In the

United States Court of Appeals

For the Seventh Circuit

No. 26-2238

AMERICAN ACADEMY OF PEDIATRICS,

Plaintiff-Appellee,

v.

JAMES UTHMEIER, Attorney General of the State of Florida,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 1:26-cv-02401 — **Matthew F. Kennelly**, *Judge*.

DECIDED SEPTEMBER 14, 2026

Before BRENNAN, *Chief Judge*, and EASTERBROOK, HAMILTON, SCUDDER, ST. EVE, KIRSCH, JACKSON-AKIWUMI, LEE, PRYOR, KOLAR, MALDONADO, and TAIBLESON, *Circuit Judges*.

PER CURIAM. Plaintiff-Appellee moved to dismiss its complaint in the district court, which was granted. Dist. Ct. D.E. 65 at 10. That court has indicated a willingness to vacate the preliminary injunction it previously entered. *Id*. at 11. The district court has this court's permission to do so on remand. *See* FED. R. APP. P. 12.1(b); *Chicago Headline Club v. Noem*, 168 F.4th

1033, 1039–42 (7th Cir. 2026) (per curiam). Once the injunction has been vacated, there will no longer be an appealable order, and this appeal will be dismissed for lack of jurisdiction.

So ordered.

HAMILTON, *Circuit Judge*, joined by JACKSON-AKIWUMI, *Circuit Judge*, concurring. I concur in the court's remand order to ensure dismissal of this now-moot appeal. Because the appeal is moot, it is best to resist the temptation to engage now in a full debate over the merits of the underlying case or the district court's preliminary injunction. When this case was still a live controversy, those issues were aired more fully, but still provisionally, in the motions panel opinion and dissent on denial of a stay pending appeal, *American Academy of Pediatrics v. Uthmeier*, 178 F.4th 1113 (7th Cir. 2026), a decision vacated on an en banc vote. The following opinion by Judge Scudder, dissenting in part from a dismissal that all judges agree is needed, expresses strongly-felt views on how this appeal ultimately should have been decided after full en banc consideration—if it were not moot. In the absence of a live case or controversy, I don't think it makes sense to engage fully, but I offer three brief points to put matters in context:

First, federalism concerns are at stake here, of course, but so are First Amendment rights. The district court made detailed and sound factual findings supporting application of the long-recognized bad-faith exception to *Younger* abstention. *American Academy of Pediatrics v. Uthmeier*, 2026 WL 1552734, *17–25 (N.D. Ill. June 2, 2026). No one seriously challenges those facts. As the panel majority explained, federal courts do not apply the bad-faith exception lightly, or often. The exception is, however, a critical feature—a constitutional safety valve, if you will—in the federalism balance in *Younger* doctrine. *American Academy of Pediatrics*, 178 F.4th at 1123–24; see *Younger v. Harris*, 401 U.S. 37, 53–54 (1971).

Second, the bad-faith exception is not an empty set or a dead letter. The lower federal courts have needed to invoke it from time to time to protect federal rights. See 17B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 4255 n.28 (3d ed. 2026) (collecting cases applying exception, many to protect First Amendment rights from state and local officials' clear violations); see generally *Midwestern Gas Transmission Co. v. McCarty*, 270 F.3d 536 (7th Cir. 2001) (invoking related "flagrantly and patently" unconstitutional exception to reverse *Younger* abstention and block state proceedings); *Wilson v. Thompson*, 593 F.2d 1375, 1382–83 (5th Cir. 1979) (invoking bad-faith exception to reverse *Younger* abstention).

Third, just as we owe respect to state courts, we also owe respect to our colleagues in the district court, to their fact-finding efforts, to their equitable judgments, and to applicable standards of review in fast-moving cases.

On these challenging issues, I respectfully suggest we can and should save further commentary in the pages of the *Federal Reporter* for cases that are not moot.

KOLAR, *Circuit Judge*, concurring in the remand order. My colleague's partial dissent appropriately stresses the central nature of federalism in our constitutional republic. Another colleague's concurrence makes a compelling case that *Younger's* bad-faith exception must remain as a constitutional safety valve protecting First Amendment rights. These writings weigh two principles that have towered over the American experiment since our founding: federalism and the protection of constitutional rights. The concurrence and partial dissent eloquently make the case that one principle or the other might rise a bit higher in this case.

I

At its core, federalism protects state sovereignty against an overbearing national government. *See* The Federalist No. 45, at 292 (James Madison) (Clinton Rossiter ed., 1961) ("The powers delegated by the proposed Constitution to the Federal Government are few and defined … [and] will be exercised principally on external objects as war, peace, negotiation, and foreign commerce."); The Federalist No. 51, at 322 (James Madison) (Clinton Rossiter ed., 1961) (describing federal separation of powers and state sovereignty as a "double security" for "the rights of the people"). And *Younger* abstention flows from the constitutional requirement that state government action is not subject to an override from any branch of the federal government. *Younger v. Harris*, 401 U.S. 37, 42–45 (1971) (noting that "the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States").

This does not mean federal courts are powerless to protect constitutional rights against rogue state prosecutors. And this

is where *Younger's* bad-faith exception comes in, which as my colleagues note finds its roots in an earlier Supreme Court case, *Dombrowski v. Pfister*, which involved state officials' egregious threats to bring charges against civil rights activists even after evidence was suppressed and arrest warrants were quashed. 389 U.S. 479, 487–89 (1965). It also finds support in *Younger* itself, which did not purport to impose a blanket ban against *all* injunctions of state enforcement actions, but rather only against "*good-faith* attempts to enforce" a state statute. *Younger*, 401 U.S. at 54 (emphasis added).

II

Of course, the bad-faith exception cannot swallow *Younger*'s general prohibition against federal encroachment on state enforcement actions without eviscerating federalism protections and enfeebling state courts. This case demonstrates the need for a limiting principle to *Younger*'s bad-faith exception that accounts for the federalism concerns set forth in the partial dissent. One such principle may be to cabin *Dombrowski* to its facts. But this is not the way we typically apply Supreme Court precedent. *See, e.g.*, *City of Timber Lake v. Cheyenne River Sioux Tribe*, 10 F.3d 554, 557 (8th Cir. 1993) ("Federal courts ... are not 'free to limit Supreme Court opinions precisely to the facts of each case'") (*quoting McCoy v. Massachusetts Institute of Technology*, 950 F.2d 13, 19 (1st Cir. 1991)), *cert. denied*, 504 U.S. 910 (1992); *Jones v. St. Paul Companies, Inc.*, 495 F.3d 888, 893 (8th Cir. 2007). To be sure, such a narrow reading is sometimes appropriate, especially when the Supreme Court historically refuses to extend a principle and later admonishes that such expansion is a "disfavored judicial activity." *Egbert v. Boule*, 596 U.S. 482, 491 (2022) (citation omitted).

The Supreme Court has neither indicated that *Dombrowski* is limited to its facts, nor labeled application of the bad-faith exception to *Younger* a disfavored judicial activity. Yet it has not applied the bad-faith exception in over 60 years. *See* 17B Charles Alan Wright & Arthur Miller, *Federal Practice and Procedure* § 4255 (3d ed. 2026). Perhaps this decades-long hiatus suggests that *Younger*'s bad-faith exception is withering on the vine. Or perhaps it is simply laying fallow, remaining available to protect against bad-faith state prosecutions when the need arises.

III

When the Supreme Court decided *Dombrowski*, and fashioned *Younger* to require abstention only when there are "good-faith attempts" to enforce a state statute, Justice Robert Jackson's observations about prosecutors would have been well known:

> The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous. He can have citizens investigated and, if he is that kind of person, he can have this done to the tune of public statements and veiled or unveiled intimations. Or the prosecutor may choose a more subtle course and simply have a citizen's friends interviewed. The prosecutor can order arrests, present cases to the grand jury in secret session, and on the basis of his one-sided presentation of the facts, can cause the citizen to be indicted and held for trial. He may dismiss the case before trial, in which case the defense never has a chance to be heard. Or he may go on with a

> public trial …. While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.[†]

Robert H. Jackson, The Federal Prosecutor, Address Delivered at the Second Annual Conference of United States Attorneys (Apr. 1, 1940).

Federal courts are not in the business of drafting performance reviews for prosecutors. Rather, we apply constitutional and legislative mandates, and I do not suggest that Justice Robert Jackson's view of a prosecutor is such a legal mandate. That said, Justice Jackson's observations ring as true today as they did in the 1940s. And while those comments primarily centered on the application of criminal law, with all of its attendant safeguards, today's state prosecutors also have at their disposal a litany of civil enforcement options. These civil enforcement options are often aimed at organizations, and appropriately so. *See, e.g.*, *LG Display Co. v. Madigan*, 665 F.3d 768, 770 (7th Cir. 2011)

Without a live controversy, I hesitate to come to any conclusion on the proper scope of *Younger*'s bad-faith exception. We are starting to see more cases involving allegations that state prosectors are acting in bad faith. *See Yelp Inc. v. Paxton*, 137 F.4th 944, 951–52 (9th Cir. 2025); *Netflix, Inc. v. Babin*, 88 F.4th 1080, 1099–1100 (5th Cir. 2023). Perhaps this is because of a change in how state prosecutors operate. Or maybe these

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[†] While Justice Robert Jackson's speech was aimed at federal prosecutors and he delivered it as the United States Attorney General in 1940, it was known to hang on the walls of state and federal prosecutors for decades to come.

allegations are nothing more than litigants' last-ditch efforts to convince federal courts to intrude on the province of state courts. Whatever the proper limiting principle for determining bad faith, we must consider that prosecutors can use expensive litigation to impose a heckler's veto. In the right case, after all, a court could conclude that a state prosecutor has gone too far. *See Babin*, 88 F.4th at 1100.

IV

The partial dissent and concurrence agree this case is moot and the injunction below should be vacated. For today, we need say no more. Certainly, as the partial dissent argues, we *could* provide more detail about where our court stands on the current scope of the bad-faith exception to *Younger* abstention. And should the issue come before us in a live controversy, we will no doubt do so. In the meantime, while prosecutors must at times strike hard blows and take on challenging cases, adherence to Justice Robert Jackson's view of the model prosecutor can steer them far away from the line where we might question their good faith.

SCUDDER, *Circuit Judge*, joined by BRENNAN, *Chief Judge*, and ST. EVE, and KIRSCH, *Circuit Judges*, concurring in part and dissenting in part. This case ends with a single line in a single docket entry, as everyone agrees the controversy is moot and that the district court's preliminary injunction should be vacated. So it may be tempting to see the appeal as a short-lived blip of little consequence. Law and life move on.

Yes and no. I agree that we should close the book on this appeal. But our mistake, in my respectful view, is not saying a few words about what brought the appeal to us in the first instance: a district court in Illinois preliminarily enjoined Florida's Attorney General from litigating claims under Florida law in a Florida state court. The injunction worked a grievous blow to a cornerstone principle of our constitutional design—federalism—and all but cast a vote of no confidence in state courts. We have clear authority to say this and have bypassed an important opportunity to do so, all at a time when the federal judiciary's enforcement of neutral structural constitutional principles remains as important as ever.

I

My dissent at the panel level conveys these views in much more depth. See *American Academy of Pediatrics v. Uthmeier*, 178 F.4th 1113, 1127–32 (7th Cir. 2026) (Scudder, J., dissenting). Only a few points warrant underscoring today.

Recall that the district court attempted to justify the entry of a preliminary injunction by relying on the so-called "bad faith" exception to the abstention doctrine recognized in *Younger v. Harris*, 401 U.S. 37 (1971). That exception is "narrow." *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 602 (1975). So narrow, in fact, that "[t]here is no case since *Younger* was decided

in which the Court has" applied it. 17B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 4255 (3d ed. 2026).

Indeed, the Supreme Court has found an occurrence of bad faith just once—in *Dombrowski v. Pfister*, 380 U.S. 479, 492 (1965). The situation there was night-and-day different than the one here. In 1963 Louisiana police repeatedly "raided and ransacked" the homes and offices of civil rights activists "[a]t gunpoint," and threatened charges even after a state judge had quashed the arrest warrants and suppressed the seized evidence. *Id.* at 487–88 & n.4. The reinstitution of similar criminal charges, brought under a state statute "unconstitutional on its face," led the Supreme Court to prescribe the unusually strong medicine of a federal court injunction. *Id.* at 496–97.

In *Dombrowski*'s wake, "commentators have observed that 'the universe of bad-faith-harassment claims that can be established is virtually empty.'" Erwin Chemerinsky, *Federal Jurisdiction* § 13.5 (9th ed. 2025). The bad-faith doctrine "appears limited to facts such as those present in *Dombrowski*," *id.*, and the Supreme Court's clear commitment to rigorous enforcement of principles of federalism in the decades since *Younger* can only further curtail this eye-of-the-needle exception. It cannot support the preliminary injunction entered by the district court here.

Our mistake today is not saying so as a full court. The Academy made a strategic and calculated decision to voluntarily dismiss this case. That decision rendered this appeal moot, but we had the choice to vacate the injunction ourselves after highlighting the extraordinary federalism infringement wrought by the preliminary injunction. See *Sinochem Intern. Co. v. Malaysia Intern. Shipping Corp.*, 549 U.S. 422, 431 (2007)

(citing *Ellis v. Dyson*, 421 U.S. 426, 433–34 (1975)) (recognizing that a federal court can address the propriety of *Younger* abstention even before deciding "whether the parties present an Article III case or controversy"). I worry that forgoing this opportunity will prove constitutionally expensive another time.

II

In no way is the Academy's position lost on me. Represented by very able counsel, the Academy has been crystal clear from the beginning that it believes the Florida Attorney General's state court claims violate the organization's First Amendment rights. The Academy deserves its day in court on that defense, and the record shows it is receiving it. The state court proceedings in St. Lucie County, Florida, if once stalled, are now moving forward. Indeed, the state court recently denied the Academy's motion to dismiss the state claims.

Time will tell whether the Academy prevails on its defense or falls short. All we can observe today is that, if the Academy does not prevail at the trial court level, it can seek further review in the Florida appellate courts, even the Florida Supreme Court. The U.S. Constitution presumes parity and comity between the federal and state courts. As Justice Brennan explained more than 50 years ago for a unanimous Supreme Court, "a pending state proceeding, in all but unusual cases, would provide the federal plaintiff with the necessary vehicle for vindicating his constitutional rights." *Steffel v. Thompson*, 415 U.S. 452, 460 (1974). Remember, too, that "all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution." U.S. Const. art. VI cl. 3; see also *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 346 (1816) (emphasizing that "the judges of the state courts are, and

always will be, of as much learning, integrity, and wisdom, as those of the courts of the United States"). The Florida courts, in short, are fully and equally capable of resolving the Academy's First Amendment defense. Much of our judicial design rests on that structural view.

* * *

Our order granting initial hearing en banc reflected the gravity of the federalism interests at stake. In dismissing this appeal, we should have taken one more step by vacating the preliminary injunction ourselves and articulating why it never should have issued in the first place. Because the court today rejects the opportunity to do so, I respectfully dissent from this aspect of the court's order.