The Burger Court Opinion Writing Database

Trainor v. Hernandez

431 U.S. 434 (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

April 28, 1977

Re: 75-1407 Trainor v. Hernandez

Dear Byron:

I join.

Regards,

WEB

Mr. Justice White

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: 4/4/77

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1407

James Trainor, etc., et al., Appellants, *v.* Juan Hernandez et al., etc. | On Appeal from the United States District Court for the Northern District of Illinois.

[April —, 1977]

MR. JUSTICE BRENNAN, dissenting.

The Court continues on, to me, the wholly improper course of extending *Younger* principles to deny a federal forum to plaintiffs invoking 42 U. S. C. § 1983 for the decision of meritorious federal constitutional claims when a *civil* action that might entertain such claims is pending in a state court. Because I am of the view that the decision patently disregards Congress' purpose in enacting § 1983—to open federal courts to the decision of such claims without regard to the pendancy of such state civil actions—and because the decision indefensibly departs from prior decisions of this Court, I respectfully dissent.

I

An attachment proceeding against appellees' credit union savings was instituted by the Illinois Department of Public Aid (IDPA) under the Illinois Attachment Act simultaneously with the filing of a civil lawsuit in state court for the recovery of public welfare funds allegedly fraudulently obtained. The attachment was initiated when IDPA filled in the blanks on a standard-form "Affidavit for Attachment" stating

> "That the defendants *Juan and Maria Hernandez* within two years preceding the filing of this affidavit fraudulently concealed or disposed of property so as to hinder or delay *their* creditors." (Italic indicates matter inserted

STYLISTIC CHANGES

and 4, 6, 8, 10

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: 5/20/77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–1407

James Trainor, etc., et al., Appellants, *v.* Juan Hernandez et al., etc. } On Appeal from the United States District Court for the Northern District of Illinois.

[April —, 1977]

MR. JUSTICE BRENNAN, dissenting.

The Court continues on, to me, the wholly improper course of extending *Younger* principles to deny a federal forum to plaintiffs invoking 42 U. S. C. § 1983 for the decision of meritorious federal constitutional claims when a *civil* action that might entertain such claims is pending in a state court. Because I am of the view that the decision patently disregards Congress' purpose in enacting § 1983—to open federal courts to the decision of such claims without regard to the pendancy of such state civil actions—and because the decision indefensibly departs from prior decisions of this Court, I respectfully dissent.

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An attachment proceeding against appellees' credit union savings was instituted by the Illinois Department of Public Aid (IDPA) under the Illinois Attachment Act simultaneously with the filing of a civil lawsuit in state court for the recovery of public welfare funds allegedly fraudulently obtained. The attachment was initiated when IDPA filled in the blanks on a standard-form "Affidavit for Attachment" stating

> "That the defendants *Juan and Maria Hernandez* within two years preceding the filing of this affidavit fraudulently concealed or disposed of property so as to hinder or delay *their* creditors." (Italic indicates matter inserted

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 4, 1977

No. 75-1407 - Trainor v. Hernandez

Dear Byron,

I should appreciate your adding the following at the foot of your opinion for the Court in this case:

"MR. JUSTICE STEWART substantially agrees with the views expressed in the dissenting opinion of MR. JUSTICE BRENNAN. Accordingly, he respectfully dissents from the opinion and judgment of the Court."

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 15, 1977

Re: 75-1407, Trainor v. Hernandez

Dear Byron,

I should appreciate your modifying the statement at the foot of your opinion so as to read as follows:

"MR. JUSTICE STEWART substantially agrees with the views expressed in the dissenting opinions of MR. JUSTICE BRENNAN and MR. JUSTICE STEVENS. Accordingly, he respectfully dissents from the opinion and judgment of the Court."

Sincerely yours,

P.S.
J.

Mr. Justice White

Copies to the Conference

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

1st DRAFT

From: Mr. Justice White

SUPREME COURT OF THE UNITED STATES

Circulated: 3-16-77

Recirculated: _____

No. 75–1407

James Trainor, etc., et al., Appellants, *v.* Juan Hernandez et al., etc. } On Appeal from the United States District Court for the Northern District of Illinois.

[March —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

The Illinois Department of Public Aid (IDPA) filed a lawsuit in the Circuit Court of Cook County, Ill., on October 30, 1974, against appellees Juan and Maria Hernandez (the appellees) alleging that they had fraudulently concealed assets while applying for and receiving public assistance. Such conduct is a crime under Illinois law, Ill. Rev. Stat. 1973 c. 23, § 11–21. The IDPA, however, proceeded civilly and sought only return of the money alleged to have been wrongfully received. The IDPA simultaneously instituted attachment proceedings against appellees' property. Pursuant to the Illinois Attachment Act, Illinois Revised Statutes, c. 11, 1973 (the Act), the IDPA filed an affidavit setting forth the nature and amount of the underlying claim and alleging that the appellees had obtained money from the IDPA by fraud.[1]

[1] Under the Illinois Attachement Act § 1, a writ will issue only upon allegation in the affidavit of one of the following nine grounds:

"First: Where the debtor is not a resident of this State.

"Second: When the debtor conceals himself or stands in defiance of an officer, so that process cannot be served upon him.

"Third: Where the debtor has departed from this State with the intention of having his effects removed from this State.

"Fifth: Where the debtor is about to remove his property from this State to the injury of such creditor.

"Sixth: Where the debtor has within 2 years preceding the filing of the

B.15

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

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

From: Mr. Justice White

Circulated: _____

Recirculated: 4-5-77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–1407

James Trainor, etc., et al., Appellants, *v.* Juan Hernandez et al., etc. } On Appeal from the United States District Court for the Northern District of Illinois.

[March —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

The Illinois Department of Public Aid (IDPA) filed a lawsuit in the Circuit Court of Cook County, Ill., on October 30, 1974, against appellees Juan and Maria Hernandez (the appellees) alleging that they had fraudulently concealed assets while applying for and receiving public assistance. Such conduct is a crime under Illinois law, Ill. Rev. Stat. 1973 c. 23, § 11–21. The IDPA, however, proceeded civilly and sought only return of the money alleged to have been wrongfully received. The IDPA simultaneously instituted attachment proceedings against appellees' property. Pursuant to the Illinois Attachment Act, Illinois Revised Statutes, c. 11, 1973 (the Act), the IDPA filed an affidavit setting forth the nature and amount of the underlying claim and alleging that the appellees had obtained money from the IDPA by fraud.[1]

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"Fifth: Where the debtor is about to remove his property from this State to the injury of such creditor.

"Sixth: Where the debtor has within 2 years preceding the filing of the

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 15, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 75-1407 - Trainor v. Hernandez

John Stevens' circulation of yesterday in this case strongly argues that Younger v. Harris should not apply here because the pending Illinois proceedings do not provide appellees, the federal plaintiffs, with an adequate forum in which to press their federal procedural due process challenge to the Illinois attachment statute. In this respect he differs toto caelo (as Hugo Black would not say) with the representations of the Illinois Attorney General as to the state of the Illinois law. Without the help of the District Court, it is very likely the better part of discretion not to choose up sides between these two authorities on an issue so heavily laden with local law and that I should revise the current circulation accordingly.

The District Court did not address the question whether the federal plaintiff could air his due process claims in the pending state litigation and did not place its rejection of Younger on this relatively narrow ground, which for all practical purposes would have been impervious to review here and which is a very different question from whether the attachment statute meets federal due process standards. Instead, the District Court held Younger inapplicable on two broader grounds more important to the state of the law: first, because the pending litigation was civil and it was not enough that the State happened to be a party and was seeking to enforce its laws in what "arguably" was a quasi-criminal proceeding; second, because in its view the Illinois attachment statute was so clearly unconstitutional that it fell within the Younger exception. The Conference vote was to overturn both of these holdings. The current circulation (although it apparently will not be a court opinion) does so and in this respect I take it Harry agrees in the result. There is no necessity to go further.

B.R.W.

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 3, 6-13

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

From: Mr. Justice White

Circulated: _____

Recirculated: 4-19-77

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1407

James Trainor, etc., et al., Appellants, v. Juan Hernandez et al., etc. | On Appeal from the United States District Court for the Northern District of Illinois.

[March —, 1977]

MR. JUSTICE WHITE announced the judgment of the Court and filed an opinion in which MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST joined.

The Illinois Department of Public Aid (IDPA) filed a lawsuit in the Circuit Court of Cook County, Ill., on October 30, 1974, against appellees Juan and Maria Hernandez alleging that they had fraudulently concealed assets while applying for and receiving public assistance. Such conduct is a crime under Illinois law, Ill. Rev. Stat. 1973 c. 23, § 11-21. The IDPA, however, proceeded civilly and sought only return of the money alleged to have been wrongfully received. The IDPA simultaneously instituted attachment proceedings against appellees' property. Pursuant to the Illinois Attachment Act, Illinois Revised Statutes, c. 11, 1973 (the Act), the IDPA filed an affidavit setting forth the nature and amount of the underlying claim and alleging that the appellees had obtained money from the IDPA by fraud.[1]

[1] Under § 1 of the Act, a writ will issue only upon allegation in the affidavit of one of the following nine grounds:

"First: Where the debtor is not a resident of this State.

"Second: When the debtor conceals himself or stands in defiance of an officer, so that process cannot be served upon him.

"Third: Where the debtor has departed from this State with the intention of having his effects removed from this State.

[*Footnote 1 is continued on p. 2*]

op. 1, 2, 13

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

From: Mr. Justice White

Circulated: _____

Recirculated: 4-25-77

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1407

James Trainor, etc., et al., Appellants, *v.* Juan Hernandez et al., etc. | On Appeal from the United States District Court for the Northern District of Illinois.

[March —, 1977]

MR. JUSTICE WHITE announced the judgment of the Court and filed an opinion in which MR. JUSTICE BLACKMUN, MR. JUSTICE POWELL, and MR. JUSTICE REHNQUIST joined.

The Illinois Department of Public Aid (IDPA) filed a lawsuit in the Circuit Court of Cook County, Ill., on October 30, 1974, against appellees Juan and Maria Hernandez, alleging that they had fraudulently concealed assets while applying for and receiving public assistance. Such conduct is a crime under Illinois law, Ill. Rev. Stat. 1973 c. 23, § 11-21. The IDPA, however, proceeded civilly and sought only return of the money alleged to have been wrongfully received. The IDPA simultaneously instituted attachment proceedings against appellees' property. Pursuant to the Illinois Attachment Act, Illinois Revised Statutes, c. 11, 1973 (the Act), the IDPA filed an affidavit setting forth the nature and amount of the underlying claim and alleging that the appellees had obtained money from the IDPA by fraud.[1]

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[*Footnote 1 is continued on p. 2*]

— ✓

OP. 1, 12

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

From: Mr. Justice White

Circulated: _____

Recirculated: 5-6-77

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–1407

James Trainor, etc., et al., Appellants, *v.* Juan Hernandez et al., etc. } On Appeal from the United States District Court for the Northern District of Illinois.

[March —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

The Illinois Department of Public Aid (IDPA) filed a lawsuit in the Circuit Court of Cook County, Ill., on October 30, 1974, against appellees Juan and Maria Hernandez, alleging that they had fraudulently concealed assets while applying for and receiving public assistance. Such conduct is a crime under Illinois law, Ill. Rev. Stat. 1973 c. 23, § 11–21. The IDPA, however, proceeded civilly and sought only return of the money alleged to have been wrongfully received. The IDPA simultaneously instituted attachment proceedings against appellees' property. Pursuant to the Illinois Attachment Act, Illinois Revised Statutes, c. 11, 1973 (the Act), the IDPA filed an affidavit setting forth the nature and amount of the underlying claim and alleging that the appellees had obtained money from the IDPA by fraud.[1]

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"Third: Where the debtor has departed from this State with the intention of having his effects removed from this State.

"Fifth: Where the debtor is about to remove his property from this State to the injury of such creditor.

[*Footnote 1 is continued on p. 2*]

pp 5, 9, 10

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

From: Mr. Justice White

Circulated: _____

Recirculated: 5-19-77

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–1407

James Trainor, etc., et al., Appellants, *v.* Juan Hernandez et al., etc. } On Appeal from the United States District Court for the Northern District of Illinois.

[March —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

The Illinois Department of Public Aid (IDPA) filed a lawsuit in the Circuit Court of Cook County, Ill., on October 30, 1974, against appellees Juan and Maria Hernandez, alleging that they had fraudulently concealed assets while applying for and receiving public assistance. Such conduct is a crime under Illinois law, Ill. Rev. Stat. 1973 c. 23, § 11–21. The IDPA, however, proceeded civilly and sought only return of the money alleged to have been wrongfully received. The IDPA simultaneously instituted attachment proceedings against appellees' property. Pursuant to the Illinois Attachment Act, Illinois Revised Statutes, c. 11, 1973 (the Act), the IDPA filed an affidavit setting forth the nature and amount of the underlying claim and alleging that the appellees had obtained money from the IDPA by fraud.[1]

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"Fifth: Where the debtor is about to remove his property from this State to the injury of such creditor.

[*Footnote 1 is continued on p. 2*]

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 1, 1977

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 75-1407 — Trainor v. Hernandez, No. 76-675, Sendak v. Nihiser*

Sendak v. Nihiser is an appeal from a three-judge District Court for the N.D. of Indiana. Appellant sued in state court to declare appellee's Drive-In Theater a nuisance pursuant to an Indiana statute that defines "nuisance" as "any place . . . in or upon which lewd, indecent, lascivious, or obscene films . . . are . . . shown. . . ." Appellee filed an action in federal court to enjoin enforcement of the statute against him, claiming that the statute violated the First Amendment on its face and as applied. The District Court enjoined enforcement of the statute because it did not meet the requirement of specificity set out in Miller v. California, 413 U.S. 15, 24 (1973), noting that the state supreme court had held that virtually the same language in the state criminal obscenity statute failed to meet the Miller specificity requirement and that the criminal statute was therefore unconstitutional.

This Court vacated and remanded for consideration in light of Huffman v. Pursue, 420 U.S. 592 (1975). On remand the District Court found the statute within the Younger-Huffman exception permitting injunctions against pending state proceedings brought under statutes that are "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." Id., at 611. The District Court reemphasized that the definition of obscene films as "lewd, indecent, lascivious" clearly flunked the Miller test and that the state supreme court had held to this effect with respect to the analogous criminal statute.

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*/ Monroe County Probate Court v. Weldon, No. 76-211, held for Trainor and Juidice, No. 75-1397, will be on the June 9 Conference List.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 7, 1977

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 75-1407, Trainor v. Hernandez:
Monroe County Probate Court v. Weldon, No. 76-211

In a neglect proceeding brought by a deputy sheriff in county probate court, respondent's parental rights were terminated and her child adjudicated a neglected child and put in the custody of foster parents, who filed for adoption. After the time for appeal had lapsed, respondent brought a § 1983 action in federal court alleging violations of procedural due process rights in the neglect proceeding and seeking injunctive relief and damages. The District Court refused to order return of the child to respondent, because such relief was in the nature of a habeas claim for which state remedies had not been exhausted; but the District Court did issue a declaratory judgment that the neglect proceeding was void for want of procedural due process. It thought Younger principles not controlling because of the need to resolve the status of the child as soon as possible. CA 6 affirmed summarily, stating that the only issues before it were whether the District Court was deprived of jurisdiction (because of the exhaustion requirement) and whether the District Court should have dismissed under Younger. */

*/ Meanwhile, in the state adoption proceeding brought by the foster parents, respondent was awarded custody on the basis of the District Court's declaratory judgment. After the cert petition was filed here, the Michigan Supreme Court reversed the custody award on the ground that under the Michigan Child Custody Act respondent was entitled only to a presumption of custody that can be rebutted by evidence that parental custody is not in the best interests of the child. (The Michigan court gave full faith and credit to the District Court declaratory judgment and therefore held that
(footnote continued on page 2)

HAB

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 8, 1977

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 75-1407, Trainor v. Hernandez -- No. 76-675, Sendak v. Nihiser

Correction. I would affirm. Sorry.

Spring syndrome.

Sincerely,

BRW

(cfjws)

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 4, 1977

Re: No. 75-1407, Trainor v. Hernandez

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 11, 1977

Re: No. 75-1407 - Trainor v. Hernandez

Dear Byron:

I have finally concluded to write separately in this case, concurring in the result. My material goes to the Printer today.

Sincerely,

HAB.

Mr. Justice White

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 4/14/77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1407

James Trainor, etc., et al., Appellants, *v.* Juan Hernandez et al., etc. } On Appeal from the United States District Court for the Northern District of Illinois.

[April —, 1977]

MR. JUSTICE BLACKMUN, concurring in the result.

Although I agree with the Court that the District Court erred in reaching the merits of the constitutional claims in this case, and that it should have abstained in accordance with the principles set forth in *Younger* v. *Harris*, 401 U. S. 37 (1971),[1] I believe that the Court's opinion deviates from the analysis adopted in the *Younger* line of cases and reaffirmed just a few weeks ago in *Juidice* v. *Vail*, — U. S. — (1977). Since I prefer to adhere to the established approach, and since, for me, the Court's rationale is unnecessarily broad, I concur in the result.

In *Juidice*, the appellee, Vail, had defaulted on a credit arrangement. Three months later, he was summoned to appear at a deposition in connection with the State proceedings to collect the judgment; he failed to do so. After another two months, appellant Juidice, a Justice of the Dutchess

[1] I agree with the Court that none of the exceptions to the *Younger* abstention principle are applicable here. The Illinois Attachment Act, Ill. Rev. Stat. 1973 c. 23, § 11-21, is not "flagrantly and patently" unconstitutional, in my view. See opinion of the Court, *ante* at 13-14. See also *Mitchell* v. *W. T. Grant Co.*, 416 U. S. 600 (1974); *North Georgia Finishing, Inc.* v. *Di-Chem, Inc.*, 419 U. S. 601, 614 (1975) (dissenting opinion). As the Court points out, *ante*, at 13, no allegation is made that any other extraordinary circumstance, such as bad faith or harassment, is available. Thus, the only issue is whether *Younger* abstention is appropriate in the first instance.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 22, 1977

Re: No. 75-1407 - Trainor v. Hernandez

Dear Byron:

Your recirculation of April 19 meets most of the concerns I had -- principally, the failure to cite Juidice -- with respect to the second draft circulated on April 5. Although I shall still write separately, I am now glad to join your opinion. My revision will be around as soon as possible.

Sincerely,

HAB

Mr. Justice White

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 4/22/77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1407

James Trainor, etc., et al., Appellants, *v.* Juan Hernandez et al., etc. | On Appeal from the United States District Court for the Northern District of Illinois.

[April —, 1977]

MR. JUSTICE BLACKMUN, concurring.

I join the Court's opinion and write only to stress that the substantiality of the State's interest in its proceeding has been an important factor in abstention cases under *Younger* v. *Harris*, 401 U. S. 37 (1971), from the beginning. In discussing comity, the Court in *Younger* clearly indicated that both federal and state interests had to be taken into account:

> "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." *Id.*, at 44.

Consistently with this requirement of balancing the federal and state interests, the Court in previous *Younger* cases has imposed a requirement that the State must show that it has an important interest to vindicate in its own courts before the federal court must refrain from exercising otherwise proper federal jurisdiction. In *Younger* itself, the Court relied on the State's vital concern in the administration of its criminal

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 22, 1977

No. 75-1407 Trainor v. Hernandez

Dear Byron:

Please join me.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 18, 1977

Re: No. 75-1407 - Trainor v. Hernandez

Dear Byron:

Please join me.

Sincerely,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 20, 1977

Re: No. 75-1407 - Trainor v. Hernandez

Dear Byron:

I am still with you on your third draft.

Sincerely,

WHR

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 14, 1977

Re: 75-1407 - Trainor v. Hernandez

Dear Byron:

On Tuesday I sent my dissenting opinion in this case to the Printer. I hope to have it circulated soon.

Respectfully,

John

Mr. Justice White

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

1st DRAFT

From: Mr. Justice Stevens

SUPREME COURT OF THE UNITED STATES

Circulated: 4/14/77

No. 75-1407

Recirculated: _____

James Trainor, etc., et al., Appellants, *v.* Juan Hernandez et al., etc. | On Appeal from the United States District Court for the Northern District of Illinois.

[April —, 1977]

MR. JUSTICE STEVENS, dissenting.

Thirty years ago Mr. Justice Rutledge characterized a series of Illinois procedures which effectively foreclosed consideration of the merits of federal constitutional claims as a "procedural labyrinth . . . made up entirely of blind alleys." *Marino* v. *Ragen*, 332 U. S. 561, 567. Today Illinois litigants may appropriately apply that characterization to the Court's byzantine doctrine of abstention.

Illinois has a patently unconstitutional attachment procedure.[1] In today's decision, this Court requires defendants suffering the unconstitutionality of the procedure to challenge it in state court. The irony of the decision is that the attachment procedure itself includes among its undesirable features a set of rules which effectively foreclose any challenge to the constitutionality of the procedure in Illinois courts.

Although it is true that § 27 of the Illinois Attachment Act (Ill. Rev. Stat. c. 11, § 27) allows the defendant to file a motion to quash the attachment, the purpose of such a motion

[1] The three-judge District Court, which included two District Judges who had practiced in Illinois (one a former President of the Illinois State Bar Association) and a circuit judge who served as President of the Indiana Bar Association, characterized this statute as "patently and flagrantly violative of the Constitution." In Part III of his opinion, MR. JUSTICE BRENNAN has demonstrated why that conclusion is compelled by this Court's prior cases.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 22, 1977

Re: 75-1407 - Trainor v. Hernandez

Dear Byron:

In view of your recirculation, I will have to make some revisions. I will get to them as promptly as I can.

Respectfully,

John

Mr. Justice White

Copies to the Conference

SUBSTANTIVE CHANGES,
SEE PAGES: throughout.

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: _____

2nd DRAFT Recirculated: 5/17/77

SUPREME COURT OF THE UNITED STATES

No. 75-1407

James Trainor, etc., et al., Appellants, *v.* Juan Hernandez et al., etc. | On Appeal from the United States District Court for the Northern District of Illinois.

[May —, 1977]

MR. JUSTICE STEVENS, dissenting.

Today the Court adds four new complexities to a doctrine that has bewildered the lower federal courts for several years.[1] First, the Court finds a meaningful difference between a state procedure which is "patently and flagrantly violative of the Constitution" and one that is "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."[2] Second, the Court holds that an unconstitutional collection procedure may be used by a state agency, though not by others, because there is "a distinction between the State's status as creditor and the status of private parties using the same procedures."[3] Third, the Court's application of the abstention doctrine in this case provides even greater protection to a State when it is proceeding as an ordinary creditor than the statutory protection mandated by Congress for the State in its capacity as a tax collector. Fourth, without disagreeing with the District

[1] See, for example, Judge Pell's search for a synthesizing principle in his article, Abstention—A Primrose Path by Any Other Name, 21 DePaul L. Rev. 926 (1972).

[2] At p. 12 of its opinion, the Court quotes this excerpt from *Watson* v. *Buck*, 313 U. S. 387, 402, which in turn was quoted in *Younger* v. *Harris*, 401 U. S. 37, 53-54.

[3] MR. JUSTICE BLACKMUN's concurring opinion, *ante*, at 3.

pp. 3-6, 9, 11

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: _____

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