No. 12-815

In the Supreme Court of the United States

SPRINT COMMUNICATIONS COMPANY, L.P., PETITIONER

v.

ELIZABETH S. JACOBS, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF OF *AMICI CURIAE* STATE OF MICHIGAN AND 21 OTHER STATES IN SUPPORT OF RESPONDENTS

Bill Schuette
Michigan Attorney General

John J. Bursch
Michigan Solicitor General
Counsel of Record
P.O. Box 30212
Lansing, Michigan 48909
BurschJ@michigan.gov
(517) 373-1124

Of Counsel:
Dan Schweitzer
Gregory McHugh
2030 M Street, N.W.
8th Floor
Washington, DC 20036
(202) 326-6010

[additional counsel listed at the end of the brief]

QUESTION PRESENTED

Whether *Younger* abstention is categorically inappropriate whenever the related state proceeding is "remedial" in nature.

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INTEREST OF *AMICI CURIAE*

When seeking to vindicate federal rights and interests, the federal government must "always endeavor to do so in ways that will not unduly interfere with the legitimate activities of the States." *Younger* v. *Harris*, 401 U.S. 37, 44 (1971). This principle is particularly true with respect to state judicial systems. The Constitution requires state courts and administrative agencies to resolve issues of federal law and assumes they will do so competently and in good faith. For that reason, our nation has a long legal tradition of federal courts declining to enjoin ongoing state judicial proceedings, even when litigants assert that the state proceeding runs afoul of federal law. The *Younger* abstention doctrine is part and parcel of that long tradition.

The *amici* states have an abiding interest in defending the role their judicial systems play, and in protecting those systems from unwarranted aspersions on their competence to adjudicate federal issues. Petitioner Sprint Communications Company, L.P. asks this Court to narrow the scope of the *Younger* doctrine to exclude an entire class of state judicial proceedings, those that Sprint labels "remedial." Such a categorical narrowing runs counter to the state-court deference that *Younger* contemplates. Accordingly, the *amici* states oppose Sprint's effort to weaken the *Younger* doctrine and the comity and federalism interests the doctrine advances.

INTRODUCTION AND SUMMARY OF ARGUMENT

Sprint asks the Court to adopt a new limitation on the *Younger* abstention doctrine, a limit that would authorize federal courts to enjoin ongoing state judicial proceedings whenever the state proceeding can be categorized as "remedial" in nature. In considering that invitation, it is important to understand precisely what rule Sprint is—and is not—requesting.

Critically, Sprint does not ask this Court for a rule specific to state administrative proceedings in which the state agency issued an appealable final order. In *New Orleans Public Service Inc.* v. *Council of the City of New Orleans* ("*NOPSI*"), 491 U.S. 350 (1989), this Court left open whether "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." *Id.* at 369 & n.4. And the lower courts are divided on that issue.[1] But Sprint did not seek certiorari on that question. In fact, Sprint does not ask for a rule specific to state administrative proceedings at all.

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[1] Compare *Maymo-Melendez* v. *Alvarez-Ramirez*, 364 F.3d 27, 35 (1st Cir. 2004) (*Younger* applies to administrative actions that have become final); *O'Neill* v. *City of Philadelphia*, 32 F.3d 785, 790–91 (3rd Cir. 1994) (same); *Majors* v. *Engelbrecht*, 149 F.3d 709, 713 (7th Cir. 1998) (same); *Hudson* v. *Campbell*, 663 F.3d 985, 988 (8th Cir. 2011) (same), with *Thomas* v. *Tex. State Bd. of Med. Examiners*, 807 F.2d 453, 456 (5th Cir. 1987) (*Younger* does not apply in that situation); *Norfolk & W. Ry. Co.* v. *Pub. Utils. Comm'n*, 926 F.2d 567, 572 (6th Cir. 1991) (same).

Instead, Sprint insists that this Court has already established that the *Younger* doctrine, *en toto*, is inapplicable whenever the state proceeding sought to be enjoined can be categorized as "remedial." Pet. Br. 29. The rule Sprint proposes—based on the coercive/remedial dichotomy—therefore stands or falls on whether that rule works, as a matter of principle and precedent, when a federal court is asked to enjoin a state proceeding that is still in progress.

Sprint's proposed limitation of *Younger* fails that test because *Younger*'s core principles (respect for state judicial systems, avoiding duplicative legal proceedings, and ensuring states can effectuate their substantive policies) are equally applicable to so-called "remedial proceedings" in which important state interests are involved. Consider a federal-court injunctive request grounded on the Medicaid Act, seeking to prevent a state administrative law judge from ruling regarding an applicant's entitlement to assisted-living-related Medicaid waiver services. This is a proceeding that Sprint would characterize as remedial, yet every interest *Younger* seeks to advance is implicated by the threat of a federal injunction.

Sprint's proposed limitation also conflicts with this Court's precedents, which have applied *Younger* abstention to civil cases that are not enforcement proceedings, e.g., *Pennzoil Co.* v. *Texaco Inc.*, 481 U.S. 1 (1987), and which have set out a general test that encompasses remedial proceedings. *Middlesex County Ethics Comm'n* v. *Garden State Bar Ass'n*, 457 U.S. 423 (1982). Sprint relies heavily on *Verizon Maryland Inc.* v. *Public Serv. Comm'n of Md.*, 535 U.S. 635 (2002), but that case did not address *Younger* abstention.

Nor is Sprint correct that, absent an enforcement limitation, *Younger* abstention sweeps too broadly. The doctrine contains several important exceptions, does not apply to agency actions that are legislative in nature, and is sometimes overridden by federal laws that expressly authorize federal-court review of agency actions. This Court does not need to exclude "remedial" cases from the doctrine's scope to keep it properly confined.

In sum, Sprint's test violates the federalism principles this Court established unequivocally in *Younger* and reaffirmed in later cases. The Court should reject Sprint's invitation to adopt a remedial-proceedings exception to *Younger* and should instead affirm the judgment of the Eighth Circuit.

ARGUMENT

I. For more than 200 years, Congress and this Court have generally barred federal courts from enjoining state judicial tribunals.

Sprint has asked a federal district court to enjoin a state judicial tribunal from enforcing its ruling. J.A. 9a ("Plaintiffs pray that the Court enter an order: . . . . Entering preliminary and permanent injunctive relief enjoining all defendants from enforcing the IUB's Order to the extent contrary to federal or Iowa law."). That request goes against this nation's long tradition of barring federal-court interference with ongoing state judicial proceedings.

More than two centuries ago, Congress "manifested a desire to permit state courts to try state cases free from interference by federal courts." *Younger* v. *Harris*, 401 U.S. 37, 43 (1971). The Anti-Injunction Act, first enacted in 1793 and now codified at 28 U.S.C. § 2283, prohibits federal courts from "grant[ing] an injunction to stay proceedings in a State court," subject to only a few exceptions. The Congress that enacted the Act was responding to the country's unique and recently-created system of federalism, which included a "dual court system" that "was bound to lead to conflicts and frictions." *Atlantic Coast Line R.R. Co.* v. *Brotherhood of Locomotive Engineers*, 398 U.S. 281, 286 (1970). As Justice Black explained, "to make the dual system work and to prevent needless friction between state and federal courts, it was necessary to work out lines of demarcation between the two systems." *Ibid.* (internal citation and quotation marks omitted).

The Anti-Injunction Act responded to that concern. Its prohibition on federal courts enjoining state proceedings "serve[s] to conciliate the distinct and independent tribunals of the States and of the Union, so that they may co-operate as harmonious members of a judicial system coextensive with the United States." *Taylor* v. *Carryl*, 61 U.S. 583, 595 (1857).

Supplementing the Anti-Injunction Act is the *Rooker-Feldman* doctrine, a principle derived by negative inference from 28 U.S.C. §§ 1257 and 1331 that bars federal district courts from "exercis[ing] appellate jurisdiction over state-court judgments.'" *Exxon Mobil Corp.* v. *Saudi Basic Industries Corp.*, 544 U.S. 280, 292 (2005) (quoting *Verizon Md. Inc.* v. *Public Serv. Comm'n of Md.*, 535 U.S. 635, 644 n.3

(2002)). And 28 U.S.C. § 1738 operates similarly, by "requir[ing] federal courts to give the same preclusive effect to state court judgments that those judgments would be given in the courts of the State from which the judgments emerged." *Kremer* v. *Chemical Constr. Corp.*, 456 U.S. 461, 466 (1982).

On top of those congressional policies, there has long been a "strong judicial policy," *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592, 600 (1975), against "federal court interference with state court proceedings." *Younger*, 401 U.S. at 43. In *Younger*, this Court held that even when the Anti-Injunction Act does not apply, principles of equitable jurisprudence and "a proper respect for state functions" require that federal courts stay their hands. *Id.* at 44. The Court explained that ours "is a system in which there is a sensitivity to the legitimate interests of both State and National Governments, and in which 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." *Id.* at 44. As a consequence, "the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions." *Id.* at 45.

The *Younger* doctrine matters most when neither the Anti-Injunction Act nor the *Rooker-Feldman* doctrine applies. Under present law, that most commonly occurs in two circumstances.

The first is when a party in a pending state proceeding files a federal action under 42 U.S.C. § 1983 to enjoin the state proceeding. In *Mitchum* v. *Foster*, 407 U.S. 225 (1972), the Court held that § 1983 is an

"expressly authorized" exception to the Anti-Injunction Act, but that the Court does "not question or qualify in any way the principles of equity, comity, and federalism that must restrain a federal court when asked to enjoin a state court proceeding." *Id*. at 243.

The second circumstance is when the state proceeding the federal plaintiff seeks to enjoin is a state administrative proceeding. This Court has left open whether the Anti-Injunction Act applies to state administrative proceedings, see *Gibson* v. *Berryhill*, 411 U.S. 564, 573 n.12 (1973), but the lower courts that have addressed the issue have held it does not.[2]

The *Younger* doctrine ensures that, in these two settings, federal courts will maintain their tradition of not enjoining ongoing state judicial proceedings. Such abstention furthers the comity and federalism necessary to make our dual court system work. As the Court recently observed, "Federalism, central to the constitutional design, adopts the principle that both the National and State Governments have elements of sovereignty the other is bound to respect." *Arizona* v. *United States*, __ U.S. __, 132 S. Ct. 2492, 2500 (2012).

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[2] See, e.g., *SMA Life Assurance Co*. v. *Sanchez-Pica*, 960 F.2d 274 (1st Cir. 1992); *Kerr-McGee Chemical Corp*. v. *City of West Chicago*, 914 F.2d 820 (7th Cir. 1990); *Entergy* v. *Nebraska*, 210 F.3d 887 (8th Cir. 2000); and *U.S. Fidelity & Guaranty Co*. v. *Lee Investments LLC*, 641 F.3d 1126 (9th Cir. 2011).

Sprint ignores this history and instead insists that this case represents a routine application of the principle that federal courts have a "virtually unflagging obligation" to decide cases within their jurisdiction. See Pet. Br. 11, 14 (quoting *Colorado River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 817 (1976)). But a request that a federal court enjoin an ongoing state proceeding is anything but routine—and nothing in *Colorado River* suggests otherwise. To the contrary, *Colorado River* listed "three general categories" of cases that are "exception[s]" to the general rule that federal courts exercise their jurisdiction, and included cases subject to *Younger* abstention among the exceptions. 424 U.S. at 813, 814. "Where a [federal] case is properly within [the *Younger* line of cases], there is no discretion [for the federal court] to grant injunctive relief." *Id.* at 816 n.22.

In other words, there remain "some classes of cases in which the withholding of authorized equitable relief because of undue interference with state proceedings is 'the normal thing to do.'" *NOPSI*, 491 U.S. at 359. And requests that federal courts enjoin ongoing state proceedings is one of those "classes of cases." Sprint asks this Court to carve out an entirely new category of state judicial proceedings of Sprint's own creation—so-called "remedial" proceedings—from that "normal" rule. Sprint's request conflicts with longstanding principles of judicial federalism.

II. Neither the principles underlying the *Younger* abstention doctrine nor this Court's decisions support allowing federal courts to enjoin "remedial" state proceedings.

The question presented asks whether federal courts should abstain under *Younger* when the state judicial proceeding can be characterized as "remedial." The answer is yes. There is nothing qualitatively different about a so-called "remedial" proceeding that distinguishes it from non-remedial proceedings. All of the comity and federalism interests *Younger* serves are implicated equally in the remedial context.

A. The *Younger* doctrine's purposes are served by applying the doctrine to federal actions that seek to enjoin "remedial" state proceedings.

The "'vital consideration'" justifying *Younger* abstention is "proper respect for the fundamental role of States in our federal system." *Ohio Civil Rights Comm'n* v. *Dayton Schools*, 477 U.S. 619, 626 (1986) (quoting *Younger*, 401 U.S. at 44)). Specifically, there are four "evils at which *Younger* is directed": (1) casting "aspersion on the capabilities and good faith" of the state judicial system; (2) "depriv[ing] the States of a function which quite legitimately is left to them," namely, "providing a forum competent to vindicate any constitutional objections interposed against" state policies; (3) preventing "duplicative legal proceedings"; and (4) "prevent[ing] the state . . . from effectuating its substantive policies." *Huffman*, 420 U.S. at 604, 608, 609.

Because those four considerations are "equally applicable . . . to civil proceedings in which important state interests are involved," *Dayton Schools*, 477 U.S. at 627, *Younger* applies not only to criminal proceedings, but to civil proceedings as well. *Pennzoil Co.* v. *Texaco Inc.*, 481 U.S. 1, 11 (1987); *Dayton Schools*, 477 U.S. at 627; *Trainor* v. *Hernandez*, 431 U.S. 434, 444 (1977); *Huffman*, 420 U.S. at 603–07. A state-court civil defendant who runs to federal court to ask that an ongoing state proceeding be enjoined necessarily casts "aspersion on the capabilities and good faith" of the state judicial system and necessarily deprives states the function of "providing a forum competent to vindicate any constitutional objections interposed against" state policies. If the federal court declines to abstain, it may also create "duplicative legal proceedings" and "prevent[] the state . . . from effectuating its substantive policies."

Although the first civil cases to which the Court applied *Younger* involved state-court civil-enforcement proceedings brought by state actors, *Huffman*, 420 U.S. at 604, the Court went on to apply *Younger* to purely private civil actions, *Pennzoil*, 481 U.S. at 13; *Juidice* v. *Vail*, 430 U.S. 327 (1977), and to state agency proceedings, *Dayton Schools*, 477 U.S. at 627–28; *Middlesex County Ethics Comm'n* v. *Garden State Bar Ass'n*, 457 U.S. 423, 432–34 (1982). More generally, the Court has stated that *Younger* abstention is appropriate when there is "an ongoing state judicial proceeding"; "the proceedings implicate important state interests"; and "there [is] an adequate opportunity in the state proceedings to raise constitutional challenges." *Middlesex County*, 457 U.S. at 432.

Just as the principles underlying *Younger* are "equally applicable . . . to civil proceedings in which important state interests are involved," *Dayton Schools*, 477 U.S. at 627, they are equally applicable to *remedial* civil proceedings in which important state interests are involved. This can be seen by looking at fact patterns where, under Sprint's proposed test, *Younger* would not apply in the state-agency context:

- A state handgun permit board receives evidence to help it determine whether an applicant meets the statutory standards for obtaining a permit to carry a handgun in public. While the hearing is pending, the applicant asks a federal court to enjoin the proceeding on the ground that the state law violates the Second Amendment.

- A state administrative law judge rules that a person is entitled to assisted-living-related Medicaid waiver services. The state appeals to the Director of the state HHS. While the Director is adjudicating the issue, the person files suit in federal court, asking that the state proceeding be enjoined because the denial of the waiver services would violate the Medicaid Act.

- An employee asserts before a state administrative law judge that her employer (a religiously affiliated college) discriminated against her in violation of state law. While the ALJ is adjudicating the issue, the employer files suit in federal court asking that the ALJ proceeding be enjoined because application of the state law to it violates the Free Exercise Clause.

Under Sprint's position, the federal courts should have unfettered discretion to enjoin each of these state proceedings. Yet every interest *Younger* seeks to advance is present in these remedial matters.

First, the federal actions casts "aspersion on the capabilities and good faith" of the state judicial systems because the federal actions are premised on the belief that the state administrative tribunal, or other state judicial tribunals on appeal, will be unable fairly and competently to address the constitutional objections to the proceedings.[3]

Second, the federal actions also necessarily deprive states the function of "providing a forum competent to vindicate any constitutional objections interposed against" state policies. As the first Justice Harlan put it: "Upon the state courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them[.]" *Robb* v. *Connolly*, 111 U.S. 624, 637 (1884); accord *Tafflin* v. *Levitt*, 493 U.S. 455, 458 (1990) ("Under [our] system of dual sovereignty, we have consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States[.]").

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[3] Of course, *Younger* does not apply if the "state proceedings" do not "afford an adequate opportunity to raise the constitutional claims." *Moore* v. *Sims*, 442 U.S. 415, 430 (1979). The *amici* states assume, for purposes of these hypotheticals, that the state proceedings do afford an adequate opportunity to raise the constitutional claims.

Third, in each of these examples, the federal action also creates "duplicative legal proceedings"; where there was one proceeding in which the plaintiff's claim and the defendant's constitutional defense could be addressed, there now are two.

Finally, the federal actions "prevent[ ] the state . . . from effectuating its substantive policies," namely, its policies regarding gun possession, Medicaid services, and discrimination.

The same is true when Sprint's rule is applied outside the agency context, to § 1983 suits filed to enjoin ongoing state-court proceedings. Examples include:

- A couple wishing to adopt a child files a petition in state court seeking the termination of the birth father's parental rights. While that action is pending, the father files a § 1983 action against the state-court judge arguing that the state parental-termination law violates due process and the Indian Child Welfare Act and asking that the state proceeding be enjoined.[4]

- A man has appeared regularly before a state court judge who oversaw the man's divorce proceeding and oversees disputes with respect to alimony payments and custody of his children. While the most recent custody dispute is pending, the man files a § 1983 action in federal court alleging that the judge's manner of

[4] That was the basic fact pattern in *Morrow* v. *Winslow*, 94 F.3d 1386 (10th Cir. 1996). The court of appeals held that the district court should have abstained under *Younger*.

> conducting the cases violates his due process and equal protection rights. For relief, the man asks that the judge be enjoined from continuing to hear his alimony and custody disputes.[5]

Again, under Sprint's position, the *Younger* doctrine would not apply and the federal court would be cut loose to enjoin each of the state proceedings even though all four interests *Younger* seeks to advance are present. In each instance, a federal-court injunction would reflect negatively on the state judicial systems' ability to enforce federal rights; the state courts would be prevented from performing their role of vindicating constitutional objections to state actions; there would be duplicate federal and state proceedings; and states would be prevented from effectuating important state policies, such as domestic relations law and protecting the public fisc. Yet Sprint offers no explanation why *Younger*'s federalism and comity roots should be ripped out in the context of a remedial action.

When first applying *Younger* to civil proceedings, this Court stated that it "is significant for present purposes that the [Anti-Injunction Act] does not discriminate between civil and criminal proceedings pending in state courts." *Trainor*, 431 U.S. at 445 n.8. Nor does the Anti-Injunction Act distinguish between state proceedings that are "coercive" and those that are "remedial." The comity and federalism considerations

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[5] That was the basic fact pattern in *Mann* v. *Conlin*, 22 F.3d 100 (6th Cir. 1994). The court of appeals held that the district court should have abstained under *Younger*. The court of appeals' decisions in these two cases show that Sprint's contention that the other circuits widely disagree with the Eighth Circuit is overstated.

underlying the *Younger* doctrine provide no reason to depart from the Anti-Injunction Act in that respect either.

Glaringly absent from Sprint's submission is an extended discussion regarding how Sprint's coercive/remedial test advances the purposes of, or is consistent with, the principles underlying *Younger*. The closest Sprint comes is asserting that "[t]he central tenet underlying all of these *Younger* cases is" that federal courts should not "unduly interfere with a state's administration of its criminal and civil-enforcement mechanisms." Pet. Br. 23. But that just states a conclusion; it provides no reason for it.

Sprint also says that *Younger* is only a "narrow exception[ ]" to the general rule that federal courts must adjudicate cases within their jurisdiction; to remain a "narrow exception" it must have limits; and limiting *Younger* to state enforcement actions accomplishes that objective. See Pet. Br. 11, 27–28. But again, this argument fails to explain why remedial proceedings as a class deserve to be excluded categorically from the protections *Younger* abstention provides.[6]

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[6] Taking a different tack, *amici* Law Professors argue (Br. 10–22) that *Younger* abstention does not apply to a "completed" agency proceeding. By its nature, that limitation on *Younger* would apply whether or not the agency proceeding was coercive or remedial. It is therefore not "fairly included" within the question presented, which focuses entirely on that distinction. S. Ct. R. 14.1(a); Pet. for Writ of Cert. i. This case must therefore proceed on the same assumption the Court made in *NOPSI*, namely, that "litigation, from agency through courts, is to be viewed as a unitary process that should not be disrupted, so that federal intervention is no

At bottom, carving remedial state proceedings from the protection of the *Younger* doctrine is arbitrary and unprincipled. It would mean a federal court could not enjoin the most minor of state criminal prosecutions, yet is free to enjoin state civil proceedings that involve issues of fundamental importance to the sovereign state. It would mean a federal court cannot enjoin a state EEOC proceeding instituted by a state agency but may enjoin a state EEOC proceeding instituted by an employee—even though the impact on the state judicial tribunal is the same and both cases vindicate the state's anti-discrimination policy.

And under the Tenth Circuit's version of the coercive/remedial test, which Sprint embraces (Br. 29–30), it would mean *Younger*'s application depends on the fortuity of how a state first implements its policies. Under *Brown* v. *Day*, 555 F.3d 882, 889 (10th Cir. 1989), if a state agency initiates an administrative proceeding to, say, take away a person's professional license, the proceeding would be considered coercive and the *Younger* doctrine would apply.

But if the state agency took away the person's license through an *ex parte* action, prompting the person to institute an administrative proceeding, the proceeding would be considered remedial and the *Younger* doctrine would not apply. The *Younger* doctrine ought not rest on such thin distinctions.

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more permitted at the conclusion of the administrative stage than during it." 491 U.S. at 369.

This very case shows the flaws in Sprint's proposed rule. Under Sprint's approach, in the middle of the IUB's deliberations, Sprint could have asked a federal court to enjoin the proceeding because (in Sprint's view) the IUB lacked the authority to address how VoIP traffic is categorized under federal law. Not only would that have been deeply offensive to the state judicial system, it would have interfered with a state agency's oversight of an important regulatory matter. Labeling this case an "everyday commercial dispute[ ]" (Pet. Br. 26) does not make it so. The proper functioning of a state's telecommunications system, free from disconnection of services, is a vital state interest—and is no less so merely because Sprint had the title of "Complainant" in the state-agency proceeding.

The far better approach is for federal courts to look at the substance of the dispute to determine whether the state proceedings are "necessary for the vindication of important state policies." *Middlesex County*, 457 U.S. at 432. When the answer to that question is yes, as is the case here, federal courts should continue to faithfully apply *Younger*.

B. This Court's decisions do not support excluding "remedial" state-court proceedings from the *Younger* doctrine's protections.

As even Sprint must acknowledge, this Court has never held that "remedial" state proceedings are exempt from the *Younger* doctrine. To the contrary, the Court has adopted a standard for *Younger* abstention—whether there is "an ongoing state judicial proceeding";

"the proceedings implicate important state interests"; and "there [is] an adequate opportunity in the state proceedings to raise constitutional challenges," *Middlesex County*, 457 U.S. at 432—that by its terms encompasses remedial proceedings.

Moreover, as Sprint concedes, the Court has applied *Younger* abstention to civil cases that are not "civil enforcement proceedings." Pet. Br. 22. In *Pennzoil*, the Court held that a federal court erred when it enjoined a state court from applying a state procedural rule that requires a losing party in civil litigation to post a bond in the amount of the judgment to obtain a stay of judgment pending appeal. 481 U.S. at 10–14. Texaco specifically argued that *Younger* abstention was inappropriate because the case did not involve a state enforcement action. See Br. of Appellee at 26, 53, *Pennzoil Co.* v. *Texaco Inc.*, 481 U.S. 1 (1987) (No. 85-1798). The Court did not agree. Likewise, in *Juidice* v. *Vail*, 430 U.S. at 335, the Court applied *Younger* abstention where defendants in a collection action asked a federal court to enjoin the state court from employing statutory contempt procedures.

In each of these rulings, the Court emphasized that the state's interest in the proceedings is what matters most. "This concern mandates application of *Younger* abstention not only when the pending state proceedings are criminal, but also when certain civil proceedings are pending, if the State's interest 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.

Sprint tries to cabin *Pennzoil* and *Juidice* by ascribing them to a narrow third category of cases to which *Younger* applies in addition to criminal- and civil-enforcement proceedings. Pet. Br. 22, 24–25 (quoting *NOPSI*'s statement that the Court has "expand[ed] the protection of *Younger* . . . 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 368 (internal citations omitted)). Sprint reads too much into that passage. The *NOPSI* Court was merely describing the facts of its prior cases, not delineating the metes and bounds of *Younger* abstention.

Indeed, if that passage in *NOPSI* meant that *Younger* does not apply to remedial state proceedings, that would have been the end of the case, for the state administrative proceeding there was undeniably "remedial"—the New Orleans City Council was determining the rates NOPSI could charge, not prosecuting a case to punish NOPSI for an alleged bad act. 491 U.S. at 355.

Yet the Court did not resolve the case on that ground. Instead, the Court explained at length that *Younger* did not apply for an entirely different reason: because the doctrine covers only federal-court review of state *judicial* action, not state *legislative* action. *Id*. at 369–73. (Sprint cannot rely on that rule here because the lower courts held, correctly, that the IUB acted in a judicial capacity, and Sprint has not appealed that holding.)

Nor would it make sense to limit *Younger*'s "non-enforcement" scope to federal plaintiffs' efforts to evade compliance with state-court contempt orders, bond requirements, and other procedures a state court applies after it issues a judgment. Even when viewed just from the perspective of the state judiciary, contempt orders, bond requirements, and the like are hardly the most fundamental components of judicial authority. Would the Harris County District Court's authority been less undermined if, during the course of the underlying trial in *Pennzoil*, Texaco filed a § 1983 action in federal district court arguing that the state trial had been a kangaroo court in violation of due process? Surely not. The "state courts' ability to perform their judicial functions" is undermined whenever a state-court defendant chooses to assert a federal defense not in state court, but through a separate federal action brought to bring a halt to the ongoing state proceeding.

Sprint also points to the final sentence of footnote 2 of *Dayton Schools*, which distinguished *Patsy* v. *Florida Board of Regents*, 457 U.S. 496 (1982), by noting that "[u]nlike *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." 477 U.S. at 627 n.2. Of course, the basic difference between *Dayton Schools* and *Patsy* was that the federal plaintiff in *Patsy* never instituted a state proceeding in the first place. As this Court later clarified in *Ankenbrandt* v. *Richards*, 504 U.S. 689, 705 (1992), "we have never applied the notions of comity so critical to *Younger*'s 'Our Federalism' when no state proceeding was pending nor any assertion of important

state interests made." Footnote 2 of *Dayton School*s merely provides details on the state administrative process that was present there.

As a result, the *most* that can be said of footnote 2 is that it is *dicta* regarding an issue the parties did not brief, for the applicability of *Younger* to remedial state actions was not before the Court. The Court is "not bound," however, "to follow [its] dicta in a prior case in which the point now at issue was not fully debated." *Central Va. Community College* v. *Katz*, 546 U.S. 356, 363 (2006).

Instead of grappling with *Younger* and its underpinnings, Sprint devotes most of the first section of its Argument to *Verizon Maryland Inc.* v. *Public Service Comm'n of Maryland*, 535 U.S. 635 (2002), which it insists supports its proposed rule. Pet. Br. 14–18. That insistence is puzzling, given that the decision did not once mention the *Younger* doctrine. This Court has time and again admonished that it does not *sub silentio* decide issues it does not discuss in its opinions. See, *e.g.*, *Webster* v. *Fall*, 266 U.S. 507, 511 (1925) ("Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.").

Verizon Maryland addressed and resolved "the question whether federal district courts have *jurisdiction* over a telecommunication carrier's claim that the order of a state utility commission requiring reciprocal compensation for telephone calls to Internet Service Providers violates federal law." 535 U.S. at 638 (emphasis added). The Court did not resolve non-jurisdictional issues. To the contrary, the Court

expressly declined to reach the Maryland PSC's contention that the Telecommunications Act of 1996 did not create a private cause of action to challenge the commission's order. See *id.* at 642–43. The Court did not reach the applicability of the *Younger* doctrine, an issue none of the parties presented to the Court.

More substantively, *Verizon Maryland* involved a state utility commission acting under a delegation of federal authority, namely, reviewing and approving interconnection agreements that federal law mandated. Contrary to *amicus* CTIA's contention (Br. 33–35), that is not the case here. The Telecommunications Act of 1996 expressly leaves state utility commissions with their traditional jurisdiction over intrastate access fees. 47 U.S.C. § 152(b). The Act might or might not preempt the state commissions' exercise of that authority with respect to VoIP traffic; that is the merits question in this case. But that does not convert the IUB into (in CTIA's words, Br. 20) "deputized federal regulators" with respect to local access fees.[7]

[7] *Amicus* CTIA also argues that *Verizon*'s holding that the *Ex parte Young* doctrine applies to actions against state utility board commissioners suggests that the *Younger* doctrine does not apply to proceedings before those commissioners. See CTIA Br. 14–16. It suggests no such thing. Many of this Court's cases upholding *Younger* abstention involved § 1983 actions brought under *Ex parte Young* against state officers. E.g., *Dayton Schools*, 477 U.S. at 621; *Trainor*, 431 U.S. at 438; *Moore*, 442 U.S. at 422. A state actor's amenability to an *Ex parte Young* action in no way militates against *Younger* abstention.

C. Applying the *Younger* doctrine to federal actions that seek to enjoin "remedial" state proceedings does not sweep too far.

Sprint insists its proposed rule is needed to ensure that *Younger* abstention does not apply "with respect to *every* state-agency proceeding" and does not swallow up parallel litigation that arises from "everyday commercial disputes." Pet. Br. 26, 27. Neither risk exists. As an initial matter, the *Younger* doctrine contains its own exceptions. The doctrine does not apply to bad-faith prosecutions, *Younger*, 401 U.S. at 54; when the state statute is "flagrantly and patently" unconstitutional, *id*. at 53; and where the state court is "incapable of fairly and fully adjudicating the federal issues before it." *Moore*, 442 U.S. at 433 (quoting *Kugler* v. *Helfant*, 421 U.S. 117, 124–25 (1975)).

Beyond that, *Younger* does not apply to state-agency actions that are legislative, not adjudicative, in nature. *NOPSI*, 491 U.S. at 370. That limitation sweeps broadly, covering a large percentage of the work state agencies perform and the orders they issue. (E.g., environmental agencies that pass rules restricting development; housing or labor agencies that set health-and-safety standards; and revenue departments that pass rules affecting tax liability).

In addition, Congress often provides expressly for federal-court review of specific final state agency actions. One example is the provision addressed in *Verizon Maryland*, 47 U.S.C. § 252(e)(6), which provides that "[i]n any case in which a State commission makes a determination under this section [regarding the formation and approval of

interconnection agreements], any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section." A provision of that sort overrides the *Younger* doctrine by expressly authorizing federal-court interference with the ongoing state proceeding.[8]

Other examples appear in the Individuals with Disabilities in Education Act, 20 U.S.C. § 1415(i)(2)(A) (authorizing federal-court review of "impartial due process" hearing conducted by state or local education agency); the Rehabilitation Act, 29 U.S.C. § 722(c)(5)(J) (authorizing federal-court review of state impartial hearing officer's decision regarding vocational rehabilitation programs); and still another provision of the Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B)(v) (authorizing federal-court review of state zoning board rulings regarding the placement of wireless facilities). In addition, the Clean Water Act and Clean Air Act authorize persons aggrieved by state agency actions to file citizen suits in federal court. 33 U.S.C. § 1365; 42 U.S.C. § 7604. Some or all of these

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[8] That limitation on *Younger*'s application to final state agency actions explains many of the examples *amicus* CTIA provided (Br. 16–17) where federal courts reviewed state agency actions. E.g., *Talk America* v. *Michigan Bell Tel. Co.*, 131 S. Ct. 2254 (2011) (addressing dispute over state agency determination regarding formation of interconnection agreement); *BellSouth Telecomms., Inc.* v. *Kentucky Pub. Serv. Comm'n*, 669 F.3d 704 (6th Cir. 2012) (same); *Illinois Bell Tel. Co.* v. *Box*, 548 F.3d 607 (7th Cir. 2008) (same); *Southwestern Bell Tel., L.P.* v. *Missouri Pub. Serv. Comm'n*, 461 F. Supp. 2d 1055 (E.D. Mo. 2006) (same).

federal statutory provisions, and others like them, may also override the *Younger* doctrine.

Nor is Sprint correct in asserting (Br. 26) that applying *Younger* abstention here is tantamount to applying it "to state-court proceedings involving adjudication of everyday commercial disputes." First, as discussed earlier, this case cannot accurately be called an "everyday commercial dispute." Second, "everyday commercial disputes" among private parties do not raise *Younger* issues. This reality can be seen by looking at a paradigmatic example of "parallel state and federal litigation," the dispute in *Exxon Mobil Corp*. v. *Saudi Basic Industries Corp*., 544 U.S. at 202.

In *Exxon Mobil*, two parties to a joint venture disagreed about royalty charges due under their agreement. One of them filed suit in state court "seeking a declaratory judgment that the royalty charges were proper under the joint venture agreements." *Id*. at 289. The other party countersued in federal district court, alleging that the charges were too high.[9] The *Younger* doctrine had no bearing on the case. Indeed, because the federal suit was not a § 1983 action, the Anti-Injunction Act, not *Younger*, would control whether the federal court, if asked, could have enjoined the state proceeding. That will typically be the case with respect to "everyday commercial disputes." In sum, excluding "remedial" cases from

[9] Federal jurisdiction existed under 28 U.S.C. § 1330 because the federal defendant was considered a foreign state. Diversity jurisdiction is the more common basis for federal subject-matter jurisdiction in commercial cases, though some disputes raise issues that arise under federal law.

Younger's rubric is not necessary to keep the doctrine properly confined.

Sprint's proposed coercive/remedial rule also undermines the balance this Court reached in *Mitchum* v. *Foster*. As noted above, *Mitchum* held that "the principles of equity, comity, and federalism that must restrain a federal court when asked to enjoin a state court proceeding"—*i.e.*, the *Younger* doctrine—fully apply to § 1983 actions. 407 U.S. at 243. *Mitchum* thereby found a balance between rigid application of the Anti-Injunction Act on the one hand, and giving federal courts free reign to enjoin state proceedings on the other.

Mitchum obtained that balance because the *Younger* doctrine contains critical exceptions (bad-faith prosecutions, flagrantly unconstitutional state law, etc.) that Professor Tribe notes "cover the very circumstances that were believed by the authors of the Civil Rights Act to require a federal judicial remedy that would not only operate independent *of* the state courts, but also *against* those courts." Br. for Appellant 49 n.10, *Pennzoil Co.* v. *Texaco Inc.*, 481 U.S. 1 (1987) (No. 85-1798).

Sprint's proposed rule upsets that balance and the policies underlying *Mitchum* and § 1983. *Mitchum* inferred that Congress excepted § 1983 from the Anti-Injunction Act because § 1983 protects federal rights against infringement by state actors. 407 U.S. at 240–42. That risk is at its highest when a state acts coercively, and is at its nadir in a remedial proceeding that might not even involve a state party. Applying *Younger* only to the former makes no sense.

III. *Younger* abstention, not *Burford* abstention, applies to this case.

In classic "heads I win, tails you lose" fashion, Sprint and its *amici* assert that (1) the only relevant abstention doctrine is *Burford* abstention, but (2) *Burford* abstention is not warranted here. Pet. Br. 32–35; Law Profs. Br. 27–33. The latter contention is correct; the former is not.

As explained in § I, *supra*, the *Younger* doctrine embodies the longstanding judicial policy against federal "interference with a state judicial proceeding." *Huffman*, 420 U.S. at 604. Based on equity, comity, and federalism principles, *Younger* decreed that "the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions." 401 U.S. at 45. By asking a federal district court to enjoin a proceeding pending in a state judicial tribunal, Sprint squarely implicated *Younger*.

Iowa did not assert *Burford* abstention, and Sprint's suggestion that the Eighth Circuit "confused" the doctrines is mistaken. *Burford* requires federal courts to abstain from interfering with state agency orders or proceedings—whether they are legislative or adjudicatory in nature—"when there are 'difficult questions of state law bearing on policy problems of substantial public import'" or where federal review would disrupt "'state efforts to establish a coherent policy with respect to'" important matters. *NOPSI*, 491 U.S. at 361 (quoting *Colorado River*, 424 U.S. at 814).

Iowa has not argued that Sprint's facial preemption challenge to the IUB's order implicates difficult questions of state law or threatens to disrupt the state regulatory scheme. Cf. *id*. at 362–63 (holding that *Burford* abstention did not apply to utility's facial preemption challenge to a retail rate order, where the federal claim called for "no inquiry beyond the four corners of the . . . order" and thus "would not unduly intrude into the processes of state government or undermine the State's ability to maintain desired uniformity"). Given this context, the Eighth Circuit correctly looked to *Younger* and *Younger*'s concern with federal disruption of state judicial proceedings.

Sprint essentially contends that, because *Burford* abstention applies in some cases involving state regulatory proceedings, *Burford* is the only doctrine potentially relevant here. This Court has not adopted such a cramped view of abstention doctrines. Indeed, *NOPSI* itself is inconsistent with Sprint's position. In *NOPSI*, this Court carefully considered the potential relevance of both *Younger* and *Burford* before deciding that neither doctrine required the district court to abstain from deciding the regulated utility's preemption claim.

Sprint also argues repeatedly that the *Younger* doctrine is inapposite because the dispute centers on a contested issue of *federal* law. See Pet. Br. 2, 11, 14. But *NOPSI* made clear that the *Younger* doctrine reaches cases where the federal plaintiff argues that federal law preempts state law. 491 U.S. at 364–66 (rejecting NOPSI's contention "that *Younger* does not require abstention in the face of a substantial claim that the challenged state action is completely pre-

empted by federal law"). Just as "the mere assertion of a substantial constitutional challenge to state action will not alone compel the exercise of federal jurisdiction," neither do "pre-emption-based challenges." *Id*. at 365.

Indeed, every decision by this Court holding that a federal court should have abstained under *Younger* involved the assertion in federal court of a federal constitutional objection to a state law or state proceeding. E.g., *Pennzoil*, 481 U.S. at 6 & n.6 (Due Process and Equal Protection Clause objection to state-court procedure); *Dayton Schools*, 477 U.S. at 621 (Free Exercise and Establishment Clause challenge to application of employment discrimination law); *Huffman*, 420 U.S. at 598–99 (Free Speech Clause challenge to state public nuisance statute).

Younger establishes that state judicial tribunals are capable of resolving federal issues and should be allowed to do so without federal interference. Sprint's view that the *Younger* doctrine is designed to safeguard state courts' ability to resolve state-law issues, and has little bearing on cases involving federal issues, has it exactly backwards.

CONCLUSION

The judgment of the Eighth Circuit should be affirmed.

Respectfully submitted,

Bill Schuette
Michigan Attorney General
John J. Bursch
Michigan Solicitor General
Counsel of Record
P.O. Box 30212
Lansing, Michigan 48909
BurschJ@michigan.gov
(517) 373-1124

Attorneys for *Amicus Curiae*
State of Michigan

Of Counsel:
Dan Schweitzer
Gregory McHugh
2030 M Street, N.W.
8th Floor
Washington, DC 20036
(202) 326-6010

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ADDITIONAL COUNSEL

Luther Strange
Attorney General
State of Alabama
501 Washington Ave.
Montgomery, AL 36130

Thomas C. Horne
Attorney General
State of Arizona
1275 W. Washington St.
Phoenix, AZ 85007

John W. Suthers
Attorney General
State of Colorado
1300 Broadway, 10th Fl.
Denver, CO 80203

Samuel S. Olens
Attorney General
State of Georgia
40 Capitol Sq., S.W.
Atlanta, GA 30334

David M. Louie
Attorney General
State of Hawaii
425 Queen St.
Honolulu, HI 96813

Lawrence G. Wasden
Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0010

Lisa Madigan
Attorney General
State of Illinois
100 W. Randolph St.
12th Fl.
Chicago, IL 60601

Gregory F. Zoeller
Attorney General
State of Indiana
302 W. Washington St.
IGC-South, Fifth Fl.
Indianapolis, IN 46204

Jack Conway
Attorney General
Commonwealth of
Kentucky
700 Capital Ave.
Ste. 118
Frankfort, KY 40601

Douglas F. Gansler
Attorney General
State of Maryland
200 St. Paul Place
20th Fl.
Baltimore, MD 21202

Marty J. Jackley
Attorney General
State of South Dakota
1302 E. Highway 14
Ste. 1
Pierre, SD 57501-8501

Jim Hood
Attorney General
State of Mississippi
P.O. Box 220
Jackson, MS 39205

Robert E. Cooper, Jr.
Attorney General
State of Tennessee
425 5th Ave. N.
Nashville, TN 37243

Catherine Cortez Masto
Attorney General
State of Nevada
100 North Carson St.
Carson City, NV 89701

John E. Swallow
Attorney General
State of Utah
P.O. Box 142320
Salt Lake City, UT
84114

Gary K. King
Attorney General
State of New Mexico
P.O. Drawer 1508
Santa Fe, NM 87504

William H. Sorrell
Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609

Kathleen G. Kane
Attorney General
Commonwealth of
Pennsylvania
16th Fl.
Strawberry Sq.
Harrisburg, PA 17120

Robert W. Ferguson
Attorney General
State of Washington
1125 Washington St. S.E.
P.O. Box 40100
Olympia, WA 98504

J.B. Van Hollen
Attorney General
State of Wisconsin
P.O. Box 7857
Madison, WI 53707

Peter K. Michael
Interim Attorney
General
State of Wyoming
123 State Capitol
Cheyenne, WY 8200