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 OF LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are professors who teach and write on issues concerning federal courts. *Amici* have a professional interest in ensuring that the various judicial abstention doctrines are applied in a coherent and fair manner, consistent with the principles and interests underlying those doctrines.

Amici include: **Erwin Chemerinsky**, Dean and Distinguished Professor of Law, University of California, Irvine School of Law; **Kermit Roosevelt**, Professor of Law, University of Pennsylvania Law School; **Paul E. Salamanca**, Wyatt, Tarrant & Combs Professor of Law, University of Kentucky College of Law; and **Christina B. Whitman**, Francis A. Allen Collegiate Professor of Law, University of Michigan Law School.

SUMMARY OF ARGUMENT

The Court of Appeals held that *Younger* abstention, *see Younger v. Harris*, 401 U.S. 37 (1971), precludes federal courts from resolving a federal preemption challenge to final and non-coercive action by a state administrative agency.

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[1] Letters of consent have been filed with the Clerk. Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for a party authored any part of the brief, and no person or entity other than *amici* and their counsel made a monetary contribution to the preparation or submission of this brief.

That marks an extraordinary and unjustified departure from this Court's precedents.

This Court has developed an abstention doctrine to evaluate a state's interest in its regulatory regime: *Burford* abstention. *See Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). Abstention is appropriate under *Burford* when a challenge to a state agency determination involves a federal interest of minimal importance, and when addressing that issue would risk upending a complex and carefully calibrated state regulatory scheme. Those indicia are not present in this case, so abstention under *Burford* would be inappropriate.

Rather than analyzing this case through the prism of *Burford* abstention, however, the Court of Appeals instead held that *Younger* abstention was required. It reasoned that *Younger* abstention was appropriate because the State has "an important interest" in the "regulation of intrastate utility rates," Pet. App. 8a, which is within the state's police power, and because a federal-court adjudication of Sprint's preemption challenge would interfere with that interest. *Id.*

In reaching this conclusion, the Court of Appeals made three fundamental errors. First, it found abstention to be warranted based upon a State interest – the regulation of intrastate utility rates – that was no longer implicated by any ongoing proceeding. The only ongoing proceeding at the time Sprint brought its federal preemption challenge was state-court judicial

review of final administrative agency action. Yet in *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350 (1989) (*"NOPSI"*), this Court made clear that, although a State may well have an important interest in regulating utility rates, its interest in a judicial proceeding *reviewing* such regulation is not sufficiently important to warrant abstention. Indeed, the Court held that "it has never been suggested that *Younger* requires abstention in deference to a state judicial proceeding reviewing legislative or executive action." *Id.* at 368.

Second, the Court of Appeals overlooked *NOPSI*'s clear holding because it treated the underlying IUB proceeding as the relevant "ongoing state judicial proceeding." Pet. App. 5a, 9a ("The IUB's order . . . constitutes a judicial proceeding that is entitled to *Younger* abstention."). That is, the Court of Appeals viewed the state court's review of the IUB's final agency action as merely another step in the IUB proceeding. That too was error.

This Court has never held that state-court review of agency action should be treated simply as a continuation of an agency proceeding – particularly when the important state interest that might warrant abstention is not implicated by the review process. Here, the interest identified by the Court of Appeals as justifying abstention – an interest in regulating utility rates – is not an interest implicated during the review process. Rather, the State's formulation

of its policy through an agency proceeding, and the court's review of the legality of that policy, present different state interests and should be analyzed separately for purposes of federal abstention. That is so regardless of whether the agency has chosen to make policy through rulemaking, adjudication, or some other method.

Finally, even if the Court of Appeals were correct to view the IUB proceeding as ongoing, the Court of Appeals further erred in determining that the IUB proceeding itself was the type of proceeding to which *Younger* abstention could ever apply. According to the Court of Appeals, *Younger* applied to the IUB proceeding because it was an adjudication that involved an important state interest in ratemaking. But this Court has never applied *Younger* outside the context of criminal proceedings or coercive civil enforcement proceedings, or, at its outer edge, proceedings that challenge "the processes by which the State compels compliance with the judgments of its courts." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 13-14 (1987). It should not extend *Younger* to apply to proceedings of the type here, involving a contractual dispute between two private parties.

The flaws in the Court of Appeals' approach are evident from what it would portend. If the Court of Appeals' analysis were accepted, federal courts would regularly be forced to abstain from hearing federal constitutional or preemption challenges to state agency actions – at least when they involve an adjudication. The agency

proceedings themselves would virtually always warrant abstention because agency proceedings generally involve an interest in some way related to the state's police power – as is apparent from the Court of Appeals' conclusion that the proceedings here did so, even though they consisted of an adjudication between two private parties regarding the terms of their contractual agreement. And even after agency action was final, federal courts would still be forced to abstain because state judicial review would be seen as a mere continuation of the agency proceeding. Moreover, under the Court of Appeals' reasoning and Circuit precedent, abstention would be required regardless of whether state-court review was pending or merely available. *See Alleghany Corp. v. McCartney*, 896 F.2d 1138, 1144 (8th Cir. 1990) ("a party cannot avoid *Younger* by choosing not to pursue available state appellate remedies"); Pet. App. 6a ("Interests of comity and federalism support federal abstention where state judicial review of the IUB's order has not yet been completed.").

Yet the federal courts can entertain challenges to final state agency action without intruding on the state courts' ability "to perform their separate functions." *Younger*, 401 U.S. at 44. That is so regardless of whether the agency made its decision through an adjudicative process. Indeed, in *Verizon Maryland, Inc. v. Public Service Commission of Maryland*, 535 U.S. 635 (2002),

this Court confirmed that a federal court had federal-question jurisdiction to review the Maryland Commission's order involving intrastate telephone rate regulation for compliance with federal law, even though that order was issued through an adjudicative process similar to the one the IUB used here. *Id.* at 642. It explained that courts reviewing agency action are *not* acting as appellate courts. *Id.* at 644 n.3. And it said not one word about abstention or comity, even though Commission orders are without doubt reviewable by the Maryland state courts. *See* Md. Code, Pub. Utils. § 3-204.

Because the Court of Appeals erred in holding that *Younger* required abstention, the Court of Appeals' decision should be reversed and the case remanded.

ARGUMENT

I. ABSTENTION IS JUSTIFIED ONLY IN EXCEPTIONAL CIRCUMSTANCES.

Abstention is a judicial doctrine crafted against a backdrop in which "Congress, and not the Judiciary, defines the scope of federal jurisdiction within the constitutionally permissible bounds." *NOPSI,* 491 U.S. at 358-59. Thus, this Court has long held that a federal court has "no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821). Indeed, federal courts

have a "virtually unflagging" obligation "to adjudicate claims within their jurisdiction." *NOPSI*, 491 U.S. at 359 (internal quotation marks omitted).

Accordingly, a plaintiff may press a claim in federal court in preference to state court, even when the state court would also be capable of adjudicating the claim. *See, e.g.*, *Willcox v. Consol. Gas Co. of N.Y.*, 212 U.S. 19, 40 (1909) ("The right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied."); 28 U.S.C. § 1332. Moreover, there is no general rule requiring federal courts to abstain from the exercise of jurisdiction in favor of a parallel proceeding pending in state court. *See Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) ("Generally, as between state and federal courts, the rule is that 'the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction . . .'") (quoting *McClellan v. Carland*, 217 U.S. 268, 282 (1910)); *id.* at 816 ("the mere potential for conflict in the results of adjudications, does not, without more, warrant staying exercise of federal jurisdiction."). In circumstances involving such parallel litigation, preclusion doctrines require the later-deciding court to be bound by the judgment of the first-deciding court. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293 (2005).

Abstention represents an "extraordinary and narrow exception" to this general framework. *Cnty. of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 188 (1959). The Court has found abstention to be warranted only in four limited categories of cases.

The first, *Pullman* abstention, is a constitutional avoidance doctrine. In *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), the Court found abstention to be appropriate when a parallel state-court action raised unsettled questions of state law, the resolution of which could allow the federal court to avoid confronting a constitutional question.

The second, *Burford* abstention, involves federal claims of minimal importance, the resolution of which by federal courts would significantly disrupt a complex regulatory framework established under state law. Thus, in *Burford*, 319 U.S. 315, the Court held that the federal court should abstain from adjudicating a fact-bound due process claim concerning the issuance by a Texas Commission of a permit to drill an oil well. Federal-court adjudication of the due process claim would have threatened to disrupt Texas's complex and carefully calibrated scheme for issuing drilling permits.

The third category, referred to as *Younger* abstention, is grounded in principles of comity between federal and state courts, and requires federal courts to abstain from undue interference with an ongoing state judicial proceeding

concerning an important state interest. *Younger*, 401 U.S. 37. *Younger* itself concerned a plaintiff's suit to enjoin an ongoing state criminal prosecution on constitutional grounds. This Court later extended *Younger* to civil enforcement proceedings analogous to criminal prosecutions, such as proceedings to enforce a nuisance statute barring exhibition of obscene films, *see Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604-05 (1975), and proceedings to enforce a State's anti-discrimination laws. *See Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986). It has also applied *Younger* to cases "involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." *NOPSI*, 491 U.S. at 368. For example, in *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987), the Court held that a federal court should abstain in favor of an ongoing state proceeding to challenge a state bond provision used to "compel[] compliance with the judgments of the [state's] courts." *Id.* at 13-14. Similarly, in *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423 (1982), the Court held that a federal court should not interfere in ongoing state bar disciplinary proceedings, which were held under the auspices of the State Supreme Court. *Id.* at 425. However, the Court has never applied *Younger* outside the context of a state proceeding that was coercive in nature or related to a state court's power to effectuate its judgments. Nor has it ever applied *Younger* to the judicial review

of a state administrative proceeding that had resulted in final agency action.

Finally, the fourth category, known as *Colorado River* abstention, requires dismissal of a federal suit in favor of a concurrent state-court suit, but only in "exceptional" circumstances "for reasons of wise judicial administration." *Colorado River*, 424 U.S. at 818. The Court has emphasized, however, that those circumstances "are considerably more limited than the circumstances appropriate for abstention" under other doctrines. *Id.*

II. THE COURT OF APPEALS ERRED IN INVOKING *YOUNGER* ABSTENTION.

A. The State's Interest In Judicial Review of Agency Decisions Does Not Warrant *Younger* Abstention.

In concluding that abstention was warranted in this case, the Court of Appeals relied upon the test for *Younger* abstention articulated by this Court in *Middlesex County*. Pet. App. 5a. There the Court held that abstention is warranted where: (1) there is "an ongoing state judicial proceeding" that (2) "implicates important state interests," and (3) the state proceedings provide "an adequate opportunity to raise constitutional challenges." *Middlesex County*, 457 U.S. at 432.

According to the Court of Appeals, *Younger* abstention was required in this case in light of the State's important interest in the "regulation of intrastate utility rates." Pet. App. 8a. But

that interest had no relevance in the pending state proceeding. The only "ongoing state judicial proceeding," *Middlesex County*, 457 U.S. at 432, was the state court's review of the IUB decision. The state court does not itself engage in any local telephone regulation. Rather, it reviews the lawfulness of the *IUB's* regulation. And *NOPSI* makes clear that the State's interest in having its own courts review the decisions of its administrative agencies is not sufficiently important to justify abstention. As this Court held in *NOPSI*, "it has never been suggested that *Younger* requires abstention in deference to a state judicial proceeding reviewing legislative or executive action." *NOPSI*, 491 U.S. at 368.

That is so even though state agency proceedings frequently – indeed, typically – involve the administration of regulatory schemes lying at the heart of the police power. Regardless of whether comity may require a federal court to abstain from interfering with the state administrative proceeding *before* the agency has committed to take any particular action, *see Dayton*, 477 U.S. at 628, comity does not require abstention *after* the agency has committed to act. While a federal-court decision might result in nullification of a state law or policy, and might collaterally estop the state court from reaching a contrary conclusion, those consequences are routine in federal litigation and cannot justify abstention. *Every* case that includes a federal challenge to state law touches upon such an

interest. *See NOPSI*, 491 U.S. at 373 ("It is true, of course, that the federal court's disposition of such a case may well affect, or for practical purposes pre-empt, a future – or, as in the present circumstances, even a pending – state-court action. But there is no doctrine that the availability or even the pendency of state judicial proceedings excludes the federal courts.").

NOPSI itself involved the same police power at issue here: regulation of utilities. Indeed, except for the fact that the IUB decision at issue was rendered through an adjudication, this case is identical to *NOPSI*. But the Court in *NOPSI* found no need to abstain *after* the agency action was complete merely because state courts were reviewing the agency's decision. *See NOPSI*, 491 U.S. at 372 ("As a challenge to completed legislative action, NOPSI's suit [does not] interfere[] with ongoing judicial proceedings against which *Younger* was directed."). As the Court explained in *NOPSI*, "[s]uch a broad abstention requirement would make a mockery of the rule that only exceptional circumstances justify a federal court's refusal to decide a case in deference to the States." *NOPSI*, 491 U.S. at 368.

This Court had previously reached a similar conclusion in *Prentis*. There, the Court held that federal courts should not intervene during the state's ratemaking process because the State should be permitted to complete that process before it was challenged. *See Prentis v. Atl.*

Coast Line Co., 211 U.S. 210, 230 (1908) (cited by *NOPSI*, 491 U.S. at 372).[2] Once the ratemaking had ended, however, there was no longer any reason for federal courts to refrain from action. *Id.* at 230; *see also NOPSI*, 491 U.S. at 372-73 (discussing *Prentis*). The same is true here.

To be sure, this case involves an underlying state agency adjudication, which *NOPSI* did not – a fact on which the Court of Appeals placed great emphasis. *Cf.* Pet. App. 8a-9a. But that factual distinction should not change the analysis. The importance of the state interest in *reviewing* an agency decision does not change depending on whether the state agency chooses to regulate by way of adjudication or rulemaking. Indeed, agencies often enjoy substantial discretion to determine the method they will use to make policy, *see Martin v. Occupational Safety & Health Review Comm'n,* 499 U.S. 144, 153-54 (1991), and it would be odd – and potentially create perverse incentives for a state agency that

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[2] This Court pointed to a similar interest as part of the justification for abstention in *Dayton*, which is the only *Younger* abstention case decided by this Court involving a state agency proceeding in which the agency was not acting under the auspices of the courts. The agency proceeding in *Dayton* was ongoing, and no final agency action had been taken. The Court explained that principles of comity do not permit a federal court to interfere with a state agency's "mere exercise of jurisdiction," when the state agency had not yet committed itself to any action. *Dayton*, 477 U.S. at 628.

wished to avoid a federal-court challenge – if *Younger* abstention turned on the agency's choice of regulatory method.

B. The Underlying IUB Proceeding Cannot Justify Abstention Because It Has Been Completed.

Rather than analyze the importance of the State's interest in *reviewing* final action taken by a state administrative agency, the Court of Appeals instead treated the IUB proceeding and the state-court review proceeding as unitary, and viewed the relevant state interest as the one presented by the IUB proceeding. *See* Pet. App. 8a (describing "the generic proceedings" at issue as "involv[ing] the state's regulation of intrastate utility rates").

The Court of Appeals employed a two-step chain of logic in concluding that the relevant state interest was the one at issue in the IUB proceeding. First, it reasoned – drawing on Circuit precedent – that "once a party initiates state judicial proceedings in which the state has an important interest, the party must follow the proceedings through to the end." Pet. App. 4a (citing *Alleghany Corp.*, 896 F.2d at 1144). Second, it characterized the IUB proceeding as a "judicial proceeding" on the ground that it "attempts to enforce liabilities based on present facts and existing laws." Pet. App. 9a. Thus, the Court of Appeals concluded, "[i]nterests of comity and federalism support federal abstention where state judicial review of the IUB's order

has not yet been completed." Pet. App. 6a. The Court of Appeals erred, however, in treating the two proceedings as unitary.

1. The State Had No Continuing Interest in the Regulation of Intrastate Utility Rates.

As an initial matter, the actual state interest articulated by the Court of Appeals in this case – the "regulation of intrastate utility rates," Pet. App. 8a – could only have been implicated if the IUB proceedings were *not* entirely judicial. As this Court held in *NOPSI*, ratemaking is a legislative function, not a judicial one, *see NOPSI*, 491 U.S. at 371-72, and a completed ratemaking proceeding is not the kind of proceeding to which *Younger* abstention can apply. *Id.* at 372-73. And that is so regardless of whether rates are set through a contested proceeding or otherwise. *See Prentis*, 211 U.S. at 226-27.

Conversely, if the IUB proceedings could be described as entirely judicial merely because they involved the resolution of liabilities based upon existing facts and law, Pet. App. 9a, then the IUB proceedings did not involve the ratemaking interest on which the Court of Appeals relied. Instead, the State's interest in the IUB proceeding would have been the same interest the State possesses in adjudicating any contractual dispute between two private parties. And that interest has never been held sufficient

to warrant *Younger* abstention. *See infra* Part II.C.

In any event, even if the State's interest in the legislative activity of ratemaking could somehow have been implicated by the IUB proceeding in this case, that interest was no longer at stake once the IUB issued its final order. Under Iowa law, state courts enjoy only judicial power, not legislative or executive power. *E. Buchanan Tel. Coop. v. Iowa Utilities Bd.*, 738 N.W.2d 636, 641 (Iowa 2007). They thus cannot engage in the legislative function of ratemaking. As a result, once the IUB proceeding had concluded, Iowa had no interest in protecting the integrity of "a unitary and still-to-be completed" ratemaking process. *NOPSI*, 491 U.S. at 372. The ratemaking process had ended.

Indeed, the analysis in this case should be the same as that in *NOPSI*, which involved an asserted state interest identical to the one invoked by the Court of Appeals in this case. *See id.* at 365 (describing the interest at issue in *NOPSI* as one "in regulating intrastate retail rates"). The Court concluded there:

> As a challenge to completed legislative action, NOPSI's suit represents neither the interference with ongoing judicial proceedings against which *Younger* was directed, nor the interference with an ongoing legislative process against which our ripeness holding in *Prentis* was directed. It is, insofar as our policies of

> federal comity are concerned, no different in substance from a facial challenge to an allegedly unconstitutional statute or zoning ordinance – which we would assuredly not require to be brought in state courts.

Id. at 372.

2. Litigation From an Agency to a Court Should Not Be Treated as a Unitary Process When the Important State Interest Justifying Abstention at the Agency Stage Does Not Persist at the Appellate Stage.

The Court of Appeals nevertheless was led to treat the IUB proceeding as an "ongoing" judicial proceeding as a result of Circuit precedent applying this Court's decision in *Huffman*, 420 U.S. 592. In that case, a federal court had enjoined a State from executing a state-court judgment; the judgment could have been appealed to the State's appellate courts, but the challenger chose to go to federal court instead. The Court held that the federal court should have abstained rather than having intervened "in a state judicial proceeding as to which a losing litigant has not exhausted his state appellate remedies." *Id.* at 609. This is because "the State's trial-and-appeals process" should be treated "as a unitary system," so that it would be improper "for a federal court to disrupt its integrity by intervening in mid-process," *NOPSI,* 491 U.S. at 369.

The Eighth Circuit has previously extended *Huffman* to the agency context in *Alleghany Corporation*. It analogized a state agency adjudication to a state trial-court proceeding, and concluded that in either situation, "a party cannot avoid *Younger* by choosing not to pursue available state appellate remedies." 896 F.2d at 1144.[3]

The logic of treating the trial and appellate courts as unitary, however, rests on the notion that the same important state interest is present at each stage. In *Huffman*, the Court explained that "[v]irtually all of the evils at which *Younger* is directed would inhere in federal intervention prior to completion of state appellate proceedings, just as surely as they would if such intervention occurred at or prior to trial." 420 U.S. at 608. Thus, federal intervention in the appellate proceedings would not have been "any the less a disruption of the State's efforts to protect interests which it deems important." *Id.*

This Court has never accepted the much broader proposition that, whatever the state

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[3] The circuits are in conflict over whether *Huffman* applies only to decisions by state trial courts, or whether it also applies to decisions by state administrative agencies. *Compare, e.g.*, *Alleghany Corp.*, 896 F.2d at 1144; *O'Neill v. City of Phila.*, 32 F.3d 785, 791 (3d Cir. 1994); *Moore v. City of Asheville*, 396 F.3d 385, 395-96 (4th Cir. 2005), with *Thomas v. Tex. State Bd. of Med. Examiners*, 807 F.2d 453, 456 (5th Cir. 1987); *Norfolk & W. Ry. Co. v. Pub. Utils. Comm'n of Ohio*, 926 F.2d 567, 572-73 (6th Cir. 1991).

interests at stake in each stage, "the litigation from agency through courts, is to be viewed as a unitary process that should not be disrupted, so that federal intervention is no more permitted at the conclusion of the administrative stage than during it." *NOPSI*, 491 U.S. at 369. Nor should the Court accept that proposition here, where the ratemaking interest that might have justified abstention at the agency stage no longer is implicated, now that the agency has acted and the matter is being reviewed in the courts. For abstention to be justified under *Younger*, there must be an important state interest at stake in the *ongoing* process above and beyond that which would exist in every state appellate proceeding. Otherwise, federal courts would regularly be forced to abstain from hearing preemption or constitutional challenges to state agency decisions.

This Court's decision in *Verizon Maryland* underscores the inappropriateness of treating a state agency proceeding and state-court judicial review as a unitary process. There, as here, the state agency issued an adjudicative administrative decision that was being challenged in federal court on preemption grounds. The only potentially relevant factual difference between the two cases is that in *Verizon* there was no state court action pending, a difference to which the Eighth Circuit points. Pet. App. 5a

n.2.[4] But, if one accepts (as the Eighth Circuit does) that, once begun, an adjudicative agency proceeding must be allowed to continue through the state appellate process, that difference is irrelevant. According to the Eighth Circuit's reasoning, Verizon should have had an obligation to "follow the [state] proceedings through to the end." Pet. App. 4a.

Yet nothing in this Court's opinion in *Verizon Maryland* even hints at such a notion. Quite to the contrary, the Court went out of its way to distinguish appellate review of trial-court decisions from "judicial review of executive action, including determinations made by a state administrative agency." 535 U.S. at 644 n.3.

Rather than assess whether the State's interest in regulating intrastate utility rates persisted once the IUB's action was complete, the Court of Appeals instead analyzed the case in formalistic terms: because the IUB proceedings were adjudicatory, they must be considered "judicial proceedings" akin to trial-court proceedings. Pet. App. 8a-9a. That analysis fails even if evaluated purely on its own terms. Although the IUB conducts adjudications, it has no judicial power at all and thus could not have

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[4] The version of the Court of Appeals opinion set forth in Petitioner's Appendix contains a typo. There are two footnotes enumerated as footnote 1. As a result, the footnote appearing on page 5a is enumerated footnote 2. In the original reported decision, that footnote is footnote 3.

rendered a judicial decision that was part of a unitary judicial process. As the Iowa Supreme Court has explained, "the board [is] an administrative agency within the Executive Branch of state government," and thus "has no authority to grant judicial remedies." *E. Buchanan Tel. Coop.*, 738 N.W.2d at 641.[5]

In sum, the Court of Appeals erred by treating the agency proceeding and the state-court review proceeding as a unitary process presenting the same important state interest in the regulation of utility rates. Federal-court action will not interfere with the IUB proceeding, because it is no longer ongoing. And because Iowa courts have no power to regulate rates, once the IUB proceeding had concluded, Iowa had no interest in protecting the integrity of "a unitary and still-to-be completed" ratemaking

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[5] This Court similarly explained just last Term that while the decisions of federal agencies "take 'legislative' and 'judicial' forms, . . . they are exercises of – indeed, under our constitutional structure they *must be* exercises of – the 'executive Power.'" *City of Arlington v. FCC*, 133 S. Ct. 1863, 1873 n.4 (2013). Likewise, in *Verizon Maryland*, the Court described "determinations made by a state administrative agency" as "executive action." 535 U.S. at 644 n.3. It thus held that when a federal trial court reviews the decision of a state agency, it is not acting in an appellate capacity. *Id.*; *see also Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 238-39 (1984) (holding that Hawaii Housing Authority administrative process that designated certain properties for eminent domain were not judicial proceedings subject to *Younger* abstention).

process. *NOPSI*, 491 U.S. at 372. Nor can abstention be justified on the ground that the state-court proceedings are akin to appellate review of a trial court decision. This Court has never held, and should not hold, that an agency proceeding and judicial review necessarily constitute a unitary process, especially where the state interest at the agency stage is not implicated at the judicial stage.

C. The IUB Proceedings Were Not Themselves the Kind of Judicial Proceedings To Which *Younger* Abstention Applies.

Finally, even if the Court of Appeals had correctly focused on the IUB proceedings as the relevant ones for *Younger* purposes, it erred in concluding that those proceedings were ones to which *Younger* applies. Under the Court of Appeals' approach, abstention would apply to virtually all agency adjudications (and judicial review of those adjudications). But this Court has never applied abstention so broadly.

This Court has applied *Younger* to state agency proceedings on only two occasions: in *Dayton* and *Middlesex*, and in one of those, the proceedings were conducted under the auspices of the State Supreme Court's authority to regulate the conduct of the attorneys practicing before it and the State's lower courts. *Middlesex County*, 457 U.S. at 433-34. The other, *Dayton*, was predicated in part on an interest similar to that which existed in *Prentis*, in the completion of

agency action prior to federal-court intervention. *See supra* at 11-12.

Significantly, both *Dayton* and *Middlesex County* were enforcement proceedings. *Dayton* involved an enforcement action brought by the State to vindicate an important state interest in "the elimination of prohibited sex discrimination." 477 U.S. at 628. *Middlesex County* involved disciplinary proceedings conducted to regulate the conduct of the attorneys practicing before the state's courts. *Middlesex County*, 457 U.S. at 433-34.

That is consistent with this Court's *Younger* jurisprudence more generally. Contrary to the Court of Appeals' holding, this Court has applied *Younger* abstention only to a subset of judicial proceedings: those involving a state's coercive enforcement of its laws. *See Dayton*, 477 U.S. at 627 n.2 (drawing a distinction between "coercive" proceedings, to which *Younger* applies, and "remedial" proceedings, to which it does not).

Younger itself involved a federal-court injunction that had been issued against a state criminal prosecution. 401 U.S. at 49. The Court first extended *Younger* beyond the criminal context in *Huffman*, in which the Court applied *Younger* to a civil enforcement proceeding that was "more akin to a criminal prosecution than are most civil cases." *Huffman*, 420 U.S. at 604. The case involved an enforcement action brought under the state nuisance law against the owner of a pornographic theatre. The Court reasoned

that the civil enforcement proceeding "is both in aid of and closely related to criminal statutes which prohibit the dissemination of obscene materials. Thus, an offense to the State's interest in the nuisance litigation is likely to be every bit as great as it would be were this a criminal proceeding." *Id.* Accordingly, a federal-court injunction disrupting the state proceeding "has disrupted that State's efforts to protect the very interests which underlie its criminal laws and to obtain compliance with precisely the standards which are embodied in its criminal laws." *Id.* at 605; *see also Trainor v. Hernandez*, 431 U.S. 434, 444 (1977) (applying *Younger* to "civil enforcement action" to recover fraudulently obtained welfare payments – conduct which was a crime under state law); *Moore v. Sims*, 442 U.S. 415, 423 (1979) (applying *Younger* abstention to civil proceeding for the temporary removal of a child during child-abuse investigations, a proceeding that is "in aid of and closely related to criminal statutes" (quotation marks omitted)).

The Court subsequently extended *Younger* to "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." *NOPSI*, 491 U.S. at 368. For example, in *Juidice v. Vail*, 430 U.S. 327, 336 n.12 (1977), the Court applied *Younger* to civil contempt proceedings, "through which [the State] vindicates the regular operation of its judicial system." *Id.* at 335. The

Court reasoned that, although the State's interest in civil contempt proceedings was not "quite as important as is the State's interest in the enforcement of its criminal laws . . . or even its interest in the maintenance of a quasi-criminal proceeding such as was involved in *Huffman*, . . . we think it is of sufficiently great import to require application of the principles of those cases. The contempt power lies at the core of the administration of a State's judicial system." *Id.*

Likewise, in *Pennzoil*, a case at the far edge of this Court's *Younger* cases, the Court applied *Younger* to a challenge to a State's appeal bond and judgment lien provisions. The Court reasoned that, like *Juidice*, that case challenged "the processes by which the State compels compliance with the judgments of its courts." *Pennzoil*, 481 U.S. at 13-14.

Significantly, this Court has never applied *Younger* so broadly as to encompass even all proceedings in which the State is a party, let alone all proceedings between private parties such as the IUB proceeding here. *See Moore*, 442 U.S. at 423 n.8 ("[W]e do not remotely suggest that every pending proceeding between a State and a federal plaintiff justifies abstention unless one of the exceptions to *Younger* applies.") (internal quotation marks omitted).

In fact, this Court has found abstention to be *unwarranted* in a case similar to this one. In *Public Utilities Commission of Ohio v. United*

Fuel Gas Co., 317 U.S. 456, 468-69 (1943), this Court held that there was no reason a federal court should abstain from resolving a straightforward preemption claim even though it would have impacted a *pending* state ratemaking proceeding. *Id.* (cited in *NOPSI*, 491 U.S. at 362-63). The Court noted "that the federal courts should be wary of interrupting the proceedings of state administrative tribunals by use of the extraordinary writ of injunction." *Id.*[6] But it explained that "this, too, is a rule of equity and not to be applied in blind disregard of fact. And what are the commanding circumstances of the present case? First, and most important, the orders of the state Commission are on their face plainly invalid. No inquiry beyond the orders themselves and the undisputed facts which underlie them is necessary in order to discover that they are in conflict with the federal Act." *Id.* In other words, the existence of a ratemaking interest did not alone suffice to justify abstention in the face of a facial preemption challenge.

In sum, *Younger* abstention is not warranted simply because there is an ongoing proceeding in which the court has a regulatory interest. Rather, to justify *Younger* abstention, the state must have an interest related to enforcement.

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[6] The agency proceeding there was legislative, but federal courts are no less wary of interrupting ongoing state legislative processes as they are of interrupting ongoing state judicial processes, as *Prentis* shows.

And such an interest is present only in certain types of proceedings: criminal proceedings, such as those in *Younger* itself; civil enforcement proceedings intertwined with the enforcement of criminal law, as in *Huffman*, *Trainor*, and *Moore*, or particularly important state public policies, as in *Dayton*; civil enforcement proceedings that seek to vindicate the power of the courts to effectuate their judgments and to discipline their attorneys, as in *Juidice* and *Middlesex County*; and, at the outer reaches, civil proceedings that touch on a court's ability to enforce its judgments, as in *Pennzoil*.

The proceeding here falls well outside the types of judicial proceedings to which this Court has applied *Younger*. The proceeding was initiated by Sprint, not by the State, and it involved a commercial dispute between Sprint and Windstream, another private party, concerning access charges that Windstream had imposed on Sprint. J.A. 4a. Whatever the outer bounds of *Younger* abstention may be, a commercial dispute between two private parties lies far outside them.

III. *BURFORD* IS THE ABSTENTION DOCTRINE RELEVANT TO THIS CASE, BUT ABSTENTION WOULD BE INAPPROPRIATE UNDER THAT FRAMEWORK AS WELL.

The sort of analysis undertaken by the Court of Appeals would undermine the approach this Court has followed to evaluate precisely the sort

of state interest on which the Court of Appeals relied here. To the extent that any abstention doctrine is potentially relevant in this case, it is *Burford* abstention. In contrast to *Younger* abstention, which is focused on a State's interest in carrying out coercive enforcement actions free of federal interference, *Burford* abstention is focused on a State's interest in executing a complex and detailed regulatory scheme requiring significant state expertise, which could be undermined through federal-court involvement. Specifically, *Burford* requires a federal court to abstain from interfering with the proceedings of state administrative agencies "(1) when there are 'difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar'; or (2) where the 'exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.'" *NOPSI*, 491 U.S. at 361 (quoting *Colorado River*, 424 U.S. at 814).

Abstention under *Burford* would not be warranted here. Yet the Court of Appeals, by expanding *Younger* abstention far beyond its proper bounds, displaced the *Burford*-type analysis that should have been applied in this case.

A. *Burford* Abstention.

In *Burford,* Sun Oil Co. filed suit in federal court, claiming that the Texas Railroad Commission had violated due process and state law when it granted an oil drilling permit to a third party. That suit took place against a backdrop in which the federal government had left "the principal regulatory responsibility [over the complex process of delegating oil extraction rights] with the states." *Burford,* 319 U.S. at 319.

Texas had "very large" interests in the regulation of oil and gas extraction, given "the impact of the industry on the whole economy" and the need to balance concerns about "oil supply," "market demand," "protection of the individual operators," and "protection of the public interest." *Id.* at 319-20.

To effectuate these interests, the Texas Railroad Commission oversaw the spacing of wells drilled from shared underground oil and gas pools. Due to the geologic nature of these pools, which often spanned many miles across multiple owners' tracts of land, extracting oil or gas from one well could result in a shift of pressure, oil, or gas across the rest of the pool. Thus, the Commission needed to exercise central authority over all extraction decisions in order to prevent waste and to ensure that each owner recovered a quantity of oil and gas substantially equal to the amount that was initially recoverable under his or her land. *Id.* at 320-22.

Although the minimum spacing of wells was generally governed by a rule promulgated by the Commission, the Commission issued numerous exceptions in light of the geological complexity of well extraction. These exceptions had historically been litigated in a single Texas state court, to ensure uniformity and centralization. *Id.* at 325.

In *Burford*, this Court evaluated whether a federal court should abstain from deciding a due process challenge to a decision of the Railroad Commission to grant an oil drilling permit. *Id.* at 331. Resolution of that question would have required the Court to untangle complex issues related to Texas' regulatory scheme: "the question [was] whether the commission had properly applied Texas' complex oil and gas conservation regulations." *NOPSI*, 491 U.S. at 360.

The Court determined that "questions of regulation of the industry by the State administrative agency . . . 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." *Burford*, 319 U.S. at 332. The Court added 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." *Id.* at 334. Given the longstanding federal deference to states to regulate oil and gas extraction; the well-developed and complex state regulatory scheme; the relative expertise of the Texas courts in resolving

disputes over exceptions to the commission's rules; and the minimal importance of the federal issue, which was fact-bound and entangled with difficult issues of state law, the Court determined that federal abstention was warranted.

B. Abstention Would Not Be Warranted Under *Burford*.

The general fact pattern in this case – review of a decision by a state agency charged with administering a complex regulatory area of local importance – fits the general pattern of *Burford* cases, not *Younger* cases. But *Burford* abstention in this case is not warranted, either.

The underlying legal question at issue here – whether States have authority to impose intrastate access charges to Voice over Internet Protocol (VoIP) calls – is purely a federal question that is not particular to Iowa nor uniquely wrapped up in questions specific to Iowa's local tariffing scheme over which Iowa courts might have a comparative advantage. And the question is one of substantial federal importance, going to the basic division of authority between state and federal authorities under the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56. Moreover, the basic regulatory scheme under the Telecommunications Act unquestionably is one in which the FCC and federal courts have a significant role even with respect to intrastate communications. *See generally AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 377-86 (1999).

This is not an area in which state regulation is limited only by due process and similar constitutional concerns.

In *NOPSI*, this Court found that a state interest virtually identical to the one at issue here was insufficient to warrant *Burford* abstention. The Court considered whether abstention was required with respect to a claim that federal law preempted a rate adjustment made by the local ratemaking body with respect to a particular utility. 491 U.S. at 352-57.

In finding abstention unwarranted, this Court explained that where "no inquiry beyond the four corners" of a state agency's order is needed to determine "whether it is facially preempted" by federal law, "such an inquiry would not unduly intrude into the process of state government or undermine the State's ability to maintain desired uniformity" *Id.* at 363.

The same analysis applies here. "[F]ederal 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," *NOPSI*, 491 U.S. at 362 (internal quotation marks omitted), because the question of whether VoIP regulation is preempted is a national problem where uniformity of law is a national, not local, concern.

To be sure, a federal (or state) decision finding state regulation to be preempted potentially could disrupt Iowa's interest in

regulating telecommunications within the state. But as *NOPSI* explained, although *Burford* protects "complex state administrative processes from undue federal influence, 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 and policy." *NOPSI*, 491 U.S. at 362 (internal quotation marks omitted).

CONCLUSION

The judgment of the United States Court of Appeals for the Eighth Circuit should be reversed and the case remanded.

Respectfully submitted,

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