Pace Law Review

Volume 1
Issue 1 *1980*

Article 5

January 1980

Moore v. Sims: A Further Expansion of the Younger Abstention Doctrine

Follow this and additional works at: https://digitalcommons.pace.edu/plr

Recommended Citation
, *Moore v. Sims: A Further Expansion of the Younger Abstention Doctrine* , 1 Pace L. Rev. 149 (1980)
DOI: https://doi.org/10.58948/2331-3528.1679
Available at: https://digitalcommons.pace.edu/plr/vol1/iss1/5

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Law Review by an authorized administrator of DigitalCommons@Pace. For more information, please contact dheller2@law.pace.edu.

Notes and Comments

Moore v. Sims: A Further Expansion of the *Younger* Abstention Doctrine

The federal abstention doctrine of *Younger v. Harris*[1] requires that federal courts refrain from interfering with pending state criminal proceedings and with certain pending state civil proceedings,[2] except when the aggrieved party has no adequate remedy at law and will suffer great and immediate irreparable harm if denied relief.[3] *Moore v. Sims*,[4] a recent five-four Supreme Court decision,[5] appears to expand the scope of the *Younger* doctrine and clearly narrows the exceptions to it.

In *Sims*, state officials seized plaintiffs' children pursuant to provisions of the Texas Family Code designed to protect children in emergencies.[6] After efforts to recover custody of the children in state proceedings proved futile,[7] the parents brought suit in federal court challenging the constitutionality of several provisions of the Texas Family Code.[8] A three-judge district court held that the *Younger* doctrine did not bar relief, and it enjoined enforcement of the challenged statutes.[9] The Supreme Court reversed, holding that the lower court should have abstained because *Younger* was properly applicable and the plaintiffs did not come within the exceptions to the *Younger*

---

1. 401 U.S. 37 (1971).

2. The expansion of the doctrine since 1971 to include certain state civil proceedings is discussed in notes 57-67 and accompanying text *infra*.

3. The limited exceptions to the doctrine are discussed in notes 87-109 and accompanying text *infra*.

4. 442 U.S. 415 (1979).

5. Justice Rehnquist delivered the opinion of the Court, in which Chief Justice Burger and Justices White, Blackmun, and Powell joined. Justice Stevens filed a dissenting opinion, in which Justices Brennan, Stewart, and Marshall joined.

6. The Texas Family Code authorizes designated state officials to take custody of children in emergencies. TEX. FAM. CODE ANN. tit. 2, ch. 17 (Vernon 1975). The relevant portions of Chapter 17 are set forth in note 15 *infra*.

7. The state court efforts undertaken by the Simses to regain custody are set forth at notes 20-26 and accompanying text *infra*.

8. Those provisions of Texas law challenged by the plaintiffs are discussed in note 27 *infra*.

9. Sims v. State Dep't of Pub. Welfare, 438 F. Supp. 1179, 1183 (S.D. Tex. 1977).

doctrine.[10]

Part I of this note details the circumstances of *Sims*. Part II discusses the development of the *Younger* abstention doctrine and its exceptions. Part III sets forth and analyzes the reasoning of the Court. This note concludes that *Sims* extends the reach of the *Younger* doctrine in three ways. First, by clarifying an earlier decision,[11] *Sims* brings within the scope of the *Younger* doctrine claims concerning matters that are ancillary to the pending state proceedings if the federal relief would disrupt the state proceedings. Second, *Sims* establishes an unexacting standard for determining the adequacy of a state remedy and may allow the mere theoretical existence of a remedy to preclude federal relief. Third, *Sims* departs from established principles of mootness by confining the scope of inquiry in evaluating irreparable harm to only those circumstances that exist at the time federal relief is granted. Thus, *Sims* enlarges the class of cases subject to the *Younger* doctrine, and thereby further restricts access to federal courts for vindication of constitutional rights.

I. *Moore v. Sims*: The Facts[12]

The Sims children lived with their parents in Montgomery County, Texas, and attended public school in Harris County, Texas.[13] On March 25, 1976, in response to a telephone referral from school personnel alleging that one of the Sims children (Paul) had been abused, a caseworker from the Texas Department of Human Resources[14] ("Department") went to the school and took temporary possession of the three Sims children.[15] A

10. Moore v. Sims, 442 U.S. 415, 425-26 (1979).

11. Gerstein v. Pugh, 420 U.S. 103 (1975).

12. The facts presented are drawn from the opinion of the Supreme Court except where otherwise noted. Moore v. Sims, 442 U.S. 415 (1979).

13. Sims v. State Dep't of Pub. Welfare, 438 F. Supp. 1179, 1183 (S.D. Tex. 1977).

14. The Texas Department of Human Resources was formerly named the State Department of Public Welfare. *See* TEX. HUM. RES. CODE ANN. tit. 2, ch. 11 (Vernon 1979).

15. The caseworker acted pursuant to Chapter 17, Title 2 of the Texas Family Code, which provides for suits for protection of children in emergencies. The relevant sections are as follows:

> Section 17.01. Taking Possession in Emergency
>
> An authorized representative of the State Department of Public Welfare, a law-enforcement officer, or a juvenile probation officer may take possession of a child to protect him from an immediate danger to his health or physical safety

physician found that all three children had been battered.[16] On March 26, pursuant to the Texas Family Code,[17] the Department instituted a suit in Harris County Juvenile Court for the emergency protection of the children. On the same day, the court issued an ex parte order[18] which gave temporary possession of the children to the Department.[19]

---

and deliver him to any court having jurisdiction of suits under this subtitle. . . . The child shall be delivered immediately to the court.

Section 17.02. Hearing

Unless the child is taken into possession pursuant to a temporary order entered by a court under Section 11.11 of this code, the officer or representative shall file a petition in the court immediately on delivery of the child to the court, and a hearing shall be held to provide for the temporary care or protection of the child.

Section 17.03. Notice

The proceeding under Section 17.02 of this code may be held without notice.

Section 17.04. Grounds and Disposition

On a showing that the child is apparently without support and is dependent on society for protection, or that the child is in immediate danger of physical or emotional injury, the court may make any appropriate order for the care and protection of the child and may appoint a temporary managing conservator for the child.

Section 17.05. Duration of Order

(a) An order issued under Section 17.04 of this code expires at the end of the 10-day period following the date of the order, on the restoration of the child to the possession of its parent, guardian, or conservator, or on the issuance of ex parte temporary orders in a suit affecting the parent-child relationship under this subtitle, whichever occurs first.

(b) If the child is not restored to the possession of its parent, guardian, or conservator, the court shall:

(1) order such restoration of possession; or

(2) direct the filing of a suit affecting the parent-child relationship in the appropriate court with regard to continuing jurisdiction.

Section 17.06. Modification

On the motion of a parent, managing conservator, or guardian of the person of the child, and notice to those persons involved in the original emergency hearing, the court shall conduct a hearing and may modify any emergency order made under this chapter if found to be in the best interest of the child.

TEX. FAM. CODE ANN. tit. 2, ch. 17 (Vernon 1975 & Supp. 1978-1979). All of the sections quoted herein were amended subsequent to the decisions in *Moore v. Sims*. The amendments, TEX. FAM. CODE ANN. tit. 2, ch. 17 (Vernon Supp. 1980), became effective on September 1, 1979.

Possession of the children was taken pursuant to § 17.01.

16. On a showing that children are in immediate danger of physical injury, the court may make an appropriate order for their care and protection. TEX. FAM. CODE ANN. tit. 2, § 17.04 (Vernon 1975). *See* note 15 *supra*.

17. TEX. FAM. CODE ANN. tit. 2, § 17.02 (Vernon 1975). *See* note 15 *supra*.

18. TEX. FAM. CODE ANN. tit. 2, § 17.04 (Vernon 1975). *See* note 15 *supra*.

19. Section 17.05 provides that such an order expires at the end of a 10-day period.

On March 31, the Simses sought to present a motion for modification of that order. Although a hearing on such a motion is required by Texas law,[20] the court clerk returned the papers to the parents' attorney because the juvenile court judge was unavailable. Later that day,[21] in the same Harris County court, the attorney filed a petition for a writ of habeas corpus. An April 5 hearing on the habeas corpus petition provided the parents with their first opportunity to appear before the court since their children had been seized on March 25. The merits of the dispute were not addressed, however, because the judge determined that venue was properly in Montgomery County;[22] accordingly, he transferred the proceedings to that county. On the same day, at the judge's direction,[23] the Department filed a "suit affecting the parent-child relationship,"[24] which supplanted the March 26 emergency suit. In addition, and despite his determination that venue was not in Harris County, the judge issued another temporary order continuing the Department's possession of the children.[25] On April 6, the suit affecting the parent-child relation-

---

Upon expiration, the court is required either to order the return of the children to their parent, guardian, or conservator, or to direct that a suit affecting the parent-child relationship be filed. TEX. FAM. CODE ANN. tit. 2, § 17.05 (Vernon Supp. 1978-1979). *See* note 15 *supra*.

20. TEX. FAM. CODE ANN. tit. 2, § 17.06 (Vernon 1975). *See* note 15 *supra*.

21. 438 F. Supp. at 1184.

22. The judge had determined that the children were residents of Montgomery County. 438 F. Supp. at 1184. Section 11.04 of the Code provides that, with specific exceptions, a suit affecting the parent-child relationship shall be brought in the county where the child resides. TEX. FAM. CODE ANN. tit. 2, § 11.04 (Vernon 1975).

23. TEX. FAM. CODE ANN. tit. 2, § 17.05(b)(2). *See* note 15 *supra*.

24. Suits affecting the parent-child relationship are authorized by TEX. FAM. CODE ANN. tit. 2, § 11.02 (Vernon 1975):

Suit Authorized; Scope of Suit

(a) A suit affecting the parent-child relationship may be brought as provided in this subtitle.

(b) One or more matters covered by this subtitle may be determined in the suit. The court, on its own motion, may require the parties to replead in order that any issue affecting the parent-child relationship may be determined in the suit.

25. This order was issued pursuant to TEX. FAM. CODE ANN. tit. 2, § 11.11 (Vernon 1975):

Temporary Orders

(a) In a suit affecting the parent-child relationship, the court may make any temporary order for the safety and welfare of the child, including but not limited to an order:

(1) for the temporary conservatorship of the child;

(2) for the temporary support of the child;

ship was also transferred to Montgomery County.[26]

On April 19, the Simses turned to the federal court and initiated what became a broad-based challenge to several sections of the Texas Family Code.[27] Alleging that the Code, while effectuating a legitimate state interest, does so in a manner which contravenes basic constitutional principles,[28] the Simses sought declaratory, injunctive, and monetary relief[29] and requested that a three-judge district court be convened.[30] Their request for a temporary restraining order was denied on April 20, but a hearing on their application for a preliminary injunction was set for

---

(3) restraining any party from molesting or disturbing the peace of the child or another party;

(4) taking the child into the possession of the court or of a person designated by the court; or

(5) attaching the body of the child or prohibiting a person from removing the child beyond the jurisdiction of the court as under a writ of ne exeat.

(b) Temporary orders under this section are governed by the rules governing temporary restraining orders and temporary injunctions in civil cases generally.

The parties disagree as to whether the juvenile court judge had jurisdiction to enter this order. 442 U.S. at 421 n. 6.

26. 438 F. Supp. at 1184. The transfer was apparently made sua sponte under § 11.06(a), despite the requirement of this section that transfer be made upon a timely motion. *Id.* The section reads:

Section 11.06. Transfer of Proceedings

(a) If venue is improperly laid in the court in which a suit affecting the parent-child relationship is filed, and no other court has continuing jurisdiction of the suit, the court, on the timely motion of any party other than the petitioner, and on a showing that venue is proper in another county, shall transfer the proceeding to the county where venue is proper.

TEX. FAM. CODE ANN. tit. 2, § 11.06(a) (Vernon 1975).

27. Portions of chapters 11, 14, 15, 17, and 34, title 2, Texas Family Code were challenged. Chapter 34 concerns the reporting of suspected child abuse and the initial investigative steps to be undertaken by the Department. Once suspected abuse is identified under chapter 34, the state may take possession of the alleged victims. *See* TEX. FAM. CODE ANN. tit. 2, § 34.05(d) (Vernon 1975).

Although it is not clear from either the district court or Supreme Court opinion, it appears that the complaint, as originally filed, contained all of the above challenges. Conversation with John Quincy Carter, Attorney for Plaintiffs (March 21, 1980).

28. Sims v. State Dep't of Pub. Welfare, 438 F. Supp. 1179, 1190 (S.D. Tex. 1977).

29. *Id.* at 1182.

30. At the time *Moore v. Sims* was filed, 28 U.S.C. § 2281 provided that an interlocutory or permanent injunction restraining the enforcement, operation, or execution of a state statute on grounds of unconstitutionality could not be granted unless the application was heard and determined by a three-judge district court. Section 2281 was repealed by Pub. L. No. 94-381, 90 Stat. 1119 (1976); the repeal was applicable, however, only to actions commenced on or after August 12, 1976. Because *Sims* was commenced prior to that date, a three-judge court was still required.

May 5. In the interim, the Simses moved to file an original petition for a writ of habeas corpus in the Texas Court of Civil Appeals. The motion was denied for lack of jurisdiction.

On May 5, the federal district court judge found that the Department's custody of the children, which had continued for forty-two days,[31] was not legal because the temporary orders issued by the state court had expired. The federal court therefore ordered that the children be returned to their parents. The Department, however, was not enjoined from taking further action to gain custody of the children.[32] On May 14, in Montgomery County, the Department did file a new section 11.02[33] suit affecting the parent-child relationship. The state court ordered that Paul Sims be placed in the temporary custody of his grandparents, and it scheduled a hearing for May 21. When the Simses could not be found for purposes of service, the hearing was rescheduled for June 21.[34]

On May 21, the parents turned again to the federal district court, wherein they sought and were granted a temporary restraining order addressed to the Montgomery County court. On June 7, 1976, a three-judge federal court entered a preliminary injunction prohibiting further proceedings under the challenged statutes pending final determination by the three-judge court of the plaintiffs' claims.

The three-judge court handed down its decision on October 12, 1977.[35] The opinion first considered whether abstention was appropriate under the doctrine of *Younger v. Harris*.[36] The court concluded that *Younger* principles were inapplicable.[37] First, the court stated that because "the action taken by the State of Texas against the plaintiffs is multifaceted . . . there is

---

31. The Sims children were in the custody of the Department from March 25, 1976 to May 5, 1976.

32. The district court judge also noted that he was requesting a three-judge court to consider the plaintiffs' constitutional challenges to the state statutes. 438 F. Supp. at 1183.

33. *See* note 24 *supra*.

34. The record indicated that the Simses avoided service of process by absenting themselves from home, work, and school. Brief for Appellant at 8, Moore v. Sims, 442 U.S. 415 (1979).

35. Sims v. State Dep't of Pub. Welfare, 438 F. Supp. 1179 (S.D. Tex. 1977).

36. 401 U.S. 37 (1971).

37. 438 F. Supp. at 1186-87.

no single state proceeding to which the plaintiffs may look for relief on constitutional or any other grounds."[38] Second, the court concluded that abstention would be inappropriate because plaintiffs' challenge to the legality of the childrens' seizure and detention without a hearing could not "be raised as a defense in the normal course of the pending judicial proceeding."[39]

Alternatively, the court concluded that even if *Younger* principles did apply, *Sims* came within the exceptions to the doctrine:[40] as a result of the "failure of the state to follow its procedures," there was no adequate remedy at law;[41] and " 'deprivation of custody prior to [a] civil proceeding is an irreparable injury which is both great and immediate . . . and . . . will not be dissipated in the state proceeding.' "[42] The court then addressed the merits of the challenge to the statutes and concluded that several of the challenged provisions were unconstitutional on their face as violating due process, and that other provisions were unconstitutional as applied.[43] The court permanently enjoined application and enforcement of these provisions, but did not award monetary damages.[44]

The Supreme Court, in an opinion by Justice Rehnquist, did not reach the merits because it concluded that abstention was required.[45] The Court found that the *Younger* doctrine did apply and specifically rejected the district court's conclusions that the state proceedings were inadequate for the presentation of the plaintiffs' claims and that extraordinary circumstances existed creating great and immediate irreparable harm.[46] The Supreme Court reversed and remanded for dismissal of the

---

38. *Id.* at 1187.

39. *Id.*

40. *Id.* at 1187-89.

41. *Id.* at 1189.

42. *Id.* at 1188 (quoting Newton v. Burgin, 363 F. Supp. 782, 785 (W.D.N.C. 1973), *aff'd mem.*, 414 U.S. 1139 (1974)).

43. *Id.* at 1195. The sections found invalid were 11.10, 11.15, 17.02, 17.03, 17.05, 17.06, 34.05(c), and 34.08 of Title 2 of the Texas Family Code. Sections 34.06 and 11.11(a)(4), used in conjunction with chapter 17, were found unconstitutional as applied. 438 F. Supp. at 1195.

44. *Id.*

45. 442 U.S. 415, 423 (1979). The decision of a three-judge district court is directly appealable to the Supreme Court. 28 U.S.C. § 1253 (1976).

46. 442 U.S. at 423-35.

complaint.[47]

II. The *Younger* Doctrine

A. *The Scope of the Doctrine*

The nonintervention doctrine[48] set forth in *Younger v. Harris*[49] and its companion cases[50] requires that federal courts refrain from directly interfering, either by injunction or declaratory judgment, with pending state court criminal proceedings[51] unless the aggrieved party has no adequate remedy at law and will suffer great and immediate irreparable harm if relief is denied.[52] Subsequent decisions have expanded the scope of the doctrine to preclude direct federal court intervention in certain state court civil proceedings.[53] In a more subtle expansion, federal courts have used the doctrine to bar claimants challenging

---

47. *Id.* at 435.

48. This nonintervention doctrine reflects a long-established judicial policy of self-restraint. For a concise history of the development of the doctrine prior to its restatement in Younger v. Harris, 401 U.S. 37 (1971), see Zeigler, *An Accommodation of the* Younger *Doctrine and the Duty of the Federal Courts to Enforce Constitutional Safeguards in the State Criminal Process*, 125 U. PA. L. REV. 266, 269-82 (1976). *See also* Whitten, *Federal Declaratory and Injunctive Interference with State Court Proceedings: The Supreme Court and the Limits of Judicial Discretion*, 53 N.C.L. REV. 591 (1975); Wechsler, *Federal Courts, State Criminal Law and the First Amendment*, 49 N.Y.U.L. REV. 740 (1974).

49. 401 U.S. 37 (1971).

50. Byrne v. Karalexis, 401 U.S. 216 (1971); Dyson v. Stein, 401 U.S. 200 (1971); Perez v. Ledesma, 401 U.S. 82 (1971); Boyle v. Landry, 401 U.S. 77 (1971); Samuels v. Mackell, 401 U.S. 66 (1971).

51. Such relief is not precluded, however, when state action is threatened rather than pending. In Steffel v. Thompson, 415 U.S. 452, 475 (1974), the Supreme Court held that a federal complainant who is *threatened* by arrest and state prosecution under an allegedly invalid state statute might seek a federal court declaratory judgment regarding the constitutionality of the statute. In Doran v. Salem Inn, Inc., 422 U.S. 922, 930 (1975), the Court extended the *Steffel* rule to requests for preliminary injunctive relief. *See also* Wooley v. Maynard, 430 U.S. 705 (1977).

Although access to a federal forum when state prosecution is merely threatened is not precluded, such access was severely limited in Hicks v. Miranda, 422 U.S. 332 (1975). In that case, the Court held that the principles of *Younger* should apply "where state criminal proceedings are begun against the federal plaintiffs after the federal complaint is filed but before any proceedings of substance on the merits have taken place in the federal court." *Id.* at 349. In his dissenting opinion, Justice Stewart criticized this rule as "an open invitation to state officials to institute state proceedings in order to defeat federal jurisdiction." *Id.* at 357 (Stewart, J., dissenting).

52. 401 U.S. at 43-44.

53. *See* notes 57-67 and accompanying text *infra*.

the constitutionality of state practices and procedures, even though the claims concern matters that are ancillary or unrelated to pending proceedings.[54] Typically, such claimants seek to reform state procedures, but do not seek to enjoin state proceedings. In addition, these federal claims generally cannot be raised in the state proceedings.[55] Nonetheless, in many instances, federal courts have held that to grant the relief requested "would indirectly accomplish the kind of interference that *Younger v. Harris* . . . and related cases sought to prevent."[56]

1. *Expansion to Civil Litigation*

Younger was first extended to civil proceedings in *Huffman v. Pursue, Ltd.*[57] A federal district court had issued an injunction against proceedings initiated by the state to enforce a civil nuisance statute.[58] The Supreme Court emphasized that the state was a party and that the statute was "in aid of and closely related to criminal statutes."[59] The Court concluded that a federal injunction would therefore offend the state's interest as substantially as would an injunction against a criminal proceeding.[60] More recently, *Juidice v. Vail*[61] broadened the range of civil cases subject to the *Younger* doctrine to include contempt pro-

---

54. *See* notes 68-86 and accompanying text *infra*.

55. Generally, these claimants seek to challenge state criminal pretrial practices and procedures such as those concerning bail, transmittal of arrest records, and pretrial detention facilities. For further discussion, see text accompanying notes 68-86 *infra*.

56. O'Shea v. Littleton, 414 U.S. 488, 500 (1974). *See also* Martin v. Merola, 532 F.2d 191 (2d Cir. 1976) (per curiam). In *Martin*, defendants in a pending state criminal case brought suit in federal court against the state prosecutor. The federal plaintiffs alleged, inter alia, that their right to a fair trial had been infringed. *Id.* at 193. Although the court dismissed on other grounds, it noted that *Younger* principles would require abstention even though the federal claimants sought damages rather than an injunction. *Id.* at 194-95. The court's citation to *Younger* seems appropriate because the federal adjudication might have resulted in findings of fact which would have substantially affected the state proceedings.

57. 420 U.S. 592 (1975).

58. The state of Ohio had brought civil actions, under its obscenity laws, to abate the showing of movies in a theater leased by Pursue. After the state issued a final order of abatement, Pursue filed a federal complaint challenging the validity of the state obscenity statute. *Id.* at 598.

59. *Id.* at 604.

60. *Id.* The Court characterized its holding as the "civil counterpart" of *Younger*. *Id.* at 611.

61. 430 U.S. 327 (1977).

ceedings.[62] The Court stressed the importance of the state interest in ensuring the regular operation of its contempt process and expressed concern that federal intervention would reflect negatively upon the ability of state courts to enforce constitutional requirements.[63] Further expansion followed in *Trainor v. Hernandez*,[64] in which the Court held that *Younger* principles precluded a federal court from entertaining the claims of welfare recipients who were defendants in a civil suit for welfare fraud brought by the state.[65] The Court appeared to indicate that the *Younger* doctrine would apply generally to civil proceedings that were brought by the state "in its sovereign capacity."[66] Whether *Younger* principles now preclude federal court intervention in all pending state civil proceedings to which the state is a party, regardless of the substantiality of the state interest in those pro-

62. Vail had defaulted on a loan and a state court had entered a default judgment against him. Three months later, the judgment remained unsatisfied, and Vail was served with a subpoena. Vail did not appear, and the court subsequently issued an order requiring Vail to show cause why he should not be punished for contempt. When Vail failed to comply with the order to show cause, the court entered an order holding him in contempt and imposing a fine. Vail was arrested and jailed when he failed to pay the fine. Vail then brought a class action in federal district court seeking to enjoin New York's use of its statutory contempt procedures on the ground that the procedures leading to imprisonment for contempt violated the Fourteenth Amendment. Because Vail had never appeared in the New York courts, he obviously had not raised his constitutional claims in state proceedings. Nevertheless, the Supreme Court found it "abundantly clear that [Vail] had an *opportunity* to present [his] federal claims in the state proceedings." *Id.* at 337 (emphasis in original).

63. 430 U.S. at 336.

64. 431 U.S. 434 (1977).

65. Rather than prosecuting under the applicable Illinois criminal statute, the state had brought a civil suit against the recipients, seeking return of public funds allegedly obtained after fraudulent concealment of assets. The state had attached credit union funds of those charged, and the attachment procedure was attacked in the federal district court. Hernandez v. Danaher, 405 F. Supp. 757 (N.D. Ill. 1975). The district court found *Younger* inapplicable: the court stressed that the state had brought its action under a statute which provided a cause of action for any person, public or private; therefore, it was "mere happenstance" that the state was the petitioner in the pending state proceeding. *Id.* at 760.

The Supreme Court reversed, reasoning that the suit, although civil in nature, was brought "to vindicate important state policies such as safeguarding the fiscal integrity of those [welfare] programs." 431 U.S. at 444. The Court remanded for further proceedings to determine whether the pending state proceeding provided an adequate forum for the presentation of the appellees' claims. *Id.* at 447-48.

66. 431 U.S. at 444.

ceedings, has not yet been determined.[67]

2. *Expansion to Litigation Challenging State Practices and Procedures*

A more subtle expansion of the *Younger* doctrine has occurred through its application to plaintiffs who raise claims in the federal courts concerning matters that are only ancillary to pending state judicial proceedings. These challenges generally seek to modify state criminal practices and procedures, but do not seek to enjoin state prosecutions. Suits challenging the constitutionality of assignment-of-counsel practices,[68] juvenile court intake procedures,[69] and pretrial release practices[70] are examples of actions which concern matters ancillary to the pending state proceedings. Some lower courts have reasoned that *Younger* does not require abstention in these cases because the relief requested entails virtually no interference with substantive aspects of state proceedings and because the claims cannot readily be raised in the state proceedings.[71] Other lower courts have held

---

67. The *Sims* decision does not resolve this issue. *See* notes 131-32 and accompanying text *infra*. The courts of appeals have applied the *Younger* doctrine in a variety of civil areas. For an extensive collection of these decisions, see Aldisert, *On Being Civil to* Younger, 11 CONN. L. REV. 181, 200-14 (1979).

Justices Brennan and Marshall have consistently opposed the wholesale expansion of the doctrine to bar injunctions against civil proceedings. Justice Brennan has stated:

> The principles that give strength to *Younger* simply do not support an inflexible rule against federal courts' enjoining state civil proceedings. . . . [I]n civil proceedings it cannot be assumed that state interests of compelling importance outweigh the interests of litigants seeking vindication of federal rights . . . under a statute expressly enacted by Congress to provide a federal forum for that purpose. Even assuming that federal abstention might conceivably be appropriate in some civil cases, the transformation of what I must think can only be an exception into an absolute rule crosses the line between abstention and abdication.

Trainor v. Hernandez, 431 U.S. 434, 455-56 (1977) (Brennan, Marshall, JJ., dissenting). *See* Juidice v. Vail, 430 U.S. 327, 341 (1977) (Brennan, Marshall, JJ., dissenting); Huffman v. Pursue, Ltd., 420 U.S. 592, 613 (1975) (Brennan, Douglas, Marshall, JJ., dissenting). *See generally* Aldisert, *On Being Civil to* Younger, 11 CONN. L. REV. 181 (1979); Comment, *Post-*Younger *Excesses in the Doctrine of Equitable Restraint: A Critical Analysis*, 1976 DUKE L. REV. 523, 548-73.

68. *See, e.g.*, Gilliard v. Carson, 348 F. Supp. 757 (M.D. Fla. 1972).

69. *See, e.g.*, Conover v. Montemuro, 477 F.2d 1073 (3d Cir. 1973).

70. *See, e.g.*, Wallace v. Kern, 520 F.2d 400 (2d Cir. 1975), *cert. denied*, 424 U.S. 912 (1976); Kinney v. Lenon, 447 F.2d 596 (9th Cir. 1971); Harrington v. Arceneaux, 367 F. Supp. 1268 (W.D. La. 1973).

71. *See, e.g.*, Utz v. Cullinane, 520 F.2d 467, 472 n. 9. (D.C. Cir. 1975); Conover v.

that abstention is required in such actions because granting the injunctive relief requested would cause disruption of the state criminal process and impair the ability of the state courts to adjudicate individual cases.[72]

This conflict appeared to be resolved in *Gerstein v. Pugh*,[73] a civil rights class action brought by pretrial detainees to obtain declaratory and injunctive relief against the Florida practice of detaining persons prior to trial solely on the basis of a prosecutor's information and without a judicial determination of probable cause. The district court granted the desired relief and ordered the defendants to submit a plan providing for preliminary hearings in all cases instituted by information.[74] The Supreme Court disagreed with the lower court on the merits,[75] reversing in part and remanding for further proceedings.[76] With reference to the *Younger* issue, however, the Court stated that the lower court did possess the power to enter its order. The Court confined its treatment of *Younger* to a single footnote, stating:

> The District Court correctly held that respondents' claim for relief was not barred by the equitable restrictions on federal intervention in state prosecutions, *Younger v. Harris* . . . . The injunction was not directed at the state prosecutions as such, but only at the legality of pretrial detention without a judicial hearing, an issue that could not be raised in defense of the criminal prosecution. The order to hold preliminary hearings could not prejudice the conduct of the trial on the merits.[77]

Thus, the conflict in the lower courts as to the proper application of the *Younger* doctrine in challenges to state practices and

---

Montemuro, 477 F.2d 1073, 1090-92 (3d Cir. 1973); Gilliard v. Carson, 348 F. Supp. 757, 762 (M.D. Fla. 1972).

72. *See, e.g.*, Wallace v. Kern, 520 F.2d 400, 405-06 (2d Cir. 1975), *cert. denied*, 424 U.S. 912 (1976); Kinney v. Lenon, 447 F.2d 596, 599-601 (9th Cir. 1971); Harrington v. Arceneaux, 367 F. Supp. 1268, 1272 (W.D. La. 1973). *See generally* Zeigler, *supra* note 48, at 290-95.

73. 420 U.S. 103 (1975).

74. *Id.* at 107-08. A final order subsequently issued by the district court prescribed a detailed post-arrest procedure. *Id.*

75. Specifically, the Supreme Court held that, although the Constitution requires a judicial determination of probable cause, the adversary safeguards ordered by the district court were not required by either the Fourth Amendment or the Due Process Clause of the Fourteenth Amendment. *Id.* at 119-26.

76. *Id.* at 126.

77. *Id.* at 108 n. 9.

procedures seemed to be resolved; apparently, despite the disruption of the state criminal process that might result from federal court intervention, *Younger* did not bar relief.[78]

Although *Gerstein* and some lower court decisions seem to indicate that abstention is not required in cases challenging matters ancillary to pending state proceedings, abstention has been required in cases making broad-based challenges and seeking extensive reform of state judicial practices and procedures. In *O'Shea v. Littleton*,[79] for example, the plaintiffs mounted a broad attack on the criminal justice system of Cairo, Illinois, alleging racially discriminatory practices by the state's attorney, his investigator, the police commissioner, a county magistrate, and a judge. The plaintiffs sought far-reaching injunctive relief.[80] The Supreme Court dismissed the case on the ground that the plaintiffs lacked standing, but stated in dictum that the kind of relief sought by the plaintiffs would entail "abrasive and unmanageable intercession"[81] into the day-to-day conduct of local criminal proceedings and would thus "indirectly accomplish the kind of interference that *Younger v. Harris* . . . and related cases sought to prevent."[82] Similarly, in *Ad Hoc Committee on Judicial Administration v. Massachusetts*,[83] a federal court of appeals held nonjusticiable a case in which the plaintiffs asked the federal judiciary "to order enlargement and restructuring of the entire state court system."[84] The court noted that the scope of the relief sought made it impractical, if not impossible, for the court to formulate a remedy or determine compliance.[85] Thus, as indicated above, the principles of *Younger* abstention are more readily applied when challenges are broad-based than when challenges are limited in scope.[86]

---

78. *See* Zeigler, *supra* note 48, at 296-98. In light of *Sims*, this interpretation may no longer be supportable. *See* notes 138-44 and accompanying text *infra*.

79. 414 U.S. 488 (1974).

80. *Id.* at 500.

81. *Id.* at 504.

82. *Id.* at 500.

83. 488 F.2d 1241 (1st Cir. 1973), *cert. denied*, 416 U.S. 986 (1974).

84. *Id.* at 1243. The plaintiffs alleged that the state's "failure to provide 'court facilities, judges, clerical personnel, and other facilities' violate[d] their Sixth and Fourteenth Amendment rights." *Id.*

85. *Id.* at 1245-46.

86. *See also* Bonner v. Circuit Court, 526 F.2d 1331 (8th Cir. 1975) (en banc), *cert.*

B. *Exceptions to the Doctrine*

The *Younger* doctrine is not an absolute bar to federal court intervention even when a particular case comes within its scope. *Younger v. Harris* itself provides that the federal court need not abstain if the complainant has no adequate remedy at law and will suffer great and immediate irreparable harm if equitable relief is denied.[87] The *Younger* decision, however, provided little guidance for determining specific circumstances in which abstention is not required.[88] One must look to other decisions to give content to the exceptions to the *Younger* doctrine.[89]

1. *No Adequate Remedy at Law*

The Supreme Court has stated that a legal remedy, to be adequate, "must be as complete, practical and efficient as that which equity could afford."[90] A complainant has an adequate remedy at law if he is given "the opportunity to raise and have timely decided by a competent state tribunal the federal issues involved."[91] The right to a direct appeal within the state court system is an adequate remedy at law; thus, a federal plaintiff must have exhausted his state appellate remedies before seeking relief in the federal courts.[92] Furthermore, only the opportunity

---

denied, 424 U.S. 946 (1976); Gardner v. Luckey, 500 F.2d 712 (5th Cir. 1974), *cert. denied*, 423 U.S. 841 (1975); Karr v. Blay, 413 F. Supp. 579 (N.D. Ohio 1976).

87. 401 U.S. at 43-45.

88. Such guidance as *Younger* does afford is discussed at notes 98-102 and accompanying text *infra*.

89. *See* notes 90-109 and accompanying text *infra*.

90. Terrace v. Thompson, 263 U.S. 197, 214 (1923).

91. Gibson v. Berryhill, 411 U.S. 564, 577 (1973).

92. Huffman v. Pursue, Ltd., 420 U.S. 592, 608 (1975). The Court stated that even if litigants are entitled to a federal forum for the resolution of federal issues, "that entitlement is most appropriately asserted by a state litigant when he seeks to *relitigate* a federal issue adversely determined in *completed* state court proceedings." *Id.* at 606 (emphasis in the original). *But see* Wooley v. Maynard, 430 U.S. 705, 710-11 (1977).

This raises the question of whether a plaintiff in a § 1983 action in a federal court is barred by normal res judicata principles from relitigating federal constitutional issues which were adjudicated, or which could have been but were not raised, in previous state court proceedings involving the plaintiff. A number of Supreme Court justices have noted that the Court has never expressly decided this question. *See, e.g.*, Ellis v. Dyson, 421 U.S. 426, 440 (1975) (Powell, J., dissenting); Preiser v. Rodriguez, 411 U.S. 475, 509 n. 14 (1973) (Brennan, J., dissenting). For a full discussion of the cases in the courts of appeals and the district courts, see Averitt, *Federal Section 1983 Actions After State Court Judgment*, 44 U. COLO. L. REV. 191 (1972); Vestal, *State Court Judgment as*

to present federal claims in state proceedings is required. A plaintiff's failure to avail himself of such an opportunity does not indicate that the state proceedings are inadequate.[93]

The federal courts generally have found that no adequate remedy at law exists when there is no existing procedural mechanism in the state courts by which the federal plaintiff could have presented his claim.[94] Adequacy, however, is not assured by the mere existence of a state mechanism; a state remedy which exists only in theory may not be sufficient to compel federal abstention.[95] Theoretically available remedies have been held inadequate when the state tribunal was found to be biased against the plaintiffs,[96] and when an adverse decision seemed inevitable in light of prior state decisions, thus rendering illusory the available remedy at law.[97]

2. *Great and Immediate Irreparable Harm*

Younger v. Harris provides that great and immediate irreparable harm[98] may be inferred if the state criminal prosecution

---

Preclusive in Section 1983 Litigation in a Federal Court, 27 OKLA. L. REV. 185 (1974); 88 HARV. L. REV. 453 (1974).

93. Juidice v. Vail, 430 U.S. 327, 337 (1977); Duke v. Texas, 477 F.2d 244, 252 (5th Cir. 1973), *cert. denied*, 415 U.S. 978 (1974).

94. *See, e.g.*, Morgan v. Wofford, 472 F.2d 822 (5th Cir. 1973) (no state procedure existed through which the federal plaintiff, at the time of his federal suit, could raise his constitutional challenges to a Georgia statute mandating restitution as a condition of probation).

95. *Sims*, however, indicates that merely theoretical state remedies may suffice to render unavailable the inadequate forum exception to the *Younger* doctrine. *See* notes 169-80 and accompanying text *infra*.

96. *See, e.g.*, Gibson v. Berryhill, 411 U.S. 564 (1973); Callahan v. Sanders, 339 F. Supp. 814 (M.D. Ala. 1971) (injunction issued prohibiting justices of the peace from hearing traffic cases when they had a pecuniary interest in conviction, because any challenge to their conduct in such cases would have to be made before the justices of the peace themselves).

97. *See, e.g.*, Cleaver v. Wilcox, 499 F.2d 940, 943-44 (9th Cir. 1974); Anderson v. Nemetz, 474 F.2d 814, 820 n. 2 (9th Cir. 1973); Detco, Inc. v. Breier, 349 F. Supp. 537, 538 (E.D. Wis. 1972); G.I. Distribs., Inc. v. Murphy, 336 F. Supp. 1036, 1039 (S.D.N.Y.), *rev'd on other grounds*, 469 F.2d 752 (2d Cir. 1972), *vacated*, 413 U.S. 913 (1973). *But see* Hicks v. Miranda, 422 U.S. 332, 350 n. 18 (1975); Anonymous v. Association of the Bar, 515 F.2d 427, 434-35 (2d Cir.), *cert. denied*, 423 U.S. 863 (1975).

98. 401 U.S. at 46. The "cost, anxiety, and inconvenience of having to defend against a single criminal prosecution" do not constitute irreparable harm. *Id.* Moreover, prospective harm is not irreparable if it can be eliminated by defense of a single prosecution. *Id.*

is the product of bad faith and harassment[99] or if the state law to be applied is " 'flagrantly and patently violative of express constitutional prohibitions.' "[100] To suffice for *Younger* purposes, the constitutional infirmity must pervade "every clause, sentence and paragraph" of the challenged statute.[101] *Younger* further provides that other "extraordinary circumstances" may exist from which the requisite irreparable harm can be inferred.[102] The courts have generally agreed that any unconstitutional deprivation of liberty causes irreparable harm[103] and that the risk of

---

99. *Id.* at 54. Bad faith, however, cannot be inferred merely from the innocence of the accused. Rather, it must be shown that a statute has been enforced "with no expectation of convictions but only to discourage exercise of protected rights." Cameron v. Johnson, 390 U.S. 611, 621 (1968). *See also* International Soc'y for Krishna Consciousness, Inc. v. Conlisk, 374 F. Supp. 1010 (N.D. Ill. 1973). Nor can bad faith be inferred from enforcement of a statute subsequently found to be unconstitutional. Hicks v. Miranda, 422 U.S. 332, 352 (1975). *Cf.* Kugler v. Helfant, 421 U.S. 117 (1975) (allegation of collusive actions of the Deputy Attorney General and members of the state supreme court found not to support a finding of bad faith).

100. 401 U.S. at 53 (quoting Watson v. Buck, 313 U.S. 387, 402 (1941)).

101. *Id.* This standard has been interpreted so strictly that it is questionable whether any statute could qualify, no matter how blatantly unconstitutional. A claim that a statute is unconstitutional on its face does not suffice for *Younger* purposes. *Id.* at 54. The *Younger* Court implicitly overruled *Dombrowski v. Pfister*, *id.* at 53 (distinguishing *Dombrowski*, 380 U.S. 479 (1965)), which held that abstention is inappropriate if "statutes are justifiably attacked on their face as abridging free expression, or as applied for the purpose of discouraging protected activities." 380 U.S. at 489-90. In Trainor v. Hernandez, 431 U.S. 434 (1977), a district court conclusion that the challenged statutes were "on [their face] patently violative of the due process clause" was found by the Supreme Court to fall short of the *Younger* requirement for invalidity. *Id.* at 439 (quoting Hernandez v. Danaher, 405 F. Supp. 757, 762 (N.D. Ill. 1975)). Such treatment, the *Trainor* dissent opined, "actually eliminates one of the exceptions from the doctrine." *Id.* at 463 (Stevens, J., dissenting).

102. 401 U.S. at 53. An indication of the types of circumstances from which great and immediate irreparable harm may be inferred is found in Kugler v. Helfant, 421 U.S. 117 (1975):

> The very nature of "extraordinary circumstances," of course, makes it impossible to anticipate and define every situation that might create a sufficient threat of such great, immediate, and irreparable injury as to warrant intervention in state criminal proceedings. But whatever else is required, such circumstances must be "extraordinary" in the sense of creating an extraordinarily pressing need for immediate federal equitable relief, not merely in the sense of presenting a highly unusual factual situation.

Id. at 124-25.

103. *See, e.g.*, Pugh v. Rainwater, 483 F.2d 778, 782-83 (5th Cir. 1973), *aff'd in part, rev'd in part sub nom.* Gerstein v. Pugh, 420 U.S. 103 (1975) (*see* notes 48-50 and accompanying text *supra*); Morgan v. Wofford, 472 F.2d 822, 826 (5th Cir. 1973); Gilliard v. Carson, 348 F. Supp. 757, 761-62 (M.D. Fla. 1972). *See also* Lynch v. Snepp, 472 F.2d

multiple prosecutions may also constitute irreparable harm.[104] Moreover, it has been held that depriving a parent of custody prior to a civil proceeding constitutes great and immediate irreparable harm, regardless of the outcome of the civil proceeding.[105]

In determining whether a particular case comes within the exceptions to the *Younger* doctrine, courts focus primarily on the adequacy of remedies available at law.[106] Indeed, a finding of adequacy may obviate the need to consider the issue of irreparable harm; if an existing remedy is found to be adequate, that finding itself implies that any harm is repairable.[107] Moreover, although *Younger* provides that irreparable harm can be inferred from bad faith and harassment,[108] these circumstances can also be viewed as factors in measuring the adequacy of the state forum. The various exceptions to *Younger*, therefore, can be seen as "different ways of showing that the state legal appa-

---

769, 776 (4th Cir. 1973), *cert. denied*, 415 U.S. 983 (1974).

104. *See, e.g.*, International News Distribs., Inc. v. Shriver, 488 F.2d 1350 (6th Cir. 1973); Krahm v. Graham, 461 F.2d 703 (9th Cir. 1972); International Soc'y for Krishna Consciousness, Inc. v. Conlisk, 374 F. Supp. 1010 (N.D. Ill. 1973).

105. Newton v. Burgin, 363 F. Supp. 782, 785 (W.D.N.C. 1973), *aff'd mem.*, 414 U.S. 1139 (1974). In *Burgin*, the state assumed custody of a child after her mother was arrested for possession of drug paraphernalia. The mother, after her release from jail on bond, applied for a hearing to regain custody. The court refused to hear the case earlier than the date already set, which was four days hence. Before the scheduled state court hearing, the federal district court issued a temporary restraining order, returned the child to the custody of her mother, and ordered that the state proceedings be stayed until a three-judge federal court could consider the constitutionality of the statutes under which the state had assumed custody of the child. The court found that "deprivation of custody prior to [a] civil proceeding is an irreparable injury which is both great and immediate," 363 F. Supp. at 785, and is thus sufficient to meet the irreparable harm requirement for exception from the *Younger* doctrine. *See* notes 196-97 and accompanying text *infra* (discussing the *Sims* Court's apparent rejection of this conclusion).

106. *See, e.g.*, Trainor v. Hernandez, 431 U.S. 434, 447-48 (1977); Juidice v. Vail, 430 U.S. 327, 337-38 (1977). *Sims* continues this trend. *See* text accompanying notes 198-99 *infra*.

Cases which find irreparable harm generally find the harm irreparable because state remedies are inadequate for vindication of the plaintiffs' claims. *See, e.g.*, International Soc'y for Krishna Consciousness, Inc. v. Conlisk, 374 F. Supp. 1010 (N.D. Ill. 1973); Gilliard v. Carson, 348 F. Supp. 757 (M.D. Fla. 1972).

107. Courts also may focus on the adequacy of state remedies before assessing the magnitude of the plaintiff's injury because the latter inquiry might lead the court to comment on the merits of the plaintiff's allegations. A court that abstains will not reach the merits. Thus, if a federal court determines that state remedies are adequate, it may consider discussion of the plaintiff's injuries inappropriate, as well as unnecessary.

108. *See* note 99 and accompanying text *supra*.

ratus has broken down so thoroughly that federal rights cannot be vindicated through it in a timely fashion."[109]

III. *Moore v. Sims*: Decision and Analysis

A. *The Scope of the* Younger *Doctrine*

The Opinion of the Court

The Supreme Court finds that *Sims* is within the scope of the *Younger* doctrine as it has been applied to civil litigation and to broad-based challenges to state practices and procedures. The Court also finds that *Sims* is within the scope of *Younger* because the relief ordered interfered with the pending state proceedings.

First, the Court concludes that *Sims* is within the scope of the doctrine as previously applied in civil cases. The Court reasons that in *Sims*, as in *Huffman*,[110] the state is a party to the state proceedings;[111] the child abuse statutes in *Sims*, like the civil nuisance statute in *Huffman*, are "in aid of and closely related to criminal statutes;"[112] and the proceedings in *Sims*, like those in *Juidice*[113] and *Trainor*,[114] were instituted to further a state interest of vital concern.[115]

Second, the Court concludes that *Sims* is within the scope of the *Younger* doctrine as previously applied to broad-based

---

109. Soifer & Macgill, *The* Younger *Doctrine: Reconstructing Reconstruction*, 55 TEX. L. REV. 1141, 1204 n. 259 (1977).

110. Huffman v. Pursue, Ltd., 420 U.S. 592 (1975). *See* notes 57-60 and accompanying text *supra*.

111. 442 U.S. 415, 423 (1979).

112. *Id.* (quoting Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1975)).

113. Juidice v. Vail, 430 U.S. 327 (1977). *See* notes 61-63 and accompanying text *supra*.

114. Trainor v. Hernandez, 431 U.S. 434 (1977). *See* notes 64-66 and accompanying text *supra*.

115. 442 U.S. at 423. The Supreme Court and the district court agree that there is a "compelling state interest in quickly and effectively removing the victims of child abuse from their parents." *Id.* at 435 (quoting Moore v. Sims, 438 F. Supp. 1179, 1189 (S.D. Tex. 1977)). While the district court reasoned that the importance of the parental rights involved militated against abstention, 438 F. Supp. at 1187, the Supreme Court concludes that because "[f]amily relations are a traditional area of state concern," 442 U.S. at 435, it is preferable to assign first to state courts "the task of accommodating the various interests and deciding the constitutional questions that may arise in child-welfare litigation." *Id.*

challenges. The Court repudiates the suggestion, which it finds intimated in the district court's decision, that "the more sweeping the challenge the more inappropriate is abstention."[116] Justice Rehnquist states that such an approach "inverts traditional abstention reasoning,"[117] and points to "three distinct considerations that counsel abstention when broad-based challenges are made to state statutes:"[118] the policies underlying the related doctrine of *Pullman* abstention,[119] the need for a concrete case or controversy, and the "threat to our federal system of government posed by 'the needless obstruction to the domestic policy of the states by forestalling state action in construing and applying its own statutes.' "[120] Justice Rehnquist states that failure to

---

116. 442 U.S. at 427. The Court points to the following language in the district court's opinion as suggesting this rationale:

> The entire statutory scheme by which Texas attempts to deal with the problem of child abuse has been challenged and should be viewed as an integrated whole. This court will not consider part of the scheme and abstain from another part. To do so would seriously jeopardize any hope for an effective statutory scheme and, in the name of comity and federalism, do violence to the state functions those principles seek to protect.

Id. at 426 (quoting Moore v. Sims, 438 F. Supp. 1179, 1187 (S.D. Tex. 1977)). Although the Court agrees that "a comprehensive attack on an integrated statutory structure [is] best suited to resolution in one forum," 442 U.S. at 426 n. 10, the Court disagrees with the district court's choice of forum. *Id.*

117. 442 U.S. at 427.

118. *Id.* at 428.

119. The *Pullman* abstention doctrine was enunciated in Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941). According to *Pullman*, a federal court should postpone hearing a constitutional question if (1) the claim before the court involves both an issue of federal constitutional law and an issue of state law; (2) decision of the state law issue might obviate the need for a decision of the constitutional question; and (3) the proper resolution of the state issue under state law is unclear. *Id.* at 498-500.

Pullman abstention differs from the *Younger* variety in that the federal court should, under *Pullman*, retain jurisdiction of the case while the parties obtain a resolution of the state law question in state court. *Id.* at 501-02. *See* England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411 (1964). Moreover, under *Pullman*, a federal court may decline to exercise jurisdiction only if the preconditions are met, while, under *Younger*, a federal court may exercise jurisdiction only in limited circumstances. *See generally* P. BATOR, P. MISHKIN, D. SHAPIRO & H. WECHSLER, HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 985-1009 (2d ed. 1973); Field, *Abstention in Constitutional Cases: The Scope of the* Pullman *Abstention Doctrine*, 122 U. PA. L. REV. 1071 (1974); Note, *Federal-Question Abstention: Justice Frankfurter's Doctrine in an Activist Era*, 80 HARV. L. REV. 604 (1967); Comment, *The Abstention Doctrine: Some Recent Developments*, 46 TUL. L. REV. 762 (1972).

120. 442 U.S. at 429 (quoting Alabama State Fed'n of Labor v. McAdory, 325 U.S. 450, 471 (1945)).

accord these considerations proper weight increases the dangers of unnecessary or even meaningless litigation,[121] premature litigation,[122] and improper interference with state affairs.[123] Thus, the Court concludes that, the broader the challenge to a state statutory scheme, the more appropriate is abstention.[124]

Third, the Court concludes that *Sims* is within the scope of the *Younger* doctrine because the relief ordered directly interfered with a pending state proceeding. In so holding, the Court distinguishes *Sims* from the earlier case of *Gerstein v. Pugh*[125] in which *Younger* was not applied. As the Supreme Court notes, the district court relied on *Gerstein* in finding abstention to be inappropriate. The Supreme Court quotes the following passage from the district court opinion:

> [W]e note that the plaintiffs' constitutional challenge is directed primarily at the legality of the children's seizure and detention for a 42-day period without a hearing. It is clear that because this issue cannot be raised as a defense in the normal course of the

---

121. 442 U.S. at 428. As the Court indicates, a concern underlying the *Pullman* abstention doctrine is that "a federal court will be forced to interpret state law without the benefit of state-court consideration and therefore under circumstances where a constitutional determination is predicated on a reading of the statute that is not binding on state courts." *Id.* If the state courts subsequently give a different meaning to their law, this may render "the federal-court decision advisory and the litigation underlying it meaningless." *Id.*

122. *Id.* at 429-30. In the Court's view, the decision below involved premature litigation of some issues. For example, the district court held that the Constitution requires a burden of proof of clear and convincing evidence in any proceeding affecting parental rights, thus vitiating a portion of § 11.15 of the Texas Family Code which mandated only a preponderance of the evidence standard. 438 F. Supp. at 1194. Since no state proceedings involved in *Sims* reached the hearing stage, the plaintiffs could point to no injury from application of the lesser standard. Thus, *Sims* did not present a concrete case or controversy on the burden of proof issue. 442 U.S. at 429. Similarly, the plaintiffs challenged the methods by which child abuse reports are received and recorded in Texas. 438 F. Supp. at 1187. They did not allege, however, that information concerning themselves was disseminated in these reports, and, in fact, none was. Brief for Appellants at 28, Moore v. Sims, 442 U.S. 415 (1979). Thus, the plaintiffs could point to no injury in fact from operation of the reporting and recording system, and their challenge to that system apparently did not present a case or controversy.

123. 442 U.S. at 429-30. The Court states that "[w]hen federal courts disrupt that process of mediation [of federal constitutional concerns and state interests by the state courts,] . . . they prevent the informed evolution of state policy by state tribunals." *Id.* at 430.

124. *Id.* at 427.

125. 420 U.S. 103 (1975). *Gerstein* is discussed at notes 73-78 and accompanying text *supra*.

pending judicial proceeding, abstention would be inappropriate. *See Gerstein v. Pugh*, 420 U.S. 103, 108 n. 9 (1975).[126]

In a brief discussion, the Court finds that the district court's "reliance on *Gerstein* is misplaced"[127] because the relief ordered in *Gerstein* "was not addressed to [the] state proceeding," while the injunction in *Sims* "did address the state proceeding."[128]

Analysis of the Court's Reasoning

The Court's conclusion that *Sims* is similar to other civil cases in which *Younger* has been applied is clearly correct. Not only has the state brought suit to further a state interest of vital concern, but child abuse statutes are indeed "in aid of and closely related to criminal statutes."[129] The protective purpose of child abuse legislation is closely akin to the purpose of criminal statutes. Both regulate by defining proscribed behavior, by giving notice that the proscribed behavior is prohibited, and by establishing penalties for engaging in the proscribed behavior. Were deference not given to the parent-child relationship, adults who physically injure their children could be punished under appropriate criminal statutes. Thus, the conclusion that *Sims* is within the scope of the *Younger* doctrine is compelled by the *Huffman*, *Juidice*, and *Trainor* decisions,[130] even in the absence of a mandate that *Younger* is to apply to all civil proceedings to which the state is a party. The Court explicitly states that the *Sims* decision is not to be construed as such a mandate: "Therefore, contrary to the suggestion of the dissent, we do not remotely suggest 'that every pending proceeding between a State and a federal plaintiff justifies abstention unless one of the exceptions to *Younger* applies.' "[131] Because *Sims* is so completely within the scope of the doctrine as it has been applied, it could not be expected to, and does not, further clarify the boundaries of the *Younger* expansion into civil proceedings.[132]

---

126. 442 U.S. at 431.
127. *Id.*
128. *Id.*
129. Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1975).
130. *See* notes 57-66 and accompanying text *supra*.
131. 442 U.S. at 423 n. 8.
132. Nevertheless, one may wonder whether Justice Rehnquist's reference to

The Court is also correct in stating that "[t]he breadth of a challenge" to state practices and procedures "has traditionally militated in *favor* of abstention, not *against* it."[133] Further, *Sims* is certainly an appropriate case in which to express concern about the difficulties caused by broad-based challenges. *Sims* poses serious questions of standing and justiciability,[134] and clearly illustrates the problems that may result from far-reaching injunctive relief. The district court not only held unconstitutional several notice and hearing sections of the Texas Family Code[135] that were actually applied to the Simses, but also held invalid several other sections that apparently had never been applied to the Simses.[136] Thus, *Sims* fully illustrates the Supreme Court's point that in a broad-based challenge, abstention is appropriate if such a challenge gives rise to premature and perhaps

---

"Younger-Huffman principles," *id.* at 423, does not presage the enunciation of a rule that will draw within the scope of the doctrine all civil cases to which a state is a party.

133. *Id.* at 427 (emphasis in original). The Court properly relies on the policies of comity and federalism underlying the *Pullman* abstention doctrine, but appropriately refrains from holding that the *Pullman* doctrine by itself requires abstention in this case. In *Sims*, the criteria for *Pullman* abstention, *see* note 119 *supra*, are not met as to all of plaintiffs' claims. *Pullman* requires not only a federal constitutional question and an issue of state law, a criterion met in this case, but *Pullman* also requires that the state law on the state issue be unclear and that decision of the state law issue will obviate the need for deciding the federal constitutional claim, criteria not met as to all of the plaintiffs' claims.

For example, the plaintiffs challenged the constitutionality of the provisions in Chapter 17 of the Texas Family Code which authorize state officials to seize children and deliver them to the court, and authorize the court to make appropriate orders for their care, all without notice to the parents. *See* note 15 *supra*. Since this claim raises a constitutional question, as well as issues of state law centering on the proper application of Chapter 17, the first criterion for *Pullman* abstention is met. Chapter 17, however, is not unclear on the point the plaintiffs raise. Section 17.03 specifically states that the court proceedings authorized by Chapter 17 "may be held without notice." TEX. FAM. CODE ANN. tit. 2, § 17.03 (Vernon 1975). It is difficult to conceive that a state court could read that provision as requiring notice to parents; therefore, state court decisions as to the meaning of § 17.03 will not obviate the need for deciding the constitutional question.

134. *See* note 122 and accompanying text *supra*.

135. *See* note 43 *supra*.

136. These latter sections concerned such diverse issues as psychological and psychiatric examinations (§ 34.05(c), found unconstitutional on its face), the reporting and recording of information (§ 34.08, found unconstitutional on its face; § 34.06, found unconstitutional as applied), the appointment of an attorney ad litem (§ 11.10, found unconstitutional on its face), and appropriate standards of proof (§ 11.15, found unconstitutional on its face). 438 F. Supp. at 1190-95. *See* Brief for Appellees at 24, Moore v. Sims, 442 U.S. 415 (1979).

unnecessary litigation.[137]

The Court's conclusion that the district court's reliance on *Gerstein* was in error sheds some light on the interpretation of *Gerstein*. In *Gerstein*, the Court found *Younger* inapplicable because the plaintiffs' claims could not have been raised in defense of their criminal prosecutions, and because the relief ordered was not directed at the state prosecutions and could not have prejudiced the conduct of the trials on the merits.[138] Thus, *Gerstein* considered both the opportunity to raise one's federal claims in the state proceeding and the impact of the ordered relief on the state proceeding. The Court did not indicate, however, whether these concerns were of equal importance, or whether lack of opportunity to raise one's claims would suffice to render *Younger* inapplicable even if the relief would entail interference in state proceedings. In *Sims*, the Court appears to indicate that lack of opportunity to raise one's claims is not sufficient to avoid application of *Younger* if federal relief would cause significant interference with pending state proceedings, and, therefore, that the impact on state proceedings is the factor of overriding importance.

Although the Supreme Court in *Sims* never expressly notes that the plaintiffs in both *Gerstein* and *Sims* lacked adequate opportunities to raise their federal claims in defense of the state proceedings, the district court's conclusion that *Gerstein* and *Sims* are similar in this regard appears to be correct. The plaintiffs' claims in *Gerstein* of illegal deprivation of liberty and the plaintiffs' claims in *Sims* of improper deprivation of custody both involve important, constitutionally protected interests.[139] In *Gerstein*, the constitutional claims concerning the plaintiffs' original detention could not be raised in their state criminal prosecutions because a state criminal trial involves only the determination of guilt or innocence on the underlying criminal charge. A claim of improper denial of a preliminary hearing and consequent illegal pretrial detention is not relevant to that de-

137. *See* notes 121-22 and accompanying text *supra*.

138. *See* note 77 and accompanying text *supra*.

139. A parent has a constitutionally protected right to the custody and control of his child. *See* Newton v. Burgin, 363 F. Supp. 782, 785-86 (W.D.N.C. 1973), *aff'd mem.*, 414 U.S. 1139 (1974), and cases cited therein. Liberty, of course, is also a constitutionally protected right. U.S. CONST. amend. XIV.

termination. Similarly, in *Sims*, the due process claims concerning the original denial of custody could not be raised in the state proceeding because lack of notice and hearing before the initial deprivation of custody are not relevant to an inquiry concerning parental fitness for future custody. Thus, the plaintiffs in *Sims* apparently had no greater opportunity than did the plaintiffs in *Gerstein* to present their federal claims in the state proceedings.

Instead of focusing on this similarity of *Gerstein* and *Sims*, however, the *Sims* Court notes that the relief ordered in *Gerstein*, unlike the relief ordered in *Sims*, had no impact on the state proceedings. The Court is correct in finding the cases distinguishable in this regard. The district court in *Gerstein* merely enjoined the practice of pretrial detention based solely on a prosecutor's information and without a judicial determination of probable cause, and ordered the state courts to provide preliminary hearings in the future.[140] No pending proceedings were actually enjoined, and the plaintiffs' state criminal trials could continue unimpeded. The district court in *Sims*, however, enjoined the state from applying and enforcing the operative provisions of the very statute under which the state proceedings had been brought.[141] In effect, therefore, the relief ordered in *Sims* eliminated the possibility, until the state legislature could enact a new statutory scheme, of any state proceedings pursuant to the invalidated provisions.[142] Thus, the Court appears to limit the application of *Gerstein* to cases in which federal relief will not interfere significantly with the state proceedings.

From this treatment, it may be inferred that, of the two factors considered in *Gerstein*, the impact on state proceedings of the relief ordered is the factor of overriding importance,[143] and

---

140. 420 U.S. at 107-08.

141. 438 F. Supp. at 1195. *See* notes 15, 25 and 43 *supra*.

142. Thus, as the Court notes, 442 U.S. at 426 n. 10, the dissent seems to be incorrect when it says that the plaintiffs' claims were as irrelevant to the issue of their fitness as parents as would be a hearing on a traffic violation. *Id.* at 439.

143. A question that may be raised with respect to *Gerstein* is whether the applicability of *Younger* depends on the nature of the relief ultimately ordered or on the nature of the relief sought. The answer to this question should depend on whether an appellate court is asked to review a district court order denying, on *Younger* grounds, the relief requested, or, on the other hand, to review a district court order granting specific relief. In the first situation, the appellate court must necessarily look to the relief requested. In the second situation, the court should look to the relief ordered.

the lack of opportunity to raise one's claims in state proceedings is not sufficient, by itself, to avoid application of *Younger*. The Court is correct in focusing on the impact of the relief; federal relief that interferes with state proceedings is precisely what *Younger* seeks to avoid. The Court does not indicate, however, the means by which claimants may obtain relief on claims concerning ancillary matters that cannot be raised in the state proceedings.[144] It appears that claimants may still obtain relief in the federal courts for such claims as long as the relief ordered does not significantly interfere with state proceedings. Thus, despite *Sims*, *Gerstein* may still support federal relief, provided that the claimant carefully tailors his demands.

B. *Exceptions to the* Younger *Doctrine*

Federal relief is warranted in cases within the scope of *Younger* only if plaintiffs have no adequate state remedy for vindication of their federal claims and will suffer great and immediate irreparable harm if relief is denied. The requisite irreparable harm may be inferred from the existence of extraordinary circumstances.[145] The Court concludes that *Sims* does not satisfy these criteria and, thus, does not fit within the exceptions to the *Younger* rule.

1. *No Adequate Remedy at Law*

The Opinion of the Court

Throughout its opinion, the Supreme Court addresses the adequacy of state remedies and categorically rejects the district court's findings of inadequacy.[146] The Court notes that a "federal court should not exert jurisdiction if the plaintiffs 'had an *opportunity* to present their federal claims in the state

144. Perhaps the Court does not address this question because it ultimately finds that the state proceedings provided an adequate forum for the presentation of the Simses' claims. *See* notes 147-68 and accompanying text *infra*. In so finding, however, the Court considers only the circumstances existing at the time the federal court intervened. At that point, the children had been returned to their parents' custody. Thus, the Court again fails to address the Simses' claim that the initial deprivation of custody was illegal for lack of prior notice and hearing. *See* text accompanying note 191 *infra*.

145. 401 U.S. at 50-51. *See* notes 102-05 and accompanying text *supra*.

146. 442 U.S. at 425, 430, 432, 435.

proceedings.' "[147]

The district court found that there was no single state proceeding to which the plaintiffs could look for relief.[148] Referring to the "multifaceted" nature of the plaintiffs' challenges,[149] the court found that certain of those challenges, particularly those concerning the child abuse reporting system,[150] could not be raised in the single pending state suit.[151] The district court also found that the state procedures failed to provide an adequate forum for the timely presentation of the plaintiffs' claims: "The burdensome irregularities encountered by these plaintiffs in seeking a state forum for their constitutional claims illustrate . . . that in practice the state procedures operate in such a manner as to prevent or, at the very minimum, substantially delay the presentation of constitutional issues."[152]

The Supreme Court rejects the findings of the district court and determines that the plaintiffs had not shown that state procedural law was inadequate for the presentation of their claims; "in fact," the Court notes, "Texas law seems clearly to the contrary."[153] In support of this finding, the Court relies on section 11.02 of the Texas Family Code,[154] which permits the court to order the parties to a suit brought under the Code to replead if the court determines that relevant issues have been omitted.[155] In addition, the Court cites a recent Texas decision[156] which, the Court states, "indicate[s] that under Title 2 the full range of constitutional challenges is cognizable in the emergency removal proceedings and in suits affecting the parent-child relationship."[157]

---

147. *Id.* at 425 (quoting Juidice v. Vail, 430 U.S. 327, 337 (1977)). *See* notes 61-63 *supra.*

148. 438 F. Supp. at 1187.

149. *Id.*

150. *See* note 122 *supra.*

151. 438 F. Supp. at 1187.

152. *Id.* at 1189.

153. 442 U.S. at 432.

154. The relevant portion of § 11.02 is quoted in note 24 *supra.*

155. The Court also points to an article in the *Texas Tech Law Review* which stated that § 11.02 adopts a liberal approach to joinder of claims and counterclaims. 442 U.S. at 425 n. 9 (citing Smith, *Draftsmen's Commentary to Title 2 of the Texas Family Code*, 5 TEX. TECH. L. REV. 389, 393 (1974)).

156. Matter of R.E.W., 545 S.W.2d 573 (Tex. Civ. App. 1976).

157. 442 U.S. at 425 n. 9 (citing Matter of R.E.W., 545 S.W.2d 573, 575 (Tex. Civ.

The Court recognizes "the delay in affording the parents a hearing in state court,"[158] and the "undeniable" confusion[159] evidenced by "the uncertainty regarding the effective period of a temporary order under section 11.11[160] and regarding the propriety of entering that order when venue was in Montgomery County."[161] The Court observes, however, that these irregularities do not indicate bad faith on the part of the state authorities,[162] and are only "the predictable byproduct of a new statutory scheme."[163] The Supreme Court suggests that greater diligence or other approaches were required of the plaintiffs to test the adequacy of the state procedures.[164] "The question would be a much closer one," the Court states, "had [the plaintiffs] diligently sought a hearing in Montgomery County after the Harris County action was transferred or had they pursued their appellate remedies."[165] In particular, the Court suggests that plaintiffs should have appealed the original emergency order[166] or renewed the motion to modify that order,[167] rather than filing a petition for habeas corpus.[168]

App. 1976)).

158. 442 U.S. at 432.

159. *Id.*

160. *See* note 25 *supra.*

161. 442 U.S. at 432. *See* notes 22-25 and accompanying text *supra.*

162. 442 U.S. at 432. Nor was bad faith alleged. Bad faith, as it relates to the *Younger* doctrine, is discussed at note 99 and accompanying text *supra.* Furthermore, neither errors nor mistakes of state officials are, in and of themselves, special circumstances which justify federal intervention. *See, e.g.*, Duke v. Texas, 477 F.2d 244, 252 (5th Cir. 1973); Lynch v. Snepp, 472 F.2d 769, 775-76 (4th Cir. 1973), *cert. denied*, 415 U.S. 983 (1974).

163. 442 U.S. at 432.

164. *Id.* at 421, 432.

165. *Id.* at 432.

166. The decision notes that "[e]mergency orders are apparently appealable under Texas law," *id.* at 420 n. 5 (citing § 17.07 of the Texas Family Code, and Matter of R.E.W., 545 S.W.2d 573 (Tex. Civ. App. 1976)). Section 17.07, which was not mentioned in the briefs of either party, reads: "Effect of Appeal: An appeal from an emergency order made under this chapter does not stay the order." TEX. FAM. CODE ANN. tit. 2, § 17.07 (Vernon 1975).

167. *See* text accompanying note 20 *supra.*

168. The Court does not explain why the habeas corpus petition was not an acceptable alternative approach.

Analysis of the Court's Reasoning

The Court's conclusion that state remedies were adequate to vindicate the plaintiffs' claims cannot be supported by the circumstances in *Sims*. Although the Texas Family Code provides theoretical opportunities for the timely presentation of many of the plaintiffs' claims,[169] as a practical matter, the plaintiffs were never afforded any opportunity to present their claims. The Code provides for a mandatory hearing on a motion to modify emergency custody orders;[170] the plaintiffs, however, were denied such a hearing.[171] In addition, a hearing on their first petition for habeas corpus did not provide an opportunity to present their claims because it was determined that venue lay in another county.[172] Moreover, a second habeas corpus petition was denied for want of jurisdiction.[173] Thus, the plaintiffs attempted to present their claims in three separate proceedings, and, in each proceeding, they were denied the opportunity to do so.

Furthermore, the plaintiffs' opportunities to raise their claims in Texas appellate proceedings are not nearly as apparent as the Supreme Court implies. For example, careful examination of *Matter of R.E.W.*,[174] the Texas case cited by the Court as authorizing "the full range of constitutional challenges" in emergency removal proceedings and suits affecting the parent-child relationship, reveals two separate procedural bars to effective appellate consideration of such challenges. First, the Texas court noted that although "[a]n appeal could have been taken from the emergency order, . . . the appeal would not have stayed the order."[175] Thus, even if one assumes that parents have an opportunity to raise a constitutional challenge before an emergency order is issued, if the challenge is rejected at the trial level, the allegedly unconstitutional denial of custody will occur before the parents can raise their claims on appeal. Second, the court stated that "[a]ny question relating to the temporary custody of

169. *See* note 15 *supra*.
170. *See* note 15 *supra*.
171. *See* note 20 and accompanying text *supra*.
172. *See* notes 21-22 and accompanying text *supra*.
173. *See* text following note 30 *supra*.
174. 545 S.W.2d 573 (Tex. Civ. App. 1976).
175. *Id.* at 575.

the child was rendered moot upon the rendition of a final judgment in the case terminating the parent-child relationship."[176] Thus, once the parent-child relationship was terminated, the court refused to consider constitutional objections to the procedures by which the parents were initially denied custody. Such invocation of the mootness doctrine greatly reduces the opportunities of parents to present their federal claims in state appellate proceedings.

The Court states that "[t]he question [of adequacy] would be a much closer one had appellants diligently sought a hearing in Montgomery County after the Harris County action was transferred or had they pursued their appellate remedies."[177] The Court does not suggest that the course of action pursued by the plaintiffs in seeking return of their children was unreasonable, but only that it indicated insufficient diligence. It is not clear why the many apparently reasonable actions taken by plaintiffs fail to evidence diligent pursuit of state court opportunities, nor is it clear why the Court would have found the question of adequacy "closer" had plaintiffs taken further steps which were likely to be equally inefficacious. Moreover, the Court explains away the delay, confusion, and irregularities in the state's actions as "the predictable byproduct of a new statutory scheme."[178] The Court, however, does not afford the plaintiffs the same consideration when evaluating their actions which were taken pursuant to the same "new statutory scheme."

By holding that state remedies in *Sims* were adequate to vindicate the plaintiffs' claims, the Court actually may be modifying the adequacy standard. Henceforth, the mere theoretical existence of a state remedy may bar federal relief, no matter how impractical or inadequate such a remedy would be in practice. As Justice Stevens noted in his dissent in *Trainor v. Hernandez*:[179] "Thirty years ago Mr. Justice Rutledge characterized a series of Illinois procedures which effectively foreclosed consideration of the merits of federal constitutional claims as a 'proce-

176. *Id.* *See also* Coleman v. Department of Pub. Welfare, 562 S.W.2d 554, 556 (Tex. Civ. App. 1978).

177. 442 U.S. at 432.

178. *Id.*

179. 431 U.S. 434 (1977).

dural labyrinth . . . made up entirely of blind alleys.' *Marino v. Ragan*, 332 U.S. 561, 567."[180] Texas parents could appropriately apply that characterization to the state remedies which the Court certifies as adequate in *Moore v. Sims*.

2. *Great and Immediate Irreparable Harm*

The Opinion of the Court

In the concluding portion of its opinion, the Court considers whether *Sims* involves other extraordinary circumstances which demonstrate the irreparable harm necessary to warrant federal relief.[181] The Court states that "[t]o gauge whether such extraordinary circumstances exist in this case, we must view the situation at the time the state proceedings were enjoined."[182] The Court notes that the Simses had regained custody of their children as a result of the May 5 order of the federal court;[183] that before the federal court issued either the May 21 temporary restraining order or the June 7 preliminary injunction, the state had instituted a new Chapter 11 suit seeking to place Paul Sims in the temporary custody of his grandparents until a hearing to show cause could be held;[184] and that the writ of attachment and the show cause order setting a hearing for May 21 had not been effectuated because the parents avoided service.[185] Thus, the Court concludes that, at the time the state proceedings were enjoined, "Paul Sims was within the custody of his parents, and a specific date had been set for the show-cause hearing regarding

---

180. *Id.* at 470.

181. The Court summarily holds that the facts do not support a finding of harassment, 442 U.S. at 432, and that title 2 of the Texas Family Code is not "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph." *Id.* (quoting Watson v. Buck, 313 U.S. 387, 402 (1941)). The district court found that "several sections of the Texas Family Code are 'flagrantly and patently' violative of constitutional requirements." 438 F. Supp. at 1188. The Supreme Court's contrary conclusion is consistent with earlier case law interpreting this *Younger* exception very strictly. *See* notes 100-01 and accompanying text *supra*.

182. 442 U.S. at 433. *See* notes 102-09 and accompanying text *supra*. The Court defines extraordinary circumstances with a quotation from Kugler v. Helfant, 421 U.S. 117, 124-25 (1975), *quoted in* note 102 *supra*.

183. 442 U.S. at 433-34. *See* note 31 and accompanying text *supra*.

184. 442 U.S. at 433-34.

185. *Id. See* note 34 and accompanying text *supra*.

the writ of attachment, at which time the parents could press their objections."[186] The Court then states: "Unless we were to hold that every attachment issued to protect a child creates great, immediate, and irreparable harm warranting federal-court intervention, we are hard pressed to conclude that with the state proceedings in this posture federal intervention was warranted."[187]

Finally, the Court rejects the district court's conclusion that "[t]he denial of custody of the children pending any hearing regardless of the result of the hearing, is in itself sufficient to prevent the application of *Younger*."[188] Reasoning that "[f]amily relations are a traditional area of state concern," the Court states that it is "unwilling to conclude that state processes are unequal to the task of accommodating the various interests and deciding the constitutional questions that may arise in child-welfare litigation."[189] Accordingly, the Court reverses the district court judgment and remands with instructions that the plaintiffs' complaint be dismissed.[190]

Analysis of the Court's Reasoning

The Court does not explain or cite precedent for the proposition that only those circumstances existing at the time the state proceeding is enjoined should be considered when evaluating whether extraordinary circumstances exist. If the Court is suggesting that plaintiffs' challenges to the earlier deprivation of custody were moot by the time the federal court enjoined further state proceedings, case law seems to be contrary. As stated in *Allee v. Medrano*,[191] "[i]t is settled that an action for an injunction does not become moot merely because the conduct complained of has terminated, if there is a possibility of recurrence, since otherwise the defendants 'would be free to return to "[their] old ways." ' "[192] At the time the federal court injunction

186. 442 U.S. at 434.
187. *Id.*
188. *Id.* (quoting Moore v. Sims, 438 F. Supp. 1179, 1187 (S.D. Tex. 1977)).
189. 442 U.S. at 435.
190. *Id.*
191. 416 U.S. 802 (1974).
192. *Id.* at 810-11 (quoting SEC v. Medical Comm. for Human Rights, 404 U.S. 403, 406 (1972); NLRB v. Raytheon Co., 398 U.S. 25, 27 (1970); Gray v. Sanders, 372 U.S.

was ordered, a new Chapter 11 suit affecting the parent-child relationship had been instituted. The state court had issued a writ in that suit, presumably without affording the parents notice or an opportunity to be heard, directing that Paul Sims be taken from his parents and placed in the custody of his grandparents.[193] Thus, the Department *had* returned to its old ways just prior to the federal court order. If the parents had not actively evaded state officials seeking to seize Paul Sims, and if the district court had refused relief, it is likely that the parents would again have been deprived of custody without an opportunity to contest, in advance, the constitutionality of the procedure by which that deprivation would occur. Thus, the plaintiffs' claims were not moot at the time the district court enjoined the pending state proceedings.[194]

The Court also expresses reluctance "to hold that every attachment issued to protect a child creates great, immediate, and irreparable harm."[195] Thus, the Court appears to reject the conclusion in *Newton v. Burgin*[196] that *any* deprivation of custody

---

368, 376 (1963); United States v. W.T. Grant Co., 345 U.S. 629, 632 (1953); Walling v. Helmerich & Payne, Inc., 323 U.S. 37, 43 (1944)). In *Medrano*, union organizers had been engaged in an effort to organize Mexican-American farmworkers. This effort led to considerable local controversy and brought the organizers into conflict with state and local authorities, who subjected the organizers to persistent harassment and violence. After a state court temporarily enjoined the activities of the organizers, they brought a federal civil rights action attacking the constitutionality of certain Texas statutes and alleging that state and local officials had conspired to deprive them of their First and Fourteenth Amendment rights. A district court declared several of the statutes unconstitutional and enjoined their enforcement, and the court permanently enjoined the officials from intimidating the organizers in their organizing efforts. *Id.* at 813-16.

The state and local officials argued that the state injunction ending the strike had rendered the controversy moot. The Supreme Court disagreed, finding that "it was the defendants' conduct, which is the subject of this suit, that ended the strike, not the state court injunction, which came afterward. With the protection of the federal court decree, [the organizers] could again begin their efforts." *Id.* at 809.

193. 442 U.S. at 434. *See also* notes 33-34 and accompanying text *supra*.

194. *See also* Moore v. Ogilvie, 394 U.S. 814 (1969); Southern Pac. Terminal Co. v. ICC, 219 U.S. 498 (1911).

195. 442 U.S. at 434.

196. 363 F. Supp. 782 (W.D.N.C. 1973), *aff'd mem.*, 414 U.S. 1139 (1974). The *Sims* district court had, in part, based its finding of irreparable harm on *Burgin*. 438 F. Supp. at 1187. Although the Supreme Court does not mention *Burgin* explicitly, it does quote from that portion of the district court's opinion which relied on *Burgin*. 442 U.S. at 431. The Supreme Court, however, omits the citation to *Burgin* which had been appropriately noted in the district court opinion. *Burgin* is discussed at note 105 and accompanying text *supra*.

prior to a civil proceeding is sufficient to meet the irreparable harm component of the exception to the *Younger* doctrine. The Court gives no guidance, however, for determining the period of initial deprivation which is permissible.[197] In addition, by focusing solely on the circumstances existing at the time of the injunction, the Court avoids considering whether the 42-day deprivation of custody suffered by the adult Simses constitutes irreparable harm.

As noted in Part II, a finding of adequacy may obviate the need to assess the harm.[198] Thus, while the Court begins this portion of the opinion by considering whether extraordinary circumstances exist in *Sims* which establish irreparable harm, it concludes by once again addressing the adequacy of state remedies. The Court refuses to find that "state processes are unequal to the task of . . . deciding the constitutional questions that may arise in child-welfare litigation."[199] The facts in *Sims*, however, did not compel the Court to conclude that *all* state processes were unequal to that task. The plaintiffs challenged particular state processes provided in the Texas Family Code and the manner in which the statutory provisions were applied. *Those* processes seem to be "unequal to the task of" deciding the constitutional issues raised by the Simses concerning their 42-day deprivation of custody. As Justice Stevens states in his dissenting opinion, "the opportunity to be heard at a later ch. 11 hearing is, as the State accepts, too late to meet the requirements of due process and to afford relief as to the interim deprivation."[200] Thus, even if irreparable harm is to be measured by the adequacy of state procedures, the state procedures in *Sims* were apparently inadequate to repair the harm suffered by the Simses.

---

197. Some guidance is found in *Burgin*, in which a five day period was held permissible. The district court in *Sims* would have required that the initial ex parte hearing be held, barring unusual circumstances, the very day of seizure. 438 F. Supp. at 1193. This requirement seems incorrect in light of the cases which urge flexible due process standards and which allow that "extraordinary situations" will justify postponement of a hearing until after the event. *See, e.g.*, Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974); Fuentes v. Shevin, 407 U.S. 67 (1972); Boddie v. Connecticut, 401 U.S. 371 (1971); Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886 (1961).

198. *See* notes 106-09 and accompanying text *supra*.

199. 442 U.S. at 435.

200. *Id.* at 442-43.

IV. Conclusion

The effect of the Supreme Court's decision in *Moore v. Sims* is to enlarge the class of cases that are subject to the *Younger* abstention doctrine. The prior case of *Gerstein v. Pugh* appeared to indicate that the *Younger* doctrine would not require abstention in cases wherein the claims raised or the relief sought concerned matters that were only ancillary to pending state proceedings. As refined by *Sims*, however, the *Younger* doctrine does apply to claims concerning ancillary matters, if the claimants seek federal relief that could disrupt pending proceedings, notwithstanding the absence of a state forum for vindication of federal claims. Thus, *Sims* appears to expand the scope of the *Younger* abstention doctrine.

In addition, the exceptions to the *Younger* doctrine are severely narrowed by the *Sims* decision. *Younger v. Harris* stated that abstention is not required if the complainant has no adequate remedy at law and will suffer great and immediate irreparable harm if federal relief is denied. *Sims* establishes an unexacting standard for adequacy and implies that remedies available in theory, but not in practice, may now be sufficient to meet the standard of adequacy. Moreover, *Sims* requires that the extraordinary circumstances which demonstrate irreparable harm must exist at the moment federal relief is sought; neither past nor future circumstances will be considered relevant in evaluating irreparable harm. Thus, by expanding the scope of the *Younger* doctrine and narrowing its exceptions, *Moore v. Sims* has further restricted access to the federal courts.