The *Younger* Abstention Doctrine: Bleak Prospects for Federal Intervention in Pending State Proceedings

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Comment

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I. INTRODUCTION

Younger v. Harris and its companion cases have established a policy of abstention emanating from the concept of Federalism. “Our Federalism” mandates that federal courts respect the proper functions of state courts in order to avoid creating unnecessary friction with the states. Under the Younger abstention doctrine a federal court ordinarily is precluded from enjoining a state court proceeding where the federal petitioner has an adequate opportunity to litigate his federal claim in the state system. Federal equitable relief is available in the absence of a pending state proceeding or where the underlying state suit does not trigger the application of the notions of comity and federalism attendant to the Younger abstention doctrine. Additionally, extraordinary circumstances which create the threat of great and immediate irreparable harm are recognized exceptions to the Younger abstention doctrine.

3. 401 U.S. at 44-45. Justice Black explained the meaning of the term “Federalism” as follows:
The concept does not mean blind deference to “States’ Rights” any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. What the concept does represent is a system in which there is 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. It should never be forgotten that this slogan, “Our Federalism,” born in the early struggling days of our Union of States, occupies a highly important place in our Nation’s history and its future.

Id.
4. Id. at 49.
6. 401 U.S. at 45.
An evaluation of the prospects for federal injunctive or declaratory relief entails a two-step analysis: first, determining the applicability of Younger principles to the state suit at hand and, second, examining the particular facts of the case to determine if one of the recognized exceptions to the Younger abstention doctrine is present. In the course of this two-step analysis, this writing will analyze the fundamental policies underlying the Younger abstention doctrine; the principal objective being an evaluation of the continued utility of judicially recognized areas of permissible federal relief. The development of the Younger abstention doctrine will be traced from its predecessor, Dombrowski v. Pfister, to its present state. This comment will identify the obstacles confronting a federal petitioner seeking equitable relief against either a threatened or pending state court proceeding. The applicability of Younger principles to criminal prosecutions and civil proceedings will be discussed with emphasis on the policy foundations of comity and federalism. Focus will then shift to the utility of the recognized exceptions as a means of securing a federal forum once Younger principles are operative. Finally, this comment will briefly suggest an alternative approach to determining whether federal intervention is appropriate, based on the weighing of the interests of the federal petitioner against the actual affront to the state occasioned by the granting of equitable relief.

II. BACKGROUND: YOUNGER AND ITS PROGENY

Prior to Younger, the principles enunciated in Dombrowski v. Pfister controlled the accessibility of the federal courts for the adjudication of constitutional issues and the granting of injunctive relief against pending or threatened state court prosecutions. Under Dombrowski, a federal petitioner could obtain equitable relief from a threatened state prosecution merely by establishing that the state statute which formed the basis of the threatened action produced a "chilling effect" on the exercise of his individual constitutional liberties.

8. Id. In Dombrowski a civil rights organization sought injunctive and declaratory relief to restrain state and local enforcement authorities from instituting a state prosecution under the Louisiana Subversive Activities and Communist Control Law and the Communist Propaganda Control Law as violative of first amendment guarantees. Id. at 482.
9. Id. at 494. The Dombrowski reasoning was based on the preferred status and importance afforded first amendment guarantees and was extended to authorize injunctive relief against pending state prosecutions where the state statute was found to have a "chilling effect" on the petitioner's first amendment rights. See Honey v. Goodman, 432 F.2d 333, 343-44 (6th Cir. 1970) (federal equitable relief appropriate to enjoin state court prosecution where petitioner establishes that state authorities undertook prosecution to
The liberal teachings of *Dombrowski* were all but eliminated by the Supreme Court's landmark decision in *Younger v. Harris*. In *Younger* the defendant was the subject of a state court prosecution under the California Criminal Syndicalism Act. The defendant petitioned the federal courts to enjoin the pending state prosecution, citing *Dombrowski* as the controlling precedent. A federal district court in California agreed with the petitioner and granted the requested relief, holding the California statute unconstitutionally overbroad and vague. On direct appeal, the United States Supreme Court reversed the district court and held that the lower court should have abstained under traditional equitable concepts. The majority concluded that the petitioner had failed to establish the requisite great and immediate irreparable harm warranting injunctive relief. The Court stated, however, that the necessary irreparable harm may be shown even though the usual prerequisites of bad faith and harassment are absent; for example, where a state statute is flagrantly violative of express constitutional prohibitions.

The *Younger* Court expressly left unresolved the question of whether the Federal Anti-Injunction Act barred a federal action

chill free expression of unpopular ideas); *Machesky v. Bizzell*, 414 F.2d 283, 291 (5th Cir. 1969) (injunctive relief available to enjoin prosecution of petitioners under statute unduly prohibiting picketing where statute infringes upon first amendment rights).

14. *Id.* at 516.
15. Direct appeal was accomplished pursuant to 28 U.S.C. § 1253 (1976) (repealed 1978), which provided in pertinent part: "[A]ny party may appeal to the Supreme Court from an order granting ... an ... injunction in any ... action ... required by an Act of Congress to be heard and determined by a district court of three judges."
16. 401 U.S. at 54. See note 3 supra.
17. 401 U.S. at 48-49.
18. *Id.* at 53-54. Mere facial invalidity of a statute is insufficient to warrant federal injunctive relief. *Id.* at 54.
19. The majority stated:
Because our holding rests on the absence of the factors necessary under equitable principles to justify federal intervention, we have no occasion to consider whether 28 U.S.C. § 2283, which prohibits an injunction against state court proceedings "except as expressly authorized by Act of Congress" would in and of itself be controlling under the circumstances of this case.

*Id.*

20. 28 U.S.C. § 2283 (1976). The Anti-Injunction Act provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." *Id.* The Supreme Court has interpreted § 2283 as
under 42 U.S.C. § 1983. The following year, in Mitchum v. Foster, the Supreme Court addressed this question and held that a section 1983 action is a legislative exception to the Anti-Injunction Act, and is not barred. The Court reasoned that the predecessor to section 1983 was enacted to enforce the provisions of the fourteenth amendment against any state action including state judicial action. Traditionally, state action was thought to include only legislative acts or statutes rather than actions involving the state judicial process. The Mitchum Court stated that section 1983 permitted "suits in equity" among the various remedies available to protect citizens from unconstitutional actions under color of state law. Thus, the Court concluded, section 1983 was intended as an express authorization from Congress to grant injunctive relief against pending state proceedings and, therefore, was not barred by the federal Anti-Injunction Act.

The next development in the Younger abstention doctrine focused on the pendency of a state action as a prerequisite for invoking considerations of Younger principles. In Steffel v. Thompson, the
Supreme Court was faced with the propriety of allowing federal declaratory relief in response to a threatened criminal prosecution in the state system. The Court sanctioned this limited form of federal relief by finding that the considerations of comity and federalism are not operative in the absence of a pending state proceeding. The Stef-fel rationale was later employed to permit the granting of a preliminary injunction against a threatened but not pending state prosecution.

These early developments in the Younger abstention doctrine occurred exclusively within the context of state criminal prosecutions. A significant change in the doctrine occurred when the Supreme Court extended application of the concepts of federalism and comity to a civil proceeding in Huffman v. Pursue, Ltd. In Huffman municipal authorities initiated a civil action against a theatre owner under a state obscenity statute. The owner petitioned a federal court for equitable relief claiming that the Ohio nuisance statute was unconstitutional. Relief was granted at the trial level but was denied by the Supreme Court on appeal. The Court, although alluding to the "quasi-criminal" character of the challenged statute, premised its ruling on the importance of the state interests involved. The Court held that the notions of comity and federalism are equally applicable to civil proceedings as well as criminal prosecutions. The Huffman ruling clarified the policy behind Younger by holding that the appropriate focus of inquiry in deciding the applicability of Younger principles is not the criminal nature of the pending state suit but the importance of the state's interest in the underlying litigation. The Huffman majority concluded by stating that Younger principles were in full force where the federal petitioner had not exhausted his state appellate remedies prior to seeking federal injunctive relief.

30. Id. at 462. The majority stated:
When no state criminal proceeding is pending at the time the federal complaint is filed, federal intervention does not result in duplicative legal proceedings or disruption of the state criminal justice system; nor can federal intervention, in that circumstance, be interpreted as reflecting negatively upon the state court's ability to enforce constitutional principles.


33. Id. at 598.
34. Id. at 604.
35. Id.
36. Id. at 609. But see Wooley v. Maynard, 430 U.S. 705 (1977), and note 31 supra.
The Supreme Court's next involvement with the Younger abstention doctrine came later that same year in *Hicks v. Miranda.* The issue presented concerned the procedural rather than the substantive aspects of the Younger abstention doctrine. The Court was faced with determining when a state proceeding was "pending" for purposes of applying Younger principles. The *Hicks* Court concluded that a state action was deemed pending if it was begun prior to the time any proceedings on the merits had taken place in the action filed in the federal court.

Subsequent Supreme Court decisions have continued the trend of limiting the availability of the federal forum, by broadening the scope of the Younger abstention doctrine and repeatedly refusing to sanction the granting of equitable relief by a federal district court against a pending state suit. As a result, the federal petitioner is forced to litigate his federal claims in the state court system.

37. 422 U.S. 332 (1975). In *Hicks* local officials seized copies of an allegedly obscene film from the federal petitioner's theatre and filed criminal charges against two theatre employees. The federal petitioners sought injunctive relief against future prosecution under the obscenity statute in federal district court. One day after the federal petition was filed, the state complaint was amended to include the petitioners as defendants.

38. *Id.* at 349. The *Hicks* ruling was intended to preclude a race to the courthouse by the federal petitioner in an effort to avoid the application of Younger principles. Thus, even though no state criminal complaint had been filed against the federal petitioner, Younger principles were applicable since no proceedings on the merits had taken place in the federal forum. *Id.*

Instead of avoiding the race to the courthouse, the *Hicks* ruling may have merely changed the rules of the race by eliminating the federal petitioner as a contestant. Once the federal petition is filed, the state authorities have until the day proceedings on the merits commence in federal court to counter by filing a state action. The race is thus limited to one contestant, the state prosecuting authority, and it has a more clearly defined time period within which to act. See *Hicks v. Miranda*, 422 U.S. at 354 (Stewart, J., dissenting) ("[t]he rule the Court adopts today, however, does not eliminate that race; it merely permits the State to leave the mark later, run a shorter course, and arrive first at the finish line").

39. In *Juidice v. Vail*, 430 U.S. 327 (1977), the Court concluded that vindication of a state's contempt powers was of sufficient moment to trigger Younger principles. *Id.* at 335. The majority stated that federal intervention into a pending state civil proceeding in which the federal petitioners could have asserted their federal claims would offend the state's legitimate interest in the administration of its judicial system and reflect negatively on the state court's ability to enforce constitutional guarantees. *Id.* at 335-36. Finally, the Court pointed to the petitioners' failure to avail themselves of the opportunities to assert their federal rights in the state proceedings and the absence of any of the recognized exceptions as establishing the adequacy of the state proceedings and the appropriateness of equitable restraint. *Id.* at 337-38.

In *Trainor v. Hernandez*, 431 U.S. 434 (1977), the Court found that the state's interest in enforcing the fiscal integrity of its welfare assistance program was of sufficient magnitude to call into play the notions of comity and federalism of the Younger abstention doctrine. *Id.* at 444. The Court relied on the state's presence as a party in the state suit and its option of bringing a criminal prosecution instead of a civil action as
The Younger Abstention Doctrine

III. PROSPECTS FOR RELIEF IN A FEDERAL FORUM

A. Absence of a Pending State Proceeding

A logical and convenient starting point for an evaluation of the prospects for federal relief is where there is no suit pending in the state system. The pendency of a state court action is often viewed as the fundamental prerequisite to invoking the Younger abstention doctrine. Because the genesis of the Younger abstention doctrine was in the concepts of comity and federalism, there is little concern for infringing upon the proper functions of the state courts in the absence of a pending state proceeding. This rationale was advanced by the Court in Steffel to justify the granting of declaratory relief to the federal petitioner who was not party to any pending state court proceeding.

Where the request for declaratory or injunctive relief entails the interpretation of a recently enacted state statute, however, an additional parameter emerges. Federal courts may be precluded from granting equitable relief under the Pullman abstention doctrine which is premised on the belief that if the dispute before the federal court may be resolved on a point involving the interpretation of state law, the need for a federal court ruling on the statute's constitutionality is obviated. Further, the Pullman Court noted that the states' supreme courts are entrusted with the responsibility of having the final word on the construction of their own laws and, therefore, a federal district court's interpretation would be in the nature of an advisory opinion.

manifesting the importance of the state's interests. Id. In concluding that federal abstention was proper, the majority held that prehearing deprivation of property without notice did not create the necessary great and immediate irreparable injury warranting equitable relief, provided that the state proceedings offered the federal petitioners an opportunity to raise the due process claim. Id. at 447. On remand, the district court concluded that the petitioners could not have raised their constitutional due process claim in the state proceedings. Hernandez v. Finley, 471 F. Supp. 516 (N.D. Ill. 1978), aff'd, 440 U.S. 951 (1979).

The Supreme Court's latest encounter with the Younger abstention doctrine occurred in Moore v. Sims, 442 U.S. 415 (1979), where the Court viewed a state's interest in overseeing the enforcement of its child abuse statute as of sufficient importance to invoke consideration of Younger principles. Id. at 432. The Moore Court likened the child abuse statute to the public nuisance statute at issue in Huffman. Id. at 423. Finally, the majority held that, absent a recognized exception to Younger, a federal court must refrain from enjoining a pending state proceeding where the petitioner has an available procedural device to raise his federal claims in the state action. Id. at 430-31.

41. See Steffel v. Thompson, 415 U.S. at 462.
42. Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941).
Consequently, even though no state suit is pending and only declaratory relief is sought, the federal petitioner may be forced to litigate his constitutional claims in state court.

The Pullman policies were considered in Moore v. Sims which involved a federal district court's enjoining of Texas state court actions. Justice Rehnquist, writing for the majority, stated initially that the petitioners' action represented broad, novel challenges to interrelated parts of the Texas child abuse statute. The Moore Court traced the evolution of the Pullman abstention doctrine by citing the policy behind it. In particular, the Court observed that Pullman was designed to avoid the needless friction between federal and state systems that a premature injunction may create. In the Court's view, as the constitutional challenge to the state statute becomes broader, the possibility of friction becomes greater and Pullman principles become more important. Although not dispositive of the Moore case, Pullman considerations no doubt militated against federal intervention. In summary, even though no state suit is pending, under Pullman principles the petitioner may be denied the opportunity to litigate his constitutional challenges to a state statute in a federal forum.

The Pullman and Younger abstention doctrines can be viewed as

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45. Id. at 418.
46. Id. at 428-29. The Pullman doctrine is based on the concept of federalism and the desire to avoid the needless adjudication of constitutional issues. Its operation is triggered where a federal court is called upon to interpret an unsettled area of state law. The concern is that the federal court may erroneously apply or construe state law resulting in the possible adjudication of a federal question which need not have been decided. Further, the error may be exposed in a subsequent state court action, thus necessitating a reopening of the federal case. Accordingly, where uncertainty exists in the state law, a federal court should avoid ruling on the federal question until the state has had an opportunity to resolve the state issues. If resort to the state court resolves the conflict, then the federal court is relieved of the task of adjudicating the constitutional issue since it has become moot. See Field, Abstention in Constitutional Cases: The Scope of the Pullman Abstention Doctrine, 122 U. PA. L. REV. 1071, 1077-78 (1974).
47. 442 U.S. at 429. See notes 42-44 and accompanying text supra.
48. The Court also stressed that abstention is favored where the broad constitutional challenges to the state statute may be precluded by a narrowing construction of the statute in the state courts. 442 U.S. at 429-30. The Court stated:

State courts are the principal expositors of state law. Almost every constitutional challenge—and particularly one as far ranging as that involved in this case—offers the opportunity for narrowing constructions that might obviate the constitutional problem and intelligently mediate federal constitutional concerns and state interests. When federal courts disrupt that process of mediation while interjecting themselves in such disputes, they prevent the informed evolution of state policy by state tribunals.

Id.
methods to reduce the congestion of the federal court docket.\textsuperscript{49} The purpose of the \textit{Pullman} abstention doctrine is to prevent the needless federal adjudication of cases involving federal issues which may be resolved by state courts.\textsuperscript{50} Not to be overlooked, however, is the federal petitioner's right to litigate his federal questions in a federal forum if resort to the state system does not dispose of the matter. Under \textit{Pullman}, federal courts only stay their jurisdiction rather than dismiss the case outright, essentially guaranteeing the federal petitioner eventual access to the federal courts.\textsuperscript{51} In other words, \textit{Pullman} serves two purposes: alleviating the workload placed on federal courts by avoiding needless litigation and safeguarding the federal petitioner's rights by providing federal court resolution of all federal claims.

The \textit{Younger} abstention doctrine, on the other hand, reduces the federal docket at the expense of depriving the petitioner of a federal forum because the federal court must dismiss the petition rather than hold it in abeyance.\textsuperscript{52} This type of forum allocation between the state and federal systems does not actually reduce litigation since the federal claims will be adjudicated in the state forum. The only question is which court shall hear the petitioner's claims.\textsuperscript{53} Moreover, resort to the federal system can only be had through appeal to the Supreme Court, and then only after the state appellate remedies have been exhausted.\textsuperscript{54} Access to the federal courts under these circumstances is doubtful at best, in view of the lengthy and costly procedure involved in exhausting the state appellate process and the remote chances of having the Supreme Court grant certiorari. Hence, if viewed in terms of reducing the federal caseload, the \textit{Pullman} abstention doctrine accomplishes this objective while affording some protection to the federal petitioner but the \textit{Younger} abstention doctrine does not provide protection.

\textit{Pullman} considerations are not the only obstacles blocking access to the federal courts in the absence of a pending state proceeding; prospects for securing a federal forum are tempered by a consideration of two additional factors. First, under the \textit{Hicks v. Miranda} ruling,\textsuperscript{55} state

\begin{itemize}
  \item \textsuperscript{50} See notes 42-43 and accompanying text supra.
  \item \textsuperscript{51} See note 43 supra. One commentator, however, has suggested that the \textit{Pullman} doctrine invariably leads to delays and excessive costs. C. Wright, \textit{Law of Federal Courts} 220 (3d ed. 1976).
  \item \textsuperscript{52} See note 43 supra.
  \item \textsuperscript{54} See text accompanying note 36 supra.
  \item \textsuperscript{55} See note 38 supra.
\end{itemize}
or local authorities can effectively negate the exercise of federal jurisdiction by instituting a state proceeding before any action on the merits has transpired in the federal court.\textsuperscript{56} Second, even if the state authorities fail to take advantage of \textit{Hicks}, the petitioner would be faced with the burden of establishing standing\textsuperscript{57} and entitlement to injunctive relief.\textsuperscript{68} The federal petitioner may have a difficult time proving great and immediate irreparable harm unless a state suit is imminent, in which case the petitioner risks the danger that state authorities will institute a state action prior to any proceedings on the merits on the federal petition. Accordingly, the federal plaintiff must carefully time the filing of his federal petition to coincide with his ability to carry the burden of proof in establishing standing and irreparable injury while simultaneously minimizing the ever present risk that the state authorities will pursue action in the state courts.\textsuperscript{59}

The \textit{Hicks} holding is inconsistent with an earlier statement by the Court in \textit{Steffel v. Thompson} that federal intervention does not disrupt the state's legal system when there is no state suit pending "at the time the federal complaint is filed."\textsuperscript{60} In contravention of the language of \textit{Steffel}, the \textit{Hicks} ruling would prohibit federal intervention after the filing of the federal complaint so long as no proceedings on the merits have occurred in the federal forum.\textsuperscript{61} The net effect of \textit{Hicks} is

\textsuperscript{56} See \textit{Hicks v. Miranda}, 422 U.S. at 353-55 (Stewart, J., dissenting). Under the \textit{Hicks} ruling, the Supreme Court has held that a state suit is deemed "pending" for purposes of the \textit{Younger} abstention doctrine where the state complaint is filed before any proceedings on the merits are adjudicated in the federal forum. \textit{Id.} at 349.

In a dissenting opinion Justice Stewart stated:
The Court's new rule creates a reality which few state prosecutors can be expected to ignore. It is an open invitation to state officials to institute state proceedings in order to defeat federal jurisdiction. One need not impugn the motives of state officials to suppose that they would rather prosecute a criminal suit in state court than defend a civil case in a federal forum. Today's opinion virtually instructs state officials to answer federal complaints with state indictments. \textit{Id.} at 357 (Stewart, J., dissenting) (footnotes omitted).

\textsuperscript{57} See \textit{Moore v. Sims}, 442 U.S. at 428-29. In \textit{Moore} the Court alluded to the petitioners' possible lack of standing to contest the statutorily authorized pre-seizure investigative procedures which had not yet been undertaken. \textit{Id.} at 428-29 & n.11. The Court also questioned the assertion that the proper standard of proof for a proceeding determining parental rights was "clear and convincing evidence." Since the state proceeding had not reached the point of evaluating the parental rights the majority concluded that the federal petitioners could not demonstrate any actual injury. \textit{Id.} at 429.

\textsuperscript{58} See \textit{Younger v. Harris}, 401 U.S. at 46.

\textsuperscript{59} The federal petitioner is caught between the "Scylla" of initiating a premature suit and weakening his chances for success and the "Charybdis" of postponing his federal suit and risking the chance that state authorities may bring a state action. \textit{See}, \textit{e.g.}, \textit{Wooley v. Maynard}, 430 U.S. 705, 710 (1977).

\textsuperscript{60} 415 U.S. at 462.

\textsuperscript{61} \textit{See} text accompanying note 55 \textit{supra}.
the reduction of the availability of federal injunctive relief against threatened state suits and the narrowing of the protections afforded in Steffel. After Hicks, state or local authorities need only initiate state proceedings against the federal petitioner after receiving notice of the federal suit but prior to any hearings on the merits in the federal forum.

B. Pendency of a State Suit

Once a proceeding is pending in the state court system, the applicability of Younger principles must be determined. Although Younger principles were formulated in the context of a criminal prosecution, their applicability also must be analyzed in civil proceedings. The Huffman decision demonstrates that the basic concepts of comity and federalism, not the existence of criminal overtones, determine the applicability of the Younger abstention doctrine. More simply, it is the importance of the state’s role in the pending litigation that must be examined; the greater the legitimate interests of the state, the greater the interests the state courts have in adjudicating the matter. The state’s interest in enforcing its criminal laws traditionally has been construed as one of the highest order and has proven sufficient in itself to invoke consideration of Younger principles. In criminal cases, the Court has proceeded directly to the examination of the facts of the

62. 415 U.S. at 462.
63. See note 56 supra.
65. See Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1975) (component of Younger abstention doctrine which rests upon the threat to federal system is equally applicable to civil proceedings).
66. See Juidice v. Vail, 430 U.S. 327 (1977), where the majority stated:

We now hold, however, 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. As we emphasized in Huffman, the “more vital consideration” behind the Younger doctrine of nonintervention lay not in the fact that the state criminal process was involved but rather in

“the notion of “comity,” that is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.”

Id. at 334 (citations omitted).
67. See Younger v. Harris, 401 U.S. at 55 n.2 (Stewart, J., concurring).
68. See Kugler v. Helfant, 421 U.S. 117 (1975). See also Hicks v. Miranda, 422 U.S. at 356 (Stewart, J., dissenting) (“A State has a vital interest in the enforcement of its criminal law, and this Court has said time and again that it will sanction little federal interference with that important state function”).
case to ascertain if federal equitable relief is warranted under any of the recognized exceptions to the Younger abstention doctrine.\(^6\)

Civil proceedings, on the other hand, require an additional inquiry to determine the applicability of the Younger abstention doctrine. The Court has acknowledged that not every civil proceeding necessarily triggers application of the doctrine.\(^7\) When presented with the task of deciding whether to apply Younger to a civil proceeding, however, the Supreme Court has generally found that deference to the proper functions of the state courts is appropriate.\(^7\) Unfortunately, in reaching this conclusion the Court has neglected to enumerate the formal criteria necessary to measure the importance of the state's interest. Nevertheless, two basic indicia are discernable from the opinions of the Supreme Court. The first is whether the state is a party to the pending state proceedings.\(^8\) The state's involvement indicates an important state interest in the proceedings and militates in favor of deferring resolution of the dispute to the state courts.\(^9\) Cases involving the Younger abstention doctrine arise most frequently in situations where a federal petitioner challenges the constitutionality of a state statute.\(^10\) The petitioner is invariably prosecuted under a penal enactment or enforcement proceedings are instituted against him pursuant to a civil statute. Consequently, the state is, almost without exception, a party to the state proceedings and its presence is manifested as the complaining party. Even in the rare instance where the state was not a party to the pending state action, the Supreme Court has concluded that Younger principles were applicable.\(^11\)

The second factor in the applicability of the Younger abstention doctrine is the subject matter sought to be regulated by the state statute. The degree to which the subject matter affects the public interest determines the interest of the state. This factor, though given only cursory discussion, usually provides the basis for the Court's conclusion that Younger principles are in force.\(^12\)

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69. See, e.g., Hicks v. Miranda, 422 U.S. 322 (1975). But see Gerstein v. Pugh, 420 U.S. 103 (1975) (federal intervention into state pretrial hearings appropriate since injunctive relief was not addressed to a pending state proceeding and, therefore, would not interfere with a state criminal prosecution).

70. See Huffman v. Pursue, Ltd., 420 U.S. at 607.


72. See Moore v. Sims, 442 U.S. at 423.

73. Id.


76. The Supreme Court has found the civil statutes in the following cases of sufficient importance to the states' interests to trigger operation of Younger principles: Moore v. Sims, 442 U.S. 415 (1979) (child abuse statute); Trainor v. Hernandez, 431 U.S. 434 (1977)
Although the Court has expressly left open the question of whether Younger principles apply to all civil litigation,\textsuperscript{77} the Court may have implicitly answered this question in the affirmative through its decisions. The Supreme Court has consistently found the civil cases before it are subject to Younger considerations.\textsuperscript{78} The Court has almost exclusively devoted its attention to evaluating the interests of the state and has focused on the notions of comity and federalism\textsuperscript{79} while virtually ignoring the competing interests of the federal petitioner\textsuperscript{80} in securing a federal forum for the vindication of his constitutional rights.\textsuperscript{81} Mitchum \textit{v. Foster} presented a suitable vehicle for promoting the interests of the federal petitioner.\textsuperscript{82} Although Mitchum may be cited for the proposition that a federal court should weigh the federal interests in providing a federal forum for the litigation of section 1983 actions,\textsuperscript{83} post-Mitchum decisions have failed to develop the Mitchum reasoning and acknowledge the same vital interest of the federal petitioner.\textsuperscript{84}

Federal courts were created for the adjudication of federal claims and their abstaining indicates an insensitivity to their responsibilities.\textsuperscript{85}

\textsuperscript{77} Huffman \textit{v. Pursue, Ltd.}, 420 U.S. 592 (1975) (obscenity or public nuisance statute).

\textsuperscript{78} For purposes of the case before us, however, we need make no general pronouncements upon the application of Younger to all civil litigation".

\textsuperscript{79} Justice Brennan, in a vigorous dissent, stated: "Even assuming that federal abstention might conceivably be appropriate in some civil cases, the transformation of what I must think can only be an exception into an absolute rule crosses the line between abstention and abdication." \textit{Id.} at 456 (Brennan, J., dissenting). Justice Brennan later stated that "the Court's silence, and its insistence upon compliance with the literal words of Watson \textit{v. Buck}, only confirms my conviction that the Court is determined to extend to 'state civil proceedings generally the holding of Younger,' and to give its exceptions the narrowest possible reach." \textit{Id.} at 459-60 (Brennan, J., dissenting) (citations omitted).

Justice Stevens, dissenting in Moore \textit{v. Sims}, 442 U.S. 415 (1979), stated: "It has never been suggested that every pending proceeding between a state and a federal plaintiff justifies abstention unless one of the exceptions to Younger applies." \textit{Id.} at 435-36 (Stevens, J., dissenting).


\textsuperscript{82} See notes 21-28 and accompanying text supra.


\textsuperscript{84} See Hicks \textit{v. Miranda}, 422 U.S. at 355-57 (Stewart, J., dissenting).

\textsuperscript{85} See \textit{Hicks v. Miranda}, 422 U.S. at 355-57 (Stewart, J., dissenting).

The duty of the federal courts to adjudicate and vindicate federal constitutional
A factor militating against this proposition, however, is the Supremacy Clause of the United States Constitution which imposes the constitutional responsibilities on state court judges as well as federal court judges. Still, the availability of the federal forum would serve to expedite the claims of the petitioner, but this alone has not proved a sufficient reason to sanction the granting of equitable relief in the face of a pending state action. The dominant role the state's interest plays in the Court's analysis coupled with the seeming neglect of the petitioner's interests by the Court is strong evidence that the proper inquiry in determining the applicability of *Younger* principles is not a balancing of competing interests but rather a one-sided examination tailored to the presence of the state's interest. The result is that the federal petitioner is burdened with the almost insurmountable task of arguing the impropriety of applying *Younger* principles to the pending state suit.

C. The *Younger* Exceptions

1. Bad Faith

The *Younger* Court has set forth three instances in which federal in-

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rights is, of course, shared with state courts, but there can be no doubt that the federal courts are "the primary and powerful reliances for vindicating every right given by the Constitution, the laws, and treaties of the United States." The statute under which this action was brought, 42 U.S.C. § 1983, established in our law "the role of the Federal Government as a guarantor of basic federal rights against state power." Indeed, "[t]he very purpose of § 1983 was to interpose the federal courts between the States and the people." And this central interest of a federal court as guarantor of constitutional rights is fully implicated from the moment its jurisdiction is invoked.

The Court today, however, goes much further than simply recognizing the right of the State to proceed with the orderly administration of its criminal law; it ousts the federal courts from their historic role as the "primary reliances" for vindicating constitutional freedoms. This is no less offensive to "Our Federalism" than the federal injunction restraining pending state criminal proceedings condemned in *Younger v. Harris*. The concept of federalism requires "sensitivity to the legitimate interests of both State and National Governments." *Younger v. Harris* and its companion cases reflect the principles that the federal judiciary must refrain from interfering with the legitimate functioning of state courts. But surely the converse is a principle no less valid.

Id. (citations omitted).

86. U.S. CONST. art. VI, cl. 2, provides in pertinent part: "This Constitution, and the laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby. . . ."


88. See Hicks v. Miranda, 422 U.S. at 357 (Stewart, J., dissenting) ("The doctrine of *Younger v. Harris* reflects an accommodation of competing interests. The rule announced today distorts that balance beyond recognition").
junctive relief would be appropriate notwithstanding the pendency of a state court proceeding and the applicability of Younger principles. The first of these exceptions involves a state suit undertaken in bad faith with the intent to harass the petitioner.\textsuperscript{9} Bad faith can be established by demonstrating that the state prosecution was conducted without hope of obtaining a valid conviction.\textsuperscript{90} The showing of bad faith on the part of the state in instituting the suit is the equivalent of establishing great and immediate irreparable injury.\textsuperscript{91} The rationale advanced in support of permitting federal intervention under these circumstances is that the state does not possess a legitimate interest in pursuing a bad faith prosecution and consequently, the notions of federalism and comity are not violated by the federal intervention.\textsuperscript{92} The most patent example of bad faith is one in which the federal petitioner is subject to repeated state prosecutions, each emanating from the same act by the petitioner.\textsuperscript{93} Under these conditions, the federal petitioner could not rely on his defense to a single state prosecution to vindicate his constitutional rights, a requisite for abstention under Younger.\textsuperscript{94} The existence of bad faith through multiple prosecutions is illustrated by Shaw v. Garrison,\textsuperscript{95} where the federal petitioner was unsuccessfully prosecuted in state court on charges of conspiracy to assassinate President Kennedy. Subsequently, Shaw was prosecuted for perjury in connection with his testimony during the conspiracy trial. The defendant petitioned a federal district court for a temporary restraining order which was granted to halt the perjury prosecution.\textsuperscript{96} On appeal, the Fifth Circuit upheld the lower court's decision on the basis that the petitioner had established bad faith by showing that he was subjected to multiple prosecutions and demonstrating a serious risk of exposure to future prosecutions for a single event.\textsuperscript{97}

\textsuperscript{99} Younger v. Harris, 401 U.S. at 49.
\textsuperscript{990} Perez v. Ledesma, 401 U.S. 82, 85 (1971) (federal injunctive relief appropriate only where petitioner is subjected to bad faith prosecution or in other extraordinary circumstances creating the requisite irreparable harm).
\textsuperscript{91} Shaw v. Garrison, 467 F.2d 113, 120 (5th Cir.), cert. denied, 409 U.S. 1024 (1972) (bad faith prosecution is sufficient though not necessary in establishing irreparable injury).
\textsuperscript{92} Wilson v. Thompson, 593 F.2d 1375, 1383 (5th Cir. 1979) (abstention by federal court does not deprive petitioner of protection not available in state court where prosecution is brought in good faith).
\textsuperscript{93} See Shaw v. Garrison, 467 F.2d at 116-117.
\textsuperscript{94} See Younger v. Harris, 401 U.S. at 46 ("The threat to the plaintiff's federally protected rights must be one that cannot be eliminated by his defense against a single criminal prosecution").
\textsuperscript{95} 467 F.2d 113 (5th Cir. 1972).
\textsuperscript{96} Id. at 114.
\textsuperscript{97} Id. at 122. In Duncan v. Perez, 445 F.2d 557 (5th Cir. 1971), the federal petitioner was convicted of simple battery in state court. His conviction was vacated by the
Despite its apparent utility, the bad faith exception has its limitations. The most noticeable aspect of the cases finding bad faith is the absence of a Supreme Court opinion among them. Although the Court has devoted considerable time and attention to discussion of the bad faith concept, it has not reviewed a single case to emphasize the importance of the exception.

Another element qualifying the utility of the bad faith exception deals with the type of conduct found to create the necessary bad faith. In Shaw and similar cases the federal petitioners were all subject to multiple or repeated prosecutions for a single act. This is not to suggest that bad faith can only be established by showing multiple state prosecutions. On the contrary, a single state prosecution undertaken in bad faith or with the intent to harass may form the basis for granting federal equitable relief. What is suggested is that it is easier to prove the requisite great and immediate irreparable injury by showing a scheme or a risk of future prosecution for the same act. Further, bad faith implies a subjective intent on the part of state officials in the performance of their duties in undertaking the action. The subjective intent can be more easily established where there has been a series of state suits against the federal petitioner, each undertaken 'without the hope of obtaining a valid conviction. Accordingly, the federal petitioner may find it more difficult to prove bad faith where he has not been the subject of repeated state actions.

A final observation about the continued utility of the bad faith exception is that its presence has been confined exclusively to criminal settings. Although the Court has displayed a willingness to at least

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Supreme Court on grounds that his right to a jury trial was denied. Duncan v. Louisiana, 391 U.S. 145 (1968). The state attempted to retry the petitioner on the same charge of simple battery. The plaintiff petitioned for and was granted injunctive relief by a federal district court after a finding that the petitioner was subject to multiple arrests and excessive bail rates. 445 F.2d at 559. The Fifth Circuit, on appeal, concurred with the district court in its finding that the state prosecution was conducted in bad faith and made with the intent to harass the petitioner. Id. at n.3.

See also Timmerman v. Brown, 528 F.2d 811 (4th Cir. 1975) (federal equitable relief available to enjoin criminal prosecutions of state prisoners where their indictments were based substantially on the same charges that had already been dismissed against them).

98. See Allee v. Medrano, 416 U.S. 802 (1974) (Supreme Court remanded case to lower court to determine whether state prosecution was pending and if so, whether it was brought in bad faith).


100. See note 97 and text accompanying notes 95-97 supra.

101. Wilson v. Thompson, 593 F.2d 1375, 1381 (5th Cir. 1979).

102. See note 97 supra.


104. See note 97 supra.

105. Both cases discussed in note 97 supra arose as criminal prosecutions.
consider the possibility of bad faith existing in civil cases, so far it has not permitted federal intervention under this exception in a non-criminal state proceeding. The reason may be that there was no bad faith on the state authorities' part in any of the civil cases. It also may be attributable to the difference in sanctions that the federal petitioner faces in the two types of proceedings. Accordingly, it may take a more outrageous abuse of the civil system in order to create the requisite bad faith or intent to harass. Additionally, the federal judiciary may scrutinize the situation more closely where the federal petitioner faces greater penalties. The cumulative effect is that although bad faith has been found to exist, its presence has been generally limited to instances of multiple criminal prosecutions and even then only in rare circumstances.

2. Flagrant Statutes

Another judicially recognized exception to the Younger abstention doctrine permits federal intervention into a pending state proceeding brought under a statute that is "flagrantly violative of express constitutional prohibitions." The justification for this exception is the absence of a legitimate state interest in enforcing an unconstitutional statute. Alternatively it has been suggested that attempts to enforce a flagrantly unconstitutional statute manifests bad faith on the part of state authorities. By demonstrating that the statute is flagrantly unconstitutional, the federal petitioner establishes the requisite great and immediate irreparable injury entitling him to federal equitable relief. This is not easy: a mere showing that the state statute is unconstitutional on its face or that its existence creates a chilling effect on the exercise of first amendment rights is insufficient. The Younger Court, in rejecting the Dombrowski standard for enjoining enforcement of a state statute, expressed a serious concern about allowing courts unlimited power to pass judgment on statutes. The Court

106. See, e.g., Moore v. Sims, 442 U.S. at 432.
110. See, e.g., Wilson v. Thompson, 593 F.2d at 1383 & n.14.
112. See Younger v. Harris, 401 U.S. at 53-54.
113. See id. at 54 (possible unconstitutionality of a statute "on its face" does not in itself justify an injunction).
114. Id. at 52. The majority stated:

The power and duty of the judiciary to declare laws unconstitutional are in the
reasoned that the remoteness of controversies not before the court, coupled with the impact on the legislative process occasioned by enjoining all enforcement of the statute, would be an unacceptable process for deciding constitutional questions.\textsuperscript{115}

The petitioner’s heavy burden is indicated by the absolute standard of the language of the exception. The statute must be found to be “flagrantly and patently violative of express constitutional prohibitions in every clause, sentence, and paragraph, and in whatever manner and against whomever an effort might be made to apply it.”\textsuperscript{116} It is hardly conceivable that any state legislature could enact a statute repugnant to this degree. Further, most constitutional challenges are directed only towards a portion of a statutory scheme.\textsuperscript{117} Even conceding that a statute may possibly qualify under this exception, the federal court may not be permitted the opportunity to make this determination.\textit{Pullman} considerations may again surface to preclude the granting of equitable relief by deferring the matter to the state courts.\textsuperscript{118} Arguably, the statute may be susceptible of a narrow construction by the state court to avoid its apparent unconstitutional effect and even if not, the state court may be the desirable forum for invalidating the statute.\textsuperscript{119}

The uselessness of this exception is illustrated by the total absence of its application. To date, the Supreme Court has never sanctioned federal intervention under this exception.\textsuperscript{120} The exception has been recognized only incidentally as the Court has tried to differentiate between a flagrantly unconstitutional statute and a statute unconstitutional on its face.\textsuperscript{121} The continued worth of this exception has been

\begin{footnotes}
\item[115] Id. at 52 (citation and footnote omitted).
\item[116] Id. at 53-54 (quoting Watson v. Buck, 313 U.S. 387, 402 (1941)).
\item[118] See notes 42-44 and accompanying text \textit{supra}.
\item[119] See notes 45-48 and accompanying text \textit{supra}.
\item[121] See Younger v. Harris, 401 U.S. at 53-54.
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seriously questioned. Finally, the obstacles confronting the federal petitioner in successfully invoking the protection of this exception leaves little doubt but that the exception is illusory.

3. The Extraordinary Circumstances Exception

The final exception to the Younger abstention doctrine is actually a general category that encompasses both of the previously discussed exceptions. Federal equitable relief may be granted to enjoin a pending state proceeding in extraordinary circumstances which create the requisite great and immediate irreparable injury. In Younger the Court expressly did not resolve the issue of what other types of situations would create extraordinary circumstances warranting equitable relief. Subsequently, the Court in Kugler v. Helfant developed the breadth of the concept by holding that a mere unusual factual situation would not amount to extraordinary circumstances. The Kugler Court, however, cited a prior case, Gibson v. Berryhill, for the proper application of the general exception. In Gibson the federal plaintiffs sought to enjoin a pending state administrative proceeding instituted against them for unprofessional conduct. The Gibson Court noted that the administrative board would benefit financially if the petitioners'
licenses were suspended. The majority reasoned that the board's direct pecuniary interest in the matter rendered it incompetent to adjudicate the proceedings impartially and equated this bias with the great and immediate irreparable injury justifying federal intervention.

The Kugler Court's characterization of Gibson as an extraordinary circumstance exception is questionable. A closer examination of the Gibson Court's reasoning reveals that Younger principles were inapplicable in the first instance. The Younger abstention doctrine assumes that the federal petitioner has an opportunity to vindicate his constitutional guarantees in the pending state proceeding. Accordingly, if the opportunity does not exist in the state system because of judicial bias, then Younger principles are not in force and there is no need to evaluate the applicability of the Younger exceptions. That is, the inability of the administrative board to adjudicate the suit impartially foreclosed the opportunity to raise the federal claims in the state proceedings.

Alternatively, if Younger principles were operative in Gibson, the pecuniary interest of the board could have been handled under the bad faith exception. The judicial bias of the board manifested an unwillingness to adjudicate the dispute fairly which in turn showed insensitivity to or neglect of its responsibilities. By refusing to perform its duties, the administrative board is guilty of bad faith just as prosecutors are when they fail to carry out their functions properly. Consequently, the Gibson ruling is an artificial example of the general extraordinary circumstances exception.

The Court's reasoning in recent decisions reflects an attitude of restricting the scope of the general exception. In Trainor v. Hernandez the Court found that prehearing seizure of property did not create extraordinary circumstances or great and immediate irreparable injury which would justify federal equitable relief. Similarly, in Moore v. Sims the majority concluded that prehearing deprivation of custody of the petitioners' children did not rise to the level of extraor-

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130. 411 U.S. at 578-79.
131. Id. at 579-81.
132. See, e.g., Juidice v. Vail, 430 U.S. at 337.
135. See generally Ex parte Young, 209 U.S. 123 (1903).
137. 431 U.S. at 439-40.
dinary circumstances. The Moore Court was quick to point out that the existence of extraordinary circumstances must be gauged at the time federal intervention is sought. The petitioners in Moore had regained custody of their children at that time. Although the majority expressly refused to find that every attachment order issued to protect a child would constitute extraordinary circumstances, it did not rule out the possibility of federal intervention if the petitioners were without the custody of their children at the time the request for relief was evaluated. Nevertheless, the Supreme Court’s continued practice of limiting the scope of the extraordinary circumstances exception does not indicate favorable prospects for relief in this area in the future.

IV. PROPOSAL FOR A BALANCING OF COMPETING INTERESTS APPROACH

The Younger abstention doctrine is premised on the concepts of comity and federalism which seek to strike a harmonious balance between the operation of the state and national governments. Underlying these fundamental notions is the idea that each system should respect the proper functions of the other. Federalism entails a mutual respect and each system must be willing to make concessions in order to achieve a desirable middle ground. The difficulty arises when each system is entrusted with the adjudication of federal claims. The Supreme Court decisions, however, do not give proper weight to the interests of the federal system. The emphasis of the Younger line of cases is on the state’s interest while the national system’s interest in providing a forum for the vindication of constitutional rights is undervalued.

A suitable alternative would be to adopt a more flexible approach which acknowledges and balances the competing interests involved. The present policy with respect to pending state criminal prosecutions should be retained to reflect the traditional importance attached to the state’s interest in maintaining the effectiveness of its criminal justice

139. 442 U.S. at 434.
140. Id. at 433.
142. See note 3 supra.
143. See Younger v. Harris, 401 U.S. at 44 (“[comity means] a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways”).
144. See note 88 supra.
145. See notes 79-81 and accompanying text supra.
Further, the availability of the federal writ of habeas corpus militates against the federal courts displacing the state forums in the criminal area. The extension of *Younger* principles into the civil area should be reevaluated with the aim of balancing the actual affront to and disruption of the state system with the role of the federal courts in vindicating constitutional guarantees. Federal intervention should be permitted in instances where the state proceedings have not reached the merits of the case. Under these conditions, the petitioner’s choice of forum should be honored if timely exercised. The affront to the state system can be little more than that in a case removed under statutory authority to a federal court. The disruption of the state system is lessened if the case is removed initially rather than after the merits have been litigated. Additionally, the burden of proof should be on the party advocating abstention to demonstrate the interference with the proper functions of the state. Absent significant affront to and disruption of the state system, the federal judiciary should not be denied the opportunity to assume its role as primary guardian of federal rights.

V. CONCLUSION

The availability of federal equitable relief directed at threatened or pending state proceedings under the *Younger* abstention doctrine involves an initial determination of the pendency of a state court action. In the absence of a pending state proceeding, the notions of comity and federalism attendant to *Younger* do not operate to preclude the granting of federal declaratory or injunctive relief, although these limited forms of relief are tempered by jurisdictional requirements and the *Pullman* abstention doctrine which seeks to avoid the unnecessary adjudication of constitutional issues where the case can be disposed of on a question of state law interpreted by a state court. Once a state suit is “pending” within the meaning of *Hicks*, the applicability of *Younger* must be tested. The appropriateness of *Younger* principles to civil proceedings generally may be a foregone conclusion given the disproportionate weight attributed by the Supreme Court to the state’s interest in comparison to the national interest. If *Younger* principles are found

146. See note 68 and accompanying text supra.

147. Appeal to the federal courts via habeas corpus would be as of right whereas in civil cases, as contemplated by *Huffman*, it is discretionary. See text accompanying note 36 supra.

148. State civil cases are removable to federal court by the state defendant if the suit could have originally been brought in a federal court. 28 U.S.C. § 1441 (1976).

to be in force, federal equitable relief can be granted only in extraordinary circumstances which create great and immediate irreparable injury. The Court's narrow interpretation of these exceptions forces the petitioner to demonstrate that he is exposed to the risk of multiple state prosecutions undertaken in bad faith or with the intent to harass him.

The *Younger* abstention doctrine does leave room for the increased availability of federal equitable relief based on the avenues open to the Court to sanction federal intervention. The Court may restrict the broad application of the *Younger* abstention doctrine by adopting a balancing of competing interests approach. The purpose of section 1983 and the role of the federal judiciary in vindicating individual constitutional liberties may tip the scales in favor of federal intervention. Finally, the scope and frequency of the recognized exceptions to the *Younger* abstention doctrine may be increased in future decisions. The extraordinary circumstances exception may be given a clearer definition which would include a variety of situations in which federal injunctive relief would be proper. In view of the Supreme Court's recent trend to curtail the accessibility of the federal forum, however, it does not appear that any significant increase in federal intervention is likely to occur in the immediate future.

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151. *See Kugler v. Helfant, 421 U.S. 117, 124-25 (1975) ("The very nature of 'extraordinary circumstances,' of course, makes it impossible to anticipate and define every situation that might create a sufficient threat of such great, immediate, and irreparable injury as to warrant intervention into state criminal proceedings").*