The Burger Court Opinion Writing Database

Younger v. Harris

401 U.S. 37 (1971)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 8, 1970

Re: No. 4 - Younger v. Harris
No. 6 - Boyle v. Landry
No. 11 - Samuels v. Mackell
No. 20 - Fernandez v. Mackell

Dear Hugo:

Please join me in the above.

W. E. B.

Mr. Justice Black

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

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P. S. - Hugo - Congratulations on getting solid support for your 1968 Term position. It is as right as rain in a hot summer. - WEB

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 4.—October Term, 1969

Circulated: MAY 6 1970

Recirculated: _____

Evelle J. Younger, Appellant, v. John Harris, Jr., et al. | On Appeal From the United States District Court for the Central District of California.

[May —, 1970]

Mr. Justice Black delivered the opinion of the Court.

Appellee, John Harris, Jr., was indicted in a California state court, charged with violation of the California Penal Code §§ 11400 and 11401, known as the California Syndicalism Act, set out below.[1] He then filed a com-

[1] "§ 11400. *Definition*

" 'Criminal syndicalism' as used in this article means any doctrine or precept advocating, teaching or aiding and abetting the commission of crime, sabotage (which word is hereby defined as meaning wilful and malicious physical damage or injury to physical property), or unlawful acts of force and violence or unlawful methods of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change."

"§ 11401. *Offense; punishment*

"Any person who:

"1. By spoken or written words or personal conduct advocates, teaches or aids and abets criminal syndicalism or the duty, necessity or propriety of committing crime, sabotage, violence or any unlawful method of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change; or

"2. Wilfully and deliberately by spoken or written words justifies or attempts to justify criminal syndicalism or the commission or attempt to commit crime, sabotage, violence or unlawful methods of terrorism with intent to approve, advocate or further the doctrine of criminal syndicalism; or

"3. Prints, publishes, edits, issues or circulates or publicly displays any book, paper, pamphlet, document, poster or written or printed matter in any other form, containing or carrying written or printed

p. 3, 5, 6, 7
Stylistic Changes Throughout.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
✓Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

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June 22, 1970

Dear Chief,

Re: Nos. 4, 11 and 20- Younger v. Harris; Samuels v. Mackell; Fernandez v. Mackell.

We have conferred in an effort to reach a conclusion that would justify bringing these cases down this term. We regret that we cannot make an agreement which will relieve Brother Brennan from what he feels to be his duty to write, and, under these circumstances we both recommend that the cases go over until next year.

We make the same recommendations as to Nos. 6, 565 and 1149.

Respectfully,

H. L. B.

W. J. B., Jr.

The Chief Justice

cc: Members of the Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

Mr. Justice Douglas, J.

Circulated: 6-10

Nos. 4, 6, 11 AND 20.—OCTOBER TERM, 1969

Recirculated: _____

Evelle J. Younger, Appellant, v. John Harris, Jr., et al.	On Appeal From the United States District Court for the Central District of California.
John S. Boyle, Chief Judge of the Circuit Court of Cook County, Illinois, et al., Appellants, v. Lawrence Landry et al.	On Appeal From the United States District Court of the Northern District of Illinois.
George Samuels et al., Appellants, v. Thomas J. Mackell, District Attorney, et al. Fred Fernandez, Appellant, v. Thomas J. Mackell, District Attorney, et al.	On Appeals From the United States District Court for the Southern District of New York.

[June —, 1970]

MR. JUSTICE DOUGLAS, dissenting.

The fact that we are in a period of history when enormous extrajudicial sanctions are imposed on those who assert their First Amendment rights in unpopular causes does not, of course, change our historic federal-state relations. Nor does it mean that a judiciary can become activist and take over legislative functions. But it does emphasize the wisdom of *Dombrowski* v. *Pfister*,

Minor word changes

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Nos. 4, 6, 11 AND 20.—OCTOBER TERM, 1969

Circulated:

Recirculated: 6-16

Evelle J. Younger, Appellant, v. John Harris, Jr., et al.	On Appeal From the United States District Court for the Central District of California.
John S. Boyle, Chief Judge of the Circuit Court of Cook County, Illinois, et al., Appellants, v. Lawrence Landry et al.	On Appeal From the United States District Court of the Northern District of Illinois.
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H. L. B.

W. J. B., Jr.

The Chief Justice

cc: Members of the Conference

See Pp. 3, 5, 6, 7 — Dear Hugo
The first changes indicated on these
pages would suit my difficulties

2

JMH (Harlan)

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
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Mr. Justice Marshall

From: Black, J.

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SUPREME COURT OF THE UNITED STATES

No. 4.—October Term, 1969

Evelle J. Younger, Appellant,
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John Harris, Jr., et al.

On Appeal From the United States District Court for the Central District of California.

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Appellee, John Harris, Jr., was indicted in a California state court, charged with violation of the California Penal Code §§ 11400 and 11401, known as the California Syndicalism Act, set out below.[1] He then filed a com-

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was void for vagueness and overbreadth in violation of the First and Fourteenth Amendments, and accordingly restrained the District Attorney from "further prosecution of the currently pending action against the plaintiff Harris for alleged violation of the Act." 281 F. Supp. 507, 517 (1968).

The case is before us on appeal by the State's District Attorney Younger, pursuant to 28 U. S. C. § 1253. In his notice of appeal and his jurisdictional statement appellant presented two question: (1) whether the decision of this Court in *Whitney* v. *California,* 274 U. S. 357, holding California's law constitutional in 1927 was binding on the District Court and (2) whether the State's law is constitutional on its face. In this Court the brief for the State of California, filed at our request, also argues that only Harris, who was indicted, has standing to challenge the State's law, and that issuance of the injunction was a violation of a long-standing judicial policy and of 28 U. S. C. § 2283, which provides:

> "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."

Without passing on the questions raised about *Whitney* v. *California, supra,* or the constitutionality of the state law, we have concluded that the judgment of the District Court, enjoining appellant Younger from prosecuting under these California statutes, must be reversed as a violation of the national policy forbidding federal courts to stay or enjoin state court proceedings except under special circumstances.[2]

[2] Appellees did not explicitly ask for a declaratory judgment in their complaint. They did, however, ask the District Court to grant "such other and further relief as to the Court may seem just and

of the State's district attorney or on any other evidence—, then a genuine controversy might be said to exist. But here appellees Dan, Hirsch, and Brodlawsky do not claim that they have ever been threatened with prosecution, that a prosecution is likely, or even that a prosecution is remotely possible. They claim the right to bring this suit solely because, in the language of their complaint, they "feel inhibited." We do not think this allegation, even if true, is sufficient to bring the equitable jurisdiction of the federal courts into play to enjoin a state prosecution. A federal lawsuit to stop a prosecution in a state court is a serious matter. And persons having no fears of state prosecution except those that are imaginary or speculative, are not to be accepted as appropriate plaintiffs in such cases. See *Golden* v. *Zwickler*, 394 U. S. 103 (1969). Since Harris is actually being prosecuted under the challenged laws, however, we proceed with him as a proper party.

II

Since the beginning of this Country's history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts. In 1793 an Act unconditionally provided: ". . . nor shall a writ of injunction be granted to stay proceedings in any court of any state . . . ." 1 Stat. 335, c. 22. A comparison of the 1793 Act with 28 U. S. C. § 2283, its present-day successor, graphically illustrates how few and minor have been the exceptions granted from the flat, prohibitory language of the old Act. During all this lapse of years from 1793 to 1970 the statutory exceptions to the 1793 congressional [redacted] have been only three: (1) ". . . except as expressly authorized by Act of Congress . . ."; (2) ". . . where necessary in aid of its jurisdiction . . ."; and (3) ". . . to protect or effectuate its judgments . . . ." ~~At least two judicial exceptions have also been made to~~

enactment

In addition, [redacted] a judicial exception to the longstanding policy evidenced by the statute has been made

~~this long-standing policy where the federal court has possession of the res which has to be protected from a conflicting disposition by a state court, see *Kline v. Burke Construction Co.*, 260 U. S. 226 (1922), and~~ where a person about to be prosecuted in a state court can show that he will, if the proceeding in the state court is not enjoined, suffer irreparable damages. See *Ex parte Young,* 209 U. S. 123 (1908).[3]

The precise attiude of thinking responsible for this long-standing public policy against federal court interference with state court proceedings has never been specifically identified but the primary sources of the policy are plain. One is the basic doctrine of equity jurisprudence that courts of equity should not act, and particularly should not act to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief. The doctrine may originally have grown out of circumstances peculiar to the English judicial system and not applicable in this country, but its fundamental purpose of restraining equity jurisdiction within narrow limits is equally important under our Constitution, in order to prevent erosion of the role of the jury and avoid a duplication of legal proceedings and legal sanctions where a single suit would be adequate to protect the rights asserted. This underlying reason for restraining courts of equity from interfering with criminal prosecutions is reinforced by an even more vital consideration, 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

[3] For an interesting discussion of the history of this congressional policy up to 1941 see *Toucey* v. *New York Life Insurance Company,* 314 U. S. 118 (1941).

their institutions are left free to perform their separate functions in their separate ways. This, perhaps for lack of a better and clearer way to describe it, is referred to by many as "Our Federalism," and one familiar with the profound debates that ushered our Federal Constitution into existence is bound to respect those who remain loyal to the ideals and dreams of "Our Federalism." 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.

This brief discussion should be enough to suggest some of the reasons why it has been perfectly natural for our cases to repeat time and time again that the normal thing to do when federal courts are asked to enjoin proceedings [redacted] in state courts is not to issue such injunctions. In *Fenner* v. *Boykin*, 271 U. S. 240 (1926), suit had been brought in the Federal District Court seeking to enjoin state prosecutions under a recently enacted state law that allegedly interfered with the free flow of interstate commerce. The Court, in a unanimous opinion, made clear that such a suit could be proper only under very special circumstances:

> "*Ex parte Young*, 209 U. S. 123, and following cases have established the doctrine that when absolutely

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN M. HARLAN

May 8, 1970

Re: No. 4 - Younger v. Harris
No. 6 - Boyle v. Landry
No. 11 - Samuels v. Mackell
No. 20 - Fernandez v. Mackell

Dear Hugo:

I intend to join your opinions in all three of these cases. In No. 6, I join you now, without any suggestions. In Nos. 11 and 20, I will postpone any suggestions that I might have until the circulation, as presently seems likely, of an opinion for those Brethren who believe that federal declaratory relief should have broader scope in this area than injunctive relief. In the primary case, No. 4, I have the following suggestions to offer.

Your opinion is structured, correctly I believe, around the distinction between the specific prohibition in § 2283 of injunctions against state court proceedings already brought, and the more general policy, deriving in part from § 2283, against enjoining even the commencement of state court proceedings. I read your opinion as holding that the injunction issued in this case must be vacated as inconsistent with the second of these considerations -- the general policy of noninterference by federal with state courts -- and thus that we need not reach the question whether § 2283 itself applies in this particular case. I think, however, that certain statements in your opinion tend to blur the distinction, and perhaps to undermine the determination in Dombrowski, 380 U.S., at 484 n. 2, that § 2283 does not apply to proceedings not yet brought when the federal suit is filed.

The statements that I believe create this uncertainty are as follows. On p. 3, you state that the judgment below must be reversed "as a violation of the national policy forbidding federal courts to stay state court proceedings except under special circumstances." Should

not the policy be described as one "forbidding federal courts to stay or enjoin the institution of state court proceedings," in order to make clear that it is the general policy, broader than § 2283 itself, that is the basis of ● decision?

Again, on p. 5 you refer to the 1793 prohibition against "stays" of state court proceedings, and note "how few and minor have been the exceptions granted from the flat, prohibitory language of the old Act." In the next sentence you list the three statutory exceptions as being exceptions to "the 1793 congressional policy" (emphasis mine), and then you go on to list two "judicial exceptions . . . to this long-standing policy." It seems to me that this discussion fails to make clear which of these "exceptions" are exceptions to § 2283's ban on stays of pending state court proceedings, and which are not exceptions to that statute at all (because they are simply outside the scope of the ban) but rather are exceptions only to the broader policy of not interfering even with the commencement of state suits. It is my impression that the first of your two "judicial" exceptions is now encompassed within the present statutory exception for injunctions necessary to protect the federal court's jurisdiction, and thus is not, as you describe it, an additional exception to the broad policy but merely a part of the statutory exceptions to § 2283 itself. In contrast, the second of your judicial exceptions -- the one involved in this case -- has been invoked by this Court only in cases where state proceedings have not yet been commenced. Thus, it is not an exception to § 2283 but only to the broad policy. If you agree, this, I think, should be made more clear.

Finally, I feel that the distinction between the specific prohibition of § 2283 and the broader policy is also blurred by your statement on p. 7 that your discussion on pp. 6-7 explains why federal courts normally do not issue injunctions against "proceedings already begun in state courts." (Emphasis mine.) I would have thought that the discussion on pp. 6-7 was directed to explaining the broader policy for rarely issuing injunctions even against the commencement of state suits. That is what was involved in Ex parte Young, which leads off your discussion on p. 6, and also in Fenner v. Boykin, which concludes the discussion on p. 7. I think that a change of the phrase "proceedings already begun" to something like "the commencement or continuation of proceedings" would make clear

that it is the broader policy being discussed from this point through to the end of the opinion.

Sincerely,

Potter.

Mr. Justice Black

cc: The Conference

June 8, 1970

RE: Nos. 4, 11 & 20 - Younger v. Harris
Samuels & Fernandez v. Mackell

Dear Byron:

Here it is. It is very rough so please use a drastic pencil on it.

Sincerely,

Mr. Justice White

Incomplete

I think there was just sent a Justice Stewart

SUPREME COURT OF THE UNITED STATES

Nos. 4, 11 AND 20.—OCTOBER TERM, 1969

Evelle J. Younger, Appellant, *v.* John Harris, Jr., et al.	On Appeal From the United States District Court for the Central District of California.
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[June —, 1970]

MR. JUSTICE BRENNAN, concurring in result.

The principle that constitutional defenses to a state criminal charge should ordinarily be initially tested in the state prosecution and not in the federal courts is a cornerstone of our federal system. See *Douglas* v. *Jeannette,* 319 U. S. 157 (1943); *Cameron* v. *Johnson,* 390 U. S. 611, 618 (1968); compare *Stefanelli* v. *Minard,* 342 U. S. 117 (1951), with *Rea* v. *United States,* 350 U. S. 214 (1956). In the instant cases, prosecutions for violation of the challenged state statutes were underway when the federal actions were filed, and there was no showing of exceptional circumstances that would justify a federal court in "cutting short the normal adjudication of the constitutional defenses" in the pending prosecutions. *Dombrowski* v. *Pfister,* 380 U. S. 479, 483 (1965). I therefore agree with the result in each case. However,

SUPREME COURT OF THE UNITED STATES

Nos. 4, 11 AND 20.—OCTOBER TERM, 1969

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6-15-70

SUPREME COURT OF THE UNITED STATES

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[June —, 1970]

MR. JUSTICE BRENNAN, concurring in the result but dissenting in part from the Court's opinions.

I

The controversy over the power of federal courts to declare state statutes unconstitutional and to enjoin their enforcement has roots that reach back at least to *Chisolm* v. *Georgia,* 2 Dall. 419 (1793), where in a contract action this Court held that a State could be sued by a citizen of another State. "That decision . . . created such a shock of surprise throughout the country that, at the first meeting of Congress thereafter, the Eleventh Amendment to the Constitution was almost unanimously proposed, and was in due course adopted by the legislatures of the States." *Hans* v. *Louisiana,* 134 U. S. 1, 11 (1890) (Bradley, J.). The Amendment

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6-18-70

SUPREME COURT OF THE UNITED STATES

Nos. 4, 11 AND 20.—OCTOBER TERM, 1969

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MR. JUSTICE BRENNAN, with whom MR. JUSTICE WHITE and MR. JUSTICE MARSHALL join.

In these cases a majority of the Court is agreed that a federal court should not interfere by declaratory or injunctive relief with a state proceeding between the federal court plaintiff and a State pending at the time jurisdiction attaches in federal court, except where great, immediate, and irreparable injury is threatened. The Court is unanimous that, where there is no pending state proceeding and the federal court plaintiff alleges bad faith harassment including multiple prosecutions, federal relief should be available. Beyond these propositions, however, the Court is divided. The Justices who join in this

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 12, 1970

No. 4 - Younger v. Harris

Dear Hugo,

I think John Harlan's suggestions with respect to your opinion in this case are good ones, and I assume you will give them favorable consideration. Subject to those suggestions, I shall be glad to join your opinion.

Sincerely yours,

P.S.

Mr. Justice Black

Copies to the Conference

Justice White's Comments:

(1) We ought start with the premise that Ex Parte Young, which involved federal intervention in a state case, avoided the prohibition of the Eleventh Amendment.

(2) Congress expanded Ex Parte Young when it enacted:

(a) 3-judge court requirements for judging attacks on federal or state statutes.

(b) Expanded federal question jurisdiction and

(c) Adopted the Declaratory Judgment Act

(3) That Congress intended to follow the practice of states which allowed declaratory judgments where alternative was a criminal prosecution is evidenced by the legislative history and citation of states cases such as Pearce and Ambler. He also has impression that some of the state cases cited either in the Report or the Hearings were actual cases of allowance of declaratory judgment to avoid necessity for criminal prosecution.

(4) Justice Black's opinions in effect cut back on this history and substantially preclude attack on state statutes. His opinions emphasize three factors:

(a) criminal case

(b) federalism

(c) equitable factors.

Justice White's comments, continued.

But certainly (a) and (c) would also apply to an attack on a federal statute. Can he mean also to cut back on federal courts intervening in federal prosecutions by way of declaratory judgment.

(5) In the situation of no criminal prosecution pending we ought emphasize the availability of declaratory relief whether or not attack is grounded in First Amendment considerations and make clear that that relief is available whatever the constitutional ground of attack may be.

(6) We ought forthrightly to say that whatever may be the res judicata effect of a declaratory judgment, the litigant is entitled to that judgment in a suit where no prosecution is pending.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 15, 1970

Re: Nos. 4, 11 and 20 - Younger v. Harris, etc.
No. 565 - Dyson v. Stein
No. 1149 - Byrne v. Karalexis

Dear Bill:

Please join me in the fine opinions you have filed in these cases. You have persuasively shown that in important respects the majority opinion is contrary to congressional policy and to the settled course of prior cases. Even if we were writing on a clean slate and the construction and application of the three-judge court statute and the Declaratory Judgment Act involved here were open questions, in my opinion your analysis and conclusions represent much the better view.

Sincerely,

Byron

B.R.W.

Mr. Justice Brennan

Copies to The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 18, 1970

Re: Nos. 4, 11 and 20 - Younger v. Harris; Samuels, Fernandez v. Mackell

Dear Bill:

Please join me in your concurrence.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference