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# FEDERAL JURISDICTION V. ABSTENTION IN PUERTO RICO: WHO PREVAILS?

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> […]I admit, however, that the Constitution ought to be the standard of construction for the laws, and that wherever there is an evident opposition, the laws ought to give place to the Constitution. But this doctrine is not deducible from any circumstance peculiar to the plan of the convention, but from the general theory of a limited Constitution; and as far as it is true, is equally applicable to most, if not to all the State governments. There can be no objection, therefore, on this account, to the federal judicature which will not lie against the local judicatures in general, and which will not serve to condemn every constitution that attempts to set bounds to legislative discretion.[1]

## I. Introduction

We can all agree that federal jurisdiction has expanded during the last ten years at some degree that citizens and lawyers have the perception that state sovereignty is more an illusion than the once federalist conception. Alexander Hamilton, the Author of The Federalist No. 81, once said:

> [I] t is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent. This is the general sense and the general practice of mankind; and

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[1] Alexander Hamilton, *The Federalist No. 81, The Judiciary Continued, and the Distribution of the Judicial Authority***,** *Independent Journal* (Wednesday, June 25, Saturday, June 28, 1788).

> the exemption…is now enjoyed by the government of every State in the Union. [2]

States, in ratifying the Constitution, did surrender a portion of their inherent immunity by consenting to suits brought by sister States or by the Federal Government.[3] Nevertheless, the Convention did not disturb States' immunity from private suits, thus firmly enshrining this principle in our constitutional framework. "The leading advocates of the Constitution assured the people in no uncertain terms that the Constitution would not strip the States of sovereign immunity."[4]

Does this Federalist explanation still the doctrine in these days? Does Alexander Hamilton's federalist thinking still in practice? Although public perception is that federal jurisdiction is bigger than the sea, in federal civil cases there are some exceptions which provide deference and limited space to the state jurisdiction. Without entering in political sterile discussions, the instant article intends to inform readers about different abstention doctrines which precludes federal jurisdiction in entertaining local matters reserved by the U.S. Constitution and by the States.

Generally speaking, the Eleventh Amendment of the U.S. Constitution "renders states, including Puerto Rico, immune from claims brought in federal court by citizens of the same or any other state."[5] This includes state agencies that are not public corporations[6]. The Supreme Court

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[2] *See The Federalist No. 81*, at 487-488 (C. Rossiter ed. 1961) (J. Madison). Quotation also included in Stanton K. Osishi & Patricia N. Lemahieu, Abrogation of State Sovereign Immunity Under Title II of the ADA, and Section 504 of the Rehabilitation Act After Board of Trustees v. Garrett, 24 U. Haw. L. Rev. 347 (2001).

[3] *See Alden v. Maine*, 527 U.S. 706, 755, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999)[hereinafter *Alden*].

[4] *Id.* at 716.

[5] *See* U.S. Const.. amend. XI. *See also*, *Bernier-Aponte v. Izquierdo-Encarnación*, 196 F. Supp. 2d 93, 98, (P.R. Cir. 2002)[hereinafter *Bernier-Aponte*].

[6] The Eleventh Amendment immunity does not solely protect the State itself, but rather, extends to the state's instrumentalities, which are arms or "alter egos" of the State. *Ainsworth Aristocrat Int'l Pty. Ltd. v. Tourism Co. of Puerto Rico*, 818 F.2d 1034, 1036 (1st. Cir. 1987) [hereinafter *Ainsworth*]; *see also Mount Healthy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977) [hereinafter *Mount Healthy*]. This holding is based on the fact that a State only exists through its instrumentalities, which carry out its functions and establish public policy. Therefore, a State's agencies and departments are usually considered "*alter egos*" or branches of the State, and suits against these instrumentalities are in fact considered suits against the State. *See Id.*; *Scheuer v. Rhodes*, 416 U.S. 232, 237 (1974)[hereinafter *Scheuer*]; *Howard v. Puerto Rico Aqueduct and Sewer Authority*, 744 F.2d 880, 886 (1st Cir. 1984)[hereinafter *Howard*]; *Pérez v. Rodríguez Bou*, 575 F.2d 21, 25 (1st Cir. 1978) [hereinafter *Pérez*]; 13 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 3524 at 136 (2d. Ed. 1984) ("The central factors in the final determination appear to be the degree of autonomy of the governmental entity and whether recovery against it would come from state funds; if the governmental unit is simply

has consistently held that "Constitution does not provide for federal jurisdiction over suits against non-consenting States."[7] This what precisely Alexander Hamilton was referring long time ago, that any non-consenting state, including Puerto Rico for purposes of the discussion, cannot be sued in Federal Court.

Nevertheless, what about cases we see by the press in which the Commonwealth of Puerto Rico has been sued in federal court, like for example, the "Morales-Feliciano" case, or the Electronic Surveillance Program or "grilletes" case? In both, Plaintiffs requested injunctive relief which is an exception to the Eleven Amendment Immunity developed through jurisprudence and thus, the State can be sued for those purposes only.

At the beginning of the Twentieth Century, the U.S. Supreme Court in *Ex parte Young*,[8] specifically concluded that the Eleventh Amendment does not bar claims against state officials for prospective injunctive relief. The Supreme Court has interpreted *Young* to mean that the Eleventh Amendment does not bar a suit for injunctive relief if: (1) the complaint alleges an ongoing violation of federal law, and (2) the relief requested is prospective.[9] Thus, a plaintiff is not barred from bringing suit against a state officer in his or her official capacity for injunctive relief.

This exception to the Eleven Amendment Immunity developed by the U.S. Supreme Court in *Young* has been subjected to changes throughout decades. For example, criminal State court proceedings if ongoing, gives the obligation to federal courts to abstain while the state proceeding finishes. Another example is shown by state administrative agencies, which have the role in providing services to the citizens in order to avoid cluttering courts of suits that can be resolved by a quasi-judicial forum. The state administrative era of expansion has been in full evolution conversely with the *Young* exception of filing suits against the State Government for injunctive relief. In

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functioning as the *alter ego* of the state in accomplishing some public purpose, it will be treated as the state for purposes of the Eleventh Amendment.").

[7] *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996) [hereinafter *Seminole*]; *see also Kimel v. Florida Bd. of Regents*, 120 S. Ct. 631, 640 (2000) [hereinafter *Kimel*]; *College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 119 S. Ct. 2219, 2223 (1999) [hereinafter *College Savings Bank*].

[8] 209 U.S. 138, 159 (1908)[hereinafter *Young*].

[9] *See Nieves-Márquez v. Puerto Rico*, 353 F.3d 108, 123 (1st Cir. 2003) [hereinafter *Nieves-Márquez*] ("Under *Young*, state officers do not have Eleventh Amendment immunity from claims for prospective injunctive relief. The Eleventh Amendment issue arises only as to monetary relief."). *See also Lane v. First Nat'l Bank*, 871 F.2d 166, 172 n.5 (1st Cir. 1989) [hereinafter *Lane*] (citing *Ramírez v. P.R. Fire Serv.*, 715 F.2d 694, 697 (1st Cir. 1983)[hereinafter *Ramírez*]);*Verizon Md., Inc. v. Pub. Serv. Com'n of Md.*, 535 U.S. 635, 644 (2002) [hereinafter *Verizon*] (citing *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 296 (1997) [hereinafter *Idaho*]).

simple words, the state government bureaucracy expands and the *Young* exception has been reduced by different abstention doctrines that provide deference and comity to the state's jurisdiction.

The Author refers to the following abstention doctrines: Younger[10], Rooker-Feldman[11], Pullman[12], Colorado River[13] and Burford[14]. All of them are discussed in this Article in order to illustrate that Alexander Hamilton's Federalist conception still in debate and appears as a thermostat that arises at different levels, either in favor of the state sovereignty or in favor of the federal jurisdiction intervention. The balance between both jurisdictions as interpreted by jurisprudence from our First Circuit Court of Appeals, the U.S. Supreme Court and other jurisdictions can make us understand that the original federalism is not an illusion, and that the founding fathers conception of a living Constitution exists.

## II. The most common abstentions namely: Younger, Rooker-Feldman, Pullman, Colorado River and Burford.

### A. Younger Abstention

In *Younger v. Harris,* the Supreme Court held that a federal district court could not enjoin state proceedings pending in state court when the federal suit was commenced if the following prongs are satisfied: (1) an ongoing state judicial proceeding, instituted prior to the federal proceeding (or, at least, instituted prior to any substantial progress in the federal proceeding), that (2) implicates an important state interest, and (3) provides an adequate opportunity for the plaintiff to raise the claims advanced in his federal lawsuit[15]. This basic doctrine of equity dictated in this abstention doctrine is that no injunction should be granted "when the moving party has

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[10] *See Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971) [hereinafter *Younger*]. *See also, Maymó v. Alvarez*, 364 F.3d 27, 29 (1st Cir. 2004) [hereinafter *Maymó*]; *Esso Standard Oil v. Mujica Cotto*, 389 F. 3d 212, 220-222 (1st Cir. 2004) [hereinafter *Esso I*].

[11] *See Rooker v. Fidelity Trust Co*. 263 U.S. 413 (1923) [hereinafter *Rooker*], and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) [hereinafter *Feldman*].

[12] *See Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941) [hereinafter *Railroad Comm'n*].

[13] *See Colorado River Water Conservation Dist. v. United States,* 424 U.S. 800 (1976) [hereinafter *Colorado River*].

[14] *See Burford v. Sun Oil Co*., 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424 (1943) [hereinafter *Burford*].

[15] *See also*, *Brooks v. New Hampshire Supreme Court*, 80 F.3d 633, 638 (1st Cir. 1996) [hereinafter *Brooks*] (citing *Middlesex County Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982) [hereinafter *Middlesex County*]).

an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." [16]

Almost ten years after, in *Middlesex County*,[17] the U.S. Supreme Court was faced with the question of whether pending state bar disciplinary hearings were subject to the principles of *Younger*. In holding *Younger* applicable, the Court underscored the judicial nature of the proceedings, the "extremely important" state interest involved, and the availability of an adequate opportunity for the representation of constitutional claims in the process. The U.S. Supreme Court held that "[t]he policies underlying *Younger* are fully applicable to non-criminal judicial proceedings when important state interests are involved." [18]

As we can note, over time *Younger* abstention has been extended to " 'coercive' civil cases involving the state and to comparable state administrative proceedings that are quasi-judicial in character and implicate important state interests." [19]

### B. Rooker-Feldman Abstention

The Rooker-Feldman doctrine is the result of two cases decided by the Supreme Court sixty years apart: *Rooker v. Fidelity Trust Co.*,[20] and *District of Columbia Court of Appeals v. Feldman*.[21] In simple words, the Rooker-Feldman doctrine provides that federal courts other than the Supreme Court lack jurisdiction to hear appeals from state court decisions. This conclusion is based on inferences drawn from Title 28 U.S.C. §§ 1257 and 1331.

Both sections are opposite to one each other. Section 1257 grants the Supreme Court jurisdiction to review state court decisions and Section 1331 grants original jurisdiction to federal district courts. The inferences supporting the Rooker-Feldman conclusion are that the grant of appellate jurisdiction in these matters to the Supreme Court is exclusive and that the grant of original jurisdiction to district courts precludes appellate jurisdiction.

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[16] *See Younger,* 401 U.S. at 43-44.
[17] 457 U.S. at 432.
[18] *Id*.
[19] *See EssoI*, 389 F. 3d at 216-217; citing, *Maymó*, 364 F.3d at 31 (relying on *Younger* to abstain from licensing proceeding before state horse racing board); *see also Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.,* 477 U.S. 619, 623-27, 106 S.Ct. 2718, 91 L.Ed.2d 512 (1986) [hereinafter *Ohio Civil Rights*] (applying *Younger* to state sex discrimination proceedings); *Middlesex County.,* 457 U.S. at 432, (applying *Younger* to state ethics committee disciplinary proceeding).
[20] 263 U.S. 413 (1923).
[21] 460 U.S. 462 (1983).

Variations occurred during the end of the Twentieth Century. For example, in *Johnson v. De Grandy*,[22] the U.S. Supreme Court noted that under Rooker-Feldman "a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court". In similar terms, in *ASARCO Inc. v. Kadish*,[23] the Court concluded that: "[…][t]he Rooker-Feldman doctrine interprets 28 U.S.C. § 1257 as ordinarily barring direct review in the lower federal courts of a decision reached by the highest state court, for such authority is vested solely in this Court".

Different Law Reviews have intended to shed some light in this arid abstention. Thomas D. Rowe, Jr., in his article *Rooker -Feldman: Worth Only the Powder To Blow It Up?*,[24] adds that: "[F]ederal district courts lack jurisdiction to entertain claims that are 'inextricably intertwined' with the merits of a judgment already rendered by a state court system....". With like token, Jean R. Sternlight, in *Forum Shopping for Arbitration Decisions: Federal Courts' Use of Antisuit Injunctions Against State Courts*,[25] concludes that federal Courts should lack jurisdiction to review or "sit" as an appellate court over state court decisions. This means that no federal court should act like a "Big Daddy" that supervises state court decisions, which is a basic principle of federalism and comity.

The main objective of the Rooker-Feldman doctrine is to prevent collateral attacks on state court judgments in lower federal courts. Hence, the doctrine is relevant only when a federal court plaintiff alleges that the state court or its judgment caused the plaintiff's injury, coincidently because he or she as a plaintiff loses the case. When this occurs, the federal suit is generally a collateral attack seeking to "undo what the [state] court did."[26]

Adam McLain, in his article *The Rooker-Feldman Doctrine: Toward a Workable Role*,[27] points out that the central question when applying Rooker-Feldman is whether the argument of the federal court plaintiff can coexist with the state court decision or whether the argument seeks to undermine that decision. The author adds that claims that the state court harmed a federal court plaintiff are equivalent to claims that the state court wrongly decided the issues before it. Simply, Plaintiffs asserting these claims are asking federal courts to review judicial determinations by state courts,

[22] 512 U.S. 997, 1005-1006 (1994).
[23] 490 U.S. 605, 622 (1989).
[24] Thomas D. Rowe, Jr., *Rooker -Feldman: Worth Only the Powder To Blow It Up?* 74 Notre Dame L. Rev. 1081, 1081-82 (1999).
[25] Jean R. Sternlight, *Forum Shopping for Arbitration Decisions: Federal Courts' Use of Antisuit Injunctions Against State Courts* 147 U. Pa. L. Rev. 91, 138 (1998).
[26] *See Kamilewicz v. Bank of Boston Corp.,* No. 95 C 6341, 1995 WL 758422, at *6 (N.D. Ill. Dec. 15, 1995), *aff'd,* 92 F.3d 506 (7th Cir. 1996) [hereinafter *Kamilewicz*]..
[27] Adam McLain, *The Rooker-Feldman Doctrine: Toward a Workable Role*, 149 U. Pa. L. Rev. 1555, 1581-1584 (2001)

which is impermissible because of our policies of federalism and comity. Federalism and comity work both ways, like the Muñoz Rivera and Ponce De León Avenues in San Juan: the judgment a federal court would make when using Rooker-Feldman to dismiss a suit is similar to the one it would make when enjoining a collateral attack on its judgment in state court under the relitigation exception. In both cases, Mc Lain concludes, disappointed litigants are trying to ask another court system to undercut a judgment validly rendered. Transited in this way, Rooker-Feldman simply bars creative collateral attacks on state court judgments. In sum, Rooker-Feldman may only be jurisdictional "in the very narrow situations in which litigants ask the federal courts to rehear issues identical to those on which they have already obtained state court decisions," or when suits "are facially styled as appeals."[28]

### C. Pullman Abstention

This type of abstention has been developed by the U.S. Supreme Court in the historical cases of *Railroad Comm'n*; and *Arizonans for Official English v. Arizona*.[29] When determining whether Pullman abstention is appropriate, the First Circuit Court of Appeals in *Rivera- Puig v. García-Rosario*,[30] has set forth two factors to consider, namely: "(1) whether there is a substantial uncertainty over the meaning of the state law at issue; and (2) whether a state court's clarification of the law would obviate the need for a federal constitutional ruling."

In *Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.*,[31] the Supreme Court determined that a stay pursuant to Pullman abstention is entered with the expectation that the federal litigation will resume in the event that the plaintiff does not obtain relief in state court on state-law grounds. Pullman abstention calls for deferral of a case rather than dismissal, and the Court should retain jurisdiction pending final interpretation of a state statute from the particular State Supreme Court.[32]

Pullman abstention coincides with the latest interpretation of the Puerto Rico Supreme Court regarding requests for certification originated

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[28] *See Id*. at 1581-1584 (citing Susan Bandes, *The Rooker-Feldman Doctrine: Evaluating Its Jurisdictional Status*, 74 Notre Dame L. Rev. 1175, 1179 n.4, n. 9 (1999)).

[29] 520 U.S. 43, 77 (1997).*See also Ford Motor Co. v. Meredith Motor Co.*, 257 F.3d 67, 71(1st Cir. 2001)(discussing *Pullman* abstention).

[30] 983 F.2d 311, 322 (1st Cir. 1992).

[31] 460 U.S.1,10 n.9 (1983).

[32] *See also Pub. Serv. Co. of N.H. v. Patch*, 167 F.3d 15, 24 (1st Cir. 1998) (observing that "*Pullman* abstention calls for deferral of a case rather than dismissal"); *Pustell v. Lynn Public Schools*, 18 F.3d 50, 54-55 (1st Cir. 1994) [hereinafter *Pustell*] (abstaining on *Pullman* grounds but retaining jurisdiction pending a decision by the Massachusetts state court on proper interpretation of statute).

from the Federal District Court for the District of Puerto Rico. It bears mentioning that the Puerto Rico Supreme Court in *Guzmán Vargas v. Calderón*,[33] announced in the year 2005 that it would henceforth be much more welcoming to requests for inter-jurisdictional certification than it had been in the past.

In *Guzmán Vargas*, the Court held that Art. 3.002(f) of the Judiciary Act of 2003, Act No. 201 de August 22, 2003, had overruled, essentially, many of the limitations that had previously applied to such requests. The new provision provides that certification is permissible whenever the question of Puerto Rico law sought to be certified has not been resolved by clear precedent and might determine the result. In other words, it is no longer an indispensable requirement for certification that the question of Puerto Rico law be determinative[34].

### D. Colorado River abstention

In *Colorado River*,[35] the Court faced the situation of a case filed at state level and thereafter at the federal level, with intertwined issued between both cases. Recognizing that the "pendency of an action in state court is no bar to a proceeding concerning the same matter in the Federal court having jurisdiction," *Colorado River* identified certain exceptional circumstances "permitting the dismissal of a federal suit due to the presence of a concurrent state proceeding for reasons of wise judicial administration." The factors to be considered are: (1) whether either court has assumed jurisdiction over a res; (2) the inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal law or state law controls; and (6) whether the state forum will adequately protect the interests of the parties.[36]

The decision to abstain under the Colorado River standard as added by the case of *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983), "does not rest on a mechanical checklist, but on a careful balancing of the important factors as they apply in a given case, with the balance heavily weighted in favor of the exercise of jurisdiction." Further, the First Circuit in *Casa Marie. Inc. v. Superior Court of Puerto Rico*,[37]

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[33] 2005 T.S.P.R. 33, 2005 WL 756814 (March 13, 2005)[hereinafter *Guzmán Vargas*].Recognizing statutory overruling of *Pan Ame. Comp. Corp. v. Data Gen. Corp.,* 112 D.P.R. 780 (1982); *Dapena Thompson v. Colberg Ramírez,* 115 D.P.R. 650 (1984).

[34] *See Guzmán Vargas*, 2005 WL 756814 at **2-4.

[35] *Colorado River*, 424 U.S. at 817.

[36] *See Currie v. Group Ins. Comm'n*, 290 F.3d 1, 10 (1st Cir. 2002); *see also Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.,* 460 U.S. 1, 14-16 (1983).

[37] 988 F.2d 252, 262 (1st Cir. 1993).

mentioned that except in the most extraordinary cases, a federal court must presume that state courts, consistent with the imperatives of the Supremacy Clause are fully competent to adjudicate federal constitutional and statutory claims properly present by the parties.

Thus, Colorado River abstention doctrine in simple words allows a Defendant to defend himself against a Plaintiff that intends to run the same horse in two different horse-track races at the same time, which makes us imply that he or she [the Plaintiff] is trying to recover double compensation from the same horse at different races, with the same alleged cause of action.

### E. Burford abstention

In *Burford*[38] and its progeny, the U.S. Supreme Court has held that a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies when: 1) there are difficult policy problems of substantial public import whose importance transcends the result in the case then at bar; or 2) where the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial state concern[39].

*Burford* abstention, as interpreted in *Pub. Serv. Co. of New Hampshire ("NOPSI") v. Patch*;[40] and thereafter in *Wal-Mart Stores, Inc. v. Rodríguez*,[41] seeks to "prevent federal courts from bypassing a state administrative scheme and resolving issues of state law and policy that are committed in the first instance to expert administrative solution.". It does not apply per se every time there is a complex state administrative proceeding involving state public policy. As reiterated in *NOPSI*,[42] neither does it apply every time there is a "potential for conflict" with the state regulatory law or policy. Federal courts should not abstain under the *Burford* doctrine when there are "predominating federal issues that do not require resolution of doubtful questions of law and policy."[43] Further, the First Circuit in *Construction Aggregates Corp. v. Rivera de Vicenty*,[44] held that "[d]ecisions in this circuit, as elsewhere, have reserved the *Burford* type of abstention for

[38] *Burford*, 319 U.S. at 333-334.

[39] *See also,* New Orleans Pub. Serv., Inc. ("NOPSI") v. New Orleans, 491 U.S. 350, 361, 109 S.Ct. 2506, 105 L.Ed.2d 298 (1988) (*citing* Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 814, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976).

[40] 167 F.3d 15, 24 (1st Cir.1998) [hereinafter *NOPSI*].

[41] 238 F.Supp.2d 423, 426 (P.R. Cir. 2003) [hereinafter *Wal-Mart Stores*].

[42] 491 U.S. at 362

[43] *See also*, *Wal-Mart Stores,* 238 F.Supp.2d at 426..

[44] 573 F.2d 86, 93 (1978),

the relatively rare case where the equities strongly point in the direction of litigation exclusively in the state forum."

## III. Specific examples of cases in which the abstention doctrines were discussed by the Federal District Court for the District of Puerto Rico and by the First Circuit Court of Appeals.

### A. The "horse trainer" case

A great example of the application of the *Younger* doctrine was discussed in *Maymó*. In *Maymó*, eventually affirmed as to the *Younger* abstention doctrine by *Esso*, it was discussed the challenge to the constitutionality of proceedings charging *Maymó*, a horse trainer, with two violations of the Puerto Rico Horse Racing Industry and Sport Administration's controlled medication program.

The Racing Board administrator concluded on November 3, 2000, after notice and hearings, that *Maymó* had administered the drug Clenbuterol and suspended *Maymó's* license to train horses for five years[45]. Thereafter, *Maymó* appealed the decision to Puerto Rico's Circuit Court of Appeals, which stayed the penalty pending resolution of the appeal but ultimately affirmed the decision on June 21, 2002. The penalty was reimposed when the stay expired on July 11, 2002, and the Puerto Rico Supreme Court declined to review the case.[46] While the Clenbuterol case was under review in state court, the Board administrator also initiated hearings on whether *Maymó* had improperly administered another drug, Tramadol[47]. The administrator ruled against *Maymó* on June 26, 2002 and imposed a five-year license suspension to run consecutively with the pending Clenbuterol suspension. *Maymó* then filed a suit in federal district court seeking to enjoin both license suspensions on due process grounds, alleging that the Racing Board officials who conducted the hearings and imposed the suspensions were biased. The district court granted a preliminary injunction, finding that Younger did not dictate abstention because neither proceeding was "ongoing."[48]

The First Circuit Court reversed. With regard to the Clenbuterol case, it was held that the *Rooker-Feldman* doctrine prohibited the collateral attack on a state court decision[49]. As to the Tramadol case, the First Circuit concluded that Younger mandated abstention because *Maymó's* failure to exhaust his state judicial remedies meant that the state proceedings were

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[45] *See Maymó*, 364 F.3d at 30.
[46] *Id.* at 31 and n.2.
[47] *Id.* at 30.
[48] *Id.,* at 32.
[49] *Id.* at 34.

ongoing. It was rejected *Maymó's* claim that abstention was inappropriate under *Gibson's*, (bias by an adjudicator provides federal jurisdiction)[50] reasoning that even if *Maymó's* allegations were true, there was no constitutional urgency to his claims that required federal intervention. The First Circuit Court explained that "[s]o far as the *Younger* exceptions are concerned with the impact of the state proceeding independent of any final remedy (*e.g.* to harass), the suspension order has already been entered . . . ."[51] In other words, because the hearings had concluded and *Maymó* was no longer appearing before the allegedly biased adjudicator, he was not suffering an ongoing injury. In those circumstances, state judicial review was sufficient to protect his constitutional rights.[52]

### B. The "grilletes" case

In *Rivera-Feliciano v. Acevedo-Vilá*,[53] commonly known as the "grilletes case", approximately 90 plaintiffs, who are convicts of first degree murder, sought to enjoin defendants from removing plaintiffs from the Administration of Corrections' Electronic Surveillance Program and re-incarcerating them. The administration intended to impose their new policy named "castigo seguro", which included among other taskforces to review the status of convicts of first degree murder, who were participants of the Electronic Surveillance Program contrary to Law No. 49 of May 26, 1995.

Before re-incarcerating the first degree convicts, the Court issued a temporary restraining order against the Government and then held a preliminary injunction hearing. Upon hearing the testimony of several witnesses and receiving documentary evidence, the Court issued the preliminary injunction requested by the convicts, and the Government appealed the Court's order.

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[50] The First Circuit Court in *Maymó*, discussed the case of *Gibson v. Berryhill*, 411 U.S. 564, 93 S.Ct. 1689, 36 L.Ed.2d 488 (1973). In *Gibson*, a group of optometrists sued in federal court to enjoin disciplinary proceedings against them by a state board, 411 U.S. at 568-70, 93 S.Ct. 1689; and the Supreme Court said that *Younger* did not bar a due process claim that the administrative tribunal was "incompetent by reason of bias [an alleged financial stake in the outcome] to adjudicate the issues pending before it." *Id.* at 577-579, 93 S.Ct. 1689. The Court also said: "[n]or, in these circumstances, would a different result be required simply because judicial review, de novo or otherwise, would be forthcoming at the conclusion of the administrative proceeding." *Id*. at 577, 93 S.Ct. 1689.

In sum, the Supreme Court held in Gibson that a federal injunction was appropriate where the state proceedings were administered by an agency "incompetent by reason of bias to adjudicate the issues pending before it. . . . Nor, in these circumstances, would a different result be required simply because judicial review, de novo or otherwise, would be forthcoming at the conclusion of the administrative proceedings." 411 U.S. at 577.

[51] *See Maymó*, 364 F.3d at 38.

[52] *See Esso I,,* 389 F.3d at 220-222.

[53] 438 F. 3d 50 (1st Cir. 2006).

Then, the Court of Appeals for the First Circuit decided the case based on Pullman abstention. It ordered the abstention of the District Court from taking further action in the case pending resolution of *González-Fuentes*[54] before the Puerto Rico Supreme Court and to stay all further proceedings.

In the *González-Fuentes* case the Court of First Instance of Puerto Rico granted habeas corpus petition based on the same facts and law claimed in the *Rivera-Feliciano's* case. Nevertheless, on June 20, 2005, the decision was overruled by the Puerto Rico Court of Appeals. The petitioners appealed to the Puerto Rico Supreme Court in *González-Fuentes v. Commonwealth*[55] on September 1, 2005, where their case was briefed and was pending resolution at the moment the First Circuit addressed the Rivera-Feliciano's case.

In sum, the First Circuit Court remanded with instructions to the District Court to revise the preliminary injunction to make clear that anyone among the plaintiffs who violates the terms of release and supervision under the Electronic Surveillance Program may suffer the usual detriments from such violations. On remand, the District Court had to address the question of whether the preliminary injunction would cover the plaintiffs added by the amended complaint filed after notice appeal, and to wait until the Puerto Rico Supreme Court finally decides the state law interpretation of Law 49.

### C. The "escoltas" case

In *Romero-Barceló v. Toledo*,[56], plaintiff requested via an injunction filed at the federal Court to enjoin Defendant to re-instate his "escoltas" or police protection.

Before commencing the federal action, Plaintiff petitioned the Puerto Rico Court of Appeals to overturn Superintendent Toledo's order removing his police in the case *Carlos Romero Barceló v. Policía De Puerto Rico*.[57]. Another former governor, Rafael Hernández-Colón, not a party to the federal case, filed a similar petition at state level and the two cases were subsequently consolidated in the case *Rafael Hernández-Colón v. Policía De Puerto Rico*.[58] The Federal Court noted that these actions are not civil lawsuits in the traditional sense but rather, administrative appeals commenced pursuant to the Puerto Rico Uniform Administrative Procedures

[54] No. AC-25-48.
[55] 438 F. 3rd 50 (1st Cir. 2006), [hereinafter *Rivera-Feliciano*].
[56] No. 07-1051, Slip Op. (D.P.R. 2007).
[57] 2006 KLRA 01036.
[58] 2006 KLRA 01009.

Act.[59] In their petitions at the state level, the former governors also requested the equivalent of a preliminary injunction requesting the state court to issue an order reinstating police protection until the case was subsequently adjudicated on the merits. Thus, Defendants argued that the Puerto Rico Court of Appeals lacked jurisdiction over the matter because the decision was not administrative in nature but rather, came from an executive order from the Governor and is therefore exempted from the application of the *L.P.A.U.*

In its opinion, the Court discusses in extenso the Pullman abstention doctrine, applying the following principle: "when a federal constitutional claim is premised on an unsettled question of state law, the federal court should stay its hand in order to provide the state courts an opportunity to settle the underlying state law question and thus avoid the possibility of unnecessarily deciding a constitutional question."[60] The Court noted that "[A]bstention under this doctrine "does not. . . . involve the abdication of federal jurisdiction, but only the postponement of its exercise" so that the state court may be provided an opportunity to determine the unsettled question of state law".[61] Its purpose is to minimize federal-state friction by allowing state courts to construe their own laws and avoid unnecessary adjudication of constitutional questions.[62]

Therefore, the Court concluded that based on the status of the ongoing litigation in the Commonwealth courts and by the applicable law, it denied the preliminary injunction petition by granting Defendants' motion to dismiss and thus, abstaining from hearing the case until such time as the Supreme Court of Puerto Rico determines whether Romero Barceló possesses an acquired right to police protection.

### D. The "Tribunos" Case

In *Echeverría-Rodríguez v. Acevedo-Vilá*,[63] some former members of the Medical Examining Board ("MEB") commonly known as the "TEM" ("Tribunal Examinador de Medicos") filed a preliminary injunction petition to enjoin defendants to cease and desist from interfering with MEB's imposition of disciplinary measures, and to order that a public apology be

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[59] (Ley de Procedimientos Adminsitrativos Uniforme, "L.P.A.U." for its Spanish initials) [hereinafter *L.P.A.U.*].

[60] *See Romero-Barceló*, No. 07-1051, Slip Op. at p. 4; *citing Rivera-Feliciano v. Acevedo-Vilá*, 438 F.3d 60, 61 (1st Cir. 2006) (citing *Harris County Comm'rs Court v. Moore*, 420 U.S. 77, 83 (1975)(internal quotations omitted)).

[61] *See Romero-Barceló,* No. 07-1051, Slip Op. at p. 4; *citing Harrison v. N.A.A.C.P.*, 360 U.S. 167, 177 (1959). citing *Kusper v. Pontikes,* 415 U.S. 51, 54-55 (1973); *Harrison*, 360 U.S. at 177; *Pullman*, 312 U.S. at 500-01; *Ford Motor Co.,* 257 F.3d at 71.

[62] *Id.*

[63] 565 F.Supp.2d 328, 330 (P.R. Cir. 2008) [hereinafter *Echeverría-Rodríguez*].

made through the press. The MEB Members or "Tribunos" (in Spanish language) petition was triggered at least in part by the criminal indictments filed in federal court against various dozen private practice physicians, and several administrative employees and/or staff members of the MEB[64].

After the indictments were made, the Governors' Office, who then had jurisdiction for "notice and/or removal" of the MEB Members under Title 20 Laws of Puerto Rico Annotated, Section 31 et seq, issued letters to the "Tribunos" for them to show cause why they should not be removed from their positions. The Court noted that plaintiffs voluntarily consented to participate in the administrative hearings after the show cause letters were issued, although it appears that plaintiffs had second thoughts later after having filed the federal case[65].

The Court went throughout a well documented discussion of the Younger abstention doctrine and discussed also its exceptions. After a well done analysis, the Court abstained under Younger abstention grounds, specifically "[…]because plaintiffs have voluntarily engaged the wheels of administrative exhaustion. Hence, the general rule of Younger abstention applies, as explained in Esso II, 522 F.3d at 143."[66] The Court's decision was apparently un-appeallable (although their right to do so) since Plaintiffs opted not to appeal to the First Circuit Court.

## III. Exceptions to the Abstention Doctrines in which Federal Jurisdiction has Prevailed.

### A. "Esso's" Case

In *Esso Standard Oil Co. v. Mujica Cotto*,[67] the First Circuit in a detailed opinion followed the Younger abstention principle by affirming the district court decision denying preliminary injunction. The ongoing administrative proceedings in *Esso I* were before the Environmental Quality Board regarding the proposed fine to be imposed of around $70 million dollars due to oil spills at Barranquitas, Puerto Rico. In its decision, the First Circuit affirmed the previous federal abstention decision, but warned Plaintiff to pursue its claims of "structural bias" of the agency via the state jurisdiction all the way to the Puerto Rico Supreme Court, and thereafter, to pursue their claims at the federal level.

Esso did precisely that. It filed interlocutorily their "administrative

[64] *See Id.* at 331.
[65] *Id.* at 331-332.
[66] *Id.* at 339 citing *Esso Standard Oil Co. v. Lopez-Freytes,*522 F.3d 136,143 (1st. Cir. 2008) which is discussed thereafter in the instant Article.
[67] 389 F.3d 212, 216-217 (1st Cir.2004) [hereinafter *Esso I*]

review" to the Court of Appeals and then to the Supreme Court of Puerto Rico. Then, they renewed their petition for permanent injunction in federal court, alleging again the "structural bias", and mentioning the procedural background at the state level. The District Court granted the petition for permanent injunction, enjoining the Environmental Quality Board of not imposing the proposed $70 million dollars fine to Esso. On appeal, the First Circuit Court in *Esso Standard Oil Co. v. Lopez-Freytes*,[68] expressed serious concerns with the undisputed evidence of structural and actual bias in the case, and opted not to reverse the District Court in its decision of not abstaining in the case. In *Esso II*, the First Circuit after finding of exhaustion of state remedies focused on "core constitutional values ... threatened during ongoing state proceedings, based on the "structural" pressure exercised on the examiner by governmental entities, as well as the particulars of the contract arrangement of the examiner, all containing potential "structural bias." [69]

### A. The "Telecommunications Antenna" Case

In *Sprintcom, Inc. v. ARPE*,[70] Sprint brought the instant suit against ARPE for its decision to deny Sprint's application for a preliminary plan approval to install a telecommunications facility on the roof of a three-story building located in the town of Isabela, Puerto Rico. Sprint alleged that the telecommunications facility is necessary to provide seamless, reliable wireless telephone and other communication services to individuals living, working or traveling in and around Isabela. In its pleadings, Sprint argued that ARPE's denial of the application is a violation of the Federal Telecommunications Act ("FTA"),[71] because the denial was based on the citizens' concerns about alleged adverse environmental and health effects of radio frequency emissions. Sprint also argued that ARPE has violated Section 2151 of the Puerto Rico Uniform Administrative Procedure Act,[72] which grants all parties in an administrative case "the right to have the decision based on the record of the case."[73] Sprint requested injunctive and declaratory relief ordering Defendant ARPE to grant the application and issue all necessary permits to allow the installation and operation of the facility.

Defendant ARPE argued via motion to dismiss that under the *Burford* abstention doctrine, a federal court sitting in equity must decline to interfere

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[68] 522 F.3d 136 (1st Cir.2008) [hereinafter *Esso II*].
[69] *Esso II*, 522 F.3d at 147,
[70] 490 F.Supp.2d 238 (P.R. Cir. 2007) [hereinafter *Sprintcom*].
[71] *See* 47 U.S.C. § 332(c)(7)(B)(i)(II) (2009).
[72] *See* P.R. Laws Ann.. tit. 3, § 2151 ss (2009).
[73] *Id.*

with the proceedings or orders of state administrative agencies, and as such this Court should abstain from interfering with ARPE's decision. Defendant ARPE's motion to dismiss was limited to these procedural arguments, and the Court limited its analysis accordingly[74]. The Court concluded the contrary. Specifically, the Court was emphatically in stating that the FTA was created especially to eliminate the type of violations that Plaintiff is alleging. The Court cited different case law from other jurisdiction indicating the *Burford* abstention is reserved for complex state administrative proceedings involving state public policy and is used only in rare cases, and because the installation of telecommunications facilities are clearly regulated by the FTA, federal jurisdiction was warranted. Thus, the Court did not decline jurisdiction based on the *Burford* abstention doctrine in this specific case.

### C. The Exxon Mobile v. Saudi's Case

In *Exxon Mobile Corporation v. Saudi Basic Industries*,[75] the U.S. Supreme Court placed limits to the Rooker-Feldman doctrine. The U.S. Supreme Court commenced its discussion with the factual background between Exxon Mobile Corp. and Saudi Basic Industries Corp. Two subsidiaries of Exxon Mobile Corp. in 1980, (then the separate companies Exxon Corp. and Mobil Corp.) formed joint ventures with Saudi Basic Industries Corp. to produce polyethylene in Saudi Arabia. Then, two decades later, the parties began to dispute royalties that Saudi Basic Industries Corp. had charged the joint ventures for sublicenses to a polyethylene manufacturing method[76].

The judicial process was begun by Saudi Basic Industries Corp., which preemptively sued the two Exxon Mobile Corp. subsidiaries in Delaware Superior Court in July 2000 seeking a declaratory judgment that the royalty charges were proper under the joint venture agreements. In response two weeks later, Exxon Mobile Corp. and its subsidiaries countersued Saudi Basic Industries Corp. in the United States District Court for the District of New Jersey, alleging that Saudi Basic Industries Corp. overcharged the joint ventures for the sublicenses[77].

Exxon Mobile Corp. subsidiaries answered in January 2002, the Saudi Basic Industries Corp.'s state-court complaint, asserting as counterclaims the same claims Exxon Mobile Corp. had made in the federal suit in New Jersey. The state suit went to trial in March 2003, and the jury

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[74] *See Sprintcom,* 490 F.Supp.2d at 238, 239.
[75] 544 U.S. 280, 125 S. Ct. 1517 (2005) [hereinafter *Exxon Mobile Corp*.].
[76] *See Exxon Mobile Corporation v. Saudi Basic Industries*, 544 U.S. 280, 289, 125 S. Ct. 1517, 1525 (2005).
[77] *Id.*

returned a verdict of over $400 million in favor of the Exxon Mobile Corp. subsidiaries. Saudi Basic Industries Corp. appealed the judgment entered on the verdict to the Delaware Supreme Court[78].

Right before the state-court trial, Saudi Basic Industries Corp. moved to dismiss the federal suit, alleging, inter alia, immunity under the Foreign Sovereign Immunities Act of 1976. The Federal District Court denied Saudi Basic Industries Corp.'s motion to dismiss, which was interlocutorily appealed. The Third Circuit Court of Appeals heard argument in December 2003, over eight months after the state-court jury verdict. Said Appeals Court sua sponte raised the question whether subject-matter jurisdiction over the federal suit failed under the Rooker-Feldman doctrine because Exxon Mobile Corp.'s claims had already been litigated in state court. [79]

In its decision rendered in *Exxon Mobile Corporation*,[80] the Appeals Court rejected Exxon Mobile Corp.'s argument that Rooker-Feldman could not apply because Exxon Mobile Corp. filed its federal complaint well before the state-court judgment. The only relevant consideration, the Third Circuit Court stated; "is whether the state judgment precedes a federal judgment on the same claims."[81]

The U.S. Supreme Court granted certiorari and reversed the judgment of the Court of Appeals for the Third Circuit. It commenced the discussion stating very clear that Exxon Mobile Corp., at the point prevailing in Delaware, was not seeking to overturn the state-court judgment. Said statement was in response to the Third Circuit speculative conclusion when stated that if Saudi Basic Industries Corp. won on appeal in Delaware, Exxon Mobile Corp. would be endeavoring in the federal action to "invalidate" the state-court judgment, "the very situation," the court concluded, "contemplated by Rooker- Feldman's 'inextricably intertwined' bar". [82]

In sum, the U.S. Supreme Court made clear that this is not a "paradigm situation in which Rooker-Feldman precludes federal district court from proceeding". The U.S. Supreme Court added that since Exxon Mobile Corp. has not came to federal court to undo the Delaware judgment in its favor, but rather, Exxon Mobile Corp. filed suit in Federal District Court (only two weeks after Saudi Basic Industries Corp. filed in Delaware and well before any judgment in state court) to protect itself in the event it lost in state court on grounds (such as the state statute of limitations) that might not preclude relief in the federal venue. Therefore, the Supreme Court declined to apply the Rooker-Feldman doctrine, since it "[…]did not prevent

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[78] *Id.*
[79] *Id.* at 289-290.
[80] 364 F.3d 102, 105 (3rd. Cir. 2004).
[81] *Exxon Mobile Corp.,,* 544 U.S. at 291, citing *Exxon Mobile Corporation v. Saudi Basic Industries*, 364 F.3d 102, 104 (3rd Cir. 2004).
[82] *See Exxon Mobile Corp.,* 544 U.S. at 291, citing 364 F.3d at 106.

the District Court from exercising jurisdiction when ExxonMobil filed the federal action, and it did not emerge to vanquish jurisdiction after ExxonMobil prevailed in the Delaware courts".

In simple words, the maximum forum concluded that the doctrine does not apply merely because a "parallel" state court proceeding was pending when the federal suit was commenced, and it comes to judgment during the pendency of the federal suit.

## IV. Conclusion and Recommendations

Among the doctrines discussed herewith together with specific examples of cases litigated at the Federal District Court for the District of Puerto Rico and the First Circuit, Younger and Pullman abstention doctrines deserve the most deferential and highest degree of acceptance in the contemporaneous era of litigation. This means that, Federal Courts have concluded that said abstention doctrines are well respected and that federalism and comity in favor of state proceedings have been reflected in opinions when the requirements of said doctrines are applied to federal cases pending resolution at the same time at the state level.

Regarding the *Burford* and *Colorado River* abstention doctrines, the author during his years of litigation can conclude that there is no sympathy from the Federal District Court for the District of Puerto Rico to enforce said doctrines. Their interpretations are not based in a vacuum, rather, are based in the First Circuit interpretation and in the cases before said court, which has obliged not to apply said abstention doctrines. This does not mean that are inapplicable. The Author recommends that any attorney who after making the proper analysis of the case should argue said abstention doctrines, and in the opposite, any plaintiff's attorney who has done his research then should file its well documented opposition. This is not only about federalism, is about doing the right thing by making the hard work in research and conducting the case the very best way.

On the other hand, as said above, the Author concludes that Younger and Pullman abstention doctrines have practical deference either at the District Court and in the First Circuit. The horse trainer case and the "grilletes" case explain this conclusion. The reasons are simple. The administrative law principles attached to the bureaucracy expansion for the alleged benefit of the citizens forces the federal jurisdiction to provide deference and comity to the local proceedings. The "escoltas", the "Tribunos" and the "grilletes" cases illustrate said conclusion.

In the "escoltas" case, the District Court provided the necessary deference to the Puerto Rico Supreme Court and abstained to entertain the controversies of the case until said state forum determines the path to follow when interpreting state statutes. The same occurred in the "Tribunos" case,

in which the District Court respected the local administrative process of removal of former MEB Members and applied Younger abstention with vehemence, pointing out that the "Tribunos" voluntarily appeared to the administrative process and thereafter by "second thoughts" decided to knock the doors of the federal forum[83].

In the "grilletes" the District Court opted to retain jurisdiction even though Pullman abstention was argued since the case at that moment was pending before the Puerto Rico Supreme Court regarding the interpretation of different state statutes and local regulations. Nevertheless, the First Circuit followed the federalist principle and reversed the District Court decision by ordering the abstention until the Puerto Rico Supreme Court decides the state statute controversies as dictated by the Pullman abstention doctrine.

Both cases, among other discussed herewith, with the discussion brought by the Author, can attempt to answer the questions posted at the beginning regarding if whether Alexander Hamilton's federalist conception still alive. The thermostat in favor of the State sovereignty is shown by the Pullman and Younger abstention doctrines, and conversely, the thermostat is in favor of federal jurisdiction in the *Colorado River* and *Burford* abstention doctrines. We should understand that Alexander Hamilton's federalist conception is not static since is the representation of a living Constitution that is constantly in evolution. The key for our analysis is the true belief that these doctrines are not a mathematical equation, and that each attorney must study all of them prior to argue said abstention doctrines in their cases in order to provide the Court with the necessary tools to decide either one way or the other. This, because the Court cannot be obliged to infer or to decide upon speculation when the parties do not argue correctly what are the abstention doctrines and its exceptions in their cases.

Therefore, the Author concludes that the abstentions doctrines discussed in this article together with its exceptions are at the will of the attorneys' interpretation prior to the Court's intervention. We, as attorneys, must have the responsibility of studying our cases because good work is synonymous of prevailing, and the Court provides its mechanisms for that end. Thus, is not about if abstention prevails over federal jurisdiction, is about applying the right doctrine or the correct exception to the specific facts of the case.

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[83] In *Echeverría-Rodríguez*, 565 F.Supp.2d at 331-332, the Court admonished Plaintiffs regarding their "**second thoughts**" by stating that "[t]he record shows that plaintiffs voluntarily consented to participate in the administrative hearings, although it appears that plaintiffs had **second thoughts later after having filed the instant federal court** proceeding"..

(Emphasis added).