ORIGINAL

22-883

No.

IN THE

Supreme Court of the United States

RACHEL EVENS

Petitioner

v.

DAVID E. GILBERTSON; STEVEN R. JENSEN
JANINE M. KERN; MARK E. SALTER;
PATRICIA J. DEVANEY; SCOTT P. MYREN

Respondents

On Petition For Writ Of Certiorari
To The United States Court of Appeals
for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

RACHEL EVENS
pro se' litigant
P.O. BOX 1015
STEVENSVILLE, MT. 59870

QUESTIONS PRESENTED

The U.S. Const. amend. XIV, §1 states that all persons are subject to the jurisdiction of the State wherein they reside. In order to exercise judicial authority over parties, a court must first hold both personal and subject matter jurisdiction as defined by their congress or legislative statutes. Absolute judicial immunity is a common-law doctrine, established since 1871. However, it was clearly defined that judicial immunity would not apply if the judge acted with full knowledge that statutory subject matter jurisdiction was completely absent. *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978).[1]

The United States Court of Appeals for the Eighth Circuit has decided that the U.S. Const. amend. XIV, §1 and legislature no longer determines jurisdiction, but expanded this common-law principle by deciding that Absolute Judicial Immunity applies to any act performed by a judge in the judicial setting, "which is gauged by... whether it is a function normally performed by a judge". This ruling directly contradicts both absolute constitutional privileges, longstanding established case law established by this Supreme Court of the United States, being also prohibited by South Dakota and Montana statutes.

The Petitioner invoked the Federal Court's diversity jurisdiction as Rachel and her four minor

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[1] "[T]he necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him." *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978)

children are citizens of Montana. The Eighth Circuit Court of Appeals again contradicted the United States Supreme Court and recent Federal Supreme Court's application of the *Younger* abstention doctrine and determined that *Younger v. Harris,* 401 U.S. 37 (1971) required recusal of the federal court in any proceedings where residents of Montana's constitutional rights (including four minor children) were being grossly violated by South Dakota justices. This federal application of *Younger* abstention requires SCOTUS review as it contradicts the majority of federal circuits application.

The Questions presented are:

1: What constitutes "acts in excess of jurisdiction" versus "the clear absence of subject-matter jurisdiction", with the judges being subject to civil liability in the latter and not granted judicial immunity?

Does absolute judicial immunity apply where exclusive jurisdiction is "conferred by law upon some other court, board, or officer," and extensive statute or case law prohibits the judge from considering a petition for divorce and custody of minor children who are residents of another state?

2: Does *Younger abstention* doctrine apply to nullified and voided state proceedings? Or did the circuit court err in determining that abstention was required when a South Dakota court is illegally presiding over nullified Montana resident minor custody proceedings?

PARTIES TO THE PROCEEDING

The Petitioner is Rachel Evens; Montana resident, wife of Timothy John Evens, and mother of four minor children (Montana residents) currently being held hostage in South Dakota.

Respondents are South Dakota Supreme Court justices:

David E. Gilbertson (now retired);
Steven R. Jensen – Chief Justice
Janine M. Kern;
Mark E. Salter;
Patricia J. DeVaney;
Scott P Myren

RELATED CASES

- *Evens v. Gilbertson et al.*, No. 5:22-CV-5057, U.S. District Court, District of South Dakota, Western Division. Judgement of Dismissal based on Absolute Judicial Immunity and *Younger Abstention* entered Sept. 27, 2022.

- *Evens v. Gilbertson et al.*, No. 22-3111, U.S. Court of Appeals for the Eighth Circuit. Judgement of Affirmation entered Dec. 13, 2022.

- *Evens v. Connolly et al.*, No. 9:20-cv-00165-DLC-KLD, U.S. District Court for the District of Montana, Missoula Division. Judgement entered March 19, 2021. (Dismissed for lack of personal jurisdiction)

- *Evens v. Evens*, 951 N.W.2d 268, 283 (S.D. 2020). Judgement entered Nov. 4, 2020.

- *Evens v. Evens*, No. 51 DIV18-041, S.D. Seventh Judicial Circuit, Rapid City. Judgement entered Dec. 21, 2018.

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PETITION FOR WRIT OF CERTIORARI

Rachel Evens petitions the Court for a writ of certiorari to review the judgement of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The Eighth Circuit's petition for rehearing "DENIED" is attached as Appendix 1. The Eighth Circuit's unpublished opinion affirming the lower court's ruling is attached as Appendix 2. The district court's order dismissing Petitioner's suit is unreported and attached as Appendix 3.

JURISDICTION

The Eighth Circuit entered the judgement on December 13, 2022 and entered the denial for rehearing on January 10, 2023. This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

This case involves:

- U.S. Const. amend. VIII
- U.S. Const. amend. XIV §1
- U.S. Constitution Annotated, art III. Judicial Power, Judicial Immunity from Suit, §1.
- Relevant Constitution of the State of Montana, provisions appear at App. 15a.
- Relevant Montana Code Annotated provisions appear at App. 16a-23a.
- Relevant S.D. Const. provisions appear at App. 24a.

- Relevant South Dakota Codified Law provisions appear at App. 25a-30a.

Factors Establishing Absolute Judicial immunity

"[T]he necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him." *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978)

"When there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible" *Bradley v. Fisher,* 13 Wall. 335, 80 U.S. 335, 351-52, 20 L.Ed. 646 (1871).

Applying *Younger Abstention* To Nullified State Proceedings

In *Jonathan R., minor, by next friend Sarah Dixon, et al., v. Jim Justice, et al.*, 41 F.4th 316 (4th Cir. 2022), The Fourth Circuit held that principles of federalism not only do not preclude federal intervention, they compel it. Plaintiffs bring federal claims, and federal courts "are obliged to decide" them in all but "exceptional" circumstances. The court explained that Younger's narrow scope safeguards Plaintiffs' rights, bestowed on them by Congress in the Judiciary Act of March 3, 1875, to present their claims to a federal tribunal. 28 U.S.C. §1331.

FACTS AND PROCEDURAL HISTORY

This case stems from a marriage between Timothy John and Petitioner (herein referred to as Rachel) Evens. The parties were married in Montana in 2005, and four children were born between 2006 and 2013.

On December 27, 2014 Rachel and her four minor children moved to Rapid City, SD 57702 so Rachel could work for the Oglala Sioux Tribe for sixteen months as a certified nurse midwife. From April 2017 onward, Rachel and her four minor children continued to live apart from Timothy. Rachel was employed full-time as a medical provider in Montana. Rachel home-schooled the four minor children since their birth and returned to Rapid City temporarily for average one week a month until her home could be sold. The four minor children remained legal residents of Montana throughout this time, verified by tax returns and resident hunting licenses in 2017.

Timothy continuously claimed to be a resident of Havre, Montana. Timothy had previously lost custody of his daughter through his first marriage, had been found guilty of concealing assets and refusal to abide by orders, and was being prosecuted with criminal charges in Montana courts. On January 25, 2018 Timothy John Evens, a 51 year old, life-long resident of Montana filed his Petition for Divorce Complaint, Summons and Temporary Restraining Order (prohibiting Timothy's entrance into Rachel's home) upon Rachel in Pennington Courts. Timothy violated the restraining order, entered Rachel's home, and refused to vacate Rachel's residence. Rachel suffered a fractured

pelvis and numerous other physical injuries from Timothy's abuse, including Timothy spraying Rachel and her four-year old son with bear mace and kicking a door in half while trying to aggressively attack Rachel. Rachel requested a permanent protection order. Honorable Jeffrey Connolly presided in Pennington County.

On February 20, 2018 Rachel objected to South Dakota's personal and subject matter jurisdiction over a non-resident divorce action, requesting the case be dismissed or transferred to a Montana court. On March 23rd, 2018 Judge Connolly dismissed Rachel's protection order request, claiming he could find no evidence domestic violence had occurred despite Timothy admitting under oath that he committed the acts which fractured Rachel's pelvis, sprayed Rachel with bear mace, and breaking her bedroom door in half.

On March 23, 2018, during the first preliminary divorce hearing, Rachel again objected to statutory subject matter jurisdiction. Judge Connolly dismissed Rachel's objections, stating that SDCL §25-4-30 did not apply, claiming *"he could be a resident of Mars, it doesn't matter"*. Connolly ruled that he could preside over any divorce action, not simply the actions allowed to be brought under App 25a.

To determine custody, both Timothy and Rachel underwent psychiatric evaluations. Timothy's mental health issues are extensive. First, Timothy was diagnosed by Dr. Scott Sternhagen, psychologist with:

- F43.23: Adjustment Disorder Mixed Anxiety and Depressed Mood, stating the diagnosis was

justified as Timothy exhibited "*Significant impairment in social, occupational or other important areas of functioning*" and "*Marked distress that is out of proportion to the stressor*".

- F43.10: Post Traumatic Stress Disorder; stating Timothy exhibited "*Irritable behavior and angry outbursts*".

Dr. Kari Scovel, psychologist diagnosed Timothy as being "*Resistant to Authority*"; "*Gregarious and enjoys attention*"; "*Seek attention from others to gain social recognition*". Dr. Scovel testified that she was afraid Timothy would stop at nothing to harm his future ex wife.

In 2018, Timothy was further diagnosed through the Veteran's Affairs as having a mental impairment involving aggressive behavior, impaired judgement and memory - worth a 50% disability (or over $1,500 monthly income) as diagnosed through Timothy exhibiting the following listed mental health findings.[2] In April, 2019 Timothy was hospitalized for the second time with an acute mental health crisis, being admitted inpatient overnight.

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[2] **VA disability compensation for PTSD: General Rating Formula for Mental Disorders**
50% disability: Occupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect; Circumstantial, circumlocutory, or stereotyped speech; Panic attacks more than once a week; Difficulty in understanding complex commands; Impairment of short - and long term (e.g., retention of only highly learned material, forgetting to complete tasks); Impaired judgment; Impaired abstract thinking; Disturbances of motivation and mood; Difficulty in establishing and maintaining effective work and social relationships.

Rachel received the following diagnosis from Timothy's abuse and was enrolled in the Victims of Crime Act (VOCA) Program through Pennington County:

- Z91.410: Personal history of spouse or partner violence, sexual
- Z91.410: Personal history of spouse or partner violence, physical
- Z91.411: Personal history of spouse or partner violence, psychological abuse

A five-day trial was held on November 13-16 and 19, 2018. On day five Judge Connolly stated "*I guess if he hasn't proven by preponderance of the evidence the grounds for divorce, I guess we're done. I mean, I guess it's 'you're married and you go home'.... I can't grant you* [Rachel] *a divorce because you didn't move for divorce*".

Judge Connolly found that Timothy Evens suffered mental anguish from being investigated for tax evasion by Montana IRS, FWP for hunting illegally in Montana, and a police officer charged Timothy with assault and 2nd degree rape of Rachel (she had a fractured pelvis). Judge Connolly further stated that "*certain things that may or may not be true or may or may not be ultimately proven... mental anguish amounts to extreme cruelty*". South Dakota is a "fault" divorce state, The circuit court found Rachel guilty of extreme cruelty for potentially being involved in Timothy's criminal proceedings. The trial court entered its FOF and COL on December 21, 2018, along with the Judgment and Decree of divorce. Notice of entry was served by the trial court on January 2, 2019.

Rachel appealed to the South Dakota Supreme Court. Meanwhile, Timothy pled guilty to the criminal charges in Montana court. The Supreme Court denied all Rachel's request to consider Timothy's perjury, criminal court cases, and issued sanctions against Rachel for daring to speak up. On November 4, 2020 the Supreme Court completely ignored the lack of subject matter jurisdiction issue; failed to establish how South Dakota had jurisdiction in any fashion; and issued "rulings" which were proven as false and fabricated though the lower court transcripts, completely contradicting the findings by Judge Connolly.

On November 23, 2020 Rachel requested a rehearing to correct these erroneous findings which also contradicted South Dakota law. On December 17, 2020 the Supreme Court then refused to correct these erroneous findings, claiming that they were grounded in the transcripts – even though it was directly contradicted and found to be false in the transcripts. The Supreme Court then claimed they had judicial immunity and did not have to follow the statutes enacted by the South Dakota Legislature (January 2021, Federal Court in Montana).

During January through May 2021 Rachel objected many times to the S.D. 7th Circuit Court's jurisdiction in DIV18-41 while her husband, Timothy John Evens continued to prosecute Rachel, steal her income, lie under oath, and remove 100% custody of Rachel's four minor children. The lower courts refused to allow child protective services or about 40 other professional, legal, and medical provider eyewitnesses

into court to testify on Rachel and her children's behalf – proving the fraudulent and false allegations.

Timothy continued to prohibit 100% communication and visitation between Rachel's children and any of Rachel's immediate family, including grandparents and two sets of great-grandparents. The Respondents upheld this illegal isolation, violating SDCL §25-4A-A: "*Children will benefit from continued contact with all relatives and friends on both sides of the family for whom they feel affection. Such relationships must be protected and encouraged.*"

On May 24, 2021 Rachel again appealed to the South Dakota Supreme Court and specifically requested this supreme court to address the lack of statutory subject matter jurisdiction in Court file 51 DIV18-41.

On August 23, 2021 the South Dakota Supreme Court requested that Timothy John Evens object to Rachel's appeal. This violated many statutes in SDCL §15-26A, namely *requesting* an objection long after the deadline for an objection could be filed by the opposing party – violating SDCL §15-26A-16, which states objections to the appeal *must be filed within seven days* by any party after the service of the petition. The supreme court agreed to continue with the appeal.

On February 22, 2022 the supreme court claimed they established the "waived" subject matter jurisdiction by issuing an opinion in *Evens v. Evens 2020 SD 62; 951 N.W.2d 268, 276* back in November 2020; thus prevented a decision to dismiss Court file 51 DIV18-

41 due to lack of statutory subject matter jurisdiction through the doctrine of *res judicata*. The Respondents stated that subject matter jurisdiction had been waived.

Rachel again requested a rehearing, pointing out that the subject matter jurisdiction had never been established by either the lower court or the supreme court, simply the finding that "*he could be a resident of Mars. It doesn't matter*". On March 16, 2022 the Respondents denied Rachel's request for a rehearing.

Rachel sued Respondents in federal court for their personal illegal behavior on June 24, 2022. The Respondents filed a Rule 12(b) Motions to Dismiss, stating absolute judicial immunity, *Rooker-Feldman* doctrine, and *Younger v. Harris* abstention doctrine. The case was dismissed, claiming absolute judicial immunity and *Younger* abstention doctrine. Rachel appeals.

STATUTORY BACKGROUND

Establishing Subject Matter Jurisdiction

"Subject matter jurisdiction is conferred solely by constitutional or statutory provisions." *Lippold v. Meade County. Bd. of Commerce*, 2018 S.D. 7, ¶17, 906 N.W. 2d. 917, 921-922 (quoting *Lake Hendricks Improvement Ass'n v. Brookings Cty. Planning & Zoning Comm'n*, 2016 S.D. 48, ¶15, 882 N.W.2d 307, 312). "Furthermore, subject matter jurisdiction can neither be conferred on a court, nor denied to a court by the acts of the parties or the procedures they employ." *Id.* (quoting *Cable v. Union Cty. Bd. Of Cty. Comm'rs*,

2009 S.D. 59, ¶20, 769 N.W.2d 817, 825). "As this Court has often stated: "The issue of jurisdiction may be raised at any time[.]" *Upell v. Dewey Cty. Comm'n*, 2016 S.D. 42, ¶9, 880 N.W.2d 69, 72 (quoting *Sazama v. State ex rel. Muilenberg*, 2007 S.D. 17, ¶9, 729 N.W.2d 335, 340).

The Eighth Circuit has admonished district courts to "be attentive to a satisfaction of jurisdictional requirements in all cases." *Sanders v. Clemco Indus.*, 823 F.2d 214, 216 (8th Cir. 1987). Once the court has knowledge that subject matter is lacking, the court (meaning the judge) has no discretion but to dismiss the action pursuant to SDCL §15-6-12(h)(3) and acknowledge that *every order rendered without subject matter jurisdiction is nullified and void, without any effect whatsoever.* "Subject matter jurisdiction is the power of a court to act such that without subject matter jurisdiction any resulting judgment or order is void." *Cable* 2009 S.D. 59, ¶20, 769 N.W.2d at 825.

"Courts are constituted by authority, and they cannot go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. **They are not voidable, but simply void, and this even prior to reversal.** *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348 (1920), (quoting *Elliott v. Peirsol*, 1 Pet. 328, 26 U. S. 340; *Old Wayne Life Assn. v. McDonough*, 204 U. S. 8.") "[W]e are not legislative overlords empowered to eliminate laws whenever we surmise they are no longer relevant or necessary." *Sanford v. Sanford*, 2005 S.D. 34, ¶23, 694 N.W.2d 283, 290.

"Because subject-matter jurisdiction involves a courts power to hear a case, it can never be forfeited or waived. Thus, defects *require correction regardless of whether the error was raised in district court." United States v. Cotton*, 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002). "This is because "[s]ubject matter jurisdiction cannot be conferred by agreement, consent, or waiver" or be "acquired by estoppel." *Lacroix v. Fluke, Warden* 2022 S.D. 29, ¶20, 975 N.W.2d 150, 159 *[quoting Honomichl v. State*, 333 N.W.2d 797, 798 (S.D. 1983).]. Also, "[a] judgment rendered by a court without jurisdiction to pronounce it is wholly void and without any force or effect whatever." *Id* at 159 (quoting *State v. Haas*, 446 N.W.2d 62, 64 (S.D. 1989); *see also State v. Smith*, 2014 S.D. 15, ¶ 9, 844 N.W.2d 626, 628).

The inquiry of whether South Dakota could assert specific jurisdiction over a non-resident plaintiff for a divorce and custody action was clearly outlined in SD Const. art. V, §1; SDCL §15-7-2(9) and §25-4-30. Proof of jurisdiction must appear on the record of the court. While litigating parties may waive personal jurisdiction, they cannot waive subject-matter jurisdiction. A court *cannot* intentionally proceed in the clear absence of statutory subject matter jurisdiction, which is prohibited by SDCL §15-6-12(h)(3)[3], and violate the U.S. Const. amend. VIII, amend. XIV; SD Const. art. V, §1 and §5, SD Const. art. VI, §2; and The Constitution of the State of Montana, art. II, §2, §3, §4, §15, §16,

[3] 15-6-12(h)(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

§17 in issuing orders *without* being granted the authority to enter such orders by state laws and statutes.

A. Both Montana and South Dakota have clearly established when a court acquires jurisdiction over a divorce petition.

The South Dakota legislation has clearly, without any room for guessing, established the boundaries of South Dakota judges' authority to preside over a divorce action. First, a divorce action limits jurisdiction exclusively to SD residents pursuant to SDCL §25-4-30. "Residence requirements for divorce or separate maintenance: *The plaintiff in an action for divorce must, at the time the action is commenced, be a resident of this state".* The South Dakota Supreme Court already previously clearly defined the actions required to establish residency for the purpose of obtaining a dissolution of marriage (obtaining a South Dakota driver's license, registering vehicles, and registering to vote in South Dakota), in addition to establishing that the residency must be in effect for forty-five days prior to *petitioning pursuant to Rush v. Rush,* 2015 S.D. 56, ¶¶12-15, 866 N.W.2d 556, 561-62.

South Dakota law defines residency under:

- SDCL §12-1-4, which restates the legal concept of domicile.
- SDCL §12-4-5, a person must be registered to vote fifteen days prior to the election in order to vote. However, the South Dakota Constitution provides that a person does not lose the right to vote in one jurisdiction until that right is established in another (SD Const. art. VII, §2). South Dakota

upholds that a person cannot be registered to vote in two states at the same time and may only be registered in his state of residency. At the time of filing, Timothy was registered to vote in Montana as a Montana resident.

- SDCL §41-1-1.1 Additionally, South Dakota statute provides a detailed list of categories of persons who qualify as state residents.
- South Dakota statute also clearly states the factors that terminate South Dakota residence (SDCL §41-1-1.2).[4]

Judge Connolly knew that Timothy held a Montana driver's license; was registered to vote in Montana; purchased big game hunting tags as a resident of Montana; and licensed all his vehicles in Montana at the time of filing for divorce on January 25, 2018. Judge Connolly acknowledged that Timothy executed no union of act or intent to sever his residence from Montana as required by §1-1-215(7), MCA. Rather, Timothy repeatedly implemented specific actions to maintain the benefits and privileges of his Montana residency:

- §87-2-102, MCA enumerating several requirements for "determining whether a person is a resident for the purpose of issuing resident hunting, fishing, and trapping licenses . . . .")

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[4] "a person is deemed to have terminated the person's South Dakota resident status if the person applies for, purchases, or accepts a resident hunting, fishing, or trapping license issued by another state or foreign country; registers to vote in another state or foreign country; accepts a driver's license issued by another state or foreign country"

- §87-2-113, MCA: setting higher application fees for nonresident hunters.
- §87-2-104, MCA and §87-2-506, MCA: limiting the number of nonresident licenses issued each year.
- §87-2-106(1), MCA: and enacting criminal penalties for falsifying residency information, [an applicant for a hunting, fishing, or trapping license] "*shall state the applicant's . . . street address of permanent residence, mailing address,* [and] *qualifying length of time as a resident in the state of Montana . . . . An applicant for a resident license shall present a valid Montana driver's license . . . or other identification specified by the department to substantiate the required information.*"
- §87-6-302(1), MCA: "*A person may not . . . subscribe to or make any materially false statement on an application or license.*"
- §87-6-303(1), MCA: "*A person who is not a resident may not . . . affirm to or make a false statement to obtain a resident license.*"
- §87-6-303(2), MCA: (specifying penalties for falsifying residency information).
- §13-1-111(1), MCA: "*A person may not vote at elections unless the person is . . . a resident of the state of Montana . . .*". Timothy represented himself to be a Montana resident when he voted in Montana elections.
- §15-30-2112, MCA: "[i]f a resident obtains employment outside the state, income from the employment is taxable in Montana."

"When assessing a person's acts and declarations regarding residency, "*'[m]ore weight or importance will be given to a person's acts than to his declarations,*

and when they are inconsistent, the acts will control." Greenwood v. Montana Department of Revenue, DA 19-0615; 2020 MT 149, ¶ 20 (quoting *Veseth v. Veseth, 147* Mont. 169, 173, 410 P.2d 930, 932 (1966)).

Pursuant to §40-4-104, MCA. Timothy was required to petition for divorce in Montana. As Timothy met none of the required criteria to bring a petition into South Dakota courts, and the S.D. Constitution explicitly denied any judge in South Dakota the jurisdiction to consider Timothy's petition, Court file 51: DIV18-41 lacked all subject matter jurisdiction. Therefore, South Dakota and these defendant justices are not considered a *court of competent* jurisdiction pursuant to either federal[5] or SD Const. art. V, §1[6] standards.

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[5] 18 U.S. Code §2711

(3) the term "court of competent jurisdiction" includes—

(A) any district court of the United States (including a magistrate judge of such a court) or any United States court of appeals that—

(i) has jurisdiction over the offense being investigated;

18 U.S. Code §3127 - Definitions for chapter

(2)the term "court of competent jurisdiction" means—

(A)any district court of the United States (including a magistrate judge of such a court) or any United States court of appeals that—

(i) has jurisdiction over the offense being investigated;

[6] § 1. Judicial powers. The judicial power of the state is vested in a unified judicial system consisting of a Supreme Court, circuit courts of general jurisdiction and courts of limited original jurisdiction **as established by the Legislature.**

According to Fed. R. Civ. P. 41(b), lack of jurisdiction and improper venue are neither claim preclusive nor considered an adjudication on the merits for the principle of absolute judicial immunity or *res judicata* to apply, henceforth none of the Respondents' arguments are applicable.

The Respondents' discrimination against pro se' Rachel was so blatant, that with the full permission of these same S.D. justices, the circuit court subsequently violated federal law[7] in May 2022 through garnishing Rachel's absolute protected income, stole Rachel's only vehicle, and further threated Rachel with jail time in June 2022 *just* for objecting to the complete lack of statutory jurisdiction. Subsequently, as Respondents even violated *"No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section."* Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2) Rachel was left with no alternative but to bring a personal suit.

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[7] Garnishing 100% of Rachel's weekly income is federally prohibited under Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2) and further stated as (c)Execution or enforcement of garnishment order or process prohibited. *"No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section."* South Dakota prohibits Judge Gusinsky's illegal order of 100% garnishment as stated in SDCL §21-18-52 *"No court of this state may make, execute, or enforce any order or process in violation of this section"*. No more than 20% of a persons weekly disposable income may be garnished per SDCL § 21-18-51.

B. Both Montana and South Dakota have clearly established when a court acquires jurisdiction over a minor.

First, the state must find that a child is within its jurisdiction. It was clearly stated that Rachel's four minor children were residents of Montana and had primarily resided in Montana *with Rachel or her immediate family* for the previous year prior to Timothy petitioning for divorce in South Dakota. Judge Connolly decided that he would exert jurisdiction over the children even though Montana courts had not agreed to extend jurisdiction, and the Respondents approved Connolly's decision against statute.

The Constitution of the State of Montana, art. II, §15 and §17; §40-4-211, MCA. and SDCL §25-4-45, SDCL §26-5B-201 all clearly state that the minor is subject to the jurisdiction of the state in which the minor is a resident of for the purposes of custody in divorce proceedings. In order to have jurisdiction over children SDCL §26-5B-201(a)(1):

> *they must be residents of the state, or have significant ties to the state "(a) Except as otherwise provided in § 26-5B-204, a court of this state has jurisdiction to make an initial child-custody determination only if:*
>
> *(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding.*

AND

SDCL §26-5B-201(a)(2)(a), (b).

> *(2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under § 26-5B-207 or 26-5B-208, and:*
>
> *(3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under § 26-5B-207 or 26-5B-208.*

SDCL §25-4-45.5 and §25-4-45.8 direct the court to consider domestic abuse, that the perpetrator of domestic abuse should not have custody of the minor child[8] and false allegations of child abuse in a custody setting[9]. Child Protective Services and law enforcement both voiced concern over Timothy being allowed custody of the minors and advised the circuit court to grant Rachel custody. Connolly declined to address any of Timothy's verified abuse or proven false allegations of Rachel abusing him and the children in determining custody.

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[8] Timothy repeatedly abused Rachel and fractured her pelvis, requiring surgical debridement and repair so Rachel could walk again.

[9] It was verified by multiple social workers and law enforcement officers (at the time of the alleged offenses) that the reports Timothy made stating Rachel was abusive to both Timothy and the children were proven to be false and unsubstantiated.

"The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." *Washington* v. *Glucksberg,* 521 U.S. 702, 719 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Id.*, at 720; see also *Reno* v. *Flores,* 507 U.S. 292, 301—302 (1993).

The liberty interest at issue in this case–the interest of parents in the care, custody, and control of their children–is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer* v. *Nebraska,* 262 U.S. 390, 399, 401 (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Two years later, in *Pierce* v. *Society of Sisters,* 268 U.S. 510, 534—535 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." We explained in *Pierce* that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Id.*, at 535. We returned to the subject

in *Prince* v. *Massachusetts,* 321 U.S. 158 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Id.*, at 166.

In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. See, *e.g.*, *Stanley* v. *Illinois,* 405 U.S. 645, 651 (1972) ("It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements' " (citation omitted)); *Wisconsin* v. *Yoder,* 406 U.S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"); *Quilloin* v. *Walcott,* 434 U.S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); *Parham* v. *J. R.,* 442 U.S. 584, 602 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with

> broad parental authority over minor children. Our cases have consistently followed that course"); *Santosky* v. *Kramer*, 455 U.S. 745, 753 (1982) (discussing "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Glucksberg, supra*, at 720 ("In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the righ[t] ... to direct the education and upbringing of one's children" (citing *Meyer* and *Pierce*)). In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."

Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054 (2000)

The U.S. Const. amend. VIII prohibits infliction of cruel and unusual punishments by a justice. This Court adding that cruel and unusual punishment is judged not by the standards that prevailed in 1685 . . . or when the Bill of Rights was adopted, but rather by those that currently prevail. *Atkins v. Virginia*, 536 U.S. 304, 311–12 (2002). It should be classified as cruel and unusual punishment to deny a mother and her children the right to a relationship who were found by social workers and child protective services that the same had a very tight knot and positive bond.

C. South Dakota has clearly established when the Respondents, acting as a Supreme Court, acquires jurisdiction.

Finally, South Dakota legislation has clearly, without any room for guessing, established the boundaries of the South Dakota Supreme Court's jurisdiction. "The Supreme Court shall have such appellate jurisdiction as may be provided by the Legislature[.]" S.D. Const. art. V, §5. "The right to appeal is statutory and therefore does not exist in the absence of a statute permitting it" *State v. Edelman*, 2022 S.D. 7, ¶10, 970 N.W.2d.239, 242 (quoting *State v. Sharpfish*, 2019 S.D. 49, ¶12, 933 N.W.2d 1, 7).

The South Dakota Supreme Court had no jurisdiction to enter any findings in *Evens v. Evens* 2020 S.D. 62, 951 N.W.2d 268 as the circuit court had no subject matter jurisdiction. "When the circuit court is without jurisdiction of the subject matter in litigation, the Supreme Court does not acquire jurisdiction by appeal to it from a judgment of the circuit court". *Schrank v. Pennington County Board of Commissioners* 1998 SD 108, ¶43; 584 N.W.2d 680, 682 (quoting *In Re Mackrill's Addition*, 85 SD 196, 201, 179 NW2d 268, 270 (SD 1970)).

Further, the supreme court was required to dismiss *Evens* 2020 SD 62 *sua sponte* due to lack of jurisdiction. "...this Court is obligated to consider any jurisdictional defects that may exist on appeal. "It is the rule in this state that jurisdiction must affirmatively appear from the record and this [C]ourt is required sua sponte to take note of jurisdictional deficiencies,

whether presented by the parties or not . . . ." *State v. Edelman*, 2022 S.D. 7, ¶8 (quoting *State v. Koch*, 2012 S.D. 59, ¶ 13, 818 N.W.2d 793, 797).

This Court must decide if Respondents failure to dismiss the action and subsequent issuing of orders and judgements in this nullified file means the justice is proceeding in clear absence of all jurisdiction which subjects the judge to suit.

Previously, when a justice knowingly acted beyond the boundaries of jurisdiction established by their legislature, that justice was no longer acting in the judiciary function and became personally liable through civil suit under Color of Law. "State officers may be held personally liable for damages under 42 U.S.C. §1983 based upon actions taken in their official capacities." *Hafer V. Melo*, 502 U.S. 21, 112 S. Ct. 358 (1991). "State officials, sued in their individual capacities, are "persons" within the meaning of §1983." *Id.*

The federal court ruled against previous case law in finding that these justices have absolute immunity simply through presiding in the capacity of a judge while violating constitutional rights without having any jurisdiction to illegally separate Rachel and her four minor children for two and a half years and counting, without allowing any communication or custody with their mother – the children's exclusive caregiver. Rachel and her children are subject to the courts of Montana, not South Dakota.

REASONS FOR GRANTING THE PETITTION

I. The Court Should Resolve What Constitutes Clear Absence of Subject Matter Jurisdiction to Establish Whether a Defendant Judge is Immune from Suit.

The Respondents' arguments are simply that they are entitled to absolute judicial immunity for any act taken while they are presiding in the official capacity as a judge. The Respondents argue that it is not the act itself which determines judicial immunity, but rather the circumstance allowing the act (in this matter it happens to be an illegal divorce petition).

The Eighth Circuit and Respondents are attempting to create new case law with their rulings, which requires this Court's review and direction. The Supreme Court of the United States decided in *Williams v. North Carolina*, 325 U.S. 226, 65 S. Ct. 1092 (1945) that that the federal government determines marriage and divorce statuses between state lines. The Court held that a decree of divorce rendered in one state may be collaterally impeached in another by proof that the court that rendered the decree lacked jurisdiction. "The Constitution did not mean to confer [upon the States] a new power or jurisdiction, but simply to regulate the effect of the acknowledged jurisdiction over persons and things within their territory." *Id. Williams,* 325 U.S. 226 is still currently the standard of review for divorces today.

Using the aforementioned statutes for establishing constitutional and statutory subject matter jurisdiction, these Respondents have without a doubt presided over an illegal court file, issuing orders and opinions, then removing Rachel's custody of her four minor children without having jurisdiction to do the same.

> The U.S. Constitution Annotated, Art III. Judicial Power, Judicial Immunity from Suit, §1 delineates how jurisdiction differs from judicial authority. *"Shall Be Vested".* "The distinction between judicial power and jurisdiction is especially pertinent to the meaning of the words "shall be vested" in § 1. Whereas all the judicial power of the United States is vested in the Supreme Court and the inferior courts created by Congress. Thus, except for the original jurisdiction of the Supreme Court, which flows directly from the Constitution, two prerequisites to jurisdiction must be present: first, the Constitution must have given the courts the capacity to receive it,[10] and, second, an act of Congress must have conferred it.[11] The fact that federal [and

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[10] Which was, of course, the point of Marbury v. Madison, 5 U.S. (1 Cr.) 137 (1803), once the power of the Court to hold legislation unconstitutional was established.

[11] The Mayor v. Cooper, 73 U.S. (6 Wall.) 247, 252 (1868); Cary v. Curtis, 44 U.S. (3 How.) 236 (1845); Sheldon v. Sill, 49 U.S. (8 How.) 441 (1850); United States v. Hudson & Goodwin, 11 U.S. (7 Cr.) 32, 33 (1812); Kline v. Burke Constr. Co., 260 U.S. 226 (1922). Some judges, however, have expressed the opinion that Congress's authority is limited by provisions of the Constitution such as the Due Process Clause, so that a limitation on jurisdiction that denied a litigant access to any remedy might be

> state courts] are of limited jurisdiction means that litigants in them must affirmatively establish that jurisdiction exists and may not confer nonexistent jurisdiction by consent or conduct.[12]"

The finding of the Eighth Court of Appeals that these justices are covered by absolute judicial immunity (even in the clear absence of statutory subject matter jurisdiction) violates the U.S. Constitution and case law. In *Smith v. Bacon*, 699 F.2d 434,436 (8th Cir. 1983) this Eighth Circuit previously recognizes that a judge is not protected if the judge lacks subject matter jurisdiction, which currently these justices clearly did not have.

"There are two exceptions to absolute judicial immunity: (1) when the judge's actions are taken outside his role as a judge, i.e., entirely non-judicial conduct, or (2) when the judge's actions are taken in the complete absence of jurisdiction." *Book v. Dunlavey*, 2009 WL 891880, *4 (W.D. Pa. 2009) (quoting *Mireles v. Waco*, 502 U.S. 9, 9-10, 112 S. Ct. 286, 116 L. Ed. 2d 9

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unconstitutional. *Cf.* Eisentrager v. Forrestal, 174 F.2d 961, 965–966 (D.C. Cir. 1949), *rev'd on other grounds sub nom*, Johnson v. Eisentrager, 339 U.S. 763 (1950); Battaglia v. General Motors Corp., 169 F.2d 254, 257 (2d Cir. 1948), *cert. denied*, 335 U.S. 887 (1948); Petersen v. Clark, 285 F. Supp. 700, 703 n.5 (N.D. Calif. 1968); Murray v. Vaughn, 300 F. Supp. 688, 694–695 (D.R.I. 1969). The Supreme Court has had no occasion to consider the question.

[12] Turner v. Bank of North America, 4 U.S. (4 Dall.) 8 (1799); Bingham v. Cabot, 3 U.S. (3 Dall.) 382 (1798); Jackson v. Ashton, 33 U.S. (8 Pet.) 148 (1834); Mitchell v. Maurer, 293 U.S. 237 (1934).

(1991) at 11-13; *Stein v. Disciplinary*, 520 F.3d 1183 (10th Cir. 2008) at 1195. "[A]n act taken in excess of a court's jurisdiction is not to be confused with an act taken in the complete absence of all jurisdiction." *Strand v. Dawson,* 2011 U.S. Dist. LEXIS 115367 (C.D. Utah Oct. 4, 2011).

In the matter currently under appeal, the circuit court referred to *Meyer v. Pfeifle*, WL 1208776, (D.S.D. 2019) as grounds for dismissal, but the judges in that case were not acting in the complete absence of statutory subject matter jurisdiction (as the judge was presiding within the subject matter jurisdiction boundaries established by his legislature and he had full personal jurisdiction over the parties).

It has been historically held that "the necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him." *Stump* 435 U.S. 349, 98. "When there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible" *Bradley v. Fisher,* 13 Wall. 335, 80 U.S. 335, 351-52, 20 L.Ed. 646 (1871).

Previous to the Eighth Circuit Court's ruling, only a judge of "competent jurisdiction" enjoys the privilege of absolute judicial immunity. It was universally recognized that only a "court of competent jurisdiction" can issue a decision on the merits. The factors which establish a "court of competent jurisdiction" are

extensively established by case law and federal statute as "a court which has statutory subject matter jurisdiction". "Whether the court had jurisdiction in this case is a question of law, reviewable de novo by this Court." *LaCroix,* 2022 S.D. at 159 (quoting *Neitge,* 2000 S.D. 37, ¶ 10, 607 N.W.2d at 260). Subject-matter jurisdiction was previously considered the requirement that a given court have power to hear the specific kind of claim that is brought to that court, pursuant to a statute. This legal question is thus squarely teed up and ripe for disposition. This Court is asked to determine if this same standard applies to a judge acting in the clear absence of jurisdiction.

II. The Court Should Resolve If Courts May Abstain Under *Younger* To Nullified And Voided Court Files

The decision rendered deepens a circuit split over what constitutes *Younger* Abstention, appearing to widen the limited scope of *Younger.* In *Jonathan R., minor,* (4th Cir. 2022), the Fourth Circuit held that principles of federalism not only do not preclude federal intervention, they compel it. Rachel brings federal claims, and federal courts "are obliged to decide" them in all but "exceptional" circumstances. (quoting *Sprint Commc'ns, Inc. v. Jacobs,* 571 U.S. 69, 72, 73 (2013) (citation omitted)). The court explained that Younger's narrow scope safeguards Plaintiffs' rights, bestowed on them by Congress in the Judiciary Act of March 3, 1875, to present their claims to a federal tribunal. 28 U.S.C. §1331.

"In an opinion by Justice Ginsburg, the unanimous Court, citing NOPSI, emphasized that "federal courts are obliged to decide cases within the scope of federal jurisdiction. Abstention is not in order simply because a pending state-court proceeding involves the same subject matter." 571 U.S. at 72, 134 S.Ct. 584. Rather, Younger extends only to the three "exceptional circumstances" the Court identified in NOPSI — state criminal prosecutions, civil enforcement proceedings, and "civil proceedings involving certain orders ... uniquely in furtherance of the state courts' ability to perform their judicial functions." Id. at 78, 134 S.Ct. 584, citing *NOPSI*, 491 U.S. at 368, 109 S.Ct. 2506" *375 Slane Chapel Road v. Stone County, Missouri*, 53 F. 4th 1122-1129 (8th Cir. 2022).

And this case presents none of those circumstances. At issue is failure to apply the NOPSI test. The district court ignored Supreme Court precedent and the 8th circuit's controlling law by abstaining without conducting the required analysis whether this case falls within either of the two types of civil cases — quasi-criminal enforcement actions or cases involving a state's interest in enforcing the orders and judgments of its courts — in which *Younger* abstention is appropriate. *See 375,* 53 F. 4th at 1127-1129. Instead, the court relied on previous applications of *Younger* abstention to family law cases and the state's unique interest and sole jurisdiction in the law of domestic relations.

Yet just days after *375* was decided by these same justices, the Eighth Circuit Court of Appeals refused to apply these exact same *Younger* principles for a pro

se' litigant, thus also demonstrating bias and refusal to render justice equally. The court failed to identify exactly how *Younger* abstention doctrine applied, yet relied on *Oglala Sioux Tribe v. Fleming*, 904 F.3d 603, 610 (8th Cir. 2018) to dismiss the current suit. (*Oglala* announcing, after *Sprint*, that *Younger* "counsels federal-court abstention when there is a pending state proceeding of a certain type" and assessing whether "South Dakota's temporary custody proceedings are civil enforcement proceedings to which *Younger* principles apply" (citation omitted)).

Prior to the circuit court accepting the argument from Respondents that *Younger* was applicable, the Respondents were required to explain which of the three NOPSI categories applied. Category 1 is non-applicable as this suit does not stem from state criminal prosecutions.

> "**Category 2.** The second NOPSI category, a "civil enforcement proceeding," is limited to cases involving state proceedings that are "akin to a criminal prosecution" "in important respects." *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975). That is, civil proceedings that are "quasi-criminal" in nature. *Sprint*, 571 U.S. at 81, 134 S.Ct. 584. In deciding this question, the Court in *Sprint* asked: (1) was the action commenced by the State in its sovereign capacity? (2) Was the proceeding initiated to sanction the federal plaintiff for some wrongful act? (3) Are there other similarities to criminal actions, such as a preliminary investigation culminating in the filing of formal

charges? See *id.* at 79-80, 134 S.Ct. 584". *375* at 1128.

Sprint has characterized civil enforcement proceedings as cases "brought by the State in its sovereign capacity" following an "investigation" and upon "the filing of a formal complaint or charges." 571 U.S. at 79–80 (citations omitted). Here, the NOPSI Category 2 shoe does not fit.

Sprint cited *Moore v. Sims, 442 U. S. 415, 419–420 (1979) (state-initiated proceeding to gain custody of children allegedly abused by their parents)* as an example of a quasi-criminal enforcement action. *Sprint* at 586. "In *Moore,* parents challenged the constitutionality of parts of the Texas Family Code that permitted removal of their children following allegations of child abuse. *See* 442 U.S. at 418-20, 99 S.Ct. 2371. Prior to the parents' action, the state had initiated proceedings alleging child abuse, leading to an investigation and subsequent custody hearings. *See id." Cook v. Harding*, 879 F.3d 1035, 1040 (9th Cir. 2018).

Although this case, like *Moore,* involves a constitutional challenge to a state family law scheme, none of the characteristics of an enforcement proceeding exemplified in *Moore* are present here.

Respondent's application of *Younger* in custody proceedings is non-applicable as upheld in *Jonathan R.,* 41 F.4th 316 (4th Cir. 2022). In order for the Category 2 of *Younger* to apply, the State of South Dakota needed to bring the formal prosecution to remove custody of abused and neglected children from their

parents – which has not happened in *Evens v. Evens*. The circuit court's arguments of *Oglala's* applicability is misplaced. *Oglala*, 904 F.3d at 606, fit neatly into the quasi-criminal category: It was brought by parents whose children were taken into state custody and challenged in federal court the very decision to take them away. The circuit court erred in accepting the *Oglala* argument and dismissing, stating this as grounds for *Younger abstention*.

> **Category 3.** The third NOPSI category is limited to "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." 491 U.S. at 368, 109 S.Ct. 2506. The district court's decision that this case falls within Category 3 reflected its flawed definition of the scope of this category. *375* at 1128.
>
> "Nor is Category 3 triggered simply because the state civil administrative proceeding involves a quintessentially state-law matter such as [marriage dissolution or child custody]. See, e.g. *Cook*, 879 F.3d at 1040-41 (family law). Because this parallel federal action does not interfere with "the state courts' ability to perform their judicial functions," [if the South Dakota courts acquire personal and subject-matter jurisdiction over the parties], it does not fall within the narrow parameters of NOPSI Category 3 and therefore does not deprive the district court of jurisdiction." *375* at 1129.

Then turning to the 9th Circuit's analysis of *Younger* abstention as rendered inapplicable to family law and civil custody proceedings, it was found in *Cook* (2018, at 1040) that

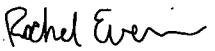
> "We emphasize that federal courts cannot ignore *Sprint*'s strict limitations on *Younger* abstention simply because states have an undeniable interest in family law. *See Elk Grove Unified Sch. Dist. v. Newdow,* 542 U.S. 1, 12, 124 S.Ct. 2301, 159 L.Ed.2d 98 (2004); *see also Moore,* 442 U.S. at 435, 99 S.Ct. 2371. *Sprint* gave us cause to once more "believe that wherever the Federal courts sit, human rights under the Federal Constitution are always a proper subject for adjudication, and that we have not the right to decline the exercise of that jurisdiction simply because the rights asserted may be adjudicated in some other forum." *Zwickler v. Koota,* 389 U.S. 241, 248, 88 S.Ct. 391, 19 L.Ed.2d 444 (1967) (citation omitted). Indeed, the law of domestic relations often has constitutional dimensions properly resolved by federal courts. *See, e.g., Obergefell v. Hodges,* ___ U.S. ___, 135 S.Ct. 2584, 192 L.Ed.2d 609 (2015); *Loving v. Virginia,* 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967). We must enforce the mandated constraints on abstention so that such constitutional rights may be vindicated." *Cook* at 1040.

Younger abstention was previously improper in civil cases outside of the two limited categories referred to above, regardless of the subject matter or the importance of the state interest.

CONCLUSION

This Court is humbly requested to grant this petition for a writ of certiorari to clarify whether a judge is entitled to absolute judicial when exclusive jurisdiction is "conferred by law upon some other court, board, or officer," and extensive statute or case law prohibits the judge from considering a petition for divorce and custody of minor children who are residents of another state? Also to resolve a nationwide split on applying *Younger* abstention.

Respectfully submitted,



Rachel Evens
PO Box 1015
Stevensville, MT 59870
evens.cnm@gmail.com
406.945.5551

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