No. 12-815

IN THE
Supreme Court of the United States

SPRINT COMMUNICATIONS COMPANY, L.P.

Petitioner,

v.

ELIZABETH S. JACOBS, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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The Chamber of Commerce of the United States of America (the "Chamber") respectfully submits this brief as *amicus curiae* in support of Petitioner Sprint Communications Company, L.P. ("Sprint").[1]

INTEREST OF *AMICUS CURIAE*

Founded in 1912, the Chamber is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community.

The correct resolution of this case, and in particular the rejection of the Eighth Circuit's expansive understanding of abstention under *Younger v. Harris*, 401 U.S. 37 (1971), is important to businesses that are subject to dual federal and state regulatory regimes, such as businesses in the telecommunications industry. Regulated entities in such industries participate in state administrative proceedings and may find it

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution intended to fund this brief's preparation or submission. Pursuant to Supreme Court Rule 37.3, the parties in this case have granted blanket consent to the filing of *amicus curiae* briefs.

necessary to seek relief in federal court either to block such proceedings or to challenge the outcome of completed proceedings. The Eighth Circuit's interpretation of *Younger* limits the ability of regulated entities to secure a federal forum for hearing their federal-law challenges to state-agency proceedings. Correct resolution of this case is therefore of particular interest to the Chamber and the businesses it represents.

SUMMARY OF ARGUMENT

The *sine qua non* for the application of *Younger* abstention is the pendency of a state proceeding that is coercive in nature, in which a State seeks to enforce its own laws. The critical distinction between "coercive" and "remedial" state proceedings is evident from this Court's cases extending *Younger* from the context of criminal prosecutions (in which it was first applied) to certain civil and administrative enforcement proceedings. Indeed, the Court has expressly endorsed that distinction in defining the scope of *Younger* abstention. Moreover, the twin rationales underpinning *Younger*—proper respect for the role of States in our federal system and traditional limitations on federal equity jurisdiction—simply do not apply in the context of remedial state actions. By exercising jurisdiction while a state remedial action is pending, a federal court does nothing to interfere with a State's prerogative as a sovereign to enforce its own laws. And it was never a rule of equity that the mere pendency of a related action in another court was enough to require abstention.

For those reasons, every Court of Appeals that has addressed the issue (other than the Eighth Circuit) has held that *Younger* abstention is appropriate only when a related state proceeding is coercive in nature. The

pendency of a purely remedial state proceeding, by contrast, does not warrant *Younger* abstention and is instead subject to the general rule that the "pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *Colorado River Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) (internal quotation marks omitted).

Under that rule, *Younger* abstention was not appropriate in this case. The underlying state agency proceeding here lacked any of the hallmarks of a "coercive" action intended to enforce state law. The State of Iowa did not initiate enforcement proceedings before the Iowa Utilities Board ("IUB") in an attempt to enforce its laws against Sprint. Instead, Sprint voluntarily petitioned the IUB to help resolve a commercial disagreement with another private party over the propriety of certain charges. Sprint, in other words, sought relief in the IUB solely for remedial purposes.

The Eighth Circuit nonetheless concluded that Sprint's remedial proceeding before the IUB warranted *Younger* abstention. *See Sprint Commc'ns Co. v. Jacobs*, 690 F.3d 864, 869 (2012). In doing so, it expressly rejected the distinction between coercive and remedial state proceedings. *Id.* at 867. Instead, the Eighth Circuit explained that, under its jurisprudence, *Younger* abstention applies to *any* ongoing state judicial proceeding—whether coercive or remedial—so long as that proceeding "implicates important state interests" and "provide[s] an adequate opportunity to raise constitutional challenges." *Id.*; *see also Hudson v. Campbell*, 663 F.3d 985, 987 (8th Cir. 2011). And although the particular situation before the court involved a state-court proceeding in which Sprint was

seeking review of a state-agency decision, the Eighth Circuit proclaimed more broadly (in line with Eighth Circuit precedent) that the agency proceeding itself warranted *Younger* abstention—that is, the "IUB's order . . . constitutes a judicial proceeding that is entitled to *Younger* abstention." *Sprint*, 690 F.3d at 869.

The Eighth Circuit's sweeping view of *Younger* abstention cannot be reconciled with this Court's understanding of that doctrine. Given that States could be said to have an "important interest" in almost *all* proceedings before their own specialized regulatory agencies, the Eighth Circuit's rule taken to its logical limit would effectively require federal courts to abstain during the pendency of almost *any* state administrative proceeding. Such a result would not only conflict with this Court's repeated admonitions that *Younger* abstention is the "exception, not the rule," *New Orleans Public Service, Inc. v. Council of City of New Orleans* ("*NOPSI*"), 491 U.S. 350, 359 (1989) (internal quotation marks omitted), but it also (if accepted) would threaten to foreclose federal judicial review for the numerous industries subject to dual federal and state regulatory regimes. Regulated entities in industries such as telecommunications, electricity, and oil and gas (to name a few) frequently find it necessary to police the line between federal and state authority to which they are subject by challenging state action as preempted by federal law. Currently, those entities are generally free to take such claims to federal court. Under the Eighth Circuit's rule, however, the doors of the federal courthouse would be slammed shut whenever a regulated entity commences a state administrative proceeding.

Nor would the expansive effects of the Eighth Circuit's novel approach to *Younger* abstention abate once the administrative proceeding ends. Although this Court has specifically reserved judgment on the issue, the Eighth Circuit has held that, upon the conclusion of proceedings before a state agency, *Younger* abstention requires parties to exhaust all state appellate remedies before seeking to file suit in federal court. *See, e.g.*, *Hudson*, 663 F.3d at 988 (requiring "exhaustion of . . . state appellate remedies," including "administrative, circuit court, and appellate review"). In other words, the Eighth Circuit's approach to *Younger* means that a private party that commences a state administrative proceeding will not be free to bring a related proceeding in federal court until the administrative proceeding has concluded and all state appellate options—including potentially state circuit-court, appellate-court, and supreme-court review—have been exhausted.

This Court's *Younger* doctrine does not support using the mere pendency of a state remedial proceeding at any (let alone every) stage as a basis for a sweeping denial of access to a federal forum for resolving federal-law issues. This Court should reverse the Eighth Circuit's ruling and make clear that *Younger* abstention is warranted only when a related state proceeding is coercive in nature. If, however, the Court is inclined to affirm, it should make clear that *Younger* applies here only because the federal plaintiff both initiated the original state administrative proceeding and voluntarily sought to appeal the outcome of that proceeding through the state courts.

ARGUMENT

In its decision below, the Eighth Circuit held that *Younger* required a federal district court to abstain during the pendency of a purely remedial state

proceeding. The State of Iowa did not initiate enforcement proceedings against Sprint in front of a state agency or in state court. Instead, Sprint *itself* voluntarily filed a complaint before the IUB. *See* Pet. App. 64a. It did so, moreover, to help resolve a commercial disagreement with another private party. *See id*. at 64a-65a. Whatever else might qualify as a "coercive" state proceeding for *Younger* purposes, it surely cannot include a case where two private parties voluntarily bring a dispute before a state agency. Indeed, even the Eighth Circuit did not dispute that the underlying state proceeding here was "remedial, rather than coercive," in nature. *Sprint*, 690 F.3d at 868.[2]

Because it applies *Younger* abstention to remedial state proceedings, the Eighth Circuit's holding conflicts with this Court's cases, the purposes underlying the *Younger* doctrine, and the views of every other Court of Appeals to address the issue. Embracing the Eighth Circuit's novel approach to *Younger* abstention, moreover, would have significant implications for federal-judicial-review rights of businesses in numerous

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[2] Although the Eighth Circuit stated below that the IUB's order "attempts to enforce liabilities based on present facts and existing laws," *Sprint*, 690 F.3d at 869, that characterization was made in the context of the lower court holding that the IUB's proceeding was judicial, rather than legislative, in nature, under the analysis this Court applied in *NOPSI*. *Id*. at 868 (explaining that *NOPSI* "distinguished between state judicial inquiries and legislation, noting that only judicial proceedings are entitled to *Younger* abstention"). The Eighth Circuit never disputed that while the IUB's proceeding was judicial in nature, it nevertheless was a "remedial" judicial proceeding that had been initiated by Sprint. *See id*.

sectors of American industry that are subject to dual state and federal regulatory regimes.

A. The Eighth Circuit's Holding Is Inconsistent With This Court's Cases Defining The *Younger* Doctrine.

By holding that *Younger* abstention was warranted during the pendency of remedial state proceedings, the Eighth Circuit reached a result that cannot be squared with decades of this Court's precedents construing the *Younger* doctrine. In the more than 40 years since *Younger* was decided, this Court has applied *Younger* abstention *only* in the context of coercive state proceedings. *Younger* itself involved the archetypal state coercive action: a criminal prosecution. And although the Court's "concern for comity and federalism has led [it] to expand the protection of *Younger* beyond state criminal prosecutions," *NOPSI*, 491 U.S. at 367-68, in the process of extending the doctrine, the Court has consistently limited *Younger* to coercive actions brought by the State for the purpose of enforcing its own laws. Thus, the Court has held that *Younger* abstention is required in the context of state-initiated civil-enforcement proceedings to compel closure of a theatre showing obscene films, *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975), recover fraudulently obtained welfare payments, *Trainor v. Hernandez*, 431 U.S. 434 (1977), and assume state custody over abused children, *Moore v. Sims*, 442 U.S. 415 (1979).

In each instance, the Court's reasoning was unmistakably tied to the coercive nature of the relevant state proceeding. The Court thus noted that the State was a party to the underlying civil proceeding. *See Moore*, 442 U.S. at 423 ("[T]he State here was a party to the state proceedings."); *Trainor*, 431 U.S. at 444 ("[T]he fact remains that the State was a party to the

suit in its role of administering its public-assistance programs."); *Huffman*, 420 U.S. at 604 ("The State is a party to the Court of Common Pleas proceeding."). And it emphasized that the State was acting as a sovereign to secure compliance with its laws, typically in a field closely related to the State's criminal laws. *See Moore*, 442 U.S. at 423 (proceeding was "in aid of and closely related to criminal statutes") (internal quotation marks omitted); *Trainor*, 431 U.S. at 444 (State "had the option of vindicating these policies through criminal prosecutions"); *Huffman*, 420 U.S. at 604-05 (proceeding was "more akin to a criminal prosecution than are most civil cases" and was brought to "obtain compliance with precisely the standards which are embodied in [the] criminal laws"). *Younger* abstention, in other words, is intended to prevent the "disruption of suits by the State in its sovereign capacity." *Trainor*, 431 U.S. at 446.

In contrast to these cases, which applied *Younger* to coercive civil-enforcement proceedings, no decision of this Court has ever applied *Younger* abstention where an ongoing state proceeding involved a private party's efforts to obtain a *remedy* from a state judicial or administrative body for a past wrong—whether the remedy was sought against the State itself or against another private party.[3] The lack of precedent over more than 40 years is itself telling.

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[3] The Court has also extended *Younger* to "challenges to the processes by which the State compels compliance with the judgments of its courts." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 13-14 (1987) (enforcement of state-court judgment); *see also Juidice v. Vail*, 430 U.S. 327 (1977) (enforcement of contempt order). Such cases are limited to "civil proceedings involving certain orders that are uniquely in furtherance of the state courts'

Distinguishing between coercive and remedial actions is particularly important in the context of state-administrative proceedings. As the Court recognized in *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, limiting *Younger* to coercive proceedings initiated by the State is critical to squaring the *Younger* doctrine with the general rule that a party need not exhaust state administrative remedies before bringing a federal lawsuit. 477 U.S. 619, 627 n.2 (1986) (explaining that *Younger* abstention applied because, *inter alia*, "the administrative proceedings here are coercive rather than remedial"); *see also Patsy v. Board of Regents*, 457 U.S. 496, 509 (1982) (holding that plaintiffs bringing § 1983 claims generally are not required to exhaust state remedies before bringing suit in federal court); *Devlin v. Kalm*, 594 F.3d 893, 895 (6th Cir. 2010) (former employee free to pursue wrongful termination claims simultaneously "in federal and state proceedings"). Thus, the Court has held that *Younger* abstention applies to state-initiated disciplinary proceedings against an attorney, *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 437 (1982) (explaining that ethics committees "act as the arm of the [Supreme Court of New Jersey] in performing the function of receiving and investigating complaints and holding hearings"), and to a state agency's administrative action against a private school that allegedly engaged in employment discrimination,

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ability to perform their judicial functions." *NOPSI*, 491 U.S. at 368. Given that they fundamentally involve a State's capacity to ensure enforcement of the judgments or orders of its courts, they provide no basis for holding that *Younger* applies to purely remedial state proceedings, such as the proceedings Sprint initiated before the IUB in this case.

Dayton Christian Schools, 477 U.S. at 627-28. In both cases, an arm of the State was seeking to enforce state laws. The Court has never interpreted *Younger*, however, to require a federal court to abstain in deference to a related state administrative proceeding initiated by a private party to obtain resolution of a private commercial dispute.

B. The Eighth Circuit's Holding Is Inconsistent With The Rationales Underpinning *Younger*.

The principles underlying the *Younger* doctrine also provide no support for requiring federal courts to abstain in deference to state remedial proceedings. To the contrary, the two rationales invoked by the Court in *Younger* necessarily limit that abstention doctrine to situations where a State's sovereign interests in enforcing its laws are at stake.

The most "vital consideration" animating *Younger* is the "notion of comity" in our federal system—the idea that "States and their institutions are left free to perform their separate functions in their separate ways." 401 U.S. at 44. Those considerations are at their zenith when a State institutes a coercive action to enforce its laws. *See, e.g.*, *Kelly v. Robinson*, 479 U.S. 36, 49 (1986) ("This Court has recognized that the States' interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief."); *Trainor*, 431 U.S. at 444 (recognizing a strong State interest in avoiding "interference by a federal court with an ongoing civil enforcement action"). Where a private party voluntarily invokes a State's administrative or judicial system to obtain a remedy (even in parallel with federal remedies) the State has no stronger claim

that its agencies or courts should be the venue for the party's complaint than do the federal courts. Indeed, that is particularly the case where (as here) the proceeding involves a dispute between two private parties and raises important questions of federal law. In such a case, the settled principle that applies is that a federal court has a "virtually unflagging obligation . . . to exercise the jurisdiction given" to it, *Colorado River*, 424 U.S. at 817, and the pendency of a parallel state proceeding is no bar to the federal action. In other words, the State's mere role as a decisionmaker in a remedial action (as opposed to its role as a sovereign seeking to enforce its own laws) does not trigger the comity rationale of *Younger*.

The second rationale underpinning *Younger*—traditional constraints on the authority of courts of equity to enjoin criminal prosecutions or enforcement proceedings—also provides no support for applying *Younger* to remedial state proceedings. As this Court has explained in a case involving concurrent state and federal proceedings, "[i]t was never a doctrine of equity that a federal court should exercise its judicial discretion to dismiss a suit merely because a State court could entertain it." *Colorado River*, 424 U.S. at 813-14 (internal quotation marks omitted). Instead, *Younger* leaned heavily on the principle that courts of equity "should not act to restrain a *criminal* prosecution." 401 U.S. at 43 (emphasis added). Although that principle might apply to a civil or administrative proceeding "which in important respects is more akin to a criminal prosecution than are most civil cases," *Huffman*, 420 U.S. at 604, it has no application where (as here) the underlying state proceeding is remedial in nature.

Finally, applying *Younger* to remedial state proceedings would "make a mockery of the rule that only exceptional circumstances justify a federal court's refusal to decide a case in deference to the States." *NOPSI*, 491 U.S. at 368. As this Court has frequently warned, *Younger* abstention is "the exception, not the rule." *Id.* at 359 (internal quotation marks omitted); *see also County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 188-89 (1959) ("The doctrine of abstention . . . is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it."). If *Younger* required federal courts to abstain during the pendency of both coercive *and* remedial state proceedings, there would be few (if any) state proceedings to which *Younger* did not apply. Such a sweeping understanding of *Younger* abstention would be inconsistent with the general rule that "as between state and federal courts … the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *Colorado River*, 424 U.S. at 817 (internal quotation marks omitted). Although *Younger* imposes exceptions to that general rule, it does not "remotely suggest that every proceeding between a State and a federal plaintiff justifies abstention." *Moore*, 442 U.S. at 423 n.8 (internal quotation marks omitted).

C. The Eighth Circuit's Understanding Of *Younger* Is An Outlier Among The Courts Of Appeals.

By extending *Younger* to remedial state proceedings, the Eighth Circuit adopted an approach to *Younger* abstention that the great majority of the lower courts have rejected. Every Court of Appeals that has addressed the issue, other than the Eighth Circuit, has held that *Younger* abstention is warranted only when a

related state proceeding is coercive in nature. *See, e.g.*, *Guillemard–Ginorio v. Contreras–Gomez*, 585 F.3d 508, 522 (1st Cir. 2009); *Univ. Club v. City of New York*, 842 F.2d 37, 42 (2d Cir. 1988); *O'Neill v. City of Philadelphia*, 32 F.3d 785, 791 n.13 (3d Cir. 1994); *Moore v. City of Asheville*, 396 F.3d 385, 394-95 (4th Cir. 2005); *Devlin v. Kalm*, 594 F.3d 893, 895 (6th Cir. 2010); *Nader v. Keith*, 385 F.3d 729, 732 (7th Cir. 2004); *Brown ex. rel. Brown v. Day*, 555 F.3d 882, 890 (10th Cir. 2009).

As those courts have recognized, "*Younger* originated in situations where federal involvement would block a state's efforts to enforce its laws," and the rationale behind the decision limits it to such situations. *Brown*, 555 F.3d at 893. As a result, there is a critical distinction "between cases where the state proceeding involves the state coercively enforcing its laws and cases where state proceedings involve the federal plaintiff seeking a remedy for a past wrong." *Id.* at 884; *see also id.* at 892 (a coercive proceeding involves a "state's proactive enforcement of its laws"); *City of Asheville*, 396 F.3d at 393 (in finding action coercive, emphasizing that the City was a party to the proceeding and was seeking to "enforce its substantive policies"); *Nader*, 385 F.3d at 732 (explaining that *Younger* applies when "the state has *instituted* a criminal, disciplinary, or other enforcement proceeding against [the federal plaintiff]") (emphasis added); *Planned Parenthood League v. Bellotti*, 868 F.2d 459, 467 (1st Cir. 1989) (*Younger* did not apply where there was no "state-initiated proceeding, criminal or civil"). Participation by an arm of the State in an effort to enforce state law is crucial because it triggers the essential concerns animating the *Younger* doctrine—namely, preventing federal-court interference "with the

State's interest in enforcing its substantive laws as well as its interest in enforcing those laws through available administrative proceedings and in its own courts." *City of Asheville*, 396 F.3d at 395; *see also Trainor*, 431 U.S. at 442 (*Younger* prevents "interference by the federal courts with legitimate state efforts to enforce state laws"). Other proceedings, in contrast, "fill the 'remedial' category," *Brown*, 555 F.3d at 890, and do not involve similar concerns for interfering with a State's "proactive enforcement of its laws," *id.* at 892.

Although it acknowledges that "[o]ther circuits" have limited *Younger* abstention to coercive state proceedings, the Eighth Circuit nonetheless has held that the distinction between coercive and remedial actions is not "outcome determinative." *Hudson*, 663 F.3d at 987; *Sprint*, 690 F.3d at 866, 868 (same). Instead, in the Eighth Circuit's view, *Younger* abstention is warranted where there is *any* pending state proceeding—without regard to whether is properly characterized as "coercive" or "remedial"—so long as the proceeding (i) is "ongoing;" (ii) "implicates an important state interest;" and (iii) "provides an adequate opportunity to raise constitutional challenges." *Hudson*, 663 F.3d at 987; *Sprint*, 690 F.3d at 867 (same).

That cannot be all that is required for *Younger* abstention to apply. This Court has repeatedly warned that *Younger* does not require abstention whenever a related state proceeding is pending. *See, e.g.*, *Pennzoil*, 481 U.S. at 14 n.12 ("Our opinion does not hold that *Younger* abstention is always appropriate whenever a civil proceeding is pending in a state court."); *Moore*, 442 U.S. at 423 n.8 ("[W]e do not remotely suggest that every proceeding between a State and a federal plaintiff justifies abstention.") (internal

quotation marks omitted). Instead, it has emphasized that *Younger* applies only to certain "type[s] of proceeding[s]." *NOPSI*, 491 U.S. at 367. But under the Eighth Circuit's test, *Younger* abstention would be warranted for almost *any* type of ongoing state proceeding raising issues related to a pending federal court action. A State, after all, can almost *always* be said to have an "important . . . interest" in matters pending in its own courts and administrative bodies. *Hudson*, 663 F.3d at 987, 989. And the availability of state-court review of a lower court or agency decision typically satisfies the requirement that there be an "adequate opportunity" to raise constitutional challenges. *Id.*; *see also Dayton Christian Schools*, 477 U.S. at 629 (explaining that, for *Younger* purposes, it is "sufficient . . . that constitutional claims may be raised in state-court judicial review of the administrative proceeding"). Embracing the Eighth Circuit's approach, in short, would turn *Younger* abstention from an "extraordinary and narrow exception," *County of Allegheny*, 360 U.S. at 188-89, into a matter of routine practice.

D. Adopting The Eighth Circuit's Approach To *Younger* Would Frustrate Federal Judicial Review Of Federal Challenges To State Agency Action.

The Eighth Circuit's rule has potentially significant implications in the context of ongoing state administrative proceedings. In both the decision below and in several of its past decisions, the Eighth Circuit required federal courts to abstain on *Younger* grounds in deference to ongoing state administrative proceedings that had been initiated by private parties. *See Sprint*, 690 F.3d at 869 ("The IUB's order . . . constitutes a judicial proceeding that is entitled to

Younger abstention."); *Hudson*, 663 F.3d at 986 (holding that "abstention is appropriate in administrative proceedings like Hudson's"); *Night Clubs, Inc. v. City of Fort Smith*, 163 F.3d 475, 479-81 (8th Cir. 1998) (proceedings before a city planning commission in which a private party was seeking approval to open an exotic dancing club); *Alleghany Corp. v. McCartney*, 896 F.2d 1138, 1145 (8th Cir. 1990) (proceedings before the Nebraska Director of Insurance in which a private party was seeking approval to acquire common stock in an insurance company).[4] Indeed, nothing in the Eighth Circuit's test would prevent *Younger* abstention from applying in practice to *all* ongoing state-agency proceedings.

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[4] At certain points, the decision below is less than clear about whether it was Sprint's initiation of proceedings before the IUB that triggered *Younger* abstention or, alternatively, whether it was Sprint's decision to file a state-court petition for review that triggered *Younger* abstention. *See Sprint*, 690 F.3d at 867 ("The parallel state court proceeding . . . has a bearing on our abstention analysis."). The procedural posture of the case required the court to consider solely whether Sprint's state-court petition for review warranted application of *Younger*. Nevertheless, the court announced more broadly that it was the administrative proceeding that warranted *Younger* abstention: "The IUB's order . . . constitutes a judicial proceeding that is entitled to *Younger* abstention." *Id.* at 869; *see also id.* at 867 (explaining that interference warranting *Younger* abstention "would result from a federal court's declaration of how a *state utilities board* should interpret its state's laws") (emphasis added). The district court also made it clear that it viewed the IUB proceeding as triggering *Younger* when it explained that that Sprint's subsequent petition for review in state court was "an appeal from the IUB orders" that was part of an "uninterruptible process under the *Younger* doctrine." Pet. App. 24a.

The Eighth Circuit's reasoning has few logical limits regarding the kinds of state proceedings that could be subject to *Younger* abstention. In this case, Sprint itself initiated the underlying state proceedings. But the Eighth Circuit's lodestar for applying *Younger*—namely, whether a state has an "important interest" in the ongoing proceeding—would seem to be unaffected by which party initiated the proceedings. The logical extension of the Eighth Circuit's reasoning would therefore suggest that even state proceedings started by *another party* would trigger *Younger* abstention and would thus deprive a defendant involuntarily haled before a state agency (or other state tribunal) of the ability to resort to federal court to present any federal claims.

Nor under the Eighth Circuit's rule could a party assure itself a federal forum simply by filing a federal-court action before a state administrative proceeding had commenced. Federal courts must abstain when a proceeding to which *Younger* applies is brought "after the federal complaint is filed but before any proceedings of substance on the merits have taken place in the federal court." *Hicks v. Miranda*, 422 U.S. 332, 349 (1975). Under the Eighth Circuit's rule, therefore, a defendant seemingly could obtain an automatic stay of a federal action simply by quickly filing a related proceeding in a state agency or before a state court.

The Eighth Circuit's expansive approach to *Younger*, if adopted nationwide, could have significant ramifications for the numerous sectors of American industry that are subject to dual state and federal regulatory regimes. Businesses in these industries frequently resort to federal court to vindicate their federal constitutional and statutory rights when state regulators violate federal law. Today, dual regulatory

regimes affect myriad segments of the economy, including (to name just a few) natural gas production and transport under the Natural Gas Act and Natural Gas Policy Act, *see, e.g., Northwest Central Pipeline Corp. v. State Corp. Commission of Kansas*, 489 U.S. 493, 506 (1989) ("The natural gas industry is subject to interlocking regulation by both federal and state authorities."); electric utilities under the Federal Power Act and Public Utility Regulatory Policies Act, *see, e.g.*, *Freehold Cogeneration Assocs. v. Board of Regional Commissioners*, 44 F.3d 1178, 1182 (3d Cir. 1995); and telecommunications, *see, e.g. Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 360 (1986) ("The [Communications] Act establishes, among other things, a system of dual state and federal regulation over telephone service."). These industries, moreover, account for a significant amount of American economic activity. *See, e.g.*, U.S. Department of Commerce, Bureau of Economic Analysis, http://www.bea.gov/regional/downloadzip.cfm (noting 2012 GDP of telecommunications industry at $363 billion or 2.4% of private sector economic activity and utilities at $304 billion or 2.03% of private sector economic activity, and 2011 GDP of oil and gas extraction at $174 billion or 1.16%).

Entities doing business in those sectors frequently may find themselves before state administrative agencies or courts in proceedings that implicate important federal claims, including claims that involve demarcating the line between federal and state authority. *See, e.g.*, *Verizon Md. Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635, 642 (2002) (telecommunications company challenging legality under the Telecommunications Act of state utility commission's order to pay reciprocal compensation).

Courts have long held that entities in these heavily regulated industries can obtain federal-court review of their federal claims, even while they also have a simultaneous state-court proceeding addressing the same claims. *See, e.g.*, *Kentucky West Virginia Gas Co. v. Pennsylvania Pub. Util. Comm'n*, 791 F.2d 1111, 1117 (3d Cir. 1986) (natural gas companies could challenge order of Pennsylvania Public Utility Commission in federal court while simultaneously challenging the order in state court). In many instances, such a proceeding might be instituted to resolve a dispute between two regulated entities—much like the underlying dispute about access charges between Sprint and Windstream in this case. *See, e.g.*, *Freehold Cogeneration Assocs.*, 44 F.3d at 1182 (dispute between electricity generators concerning modification of contract). But such a proceeding would not prevent one party from resorting to federal court to secure an answer to federal-law questions affecting the dispute. *See, e.g.*, *id.*

Under the Eighth Circuit's rule, however, once *any* party initiates a state-administrative proceeding—apparently including a contractual counterparty or competitor of a regulated entity—*all* issues of federal law must be litigated solely before the state agency. The Eighth Circuit makes no exception to that rule no matter how complex the issues of federal law may be, no matter how important they may be to the functioning of an overall federal regulatory policy, and no matter how much they may cry out for resolution by the expert federal agency in the field.

The underlying merits question in this case, for example, concerns a pure issue of federal statutory interpretation—namely, whether VoIP calls qualify as an "information service" under the Telecommunications

Act of 1996, Pub. L. No. 104-104, 110 Stat. 56. That question clearly implicates "a pervasive federal regulatory regime" and involves "strong federal interest[s]." *Sprint*, 690 F.3d at 868 (internal quotation marks omitted). The Eighth Circuit nonetheless compelled Sprint to litigate that issue in state proceedings. *Id.*; *see also Hudson*, 663 F.3d at 988 (requiring *Younger* abstention and exhaustion of state remedies even though a state administrative decision on Medicaid "involve[d] a pervasive federal regulatory regime"). Indeed, the Eighth Circuit compelled Sprint to litigate that issue in state proceedings even though Sprint itself had initiated and framed the state proceeding and had *not* presented the federal question to the state agency for a decision. *See* J.A. 4a-5a. Sprint's complaint before the IUB was limited purely to the procedural question whether Sprint could withhold payment on disputed charges until the dispute had been resolved in a separate proceeding before the Federal Communications Commission.

Moreover, the Eighth Circuit's expansive understanding of *Younger* would actually undermine the values of federalism and respect for state processes that are at the heart of the *Younger* doctrine. An entity operating in an area of dual state-and-federal regulation often has a choice as to whether to file suit directly in federal court, or to first seek relief before a state administrative body. In this case, for example, nothing would have barred Sprint from seeking declaratory relief directly from a federal district court, without bringing any aspect of its dispute with Windstream to the IUB. If the consequence of invoking state-administrative channels is that a party also necessarily forfeits the ability to secure a federal forum to address any related federal issues, then regulated

parties might well avoid state-administrative proceedings at all costs. "With firms thus induced to avoid the state regulatory process, the principles of federalism would be affronted rather than protected." *Alleghany Corp. v. Haase*, 896 F.2d 1046, 1051 (7th Cir. 1990), *vacated on other grounds by* 499 U.S. 933 (1991).

Beyond the effects noted above, the practical implications of the Eighth Circuit's rule are potentially even broader in light of the exhaustion requirements that can flow from the finding that a particular state proceeding merits *Younger* abstention. This Court has expressly reserved judgment on whether an administrative proceeding to which *Younger* applies can be challenged directly in federal court after the administrative proceeding concludes, or whether parties must first exhaust state judicial review before resorting to federal court. *See NOPSI*, 491 U.S. at 369 n.4. Nonetheless, every Court of Appeals to address the question (except the Fifth Circuit) has held that, when *Younger* abstention to a coercive state administrative proceeding is warranted, a party must exhaust state appeals before seeking to challenge the state-agency decision in federal court. *See, e.g.*, *City of Ashville*, 396 F.3d at 388; *Maymo-Melendez v. Alvarez-Ramirez*, 364 F.3d 27, 35 (1st Cir. 2004); *Majors v. Engelbrecht*, 149 F.3d 709, 712-13 & n.3 (7th Cir. 1998); *O'Neill*, 32 F.3d at 790-91. *But see Thomas v. Texas Bd. of Med. Exam'rs*, 807 F.2d 453, 456 (5th Cir. 1987). The Eighth Circuit has reached the same conclusion. *See, e.g.*, *Hudson*, 663 F.3d at 988 (requiring "exhaustion of state appellate remedies"); *McCartney*, 896 F.2d at 1144 ("[A] party cannot avoid *Younger* by choosing not to pursue available state appellate remedies.").

If the Eighth Circuit's expansive approach to *Younger* were upheld and combined with that

exhaustion requirement, the consequences would be substantial. Combining both rules would mean that once any kind of state administrative proceeding is commenced, a federal court presented with a related case would be *required* stay its hand not only while the administrative proceeding is ongoing, but also unless and until all state appellate options have been exhausted—including potentially state circuit-court, appellate-court, and supreme-court review.

Simply by filing a state administrative action, therefore, putative defendants in a federal lawsuit could force parties to litigate their federal claims solely before state tribunals. That would frustrate an aggrieved party from securing a federal court hearing for a claim that a state agency misinterpreted or violated federal law. Once the mandatory state-appellate review has concluded, principles of *res judicata* might well preclude a new federal lawsuit raising the same claims. *See, e.g.*, *Allen v. McCurry*, 449 U.S. 90, 96 (1980) ("Congress has specifically required all federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so."). Under that scenario, the only avenue for obtaining federal review would be a petition to this Court for a writ of *certiorari* to review the decision of the highest state court in which review could be had. Given the low likelihood of securing a writ of *certiorari* in most cases, however, adoption of the Eighth Circuit's approach could significantly alter judicial review of federal-law issues in industries under dual federal and state regulatory regimes. In any case in which a party saw an advantage to bringing a dispute before a state administrative agency, there would be a race to filing,

because filing before a state agency would effectively bar the other party from resorting to federal court.

Thus, taken to its logical limits, the Eighth Circuit's ruling foreshadows a world in which strategic behavior could inhibit a regulated entity from obtaining federal court review of federal issues—not because state agencies themselves are pursuing proceedings to enforce *state* law in areas of dual regulatory authority, but rather because opponents see an advantage in selecting a state forum. That plainly is not the system this Court envisioned in its decisions explaining the contours of the *Younger* doctrine.

E. Any Affirmance Should Be Limited To The Specific Circumstances Of This Case.

Because the underlying state proceedings were initiated by Sprint and were remedial in nature, the Eighth Circuit erred in holding that *Younger* abstention was warranted. Sprint had every right to bring a federal lawsuit challenging the outcome of the IUB's decision. Sprint should not be punished, moreover, because it opted to seek review in *both* federal *and* state court. Parties are generally free to simultaneously pursue remedies in state and federal court. *See, e.g.*, *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 292 (2005) ("This Court has repeatedly held that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction.") (internal quotation marks omitted); *Devlin*, 594 F.3d at 895-96 (*Younger* abstention not appropriate even though plaintiff simultaneously pursued relief "in federal and state proceedings"); *Nader*, 385 F.3d at 731-32 (*Younger* abstention not appropriate even though plaintiff had "also sued in state court" because a party is free to "pursu[e] parallel remedies" against state agency

decision). And the state of Eighth Circuit law at the time Sprint sought review made it prudent to file proceedings in both jurisdictions.[5]

If, however, the Court nonetheless concludes that *Younger* abstention was appropriate in this case, it should limit its holding to the particular facts presented here. The facts of this case required the Eighth Circuit to consider solely whether Sprint's state-court petition for review, filed on the same day as Sprint's federal-court action, warranted *Younger* abstention. There was no need for the Eighth Circuit to declare that "[t]he IUB's order . . . constitutes a judicial proceeding that is entitled to *Younger* abstention." *Sprint*, 690 F.3d at 869. Thus, this Court should make clear that any application of *Younger* in this case is warranted only because (i) Sprint had initiated a state administrative proceeding of its own accord, thereby initially choosing a state administrative forum; and (ii) Sprint chose to appeal the outcome of that proceeding within the state-

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[5] At the time it sought to challenge the IUB's determination, Sprint faced a dilemma. If, on the one hand, Sprint challenged the IUB's decision only in federal court, existing Eighth Circuit precedent made it likely that the district court would have been required to abstain on *Younger* grounds because Sprint had not exhausted its state-court remedies. *See McCartney*, 896 F.2d at 1144 ("[A] party cannot avoid *Younger* by choosing not to pursue available state appellate remedies."). Moreover, by the time Sprint could have obtained a ruling on the *Younger* issue, its window for seeking state-court review would have closed. *See* Iowa Code § 17A.19(3) (giving parties thirty days to seek judicial review of state administrative action). If, on the other hand, Sprint challenged the IUB's determination only through state appellate avenues, principles of *res judicata* could have forever denied Sprint a federal forum (unless this Court chose to review the decision of the highest state court to which Sprint could have appealed).

court system. Even if *Younger* applies on those facts, it should not apply where a federal plaintiff has been compelled to participate in state administrative proceedings by a third party and has chosen to challenge any state decision solely in federal court.

The Court should also make clear that this case presents no opportunity to address whether a party is required to exhaust state remedies after concluding a state administrative proceeding. This Court explicitly left that question open in *NOSPI*. *See* 491 U.S. at 369 n.4 (explaining that the Court has "never squarely faced the question" whether "an administrative proceeding to which *Younger* applies cannot be challenged in federal court even after the administrative action has become final"). Because Sprint voluntarily chose to pursue state-court remedies, this Court need not decide whether Sprint was *required* to exhaust state appellate remedies before challenging the IUB's decision in federal court.

CONCLUSION

For the foregoing reasons, the Court should hold that *Younger* abstention is warranted only when a related state proceeding is coercive in nature. Because that necessary prerequisite for *Younger* abstention is not met here, the Court should reverse and remand for proceedings consistent with its opinion.

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Respectfully submitted,

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