

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA**

DENNY C. CORMIER,	:	
	:	
Plaintiff, pro se	:	CIVIL ACTION
	:	No. 6:04-CV-19 (HL)
v.	:	
	:	
MARIA GREEN, Acting Director,	:	
Georgia Department of Human	:	
Resources, in her Official Capacity,	:	
et.al.,	:	
	:	
Defendants.	:	

**PLAINTIFF’S MOTION TO DENY MOTION TO DISMISS BASED
UPON YOUNGER ABSTENTION**

Comes now the Plaintiff, pro se, to request this court Deny the Motion to Dismiss based upon Younger abstention filed by the Georgia Attorney General on behalf of Defendants Maria Green, Georgia Department of Human Resources, Bruce E. Cook, Georgia Board of Human Resources, and Colquitt County Superior Court.

In support he offers,

**BRIEF TO DENY MOTION TO DISMISS BASED UPON YOUNGER
ABSTENTION**

"abstention from the exercise of federal jurisdiction is the exception, not the rule." Hawaii Housing Auth. v. Midkiff, 467 U.S. 229, 236 (1984)

Justice O'Connor recently wrote that the Supreme Court "has frequently acknowledged the importance of having federal courts open to enforce and interpret federal rights." Idaho v. Coeur d'Alene Tribe of Idaho, 117 S.Ct. 2028, 2045–46 (1997) (O'Connor, J, concurring)

The Plaintiff accepts the Defendants summary of the facts except that Defendant, the Honorable H. Arthur McLane, is not the presiding judge in the state action Nancy B. Cormier v. Denny C. Cormier. He is the Chief Judge of the Colquitt County Superior Court in which the proceedings take place.

Defendants request dismissal based on the Younger abstention doctrine, Younger v. Harris, 401 U.S. 37 (1971), and argue,

- a. Younger creates a strong presumption “against federal court interference with pending state judicial proceedings....,”
- b. Abstention in the civil context is based on the premise of comity between the states and National Government,
- c. Abstention fosters judicial economy when federal complaints have dropped out of the lawsuit in its earliest stages and only state claims remain,
- d. abstention is the rule not the exception,
- e. it is preferable Georgia courts, not Federal courts, make rulings on issues of Georgia law.
- f. “In the case at bar, there is nothing unusual or extraordinary about this case.”

This Brief argues the inapplicability of the Younger abstention doctrine, the consequences of granting a Younger abstention in this case, and addresses the other abstention doctrines because the Court has authority to raise them sua sponte.

I. Younger abstention doctrine

a. The three Younger prongs

The Younger abstention doctrine scope and elements are succinctly summarized in Foster Children v. Bush, 329 F. 3d 1255, 1274 (11th Cir.2003),

“The Supreme Court has said that federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given them." Col. River Water Conservation Dist. v. United States, 424 U.S. 800, 817, 96 S.Ct. 1236, 1246 (1976). But "virtually" is not "absolutely," and in exceptional cases federal courts may and should withhold equitable relief to avoid interference with state proceedings. New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 U.S. 350, 359, 109 S.Ct. 2506, 2513 (1989). While non-abstention remains the rule, the Younger exception is an important one. It derives from "the vital consideration of comity between the state and national governments," Luckey v. Miller, 976 F.2d 673, 676 (11th Cir. 1992)”

Although state interests are involved.” Middlesex County Ethics Comm. v. Garden State Bar Ass’n, 457 U.S. 423, 432, 102 S. Ct. 2515, 2521 (1982). “Proceedings necessary for the vindication of important state policies or for the functioning of the state judicial system . . . evidence the state’s substantial interest in the litigation.” Id. “Where vital state interests are involved, a federal court should abstain unless state law Younger concerned state criminal proceedings, its principles are “fully applicable to noncriminal judicial proceedings when important clearly bars the interposition of the constitutional claims.” Id. (citation omitted). As the Middlesex Court framed the issue, “The question . . . is threefold: first, do [the proceedings] constitute an ongoing state judicial proceeding; second, do the proceedings implicate important state interests; and third, is there an adequate opportunity in the state proceedings to raise constitutional challenges.” Id. (emphasis omitted); see also Old Republic Union Ins. Co. v. Tillis Trucking Co., 124 F.3d 1258, 1261 (11th Cir. 1997).”

All three prongs fail in this case.

The first prong...The Younger abstention doctrine is inapplicable because these proceedings do not constitute an ongoing state judicial proceeding. There is no concurrent or parallel state proceedings on the same claims between the same parties.

The Defendants in their Brief acknowledge the state proceeding is only divorce proceeding between Nancy B. Cormier and Denny C. Cormier. None of the Defendants are parties to that proceeding. The claims and parties here are different

from the divorce proceeding in state court. The Defendants here would need to intervene in that proceeding to defend the challenged statute or the non party here, Nancy B. Cormier, would need to assume the burden of the state and defend the statutes.

Further, it is conceivable the Plaintiff here would be liable for Nancy B. Cormier's concurrent attorney fees and court costs to defend the statute he is challenging. The Plaintiff would be, in effect, subsidizing the state in its ongoing defense on the issues raised by the Plaintiff. The Plaintiff probably would be compelled by one of the defendants here to underwrite all costs and all fees for the current state proceeding on these claims as well as the appeals for them on a concurrent basis.

Without this fundamental element of the same parties in the state proceeding the Younger abstention cannot apply.

“Moreover, the Younger doctrine has been held to ‘have little force in the absence of a pending state proceeding.’ Lake Carriers' Assn. v. MacMullan, 406 U.S. 498, 509 (1972) (emphasis added). There are at present no proceedings of any kind pending against these [409 U.S. 109, 125] appellees.” California v. Larue, 409, U.S. 109 (1972) Footnote 2.

As in California, there are no proceedings of any kind pending between these parties, by the Plaintiff against these Defendants, or the Defendants against this Plaintiff.

The Plaintiff believes Younger itself, all the criminal cases, and the civil cites of the Defendants' involve the same parties in state and federal court.

The Plaintiff relies on The Abstention Doctrines: Balancing Comity with Federal Court Intervention, Mathew D. Staver, 28 Seton Hall Law Review 1102, 1109 (1998) citing Trainor v. Hernandez, 431 U.S. 434, 440 (1977) for the premise that

litigation between the same parties should exist in the state court.¹ “The Younger Abstention Doctrine only applies to pending state court proceedings or “litigation *between the same parties . . . raising the same issues.*” (emphasis not added)

This principle of having the same claims and same parties in state court is an implied element incorporated by Chief Judge Posner of the United States Court of Appeals for the Seventh Circuit,

“[t]he core of the Younger doctrine is the proposition that a person who is being prosecuted by a state for violating its laws is not allowed to derail the prosecution by bringing a suit in federal court to enjoin the prosecution on the ground that the state statute on which it is based is unconstitutional.” Hoover v. Wagner, 47 F. 3d 845, 847 (7th Cir. 1995)

Though not articulated clearly as such the implication is that the parties in the federal case are the same parties in the state case when Younger is being considered.

This core principle has been expanded to quasi criminal and civil applications of Younger but the core principle is the underpinning in the expansionism of the doctrine. In this case the core principle should be followed requiring effectively same parties and same claims. The Plaintiff is not attempting to use Federal court to enjoin a state court proceeding.

Further, the Plaintiff is raising a general challenge to the constitutionality of the state statutes (See Complaint 16). He only offers his involvement in a current state proceeding for the issue of standing, not for this court to enjoin or interfere in any way with the state proceeding.

In this case the claims made, civil rights violation under 42 U.S.C. 1983, and federal Constitutional claims cannot be properly raised in a dissolution of marriage proceeding in the state court of equity. They cannot and should not be raised in a

¹ Similar to the abstention requirements in Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976)

forum where equity is the adjudication standard and the defendant, the Colquitt County Superior Court, is the adjudicator granted broad discretionary powers.

The first prong of *Younger* is not fulfilled and cannot be fulfilled for the claims made here.

The second prong ... i.e., do the proceedings implicate important state interests, is not fulfilled by the Defendants' own admission, "In the case at bar, there is nothing unusual or extraordinary about this case." (Defendant's Brief to Dismiss at 5).

Further, The burden is on the state [Defendants] to establish that an important state interest is implicated. See *Trainor v. Hernandez*, 431 U.S. 434, 448 (1977) (Blackmun, J., concurring).

"Consistently with this requirement of balancing the federal and state interests, the Court in previous *Younger* cases has imposed a requirement that the State must show that it has an important interest to vindicate in its own courts before the federal court must refrain from exercising otherwise proper federal jurisdiction."

The Defendants have not stated any state interest let alone an important one. In its statement above the Defendants have effectively conceded there is no important state interest in this case.

The Eleventh Circuit in *Rindley v. Gallagher*, 929 F.2d 1552 (11th Cir. 1991) stated the scope of *Younger* application in civil cases,

"The *Younger* doctrine, based upon the principle of comity, has subsequently been extended to civil proceedings, but "has been limited to those civil actions in aid of criminal jurisdiction or involving enforcement-type proceedings in which vital interests of the state *qua* state are involved." *Cate v. Oldham*, 707 F.2d 1176, 1183 (11th Cir. 1983). See, e.g., *Pennzoil Co. v. Texaco*, 481 U.S. 1, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987) (state interest in execution of state judgments); *Middlesex County Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982) (important state interest in maintaining and assuring the professional conduct of attorneys it licenses)."

The Eleventh Circuit outlined its view of what constitutes an important state interest in First Ala Bank, Montgomery v. Parsons Steel, 825 F.2d 1475, 1483 (11th Cir. 1987),

Our consideration of this threshold inquiry leads us to conclude that Younger abstention is not appropriate in this case because the state court action enjoined by the district court does not implicate any important government interest of the State of Alabama. The importance of a state interest may be demonstrated by the fact that the proceedings sought to be enjoined are noncriminal proceedings bearing a close relationship to criminal proceedings or by the fact the proceedings are necessary for the vindication of important state policies or the functioning of the state judicial system. Middlesex Ethics Comm'n, 457 U.S. at 432, 102 S.Ct. at 2521. Alabama is not a party to the action enjoined in this case, nor was that action brought to vindicate important interests of that State. Similarly, the action does not implicate the State's "important interests in administering certain aspects of [its] judicial system[]." Pennzoil, 107 S.Ct. at 1527. The state court action involved in this case was merely a private action between private parties in which the State of Alabama had no interest beyond "its interest as adjudicator of wholly private disputes." *Id.* at n. 12. Therefore, we find that the Younger doctrine did not require that the district court abstain from issuing the injunction against further state court proceedings.

and in Cate v. Oldham, 707 F.2d 1176 (11th Cir. 1983),

Application of the Younger doctrine to ongoing state civil proceedings has been limited to those civil actions in aid of criminal jurisdiction or involving enforcement-type proceedings in which vital interests of the state *qua* state are involved. See Middlesex County Ethics Committee v. Garden State Bar Ass'n., 457 U.S. 423, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982); Moore v. Sims, 442 U.S. 415, 99 S.Ct. 2371, 60 L.Ed.2d 994 (1979); Juidice v. Vail, 430 U.S. 327, 97 S.Ct. 1211, 51 L.Ed.2d 376 (1977); Huffman v. Pursue, Ltd., 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975). Accord O'Hair v. White, 675 F.2d 680, 695 (5th Cir. 1982) (en banc); Gresham Park Community Organization v. Howell, 652 F.2d 1227, 1244-48 (5th Cir. 1981).

The federal claims raised here are not matters that traditionally look to state law for their resolution. Federal questions, 42 U.S.C. 1983 claims, though capable of

state legal adjudication, are traditionally pervue of the Federal Courts not the state courts.

The Plaintiff is not asking for injunctive relief. (Complaint at 19)

The Plaintiff is not asking that this court intervene in a state proceeding. (See Complaint at 17 and 18)

The Plaintiff is not asking this court to issue any order in a state proceeding. (See Complaint at 17 and 18)

The Plaintiff is not asking this court to “make rulings on issues of Georgia law.” (Defendants’ Brief at 5)

This Plaintiff is asking this court to rule to offer equitable declaratory judgment relief on federal questions of Liberty interest, Fundamental Rights and supplemental state questions. Because there is currently no forum for the Plaintiff to address his Federal claims it is appropriate for this court to address them and under the courts supplemental jurisdiction to address the state claims.

Contrary to the Defendants’ closing line in their Brief, the Plaintiff is not asking this court to interject its decisions in a state court proceeding. (See Complaint at 17 and 18)

Any order rendered by this court, if favorable to the Plaintiff, may be taken by him to the state court for application to any issue in any proceeding in which he is involved or may be involved in the future. This principle is entirely different than asking this court to intercede in a state proceeding.

The second prong of Younger is not fulfilled by the Defendants’ own admission, “In the case at bar, there is nothing unusual or extraordinary about this case.” (Defendant’s Brief to Dismiss at 5)

The third prong... Without a legal proceeding between the same parties the Plaintiff lacks a forum to raise the claims raised in this federal case. Additionally, were this court to dismiss and the Plaintiff make his claims in the state proceeding it would create judicial inefficiencies, added costs to all, and create new issues of state law.

The Defendants here, the Honorable H. Arthur McLean and the Colquitt County Superior Court, have been named parties and responded to the lawsuit here. If Younger is applied they would then become the adjudicating body in the state proceeding where the Plaintiff would be expected to raise the same claims...claims, some of which, are directed at the adjudicating court. This conflict of interest would mandate recusal by the defendants at the state court level.

The Plaintiff would have profound concerns about the impartiality of any subsequent state court ruling.

Because the state proceedings are in equity with a court granted broad discretion there would be a conflict of interest on whether or not to even grant the Plaintiff the opportunity of a declaratory judgment. Even if granted, a negative ruling for the Plaintiff in a court of equity granted broad discretionary powers when appeal is considered is not the proper forum to adjudicate Federal Liberty Interest and Fourteenth Amendment Fundamental Rights. Only this court is the proper forum to adjudicate the federal questions and the state claims raised.

b. comity between state and federal courts.

Because the Plaintiff is not asking for this court to intervene in a state proceeding this court is not violating the Federal courts' desire to fulfill the tenet of comity.

Daniel C. Norris in The Final Frontier of Younger Abstention: The Judiciary's Abdication of the Federal Court Removal Jurisdiction Statute, 31 Fla. St. U. Law Review 193, 229 (2003) states the error of allowing the notion of comity for states to supercede the jurisdiction granted to the federal courts by the Constitution and the U.S. Congress as well as the error of using abstention for docket clearing.

“It is entirely uncertain from the Court’s extensive abstention jurisprudence why the interests of comity are constitutionally sufficient to repudiate the jurisdiction which Congress has placed upon them through the exercise of its Article III powers. This is particularly true in light of the Court’s numerous observations regarding the duty of federal courts to exercise the jurisdiction that Congress has given to them. While some commentators have rejected the notion that federal courts have an absolute duty to exercise their jurisdiction, even the Court’s own abstention cases make it clear that a refusal to exercise jurisdiction should not be undertaken lightly. While some extraordinary cases may require a district court to refuse the exercise of its jurisdiction, it seems almost axiomatic that such refusals must not rise to the level of repudiating an entire area of jurisdiction that was created by a clear and unequivocal act of Congress. While many scholars have expressed great disdain for diversity jurisdiction, federal courts must not be allowed to unilaterally act to eliminate that entire area of jurisdiction for the purpose of clearing their dockets. However, this is precisely what the modern developments in the Younger abstention doctrine have done. By essentially eliminating the right of a party to remove a case to federal court on diversity grounds, and to a lesser extent on federal question grounds, the Court has substantially interfered with the Article III prerogatives of Congress.” Citing Hart & Wechsler, The Federal Courts and the Federal System ch. 7, § 3, at 1043 (2d ed. 1973), ch. 8, § 5, at 1257 (canvassing the Court’s decisions requiring the exercise of jurisdiction and its opinions that call for abstention and discussing the apparent contradiction of these two positions) and Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 716 (1996); Ankenbrandt v. Richards, 504 U.S. 689, 705 (1992); New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 U.S. 350, 359 (1989); Deakins v. Monaghan, 484 U.S. 193, 203 (1988); Murray v. Carrier, 477 U.S. 478, 519 (1986); Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 15 (1983); Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 817-18 (1976); England v. La. State Bd. of Med. Exam’rs, 375 U.S. 411, 415 (1964).

c. judicial economy when federal complaints have dropped out of the lawsuit in its earliest stages and only state claims remain

Federal claims are present and have not dropped out.

Justice O'Connor cited above has expressed that the United States Supreme Court "has frequently acknowledged the importance of having federal courts open to enforce and interpret federal rights."

d. abstention is the rule not the exception

The Defendant's argument that abstention is the rule is flawed. We rely on the opening cite "abstention from the exercise of federal jurisdiction is the exception, not the rule." Hawaii Housing Auth. v. Midkiff, 467 U.S. 229, 236 (1984) as well as Foster Children v. Bush above and other citing herein.

II. The limited nature of the abstention doctrine

The Hawaii Housing Auth. v. Midkiff, 467 U.S. 229, 236 (1984) quote and the quote of Justice O'Connor in Idaho v. Coeur d'Alene Tribe of Idaho, 117 S.Ct. 2028, 2045–46 (1997) above both point to the principle that the role of abstention to dismiss a federal suit is narrowly tailored. The burden is on the movants and it is a heavy one.

Because of the limited role of abstention as an exception the movants are limited to the now established recognized abstentions unless they can provide foundation for this court to establish a new doctrine or expand upon the necessary elements of the established doctrine.

II. The Burford Abstention (Burford v. Sun Oil Co., 319 U.S. 315 (1943))

The **Burford** abstention is directed and applicable to state administrative agencies. Because no state administrative agency ruling is at issue the doctrine is inapplicable.

“The Burford abstention doctrine allows a federal court to dismiss a case only if it presents difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar, or if its

adjudication in a federal forum would disrupt state efforts to establish a coherent policy with respect to a matter of substantial public concern. See Boyes v. Shell Oil Prods. Co., 199 F.3d 1260, 1265 (11th Cir. 2000) (citing New Orleans Pub. Serv., Inc. v. Council of the City of New Orleans, 491 U.S. 350, 361, 109 S. Ct. 2506, 2514 (1989)). A central purpose furthered by Burford 15 abstention is to protect complex state administrative processes from undue federal interference. See New Orleans Pub. Serv., 491 U.S. at 362, 109 S. Ct. at 2515.”
Siegel v. Lepore, 234 F.3d 1163, 1173 (11th Cir. 2000)

Citing Rindley again,

“Burford abstention is appropriate when "exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 814, 96 S.Ct. 1236, 1245, 47 L.Ed.2d 483 (1976) (citing Burford, 319 U.S. 315, 63 S.Ct. 1098).” Id.

There is no evidence the state is attempting to establish any policy let alone a coherent policy with respect to a matter of substantial public concern. For Burford to apply such policy should be present in an administrative proceeding not a judicial proceeding.

Siegel at 1173 also cites County of Allegheny v. Frank Mashuda Co., 360 U.S. 185, 188, 79 S. Ct. 1060, 1063 (1959) “that Burford abstention represents an ‘extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it.’ ”

III. The Pullman Abstention (Railroad Comm'n of Texas v. Pullman Co., 312 U.S. 496 (1941))

Again, the Plaintiff relies on Rindley at 1555,

“Under the Pullman abstention doctrine, "a federal district court is vested with discretion to decline to exercise or to postpone the exercise of its jurisdiction in deference to state court resolution of underlying issues of state law." Harman v. Forssenius, 380 U.S.

528, 534, 85 S.Ct. 1177, 1181, 14 L.Ed.2d 50 (1965) (citing Railroad Comm'n v. Pullman Co., 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941)). Two criteria have been established for application of the Pullman doctrine: (1) the case presents an unsettled question of state law, and (2) the question of state law is dispositive of the case or would avoid, or substantially modify, the constitutional question presented. Duke v. James, 713 F.2d 1506, 1510 (11th Cir. 1983). If a case presents such an issue, it is incumbent on the court to exercise discretion in deciding whether to abstain. Duke, 713 F.2d at 1510. Because it is "severely circumscribed to constitutional challenges posing 'special circumstances,' . . . [Pullman abstention] is therefore the exception rather than the rule." High Oil Times, 621 F.2d at 139 (quoting Zwickler v. Koota, 389 U.S. 241, 248, 88 S.Ct. 391, 395, 19 L.Ed.2d 444 (1967))."

"We agree with Rindley that Pullman abstention is improper because no unsettled question of state law exists which, if decided, would substantially avoid the federal constitutional questions involve in Rindley's claim."

This court should only consider applying Pullman if there is an unsettled state law question (which the Defendants appear to imply does not exist here as this is not an unusual case) and that in so doing the state court can and will adequately deal with the federal questions raised in the content of the Defendants here being the adjudicator in the state proceedings.

In this case there are no unsettled questions of state law. Because there are no unsettled questions of state law the second part of the Pullman test also fails.

To repeat, Defendants admit, "In the case at bar, there is nothing unusual or extraordinary about this case."

The Pullman abstention is inapplicable.

IV. The Ankenbrandt Abstention (Ankenbrandt v. Richards, 504 U.S. 689 (1992)

Stone v. Wall, 135 F.3d 1438, 1440 (11th Cir. 1998) discussed the requirement to prevail under the Ankenbrandt abstention doctrine. Again the movants cannot prevail.

“The Supreme Court in Ankenbrandt v. Richards , 504 U.S. 689 (1992), reaffirmed the ‘domestic relations exception’ to exercising diversity jurisdiction and noted that this exception ‘divests the federal courts of power to issue divorce, alimony, and child custody decrees.’” 504 U.S. at 703 . In addition, the Court wrote that even when subject-matter jurisdiction might be proper, sufficient grounds may exist to warrant a court's abstention from the exercise of jurisdiction. Id. at 704. The Court suggested that abstention in family-law disputes might be appropriate when ‘the suit depended on a determination of the status of the parties.’ Id. at 706. But, according to the Court, ‘[i]t is axiomatic . . . that abstention from the exercise of federal jurisdiction is the exception, not the rule Abstention rarely should be invoked, because the federal courts have a virtually unflagging obligation . . . to exercise the jurisdiction given them.’ Id. at 705 (internal quotations and citations omitted).”

The current lawsuit simply does not fit the domestic relations exception. This court is not requested to issue modify amend or void a divorce, alimony or child custody decree. The status of the parties is irrelevant and not at all at issue.

Stone further said, “We pointed out that the main point was whether the litigation would mandate an inquiry into the ‘marital or parent-child relationship.’” Id. at 1441 citing Ingram V. Hayes, 866 F. 2s 368 (11th Cir. 1988).

In this case there is no need nor is there a request to inquiry into the marital or parent-child relationship.

The case before this court involves third parties, i.e. a Georgian and state officials, not the parties in the marital proceedings in state court, therefore the Ankenbrandt doctrine does not apply.

This case simply does not fit the domestic-relations-exception precedents and therefore cannot be relied upon by the movants.

VI. The high standard to dismiss pro se litigation

The Plaintiff reiterates the law cited in the Complaint at 26.

26. Because the Plaintiff is pro se, the Court has a higher standard when faced with a motion to dismiss. White v. Bloom, 621 F.2d 276 makes this point clear and states:

“A court faced with a motion to dismiss a pro se complaint alleging violations of civil rights must read the complaint's allegations expansively, Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972), and take them as true for purposes of deciding whether they state a claim.” Cruz v. Beto, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2d 263 (1972).

Moreover, "the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory." Bonner v. Circuit Court of St. Louis, 526 F.2d 1331, 1334 (8th Cir. 1975) (quoting Bramlet v. Wilson, 495 F.2d 714, 716 (8th Cir. 1974)).

Thus, if this court were to entertain any motion to dismiss this court would have to apply the standards of White v. Bloom. Furthermore, if there is any possible theory that would entitle the Plaintiff to relief, even one that the Plaintiff hasn't thought of, the court cannot dismiss this case.

VII. Broad scope of Federal Court to review local actions which violate federal law

Though it is in the context of a taking proceeding the United States Supreme Court has announced its view that the federal court should be open to challenges of Liberty Interests and fundamental rights. See City of Chicago v. International College of Surgeons, 118 S. Ct. 523 (1997).

The Plaintiff further relies on the analysis of abstention doctrine put forth in Quackenbush v. Allstate Ins.Co., 517 U.S. 706 (1996)

Conclusion

Dismissal based on abstention is a limited exception to the unflagging obligation of the Federal Courts to fulfill their duty.

The burden is on the movant to satisfy the elements of the Younger abstention and the Defendants have not met their burden. The burden is especially heavy when the Plaintiff is pro se.

Prayer for Relief

WHEREFORE the Plaintiff prays this court deny Defendants motion to dismiss based on Younger or any other abstention.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing motion has been served via U.S. mail to John J. Jones, Senior Assistant Attorney General, and Laura W. Hyman, Assist Attorney General, Department of Law, 40 Capitol Square, S.W., Atlanta, Georgia 30334-1300 and to Dwight May, Esq., PO Box 1660 Moultrie, GA 31776, Attorney for Nancy B. Cormier, this 17th day of June 2004.

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