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IN THE SUPREME COURT OF THE UNITED STATES

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SPRINT COMMUNICATIONS, INC., :

Petitioner : No. 12-815

v. :

ELIZABETH S. JACOBS, ET AL. :

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Washington, D.C.

Tuesday, November 5, 2013

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:06 a.m.

APPEARANCES:

TIMOTHY J. SIMEONE, ESQ., Washington, D.C.; on behalf of Petitioner.

DAVID J. LYNCH, ESQ., Des Moines, Iowa; on behalf of Respondents.

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P R O C E E D I N G S

(11:06 a.m.)

CHIEF JUSTICE ROBERTS: We will next hear argument in case 12-815, Sprint Communications v. Jacobs.

Mr. Simeone.

ORAL ARGUMENT OF TIMOTHY J. SIMEONE
ON BEHALF OF THE PETITIONER

MR. SIMEONE: Mr. Chief Justice, and may it please the Court:

The IUB's arguments here would transform Younger abstention from the exception into the rule for State agency adjudications. Virtually all State agency decisions, even on issues of Federal law would be subject to challenge only in State court.

There's no basis for that broad rule in this Court's decisions. Younger abstention began with the traditional principle going back to the time of the framing that Federal courts sitting in equity shouldn't intrude on State criminal cases.

This Court's decisions have, of course, expanded Younger slightly beyond criminal cases. In Huffman, in Moore, in Trainor, the Court extended Younger to civil enforcement actions in aid of State criminal laws.

1 In Middlesex County in Dayton, the Court
2 extended Younger to administrative disciplinary actions.
3 But all of these cases are still coercive civil
4 enforcement actions, where the State's enforcement
5 interests are similar to those in criminal cases.

6 JUSTICE SOTOMAYOR: Counsel, one of the
7 problems I have is I don't know how to define
8 "coercive." The line seems very hard to draw. There
9 are plenty of examples in the brief where some courts
10 have said this kind of proceeding is coercive and that
11 kind is not. So --

12 MR. SIMEONE: Yes, Your Honor.

13 JUSTICE SOTOMAYOR: -- is it -- is it
14 worthwhile using that distinction at all, or should we
15 be thinking about going back to basic principles and
16 doing something like the Second Circuit does, which is
17 to say it's a sovereign interest rather than a personal
18 interest?

19 MR. SIMEONE: Your Honor, we've argued that
20 there is no magic to the -- to the word "coercive."
21 Coercive is a sort of shorthand that the lower courts
22 have used to mean coercive in the ways that this Court's
23 Younger decisions are coercive.

24 So, I think the question of how far this
25 Court has extended Younger is really the heart of this

1 case as opposed to sort of what is the meaning of the
2 word "coercive." And I think, as I was saying, the
3 Court started with criminal cases, and it extended that
4 principle somewhat in Huffman and Moore and Trainor.

5 JUSTICE SOTOMAYOR: Those were when most of
6 them involved State proceedings.

7 MR. SIMEONE: Yes. There's -- they're --
8 but they're a specific kind of State enforcement action.
9 In each of those cases, this Court held that the State
10 enforcement action was in aid of criminal law. So it's
11 a small extension of the traditional principle that
12 courts sitting in equity don't intrude on State criminal
13 cases.

14 JUSTICE SOTOMAYOR: But then we went further
15 in Pennzoil and in New Orleans -- well, perhaps not.

16 MR. SIMEONE: Yes, the Court went further in
17 a couple of different directions, and I want to try to
18 address them separately, if I may.

19 The first direction is really the Dayton
20 Middlesex County cases. Those were administrative
21 disciplinary actions. And I think the Dayton case is
22 actually especially helpful here in drawing the kind of
23 line that you're looking for, Your Honor. The Dayton
24 case helps to give some substance to exactly what is a
25 civil enforcement proceeding.

1 So in -- in Dayton, the Ohio Civil Rights
2 Commission conducted an investigation and found that the
3 school there had engaged in discrimination on the basis
4 of sex. The commission proposed a consent order, and it
5 told the school if you don't agree to this consent order
6 under which you need to hire back the professor -- I
7 mean, the teacher and pay her backpay, then we're going
8 to proceed to disciplinary action; we're going to file
9 an administrative complaint.

10 The school ignored the consent order,
11 refused to show up for a hearing that the commission had
12 scheduled. And so in Dayton, the State filed an
13 administrative complaint, charging violations of the
14 Ohio Civil Rights Act. And those violations that were
15 charged were third-degree misdemeanors subject to fines,
16 subject to jail time, up to 60 days in jail.

17 So we think that Dayton gives some substance
18 to what is a civil enforcement action. It's the sort of
19 proceeding where you have an investigation. You have
20 factual findings. You have an administrative complaint.
21 You have the possibility of civil penalties and
22 potentially, in that case, there was jail time as well.

23 JUSTICE GINSBURG: Mr. Simeone, this -- the
24 background of this case, I don't quite grasp. You
25 originally said that you wanted to make sure you --

1 there was no disconnection pending the FCC's resolution
2 of the issue.

3 MR. SIMEONE: That's exactly right, Your
4 Honor.

5 JUSTICE GINSBURG: Has the FCC had a
6 proceeding to resolve it?

7 MR. SIMEONE: Yes. Although the FCC is
8 surprisingly adept at not resolving the issue in the
9 proceedings that it holds to resolve the issue. So, in
10 fact, the FCC had a proceeding pending before it at the
11 time that this case was before the IUB, in which Sprint
12 expected that the -- that the FCC would resolve this
13 issue. What the FCC did was resolve the issue of what
14 inter-carrier compensation regime applies going forward,
15 but it didn't address these calls that have already
16 occurred. So this is a sort of strange corner of
17 telecommunications law now.

18 Going forward, the FCC has applied specific
19 inter-carrier compensation regime under Federal law to
20 this kind of call. But going backwards, the appropriate
21 inter-carrier compensation regime to apply under the
22 1996 act under the federal law is -- is still at issue.

23 JUSTICE GINSBURG: Well, why wouldn't --
24 let's say you -- you -- there were no abstention. You
25 have your case in Federal court. And the Federal judge

1 says, the FCC hasn't spoken, so I don't want to step out
2 in front of the FCC on this on this -- on this question.

3 MR. SIMEONE: We -- we strongly urged the
4 IUB not to address these issues of Federal law. The
5 IUB, I think, was frustrated with the FCC, which had not
6 implemented the relevant provisions of Federal law, and
7 the IUB reached out to make decisions on Federal law.
8 And all we're saying in this case is that we -- we think
9 that we ought to be able to challenge those decisions
10 that the IUB made as to what's an information service,
11 what's a telecommunications service.

12 JUSTICE GINSBURG: Well, you could. You
13 could challenge it in the State court or this Court
14 and -- eventually. But there's a proceeding going on in
15 the State court, and there's a review -- State review
16 attached to that. And you're -- you're saying we can
17 cut off this administrative process that ends in State
18 review. We could cut it off and go to the Federal
19 court.

20 MR. SIMEONE: To be clear, Your Honor, we
21 actually aren't seeking to enjoin any proceeding in the
22 State. We filed the action in State court because we
23 were required to by Eighth Circuit law. The Eighth
24 Circuit has a line of cases.

25 JUSTICE GINSBURG: You explained that.

1 But -- but in the review -- in your review petition from
2 the State court -- to the State court, you brought up
3 more than just this -- the question of these -- these
4 charges.

5 MR. SIMEONE: Yes, Your Honor. This
6 could -- this is a situation quite comparable to the
7 England case. In the England case, the -- the Federal
8 court plaintiffs thought that they were required to go
9 to State court with their Federal law issues. And this
10 Court said that they didn't have to go to Federal
11 court -- to State court with their Federal law issues.
12 And since they did, they were still entitled to reserve
13 their Federal law issues for Federal court.

14 In our case, we actually were required by
15 Eighth Circuit precedent to go to State court. The
16 Eighth Circuit rule is that if you don't go to State
17 court with your Federal law issues then abstention,
18 Younger abstention applies anyway, even though there is
19 no State proceeding whatsoever. So in this case we went
20 to State court, but only because we had to under Eighth
21 Circuit -- under the Eighth Circuit's unusual law of
22 Younger abstention.

23 When we got to State court, we tried to
24 essentially do an England reservation. We said to the
25 State court: We'd like to stay the Federal issues while

1 they go forward in Federal court, because, of course,
2 the Federal court has jurisdiction and a virtually
3 unflagging obligation to exercise that jurisdiction.

4 The State court actually held those issues
5 in abeyance for 2 years while the abstention issues were
6 heard in Federal court. When the Federal abstention
7 issues were decided by the Eighth Circuit, incorrectly
8 we think, the State court decided to go forward.

9 But our argument here is that in a system of
10 concurrent jurisdiction where we have the right to be in
11 Federal court, to get review of our Federal law issues,
12 the fact that we were forced by Eighth Circuit law to go
13 to State court too shouldn't preclude the Federal court
14 proceeding from going forward.

15 JUSTICE KENNEDY: Well, what would have been
16 the ruling, do you think -- what would have been the
17 correct ruling if you had filed your Federal action
18 while the case was still -- the issue was still pending
19 before the Iowa board? In other words, before the State
20 judicial review process kicked in. Would your analysis
21 of the case be the same or would we apply a different --

22 MR. SIMEONE: It would not be the same, Your
23 Honor, but we do think that we should --

24 JUSTICE KENNEDY: Because it would be an --
25 because it would be Burford at that point or what?

1 MR. SIMEONE: I don't think it would be -- I
2 don't think it would be Burford because the State
3 doesn't argue that there's a complex regulatory regime
4 here of the sort that's covered by Burford. What we
5 think is that if this were still before the IUB, that
6 would really take us back to our main argument here in
7 this case. Our argument is that neither the State court
8 proceeding nor the IUB proceeding was the kind of civil
9 enforcement action to which this Court has extended
10 Younger.

11 So even if we'd filed in Federal court at
12 the time that proceeding was still pending before the
13 IUB, we think that Younger still shouldn't apply.

14 But here there's an additional reason why it
15 shouldn't apply. We waited for the IUB proceeding to
16 conclude. And, by the way, we then paid the invoices
17 that Windstream wanted us to pay. There's -- there's
18 nothing further that we could be obliged to do here.
19 We've already paid.

20 But the -- but the additional reason why we
21 think we would -- we should prevail here really goes to
22 the issue that this Court reserved in NOPSI. So in
23 NOPSI, the Court assumed, without deciding, that the
24 agency proceeding and the State court review of the
25 agency proceeding were a unitary proceeding. We think

1 that those proceedings should only be treated as unitary
2 in situations where the State interests at the two
3 levels are similar.

4 So in Burford, to go back to your question,
5 Your Honor, in Burford the State appellate court was
6 participating in the regulatory process with the State
7 agency. And of course this Court treated that as a
8 unitary proceeding.

9 In this case, the State court proceeding, as
10 the IUB discusses on pages 33 and 34 of its brief, has
11 nothing to do with the partnership with the -- with the
12 agency. The relevant partnership here, the relevant
13 place to review the Federal law issues, is Federal
14 court. The State's only interest in the State court
15 proceeding here is a State interest in State court
16 review, as opposed to Federal court review, of Federal
17 law issues. That's not the same kind of interest that
18 it had at the regulatory proceeding level.

19 So, our view here is that issue in NOPSI
20 of -- you know, is the State interest for purposes of
21 Younger the interest at the agency level or is there a
22 separate interest when it comes to State judicial review
23 of State agency action and Federal judicial review of
24 State agency action, we think that that should be
25 resolved in our favor. So that's a --

1 JUSTICE KAGAN: Mr. Simeone?

2 MR. SIMEONE: Yes.

3 JUSTICE KAGAN: Could I take you back to --
4 to the agency proceeding? So I guess I understood from
5 your respective briefs that you say the agency
6 proceeding was not an enforcement proceeding and the
7 agency says it was an enforcement proceeding because you
8 might have brought it initially, but you tried to get
9 out, and then the agency compelled you to keep on going
10 in its process. So could you explain that to me?

11 MR. SIMEONE: I can do my best. It's
12 somewhat complicated. We went to the agency with an
13 issue of State law. We went to the agency to ask the
14 agency to hold that Windstream was not entitled to stop
15 connecting our calls to its customers without IUB
16 approval under Iowa's consumer protection rules. So
17 that's the issue that we took to the State agency.

18 When we got to the State agency, Windstream
19 said: Oh, no, no, no, we are not going to really stop
20 connecting your calls to our customers, because that's a
21 big no-no in the telecommunications world. You are not
22 supposed to stop connecting calls. So that dispute went
23 away.

24 What the IUB did was it reached out to
25 decide a different set of issues, the underlying

1 question of what intercarrier compensation regime should
2 apply to these calls. So at that point, the IUB's
3 theory now is when they reached out to decide these
4 Federal issues under the 1996 Act -- you know, what's an
5 information service, what's a telecommunication service,
6 what intercarrier compensation regime applies here --
7 when they reached out to decide those Federal issues
8 they say this case became a civil enforcement
9 performance proceeding.

10 But this takes me back to my description of
11 Dayton. Dayton was a civil enforcement proceeding.
12 There was an investigation there. There was a finding
13 of violations of the Ohio civil rights statute. There
14 was an administrative complaint charging third degree
15 misdemeanors and threatening penalties and jail time.

16 That is the kind of civil enforcement
17 proceeding to which this Court has applied Younger.
18 That's the kind of proceeding that's like a criminal
19 case, that takes us back to that traditional principle
20 that courts, Federal courts sitting in equity, don't
21 intrude into State criminal proceedings.

22 JUSTICE ALITO: On Dayton, if the only
23 relief available had been reinstatement and back pay,
24 would that matter?

25 MR. SIMEONE: No, I don't think it would

1 matter, Your Honor. I think that, again, the posture of
2 the case was very different. There, you know, there was
3 -- again, there was an investigation, there was a due
4 process right to a hearing. There was an agency that
5 was enforcing existing State law.

6 Here, the agency was essentially
7 implementing Federal law. The FCC hadn't implemented
8 these provisions. Everyone in the industry was
9 frustrated. We were frustrated. We had taken these
10 issues to the FCC, you know, please decide what
11 intercarrier compensation regime applies here. The FCC
12 hadn't done it.

13 And so the IUB, quite understandably,
14 reached out to decide those issues. But in announcing
15 the kind of intercarrier compensation regime that ought
16 to apply to these calls, the IUB wasn't conducting an
17 enforcement proceeding against Sprint.

18 An interesting point here, I think, is that
19 the IUB's position makes for something very strange
20 under Ex Parte Young. You know, agencies generally have
21 the choice to proceed either by rulemaking, which they
22 often do, or by adjudication. And they can make the
23 exact same rules in either way.

24 Under the -- under the IUB's theory, if the
25 agency proceeds by rulemaking under Ex Parte Young, you

1 can go to Federal court and get an injunction. If the
2 agency proceeds by adjudication, making the exact same
3 rules, you can't, because there is a unitary proceeding
4 up through the State court appeals, and you are stuck
5 with that, and certiori review by this Court, of course.

6 That to me makes no sense under Ex Parte
7 Young. The agency's decision to proceed by rulemaking
8 versus proceeding by adjudication -- which, by the way,
9 the IUB had in this case. The IUB, when the dispute
10 disappeared between Sprint and Windstream, the IUB could
11 have said: We'll close that docket and we're going to
12 start a rulemaking to implement these provisions of
13 Federal law that the FCC can't seem to get around to
14 implementing.

15 In that case, we would, of course, have been
16 entitled under ex parte Younger -- and this is an ex
17 parte Younger case -- we could have gone to Federal
18 court and gotten an injunction, a declaratory ruling and
19 injunction. And, of course, it really doesn't make
20 sense to distinguish whether that relief is available on
21 the basis of what -- how the agency decides to proceed.

22 I want to go back to a question that came up
23 earlier about Pennzoil and Juidice and how they fit into
24 this Court's extension of that traditional principle
25 that -- that courts of equity shouldn't intrude into

1 State criminal proceedings. Juidice and Pennzoil are a
2 kind of unusual corner of Younger abstention law,
3 because they both involve challenges to the processes
4 that the States use to enforce their judgments.

5 So, in Juidice, the Federal Plaintiff was
6 asking -- what challenging under -- under the due
7 process clause New York's contempt procedures, sort of
8 how they went about holding folks in contempt.

9 In Pennzoil, Texaco was challenging the bond
10 requirements to appeal in Texas, but they were both
11 Federal court cases bringing challenges to aspects of
12 the way -- the way that the States enforce their
13 judgments.

14 In this case, Sprint has no quarrel at all
15 with any aspect of Iowa law. We followed Iowa law to a
16 T and -- and filed the State court appeal that the
17 Eighth Circuit required us to file.

18 JUSTICE ALITO: Well, those cases are
19 different. But why is there a -- why is there a greater
20 federalism concern in those cases than in this case
21 where the IUB has a legitimate interest in how much
22 citizens of Iowa pay for a telephone service?

23 MR. SIMEONE: Well, I think this really goes
24 back, Your Honor, to the traditional principle that I
25 started with. The -- the basic idea of Younger is that

1 Federal courts sitting in equity don't intrude into
2 State criminal proceedings.

3 That's a very important traditional rule
4 because that's where the State police power is really at
5 its zenith, you know, enforcing State criminal law. We
6 think that the Pennzoil and Juidice cases are very
7 similar. The -- the idea that a State can't enforce a
8 judgment once its courts have gone through the process
9 of coming to judgment is -- would be very unsettled.
10 That's -- that's the kind of police -- you know, State
11 police power at its absolute zenith.

12 Now, all the things that State regulatory
13 agencies do are important, you know, but -- but, you
14 know, not every rule of a State agency is at that same
15 level of importance as a State criminal court.

16 JUSTICE ALITO: But then, if the question is
17 whether something is tied to something that can be
18 regarded as criminal or quasi-criminal, what about
19 Middlesex County? That's not criminal. Or is not
20 criminal.

21 MR. SIMEONE: Well, Middlesex County is not
22 criminal, certainly. I call it an administrative
23 disciplinary proceeding. And I think that the State's
24 interests in that kind of disciplinary proceeding is, in
25 fact, very similar to its interest in a criminal case.

1 In -- in Middlesex County itself, of course,
2 a lawyer had referred to a trial as a kangaroo court and
3 a legalized lynching. And -- and the New Jersey Ethics
4 Committee, you know, said that that was the sort of
5 conduct that -- that couldn't be permitted under the
6 State bar rules.

7 So, that is not literally a criminal case.
8 It is one of this Court's extensions of -- of the
9 principle to the civil enforcement proceeding context;
10 but it does seem to me to be motivated by very much the
11 same sorts of interests.

12 JUSTICE GINSBURG: What do you say about the
13 argument that -- that once the IUB decided to go on with
14 this proceeding, you didn't want them to, but they did,
15 that that then became a proceeding for them to enforce
16 the access charge?

17 MR. SIMEONE: Well, I think, again, Your
18 Honor, that that goes back to the differences between
19 this sort of case and the Dayton case.

20 In this case, what the IUB really was doing
21 was announcing its understanding of -- of these
22 provisions of the Federal act. In -- in a case like
23 Dayton where this Court has applied Younger, the -- the
24 commission there was, you know, seeking to penal --
25 penalize wrongdoing by the -- by the school. And it

1 seems to me that there's a -- there's an important
2 difference with respect to that traditional principle
3 that Younger reflects of not interfering with State
4 criminal actions.

5 There's a big difference between when the
6 State announces rules that will be broadly applicable
7 throughout the industry like here and when the State is
8 actually seeking to punish wrongdoing, as in Dayton or
9 as in Middlesex County.

10 If there are no further questions, I will
11 reserve the balance of my time.

12 CHIEF JUSTICE ROBERTS: Thank you, counsel.
13 Mr. Lynch?

14 ORAL ARGUMENT OF DAVID J. LYNCH

15 ON BEHALF OF THE RESPONDENTS

16 MR. LYNCH: Mr. Chief Justice, and may it
17 please the Court:

18 Under Sprint's proposed test, after Sprint
19 chose to invoke the jurisdiction of the Iowa Utilities
20 Board, Windstream could have gone to Federal court at
21 any time to enjoin the board proceedings. Because under
22 Sprint's test, the board proceedings were remedial and
23 the -- Younger abstention was not applicable to those
24 proceedings.

25 That's true despite the fact that at that

1 time, when the petition was filed, the board was faced
2 with a compelling State interest; that is, an immediate
3 and direct threat to public health and welfare. If
4 Windstream had been able to go to the Federal court and
5 interrupt the State proceedings at that moment, that
6 very act would unavoidably cast dispersions on the
7 State's ability to resolve the Federal issues here in
8 the context of that important State interest, and that
9 is precisely one of the evils that Younger abstention is
10 directed to.

11 JUSTICE SOTOMAYOR: It seems --

12 CHIEF JUSTICE ROBERTS: So -- but I mean, is
13 there a different category, some of the normal
14 regulatory interests are important and other regulatory
15 interests are not? I mean, it seems to me the line that
16 Younger drew, or that I thought it was drawing, between
17 criminal and civil has been eroded to a considerable
18 extent. But your friend analogized that in other cases,
19 for want of a better word, to -- they're sort of
20 quasi-criminal or at least touching upon the process as
21 opposed to a particular proceeding.

22 I mean, do you think that the abstention
23 applies in the case of every regulatory proceeding?

24 MR. LYNCH: No, Your Honor, we do not.

25 CHIEF JUSTICE ROBERTS: Well, how do you --

1 how do you tell which --

2 MR. LYNCH: The -- let me give you two parts
3 to that answer. First of all, that -- we believe that
4 it applies when the agency proceedings are engaged in
5 enforcement of a State statute, State law. That that's
6 kind of the touchstone for when you're more likely to
7 see an important State interest.

8 JUSTICE SCALIA: When -- when aren't they?

9 MR. LYNCH: I've got to take this case and
10 make two changes to it, and I have an example for you.
11 Instead of having Sprint in the position of saying that
12 the access -- intrastate access charge tariff does not
13 apply at all, imagine that the dispute between Sprint
14 and Windstream was over merely the calculation of the
15 amounts, over un -- over ambiguous language within that
16 tariff. And because Sprint admitted that the tariff
17 applied, whatever it meant, there would be no threat of
18 disconnection.

19 Under those circumstances, you truly do have
20 the garden variety commercial dispute between two
21 parties that Sprint tries to characterize this case as.
22 But this case involved more.

23 This case involved the Filed Tariff
24 Doctrine, a statutory provision the Court's familiar
25 with, that the board is charged with enforcing. This

1 board, at least initially -- or excuse me -- this case
2 also involved, initially, that threat of disconnection,
3 which added an element of exigency to the board's action
4 that is not present in most of these cases.

5 JUSTICE SOTOMAYOR: Counsel, what's left of
6 Colorado River under your view of this case? I mean, in
7 Colorado River, we made it very clear that abstention
8 should be the exception. I always thought that was a
9 driving principle, which Federal law should be announced
10 by Federal courts.

11 If we take the Eighth Circuit rule where
12 everything is unitary and required and your rule that
13 any time it involves a State agency essentially, it's
14 subject to abstention, what's left of Federal courts
15 having any jurisdiction?

16 MR. LYNCH: Well, first of all, let me say
17 that the question of whether it's a unitary proceeding
18 or whether there's a -- a fork in the road after the
19 agency has completed its proceedings, that question is
20 not part of the question presented here in this case
21 today. The Court does not need to reach that question.
22 It can do as it did in New Orleans Public Service and
23 simply assume that it is a case of the unitary
24 requirement without deciding it.

25 JUSTICE SOTOMAYOR: Well, the Eighth Circuit

1 has decided that question. You're right. We didn't --

2 MR. LYNCH: There's --

3 JUSTICE SOTOMAYOR: They say it is.

4 MR. LYNCH: There is, in fact, under our
5 research, about a 4-3 split among the circuits on that
6 question. The parties haven't really briefed it.

7 JUSTICE SOTOMAYOR: No, I --

8 MR. LYNCH: And if you're going to get to
9 that question, in fact --

10 JUSTICE SOTOMAYOR: But why don't you get to
11 the essence of that question.

12 MR. LYNCH: Thank you. Then what's left of
13 the Colorado River case is what it has always been
14 there, which is when the -- there is not an important
15 State interest, Younger abstention does not apply. And
16 that is always the touchstone of this analysis.

17 You know, the three Middlesex County
18 factors, the first one's easy: Is there a pending State
19 proceeding or not? That's always -- either its there or
20 it isn't. That's not a problem.

21 In much that way, when Sprint chose to come
22 to the Iowa Utilities Board, it could have gone to
23 Federal court instead, I assume. I chose to come to the
24 board for relief even though it says that the issues
25 involved Federal law.

1 The third factor in Middlesex County, the
2 ability of the courts, the State courts, through a state
3 process to address the Federal questions, also typically
4 not an issue in this type of proceeding. There is the
5 right of appeal to the State courts and that is going to
6 provide an adequate remedy. Sprint has not challenged
7 that in this case.

8 JUSTICE SCALIA: Counsel, especially in
9 cases that involve jurisdictional issues. It seems an
10 awfully -- awful waste of counsel's time and client's
11 money to be litigating about which court you ought to be
12 in, and it seems to me to avoid that, the lines ought to
13 be clear. And it doesn't seem to me that the line, you
14 know, whether there is a significant State interest
15 involved or not, is a clear line. You can argue about
16 that in almost any case. So I'm disinclined to use that
17 kind of a -- of a test along with any others.

18 Why can't we just limit -- limit Younger
19 abstention to the three categories discussed in NOPSI,
20 and say, that's it; no more?

21 MR. LYNCH: The -- because it would, if you
22 were to take that approach, it would result in a denial
23 of abstention in cases like this one that present
24 exactly the evils, the concerns that were presented in
25 Younger in terms of disrespect for the State's ability

1 to resolve Federal questions, the concerns of
2 federalism, the concerns of avoiding duplicative cases
3 in the courts.

4 JUSTICE SCALIA: Any purely civil case that
5 raises that kind of an issue can arguably be subject to
6 Younger abstention; is that right?

7 MR. LYNCH: It would be up to the judges to
8 decide whether there was an important State interest
9 there or not.

10 JUSTICE GINSBURG: Are you saying then that
11 in every State agency adjudication attended by State
12 court review -- yeah, that would apply?

13 MR. LYNCH: No, Your Honor, I'm not.

14 JUSTICE GINSBURG: So can you -- so can you
15 then -- we have only the two cases. We have Middlesex
16 and Dayton, and you say this case belongs in that
17 Younger category. What State court adjudication, State
18 agency adjudications attended by State court review,
19 would fall outside Younger, your rationale of what
20 Younger covers?

21 MR. LYNCH: A State agency adjudication that
22 did not involve the State agency attempting to enforce a
23 State statute or State law. And that's, as I tried to
24 describe in my earlier example, if that would be the
25 case here, if the dispute between Sprint and Windstream

1 had been something other than does the --

2 JUSTICE SOTOMAYOR: What was the State law
3 here? They were interpreting Federal law.

4 MR. LYNCH: The State law here was Iowa Code
5 Section 476.5, the filed tariff doctrine, which requires
6 that, in this case, that Windstream charge Sprint with
7 providing intrastate access services.

8 JUSTICE SOTOMAYOR: That mimics the Federal
9 law.

10 MR. LYNCH: On the State side. That's --
11 it's our version of that Federal law, yes.

12 JUSTICE SOTOMAYOR: But you don't derive any
13 power independent of that Federal law?

14 MR. LYNCH: Oh, no, I'm sorry. I
15 misunderstood. This is an independent State statute.
16 It is not -- it is analogous to the Federal interstate
17 filed tariff doctrine, but it is not dependent upon it
18 at all. It's existed for I don't know how many years.

19 JUSTICE SOTOMAYOR: By the way, there are
20 other abstention doctrines that can take care of State
21 interests, aren't there? There's Burford. There are
22 many others.

23 MR. LYNCH: In appropriate cases, yes.

24 JUSTICE SOTOMAYOR: So I don't know why
25 Younger as you're -- in following up on Justice Scalia's

1 question, why Younger has to be the only vehicle, why we
2 need to create more categories than NOPSI did to protect
3 State interests when we have an awful lot of other
4 doctrines that do that already.

5 MR. LYNCH: I don't know that we're asking
6 you to create a new category or a new extension. We
7 felt that this case fit very clearly within the
8 Middlesex test under Younger abstention. And it was a
9 straightforward application of that three-part test, and
10 obviously a district court judge agreed.

11 It was not -- it does not require any
12 extension of Younger to apply that principle to this
13 case.

14 JUSTICE SOTOMAYOR: By the way, have we ever
15 used the Younger abstention in a case where the Federal
16 plaintiff also filed the Federal -- the State action as
17 well?

18 MR. LYNCH: Do you mean the State action
19 before the board or before --

20 JUSTICE SOTOMAYOR: Before anybody, court or
21 a board.

22 MR. LYNCH: Not that I'm aware of, no.

23 But that brings me to my second point, which
24 is that if the court were to decide to apply the
25 coercive-remedial distinction as a test in this case,

1 the results before the Eighth Circuit should still be
2 affirmed because the board proceedings were in fact
3 coercive. As has already been alluded to here today,
4 after Sprint filed its petition with the board,
5 Windstream came back and said, in essence: We will not
6 disconnect Sprint as long as they pay the access charges
7 going forward. They can hold the money going back. We
8 won't disconnect them as long as they pay going forward.
9 Sprint came back and said: We're not going to pay you
10 going forward, but we've got -- you're not going to
11 disconnect us. We've got what we want. We want to
12 withdraw our petition.

13 And at that point the board said: That's
14 fine; you can take your petition, but don't go anywhere.
15 Stay here. We're going to get to the bottom of this,
16 because if we let you go it's going to recur. This --

17 CHIEF JUSTICE ROBERTS: I'm sorry, it's
18 going to what?

19 MR. LYNCH: Reoccur.

20 CHIEF JUSTICE ROBERTS: Oh.

21 MR. LYNCH: The case would inevitably be
22 before the board again, perhaps next time with Sprint --
23 with Windstream filing instead of Sprint or Sprint
24 saying they're threatening us with disconnection again.

25 There was no point in letting it start over.

1 We got to the bottom of it to see what was going on.

2 The lower courts have identified various --
3 this goes to your earlier question, Justice Sotomayor,
4 about how to define coercive proceedings. And the lower
5 courts have identified a number of factors that they've
6 considered in this, including who initiated the
7 proceeding, was participation in the proceeding
8 mandatory, does the Federal court contend that the State
9 proceeding is unlawful, or do they -- does the Federal
10 plaintiff instead seek a remedy from some other
11 State-initiated inflicted wrong, is the Federal
12 plaintiff alleged to have committed a bad act, and
13 finally whether the proceeding involved the State's
14 enforcement of its laws.

15 CHIEF JUSTICE ROBERTS: Well, don't all --
16 it's sort of like the important State interests. I
17 assume the State's not doing anything unless they think
18 it's important. And any type of administrative
19 proceeding, remedial or otherwise, has to have some
20 bite to it. There has to be something that is going
21 happen to you if you don't do what they tell you to do.
22 So in that sense, I mean, almost every administrative
23 proceeding is coercive.

24 MR. LYNCH: If it can be backed up, as this
25 one could. When the board issued its order and directed

1 Sprint to make payment to Windstream, had Sprint failed
2 to do that Sprint could have been subject to civil
3 penalties assessed by the board. So I think to the
4 extent that the agency proceedings are backed up with
5 that kind of enforcement --

6 CHIEF JUSTICE ROBERTS: Well, my point is it
7 doesn't seem like much of a limiting test, if you can
8 say any time -- sort of any time anything bad can happen
9 to you as a result of an administrative proceeding,
10 that's coercive. It doesn't seem like a serious
11 constraint on the application of Younger.

12 MR. LYNCH: And what that, what that may go
13 to, Your Honor, is the fact that the coercive-remedial
14 distinction is not any easier to apply than the
15 important State interest test.

16 JUSTICE ALITO: Well, could you give me an
17 example of State administrative proceedings that would
18 not fall within your understanding of the scope of
19 Younger?

20 MR. LYNCH: With respect to my own agency,
21 for instance, a -- well, there is all the obvious
22 examples, legislative action, the cases where there is
23 no State agency or no State proceeding pending. But in
24 terms of a quasi-judicial agency action that would not
25 be entitled to Younger abstention, given the earlier

1 example if the parties were in what's called the
2 garden -- truly in a garden-variety commercial dispute
3 between two parties and the agency is simply resolving
4 that dispute between the two parties. The State's
5 interest is substantially diminished in that proceeding.

6 JUSTICE KAGAN: I think --

7 CHIEF JUSTICE ROBERTS: Why is -- I'm sorry.
8 I was just going to say why is that? Presumably, the
9 State is resolving that dispute pursuant to some State
10 law or State regulation, State policy. I don't know why
11 the -- the State interest is unimportant simply because
12 it's the resolution of a private dispute.

13 MR. LYNCH: Let me be clear. I don't say
14 the State interest is unimportant; it is simply
15 diminished. And at some point, it would be diminished
16 to the point where Younger abstention would not be
17 appropriate.

18 JUSTICE BREYER: Does it matter if it's just
19 purely Federal law? I mean, think of a civil case
20 involving a State on one side and private parties on
21 another in a State court which has jurisdiction over
22 Federal laws. The State claims that the defendant has
23 violated, civilly, a Federal statute. There's an action
24 also in Federal Court. In your view, does the Federal
25 Court have to abstain?

1 MR. LYNCH: If the Federal plaintiff brought
2 the Federal action in order to enjoin the State court
3 proceedings --

4 JUSTICE BREYER: No, no. There's no action
5 for an injunction. What they want is the judge to
6 decide the case. The private party wants the Federal
7 judge to decide his case. That's all. It's a matter of
8 interpreting Federal law.

9 Now, in your opinion, is Younger -- does
10 Younger, not some other doctrine, does Younger require
11 abstention?

12 MR. LYNCH: Yes.

13 JUSTICE BREYER: Yes. Okay. So on your
14 review, we can never have a case proceed in Federal
15 court even on a purely Federal issue if, in fact, there
16 is involving this estate civil case on the same
17 question.

18 MR. LYNCH: Involving the same parties.

19 JUSTICE BREYER: Yes.

20 MR. LYNCH: Yeah.

21 JUSTICE BREYER: Well, I can't think of a --
22 doesn't it often happen that there are such cases? I
23 mean, I -- I would think that wouldn't be too difficult.
24 I mean, either there never is one and you tend to be
25 right or there are a whole lot of them and you tend to

1 be wrong. I've just never heard it put in that extreme
2 way, and maybe you're right. I don't know. What's
3 your -- do you have authority for it or any light to
4 shed?

5 MR. LYNCH: I think my authority for it is
6 in this case -- in this Court's Younger abstention
7 decisions. The Middlesex County test is a simple
8 three-part test that focuses always on the second
9 factor: What is the State's interest? What is the
10 important State interest?

11 JUSTICE ALITO: Well, suppose it's a
12 licensing procedure. Somebody's been denied a license
13 to be a barber or a hairdresser and the person wants to
14 challenge that in Federal court. Would Younger apply
15 there?

16 MR. LYNCH: No, I don't think that would
17 be a --

18 JUSTICE ALITO: Why?

19 MR. LYNCH: I don't believe that would be
20 agency action in a judicial manner.

21 JUSTICE ALITO: Why not?

22 MR. LYNCH: I'm assuming that they filed
23 a -- a form, filled it out, gave it to the agency and it
24 was denied. That seems more to me to be of an executive
25 character.

1 JUSTICE ALITO: Well, suppose there's
2 some -- there's an -- an administrative agency in the
3 State that hears appeals from that.

4 MR. LYNCH: If the person applying for that
5 license had then gone on to ask for a hearing before
6 that department that hears administrative appeals, and
7 it had a quasi-judicial proceeding in order to make that
8 determination, then I believe that Younger would --
9 could apply there, if there's an important State
10 interest attached to the denial of that license.

11 JUSTICE KAGAN: I guess, Mr. Lynch, the
12 concern is, given that we think agencies are doing
13 things that implicate important State interests most of
14 the time, that's why they do them, that -- that your
15 test, and not just your test, but the Eighth Circuit's
16 tests, would turn agency adjudicators into the primary
17 legal decision-makers in our system on all matters that
18 they were -- you know, wanted to get into, including
19 matters of Federal law.

20 MR. LYNCH: That would -- to the extent that
21 the cases are brought before the State agencies in the
22 first place, and the Federal issues are raised there,
23 before it goes to the Federal court, that would be
24 correct.

25 JUSTICE KAGAN: That does seem like a big

1 proposition, you know. I mean, do you think that
2 Younger says that or that Middlesex says that or that
3 we've ever said that?

4 MR. LYNCH: I think that Middlesex combined
5 with Huffman providing for the State a unitary
6 proceeding does, in fact, provide for that result.

7 Leads logic --

8 JUSTICE BREYER: Does Younger say "before"?

9 MR. LYNCH: I'm sorry?

10 JUSTICE BREYER: Does Younger say "before"?

11 MR. LYNCH: No. Middlesex --

12 JUSTICE BREYER: You just said before.

13 MR. LYNCH: Middlesex --

14 JUSTICE BREYER: No. So -- so in your view,
15 it doesn't matter which is brought first, I guess.

16 MR. LYNCH: No. Middlesex County requires
17 that there be a pending State proceeding.

18 There is one other argument I'd like to
19 address --

20 JUSTICE ALITO: Is it correct that under
21 Eighth Circuit law the party that wants to bring the
22 Federal lawsuit has to go to State court first?

23 MR. LYNCH: You mean following the agency
24 proceedings, the unitary proceeding? That is the Eighth
25 Circuit's approach, yes. That once you've gotten on

1 the -- the State train, you have to ride that through to
2 the end of the State process.

3 JUSTICE ALITO: Well, I thought that -- I
4 thought that Sprint said that they had to go to State
5 court whether they wanted to or not or else they
6 wouldn't be able to go to Federal court.

7 MR. LYNCH: I believe Sprint's argument -- I
8 don't care -- don't want to speak for them, but I
9 believe their argument on that point was following the
10 board's decision, they feel that the Eighth Circuit law
11 required them to file petitions in both Federal court
12 and to invoke the judicial review process in State
13 district court.

14 JUSTICE BREYER: If Younger only applies
15 to -- to State proceedings that are brought first, then
16 I guess we could have a -- a criminal defendant, who's
17 not yet one, bring an action in Federal court to say
18 that the law is unconstitutional or something or
19 violates a Federal law. And then the State prosecutes
20 him criminally and the Federal court couldn't -- and the
21 Federal court could enjoin the criminal proceeding.

22 MR. LYNCH: That would be the -- very much
23 like the case in this Court's decision in Steffel
24 against --

25 JUSTICE BREYER: So we've said they can't --

1 you can enjoin a criminal decision -- a criminal
2 proceeding in a State court as long as the criminal
3 proceeding wasn't brought first. Is that what this
4 Court has said?

5 MR. LYNCH: As I read it what this Court has
6 said is that there's no Younger abstention when there's
7 no pending State criminal proceeding.

8 JUSTICE BREYER: No, no. There is a pending
9 one by the time they get around to it. Then what? I
10 mean, I --

11 MR. LYNCH: So -- I'm sorry. I
12 misunderstood.

13 JUSTICE BREYER: I'll ask you to clarify.
14 You've come up with a couple of rules that strike me as
15 counterintuitive and so I'm trying to figure that one
16 out. The before or after one doesn't seem to work too
17 well in my mind, because it would seem, you know, you
18 couldn't -- Federal court couldn't. Federal court could
19 enjoin a criminal proceeding that came up later in your
20 view, I guess.

21 MR. LYNCH: Yes. I think the Federal court
22 at least could answer the Federal question presented. I
23 guess I have a hard time seeing --

24 JUSTICE BREYER: All right.

25 MR. LYNCH: Okay.

1 The last thing I wanted to address is there
2 is a lot of discussion, particularly in some of the
3 amicus briefs, to the effect that the board was acting
4 under Federally delegated authority here under some --
5 as some kind of deputized Federal agent. That is not
6 the case at all here. The board was acting under its
7 State law authority.

8 Sprint relies, for instance, on the AT&T vs.
9 Iowa Utilities Board case for the proposition that the
10 1996 Telecommunications Act asserted Federal authority
11 to regulate local telecommunications matters.

12 That's true insofar as it goes, but that
13 case is limited to matters addressed by the '96 Act,
14 which was addressed to create in competition within the
15 local exchange marketplace.

16 What we're talking about in this case is
17 access services by which a long distance carrier such as
18 Sprint delivers a long distance call to the local
19 exchange carrier such as Windstream for completion to
20 Windstream's customers. That service remains
21 practically a monopoly service. Sprint has no way to
22 get those calls to Windstream's customers other than by
23 connecting it to Windstream and letting Windstream --
24 compensating Windstream for carrying those calls to the
25 end.

1 Because of that, the Federal
2 Telecommunications Act of '96 in Section 251(g)
3 expressly reserved the tariff access charge regime and
4 did not affect the State's jurisdiction over intrastate
5 access charges. Sprint acknowledges that in its reply
6 brief at pages 22 and 23, but claims that the situation
7 is unclear as to what applied between 1996 and 2011.
8 But the fact remains that Sprint paid those intrastate
9 access charges without protest from 1996 to 2009, when
10 it made the unilateral decision to change the process
11 and start withholding those payments.

12 JUSTICE GINSBURG: Well, then why wouldn't
13 you say that Sprint was not the initiator of this State
14 process? Because Sprint withdrew its complaint, right?

15 MR. LYNCH: I'm sorry. I missed a few words
16 there.

17 JUSTICE GINSBURG: Sprint -- Sprint withdrew
18 its complaint.

19 MR. LYNCH: Sprint was allowed to withdraw
20 its complaint.

21 JUSTICE GINSBURG: Yes. So at that point it
22 becomes the board's proceeding. It becomes a proceeding
23 initiated by the board and not by Sprint.

24 MR. LYNCH: That is correct. Thus, even
25 under the first-to-file test, we believe that this case

1 was coercive at the time it was before the board to the
2 extent that the coercive-remedial distinction matters.

3 Those are the points I had to cover. If
4 there are no further questions, thank you.

5 CHIEF JUSTICE ROBERTS: Thank you counsel.

6 Mr. Simeone, you have 6 minutes remaining.

7 REBUTTAL ARGUMENT OF TIMOTHY J. SIMEONE

8 ON BEHALF OF THE PETITIONER

9 MR. SIMEONE: I hope to be very brief. But
10 there was a lot of discussion about the problem with the
11 IUB's approach lacking sort of meaningful limits. And I
12 just want to say a couple words about the Middlesex
13 County test, because I don't think that that lack of
14 meaningful limits necessarily follows from -- from the
15 Middlesex County test, although I do think some
16 clarification of the test would be -- would be helpful.

17 Under Middlesex County, of course, Younger
18 requires an ongoing State judicial proceeding and it
19 requires an important State interest. So with respect
20 to ongoing State judicial proceeding, the IUB
21 understands "judicial" to be any adjudicative
22 proceeding. But as we argue in our briefs, that's not
23 necessarily consistent with the rest of this Court's
24 cases under -- applying Younger.

25 "Judicial" we think means an exercise of the

1 State's judicial enforcement authority. So, limiting
2 that prong of Middlesex County to an exercise of the
3 State's judicial enforcement authority would help to
4 draw this line.

5 A second similar point is with respect to
6 the State interest prong of Middlesex County, we argue,
7 of course, that the relevant State interest is the
8 State's interest in the ongoing State proceeding. Here
9 the ongoing State proceeding was this -- was judicial
10 review of the agency proceeding. So, by -- by limiting
11 the proceeding that you're looking at to the ongoing
12 State judicial proceeding required by the first prong of
13 Middlesex County, then you're really just looking at the
14 State's interest in State judicial review of Federal law
15 questions as opposed to Federal court judicial review
16 of -- of Federal law questions.

17 And again, that seems to me to help to draw
18 a line.

19 Unless there are further questions, that was
20 all I had.

21 CHIEF JUSTICE ROBERTS: Thank you counsel,
22 counsel.

23 The case is submitted.

24 (Whereupon, at 11:57 a.m., the case in the
25 above-entitled matter was submitted.)

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