FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRISTOL-MYERS SQUIBB COMPANY; SANOFI-AVENTIS U.S. LLC; SANOFI US SERVICES INC., FKA Sanofi-Aventis US Inc.; SANOFI-SYNTHELABO LLC, *Plaintiffs-Appellants*, v. CLARE E. CONNORS, in her official capacity as the Attorney General of the State of Hawaii, *Defendant-Appellee*.	No. 20-15515 D.C. No. 1:20-cv-00010-JAO-RT OPINION

Appeal from the United States District Court
for the District of Hawaii
Jill Otake, District Judge, Presiding

Argued and Submitted September 14, 2020
San Francisco, California

Filed October 29, 2020

Before: Paul J. Watford, Michelle T. Friedland, and Eric D. Miller, Circuit Judges.

Opinion by Judge Miller

SUMMARY*

Younger abstention

The panel affirmed the district court's dismissal of a lawsuit brought by several pharmaceutical companies seeking an injunction against state court litigation involving Plavix, a medication introduced to the market in 1997 to help prevent heart attacks and strokes.

In 2014, the State of Hawaii filed suit in state court against the pharmaceutical companies that produce Plavix alleging the companies knew that those with a certain genetic variation, a group that includes a significant portion of Hawaii's population, experience worse clinical outcomes when taking Plavix. The State asserted that the companies had intentionally concealed that fact in violation of Hawaii's statute prohibiting unfair or deceptive acts or practices in commerce. In January 2020, the companies turned to federal court to seek an injunction against the state proceeding which, they argued, violated their First Amendment rights. The district court dismissed the suit, concluding that *Younger v. Harris*, 401 U.S. 37 (1971), required it to abstain from exercising jurisdiction.

In affirming the district court, the panel held that even though the state proceeding was being litigated by private counsel, it was still an action brought by the State in its sovereign capacity. The panel held that what matters for *Younger* abstention is whether the state proceeding falls

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

within the general class of quasi-criminal enforcement actions—not whether the proceeding satisfies specific factual criteria. Looking to the general class of cases of which this state proceeding was a member, the panel concluded that *Younger* abstention was appropriate. The State's action was brought under a statute that punishes those who engage in deceptive acts in commerce, and the State sought civil penalties and punitive damages to sanction the companies for their allegedly deceptive labeling practices.

The panel rejected the companies' argument that a more intense scrutiny was warranted because First Amendment interests were at stake. The panel further held that the companies' First Amendment concerns did not bring this case within *Younger*'s extraordinary circumstances exception, which permits federal jurisdiction where the danger of irreparable loss is both great and immediate.

COUNSEL

Anand Agneshwar (argued), Arnold & Porter Kaye Scholer LLP, New York, New York; Daniel Pariser, Robert N. Weiner, and Sally L. Pei, Arnold & Porter Kaye Scholer LLP, Washington, D.C.; Paul Alston and Louise K. Ing, Dentons US LLP, Honolulu, Hawaii; for Plaintiffs-Appellants.

T.F. Mana Moriarty (argued), Bryan C. Yee, and James C. Paige, Deputy Attorneys General; Nicholas M. McLean, Deputy Solicitor General; Lawrence L. Tong, Senior Deputy

Attorney General; Department of the Attorney General, Honolulu, Hawaii; for Defendant-Appellee.

OPINION

MILLER, Circuit Judge:

After the State of Hawaii sued several pharmaceutical companies in state court for allegedly deceptive drug marketing, the companies turned to federal court, seeking an injunction against the state-court litigation. The federal district court dismissed the suit, concluding that *Younger v. Harris*, 401 U.S. 37 (1971), required it to abstain from exercising jurisdiction. We agree with the district court that the state-court litigation is a quasi-criminal enforcement proceeding and that *Younger* bars a federal court from interfering with such a proceeding. We therefore affirm.

This case involves Plavix, a medication introduced to the market in 1997 and used to help prevent heart attacks and strokes by inhibiting the formation of blood clots. In 2008, researchers reported that some people, particularly those of Asian or Pacific Islander descent, have a genetic variation in an enzyme involved in metabolizing Plavix, which may make the drug less effective. In 2014, the State of Hawaii filed suit in state court against the pharmaceutical companies that produce Plavix—Bristol-Myers Squibb Company, Sanofi-Aventis U.S. LLC, Sanofi US Services Inc., and Sanofi-Synthelabo LLC. *See State ex rel. Louie v. Bristol-Myers Squibb Co.*, No. 14-1-0708-03 (Haw. 1st Cir. Ct. Mar. 19, 2014). The State alleged that the companies had known since 1998 that those with the genetic variation, a group that includes a significant portion of Hawaii's population, experienced worse clinical outcomes and that the companies

had intentionally concealed that fact in violation of Hawaii's statute prohibiting unfair or deceptive acts or practices in commerce. *See* Haw. Rev. Stat. § 480-2. Two private law firms conducted the initial investigation of the companies and brought the state-court action on behalf of the State on a contingency-fee basis.

In January 2020, nearly six years after the state-court litigation began, the companies turned to federal court to seek an injunction against the state proceeding, which, they argued, violated their First Amendment rights. The State moved to dismiss under *Younger*, and the district court granted the motion. We review the district court's decision to abstain under *Younger* de novo. *Gilbertson v. Albright*, 381 F.3d 965, 982 n.19 (9th Cir. 2004) (en banc).

The Supreme Court has held that, with just a few exceptions, federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given them." *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). One such exception is the abstention doctrine recognized in *Younger*, in which the Supreme Court relied on "the basic doctrine of equity jurisprudence that courts of equity should not act . . . to restrain a criminal prosecution," reinforced by considerations of comity, to hold that federal courts generally must abstain from enjoining a pending state criminal proceeding. 401 U.S. at 43–44. In later cases, that "concern for comity and federalism" led the Court to "expand the protection of *Younger* beyond state criminal prosecutions, to civil enforcement proceedings." *New Orleans Pub. Serv., Inc. v. Council of New Orleans* (*NOPSI*), 491 U.S. 350, 367–68 (1989); *see Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975).

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