

No. 25-584

Supreme Court, U.S.  
FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

KENNETH ROSELLINI--PETITIONER,

v.

GARY WILCOX, HON. FRANK LAROCCA,  
MICHAEL DOBLIN, DDS, JUDGE EDWARD  
TORACK, MARIE LIHOTZ, HANY MAWLA, MARIE  
SIMONELLI, STUART RABNER, CARMEN DIAZ-  
PETTI, SUPREME COURT OF NEW JERSEY  
DISTRICT XI ETHICS COMMITTEE, NORMAN  
KLEIN, and ROBERT C. PAPA--RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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## QUESTIONS PRESENTED

- 1) Is there a full and fair opportunity for a person to raise constitutional issues in state court attorney ethics proceedings, so that Younger Abstention can be invoked by a federal district court to dismiss a §1983 civil rights case filed by that person alleging constitutional violations, where a state court rule bars the trial level tribunal and appellate level tribunal from hearing constitutional issues, reserves constitutional issues for a hearing with the state's highest court, and the state's highest court fails or refuses to make any opinion or decision whatsoever on those constitutional issues, except to deny the person's petition to the highest court without explanation?

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

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## OPINIONS BELOW

The Order of the United States Court of Appeals for the Third Circuit, filed on April 30, 2025, reprinted in Appendix hereto at Appendix A, 1a to 2a, *Rosellini v. Wilcox*, Case No. 22-2610. This Order denied Appellant's petition for rehearing by the panel and the Court *en banc*.

The Order of the United States Court of Appeals for the Third Circuit, filed on February 5, 2025, reprinted in Appendix hereto at Appendix B, 3a to 4a. This Order Affirmed the District Court Dismissal of Appellant's claims against Appellees under the Younger Abstention Doctrine.

The Opinion of the United States Court of Appeals for the Third Circuit, filed on February 5, 2025, reprinted in Appendix hereto at Appendix C, 5a to 16a. This Opinion Affirmed the District Court Dismissal of Appellant's claims against Appellees under the Younger Abstention Doctrine.

The Order of the United States District Court for the District of New Jersey, filed on July 28, 2022, reprinted in Appendix hereto at Appendix D, 17a to 22a. This Order denied Appellant's motion to vacate Order of dismissal of Appellant's claims against the Appellees under the Younger Abstention Doctrine.

The Order of the United States District Court for the District of New Jersey, filed on October 14, 2021, reprinted in Appendix hereto at Appendix E, 23a to 42a. This Order of dismissed Appellant's claims against the Appellees under the Younger Abstention Doctrine.

## **JURISDICTION**

The date on which the United States Court of Appeals for the Third Circuit denied Appellant's petition for rehearing by the panel and the Court *en banc* was April 30, 2025, a copy of this Order appears at Appendix A.

This matter involves federal questions under the First and Fourteenth Amendments to the Constitution for the United States of America, and the application of the Younger Abstention Doctrine to decline to exercise jurisdiction over Appellant's Complaint for violations of the Constitution pursuant to 42 U.S.C. §1983..

The jurisdiction of this Court is invoked under 28 U.S.C. §1254.

## **CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES AT ISSUE**

### **First Amendment to the Constitution of the United States**

Congress shall make no law . . . abridging the freedom of speech . . .

### **Fourteenth Amendment to the Constitution of the United States**

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . .

## **Younger Abstention Doctrine**

“Younger requires federal courts to abstain from deciding cases that would interfere with certain ongoing state proceedings.” *Malhan v. Sec'y United States Dep't of State*, 938 F.3d 453, 461 (3d Cir. 2019) (citing *Sprint Commc'n's, Inc. v. Jacobs*, 571 U.S. 69, 77 78 (2013)); *Younger v. Harris*, 401 U.S. 37 (1971).

## **STATEMENT OF THE CASE**

This proceeding involves one or more questions of exceptional importance, whether state court rules, in this case Rule 1:20-15(h) of the Rules Governing the Courts of the State of New Jersey, violate the due process clause of the Fourteenth Amendment because it instructs persons to take actions regardless of whether those actions violate the Constitution for the United States of America, and whether only being permitted to present claims of Constitutional violations to one tribunal in a proceeding, in this case the New Jersey Supreme Court, is sufficient due process so that Younger Abstention applies even when that tribunal denies a hearing on those claims without a hearing or any explanation as to why they were denied.

Petitioner seeks the following declaratory relief in the United States District Court. Count I of Petitioner’s Complaint seeks declaratory relief under 28 U.S.C. §2201 for, *inter alia*, the following:

A. Declaring as a matter of due process under the Fourteenth Amendment to the Constitution for the

United States of America, that state court officers have a duty and obligation to guard against fraud upon the court to ensure their constitutional integrity, and that the doctrine of *Res Judicata* may not be used as a legitimate basis under the Fourteenth Amendment to deny an application to vacate or void a state court judgment based upon fraud upon the court; and . . .

C. Declaring as a matter of due process under the Fourteenth Amendment, that Rule 1:20-15(h) of the Rules Governing the Courts of the State of New Jersey violates the due process clause of the Fourteenth Amendment, both on its face and as applied to the Plaintiff, because it instructs persons to take actions regardless of whether those actions violate the Constitution for the United States of America; and . . .

F. Declaring that Rule 1:4-8, RPC 8.4(d), RPC 3.4(c), and any inherent power possessed by state courts, may not be used for purposes of intimidation or chilling fundamental rights under the First Amendment and both the Due Process and Privileges and Immunities clauses of the Fourteenth Amendment so that they infringe upon the fundamental rights of free speech and advocacy of litigants in state courts.

Subsequent to the Petitioner's filing of the federal civil rights complaint, on March 31, 2021 the District Ethics Panel issued a 2-1 decision that the Complaint should be dismissed without prejudice for the Petitioner to pursue the issues raised in the federal complaint. The public panelist who refused to

recuse himself on a motion by Petitioner, issued a dissenting opinion in clear retaliation for the filing of the federal complaint; in violation of Petitioner's First Amendment rights he found [emphasis added]:

. . . in light of the fact that Mr. Rosellini continues to pursue his quest, and now cites that he is being denied his right to free speech as guaranteed by the First and Fourteenth Amendments to the Constitution, I would now recommend that the District Review Board consider to issue a reprimand as a result of this hearing, regardless of the outcome of his latest Civil Complaint.

Subsequently, the Office of Attorney Ethics ("OAE") sought censure, citing with approval the dissenter's opinion. When the Disciplinary Review Board (appellate review from the District Ethics Panel) found for Suspension, the OAE adopted that position to the New Jersey Supreme Court.

When Petitioner raised the issue of Constitutional issued to the New Jersey Supreme Court, as the Third Circuit Panel acknowledges, "the New Jersey Supreme Court denied Rosellini's petition without explanation". *See 13a.* This denial, without any evidence of consideration of the Petitioner's Constitutional issues raised, is clearly not in accordance with the requirement under Younger Abstention that Petitioner had an adequate opportunity to be heard on these issues in state court.

The Third Circuit Appellate Panel asserts:

Rosellini faced no procedural barriers here. In fact, New Jersey's disciplinary rules provide two avenues for constitutional challenges to the proceedings. An attorney can (1) petition the New Jersey Supreme Court for immediate, interlocutory review upon a showing of irreparable harm *during* the proceedings, N.J. Ct. R. 1:20-16(f)(1), or (2) raise constitutional challenges in a petition for review *after* an adverse decision by the DRB, N.J. Ct. R. 1:20-16(f)(2). Rosellini chose only the second avenue. If anything, Rosellini limited his own opportunities to raise his constitutional claims.

*See* 13a. Petitioner in no way "limited his own opportunities to raise his constitutional issues", and in fact was afforded no effective opportunity. N.J. Ct. R. 1:20-16(f)(2) provides two possible avenues to raise constitutional issues, this first one is an interlocutory petition which the New Jersey Supreme Court can simply deny without explanation, or on a final appeal, which apparently the New Jersey Supreme Court denied without explanation—choosing the second avenue in no way "limited" any opportunity to have Constitutional issues heard. In fact, the Appellees application of the rule, finding that they were barred from opining on Constitutional issues before it, was a clear bar.

## REASONS WHY CERTIORARI SHOULD BE GRANTED

Younger Abstention and Due Process require a full and fair opportunity for a person to raise constitutional issues in state court attorney ethics proceedings, so that Younger Abstention cannot be invoked by a federal district court to dismiss a §1983 civil rights case filed by that person alleging constitutional violations, where a state court rule bars the trial level tribunal and appellate level tribunal from hearing constitutional issues, reserves constitutional issues for a hearing with the state's highest court, and then state's highest court fails or refuses to make any opinion or decision whatsoever on those constitutional issues, except to deny the person's petition to the highest court without explanation.

The case that the Third Circuit Panel relies on, *Gonzalez v. Waterfront Comm'n of N.Y. Harbor*, 755 F.3d 176, 184 (3d Cir. 2014), misapplied the facts and law of the cases it cited, and the Third Circuit Panel itself misapplies the facts and law of the cases of *United States Supreme Court in Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 437 (1982). *Gonzalez v. Waterfront Comm'n of N.Y. Harbor*, 755 F.3d 176, 184 (3d Cir. 2014) states in pertinent part:

The Supreme Court has, on multiple [\*\*21] occasions, affirmed decisions to abstain notwithstanding the state agency's refusal or inability to consider federal challenges in the initial administrative proceeding—at least where those challenges may be presented on appeal to the state

the Appellees, and the Third Circuit Panel, that an ethics committee's refusal to abide by the Constitution, would be consistent with Younger Abstention in the face of a District Court's responsibility to enforce the Constitution. *See Smith & Wesson Brands, Inc. v AG*, 27 F.4th 886, 888 (3d Cir 2022) ("District Court violated its "virtually unflagging obligation . . . to exercise the jurisdiction given," *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976)"). In *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 629, 106 S. Ct. 2718, 91 L. Ed. 2d 512 (1986), the court found it absurd the Commission would not consider Constitutional issues before it:

. . . even if Ohio law is such that the Commission may not consider the constitutionality of the statute under which it operates, it would seem an unusual doctrine, and one not supported by the cited case, to say that the Commission could not construe its own statutory mandate in the light of federal constitutional principles . . . .

See *Ohio Civ. Rights Commn. v Dayton Christian Schs., Inc.*, 477 US 619, 629 (1986). In *Zahl v Harper*, 282 F3d 204, 210 (3d Cir 2002), the Court found that:

The third part of the Garden State test is met because Zahl can assert his federal preemption claim in the state administrative proceeding. Moreover, he has an automatic right of appeal to the Appellate Division of the Superior Court of New Jersey, N.J. Ct. R. 2:2-3(a)(2), which is capable of reviewing Zahl's federal claims.

*See Zahl v Harper*, 282 F3d 204, 210 (3d Cir 2002). In Middlesex itself, the New Jersey Supreme Court actually heard and ruled upon the Constitutional claims raised in that proceeding:

Whatever doubt, if any, that may have existed about respondent Hinds' ability to have constitutional challenges heard in the bar disciplinary hearings was laid to rest by the subsequent actions of the New Jersey Supreme Court. Prior to the filing of the petition for certiorari in this Court the New Jersey Supreme Court *sua sponte* entertained the constitutional issues raised by respondent Hinds. Respondent Hinds therefore has had abundant opportunity to present his constitutional challenges in the state disciplinary proceedings

See *Middlesex County Ethics Comm. v Garden State Bar Assn.*, 457 US 423, 436 (1982). The plaintiff-appellant in the Middlesex case, therefor, actually had his Constitutional issues heard and ruled upon by the New Jersey Supreme Court [*In Re Hinds*, 90 N.J. 604 449 A.2d 483 (1982)], which is why the United States Supreme Court ruled in favor of abstention. In fact, the Third Circuit Panel cites not a single Circuit or Supreme Court decision in which the person asserting standing and jurisdiction in district court was denied any ruling or explanation on Constitutional issues that they raised at either the trial/commission level or the appellate level of the subject tribunal. Under no circumstance is the situation which the Petitioner in the within case has found himself in, should the District Court's virtually

unflagging obligation . . . to exercise the jurisdiction given. This is clearly not in accordance with the requirement for abstention that the state “proceedings must afford an adequate opportunity to raise federal claims.” *See Feingold v. Office of Disciplinary Counsel*, 487 F. App’x 743, 745 (3d Cir. 2012) (emphasis added).

The Third Circuit Panel also failed to properly consider the issues of bad faith in the state proceedings. Those proceedings were found by a two to one decision to be required to be dismissed at the local ethics committee level, and only proceeded when the Office of Attorney Ethics and every subsequent tribunal either explicitly or tacitly supported the position of the dissenter in that “in light of the fact that Mr. Rosellini continues to pursue his quest, and now cites that he is being denied his right to free speech as guaranteed by the First and Fourteenth Amendments to the Constitution, I would now recommend that the District Review Board consider to issue a reprimand as a result of this hearing, regardless of the outcome of his latest Civil Complaint.” The reason for the retaliation is clear, the state actors refuse to acknowledge their obligations under the Constitution to ensure that state court tribunals must be free from fraud, even in the face of doctrines such as *Res Judicata*, which is why Appellees oppose the declaratory relief Petitioner is seeking, that as a matter of due process under the Fourteenth Amendment to the Constitution for the United States of America, that state court officers have a duty and obligation to guard against fraud upon the court to ensure their constitutional integrity, and that the doctrine of *Res Judicata* may not be used as a

legitimate basis under the Fourteenth Amendment to deny an application to vacate or void a state court judgment based upon fraud upon the court.

[W]hen the controversy has been terminated by a judgment, its freedom from fraud may always be the subject of further judicial inquiry; and the general rule that courts do not set aside their judgments after the term at which they rendered has no application.

*See Root Ref. Co. v. Universal Oil Prod. Co.*, 169 F.2d 514, 521–22 (3d Cir. 1948).

“If all three prongs of the *Younger* analysis are met, federal courts should abstain unless there is a showing of “bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate.” *Middlesex Cnty. Ethics Comm’n v. Garden State Bar Ass’n*, 457 U.S. 423, 435, 102 S. Ct. 2515, 73 L. Ed. 2d 116 (1982).” *See Feingold v. Office of Disciplinary Counsel*, 487 F. App’x 743, 745 (3d Cir. 2012). The bad faith on the part of the Appellees is in covering up the wrongdoing of the state court proceedings which led to the subject sanctions and ethics proceedings. This includes the actions of the Defendant-Appellee Gary Wilcox, who was recently temporarily suspended from the state bench for unethical conduct (Gary N. Wilcox, Supreme Court Order) (referred to by the Third Circuit Panel, footnote 7 on Page 9, Appellant “also cites unrelated ethics proceedings against a New Jersey judge . . .”

This matter stems from New Jersey Attorney Ethics proceedings brought against Petitioner for disobeyed are frivolous litigation sanctions orders

that were issued when he filed, pro bono, on behalf of a client, a motion in New Jersey Superior Court to vacate family court orders based upon fraud upon the court, including allegations that there was forged signature on a settlement agreement, which was not properly placed upon the record and which went missing from the record, which had never been litigated before. Petitioner openly asserts that these orders are constitutionally invalid, and were issued in retaliation for him having raised issues of fraud upon the court which expose the state courts' own wrongdoing. Petitioner's client, Linda Doblin, passed away in August of 2022. She was denied justice in her lifetime. At the time of the fraud upon the court, she was a hearing disabled financially dependent spouse who had obtained a final order of divorce after being subjected to spousal abuse, with primary custody of her minor child and with necessary financial support from her ex-spouse. Due to the ex-spouse's successful fraud upon the court and abuse of process, less than three years after the final arbitrator's judgment pursuant to the divorce, Petitioner's client found herself a) bankrupt, b) with her child effectively in the sole custody of the spouse, with one hour a week supervised visitation with her son, the father enabled to abuse their son's education by sending him away to an isolated desert Scientology indoctrination camp for months at a time, and c) subjected to malicious criminal prosecution for interference with custody (which was dismissed when the subject settlement agreement came up missing from the court record), when her son in accordance with the law, time after time sought refuge with his mother from abuse from the spouse). The Third Circuit Panel applied too

limiting a definition of bad faith to the Younger Abstention exception.

Intervention would still be warranted upon a showing of "bad faith, harassment or any other exceptional circumstance that would call for equitable relief. . . a refusal to abstain is also justified where a prosecution or proceeding has been brought to retaliate for or to deter constitutionally protected conduct, or where a prosecution or proceeding is otherwise brought in bad faith or for the purpose to harass. *E.g.*, *Lewellen v. Raff*, 843 F.2d 1103, 1109-10 (8th Cir. 1988), *cert. denied*, 489 U.S. 1033, 103 L. Ed. 2d 229, 109 S. Ct. 1171 (1989) (bad faith prosecution where brought in retaliation for exercise of First Amendment rights); *Rowe v. Griffin*, 676 F.2d 524 (11th Cir. 1982) (bad faith prosecution where brought after assurances of immunity to defendant).

In such cases, a showing of retaliatory or bad faith prosecution establishes irreparable injury for the purposes of the *Younger* doctrine, *Bishop v. State Bar of Texas*, 736 F.2d 292, 294 (5th Cir. 1984); *Shaw v. Garrison*, 467 F.2d 113, 119-21 (5th Cir.), *cert. denied*, 409 U.S. 1024, 34 L. Ed. 2d 317, 93 S. Ct. 467 (1972), and the expectations for success of the party bringing the action need not be relevant. *See, e.g., Lewellen*, 843 F.2d at 1109-10 (injunction justified regardless of expectations where prosecution brought to discourage exercise of constitutional rights). Abstention would serve no purpose because a state cannot have a legitimate interest in discouraging the exercise of constitutional rights, *see, e.g., id.* at

1110, or, equally, in continuing actions otherwise brought in bad faith, thereby reducing the need for deference to state proceedings.

*See Cullen v. Fliegner*, 18 F.3d 96, 103-04 (2d Cir. 1994) (emphasis added). It is respectfully submitted, that the sole purpose of the state ethics proceedings against the Petitioner is to retaliate, in bad faith, against him for the exercise of First and Fourteenth Amendment rights, and under those circumstances, the District Court must not abstain.

## CONCLUSION

Based on the foregoing, Petitioner respectfully submits that this Petition for Writ of Certiorari should be granted under Rule 10 of the Rules of the Supreme Court of the United States.

Dated: July 29, 2025

Respectfully submitted,



KENNETH ROSELLINI, ESQ.