.S. at 368. The *NOPSI* Court then went on to hold that the Council proceedings at issue there were legislative, not judicial, and therefore not subject to *Younger*. 491 U.S. at 372-73.

The Eighth Circuit construed that discussion in *NOPSI* as indicating that *Younger* abstention applies in *all* cases arising from state-agency proceedings that are "judicial" in nature, rather than "executive" or "legislative." Pet. App. 8a-9a. But that is a clear misreading of *NOPSI*—it focuses on the Court's discussion of whether the Council proceedings there were "judicial" or "legislative," while ignoring the directly preceding discussion of the specific, limited categories of "judicial" cases to which *Younger* applies. Those categories—again, "state criminal prosecutions," "civil enforcement proceedings," and "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions," 491 U.S. at 367-68—are clearly only a small subset of *all* judicial proceedings.

Perhaps the Eighth Circuit's confusion about *NOPSI* arose because the present case originated before a state agency. If this case had originated before a state trial court, it would obviously have been "judicial" in nature, since court proceedings are

by definition "judicial." But *Younger* plainly does not apply to state-court proceedings involving adjudication of everyday commercial disputes like the one underlying this case—such disputes have nothing in common with the *Younger* categories of criminal or civil enforcement cases set forth in *NOPSI*. And, of course, there is no reason to think that *Younger* should apply *more* broadly to review of state-agency proceedings than it does to court cases. If anything, it is an open question whether *Younger* applies *as* broadly to agency proceedings; while *NOPSI* was willing to "assume, without deciding," that it does, the Court also cautioned that it has only even "arguably appl[ied]" *Younger* to administrative proceedings twice. 491 U.S. at 369 & n.4.[7]

In sum, *NOPSI* indicates that it is *necessary* but not sufficient that state-agency proceedings be "judicial" rather than "legislative" in nature in order for *Younger* to apply. State agency action must also satisfy *NOPSI*'s earlier requirement that the proceedings be the *kind* of "judicial" action to which *Younger* would apply in an appeal from a state *court* decision—again, "state criminal prosecutions," "civil enforcement proceedings," or "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." *Id.* at 367-68. The Eighth

---

[7] Both cases, *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986), and *Middlesex County Ethics Committee v. Garden State Bar Ass'n*, 457 U.S. 423 (1982), are discussed in detail below. In short, however, both cases—unlike this case—clearly fit into the *NOPSI* criminal and civil enforcement categories.

Circuit's contrary view that *Younger* applies to appeals of *all* state-agency adjudications finds no support in *NOPSI* and was reversible error.

2. *Middlesex County*: Apart from *NOPSI*, the only decision of this Court discussed by the Eighth Circuit is *Middlesex County*. According to the Eighth Circuit, that case held that "federal courts should exercise *Younger* abstention when":

> (1) there is an ongoing state judicial proceeding, which (2) implicates important state interests, and (3) the state proceedings provide an adequate opportunity to raise constitutional challenges.

Pet. App. 5a.

This statement of the *Younger* rule is, however, incomplete. As Sprint argued below (and the IUB agreed[8]), the Eighth Circuit's three-pronged *Younger* standard would presumably be satisfied with respect to *every* state-agency proceeding (as long as an appeal is available, as is almost always the case)—particularly if, as the Eighth Circuit has held, the relevant "state interest" is "the importance of the generic proceedings" rather than the interests invoked in the particular case, Pet. App. 8a, and there is an "ongoing state judicial proceeding" any time that state appeals of administrative actions are available. *See* Pet. App. 4a. In other words, as a practical matter—barring "rogue" action by the IUB far beyond the authority granted to it under state law—the State of Iowa would *always* have a "substantial and legitimate interest in regulating its utilities" in *every* proceeding before the IUB.

---

[8] Pet. at 13 & n.7.

The Ninth Circuit, which has articulated essentially the same three-pronged test under *Middlesex County* as the Eighth Circuit, *see Green v. City of Tucson*, 255 F.3d 1086, 1091 (9th Cir. 2001), *limited on other grounds by Gilbertson v. Albright,* 381 F.3d 965 (9th Cir. 2004), has acknowledged this problem with its test: "Read literally, [our] test could lead one to the conclusion that the plaintiffs in a state court proceeding who raise a federal issue may never file a parallel proceeding in federal court raising the same issue without running afoul of *Younger*." *Id.* at 1093. But, of course, the Ninth Circuit concluded, "[a] brief review … of the *Younger* doctrine, beginning with *Younger* itself and culminating in *NOPSI*, makes clear that the *Younger* abstention doctrine does not reach so far." *Id.* at 1094. "As such, *Middlesex* provides an informative example of how care must be taken, in using a multi-factor analysis, to examine the context in which the analysis first was articulated." *Id.* at 1095.

The context of *Middlesex County* involved state-bar disciplinary proceedings. The source of what has become the *Middlesex County* test for *Younger* is the following passage from the case:

> The question in this case is threefold: *first*, do state bar disciplinary hearings … constitute an ongoing state judicial proceeding; *second*, do the proceedings implicate important state interests; and *third*, is there an adequate opportunity in the state proceedings to raise constitutional challenges.

457 U.S. at 432. Given the context of *Middlesex County*, it was clear that the proceeding there *did* fall within the categories to which *Younger* can

apply, as later described by *NOPSI*. Specifically, while the disciplinary proceeding was not a "state criminal prosecution[]," it *was* a "civil enforcement proceeding[]." 491 U.S. at 367-68. Accordingly, unlike this case, there was no need for the Court to go beyond the "threefold" question it asked.

As further discussed directly below, however, in cases where the quasi-criminal nature of state enforcement action is *not* obvious, the coercion inquiry adopted by the vast majority of circuits serves to ensure that an administrative proceeding falls within the categories of cases described by *NOPSI* as potentially subject to *Younger*.

C. The "Coercion" Requirement Adopted by Nearly Every Circuit Properly Reflects this Court's *Younger* Jurisprudence.

The question presented in this case is whether the Eighth Circuit erred in declining to apply the requirement of "coercive" state action that most other circuits have adopted as part of their *Younger* analysis. The answer follows from the discussion of *NOPSI* and *Middlesex County* above. As *NOPSI* indicates, *Younger* applies only in certain kinds of cases that are akin to the criminal actions at the heart of the *Younger* doctrine—but the three-pronged *Middlesex County* test does not, on its face, impose such a limitation. The requirement of a state proceeding that is "coercive," as opposed to merely "remedial," harmonizes the limitations on *Younger* set forth in *NOPSI* with the *Middlesex County* standard.

The Tenth Circuit's opinion in *Brown ex rel. Brown v. Day*, 555 F.3d 882 (10th Cir. 2009), explains this point. The court began by setting forth

the three-pronged test, citing Tenth Circuit cases construing *Middlesex County*. *See* 555 F.3d at 888 (citing *Amanatullah v. Colorado Bd. of Med. Exam'rs*, 187 F.3d 1160, 1163 (10th Cir. 1999)) (internal quotation omitted). The court then explained, however, that consistent with *NOPSI*, it "must also decide whether [the] proceeding [there was] the *type* of state proceeding that is due the deference accorded by *Younger* abstention." *Brown ex rel. Brown,* 555 F.3d at 888 (quoting *NOPSI*, 491 U.S. at 369) ("Respondents' case for abstention still requires, however, that the *Council proceeding* be the sort of proceeding entitled to *Younger* treatment.") That analysis, the court held, should look first to "whether the federal plaintiff initiated the state proceeding of her own volition to right a wrong inflicted by the state (a remedial proceeding) or whether the state initiated the proceeding against her, making her participation mandatory (a coercive proceeding)." *Brown ex rel. Brown,* 555 F.3d at 889. The court also pointed out that "a common thread [in *Younger* analysis] appears to be that if the federal plaintiff has committed an alleged bad act, then the state proceeding initiated to punish the plaintiff is coercive." *Id.* at 891.

The Seventh Circuit's decision in *Majors v. Engelbrecht*, 149 F.3d 709, 712 (7th Cir. 1998), also addressed the relationship between the *Middlesex County* test for *Younger* abstention and *NOPSI*. According to the court there, under the first prong of the *Middlesex County* test—the requirement of an ongoing state judicial proceeding—"administrative proceedings are 'judicial in nature' when they are coercive—*i.e.*, state enforcement proceedings." Similarly, while the First Circuit quoted the

Middlesex County test in *Guillemard-Ginorio v. Contreras-Gomez*, 585 F.3d 508, 518 (1st Cir. 2009), it also found that "remedial proceedings initiated by the plaintiffs are not of the type to which deference under *Younger* applies," but rather "proceedings must be coercive" to warrant abstention. *Id.* at 522.

This Court's decision in *Dayton* supports the remedial/coercive distinction. In *Dayton*, the Court clarified the line between state administrative proceedings to which abstention applies and those to which it does not. The *Dayton* Court distinguished this Court's earlier holding in *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496 (1982), that a federal employment-discrimination claim could proceed without exhaustion of or deference to state administrative proceedings. Specifically, the *Dayton* Court found that *Younger does* apply to administrative action brought by a state agency to vindicate the State's policy against sex discrimination. The Court wrote:

> The application of the *Younger* principle to pending state administrative proceedings is fully consistent with *Patsy v. Florida Board of Regents*, which holds that litigants need not exhaust their administrative remedies prior to bringing a § 1983 suit in federal court. Unlike *Patsy*, the administrative proceedings here are *coercive rather than remedial*, began before any substantial advancement in the federal action took place, and involve an important state interest.

Dayton, 477 U.S. at 627 n.2 (emphasis added and citations omitted). As subsequent courts have recognized, "[t]he critical distinction" between

Dayton and *Patsy* was that *Dayton* involved a "coercive" proceeding, whereas *Patsy* did not. *See, e.g. O'Neill v. City of Philadelphia*, 32 F.3d 785, 791 n.13 (3d Cir. 1994).

The Eighth Circuit's decision below is thus not only inconsistent with the principles underlying *Younger* abstention, but also with this Court's specific distinction, in *Dayton*, of coercive state proceedings to which *Younger* applies from remedial proceedings where it does not. And nothing in *NOPSI* or *Middlesex County* requires adoption of the broad test adopted below, which would make abstention the rule rather than the exception in cases originating in state agencies.

III. THE EIGHTH CIRCUIT'S DECISION IMPROPERLY CONFLATED THIS COURT'S *BURFORD* AND *YOUNGER* ABSTENTION DOCTRINES.

Another way of understanding the Eighth Circuit's error is that the court thoroughly confused abstention law by conflating *Younger* and *Burford* into a new, impermissibly broad kind of abstention.

As discussed above, the *Burford* abstention cases permit the states to administer their regulatory regimes without undue interference from the federal courts. And the *Younger* cases prevent federal-court interference with state criminal and similar civil-enforcement regimes. At first blush, the present case falls far closer to the *Burford* line of cases than to the *Younger* cases. The state interests identified by the IUB in the district court—"enforcing the terms of telephone company tariffs and otherwise regulating the telephone companies" and the "protection of …

citizens" who make phone calls in Iowa (*see* 8th Cir. J.A.248-249)—were closely related to the *Burford* policy of non-intervention in state regulatory affairs. The Eighth Circuit decision makes this point even more clearly, identifying no *Younger*-style enforcement interest, but only a "generic" interest in the "regulation of utilities." Pet. App. 7a-8a.

But the IUB did not even attempt to invoke *Burford* abstention below. And the reason it did not is simple—under the portion of *NOPSI* addressing *Burford* abstention, it is crystal clear that such abstention is not warranted in this case. As discussed *supra* at 24-25, *NOPSI* involved a claim that federal law preempted a decision of a state regulatory agency—specifically, that a FERC order requiring that the costs of planned nuclear reactors should be allocated to power companies in proportion to each company's share of overall demand preempted the New Orleans City Council's order denying a rate adjustment. *NOPSI,* 491 U.S. at 352-57. In reversing the lower courts' application of *Burford*, this Court observed that "[w]hile *Burford* is concerned with protecting complex state administrative processes from undue federal interference, it does not require abstention whenever there exists such a process, or even in all cases where there is a 'potential for conflict' with state regulatory law or policy." *Id.* at 362. The Court further explained that *Burford* simply does not apply to the types of facial-preemption argument at issue there:

> Here, NOPSI's primary claim is that the Council is prohibited by federal law from refusing to provide reimbursement for FERC-allocated wholesale costs. Unlike a claim that a state agency has misapplied

> its lawful authority or has failed to take into consideration or properly weigh relevant state-law factors, federal adjudication of this sort of pre-emption claim would not disrupt the State's attempt to ensure uniformity in the treatment of an "essentially local problem[.]"

Id. (citation omitted).

In addition, the Court noted that "no inquiry beyond the four corners of the Council's retail rate order is needed to determine whether it is facially pre-empted by FERC's allocative decree," *id.* at 363, and emphasized that there is "'no doctrine requiring abstention merely because resolution of a federal question may result in the overturning of a state policy,'" *id.* (quoting *Zablocki v. Redhail*, 434 U.S. 374, 380 n.5 (1978)); *see also GTE North, Inc. v. Strand*, 209 F.3d 909, 920-21 (6th Cir. 2000) ("Because Congress has invested the federal courts with primary responsibility for adjudicating [Federal Telecommunications Act] challenges to state telecommunications regulations, and because this case does not concern a disputed issue of state law, but rather a potential conflict between state and federal telecommunications laws, *Burford* abstention is inappropriate.") (citing *NOPSI*).

This Court's ruling in *NOPSI* is, of course, equally apropos in this case. The lower courts could have resolved the federal preemption arguments advanced by Sprint without any inquiry "beyond the four corners" of the IUB's order, and federal adjudication of that claim would not have disrupted Iowa's administration of its regulatory regime. Presumably, then, the IUB chose not to invoke

Burford because it was aware that this Court had stated—in a case very much like this one—that the *Burford* doctrine does not apply. Instead, the IUB convinced the Eighth Circuit to expand *Younger* beyond recognition in a case where the interests underlying *Burford* abstention are implicated but are not sufficient to warrant preemption.

In short, the Eighth Circuit's application of abstention in this case blurred the lines that this Court has drawn in its *Burford* and *Younger* cases in a way that makes no sense. This Court should correct the Eighth Circuit's confusing and overly expansive reading of *Younger*.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

CHRISTOPHER J. WRIGHT
COUNSEL OF RECORD
TIMOTHY J. SIMEONE
MARK D. DAVIS
WILTSHIRE & GRANNIS LLP
1200 18th Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 730-1300
cwright@wiltshiregrannis.com

JUNE 28, 2013