No. 12-815

IN THE
Supreme Court of the United States

SPRINT COMMUNICATIONS COMPANY, LP
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 THE NATIONAL CONFERENCE OF STATE LEGISLATURES, THE COUNCIL OF STATE GOVERNMENTS, AND THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE* [1]

The National Conference of State Legislatures (NCSL) is a bipartisan organization that serves the legislators and staffs of the nation's 50 states, its

[1] This brief was not written in whole or in part by counsel for any party, and no such counsel or party made a monetary contribution to fund the preparation or submission of this brief. This brief is filed under the blanket consent granted by the parties under Supreme Court Rule 37.3.

commonwealths, and territories. NCSL provides research, technical assistance, and opportunities for policymakers to exchange ideas on the most pressing state issues. NCSL advocates for the interests of state governments before Congress and federal agencies, and regularly submits *amicus* briefs to this Court in cases, like this one, that raise issues of vital state concern.

The Council of State Governments (CSG) is the nation's only organization serving all three branches of state government. CSG is a region-based forum that fosters the exchange of insights and ideas to help state officials shape public policy. This offers unparalleled regional, national, and international opportunities to network, develop leaders, collaborate, and create problem-solving partnerships.

The International Municipal Lawyers Association (IMLA) has been an advocate and resource for local government attorneys since 1935. Owned solely by its 3,000-plus members, IMLA serves as an international clearinghouse for legal information and cooperation on municipal legal matters.

SUMMARY OF ARGUMENT

Comity and cooperative federalism are the heart of the *Younger* abstention doctrine. As explained in *Younger*, "a proper respect for state functions," is the "vital consideration." *Younger v. Harris*, 401 U.S. 37, 44 (1971). "Vital" because states and their institutions perform separate and important functions distinct from those performed by the federal government. The Eighth Circuit understood that "vital" consideration, and properly concluded that "[i]nterests of comity and federalism support federal abstention where state

judicial review of the [Iowa Utilities Board's] order has not yet been completed." Pet. App. 6a. This Court should uphold that decision.

Younger abstention recognizes the distinct functions and roles played by the state and federal government, and calls for "sensitivity to the legitimate interests" of each actor in the federal system. *Younger*, 401 U.S. at 44. This case presents a situation warranting that kind of sensitivity to the legitimate state interests of the State of Iowa and the Iowa Utilities Board ("IUB"). The IUB, like other state and local governments, has the right to enforce state laws and regulations in state courts and administrative proceedings. As the Eighth Circuit recognized, active state legal proceedings should not be unduly interrupted by the federal courts or forum-shopping litigants. Instead, federal courts considering whether to become embroiled in ongoing state litigation should exercise the caution and sensitivity that are the hallmarks of the *Younger* abstention doctrine. As stated in *Younger*, in our federal system, "the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Younger*, 401 U.S. at 44.

In order to avoid unduly interfering with legitimate state functions, the Eighth Circuit properly considered the factors this Court outlined in *Middlesex County Ethics Committee v. Garden State Bar Ass'n*, 457 U.S. 423 (1982). In *Middlesex*, this Court set forth an approach to *Younger* abstention that considered several important factors and balanced the needs and interests of the parties while accounting for the

importance of cooperative federalism. Under the *Middlesex* approach, *Younger* abstention is appropriate when (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. *Id*. at 432. The Eighth Circuit considered those factors without placing undue emphasis on any one factor or narrow subset of factors. The Eighth Circuit did not focus exclusively or heavily on whether Sprint's action was "coercive" or "remedial," as Sprint urges this Court to do. Pet. App. 6a-7a.

Despite Sprint's concerns, and those articulated by *amicus* Chamber of Commerce, *Middlesex* is not an overly-broad framework in need of refinement through a bright-line test centered on the dichotomy between "coercive" and "remedial" actions. Under the existing *Middlesex* framework there is no danger that abstention will become the rule in every case involving a state administrative proceeding. A bright-line test focused narrowly on distinguishing between "coercive" and "remedial" state action, however, would pose a danger; it would cast aside the delicate balancing act required by *Younger* and replace it with an "analysis" centered primarily on the identity of the party that initiated the state proceeding. Abstention should not be automatically foreclosed based solely on information set forth on a caption page. While state interests might peak when state or local governments initiate criminal or civil enforcement proceedings, important interests may be implicated outside those contexts.

In other words, as this Court has recognized, a state's legitimate interests may extend beyond criminal and

civil enforcement proceedings. Indeed, this Court's past decisions applying *Younger* deliberately avoided narrowing *Younger* to only those cases brought by states in the enforcement context. The Court recognized as much in holding that "the principles of *Younger* and *Huffman* are not confined solely to the types of state actions which were sought to be enjoined in those cases." *Juidice v. Vail*, 430 U.S. 327, 334 (1977).

Like Iowa, all state and local governments have a legitimate interest in ensuring that proceedings initiated before state agencies, and in state courts, remain in the state's domain until finally resolved. The integrity of the judicial process requires that federal courts not interfere prematurely in a way that undermines the capability of state tribunals to resolve issues that directly impact the state's government, residents, economy, businesses, resources, and environment. There is time enough for federal review when the state proceedings are fully complete. 28 U.S.C. § 1257.

The integrity of the judicial process also requires that states, local governments, and federal court judges, have a clear understanding of when it is appropriate for federal courts to become embroiled in, or enjoin, ongoing state proceedings. The coercive-remedial test, as interpreted by Sprint, will not provide that clarity. Instead, it will increase the likelihood that ongoing state proceedings, concerning matters of great import to states but considered "remedial" by forum-shopping parties like Sprint, will be interrupted and undermined before they run their course. That approach hardly furthers the notion of comity.

This Court should not adopt Sprint's rigid bright-line test, which undermines respect for the integrity of ongoing state proceedings. Instead, this Court should make clear that the coercive-remedial distinction is merely a small part of the larger framework developed in *Middlesex*, and that the "remedial" label is not the end of a *Younger* inquiry.

ARGUMENT

I. The Broad Framework Articulated In *Middlesex* Allows Courts to Balance Various "Vital" Factors, And That Framework Should Not Be Sharply Limited

A. *Middlesex* Advances the Principles Upon Which *Younger* Abstention Was Built

A state's "interest" in adjudicating a matter is, like comity, at the very core of the *Younger* abstention doctrine. *See Younger v. Harris*, 401 U.S. 37, 44 (1971); *Juidice v. Vail*, 430 U.S. 327, 334-35 (1977); *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 364-65 (1989) (*NOPSI*); *Pennzoil Co. v. Texaco, Inc*., 481 U.S. 1, 10-11 (1987). "Comity" is required because our nation is made up of separate state governments, and the federal government fares best when "States and their institutions are left free to perform their separate functions in their separate ways." *Younger*, 401 U.S. at 44. This concept, branded "Our Federalism," requires analysis and understanding of state "interest" as a precondition to balancing the interests of the state against the interests of the federal government, as the concept represents "a system in which there is sensitivity to the legitimate interests of both State and National Governments . . . ." *Id*.

To honor the spirit of comity and federalism that *Younger* abstention is built upon, any test crafted to guide the *Younger* analysis must grant federal courts the flexibility to properly examine the state's legitimate interests and activities. It must also balance those interests and activities against the interests of the federal government and federal courts.

Middlesex already provides the required flexibility while limiting the *Younger* abstention doctrine's application to those cases that further *Younger*'s fundamental principles. *Middlesex* set forth three conditions, or factors, that must be satisfied for *Younger* abstention to apply. Abstention is appropriate if (1) there is an ongoing state judicial proceeding, (2) that implicates important state interests, and (3) that provides an adequate opportunity to raise constitutional challenges. *Middlesex*, 457 U.S. at 432. If those conditions are met, federal courts should abstain from interfering with ongoing state proceedings "so long as there is no showing of bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate . . . ." *Id*. at 435. In other words, *Middlesex* provided guidance. It also gave courts wide latitude to weigh the strength of a state's interests, and balance those interests with federal interests and concerns as diverse as bad faith and the presence of constitutional challenges. Bright-line rules are a poor substitute for that type of inquiry, and do not allow for the flexibility and judicial discretion required to truly consider whether *Younger* abstention is appropriate.

B. The Middlesex Balancing Approach Is Self-Limiting And Does Not Result in Automatic Abstention In All Civil Proceedings

Contrary to what Sprint and the Chamber of Commerce suggest, the *Middlesex* framework is not so expansive as to swallow all limitations this Court has imposed on the application of *Younger* abstention. As expressed in its *amicus* brief in support of Sprint, the Chamber fears that "[i]f *Younger* required federal courts to abstain during the pendency of both coercive *and* remedial state proceedings, there would be few (if any) state proceedings to which *Younger* did not apply." Brief of the Chamber of Commerce of the United States of America as *Amicus Curiae* in Support of Petitioner at 12. Sprint expressed a similar concern, arguing that the Eighth Circuit's approach to the *Younger* standard "would presumably be satisfied with respect to *every* state-agency proceeding" particularly given the availability of appeals and the broad interpretation of relevant "state interests." Brief for the Petitioner at 27. These concerns regarding the over-expansion of *Younger* abstention are unfounded.

Younger abstention applies only to proceedings that are truly judicial in nature. Several years after rendering its opinion in *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc*., 477 U.S. 619 (1986) (*Dayton Schools*), the first and only time this Court mentioned the coercive-remedial dichotomy, the Court specifically examined the types of proceedings that merit *Younger* abstention. *NOPSI*, 491 U.S. at 367-72. That inquiry did not, however, entail hard and fast rules distinguishing remedial proceedings from

coercive ones. In fact, *NOPSI* made no mention of remedial or coercive proceedings. Rather, the Court emphasized that only judicial proceedings are subject to *Younger* abstention.

That is, *Younger* is limited to those proceedings in which "'[a] judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist.'" *NOPSI*, 491 U.S. at 370, quoting *Prentis v. Atlantic Coast Line Co*., 211 U.S. 210, 226 (1908). And even among judicial proceedings, "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. Therefore, application of the *Middlesex* framework would not result in the application of *Younger* abstention to all state agency proceedings. Legislative and executive proceedings, and even judicial proceedings reviewing legislative and executive actions, would not be subject to *Younger* abstention.

Focusing the *Younger* inquiry on the character of the proceeding, rather than on the character of the initiating party, accords proper respect to the states, addressing *Younger's* concerns about comity without over-expanding its reach. This Court has recognized that federal judicial interference "prevents the state not only from effectuating its substantive policies, but also from continuing to perform the separate function of providing a forum competent to vindicate any constitutional objections interposed against those policies." *Huffman v. Pursue Ltd*., 420 U.S. 592, 604 (1975).

Younger abstention is, in fact, already limited to proceedings in which the state has an important and legitimate interest. This Court's careful extension of the doctrine into the civil context is a testament to the need for judicial discretion in determining whether a state interest is important enough to warrant abstention. This Court demonstrated as much when it considered whether a state's interest in the contempt process was sufficiently important to merit *Younger* abstention. *Juidice*, 430 U.S. at 333-36. This Court found that the state's interest in pursuing a contempt charge was sufficiently important to warrant abstention, even though it recognized that the interest was perhaps not as important as the state's interest in enforcement of its criminal laws. *Id*. at 335. A bright-line rule limiting *Younger*'s application to coercive proceedings would essentially foreclose that type of analysis and would predetermine whether certain classes, or types, of cases warranted abstention. *Younger* abstention could be appropriate in any case where "the State's interests in the proceeding are so important that exercise of the federal judicial power would disregard the comity between the States and the National Government." *Pennzoil*, 481 U.S. at 11. A bright-line rule would sharply limit the inquiry and analysis required to weigh a state interest, and would be unnecessary because of the limits this Court already placed on *Younger* in its decision in *Middlesex*.

Younger abstention is already limited by the substance of an action. For example, abstention is not appropriate unless a federal plaintiff has an adequate opportunity to raise constitutional challenges in the state tribunal. *See Middlesex*, 457 U.S. at 432 ("Where vital state interests are involved, a federal court

should abstain 'unless state law clearly bars the interposition of the constitutional claims.'"), quoting *Moore v. Sims*, 442 U.S. 415, 426 (1979). If a state or federal statute forecloses the state tribunal's consideration of constitutional issues, or commands that such issues be addressed in federal court, federal court abstention under *Younger* would not apply.

II. Focusing the *Younger* Analysis On The Coercive-Remedial Test Would Undermine the Doctrine's Fundamental Purpose

Taking their cue from a single footnote in *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986), courts have permitted the coercive-remedial distinction to dictate the outcome of the *Younger* abstention analysis. The Tenth Circuit, for example, has deemed the coercive-remedial dichotomy to be "the touchstone for determining whether the administrative proceeding is the type of proceeding that merits *Younger* abstention." *Brown v. Day*, 555 F.3d 882, 889 n.5 (5th Cir. 2009). *See also Devlin v. Kalm*, 594 F.3d 893, 895 (6th Cir. 2010) (*Younger* does not apply where the federal plaintiff is also a plaintiff in the state action); *Majors v. Engelbrecht*, 149 F.3d 709, 712 (7th Cir. 1998) (administrative proceedings are "judicial in nature" when they are coercive); *O'Neill v. Philadelphia*, 32 F.3d 785, 791 (3d Cir. 1994) (*Younger* abstention applies where a coercive proceeding has been initiated by the state in a state forum); *Kercado-Melendez v. Aponte-Roque*, 829 F.2d 255, 260-61 (1st Cir. 1987) (administrative proceeding at issue was remedial rather than coercive, unlike in *Dayton Schools*). The Court in *Dayton Schools*, however, did not declare, much less hold, that *Younger*

abstention applies only to coercive proceedings. The Court did not expand on what it meant by "coercive" or "remedial" and did not elaborate on the significance of the distinction.

The Eighth Circuit's approach, which does not deem the coercive-remedial distinction to be outcome-determinative, properly retains the flexibility courts need to determine whether abstention is appropriate within the confines of the *Middlesex* framework. As this Court has said, even "[t]he various types of abstention are not rigid pigeonholes into which federal courts must try to fit cases. Rather, they reflect a complex of considerations designed to soften the tensions inherent in a system that contemplates parallel judicial processes." *Pennzoil*, 481 U.S. at 12 n.9. Accordingly, application of *Younger* abstention should not hinge on whether a state proceeding is characterized as remedial or coercive, particularly when that characterization depends entirely upon the identity of the party that initiated the proceeding.

Nor should *Younger* abstention hinge on the clever pleading and litigation strategies of large "regulated entities" that claim to "frequently find it necessary to police the line between federal and state authority to which they are subject . . . ." Brief of the Chamber of Commerce of the United States of America as *Amicus Curiae* in Support of Petitioner at 4. It is not the tactics of the parties that should dictate abstention determinations but the delicate balance between state and federal interests. Comity is of particular import when a party seeks federal court intervention to effectively annul the results of a state proceeding. *See Huffman*, 420 U.S. 592, 608-09. Such intervention casts "a direct aspersion on the capabilities and good faith

of state appellate courts[,]" and causes "a disruption of the State's efforts to protect interests which it deems important." *Id*. at 608.

It is comity that requires in this case that Iowa be allowed to complete the administrative and judicial proceedings already underway in the state, irrespective of whether Sprint's proceeding is labeled coercive or remedial. Upon unilaterally determining that Windstream, which provides services in Iowa, was not entitled to charge Sprint *intrastate access* charges for connecting certain VoIP calls to local Windstream customers, Sprint sought an order from the IUB, a *state agency*, to prevent Windstream from refusing to make those connections if Sprint did not pay the disputed charges. Sprint did not, however, obtain the result it was hoping for, and subsequently filed two actions challenging the IUB's determination, one in federal district court and one in state court.

Although the Eighth Circuit recognized that Sprint had a right to challenge the IUB's order in federal court, Sprint deliberately also initiated an action in state court, and "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. The Eighth Circuit noted that Sprint's state court proceeding had a bearing on the abstention analysis and concluded: "Interests of comity and federalism support federal abstention where state judicial review of the IUB's order has not yet been completed." Pet. App. 6a. As the court further concluded, the interests of comity and federalism would be thwarted should the federal court intervene to declare "how a state utilities board

should interpret its state's laws and regulations . . . ." Pet. App. 6a.

By seeking to effectively annul the outcome of the IUB proceeding in federal court, Sprint undermined the capability of the Iowa state court to review the challenged IUB decision. Where a state proceeding is initiated by someone who later, dissatisfied with the result, seeks to annul the state's decision in federal court, the rule espoused in *Huffman* should apply. "*Younger* standards must be met to justify federal intervention in a state judicial proceeding as to which a losing litigant has not exhausted his state appellate remedies." *Huffman*, 420 U.S. at 609.[2]

States and local government entities have an interest in ensuring that proceedings initiated locally remain local pending final resolution. Federal court interference with pending state judicial proceedings would undermine the capability of state tribunals to decide important issues that directly affect a state, its residents, businesses, economy, resources, and environment. State courts are oftentimes more accessible and have specialized knowledge of local laws and issues affecting surrounding communities. As such, in many instances, state courts may be better equipped to handle proceedings that implicate local interests and concerns, like the public safety impact caused by disruption of utilities services.

Important state interests cannot be evaluated by looking only to the status of the party that initiated

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[2] *Huffman* addressed "the deference to be accorded state proceedings which *have already been initiated* and which afford a competent tribunal for the resolution of federal issues." *Huffman*, 420 U.S. at 609 n.21 (emphasis added).

the suit. When considering a state's substantial interest, the focus should be on the "importance of the generic proceedings to the state[,]" not on the outcome of the particular case at bar. *NOPSI*, 491 U.S. at 365. In *NOPSI*, for example, the inquiry was not whether Louisiana had a substantial interest in reducing *NOPSI's* retail rate, but whether it had a substantial, legitimate interest in regulating local electric rates. *Id*. at 365. In *Dayton Schools*, the Court did not emphasize Ohio's specific concern with the firing of a teacher, but looked instead to the state's general interest in "the elimination of prohibited sex discrimination . . . ." *Dayton Schools*, 477 U.S. at 628. And in *Younger*, the Court did not focus on California's interest in prohibiting one person from distributing handbills, but rather considered the state's interest in enforcing its criminal laws. *Younger*, 401 U.S. at 51-52. These important state interests would be present regardless of whether the government or a private party initiated the state proceeding. Placing undue emphasis on the identity of the initiating party, without considering the strength of the state's interests, undermines the purposes of *Younger* abstention.

Focusing the *Younger* abstention inquiry on whether the proceeding is coercive or remedial would erode the doctrine's application to civil proceedings and limit the definition of an "important state interest." This Court has declared: "The policies underlying *Younger* are fully applicable to noncriminal judicial proceedings when important state interests are involved." *Middlesex*, 457 U.S. at 432. Moreover, "whether the proceeding 'is labeled civil, quasi-criminal, or criminal in nature,' the salient fact is whether federal-court interference would unduly interfere with the

legitimate activities of the state." *Id*. at 434 n.12, quoting *Juidice*, 430 U.S. at 335-36. If *Younger* abstention applied only to coercive proceedings, encompassing mainly proceedings initiated by the government to enforce state law, then the protected state interests would almost always be confined to those contexts, in disregard of the "salient fact" expressed above, that is, whether federal interference would disrupt the state's legitimate activities.

* * *

The approach Sprint advocates will increase forum shopping by plaintiffs who, unhappy with the preliminary results of their state-court action, will be free to seek relief in the federal courts while that action is still pending. The coercive-remedial distinction is not, standing alone, a good approximation of a state's interest in a particular matter. Each case deserves a full examination of the type provided for in *Middlesex*, and that examination should not be so limited that federal courts are required to step on the toes of their state counterparts without weighing all relevant factors. This Court should not replace the *Middlesex* framework with a test limiting a federal court's examination of state interest to reading the party titles on the caption page of a complaint.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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