The Burger Court Opinion Writing Database

Juidice v. Vail

430 U.S. 327 (1977)

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

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

CHAMBERS OF
THE CHIEF JUSTICE

February 16, 1977

Re: 75-1397 Joseph Juidice v. Harry Vail

Dear Bill:

I join your February 15 draft.

Regards,

WEB

Mr. Justice Rehnquist

cc: The Conference

T/

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 4, 1977

RE: No. 75-1397 Juidice v. Vail

Dear Bill:

I shall in due course circulate a dissent in the above. Not only does your circulation confirm, even exceed, my prophecy in dissent in Pursue that that decision was "only the first step toward extending to state civil proceedings generally the holding of Younger," but also it confirms my prediction that Pursue was "but an obvious first step toward discard of heretofore settled law that [Sec. 1983] actions may be maintained without first exhausting state judicial remedies."

You exceed my apprehensions of Younger's extension when you apply Younger to dismiss Vail's federal suit even though no threat of interference with state proceedings is present: your footnotes 8 and 15 recognize that there simply exists no pending civil proceeding involving Vail -- all state actions involving him, including the contempt proceedings, have been terminated. In any event, no trespass, as in Younger and Pursue, upon any state interest occurred when Vail decided not to litigate his federal questions in state court: that suit involved purely and simply a private lawsuit involving a private contract dispute and implicated no state interest as does a state prosecution or a proceeding brought by a state in aid of a prosecution.

As to the 1983 aspect of Vail's federal suit your proposed holding that his action is barred by his failure to present his federal claims in the terminated state litigation is directly contrary to the conclusion of seven of us (you and Harry in dissent) in No. 75-1453, Wooley v. Maynard, the New Hampshire "live free or die" case. (The Chief is writing that opinion for the Court). There seven of us rejected out-of-hand the contention of the New Hampshire Attorney General (see appellant's brief, point 1) that Younger principles should be held to bar the federal action because that state criminal defendant had failed to raise his federal

constitutional claims in state court, and instead, waited until termination of the state proceedings to file his Sec. 1983 suit. The seven of us were of the view that the situation is simply not one calling for Younger-Pursue abstention. The situation in this case is the same and calls for the same result even if the Court is prepared to extend Younger to all situations where there are ongoing state civil proceedings.

Thus, since as to Vail, we have nothing before us except a Sec. 1983 action without any parallel "proceeding of substance on the merits" pending in state court, Hicks v. Miranda, 422 U.S. 332, 349, I cannot follow how we can hold that Vail lost his opportunity to maintain his Sec. 1983 suit by his failure to litigate his federal claims in the now dead state private civil suit. Obviously, this rule cannot stem from any Younger-Pursue concerns with the integrity of ongoing state proceedings. The only conceivable federalism concern is the hypothetical insult to state judges engendered by Vail's preference to air his federal claims before federal judges, and that insult, of course, is present in any suit where litigants choose the federal forum and, accordingly, forego the "opportunity to present their federal claims in" state courts. Slip op., at 8. I can only conclude, therefore, that your proposed opinion would sub silentio overrule Monroe v. Pape and the at least dozen other decisions that hold that exhaustion of state remedies is not a prerequisite to maintenance of a Sec. 1983 suit -- or at least to overrule that holding where a state proceeding had once been brought, even if now fully terminated. I don't see, however, why the same reasoning would not bar every Sec. 1983 suit with respect to a claim also cognizable in a state court.

Perhaps you will recall the considerable debate last Term in Burrell v. McCray, No. 75-44, that openly raised the question whether an exhaustion requirement should be reintroduced as a prerequisite to maintaining a Sec. 1983 action. That case was ultimately dismissed as improvidently granted when a substantial majority of us agreed that reintroduction of such an exhaustion requirement should be left to the Congress -- a step that it obviously has shown no desire to take ever since Monroe v. Pape was announced.

Accordingly, since Vail has never sought an order interfering with a parallel ongoing state proceeding - there simply is none in his case - his posture is that of a run-of-the-mill Sec. 1983 litigant, controlled by Monroe v. Pape as to the exhaustion issue, and in no way involving the principles of Younger and Pursue. The latter cases could be relevant, if at all, solely to plaintiff Ward, for only he has prayed for any form of interference with state proceedings. See App. 32a-33a. The class suit, however, headed by Vail and McNair seeks no similar relief.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 6, 1977

RE: No. 75-1397 Juidice v. Vail

Dear Bill:

Thanks very much for your prompt response. I welcome your clarification of the gloss upon your proposed opinion, and particularly that no departure from the Monroe v. Pape non-exhaustion principle is intended. I remain unpersuaded, however, that this is a case for application of Younger principles even if they are to be extended to situations where state civil actions are pending.

This is a class action initially brought by three named plaintiffs: Vail, McNair and Ward. As your memo indicates, only Ward still faces any pending state proceeding. Consequently Younger considerations expressly pertain, if at all, solely to Ward. As to Vail, McNair, and the remainder of the class, against whom no state court action is pending, the procedural problems that you raise are far knottier, and bear no relationship to Younger.

Your memo and opinion seem to suggest two different justifications for reversing the judgment won by Vail, McNair and their class, and requiring dismissal of their complaint. On the one hand, your footnote 8 and memo suggest that the District Court failed adequately to explore the existence of a threat of future injury sufficient to satisfy Steffel v. Thompson. I take it that the proper disposition in such a case would be a remand to the District Court for consideration of this issue. Surely, we should not sua sponte find the nonexistence of Steffel injury, since this matter never was raised by either party or the lower court, and since a realistic reading of the record (e.g., Vail and McNair apparently still have not discharged their money judgments in full) suggests that appellees are likely future targets of the New York contempt law.

However, the opinion also seems to call for an outright dismissal of the complaints "for the reasons of federalism and comity enunciated in Younger, supra and Huffman, supra." p. 10. I gather that this reflects your view that "Younger standards . . . apply even though the state proceedings have terminated" as to Vail, footnote 15, since a constitutional attack on the state statutes was not made in the earlier purely private state court lawsuit. Here, of course, is where we part company, for while clothed in the garb of Younger, what in actuality you propose is more accurately the reintroduction of the section 1983 exhaustion requirement that you have said you do not intend.

I don't think the Huffman footnote 21 answers this argument. In Huffman it might be said that the federal action directly frustrated state proceedings in two respects: (1) The state appellate remedy was still available when the federal action was filed, and the parties, therefore, sought "preappeal interference with a state judicial proceeding." 420 U.S., at 610-611; (2) The district court enjoined enforcement of a portion of the state court judgment entered in the prior action. Id., at 599. By contrast, Vail and McNair did not sidestep but rather properly brought about the termination of the outstanding state proceedings by paying their fines. They were then as free to bring their section 1983 action as might any civil rights litigant. And the relief provided by the federal court was in no way addressed to or an interference with the judgments entered in any of the prior state proceedings. The relief simply declared the challenged statutes unconstitutional and enjoined their application. This is the traditional, run-of-the-mill outcome of such a section 1983 suit and is why I remain convinced that this case is indistinguishable from our pending disposition in Wooley v. Maynard.

I wonder if the way out of this confused mess isn't to follow Potter's suggestion that we remand for Pullman v. England abstention. The state Attorney General tells us in his brief and repeated at oral argument that the Dutchess County courts treat this statutory scheme differently from the rest of the state. Some apparently offer the debtor a due process hearing before sending him to the pokey. Appellant's brief at 19-20 and asterisk. It's more than possible that a requirement that the concerned public interests groups bring an action in state court to construe these statutes would result in the disappearance of any federal constitutional issue.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: 2/10/77

Recirculated: _____

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–1397

Joseph Juidice, etc., et al., Appellants, *v.* Harry Vail, Jr., et al.	On Appeal from the United States District Court for the Southern District of New York.

[February —, 1977]

MR. JUSTICE BRENNAN, dissenting.

I dissent. I leave to a footnote [1] my reasons for disagreement with the Court's holding that only appellees Ward and Rabasco, and not also appellee Vail and similarly situated appellees, had Art. III "standing" to maintain this § 1983 action.

My dissent in *Huffman* v. *Pursue, Ltd.*, 420 U. S. 592, 613–618 (1975), details the grounds for my disagreement with the Court's extension of *Younger* principles to *any* state civil proceedings, including the form they take in *Huffman* and the instant case, and no purpose would be served in restating those reasons here. I repeat, however, my strong disagreement with the process begun in *Huffman*, carried to the extreme in last Term's *Paul* v. *Davis*, — U. S. — (1976), and furthered today, of stripping all meaningful con-

[1] The obvious error in the Court's holding *sua sponte, ante*, p. 4 n. 8, "That the District Court erred in reaching the merits" is that it overlooks the fact that Vail and the appellees in his position sought money damages as well as equitable relief in their § 1983 suit. The Court thus clearly errs in framing the standing issue as "a matter of the case-or-controversy requirement associated with Art. III to seek injunctive relief in the District Court." *Ibid.* Whatever "standing" Vail and similarly situated appellees have to seek equitable relief in the absence of a showing of sufficiently imminent harm, their prayer for damages in their § 1983 complaint precludes the holding of a denial of Art. III "standing."

where is folder on this one?

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: _____

Recirculated: 3/17/77

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1397

Joseph Juidice, etc., et al., Appellants, v. Harry Vail, Jr., et al. | On Appeal from the United States District Court for the Southern District of New York.

[February —, 1977]

MR. JUSTICE BRENNAN, dissenting.

I dissent. My earlier dissent in *Huffman* v. *Pursue, Ltd.*, 420 U. S. 592, 613–618 (1975), details the grounds for my disagreement with the Court's extension of *Younger* principles to *any* state civil proceedings, including the form they take in *Huffman* and the instant case, and no purpose would be served in restating those reasons here. I repeat, however, my strong disagreement with the process begun in *Huffman*, carried to the extreme in last Term's *Paul* v. *Davis*, — U. S. — (1976), and furthered today, of stripping all meaningful content from 42 U. S. C. § 1983. For, as I have said before, "Even if the extension of *Younger* and *Harris* to pending state civil proceedings can be appropriate in any case . . . it is plainly improper in the case of an action by a federal plaintiff, as in this case, grounded upon 42 U. S. C. § 1983," 420 U. S., at 616. Congress created this cause of action over a century ago, and at the same time expressly charged the federal judicial system with responsibility for the vindication and enforcement of federal rights under it against unconstitutional action under color of state law "whether that action be executive, legislative or *judicial*," *Mitchum* v. *Foster*, 407 U. S. 225, 240 (1972) (emphasis in original). In congressional contemplation, the pendency of state civil proceedings was to be wholly irrelevant. "The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal

1, 3, 5
stylistic
changes

Justice Stewart
Justice White
Justice Marshall

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–1397

Joseph Juidice, etc., et al., Appellants, v. Harry Vail, Jr., et al.	On Appeal from the United States District Court for the Southern District of New York.

3/21/77

[February —, 1977]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL joins, dissenting.

I dissent. My earlier dissent in *Huffman* v. *Pursue, Ltd.*, 420 U. S. 592, 613–618 (1975), details the grounds for my disagreement with the Court's extension of *Younger* principles to *any* state civil proceedings, including the form they take in *Huffman* and the instant case, and no purpose would be served in restating those reasons here. I repeat, however, my strong disagreement with the process begun in *Huffman,* carried to the extreme in last Term's *Paul* v. *Davis,* — U. S. — (1976), and furthered today, of stripping all meaningful content from 42 U. S. C. § 1983. For, as I have said before, "Even if the extension of *Younger* and *Harris* to pending state civil proceedings can be appropriate in any case . . . it is plainly improper in the case of an action by a federal plaintiff, as in this case, grounded upon 42 U. S. C. § 1983," 420 U. S., at 616. Congress created this cause of action over a century ago, and at the same time expressly charged the federal judicial system with responsibility for the vindication and enforcement of federal rights under it against unconstitutional action under color of state law "whether that action be executive, legislative or *judicial*," *Mitchum* v. *Foster,* 407 U. S. 225, 240 (1972) (emphasis in original). In congressional contemplation, the pendency of state civil proceedings was to be wholly irrelevant. "The very purpose of § 1983 was to interpose the federal courts between the States

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 4, 1977

Re: No. 75-1397, Juidice v. Vail

Dear Bill,

I cannot join your proposed opinion extending the Younger doctrine to this case. While I tentatively think the District Court should have abstained, I think it should have done so to permit an authoritative construction by the state courts of the statutes involved. In short, my tentative view is that this is a case calling for conventional Pullman-England type abstention, in view of the representation that the lower courts in different New York counties have applied the statutes in differing ways.

It is quite possible that I did not make my views very clear at the time of our Conference discussion. If so, I am sorry.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

1st DRAFT

From: Mr. Justice Stewart

Circulated: FEB 16 1977

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 75–1397

Joseph Juidice, etc., et al., Appellants, *v.* Harry Vail, Jr., et al. | On Appeal from the United States District Court for the Southern District of New York.

[February —, 1977]

MR. JUSTICE STEWART, dissenting.

The District Court found New York's statutorily specified civil contempt procedures constitutionally inadequate. It reached that conclusion without the benefit of a state court construction of the statute's procedural requirements; without consideration of whether the procedural infirmities found were limited to the class of subpoenaed civil debtors who originally filed suit; without, indeed, a determination as to whether the challenged procedures accurately reflect statewide New York practice, or were instead confined to Dutchess County.* Constitutional adjudication in the face of such legal and factual imponderables is foolhardy: the subject matter of the suit is unclear, and the very need for constitutional adjudication is uncertain.

When a federal district court confronts such uncertainty in state law, its proper course is to abstain from final resolution of the federal issues until the state courts have been accorded an opportunity authoritatively to interpret the state statutory scheme being challenged. *Railroad Comm'n* v. *Pullman Co.*, 312 U. S. 496. The state court construction may obviate or significantly modify the federal questions seemingly presented, thus avoiding "unnecessary friction in federal-state relations, interference with important state functions, tenta-

*The record suggests that the courts of New York City may apply the statutes in question in quite a different manner.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 18, 1977

Re: No. 75-1397 - Juidice v. Vail

Dear Bill:

Please join me.

Sincerely,

Byron

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 10, 1977

Re: No. 75-1397, Juidice v. Vail

Dear Bill:

Please join me in your dissent.

Sincerely,

T. M.

Mr. Justice Brennan

cc: The Conference

February 7, 1977

Re: No. 75-1397 - Juidice v. Vail

Dear Bill:

I am close to being able to join your recirculation. I wonder, however, if it would be possible to add a note of clarification.

I believe that two of the plaintiffs without standing to seek injunctive relief (Vail and McNair) also sought damages. This damage claim raises the complex issue whether abstention is required in a situation where Monroe v. Pape would indicate that there need not be exhaustion. But the only appellants here are the state court judges. The District Court held explicitly that the judges were immune from damage liability. Jurisdictional Statement 14a n. 3. Your draft, p. 10, affirms the finding that the appellant judges did not act in bad faith. Thus, their immunity from damages is easily affirmed. I would then suspect that the opinion could state that the issue of abstention in the context of Vail's and McNair's claims for damages against the creditors is not before us.

2/15 draft complies

If something along this line could be set forth in your opinion, perhaps by way of footnote, I would be happier.

Sincerely,

HAB

Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 17, 1977

Re: No. 75-1397 - Juidice v. Vail

Dear Bill:

Please join me in your recirculation of February 15.

Sincerely,

HAB

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 27, 1977

No. 75-1397 Judice v. Vail

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

IV

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice [illegible]

Circulated: DEC 30 1976

Recirc[illegible]

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1397

Joseph Juidice, etc., et al., Appellants, *v.* Harry Vail, Jr., et al.	On Appeal from the United States District Court for the Southern District of New York.

[January —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellee Harry Vail, Jr., is a judgment debtor who was held in contempt of court by the County Court of Dutchess County, N. Y., and who thereafter sought to have the statutory provisions authorizing contempts declared unconstitutional in an action brought under 42 U. S. C. § 1983 in the United States District Court for the Southern District of New York. The state court proceedings against Vail are in most respects representative of those against the other named appellees as well.[1]

Vail defaulted on a credit arrangement with the Public Loan Company, and in January 1974, a default judgment for $534.36 was entered against him in the City Court of Poughkeepsie, N. Y. Three months later, when the judgment remained unpaid, Vail was served with a subpoena requiring him to attend a deposition so as to give information relevant to the satisfaction of the judgment.[2] The subpoena required him to appear at the office of the creditor's attorney

[1] There originally were three named plaintiffs. Subsequent to the bringing of this suit, five additional named plaintiffs were added.

[2] The issuance of the subpoena is authorized by New York's Civil Practice Law and Rules (CPLR) §§ 5223 and 5224. These subpoenas are issued by the creditor's attorney, acting, however, as an officer of the court, cf. CPLR § 2308 (a).

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 4, 1977

Re: No. 75-1397 - Juidice v. Vail

Dear Bill:

Since your letter of January 4th outlines the shape your dissent will take in this case, I will take this opportunity to sketch my response to a couple of the points which you make in your letter.

As footnote 8 of the draft opinion points out, if Vail were the only plaintiff in this lawsuit, there would be the most serious question as to whether he had any standing to raise the questions which the District Court decided. I fully agree with you that as to him the state proceedings are over. But I do not believe this calls for the result which your letter indicates. The state proceedings were likewise over in Huffman, but we reasoned there that the Younger doctrine would be quite empty if a state court defendant could simply let judgment be taken against him at the first level of a state court system, and then transfer all of his contentions to a lawsuit which he initiated in federal court. I think your suggestion that the draft opinion here, or Pursue, are steps towards discarding the rule that actions under § 1983 may be maintained without first exhausting state judicial remedies is properly answered in footnote 21 of Pursue:

> "But requiring exhaustion of state appellate remedies for the purposes of applying Younger, we in no way undermine Monroe v. Pape, 365 U.S. 167 (1961). There we held that one seeking redress under 42 U.S.C. § 1983 for a deprivation of federal rights need not first initiate state proceedings based on related state causes of action. 365 U.S., at 183. Monroe v. Pape had nothing to do with the problem presently before us, that of the deference to be accorded state proceedings which have already been initiated and which afford a competent tribunal for the resolution of federal issues.
>
> "Our exhaustion requirement is likewise not inconsistent with such cases as City Bank Farmers Trust Co. v. Schnader, 291 U.S. 24 (1934), and Bacon v. Rutland R. Co., 232 U.S. 134 (1914), which expressed the doctrine that a federal equity plaintiff challenging state administrative action need not have exhausted his state judicial remedies. Those cases did not deal with situations in which the state judicial process had been initiated." 420 U.S., at 609 (1974).

I do think that Vail would probably have a difficult time showing standing to maintain this federal litigation with respect to this injunctive request because the state court proceedings have been terminated in their entirety as to him, and he alleged no further threat of similar proceedings. I have tried to point this out in footnote 8 of the draft opinion, in which I also indicate that Ward, one of the other named plaintiffs, faced immediate incarceration as a result of a similar contempt order

issued against him, and therefore he undoubtedly had standing. But with respect to this named plaintiff, intervention by the federal courts at this stage of the proceeding would interfere with the normal completion of the state judicial proceedings. The injunction issued by the District Court holding the statutes under which the plaintiffs were sentenced to be unconstitutional would surely prevent him from having to serve the contempt term imposed by the state courts.

It is in this respect that I think the case is significantly different from Wooley v. Maynard, to which you analogize it. While Harry and I disagreed with the remaining seven of our colleagues on the merits of the claim that the inscription "Live Free or Die" violated the respondents' constitutional rights, I don't think we disagreed on the Younger point. I at any rate felt that Maynard's prior convictions and the continuing requirement that he display the license plate were adequate assurance of a case in controversy under Ellis and Steffel, and that there was no violation of Younger because Maynard sought no relief whatever against the prior convictions. He sought only to enjoin the application of the statute to his future conduct, and unless he was to abandon his religious beliefs that conduct was bound to bring him into collision with the New Hampshire license plate requirement.

In the instant case, however, respondents as a class are simply judgment debtors who allege that they have been subjected to the New York supplemental proceedings and contempt requirements. I do not read the District Court's opinion to find, or the respondents' complaint to allege, that there is the sort of immediate likelihood of additional proceedings against them on other debts that would give them standing to challenge the New York statutes independently

of the proceedings to which they have already been subjected. All except Ward have been released from incarceration, and in the absence of such allegation and finding they lack such standing. (In Huffman v. Pursue, of course, the federal plaintiff's theater had been closed by order of the state court, and it would have benefited from the federal injunctive relief it sought.) The only one of the plaintiffs here with a live controversy in this respect is Ward, the one who has not yet served his time in jail. Federal court relief as to him would, to my mind, and I think under the doctrines enunciated in Younger and Pursue, constitute unwarranted interference with ongoing state proceedings in his case.

Your comments and my response lead me to think that either in footnote 8 or in the text I should amplify the difference between Vail and Ward, and I will probably do so in a second draft.

Sincerely,

WEW

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 6, 1977

Re: No. 75-1397 - Juidice v. Vail

Dear Bill:

Your second letter dated January 6th about the draft opinion in this case seems to me to leave the matter pretty much "issue joined", with two exceptions: (1) I do plan to revise the first draft to flesh out the question of standing in more detail; (2) the Pullman abstention point which Potter favors, and which you now endorse in your second letter.

My difficulty with the Pullman abstention rationale is not simply that it is different from the Younger-Huffman disposition, but that it is inconsistent with it. I am sure that this does not bother you, since you dissented in Huffman, and perhaps Potter feels the same way. But to those of us who are of the view that Younger-Huffman principles extend to a case challenging state contempt procedures as this one does, I think the proposal made by you and Potter would present some difficulty.

As I understand Pullman abstention, as most recently expounded in Thurgood's Harris County Commissioners Court v. Moore, 420 U.S. 77 (1975), it is premised on the idea

that the federal court not only has jurisdiction in the technical sense of the word, but that it is and remains the forum of choice for deciding the federal constitutional question involved. I think this is reflected by the concluding sentence in Harris County:

> "The dismissal should be without prejudice so that any remaining federal claim may be raised in a federal forum after the Texas courts have been given the opportunity to address the state-law questions in this case." 420 U.S. 77, 88-89 (1974).

Younger-Huffman principles, on the other hand, as I understand them, mandate dismissal of the action by the federal court because of its potential for interference with previously commenced state proceedings. My draft opinion, and the opinions in Younger and Huffman, on the one hand, and your first letter and your dissent in Huffman, on the other hand, have argued this proposition back and forth, and I see no point in elaborating it here. My only point is that were we to decide that the District Court should have abstained on the authority of Pullman, we would necessarily be deciding that after the New York courts had decided any question of state law, the federal plaintiffs could return to federal court and have their federal constitutional claims adjudicated. Such a result would be quite inconsistent with the position taken in the draft opinion that I have circulated, in which on the authority of Younger and Huffman I have said that the federal plaintiffs should have made their federal constitutional claims in the state forums which were made available to them for that purpose by the state of New York.

Sincerely,

Mr. Justice Brennan
Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr.

P. 1-11

2nd DRAFT

JAN 7 1977

SUPREME COURT OF THE UNITED STATES

No. 75-1397

Joseph Juidice, etc., et al., Appellants, v. Harry Vail, Jr., et al.	On Appeal from the United States District Court for the Southern District of New York.

[January —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellee Harry Vail, Jr., is a judgment debtor who was held in contempt of court by the County Court of Dutchess County, N. Y., and who thereafter sought to have the statutory provisions authorizing contempts enjoined as unconstitutional in an action brought under 42 U. S. C. § 1983 in the United States District Court for the Southern District of New York. The state court proceedings against Vail were found by the District Court to be in most respects representative of those against the other named appellees as well.[1]

Vail defaulted on a credit arrangement with the Public Loan Company, and in January 1974, a default judgment for $534.36 was entered against him in the City Court of Poughkeepsie, N. Y. Three months later, when the judgment remained unpaid, Vail was served with a subpoena requiring him to attend a deposition so as to give information relevant to the satisfaction of the judgment.[2] The subpoena

[1] There originally were three named plaintiffs. Subsequent to the bringing of this suit, five additional named plaintiffs were added. We conclude, *post*, at —, that not all of the named plaintiffs had the requisite standing to seek the relief sought.

[2] The issuance of the subpoena is authorized by New York's Civil Practice Law and Rules (CPLR) §§ 5223 and 5224. These subpoenas are issued by the creditor's attorney, acting, however, as an officer of the court, cf. CPLR § 2308 (a).

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: FEB 15 '77

P. 4, 11

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1397

Joseph Juidice, etc., et al., Appellants, *v.* Harry Vail, Jr., et al.	On Appeal from the United States District Court for the Southern District of New York.

[February —, 1977]

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Appellee Harry Vail, Jr., is a judgment debtor who was held in contempt of court by the County Court of Dutchess County, N. Y., and who thereafter sought to have the statutory provisions authorizing contempts enjoined as unconstitutional in an action brought under 42 U. S. C. § 1983 in the United States District Court for the Southern District of New York. The state court proceedings against Vail were found by the District Court to be in most respects representative of those against the other named appellees as well.[1]

Vail defaulted on a credit arrangement with the Public Loan Company, and in January 1974, a default judgment for $534.36 was entered against him in the City Court of Poughkeepsie, N. Y. Three months later, when the judgment remained unpaid, Vail was served with a subpoena requiring him to attend a deposition so as to give information relevant to the satisfaction of the judgment.[2] The subpoena

[1] There originally were three named plaintiffs. Subsequent to the bringing of this suit, five additional named plaintiffs were added. We conclude, *post*, at 4–6, that not all of the named plaintiffs had the requisite standing to seek the relief sought.

[2] The issuance of the subpoena is authorized by New York's Civil Practice Law and Rules (CPLR) §§ 5223 and 5224. These subpoenas are issued by the creditor's attorney, acting, however, as an officer of the court, cf. CPLR § 2308 (a).

HAB

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

SG

March 30, 1977

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 75-1397 - Juidice v. Vail

Maher v. Doe, No. 76-878, is a case which has been here before. It involves § 52-440b of the Connecticut General Statutes, pursuant to which the mother of an illegitimate child is obligated, on penalty of contempt, to disclose the name of the biological father and to prosecute a paternity action. Appellees filed suit challenging the Connecticut statute as in conflict with the Aid to Families with Dependent Children (AFDC) act, as well as on constitutional grounds. The three-judge district court dismissed the suit, we took the case, and, after hearing oral argument, remanded

> "for further consideration in light of Pub. L. 93-647, and, if a relevant state criminal proceeding is pending, also for further consideration in light of Younger v. Harris, 401 U.S. 37, and Huffman v. Pursue, Ltd., 420 U.S. 592 (1975)." 422 U.S. 391, 393.

On remand, the district court subdivided the class. One class consisted of those persons against whom contempt actions were pending. The other class, based on one intervening plaintiff who had alleged the threat of a prosecution, consisted of those persons against whom actions were not pending. The district court found that the Younger doctrine did not apply because (1) the contempt proceedings were not criminal; and (2) the federal courts had special expertise in interpreting federal statutes in supremacy clause issues. As an "independent ground," the district court determined that the state courts did not

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 27, 1977

Re: 75-1397 - Juidice v. Vail

Dear Bill:

Having re-read your revised circulation, I now expect to join. However, I have sufficient concern about its possible effect in the Illinois attachment case--in which I do not think abstention should apply--that I believe it would be prudent for me to await Bill Brennan's dissent before actually joining.

Respectfully,

John

Mr. Justice Rehnquist

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: 3/15/77

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–1397

Joseph Juidice, etc., et al., Appellants, *v.* Harry Vail, Jr., et al. | On Appeal from the United States District Court for the Southern District of New York.

[March —, 1977]

MR. JUSTICE STEVENS, concurring in the judgment.

The major premise underlying the Court's holding in *Younger* v. *Harris* is that a court of equity should not act when the moving party has an adequate remedy at law.[1] Consistently with *Younger*, a court of equity may have a duty to act if the alternative legal remedy is inadequate. Indeed, the major premise underlying the Court's holding in *Mitchum* v. *Foster* is a recognition of the unfortunate fact that State proceedings are sometimes inadequate to vindicate federal rights.[2]

[1] "The precise reasons for this longstanding public policy against federal court interference with state court proceedings have 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." *Younger* v. *Harris*, 401 U. S. 37, 43–44.

[2] "Those who opposed the Act of 1871 [the forerunner of 42 U. S. C. § 1983] clearly recognized that the proponents were extending federal power in an attempt to remedy the state courts' failure to secure federal rights. The debate was not about whether the predecessor of § 1983 extended to actions of state courts, but whether this innovation was necessary or desirable.

"This legislative history makes evident that Congress clearly conceived that it was altering the relationship between the States and the Nation with respect to the protection of federally created rights; it was concerned that state instrumentalities could not protect those rights; it realized that

p.2

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: _____

3rd DRAFT

Recirculated: MAR 18 1977

SUPREME COURT OF THE UNITED STATES

No. 75-1397

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