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CIVIL PROCEDURE—FEDERAL COURT JURISDICTION OVER INTERPLEADER ACTIONS: A VIRTUAL UNFLAGGING OBLIGATION OR INHERENTLY DISCRETIONAL? THE THIRD CIRCUIT OPTS FOR THE DISCRETIONARY APPROACH

NYLife Distributors, Inc. v. Adherence Group, Inc.

I. INTRODUCTION

Among both lawyers and judges, there is a widely held belief that federal courts are obligated to exercise the jurisdiction conferred upon them by the Constitution and Congress.1 The advocates of such a practice have long argued that it is an usurpation of legislative power to allow federal courts, at their discretion, to defer to a state proceeding when federal jurisdictional requirements have been legally met.2 Granting federal courts


It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution . . . . With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution.

Id. at 404 (emphasis added). This sentiment was echoed throughout nineteenth and early twentieth century jurisprudence, as federal courts adhered to the general rule that they had no right to decline the exercise of jurisdiction which is given to them by Congress. Id. Furthermore, this theory was understood as conferring an "absolute right" for litigants to utilize federal courts for the disposition of cases. See McClellan v. Carland, 217 U.S. 268, 282 (1910) (stating that federal courts have "no authority" to abdicate jurisdiction because of presence of pending state proceeding); Checker Cab Mfg. Co. v. Checker Taxi Co., 26 F.2d 752 (N.D. Ill. 1928) (recognizing right to federal forum as secured by Constitution); see also Micheal M. Wilson, Comment, Federal Court Stays and Dismissals in Deference to Parallel State Court Proceedings: The Impact of Colorado River, 44 U. CHI. L. Rev. 641, 641-42 (1977) (same); Note, Power to Stay Federal Proceedings Pending Termination of Concurrent State Litigation, 59 Yale L.J. 978, 980 (1950) (same); Note, Stays of Federal Proceedings in Deference to Concurrently Pending State Court Suits, 60 Colum. L. Rev. 684, 687 (1960) (discussing how right to federal forum is secured by Constitution and precedent).

2. Shapiro, supra note 1, at 543 (referencing Cohens, 19 U.S. (6 Wheat.) at 404). Moreover, there is widespread belief that the forum in which litigation occurs may contribute as much to the outcome of a case as the underlying merits of the case. See, e.g., David J. McCarthy, Note, Preclusion Concerns as an Additional Factor When Staying a Federal Suit in Deference to a Concurrent State Proceeding, 53 Fordham L. Rev. 1183, 1198 (1985). In this article, McCarthy argues that deference takes away the powers of the legislature, as well as limits the right of litigants to choose a forum that is neutral. Id. According to McCarthy, the two most compelling reasons from the litigant's standpoint that justify stretching the limits of the judicial power as far as possible are: (1) the fear of perceived local prejudices and (2) the
the discretion to decide whether to dismiss certain actions before them in favor of similar state actions, however, has been recognized for quite some time. Supporters of such a practice argue that greater federal court autonomy is a necessary and useful aspect of federal court litigation, both to protect the federal courts from being overburdened and to avoid undue interference with the states.

fear that a local forum will ignore or disregard federal law. Id. at 1198 n.66; see also Paul M. Bator, The State Courts and Federal Constitutional Litigation, 22 WM. & MARY L. REV. 605, 607 (1981) (arguing that federal courts are preferred forum for constitutional principles, and that this should be regarded as task of federal courts); Martin H. Redish, Abstention, Separation of Powers, and the Limits of the Judicial Function, 94 YALE L.J. 71, 112 (1984) ("The Supreme Court has recognized the important interrelations between congressional jurisdictional allocations and substantive congressional programs."); David A. Sonenshein, Abstention: The Crooked Course of Colorado River, 59 TUL. L. REV. 651 (1985) ("[I]n enacting the . . . statute . . . Congress has deemed the federal courts, with life-tenured judges who are less subject to the vagaries and pressures of local public opinion, to be an option well worth preserving for the litigant.") (citation omitted).


4. See Shapiro, supra note 1, at 587-88. In arguing that abstention has become a necessary function of the federal courts in order to maintain efficient administration of justice, Shapiro states:

My point is not that the Constitution expressly “provides” that a grant of jurisdiction carries with it certain discretion not to proceed, or that Congress necessarily “intends” to confer such discretion when it authorizes the exercise of jurisdiction. Rather, I submit that, as experience and tradition teach, the question whether a court must exercise jurisdiction and resolve a controversy on its merits is difficult, if not impossible, to answer in gross. And the courts are functionally better adapted to engage in the necessary fine tuning than is the legislature. Moreover, questions of jurisdiction are of special concern to the courts because they intimate affect the courts’ relations with each other as well as with the other branches of government.

Id. at 574.
In such instances, known as abstention cases, a federal court declines to exercise its jurisdiction in favor of state court adjudication. The Supreme Court has formulated various doctrines to guide district courts on the appropriateness of abstention. These decisions, while conferring discretion, have continually reiterated the general proposition that "abstention...is the exception and not the rule." Critics of these abstention doctrines have argued that the practice is contrary to the "[virtual] unflagging obligation" of federal courts to exercise jurisdiction given to them by Congress. Moreover, abstention is controversial because it delays, or in many cases eliminates, a plaintiff's access to a federal court, even though the court has jurisdiction over the parties. The Supreme Court justifies


7. Colorado River, 424 U.S. at 813. The doctrine of abstention is:

5. At an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly [brought] before it. Abdication of the obligation to decide cases can be justified under this doctrine only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest. County of Allegheny v. Frank Mashuda Co., 360 U.S. 185, 188-89 (1959). Further, "it was never a doctrine of equity that a federal court should exercise its judicial discretion to dismiss a suit merely because a State court could entertain it." Alabama Pub. Serv. Comm'n v. Southern Ry. Co., 341 U.S. 341, 361 (1951) (Frankfurter, J., concurring).

8. Colorado River, 424 U.S. at 817. On numerous occasions, the Court expressed the "obligation" of federal courts to exercise the jurisdiction given them, stating:

Generally, as between state and federal courts, the rule is that "the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction..." This difference in general approach between state-federal concurrent jurisdiction and wholly federal concurrent jurisdiction stems from the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them. Id. (quoting McClellan v. Carland, 217 U.S. 268, 282 (1910)) (emphasis added). This general proposition seems to support the position that abstention is improper. The Court, however, has long recognized it as appropriate in certain situations. See, e.g., Brillhart, 316 U.S. at 495 (recognizing abstention in favor of parallel state proceedings).

9. Critics suggest that the entire concept of abstention is antithetical to the federal court's obligation to exercise the jurisdiction granted them. See generally Barry Friedman, A Revisionist Theory of Abstention, 88 Mich. L. Rev. 530 (1989) (discussing importance of abstention doctrine); Linda S. Mullenix, A Branch Too Far: Pruning the Abstention Doctrine, 75 Geo. L.J. 99 (1986) (discussing abstention doctrine and problems it poses); Redish, supra note 2, at 112 (stating refusal to obey jurisdictional directive would not have, theoretically, rendered substantive legislation null); Sonenshein, supra note 2, at 651 (stating that Congress requires exclu-
its application of abstention principles primarily for reasons of comity, federalism and sound judicial administration. 10

The Supreme Court has recognized abstention in favor of state proceedings because of its concern for the efficient administration of judicial resources and the comprehensive disposition of cases. 11 Two contrasting

10. See Younger, 401 U.S. at 43-44 (holding that absent specified circumstances, federal courts should refrain from interfering with state criminal proceedings). Comity refers to the relations between state and federal judicial systems; when federal courts decide issues that state courts could resolve, the federal courts may implicitly call into question the ability or willingness of state courts to apply federal law faithfully. Trainor v. Hernandez, 431 U.S. 434, 446 (1977) (noting that when federal courts do not refrain from remitting case to pending state action, it negatively reflects upon state's ability to abdicate federal claims). Federalism refers to the relations between state and federal sovereigns with a concern that the federal courts could usurp the role of state courts in addressing matters of state policy. See Moore v. Sims, 442 U.S. 415, 430 (1979) (noting that federal intervention may prevent informed evolution of state policy by state tribunals); Burford, 319 U.S. at 327-28 (noting that federal intervention hinders state implementation of important regulatory policies). Judicial administration raises the concern that litigants brought before them should not be subject to the disruptive effect of parallel or preemptive federal-state proceedings. Colorado River, 424 U.S. at 814. The Court, in Colorado River, further supported the importance of sound judicial administration when it stated:

Abstention is also appropriate where there have been presented difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar. . . . In some cases, however, the state question itself need not be determinative of state policy. It is enough that exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.

Id. (citations omitted).

11. Colorado River, 424 U.S. at 817-18. In Colorado River, the Supreme Court officially recognized the ability of a district court to stay or dismiss a federal action in favor of parallel state proceedings for reasons of sound judicial administration and efficient disposition of cases. Id. at 818. Colorado River concerned a dispute over land waters between the United States, certain Native American tribes and a Colorado water division. Id. at 802. During the course of the proceedings, both federal and state claims were asserted in both courts. Id. at 801. The Court, per Justice Brennan, held that the federal district court was permitted to abstain from the federal claim, but only under "exceptional circumstances." Id. at 817-18. This decision narrowed a 1942 decision of the Court which conferred broad discretion upon a district court to abstain from a federal case in favor of parallel state proceedings, without expressly mentioning it. See Brillhart v. Excess Ins. Co., 316 U.S. 491 (1942) (conferring broad discretion to district courts to defer to similar state proceedings under Federal Declaratory Judgment Act). Brillhart, however, is regarded as applicable only to actions brought under the guise of the Federal Declaratory Judgment Act. See Wilton v. Seven Falls Co., 115 S. Ct. 2137, 2142 (1995) (discussing scope of Brillhart standard). For a further discussion of the decisions in Colorado River and Brillhart and their impact on federal court abstention principles, see infra notes 34-46 and accompanying text.
views, however, have emerged concerning the appropriate standard for district courts when declining to exercise jurisdiction—(1) a narrow “exceptional circumstances” test and (2) a broad discretionary standard. 12 Recently, in *Wilton v. Seven Falls Co.*, 13 the Court officially recognized a broad discretionary standard for district courts when deciding to abstain from hearing a federal declaratory judgment action in favor of “parallel” state proceedings. 14 The Court’s decision was based upon the “uniqueness” of the act itself and its historically discretionary nature. 15 The Court’s opinion, however, intimated a desire to limit such a broad standard to actions brought under the Federal Declaratory Judgment Act, while retaining the “exceptional circumstances” test for all other actions. 16

In *NYLife Distributors, Inc. v. Adherence Group, Inc.*, 17 the United States Court of Appeals for the Third Circuit considered which discretionary standard should apply to a district court’s dismissal of a federal statutory interpleader action in favor of parallel state court proceedings. 18 Relying

12. See, e.g., *Colorado River*, 424 U.S. at 817-18 (outlining and embracing “exceptional circumstances” test); *Brillhart*, 316 U.S. at 494-95 (articulating broad discretionary standard for staying or dismissing federal claim in favor of state court proceedings). For a further discussion of *Brillhart* and *Colorado River*, see infra notes 34-46 and accompanying text.


14. Id. at 2142-44. For a further discussion of *Wilton*, see infra notes 66-78 and accompanying text.

15. Id. at 2142-43.

16. *Wilton*, 115 S. Ct. at 2137. The Court stated: “[w]e do not attempt at this time to delineate the outer boundaries of that discretion in other cases [other than those arising under the Federal Declaratory Judgment Act], for example, cases raising issues of federal law or cases in which there are no parallel state proceedings.” *Id.* at 2144 (emphasis added).


18. *Id.* at 379-83. The Federal Statutory Interpleader Act, 28 U.S.C. § 1335 (1994), is a remedial device which enables a person holding property or money to compel two or more persons, asserting mutually exclusive rights to the fund, to join and litigate their respective claims in one action; the benefit being that the stakeholder is not subject to multiple liability. 3A JAMES W. MOORE ET. AL., MOORE’S FEDERAL PRACTICE § 22.02[1] (2d ed. 1996). The stakeholder is in essence removed from the action, and it gives the prevailing claimant ready access to the disputed fund. *Id.* The Federal Statutory Interpleader Act states in pertinent part:

(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if (1) Two or more adverse claimants, of diverse citizenship as defined in section 1392 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if (2) the plain-
on the Supreme Court's decision in *Wilton*, the Third Circuit determined that a motion to dismiss a federal statutory interpleader action during the pendency of parallel state proceedings should be left to the sound discretion of the district court.\(^1\) Thus, the court's decision in *NYLife* narrowed federal jurisdiction in the Third Circuit by expanding the use of the broad discretionary standard beyond declaratory judgment actions and the Supreme Court's holding in *Wilton*.\(^2\)

This Casebrief discusses a federal court's obligation to exercise jurisdiction over an action properly brought before it when faced with a parallel state proceeding.\(^3\) Part II surveys the relevant federal court history when deciding the proper standard for declining to exercise jurisdiction in favor of parallel state proceedings.\(^4\) Next, Part III discusses the Third Circuit's use of abstention in favor of parallel state proceedings.\(^5\) Finally, Part IV examines the court's decision in *NYLife* and discusses its implications in the Third Circuit.\(^6\)

### II. Federal Court Background

The Supreme Court has long recognized that the mere pendency of a controversy in state court does not deprive a federal court of jurisdiction over a similar proceeding.\(^7\) Nonetheless, three doctrines of abstention

- When a party has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.

  \(b\) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.


19. *NYLife*, 72 F.3d at 382-83.

20. *Id.*

21. For a further discussion of a federal court's obligation to exercise jurisdiction over an action when faced with a parallel state proceeding, see *infra* notes 25-161 and accompanying text.

22. For a further discussion of relevant federal court history, see *infra* notes 25-79 and accompanying text.

23. For a further discussion of the Third Circuit's use of abstention, see *infra* notes 80-106 and accompanying text.

24. For a further discussion of *NYLife*, see *infra* notes 107-61 and accompanying text.

25. Shapiro, *supra* note 1, at 550 (discussing general rule and various instances where federal courts actually exercise discretion when deciding to hear proceedings before them). As applied, the strict general rule provides that the mere existence of a similar action in state court does not require, nor even permit, a federal court to refuse to hear or to stay an action that is properly within its jurisdiction. *Id.* at 551. Moreover, the strict rule compels both the state and federal actions to continue until one of them results in a judgment that may be as-
have evolved that allow district courts to decline hearing cases over which they have jurisdiction in favor of state proceedings. First, the Pullman abstention doctrine is applicable when a state court determination of a state law question might render moot or alter a federal constitutional issue. Second, the Burford abstention doctrine concerns state law questions of substantial public concern, where the state has expressed a desire to establish a coherent policy. Finally, the Younger abstention doctrine is stated as res judicata in the other. See, e.g., Kline v. Burke Constr. Co., 260 U.S. 226, 234 (1922) (“[The federal plaintiff] ha[s] the undoubted right to invoke the jurisdiction of the federal court [who] was bound to take the case . . . . [and] it could not abdicate its authority or duty in favor of the state jurisdiction.”); McClellan v. Carland, 217 U.S. 268, 282 (1910) (stating that mere pendency of similar action in state court does not require, or even permit, federal courts to refuse to hear, or stay, actions properly within its jurisdiction); Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404 (1821) (arguing that federal courts “have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given”); see also Friedman, supra note 9, at 531 (stating that entire concept of abstention is antithetical to federal courts’ obligation to exercise jurisdiction granted them by Congress); Redish, supra note 2, at 112 (“The Supreme Court has recognized the important interrelations between congressional jurisdictional allocations” and exercise of jurisdiction as mandatory).


27. Pullman, 312 U.S. at 496. Pullman involved a constitutional challenge to a regulatory commission order requiring all sleeper cars to be continuously in the charge of an employee with the rank of conductor. Id. at 497-98. At the time, all train conductors were white and all porters black, and the order was implemented in response to a practice on lightly traveled routes of leaving cars in the charge of porters. Id. The Court decided that abstention was appropriate if a state court might resolve an unclear issue of state law in such a way that would spare a federal trial court the need to decide a constitutional question. Id. at 501.

Here, instead of having a federal court decide an equal protection question, the question would be deferred to the state court to determine whether the regulatory commission order was within its authority conferred by statute. Id. at 501-02. Thus, the Pullman doctrine is most effective as a means to eliminate or significantly narrow an important constitutional question by the resolution of an uncertain state matter. Gordon G. Young, Federal Court Abstention and State Administrative Law from Burford to Ankenbrandt: Fifty Years of Judicial Federalism Under Burford v. Sun Oil Co. and Kindred Doctrines, 42 DePaul L. Rev. 859, 869 (1993). See Hawaii Hous. Auth. v. Midkiff, 467 U.S. 229, 236 (1984) (finding abstention proper in order to avoid difficult federal constitutional issue); United Gas Pipe Line Co. v. Ideal Cement Co., 369 U.S. 134, 135-36 (1962) (requiring abstention in order to permit state judicial construction of unclear state law so that federal constitutional ruling may be avoided); Winter v. Lavine, 574 F.2d 46, 69 (2d Cir. 1978) (stating that abstention is proper in order to resolve state question when faced with complex federal issue resulting from confusion); see also Thomas G. Buchanan, Note, Pullman Abstention: Reconsidering the Boundaries, 59 Temp. L.Q. 1243, 1251-58 (1986) (discussing application and variety of shapes Pullman doctrine has taken in circuit courts).

28. Burford, 319 U.S. at 334. Burford involved the challenge of a Texas Railroad Commission order that had granted Burford a permit to drill certain oil wells.
appropriate where, absent bad faith, harassment or a patently invalid state statute, federal jurisdiction has been invoked to restrain state criminal proceedings. Although these traditional "abstention doctrines" have become valuable resources for district courts when determining whether to defer the federal action to a state proceeding, the concept has been widely criticized.

Id. at 321. Sun Oil filed suit in the district court, contesting the order as a violation of due process, as well as being arbitrary and capricious. Id. at 316-17. The Court, per Justice Black, recognizing the dispute in question as matter of intricate state law, stated: "[t]hese questions of regulation of the industry by the state administrative agency . . . so clearly involves basic problems of Texas policy that equitable discretion should be exercised to give the Texas courts the first opportunity to consider them." Id. at 332; see Alabama Pub. Serv. Comm'n v. Southern Ry. Co., 341 U.S. 341, 349-50 (1951) (holding abstention as proper course when faced with administrative order "based upon predominately local factors" and when non-abstention would cause "needless friction with state policies").

Although the Burford abstention at one time was thought to apply solely to questions of state administration, it has since been expanded, rather cryptically, to cases not involving state agencies. See Ankenbrandt v. Richards, 504 U.S. 689, 705 (1992) (indicating that, unlike some precedent, Burford abstention may apply to cases not involving state administrative agencies). But see New Orleans Pub. Serv., Inc., v. New Orleans, 491 U.S. 350, 361 (1989) (possibly limiting Burford abstention to questions that involve state administrative agencies). Whichever the case, the Burford abstention has been criticized for not having parameters that are definable—a problem that leads to confusion in its application. Young, supra note 27, at 870-71.

Younger, 401 U.S. at 37. It is important to note that the Younger doctrine has been extended to important civil and administrative proceedings brought by the state in its own courts. See Ohio Civil Rights Comm'n v. Dayton Christian Schs., Inc., 477 U.S. 619, 627-28 (1986) (extending Younger to state administrative proceedings); Juidice v. Vail, 430 U.S. 327 (1977) (extending Younger to protect state civil contempt proceedings because of their "importance").

Unlike the Pullman doctrine, the Younger doctrine requires abstention only where certain state judicial proceedings are attacked. Younger, 401 U.S. at 43-44. The question is not whether the state law is unclear or federally unnecessary, but whether the state has the ability to adjudicate without federal interference. See Young, supra note 27, at 872. Thus, a federal court may not enjoin a state criminal proceeding, even in an action to protect federal constitutional rights. Id. Additionally, the Court may have even intimated an extension of the Younger doctrine for reasons of judicial economy. See Growe v. Emison, 507 U.S. 25 (1993) (noting that federal abstention may be permissible in situations of parallel state and federal criminal proceedings).

Most of the criticism regarding abstention spawns from the repeated admissions by the Supreme Court that federal courts have a "virtually unflagging obligation" to exercise the jurisdiction conferred upon them. Honnen, supra note 5, at 364-65. One of the strongest critics of such a doctrine is Martin Redish. See Redish, supra note 2. Redish argues that "neither total nor partial judge-made abstention is acceptable as a matter of legal process and separation of powers." Id. at 74. He further contends that to construe a jurisdictional statute "as somehow vesting a power in the federal courts to adjudicate the relevant claims without a corresponding duty to do so is unacceptable." Id. at 112. He thus concludes that "[j]udge-made abstention constitutes judicial lawmaking of the most sweeping nature." Id. at 114; see also Friedman, supra note 9, at 538-39 (criticizing abstention as direct usurpation of legislative power).
Over the years, an additional ground for federal court abstention has developed to promote the efficient administration of judicial resources and the comprehensive disposition of cases, while avoiding duplicative litigation. This “fourth abstention” differs from the traditional abstention doctrines because, unlike the other three, it is supported by judicial economy and not federal-state court relations. Although the Supreme Court officially recognized this doctrine in 1976, the ability of a district court to dismiss or stay proceedings in favor of wise judicial administration has been recognized for over fifty years.

In Brillhart v. Excess Insurance Co., the Supreme Court held that for reasons of judicial economy, district courts may decline hearing lawsuits brought under the Federal Declaratory Judgment Act in favor of pending state actions. The Court determined that even though the district court had jurisdiction, it was under no duty to exercise that jurisdiction where

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31. See Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817-18 (1976) (recognizing fourth category of abstention to promote wise judicial administration and to avoid duplicative litigation). The Colorado River Court, per Justice Brennan, noted that “[a]lthough this case falls within none of the abstention categories, there are principles unrelated to considerations of proper constitutional adjudication and regard for federal-state relations which govern in situations involving the contemporaneous exercise of concurrent jurisdictions, either by federal courts or by state and federal courts.” Id. at 817. These considerations included the “‘[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.’” Id. (quoting Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co., 342 U.S. 180, 183 (1952)).

32. See Young, supra note 27, at 873 (discussing abstention doctrines and regarding fourth doctrine as “not crucial to an understanding” of three traditional doctrines). Moreover, the Court in Colorado River attempted to distance this form of discretion as a form of “abstention” by refusing to label it as such, but nevertheless declined to exercise federal jurisdiction in view of the pending state litigation. Clinton A. Vince & John S. Moot, Energy Federalism, Choice of Forum, and State Utility Regulation, 42 ADMIN. L. REV. 323, 353 (1990).


34. 316 U.S. 491 (1942).

35. Id. Brillhart involved an unsettled issue of state law. Id. at 492. In Brillhart, the Excess Insurance Company of America (“Excess”) brought a declaratory judgment action to determine its rights under a 1932 reinsurance contract made with Central Mutual Insurance Company of Chicago (“Central”). Id. at 492-94. Under the agreement, Excess agreed to reimburse Central for any losses Central sustained under certain policies. Id. at 492. Central undertook to notify Excess of any accident that might be covered by the policies. Id. In 1934, Cooper-Jarrett, Inc. (“Cooper-Jarrett”) was issued a policy by Central. Id. Later that year, Cooper-Jarrett was involved in an accident that killed Brillhart’s decedent. Id. Brillhart brought suit against Cooper-Jarrett in Missouri state court, but Central refused to defend on the grounds that the policy did not cover the accident. Id.

Central dissolved during the time the suit was pending and all claims against it were barred by an Illinois court. Id. Cooper-Jarrett suffering financial difficulties, was also liquidated, and a Missouri district court discharged it from any future liability obtained by Brillhart. Id. In 1999, however, Brillhart obtained a $20,000 default judgment against Cooper-Jarrett in Missouri state court. Id. Brillhart then brought a garnishment proceeding against Central in Missouri state court, and
the possibility of duplicative or uneconomical litigation existed. Although it did not articulate all relevant considerations for this abstention to occur, the Brillhart Court outlined various factors for district courts to consider in such instances; each of which gave much deference to maintaining efficient judicial administration. At the very least, the Brillhart

being unable to recover any part of the judgment from Cooper-Jarrett or Central, made Excess a party to a garnishment proceeding in 1940. Id. at 492-93.

Meanwhile, Excess filed a declaratory judgment action in the Kansas federal district court and alleged that it could not be held responsible for the judgment because Central contractually failed to notify them of the accident. Id. As a result, Excess argued that the default judgment was not properly obtained. Id. at 493. Brillhart moved to dismiss the suit primarily because the issues at bar in the federal court could be decided in the state court garnishment proceeding. Id. In order to avoid further delay, the district court granted Brillhart’s motion to dismiss (it had been six years since the litigation began), without considering whether Excess declaratory judgment claims could be resolved in the state proceedings. Id. at 493-94. The court of appeals reversed, holding that the dismissal of the federal court action was an abuse of discretion and remanded the case to the district court with instructions to proceed on the merits. Id. at 494. The Supreme Court subsequently reversed the court of appeals determination. Id. at 498.

36. Id. at 494-95. The Court, per Justice Frankfurter, stated that “[a]lthough the [d]istrict [c]ourt had jurisdiction . . . . it was under no compulsion to exercise that jurisdiction.” Id. at 494. The Court made it clear that the district courts have broad discretion to dismiss a declaratory judgment action when the matters in controversy can be fully adjudicated in proceedings commenced in state court. Id. at 495. The Court further supported its holding in stating that:

[I]t would be uneconomical as well vexatious for a federal court to proceed in a declaratory judgment suit where another suit is pending in state court presenting the same issues, not governed by federal law, between the same parties. Gratuitous interference with the orderly and comprehensive disposition of a state court litigation should be avoided.

Id.

Nonetheless, the Court remanded the case to the district court for a determination of whether the motion to dismiss should be granted. Id. at 498. In essence, the Supreme Court agreed with the decision of the district court to dismiss, but disagreed as to the process used to arrive at the conclusion. Id. at 496. The question in Brillhart was one of the applicability of Missouri law, and whether the judgment against Cooper-Jarrett could be used against Excess in a garnishment proceeding. Id. at 496-97. The district court needed to determine if this was the case, and if so, whether the issues raised in the federal action were the same as the state action. Id. at 497. If the actions were similar, then the court’s dismissal would have been proper. Id. at 498. The district court must determine whether the federal action is the same as the state action, and its decision is reviewed under an abuse of discretion standard. Id.

37. Id. at 495-96. The Court stated that the district courts should review various factors when faced with similar state proceedings. Id. One such factor is whether the questions in controversy between the parties in the federal suit can better be settled in the proceeding pending in state court. Id. This consideration should entail assessing “the scope of the pending state court proceeding and the nature of defenses open there,” and should evaluate “whether the claims of all parties in interest can satisfactorily be adjudicated in that proceeding, whether necessary parties have been joined, [and] whether such parties are amenable to process in that proceeding, etc.” Id. at 495. In addition, the Court noted that other cases may shed light on additional factors that would govern a district court’s decision to dismiss or stay a declaratory judgment action at the outset. Id. More-
Court indicated that where a second suit is pending in state court, involving the same parties and providing ventilation of the same state law issues, a district court might be greatly interfering if it permitted the federal declaratory action to proceed.\textsuperscript{38} Thus, the Chairhart Court outlined that the question a district court faces when presented with such an issue is "whether the questions in controversy between the parties to the federal suit, and which are not foreclosed under the applicable substantive law, can better be settled in the proceeding pending in the state court."\textsuperscript{39} It should be noted, however, that the broad discretionary principle enunciated in Chairhart has often been limited in application to federal declaratory judgment actions because of the uniqueness of the Act.\textsuperscript{40}

over, review of such a discretionary decision would be reviewable only for an abuse of discretion. \textit{Id.} at 498.

Some commentators have reasoned that the Chairhart Court articulated a three-prong test for district courts to consider in such instances. \textit{See} Honnen, \textit{supra} note 5, at 568 ("The Chairhart test considers: (1) the interest in avoiding needless determinations of state law, (2) the interest in avoiding forum shopping, and (3) the interest in avoiding duplicative litigation.").

38. Chairhart, 316 U.S. at 495; \textit{see} Wilton v. Seven Falls Co., 115 S. Ct. 2137, 2141 (1995) (embracing Chairhart conclusion that it would be "gratuitous interference" for federal district court to allow declaratory judgment action to proceed when there already exists state action regarding same issues); Continental Cas. Co. v. Robsac Indus., 947 F.2d 1367, 1374 (9th Cir. 1991) (holding that district courts should generally decline to exercise jurisdiction in suits brought under Federal Declaratory Judgment Act during pendency of state actions involving solely state issues).


40. \textit{Id.} at 494. In Chairhart, the Court found unquestionably that the federal court's jurisdiction was proper. \textit{Id.} The Court, however, also determined that the district court had discretion to dismiss the case. \textit{Id.} One of the justifications for this conclusion, other than for considerations of judicial economy, was the discretionary nature of the federal declaratory judgment action itself, which Justice Frankfurter concluded granted broad discretionary powers to the district courts. \textit{Id.} (citing 28 U.S.C. \textsection 2201 (1982)).

The Court's determination in Chairhart has been understood by some commentators as being of limited use and limited only to the facts of the Chairhart case. \textit{See} Honnen, \textit{supra} note 5, at 567 (arguing that Chairhart doctrine is actually independent branch of abstention and is limited to federal declaratory judgment actions); McCarthy, \textit{supra} note 2, at 1193 n.40 (discussing how Chairhart is limited to federal declaratory judgment which empowers, but not commands, federal courts to hear such actions); \textit{see also} Sonenshein, \textit{supra} note 2, at 670 (stating that no reasonable reading of Chairhart could have established it as general principle other than in declaratory judgment proceedings). Sonenshein argues that the decision in Chairhart should be limited to declaratory judgment actions and state proceedings where only state issues are being adjudicated. \textit{Id.} at 670-71. He states: "Chairhart held only—and in the broadest terms—that when the exercise of federal jurisdiction is, by its terms, discretionary, then the determination of whether to defer to a duplicative action pending in state court is also a matter of discretion." \textit{Id.} at 670. According to Sonenshein, because the federal declaratory judgment statute, "by its terms," makes its exercise discretionary, Chairhart should be limited to such a holding, and any other holding would be an overly broad reading of the Court's conclusion. \textit{Id.} at 671-72.
In *Colorado River Water Conservation District v. United States*, the Supreme Court revisited the propriety of a district court decision to dismiss a federal suit in favor of concurrent state court proceedings, for reasons of judicial economy and efficiency. In *Colorado River*, the Court reemphasized the fact that federal courts have a “[virtual] unflagging obligation” to exercise the jurisdiction conferred on them by Congress. The *Colorado River* Court, however, also determined that a district court could nonetheless abstain from exercising its jurisdiction in “exceptional circumstances.” Such “exceptional circumstances” which deem concurrent litigation to be inefficient judicial administration include: (1) the avoidance of piecemeal litigation; (2) the inconvenience of the federal forum; (3) the order in which the courts obtained jurisdiction; and (4) whether either court has assumed jurisdiction over the property in question.

Thus, the *Colorado River* Court emphasized that, with the exception of


42. Id. at 813. In *Colorado River*, the United States government filed a complaint against some 1000 nonfederal water users for a declaration of the government’s rights to water in certain Colorado rivers and their tributaries. Id. at 805. The complaint was filed pursuant to 28 U.S.C. § 1345 (1994), which grants the district courts original jurisdiction over all civil actions commenced by the United States. *Colorado River*, 424 U.S. at 800. Shortly after the federal suit was commenced, one of the defendants commenced a state proceeding for the purpose of adjudicating all government claims to the water, both state and federal. Id. at 806. Several parties in the federal action then filed a motion to dismiss, asserting that the district court did not have jurisdiction. Id. Thereafter, and without deciding the jurisdictional issue, the district court dismissed the action. Id. On appeal, the United States Court of Appeals for the Tenth Circuit reversed, holding that the district court had jurisdiction under 28 U.S.C. § 1345 and that abstention was inappropriate. *Colorado River*, 424 U.S. at 806. The Supreme Court reversed, and held that although jurisdiction existed, several “exceptional circumstances” were present that warranted the dismissal of the suit in favor of the state proceedings. Id. at 817-18.


44. Id. The Court held that the factor that most clearly counseled against concurrent federal-state proceedings and made dismissal proper, was the fact that dismissal furthered the policy of the relevant statute. Id. at 801. It is important to note that the Court came to this conclusion without discussing *Brillhart*, which leads many to wonder if the decisions are consistent. Id. at 813. In *Brillhart*, the Court warned district courts against “[g]ratuitous interference with the orderly and comprehensive disposition of a state court litigation,” and directed them to exercise discretion in deciding whether or not to proceed. *Brillhart*, 316 U.S. at 495. In *Colorado River*, however, the Court virtually ignored its broad discretionary holding in *Brillhart* and set forth an “exceptional circumstances” test that district courts should utilize. *Colorado River*, 424 U.S. 817-18. Thus, transforming the rather broad standard set in *Brillhart* to a narrow “exceptional” standard in *Colorado River*. Id.

45. *Colorado River*, 424 U.S. at 818. Specifically, the Court found that such “exceptional” circumstances existed and were as follows: (1) a clear federal policy against piecemeal adjudication of water rights; (2) the existence of an elaborate state scheme for resolution of such claims; (3) the absence of any proceedings in the district court (other than the filing of the complaint) prior to the motion to dismiss; (4) the extensive nature of the suit; (5) the 300-mile distance between the
these four limited circumstances, the district courts have an "obligation" to exercise their jurisdiction.\footnote{Id. at 817-18.}

Two years later, the Court in \textit{Will v. Calvert Fire Insurance Co.},\footnote{Id. at 655.} through a plurality opinion that relied upon \textit{Brillihart}, reversed a grant of a petition for writ of mandamus and ordered the district court to adjudicate the claim before it.\footnote{Id. at 658.} \textit{Calvert} concerned an action for an alleged violation of federal securities laws that was commenced in federal court during the pendency of a related state court action.\footnote{Id. at 659.} According to the plurality in district court and the site of the water district at issue; and (6) the prior participation of the federal government in related state proceedings. \textit{Id.} at 818-20.

\footnote{Id. at 817-18.} In so holding, the Court distinguished between abstention among concurrent federal proceedings and concurrent state-federal proceedings. \textit{Id.} The Court stated:

"Generally, as between state and federal courts, the rule is that "the pendency of an action in the state court is no bar to proceedings concerning the same manner in the Federal court having jurisdiction . . ." As between federal district courts, however, though no precise rule has evolved, the general principle is to avoid duplicative litigation. This difference in general approach between state-federal concurrent jurisdiction and wholly federal concurrent jurisdiction stems from the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them. Given this obligation . . ., the circumstances permitting the dismissal of a federal suit due to the presence of a concurrent state proceeding for reasons of wise judicial administration are considerably more limited than the circumstances appropriate for abstention. The former circumstances, though exceptional, do nevertheless exist." \textit{Id.} (quoting \textit{McClellan v. Carland}, 217 U.S. 268, 282 (1910)) (citations omitted).

This proposition has been used by commentators, such as Sonenshein, to argue the general rule of the court—that only in "exceptional circumstances" should abstention be appropriate in cases of parallel state proceedings. Sonenshein, \textit{supra} note 2, at 670. The less strict standard between federal courts exists for reasons of judicial economy and is warranted because a party still gets the opportunity of a proper forum. \textit{Id.} A stricter standard for abstaining to state court is therefore justified because a party, by that decree, loses the right to argue in a federal forum. \textit{Id.} at 671. Thus, Sonenshein argues that the Court in \textit{Colorado River} grasped the principle that parties could only lose their right to a federal forum upon a showing of "exceptional circumstances." \textit{Id.}

\footnote{Id.} \textit{Calvert} the Calvert Fire Insurance Company ("Calvert") advised American Mutual Reinsurance Company ("American") that it was withdrawing from membership in American's reinsurance pool; American then sued Calvert in Illinois state court. \textit{Id.} at 658. Calvert answered, asserting the illegality of the reinsurance agreement under federal and state securities laws as a defense and putting forth a counterclaim for damages under both state and federal securities acts. \textit{Id.} Calvert did not raise any affirmative claims based upon the Securities Exchange Act of 1934 (1934 Act), but did raise violation of such as a defense (such claims fall within the exclusive jurisdiction of the federal courts). \textit{Id.}

On that same day, Calvert filed an affirmative claim under the 1934 Act in federal court, along with the same claims of violations of securities laws that had been raised by way of counterclaim and affirmative defense. \textit{Id.} at 658-59. The district court then granted American's motion to stay the federal proceedings, with the exception of the 1934 Act claim, pending the completion of the state court proceedings. \textit{Id.} at 659. The court noted, however, that Calvert's defense under
Calvert, Colorado River had not "undermin[ed] the conclusion of Brillhart that the decision whether to defer to the concurrent jurisdiction of a state court is . . . a matter committed to the district court's discretion." 50 Furthermore, Justice Rehnquist re-emphasized the proposition that the "right to proceed with a duplicative action in a federal court can never be said to be 'clear and indisputable.'" 51 In contrast, five Justices took issue with the plurality's disregard for the Colorado River "exceptional circumstances" test, and the "exclusive" jurisdiction federal courts are given over Securities Exchange Act claims. 52

the Act could be determined by the state court. 53 Id. at 659-60. Calvert then sought and was granted a writ of mandamus from the United States Court of Appeals for the Seventh Circuit, which ordered the trial judge to proceed immediately with the federal trial of the claim under the 1934 Act, on the authority of Colorado River. 54 Id. at 660 (citing Calvert Fire Ins. Co. v. Will, 560 F.2d 792, 797 (7th Cir. 1977)). American appealed, arguing that issuing the writ had "impermissibly interfered with the discretion of a district court to control its own docket," and the Supreme Court reversed. 55 Id. at 661, 667.

50. Id. at 664. Justice Rehnquist, writing for the plurality, stated that "[i]t is well established that 'the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction.'" 56 Id. at 662 (quoting McClellan, 217 U.S. at 282). In light of the above proposition, however, Justice Rehnquist stated: "[I]t is equally well settled that a district court is 'under no compulsion to exercise that jurisdiction,' . . . where the controversy may be settled more expeditiously in the state court." 57 Id. at 662-63 (quoting Brillhart v. Excess Ins. Co., 316 U.S. 491, 494 (1942)).

Sonenshein, expressing his dismay at Justice Rehnquist's statement, opines that "in [this] one breathtakingly panoramic sentence, Justice Rehnquist seemed to alter the face of federal court jurisprudence." 58 Sonenshein, supra note 2, at 668. Sonenshein further argues that:

Brillhart was a declaratory judgment case, however, and on no reasonable reading could it have established the general proposition for which Justice Rehnquist cited it. Brillhart held only . . . that when the exercise of federal jurisdiction is . . . discretionary, then the determination . . . to defer to a duplicative action pending in state court is also a matter of discretion.

Id. at 670.

51. Calvert, 437 U.S. at 666 n.8. Rehnquist offers various factors to support the proposition that this right is not absolute. 59 Id. at 665. For instance, Justice Rehnquist argued that it makes great sense for a federal judge, who is faced with a rigorous judicial calendar, to defer to state proceedings that essentially mirror those brought before the federal court. 60 Id. Moreover, he stated that the ability to defer furthers the principle that "[f]ederal courts are fully capable of preventing their misuse for purposes of harassment." 61 Id. at 666 n.8 (citing General Atomic Co. v. Felter, 434 U.S. 12, 19 (1977)).

52. Id. at 668-77. Although concurring in the judgment, Justice Blackmun agreed with the dissent's conclusion that the Colorado River "exceptional circumstances" test controlled. 62 Id. at 668 (Blackmun, J., concurring). In Justice Blackmun's view, Brillhart was only applicable to declaratory judgment actions and joined in the judgment only to remand the case for consideration of the motion in light of the Colorado River test. 63 Id. at 667-68 (Blackmun, J., concurring).

In his dissenting opinion, Justice Brennan observed that while Brillhart involved a declaratory judgment action where federal jurisdiction is "discretionary," Calvert involved a claim under the 1934 Act, an area where federal courts have nondiscretionary and exclusive jurisdiction. 64 Id. at 671-72 (Brennan, J., dissenting).
Nevertheless, five Justices joined the plurality in *Calvert* and established the principle that the mere likelihood of duplicative litigation is sufficient to allow a federal court to relinquish its jurisdiction. This proposition is in direct conflict with the *Colorado River* doctrine, which prohibits federal court abstention unless there exists limited, "exceptional circumstances." As a result, and in accord with *Calvert*, many lower courts have deemed the mere possibility that trial of a federal action might lead to duplicative litigation, sufficient reason to stay or to dismiss federal suits before them.

In an attempt to clarify the conflicting holdings of *Colorado River* and *Calvert*, the Supreme Court once again revisited the "fourth branch of abstention" in *Moses Cone Memorial Hospital v. Mercury Construction Corp.* In *Moses*, the Court held that the *Colorado River* "exceptional circumstances"

Moreover, the dissent argued that the congressional policy favoring exclusive federal jurisdiction evinces an express policy against a state court determination of these federal matters. *Id.* at 673 (Brennan, J., dissenting). Further, the dissent argued that the case should be prohibited from state adjudication without first finding a federal determination of preclusion. *Id.* at 674-76 (Brennan, J., dissenting); see also Note, *The Collateral Estoppel Effect of Prior State Court Findings in Cases Within Exclusive Federal Jurisdiction*, 91 Harv. L. Rev. 1281, 1287 (1978) (discussing dangers of giving preclusive effect to such state court findings).

53. *Calvert*, 437 U.S. at 663-64. It is important to note two things in the *Calvert* decision: (1) the district court merely stayed the federal action, thereby preserving the right to pursue the federal claim rather than its outright dismissal and (2) the fact that the appeal arose from an issuance of a writ of mandamus, an action that requires a more rigorous standard for reversal then the already narrow review of discretionary acts. *Id.* at 666-67.

Some commentators argue that these two factors significantly contributed to the outcome of the *Calvert*. Sonenshein, *supra* note 2, at 671. This argument is based upon the fact that a stay is easier to justify than an outright dismissal, because the action is not eroded, but only put on hold. *Id.* at 670-71. Moreover, the fact that the appeal arose from a denial of a writ of mandamus imposes a stricter standard for the court of appeals to reverse, rather than the deferential abuse of discretion standard. *Id.* at 671. Justice Rehnquist even recognized that had this case arisen on appeal from the trial judge's stay order, the Court may have reversed on the ground that the judge had abused his discretion. *Id.*


55. *See Sonenshein, supra* note 2, at 681 n.149. Federal cases decided after *Calvert* which ordered abstention simply on the basis of duplicative litigation include: Klingenberg v. Bobbin Publications, Inc., 530 F. Supp. 173 (D.D.C. 1982) (holding fact that similar claims and parties were litigating in state and federal court justifies abstention on part of district court); American Motorists Ins. Co. v. Philip Carey Corp., 482 F. Supp 711 (S.D.N.Y. 1980) (same). *But see* Western Auto Supply Co. v. Anderson, 610 F.2d 1126, 1127 (3d Cir. 1979) (rejecting notion that *Calvert* had expanded trial judge's discretion).

56. 460 U.S. 1 (1983). In *Moses*, a North Carolina hospital entered into a contract with an Alabama contractor for the construction of certain additions to its facility. *Id.* Under the terms of the contract, contractual disputes were to be referred to a supervising architect. *Id.* Disputes resolved by the arbitrator or those which were not resolved within a specified period of time could be submitted to binding arbitration in accord with the clause in the agreement. *Id.*
test, and not the Brillhart discretionary approach, should apply to a district
court's decision to stay an action brought under the United States Arbitra-
tion Act in favor of state proceedings.\textsuperscript{57} In so holding, the Court distin-
guished the Calvert plurality and rejected the argument that Calvert had
substantively changed the law.\textsuperscript{58} Applying the factors of the Colorado River
test, the Moses Court affirmed the circuit court's conclusion that the dis-
trict court had abused its discretion in staying the federal action.\textsuperscript{59} More-
over, in reaffirming the Colorado River test, the Moses Court added two

During construction, the contractor submitted claims to the architect for pay-
ment of extra costs occasioned by the delays caused by the hospital. \textit{Id.} The claims
were not resolved, and the hospital refused to pay them. \textit{Id.} Thereafter, the hospi-
tal filed an action in a North Carolina state court and sought a declaratory judg-
ment. \textit{Id.} The hospital argued that a right to arbitration did not exist, that the
hospital did not owe anything and that if it were liable to the contractor, the archi-
tect would be its indemnitor. \textit{Id.} The contractor subsequently filed an action in the
United States District Court for the Middle District of North Carolina based on
diversity of citizenship. \textit{Id.} He sought an order to compel arbitration under § 4 of the
U.S. Arbitration Act. \textit{Id.} In response to the hospital’s motion, the district
court stayed the federal action pending the outcome of the state court suit because
both lawsuits involved the issue of whether arbitration was appropriate. \textit{Id.} The
Fourth Circuit reversed and directed the trial court to enter an order to arbitrate.
\textit{Id.} at 1-2. The hospital appealed and the Supreme Court, per Justice Brennan,
affirmed. \textit{Id.} at 29.

\textsuperscript{57} \textit{Id.} at 13-19. Throughout the opinion, the Court underscored the idea
that abstention is the exception and not the rule. \textit{Id.} at 14. Justice Brennan ar-
gued this proposition by referring to Colorado River, when he stated:
Abstention from the exercise of federal jurisdiction is the exception, not
the rule. “The doctrine of abstention, under which a District Court may
decide to exercise or postpone the exercise of its jurisdiction, is an ex-
traordinary and narrow exception to the duty of a District Court to adju-
dicate a controversy properly before it. Abdication of the obligation to
declare cases can be justified under this doctrine only in the \textit{exceptional}
circumstances where the order to the parties to repair to the State court
would clearly serve an important countervailing interest.” \textit{Id.} (quoting Colorado River, 424 U.S. at 813) (emphasis added). Accordingly, the
Court repeated its basic mantra that under Colorado River “[o]nly the clearest of
justifications will warrant dismissal.” \textit{Id.} at 16 (quoting Colorado River, 424 U.S. at
818-19).

\textsuperscript{58} \textit{Id.} at 16-19. The Court stated at the outset that Calvert had not under-
mined Colorado River and further noted that Justice Rehnquist’s view had only com-
manded four votes, while five Justices reaffirmed Colorado River’s “exceptional
circumstances” test. \textit{Id.} at 16-17. For a further discussion of the Calvert opinion,
see supra, notes 47-55 and accompanying text.

In rejecting the Calvert approach, the Court also noted that Calvert turned on
a higher standard for reversal of a mandamus action. Colorado River, 424 U.S. at 18.
In an interesting sidenote, Justice Brennan conceded that a decision to abstain is
within the trial court’s discretion, but must be guided and limited by the Colorado
River standards. \textit{Id.} at 19. Justice Brennan further stated that such decisions are
reviewable according to these standards and that discretion is abused when these
standards are not met. \textit{Id.}

\textsuperscript{59} Colorado River, 424 U.S. at 19. Before turning to the merits, the Court
noted initially that:
As [the prior cases] make clear, the decision whether to dismiss a federal
action because of parallel state-court litigation does not rest on a mechani-
cal checklist, but on a careful balancing of the important factors as they
additional factors to the "exceptional circumstances" test: (1) the determination of which forum's substantive law governs the merits of the litigation and (2) the adequacy of the state forum to protect the parties' rights. Accordingly, the Court re-emphasized the doctrine that a federal court has a "[virtual] unflagging obligation" to exercise the jurisdiction given to them. As a result of its decision in Moses, the Court directed district courts to proceed with abstention in favor of parallel state proceedings in the absence of exceptional circumstances.

apply in a given case, with the balance heavily weighted in favor of the exercise of jurisdiction. When applied, however, the Court found that none of the Colorado River factors were present. Both sides conceded that neither trial court had assumed jurisdiction over a res or particular property, and that no contention was made that the federal court was a less convenient forum. Further, the Court determined that the avoidance of piecemeal litigation was not an issue. This resulted because the terms of the Arbitration Act actually encouraged piecemeal litigation and must be enforced notwithstanding the presence of other parties to the underlying dispute. Thus, it promotes separate trials if arbitration is determined.

With respect to the priority of filing, the Court made clear that comparison of the filing dates was unimportant. Instead, the Court held that priority of the matter should be viewed in light of the realities of the case (i.e., how much progress has been made in the court) and not in terms of who files first. Therefore, no "exceptional circumstances" existed to warrant the district court's dismissal as proper.

In Calvert, five Justices (four dissenters and Blackmun's concurrence) supported the additional factor, which considers the controlling substantive law. As a result, the Court found that the present case involved federal issues governed by the Federal Arbitration Act and should be permitted to be heard in federal court. In other words, the court concluded that federal question cases should be treated differently than diversity jurisdiction cases.

The sixth factor introduced by the Court, expressed concerns about the inadequacy of state-court proceedings to protect a party's rights. Thus, these additional factors further narrow the possibility that a district court may dismiss a case in favor of a similar state claim. See Sonenshein, supra note 2, at 693 (party seeking abstention under narrow Colorado River test bears an "exceedingly heavy burden"); Young, supra note 27, at 873 (noting that present Colorado River abstention would only be appropriate in situations of "truly unusual" facts).

It is interesting to note that after having their plurality opinion rejected by the majority, the dissenters in Moses confined their argument to a discussion of appealability. Additionally, the dissenters did not agree with nor sought to limit the majority's view of the correct application of Colorado River.
a much more narrow and restrictive manner than the practice sanctioned by Calvert and Brillhart.\footnote{Some argue that Moses essentially overruled Calvert and, as a result, put to rest whatever authority Calvert provided for the position that mere duplicativeness of federal-state litigation is sufficient to allow for abstention. Sonenshein, supra note 2, at 689. Sonenshein argues that after a rather checkered history, the Moses Court restricted the use of abstention in favor of parallel state proceedings to the point of extinction. Id. at 698. Sonenshein further notes that the only exception would be in instances of federal declaratory judgment actions, where the assertion of jurisdiction has always been discretionary. Id.}

Given the conflicting holdings in Calvert and Moses, circuits have been divided over which standard governs a district court's decision to stay or dismiss a declaratory judgment action in favor of parallel state proceedings.\footnote{Several circuits have applied the discretionary standard articulated in Brillhart and Calvert when faced with a federal declaratory judgment action and equal state proceedings. See, e.g., Wilton v. Seven Falls Co., 41 F.3d 934, 935 (5th Cir. 1994) (holding Brillhart discretionary standard is applicable in declaratory judgment actions), aff'd, 115 S. Ct. 2137 (1995); Travelers Ins. Co. v. Louisiana Farm Bureau Fed'n, Inc., 996 F.2d 774, 778 n.12 (5th Cir. 1993) (holding "exceptional circumstances" test of Colorado River and Moses is inapplicable in declaratory judgment actions); Mitcheson v. Harris, 955 F.2d 235, 237-38 (4th Cir. 1992) (same); Continental Casualty Co. v. Robsac Indus., 947 F.2d 1367 (9th Cir. 1991) (holding district courts should generally decline to exercise jurisdiction over suits brought under Federal Declaratory Judgment Act presenting only state law issues during pendency of parallel state proceedings); Torch, Inc. v. LeBlanc, 947 F.2d 193, 194 (5th Cir. 1991) (same); Terra Nova Ins. Co. v. 900 Bar, Inc., 887 F.2d 1215 (3d Cir. 1989) (holding Brillhart standard governing standard in declaratory judgment actions); see also Chamberlain v. Allstate Ins. Co., 931 F.2d 1361, 1366 (9th Cir. 1991) (recognizing "special status" of declaratory relief suits and holding that Colorado River test does not apply in such instances).

Others, however, have applied the narrow exceptional circumstances test developed in Colorado River, and expanded in Moses. See, e.g., Employers Ins. of Wausau v. Missouri Elec. Works, Inc., 29 F.3d 1372, 1374 n.3 (8th Cir. 1994) (holding pursuant to Colorado River and Moses, district courts may not stay or dismiss a declaratory judgment action absent "exceptional circumstances"); Lumbermens Mut. Casualty Co. v. Connecticut Bank & Trust Co., 806 F.2d 411, 413 (2d Cir. 1986) (same).

Still others have tried to fashion some form of "middle ground" between the two positions. See, e.g., Fuller Co. v. Ramon I. Gil, Inc., 782 F.2d 306, 308-11 (1st Cir. 1986) (holding federal courts may properly decline to exercise jurisdiction over declaratory judgment action under some circumstances if state court has already expended considerable resources in pursuit of adjudicating parties' state law claims). But see Cardinal Chem. Co. v. Morton Int'l, Inc., 508 U.S. 83, 95 n.17 (1993) (noting that declaratory judgment actions afford district courts some discretion in deciding whether or not to exercise that jurisdiction).}

In contrast, the Court's more recent decisions in Colorado River and Moses espoused the principle that the federal courts have an "obliga-
tion" to fully exercise the jurisdiction conferred upon them—a rule which only bends in limited exceptions.65

Recently, however, the Supreme Court resolved this conflict in Wilton v. Seven Falls Co., 66 holding that the Brillhart discretionary standard governs a district court's decision to stay a federal declaratory judgment action during the pendency of parallel state court proceedings.67 In Wilton, the Court upheld a district court's decision to stay a federal declaratory judgment action in favor of state proceedings.68 In so holding, the Court adopted the Brillhart standard, relying significantly on the discretionary features of the Declaratory Judgment Act itself.69 The Court held that these "distinct features" of the Act "justify a standard vesting district courts with greater discretion in declaratory judgment actions than that permitted under the 'exceptional circumstances' test."70 Thus, the Wilton Court

65. For a further discussion of the Court's view of federal court jurisdiction in Colorado River, see supra notes 41-46 and accompanying text. For a further discussion of the Moses holding, see supra notes 56-62 and accompanying text.


67. Id. In Wilton, a dispute arose between the Hill Group and other parties over the ownership and operation of oil and gas properties in Winkler County, Texas. Id. at 2139. The Hill Group asked London Underwriters to provide it with coverage under several insurance policies in the event that it was sued. Id. But London Underwriters refused to defend or indemnify the Hill Group in any action. Id. Following a three-week trial in state court, a jury verdict in excess of $100 million was entered against the Hill Group. Id. Thereafter, London Underwriters filed an action under the Declaratory Judgment Act (28 U.S.C. § 2201(a) (Supp. V 1988)) in federal court, seeking a declaration by the court that the policies did not cover the Hill Group's liability. Id. This action was voluntarily dismissed, but was later refiled when the Hill Group sued London on the insurance policies in state court. Id. The Hill Group then moved to dismiss or, in the alternative, to stay London's declaratory judgment action. Id. The district court then stayed the action after determining that piecemeal litigation would result if the federal action continued. Id. The United States Court of Appeals for the Fifth Circuit affirmed, noting that "[a] district court has broad discretion to grant (or decline to grant) declaratory judgment." Wilton, 41 F.3d at 935 (citing LeBlanc, 947 F.2d at 194).

68. Wilton, 115 S. Ct. at 2142-43.

69. Id. The Federal Declaratory Judgment Act states in pertinent part: In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201(a) (Supp. V 1988) (emphasis added). The Court, per Justice O'Connor, held that because of this language, the Declaratory Judgment Act has always been understood to confer unique and substantial discretion to courts in deciding whether to exercise jurisdiction. Wilton, 115 S. Ct. at 2142. In fact, the inclusion of "may" has always distinguished the declaratory judgment from other areas of the law in which discretion surfaces. Id.; see also Shapiro, supra note 1, at 550 n.24 (noting statute's textual commitment to judicial discretion and flexibility).

70. Wilton, 115 S. Ct. at 2142. In dismissing the notion that the Moses and Colorado River decisions have undermined Brillhart when declaratory judgments are involved, the Court pointed to the fact that none of those cases dealt with declara-
found that the Declaratory Judgement Act was of a nonobligatory nature and encouraged district courts at the outset to exercise their jurisdiction with broad discretion.\footnote{Wilton, 115 S. Ct. at 2143.}

In \textit{Wilton}, the Court determined that such broad discretion to exercise jurisdiction should "yield[ ] to considerations of practicality and wise judicial administration."\footnote{Wilton, 115 S. Ct. at 2143.} Given the facts of the case and the nature of the Declaratory Judgment Act, the Court agreed with the district court that the Brillhart discretion standard should apply when deciding to grant or decline jurisdiction over a declaratory judgment action.\footnote{Wilton, 115 S. Ct. at 2143.} As a result, the \textit{Wilton} Court concluded that the stay was proper given the circumstances outlined above and may only be reviewed under an abuse of discretion standard.\footnote{Wilton, 115 S. Ct. at 2144.}

Further, and relying on precedent that distinguishes declaratory judgment proceedings from others, the Court stated that "[w]e have repeatedly characterized the Declaratory Judgment Act as 'an enabling Act, which confers a discretion on the courts rather than an absolute right upon the litigant.'"\footnote{Id. at 2143 (quoting Cardinal Chem. Co., v. Morton Int'l, Inc., 508 U.S. 83, 95 n.17 (1993); Green v. Mansour, 474 U.S. 64, 72 (1985)).} Thus, the propriety of declaratory relief will depend on the case itself and judicial discretion hardened by experience.\footnote{Id. at 2142-44.}

71. \textit{Id.} at 2143. In doing so, the Court agreed with Professor Borchard, who observed that "[t]here is . . . nothing automatic or obligatory about the assumption of 'jurisdiction' by a federal court" to hear a declaratory judgment action.\footnote{Id. at 2143 (citing Edwin Borchard, \textit{Discretion to Refuse Jurisdiction of Actions for Declaratory Judgments}, 26 MINN. L. REV. 677, 678 (1942) (noting that obligatory jurisdiction has been qualified in certain cases)).} Upon this observance, the Court further argued that "[b]y the Declaratory Judgment Act, Congress sought to place a remedial arrow in the district court's quiver; it created an opportunity, rather than a duty, to grant a new form of relief to qualifying litigants."\footnote{Wilton, 115 S. Ct. at 2143.}

72. \textit{Wilton}, 115 S. Ct. at 2143. Such considerations of judicial administration include judicial economy and the avoidance of piecemeal litigation, as well as forum shopping.\footnote{Id. The Court determined that these factors existed in \textit{Wilton}, with the avoidance of piecemeal and duplicative litigation being of primary concern.\footnote{Id. at 2144.}} Here, because both federal and state claims pertained to the same issues of state insurance law, it was evident that the federal and state actions involved the same issues and warranted a stay.\footnote{Id.}

73. \textit{Id.} at 2144.

74. \textit{Id.} at 2143-44. In addition to the Court's holding, two important points come across from the Court's decision: (1) a stay rather than a dismissal may be the appropriate action in such instances and (2) the district court's decision may be reviewed only for abuse of discretion and not de novo.\footnote{Id. In favoring a stay rather than a dismissal, the \textit{Wilton} Court noted that where the basis for declining to proceed is the pendency of a state action, a stay will often be the preferable course.\footnote{Id. at 2145 n.2.}} This, the Court felt, assures that the federal action can proceed without risk of a time bar if the state case, for any reason, fails to resolve the matter.\footnote{Id.}

In favoring an abuse of discretion review over a de novo review, the Court stated, "[w]e believe it more consistent with the statute to vest district courts with discretion in the first instance, because facts bearing on the usefulness of the declaratory judgment remedy, and the fitness of the case for resolution, are peculiarly within their grasp."\footnote{Id. at 2144; see First Options of Chicago, Inc. v. Kaplan, 115 S. Ct. 1920, 1926 (1995) (reviewing attitude towards district court decision should depend upon institutional advantages of trial and appellate courts); Miller...}
Although the Wilton Court adopted the broad Brilihart doctrine in instances of declaratory judgment proceedings, it did not reject the Colorado River "exceptional circumstances" test for other instances. In fact, the Court noted that it was not attempting to extend such broad discretion to "other cases" where federal court abstention (and the Colorado River test) may be appropriate. The Court did, however, attempt to eliminate the confusion surrounding which standard should apply when a declaratory judgment action is brought in federal court while parallel state proceedings are underway. The Wilton Court did so by relying on the discretionary nature of the Federal Declaratory Judgment Act itself, as well as adopting the Brilihart Court's reasoning that federal jurisdiction is not absolute. No federal court, including the Third Circuit, however, has directly addressed the issue of which discretionary standard should apply when deciding to exercise jurisdiction over a federal statutory interpleader action in the wake of parallel state proceedings.


75. Wilton, 115 S. Ct. at 2144.
76. Id. The Court stated, "w[e] do not attempt at this time to delineate the outer boundaries of that discretion in other cases, for example, cases raising issues of federal law or cases in which there are no parallel state proceedings." Id. (emphasis added).
77. Id. For a discussion of the confusion surrounding the standard for staying or dismissing a federal declaratory action in favor parallel state proceedings, see supra note 63-65 and accompanying text.
78. Wilton, 115 S. Ct. at 2144. Thus, the Court limited its holding to the conclusion that the district court acted within its bounds by staying the declaratory action where parallel state proceedings, of the same issues, were underway in state court. Id.
79. NYLife Distributors, Inc. v. Adherence Group, Inc., 72 F.3d 371, 379 (3d Cir. 1995) ("Our review has not produced . . . any cases which analyze the scope of a district court's discretion under 28 U.S.C. § 1335 (1993) to defer to state proceedings in light of the Supreme Court decisions we have discussed."). cert. denied, 116 S. Ct. 1826 (1996). The Ninth Circuit, however, faced the question of whether to affirm the stay of federal litigation pending the resolution of concurrent state interpleader action. New Alaska Dev. Corp. v. Lawyers Title Ins. Agency, Inc., 942 F.2d 792 (9th Cir. 1991) (unpublished decision). In this unpublished decision, the Ninth Circuit observed the Supreme Court's past decisions and held that there were certain circumstances in which a federal court may stay its proceedings in favor of a pending concurrent state proceeding for reasons of wise judicial economy. Id. (citing Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 818 (1976)). Further, the court determined that such a decision would be evaluated for an abuse of discretion under the various factors enumerated in Colorado River and Moses. Id. (citing Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 8-10 (1983); Colorado River, 424 U.S. at 818). Finding that it would defeat the purpose of the interpleader action to allow it to be litigated in both forums, and determining that the parties' rights could be adequately protected in the state suit, the court held that the decision to stay was not an abuse of discretion. Id. The court, however, did not expressly take the position that the Colorado River test was the correct standard. The Ninth Circuit merely found that the state court could adequately adjudicate the parallel claim. Id. Moreover, the
III. THE THIRD CIRCUIT'S VIEW OF ABSTENTION IN FAVOR OF PARALLEL STATE PROCEEDINGS

The United States Court of Appeals for the Third Circuit has continually advocated the use of the various doctrines of abstention, while simultaneously stressing the general rule that federal courts have an "obligation" to exercise the jurisdiction given them. Moreover, the Third Circuit has upheld the principle of abstention for the purpose of promoting wise judicial administration and the efficient disposition of justice, but only in "exceptional circumstances." In any event, the Third Circuit has afforded district courts greater discretion to abstain from federal declaratory judgment actions in order to promote judicial efficiency.

Ninth Circuit decided not to publish its opinion, a decision which prevents practitioners from using it for any precedential value in the Ninth Circuit. Id. (citing Ninth Cir. R. 36-3 (1991) (stating that dispositions other than opinions designated for publication are not precedential and should not be cited except when relevant under the doctrines of law of the case, res judicata or collateral estoppel)).

80. See, e.g., Gwynedd Properties, Inc. v. Lower Gwynedd Twp., 970 F.2d 1195, 1199 (3d Cir. 1992) (noting that although obligation to adjudicate claims properly brought within federal court's jurisdiction is "virtually unflagging," abstention is appropriate in few carefully defined situations as articulated by Supreme Court); Chez Séz III Corp. v. Township of Union, 945 F.2d 628, 631-34 (3d Cir. 1991) (affirming application of Pullman abstention as exception to general rule that jurisdiction is obligatory if properly brought); Hughes v. Lipscher, 906 F.2d 961, 964 (3d Cir. 1990) (stating that while federal courts are generally bound to adjudicate cases within their jurisdiction, Pullman abstention is appropriate in order to promote comity between state and federal courts); Schall v. Joyce, 885 F.2d 101, 107 (3d Cir. 1989) (noting general rule, but holding that abstention under Younger appropriate if circumstances permit); Kentucky W. Va. Gas Co. v. Pennsylvania Pub. Util. Comm'n, 791 F.2d 1111, 1116-18 (3d Cir. 1986) (stating that while four abstentions doctrines have validity, they did not apply to circumstances present); Georgevich v. Strauss, 772 F.2d 1078, 1079 (3d Cir. 1985) (holding Pullman abstention appropriate only under "special circumstances").

81. See, e.g., Marcus v. Twp. of Abington, 38 F.3d 1367, 1371-72 (3d Cir. 1994) (recognizing Colorado River abstention in "exceptional circumstances" for § 1983 action); Trent v. Dial Med. of Fla., Inc., 33 F.3d 217, 224-25 (3d Cir. 1994) (finding appropriate setting existed for application of Colorado River abstention where cases raised nearly identical allegations and issues regarding parties' allegations and defendants were essentially identical, although not exactly the same); Kentucky W. Va. Gas Co., 791 F.2d at 1118 (recognizing Colorado River abstention in "exceptional circumstances" and not applicable to case at hand). Thus, the court embraces the Colorado River abstention doctrine requiring "exceptional circumstances" to abate for reasons of judicial economy. For a further discussion of the Colorado River doctrine, see supra notes 41-46 and accompanying text.

82. Although the Supreme Court's decision in Wilton v. Seven Falls Co., would essentially make this point moot, the Third Circuit has continually espoused the doctrine that greater discretion should be given to district courts when deciding to abstain from a federal declaratory judgment in the wake of parallel state proceedings. See Kiewit E. Co. v. L & R Constr. Co., 44 F.3d 1194, 1198 n.3 (3d Cir. 1995) (holding Federal Declaratory Judgment Act permits "significantly greater" discretion to district courts to exercise jurisdiction than traditional abstention principles); United States v. Commonwealth of Pa., Dep't of Envtl. Resources, 923 F.2d 1071, 1074 (3d Cir. 1991) (same); Terra Nova Ins. Co. v. 900 Bar, Inc., 887 F.2d
Circuit opines that greater jurisdiction is appropriate because the declaratory judgment is traditionally discretionary. As a result, it is apparent that the Third Circuit, while emphasizing the general obligatory rule to exercise jurisdiction, will also consider the nature of the action to determine whether greater discretion to abstain is appropriate.

Two recent cases, as well as the Third Circuit's tendency to grant district courts greater discretion to decline the exercise of jurisdiction in favor of parallel state proceedings, illustrate this proposition. First, in *Terra Nova Insurance Co. v. 900 Bar, Inc.*, the Third Circuit affirmed a district court's stay of a federal declaratory judgment action in favor of concurrent state proceedings. In *Terra Nova*, an insurance company sought a declaratory judgment on its duty to defend and indemnify an insured in a pending state action. The court, per Judge Hutchinson, initially noted that the Declaratory Judgment Act is not an independent

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1213, 1223 (3d Cir. 1989) ("We believe that [the decisions in] Colorado River and Moses H. Cone do not limit the traditional discretion of district courts to decide whether to hear declaratory judgment cases."); Lac D'Amiante du Quebec, Ltd. v. American Home Ins. Co., 864 F.2d 1033, 1042 n.11 (3d Cir. 1988) (holding federal courts have discretion to decline to grant declaratory relief irrespective of merits of controversy before them); Travelers Ins. Co. v. Davis, 490 F.2d 536, 537 (3d Cir. 1974) (holding Federal Declaratory Judgment Act by its very nature makes jurisdiction discretionary); see also *Wilton*, 115 S. Ct. at 2142 (holding Federal Declaratory Judgment Act by its very nature, language, purpose and history is discretionary in its application). For a further discussion of the *Brillhart* discretionary standard and the greater discretion it grants district courts when deciding to abstain in favor of parallel state proceedings, see *supra* notes 35-40 and accompanying text.

83. *See* 10A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2759 (2d ed. 1983) (explaining that federal courts have great discretion in deciding whether to entertain declaratory judgment suit).

84. *See* *Terra Nova*, 887 F.2d at 1222 (holding act itself gives greater discretion to district courts to decide whether to exercise jurisdiction for declaratory judgments).

85. *See* Trent v. Dial Med. of Fla., Inc., 33 F.3d 217 (3d Cir. 1994) (holding *Colorado River* type abstention permissible when federal and state actions "substantially identical"); *Terra Nova*, 887 F.2d at 1213 (holding abstention appropriate when considering discretionary nature of Declaratory Judgment Act). For a further discussion of these cases, see *infra* notes 86-105 and accompanying text.

86. 887 F.2d 1213 (3d Cir. 1989).

87. *Id.* at 1217.

88. *Id.* *Terra Nova* involved insurance claims evolving out of gunshot wounds sustained by two individuals in the 900 Bar. *Id.* The plaintiffs commenced negligence and intentional infliction of serious bodily harm actions in state court against the defendant who was represented by its insurer, Terra Nova. *Id.* At the same time, however, Terra Nova filed a declaratory judgment action in district court seeking a ruling on its policy obligations to the 900 Bar owner. *Id.* The district court, however, granted 900 Bar's motion to stay the action pending disposition of the underlying tort suits. *Id.* The district court agreed with 900 Bar that the declaratory judgment action comprised the same issues as the ongoing state action, and it cited three factors impelling its exercise of jurisdiction: (1) the general policy of restraint when the same issues of state law are pending in state suit; (2) the inherent conflict of interest between Terra Nova's duty to defend the state action on 900 Bar's behalf and its efforts to prove the factual basis for the assault and battery policy exclusion; and (3) the avoidance of duplicative litigation. *Id.*
basis of federal jurisdiction and is subject to the discretion of the district court. 89 Under this principle, the Terra Nova court found that the “exceptional circumstances” test, enumerated in Colorado River and modified in Moses, did not limit the traditional discretion of district courts when deciding to hear declaratory judgment actions. 90 Instead, the court opted for the Brillhart discretionary approach. 91 Included among the factors considered by the court were the avoidance of duplicative litigation and the general policy of restraint when similar issues are pending in state court. 92 Thus, the Terra Nova court outlined an exception to the “exceptional circumstances” test based upon the discretionary nature of the declaratory judgment act itself, and as a result, narrowed federal court jurisdiction in the Third Circuit. 93

Similarly, in Trent v. Dial Medical of Florida, Inc., 94 the Third Circuit implicitly narrowed federal court jurisdiction by holding that although the “exceptional circumstances” test was applicable, abstention was proper regardless of whether the causes of action and defendants involved were not completely “identical.” 95 In Trent, a district court decided to abstain from hearing a class action medical malpractice suit after a third party inter-
vened because the third party's action was pending in state court.96 The Trent court began its analysis with the observation that a Colorado River type abstention is rare because cases which are not truly duplicative do not invite Colorado River deference.97 The court found that truly duplicative and parallel cases that justify abstention under Colorado River exist only when they involve the same parties and actions.98 Accordingly, when a federal case involves parties and claims that are distinct from those at issue in state court, the cases are not parallel and do not justify abstention under Colorado River.99 Although the Trent court determined that the parties and claims in the present actions were not identical, the court deemed them to be "substantially identical" enough to be parallel.100 Thus, the Trent court determined that an appropriate setting was present for a Colorado River type abstention.101

96. Id. at 220. In Trent, Trent filed a class action in district court against Dial Medical of Florida, Inc. ("Dial Medical"). Id. at 219. The complaint alleged negligence on the part of Dial Medical which resulted in aluminum poisoning for those who received dialysis treatment from Dial Medical. Id. In September 1992, Trent filed a motion for class certification for 53 patients who tested positive for high levels of aluminum after the dialysis treatment. Id. Shortly thereafter, Snead, who had filed a similar class action against the Dialysis Center and its two medical directors, moved to intervene in Trent's lawsuit against Dial Medical. Id. Snead sought to represent a class comprised of all patients injured by the allegedly defective dialysis treatment. Id. In November 1992, the district court granted Snead's motion to intervene, denied Trent's motion for class certification and decided to abstain from hearing the case in light of the pending Snead case in state court. Id. at 220. Trent appealed from the motion to dismiss. Id.

97. Id. at 223. The court found that abstention under Colorado River was rare for two reasons: (1) generally the pendency of a state court action will not bar federal litigation of the same issues; and (2) federal courts have a "virtually unflagging obligation" to exercise the jurisdiction given them. Id. (citing Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976)).

98. Id. (citing LaDuke v. Burlington N. R.R. Co., 879 F.2d 1556, 1559 (7th Cir. 1989) (stating case was truly duplicative because both federal and state actions involved exactly same claims)); see also Moses H. Cone Mem'l Hosp. v. Mercury Constr. Co., 460 U.S. 1, 7 (1983) (holding state and federal claims involved same claims and parties even though defendants in federal cases appeared as plaintiffs in state cases); Colorado River, 424 U.S. at 805-06 (same).

99. Trent, 33 F.3d at 224. See, e.g., University of Md. at Baltimore v. Peat Marwick Main & Co., 923 F.2d 265, 268-69 (3d Cir. 1991) (reversing district court decision to abstain because parties and claims in two cases differed; insurance company party in state court but not federal court; class of policy holders differed in each case; state claims alleged fewer legal bases than federal claims); Complaint of Bankers Trust Co. v. Chatterjee, 636 F.2d 37, 40 (3d Cir. 1980) ("It is important . . . that only truly duplicative proceedings be avoided. When the claims, parties, or requested relief differ, deference may not be appropriate.").

100. Trent, 33 F.3d at 224-25. The court found that the two actions raised "nearly" identical allegations and issues and that the defendants were "essentially" identical. Id. at 224 n.6. Thus, the court agreed with the district court that the two cases were "effectively" the same. Id. at 224. In addition, because Trent did not opt out of the duty and breach actions, he could recover in the Snead action if the case prevailed. Id. at 224-25.

101. Id. at 225. Again this result occurred after a finding that the federal and state actions were not identical, but "substantially identical." Id. at 224.
Terra Nova and Trent demonstrate the Third Circuit's efforts to grant greater discretion to district courts when deciding to abstain from the exercise of jurisdiction in light of concurrent state proceedings.\(^{102}\) Terra Nova conferred broader discretion upon district courts to decline jurisdiction when faced with a procedural device, that by its very nature, has been historically viewed as discretionary.\(^{103}\) Trent lowered the threshold for determining parallel proceedings for abstention purposes, from those proceedings that are "identical," to proceedings that are "substantially identical."\(^{104}\) Therefore, both Terra Nova and Trent illustrate the Third Circuit's desire to broaden the scope of discretion for district courts to decline jurisdiction when faced with parallel state proceedings.\(^{105}\) These earlier decisions set the stage for the court's opinion in NYLife v. Adherence Group, Inc., which extended this broad discretion to actions brought pursuant to the Federal Statutory Interpleader Act.\(^{106}\)

IV. NYLife and Its Implications in the Third Circuit

A. NYLife's Facts and Judge Mansmann's Analysis

In NYLife v. Adherence Group, Inc.,\(^ {107}\) the Third Circuit held that the broad discretionary standard enunciated in Brillhart, and not the Colorado River "exceptional circumstances" test, governed a district court's decision to decline to exercise jurisdiction over actions brought pursuant to the Federal Interpleader Act.\(^ {108}\) This decision expanded the use of the broad Brillhart standard to interpleader actions.\(^ {109}\) Prior to NYLife, the Brillhart standard had been viewed as applicable only to actions brought under the Federal Declaratory Judgment Act.\(^ {110}\) Thus, by looking to the nature of

\(^{102}\) For a further discussion of the Terra Nova decision, see supra notes 86-93 and accompanying text. For a further discussion of the Trent decision, see supra notes 94-101 and accompanying text.

\(^{103}\) See Terra Nova Ins. Co. v. 900 Bar, Inc., 887 F.2d 1213, 1222-24 (3d Cir. 1989) (holding broad Brillhart standard appropriate, rather than Colorado River "exceptional circumstances" test, when district courts are faced with declaratory judgment action and parallel state proceedings).

\(^{104}\) Trent, 33 F.3d at 224.


\(^{106}\) For a full discussion of the NYLife decision and its implications in the Third Circuit, see infra notes 107-61 and accompanying text.


\(^{108}\) Id. at 372.

\(^{109}\) For a further discussion of the Brillhart discretionary standard, see supra notes 34-40 and accompanying text.

\(^{110}\) See Wilton, 115 S. Ct. at 2142-43 (holding that Brillhart standard applies to actions brought under Federal Declaratory Judgment Act because of its textual commitment to discretion and historical view as discretionary). This decision basically reaffirmed the longstanding opinion that federal courts have a "virtually unflagging obligation" to exercise jurisdiction over cases properly brought before them, but created a distinction based on the nature of the Act itself. Id. There-
the Federal Interpleader Act itself, the Third Circuit adopted the broad **Brillhart** standard for district courts when deciding to dismiss such actions in favor of parallel state proceedings.\(^{111}\)

In **NYLife**, the administrator of a mutual fund, NYLife Distributors, Inc. ("NYLife") filed a federal complaint in interpleader against an employer, The Adherence Group ("TAG"), and several of its former employees, asserting that it was subject to conflicting demands for monies that it was holding open for employees in a compensation plan.\(^{112}\) While the case was still pending, TAG commenced an action in state court against certain former employees, alleging that they wrongfully appropriated monies deposited in the mutual fund.\(^{113}\) The district court then issued an order granting NYLife's motion for judgment in interpleader and dismissed NYLife from the case in federal court.\(^{114}\) Thereafter, TAG filed a motion seeking dismissal of cross-claims asserted against it by its former employees and a transfer or retention of disputed funds for state determination of entitlement.\(^{115}\) The district court dismissed the cross-claims against the employer, and believing that all federal claims had been eliminated, terminated the action pending the outcome of the state litiga-

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\(^{111}\) **NYLife**, 72 F.3d at 379-82.

\(^{112}\) Id. at 372-73. The action was filed against The Adherence Group ("TAG") and several of its top employees, including its former president and executive vice president. **Id.** at 373. NYLife Distributors, Inc. ("NYLife") intended to deposit the funds with the court and let TAG and its former employees fight over their respective rights in the funds. **Id.** The funds totaled $215,489.50. **Id.**

\(^{113}\) **Id.** The complaint was dated March 23, 1994, and was filed in the Superior Court of New Jersey, Middlesex County. **Id.**

\(^{114}\) **Id.** The federal interpleader statute is a remedial device which enables a person holding property or money to compel two or more persons asserting mutually exclusive rights to the fund to join and litigate their respective claims in one action. **Id.** at 374 (citing 3A JAMES MOORE ET AL., MOORE'S FEDERAL PRACTICE § 22.02[1] (2d ed. 1994)). The statute's benefits are that the stakeholder is not subject to multiple liability and may be removed from the action. **Id.** In addition, interpleader gives the prevailing claimant ready access to the disputed fund. **Id.**

\(^{115}\) **Id.** The cross-claims were brought against TAG by two former employees under New Jersey law in their answer to the interpleader complaint for breach of contract. **Id.** at 373.
The former employees appealed, and the Third Circuit vacated and remanded. The Third Circuit, per Judge Mansmann, began its discussion with an examination of the interpleader statute itself. Judge Mansmann explained that interpleader is a remedial device which enables a person holding property or money to compel two or more persons asserting mutually exclusive rights to the fund, to join and litigate their respective claims in one action. Judge Mansmann outlined that the benefits of the device were substantial to both stakeholders and the interpleader claimants because it facilitates the litigation while avoiding the prospect of multiple liability. Judge Mansmann then explained that the interpleader statute in Title 28 grants original jurisdiction to district courts in interpleader actions upon compliance with certain requirements, including diversity of citizenship of one or more of the claimants and a minimum fund amount. While there are certain requirements that must be met for original jurisdiction to exist, there are other Title 28 sections that facilitate the process. These provisions include providing nationwide service of process. The district court assumed that its prior order to grant interpleader action dismissed all claims, including the cross-claims brought by the former employees against TAG in the federal action. Thus, because the parties had nothing more to litigate in the federal court that was not being litigated in the state court, the district court dismissed the federal action in favor of the state proceedings. This decision adhered to the general practice that a district court does not have to exercise supplemental jurisdiction over a claim if a "district court has dismissed all claims over which it had original jurisdiction." 116

116. Id. at 374. The district court assumed that its prior order to grant interpleader action dismissed all claims, including the cross-claims brought by the former employees against TAG in the federal action. Id. Thus, because the parties had nothing more to litigate in the federal court that was not being litigated in the state court, the district court dismissed the federal action in favor of the state proceedings. Id. This decision adhered to the general practice that a district court does not have to exercise supplemental jurisdiction over a claim if a "district court has dismissed all claims over which it had original jurisdiction." See 28 U.S.C. § 1367(c)(3) (1994).

117. NYLife, 72 F.3d at 371. The Third Circuit's holdings are summarized as follows: (1) the district court's conclusion that all federal claims had been dismissed by virtue of its order dismissing cross-claims was in error, and its decision to terminate case in favor of pending state action on such a basis was erroneous; (2) the broad discretionary standard set forth in Brillhart, rather than the more narrow "exceptional circumstances" test for abstention enunciated in Colorado River, applies to district court's decision to dismiss interpleader action commenced under federal statute, in favor of parallel state court proceedings; and (3) the case would be remanded to permit the district court to exercise its discretion to determine whether interpleader action should be dismissed during the pendency of parallel state proceedings. Id.

118. Id. at 374.


120. NYLife, 72 F.3d at 374 (citing 3A MOORE ET AL., supra note 114, § 22.02[1]). For a further discussion of the benefits of the interpleader action, see supra note 18.

121. 28 U.S.C. § 1335(a). The minimal monetary fund of $500 is to be deposited with the court. Id. § 1335(a)(1).

122. See id. § 1397 ("Any civil action of interpleader or in the nature of interpleader under section 1335 . . . may be brought in the judicial district in which one or more of the claimants reside.").
and choice of federal forum based on residence of any of the claimants.\textsuperscript{123} A typical action commenced under 28 U.S.C. \textsection{} 1335 involves two steps: (1) the district court determines whether the requirements of the Act have been met so that the stakeholder may be removed from liability; and (2) the district court adjudicates the claims to the interplead fund, entering judgment in favor of the claimant who is lawfully entitled to the stake.\textsuperscript{124} While the first step had been completed in \textit{NYLife}, the Third Circuit concluded that the district court erred in dismissing the claims based on its mistaken belief that all claims of original jurisdiction had been adjudicated.\textsuperscript{125} Regardless of its determination that the district court erred, the Third Circuit turned its analysis to the legal principles implicated by TAG's motion to dismiss the federal action in favor of the state court proceedings.\textsuperscript{126}

In \textit{NYLife}, Judge Mansmann began her discussion of the proper discretionary standard to dismiss a federal interpleader action in favor of parallel state proceedings by reviewing the relevant precedent.\textsuperscript{127} Two views emerged from this analysis: (1) the \textit{Wilton} view that a broad standard exists

\begin{itemize}
  \item 123. Section 2361 reads in pertinent part:
    \begin{quote}
    In any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States court affecting the property . . . involved in the interpleader action until further order of the court. Such process and order shall be returnable . . . and shall be addressed to and served by the United States marshals for the respective districts where the claimants reside or may be found.
    \end{quote}

  \item 124. \textit{NYLife}, 72 F.3d at 375; \textit{see also} New York Life Ins. Co. v. Connecticut Dev. Auth., 700 F.2d 91, 95 (2d Cir. 1983) (outlining two-step process of interpleader action); \textit{7 WRIGHT ET AL., supra note 83, \textsection{} 1714 (same)}.

  \item 125. \textit{NYLife}, 72 F.3d at 375. The district court's error lay in its belief that all claims brought before it could be adjudicated in state court because the cross-claims between the former employee and TAG were not pending in state court. \textit{Id.} at 374. Therefore, because all claims over which it had original jurisdiction had not been eliminated, the district court erred when it dismissed the federal adjudication in favor of state proceedings. \textit{Id.} at 375.

  \item 126. \textit{Id.}

  \item 127. \textit{Id.} at 376-79. It was also observed from the outset that none of the three traditional doctrines of abstention were relevant to the facts of the case. \textit{Id.} at 376. For a further discussion of the three traditional abstention doctrines, see \textit{supra, notes 26-30 and accompanying text}. Notwithstanding, Judge Mansmann outlined that while the Supreme Court has continually recognized the principal of the "unflagging obligation" of federal courts to exercise jurisdiction, it has also recognized that there are circumstances which would favor abstention. \textit{NYLife}, 72 F.3d at 377. One area that may favor federal court dismissal is when there are concerns of avoiding duplicative litigation and promoting efficient judicial administration. \textit{Id.}
for district courts to dismiss federal declaratory judgment actions in favor of parallel state proceedings; and (2) the view under Colorado River and Moses, that for all other types of actions only "exceptional circumstances" of wise judicial administration would justify the dismissal of a properly brought action.\textsuperscript{128}

In light of this precedent, Judge Mansmann turned to a subject which had not been precisely addressed before, namely the question of what discretionary standard should apply to district courts under § 1335.\textsuperscript{129} As a result, the question became whether the Colorado River "exceptional circumstances" test or the Brillhart broad discretionary test should apply to the dismissal of interpleader actions for reasons of efficient judicial administration.\textsuperscript{130}

In holding that the Brillhart standard was controlling, the Third Circuit looked to the history of the interpleader action, finding that, much like the declaratory judgment, it has been traditionally viewed as a suit in equity.\textsuperscript{131} In NYLife, the Third Circuit determined that, by its nature, such an equitable device requires broad discretion in its use.\textsuperscript{132} Therefore, because the interpleader statute has traditionally been viewed as equitable,
the NYLife court concluded that one must look at the language and history of the Act to determine whether Congress intended to alter its equitable nature. In doing so, the NYLife court noted that "[o]f course Congress may intervene and guide or control the exercise of the court's discretion, but we do not lightly assume that Congress has intended to depart from established principles [of equitable discretion]."

Judge Mansmann determined that the language of the Federal Statutory Interpleader Act did not demonstrate conclusive congressional intent to make its jurisdiction mandatory. In fact, § 1335(b) of the statute provides that an action under § 1335(a) "may be entertained" even when the claims are independent to one another. Thus, the NYLife court opined that such language does not confer mandatory jurisdiction on the federal courts for such actions. Additionally, § 2361 states that "[the] district court shall hear and determine the case . . . and make all appropriate orders to enforce its judgment." The court in NYLife, however, concluded that because there were no other clues to elucidate the meaning of "shall" in any of the other relevant sections, § 2361 should be seen as a source of authority for the district court, not a command for jurisdiction.

(holding appeals in equity to federal courts are relegated to sound discretion of such court).

133. NYLife, 72 F.3d at 380-81 (citing Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982)). In Weinberger, the Court considered whether, under the Federal Water Pollution Control Act, district courts must enjoin violations of the Act, or whether they retain the broad discretion that equity jurisdiction provides them in deciding issues of injunctive relief. Weinberger, 456 U.S. at 306. To decide such an issue the Court looked to the structure of the Act itself, along with its purpose and legislative history. Id. at 314-19. Ultimately, the Court found nothing in the Act evincing a congressional intent to deny courts their traditional equitable discretion in deciding matters of equitable relief. Id. at 319.

134. NYLife, 72 F.3d at 380 (quoting Weinberger, 456 U.S. at 313).

135. Id. at 381. For the full text of the Federal Statutory Interpleader Act, see supra note 18 and accompanying text.

136. NYLife, 72 F.3d at 380 (quoting 28 U.S.C. § 1335(b) (1993)).

137. Id.

138. Id. (quoting 28 U.S.C. § 2361). For the full text of § 2361, see supra note 123.

139. NYLife, 72 F.3d at 380 (emphasis added). The court further argued that it does not seem likely that at the same time Congress gave the courts great powers in conferring jurisdiction (i.e., nationwide service of process or injunctive relief), it intended to narrow the equitable power of district courts. Id. Thus, the court interpreted § 1335 and § 2361 to favor preserving the federal court's discretion. Id. at 381 n.10. The reason for such a determination is that Congress typically uses such language when granting jurisdiction in district courts and when doing so does not necessarily command jurisdiction. Id. See, e.g., 28 U.S.C. § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.") (emphasis added); Id. § 1332(a) ("The district courts shall have original jurisdiction of all civil action where the matter in controversy exceeds the sum or value of $50,000 . . . and is between—(1) citizens of different States . . .") (emphasis added).
Looking to the purpose of the interpleader statute, the NYLife court concluded that the statute is remedial and that it exists to assist a party who fears multiple claims against their property when one proceeding would be sufficient. The court concluded that by expanding interpleader to include more litigants, Congress merely intended to resolve more disputes rather than impose a duty on district courts to hear such cases.

Finally, in turning to Wilton, the court recognized that the decision to entertain an interpleader action, like the declaratory judgment action, is one that should be left to the district courts. As a result, the Third Circuit determined that district courts should consider all relevant factors pertaining to judicial economy when deciding which forum can better manage the action. Thus, in light of the language, purpose and history of the interpleader act, the Third Circuit held in NYLife that the Brillhart discretionary standard governs a district court's decision to dismiss an interpleader claim during pending parallel state proceedings.

140. NYLife, 72 F.3d at 381-82 (citing State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523, 533 (1967)). The court also pointed to the trend, which has developed over the years, to increase the availability of the interpleader device. In doing so, the court traced its history from being burdened by technical restraints, to its “loosening up” to allow more actions.

141. Id. The first interpleader bill was limited to insurance companies but has since expanded to include “any person, firm, corporation, association, or society.” Id. (quoting Act of Jan. 20, 1936, ch. 13, § 1, 49 Stat. 1096 (1936) (current version at 28 U.S.C. § 1335)). Moreover, Congress has greatly broadened the provision to include a wide purview of obligations and competing claims. 28 U.S.C. § 1335. Additionally, in looking at the legislative history of the statute, the NYLife court determined that while it does not give any guidance to the question at hand, it also does not evince an intent to alter the traditional equity practice of the interpleader action. NYLife, 72 F.3d at 382.

142. NYLife, 72 F.3d at 382. Such a decision should be the district court’s in the first instance because “facts bearing on the usefulness of the . . . remedy, and the fitness of the case for resolution, are particularly within their grasp.” Id. (quoting Wilton v. Seven Falls Co., 115 S. Ct. 2137, 2144 (1995)). Thus, the case should be remanded to the district court to determine whether the action is indeed “parallel,” because the basis for deference is the avoidance of duplicative litigation. Id.

143. Id. at 382-83 (citing Brillhart v. Excess Ins. Co., 316 U.S. 491, 495 (1942)). Such considerations should include: which forum will protect the stakeholder more effectively while providing the claimants with more efficient, convenient and expeditious litigation; avoidance of forum shopping or gamesmanship; and any other considerations the district court feels relevant. Id. at 383.

144. Id. at 382. Again, it is important to note that the NYLife court, as in Wilton, stressed the preference of a stay over an outright dismissal. Id. at 383. The reason for this is that it ensures that the federal case may be available, without risk of time bar, if the state action fails to resolve the controversy. Id. (citing Wilton, 115 S. Ct. at 2143 n.2).

It is also important to note Judge Roth’s dissent. In her dissent, Judge Roth argued that Wilton had limited Brillhart to declaratory judgment actions and that “exceptional circumstances” need to exist in order for a district court to decline
B. Impact of the NYLife Holding in the Third Circuit.

By expanding the scope of a district court's broad discretion to stay or dismiss an interpleader action when concurrent state proceedings exist, the Third Circuit effectively narrowed the general rule that federal courts have a "[virtual] unflagging obligation . . . to exercise the jurisdiction given them." Therefore, in order for a district court to properly abstain from hearing a case for reasons of judicial economy, there must be "exceptional circumstances" to warrant such an abstention. In Wilton, however, the Supreme Court has recognized an exception to the "exceptional circumstances" test in declaratory judgment actions because of the Act's traditionally discretionary nature. In such circumstances, a district court would be governed by the broad discretionary standard enunciated in Brillhart when deciding whether to exercise jurisdiction over a declaratory judgment action. The Wilton Court, however, did not express an intent to expand this broad standard to other procedural devices and jurisdiction in all other actions. Id. at 383-84 (Roth, J., dissenting). Judge Roth believed that the majority misinterpreted Wilton, because in her opinion, Wilton restricted the application of the Brillhart standard to actions brought under the Federal Declaratory Judgment Act. Id. (Roth, J., dissenting) (citing Wilton, 115 S. Ct. at 2142). Moreover, beyond the declaratory judgment context, and in the absence of express language granting jurisdictional discretion, federal courts have a "virtual unflagging obligation . . . to exercise [the] jurisdiction given them." Id. (Roth, J., dissenting) (citing Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817-18 (1976)). Judge Roth pointed out that Wilton acknowledged that any suggestion that Brillhart might have application beyond declaratory judgments was rejected in Moses. Id. (Roth, J., dissenting) (citing Wilton, 115 S. Ct. at 2142 (citing Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1 (1983))). The language, if anything, evinces an intention for jurisdiction because "shall," by its nature, is not discretionary, but mandatory. Id. at 384 (Roth, J., dissenting). Also, Judge Roth argued that some consideration should have been given to the fact that the federal action was underway. Id. (Roth, J., dissenting).

Judge Roth felt, therefore, that a dismissal "seem[ed] all the more like an unjust abdication of the court's duty to exercise jurisdiction granted." Id. (Roth, J., dissenting). Thus, because the case was not a declaratory judgment action, only "exceptional circumstances" would permit a district court to decline jurisdiction in favor of parallel state proceedings. Id. at 383-85 (Roth, J., dissenting).


146. Id. at 817-18. For a further discussion of the Colorado River "exceptional circumstances" test, see supra notes 44-46 and accompanying text.

147. See Wilton, 115 S. Ct. at 2142-43 (explaining that broad standard governs district court's decision to decline to exercise jurisdiction over declaratory judgment actions in favor of parallel state proceedings); see also Terra Nova Ins. Co. v. 900 Bar, Inc., 887 F.2d 1213, 1222-23 (3d Cir. 1989) (noting that nature of declaratory judgment action confers broad discretion on district courts when deciding whether to entertain jurisdiction or to abstain in light of concurrent state proceedings). For a further discussion of the Wilton decision, see supra notes 66-78 and accompanying text. For a further discussion of Terra Nova, see supra notes 86-93 and accompanying text.

148. Wilton, 115 S. Ct. at 2143; see Brillhart, 316 U.S. at 495 (listing factors district court may consider in determining to dismiss action for state litigation). For a further discussion of the Brillhart decision and the factors to consider when deciding to dismiss, see supra notes 37-39 and accompanying text.
seems to imply that it is limited to the "uniqueness" of the declaratory judgment action. 149

In NYLife, the Third Circuit determined that the federal statutory interpleader action, like the federal declaratory judgment, was discretionary in nature and scope. 150 As a result, the court held that a broad discretionary standard was appropriate for district courts when deciding to stay or dismiss a federal action in favor of a parallel state action. 151 The underlying reasons for such a holding were the efficient administration of judicial resources and the avoidance of duplicative litigation. 152 These devices, however, have inherent differences which lead to a genuine question about whether the interpleader action is "unique" enough to confer greater jurisdictional discretion to district courts.

In § 1335 of the Federal Statutory Interpleader Act, Congress declared that federal courts "shall" exercise discretion over actions of this type when the appropriate requirements are met. 153 In contrast, the Declaratory Judgment Act provides that federal courts "may" exercise discretion when the proper procedural requirements are met. 154 The differences between the Federal Statutory Interpleader and the Declaratory Judgment Act are therefore obvious—while "shall" creates a duty to hear a properly brought case, "may" is expressly discretionary. 155 Thus, a larger window of opportunity to exercise broad discretion in the context of the declaratory judgment seems to exist as a result of the "may" language. The "exceptional circumstances" test, however, seems more appli-

149. Wilton, 115 S. Ct. at 2144. The Court stated, "[w]e do not attempt at this time to delineate the outer boundaries of... discretion in other cases, for example, cases raising issues of federal law or cases in which there are no parallel state proceedings." Id. (emphasis added).


151. NYLife, 72 F.3d at 382.

152. Id. at 376 (citing Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 818 (1976)). Abstention for reasons of comprehensive disposition of cases and the promotion of judicial economy is known as the Colorado River abstention doctrine. Id.

153. 28 U.S.C. § 1335(a) (1994) ("The district courts shall have original juris-diction of any civil action of interpleader or in the nature of interpleader... ") (emphasis added).

154. See 28 U.S.C. § 2201(a) (stating federal courts "may declare the rights and other legal relations of any interested party seeking such declaration") (emphasis added).

155. It is well established that such broad discretion to not exercise jurisdiction exists for declaratory judgment actions based on its language and historical perception. For a further discussion of how the language of the declaratory judgment act confers upon it a discretionary status, see supra note 69 and accompanying text.

It is also well established that the federal interpleader action is grounded in equity and serves as a remedial device. Thus, the Act by its nature is discretionary. For a further discussion of how the interpleader action has historically been viewed as an equitable device, see supra note 131 and accompanying text.
cable to the interpleader action because of the underlying duty that "shall" confers. To interpret the provisions otherwise would abridge the general proposition that "federal court abstention is the exception and not the rule." Because the Third Circuit has authorized such a standard, and because there is no other controlling authority addressing this precise issue, broad discretion is applicable and determinative in this jurisdiction. As a result, a party who properly brings an interpleader action in federal court may be denied their right to have that action decided by the federal courts and subsequently, may be subject to local prejudice.

Although on its face, the NYLife holding does not appear to be sweeping change into Third Circuit interpleader actions, it does move the circuit closer to weakening what has been the rule of federal court jurisdiction for 175 years—"We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution." Moreover, NYLife's conclusion is contrary to the general rule that "the [mere] pendency of an action in the state court is no bar to proceedings concerning the same manner in the Federal court having jurisdiction."

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156. In her NYLife dissent, Judge Roth agreed that although "shall" is used in other acts which grant original jurisdiction to district courts, the term cannot be ignored merely because its use by Congress is "typical," as suggested by the majority opinion. NYLife, 72 F.3d at 384 n.1 (Roth, J., dissenting).


158. See NYLife, 72 F.3d at 379 (stating "exceptional circumstances test is not universal and will yield where the statute" provides for greater discretion).

159. Such danger of local prejudice is a main concern of those who oppose the practice of abstention. See, e.g., McCarthy, supra note 2, at 1198 n.66 (commenting that danger of abstention is twofold: (1) to enable a plaintiff to avoid perceived prejudices of local forum; and (2) to deal with local opposition to, or disregard of, federal law) For a further discussion of the critical attacks on the practice of abstention, see supra note 9 and accompanying text.

