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September 20, 2024

Clerk Scott S. Harris
Clerk's Office
United States Supreme Court
1 First Street, NE
Washington, DC 20543

RE: PATRICIA WEISS, *Plaintiff-Appellant* v. STATE OF NEW YORK; HONORABLE JUSTICE JAMES HUDSON; JOHN BUSIELLO, *Defendants-Appellees* CA 2 #22-2326-cv and as (EDNY #22-cv-05729)(GRB/JMW) SCOTUS # 24-

Dear Clerk Harris:

I am the Plaintiff-Appellant *pro se* in this 42 USC § 1983 case. The Attachment shows that on June 5, 2024, the Second Circuit affirmed the dismissal of the Eastern District of New York's *sua sponte* premature dismissal of the complaint, by a Docket Text. The Attachment also demonstrates that on July 9, 2024, my petition for rehearing, rehearing *en banc* (and certification to this Court under Rule 19) was denied. **Pursuant to Rule 13, by this letter I request a 60 extension of time to file a Petition for Writ of Certiorari.**

This Court has **jurisdiction** because the suit was brought under a federal statute, 42 USC 1983, the civil rights law. This Court has **jurisdiction** under SCOTUS Rule 10 (a) & (c) because it has not yet interpreted (or interpreted with any clarity) the precise federal court process for the federal judiciary's decision making in full compliance with the 42 USC §1983 statute's 1996 amendment about *obtaining a declaratory decree*, now in its text:

> "… except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable … (As amended Pub. L. 104-317, title III, Section 309(3) Oct. 19, 1996, 110 Stat. 3853.)".

The questions to be presented in the Petition are, *inter alia,* these:

1. Can a person obtain that "declaratory decree" in a federal court where a State Judge, and a State, are named defendants and the "declaratory decree" sought is one declaring a state statute or court rule to be "unconstitutional", and, if so, is the judicial analysis under the Declaratory Judgment Act, 28 USC § 2201, what Congress intended for use to determine if "declaratory relief" is "unavailable" ?

2. Does the abstention doctrine in Category 3 in *Sprint v. Jacobs*, 571 US 69 (2013) which pertains to *injunctive* relief against a State Judge (on which the 2nd Circuit based its affirmance of a *sua sponte* dismissal by a docket text entry) extend far beyond just *injunctive* relief and also preclude, as a matter of law, a federal district court's subject matter jurisdiction over all such *declaratory* relief as well ?

The **reasons** for the additional time is that I require more time for further legal research and to prepare the Petition. The issues are novel and involve some "Circuit-splits", to wit:

1. This may be the first opportunity for the Court to interpret a 1996 amendment to 42 U.S.C. § 1983 and to decide if it can be construed to permit subject matter jurisdiction for a federal district court to enter a "declaratory decree", against a State Court Judge, that declares a State court law or rule to be unconstitutional or, alternatively, whether, as the 2nd Circuit held, *Younger v. Harris*, 401 U.S. 37 (1971) abstention doctrine prohibits "declaratory decree" because *Sprint v. Jacobs*'s category # 3 ("certain orders") more broadly applies to a *declaration of unconstitutionality that a state law or state court rule* because *injunctive* relief is premature, or prohibited, against a State Judge.

There is no guiding case law from this Court. Various legal scholars have written on the topic of *declaratory decrees* and on whether the 1996 amendment to 42 U.S.C. § 1983 authorizes federal district courts to adjudicate a § 1983 case that seeks a declaratory decree against a State Judge for the purpose of decreeing that a state law or rule is constitutionally infirm. See, "When Judges Were Enjoined: Text and Tradition in the Federal Review of State Judicial Action", Alexandra Nickerson and Kellen Funk, 111 California Law Review 1763 (2023) (legislative history explains how in 1996 a divided Congress ended up codifying the holding in *Pulliam v. Allen,* 466 U.S. 522 (1984), and "sequencing its relief": Section II. C: "The amendment seemingly has the incongruous effect of codifying a right of action against a judge under Section 1983 for declaratory relief, cementing concerns about vexatious suits, judicial independence, and federalism into the future implementation of Section 1983, precisely contrary to the stated goals of *Pulliam*'s critics and parts of the Senate Report." .... "While we think that the plain meaning approach makes the most sense textually, purposely, and prudentially, the full immunity reading is not completely groundless.") Fed. R. Civ. P. 57 declaratory decrees are crucial because they can "clarify" constitutional law without *improper* "interference" with a State Judge's work. See Notre Dame Law Professor Samuel L. Bray, "The Myth of the Mild Declaratory Judgment", 63 Duke Law Journal 1091-1152 (2014).

2. This Petition is also an opportunity for this Court to review conflicting multi-factor balancing tests that federal judges utilize pursuant to Rule 57 when they contemplate the Declaratory Judgment Act, 28 USC § 2201 as a discretionary remedy, and to determine whether the Second Circuit's newest test in *Admiral Insurance Company v. Niagara Transformer Corp.*, 57 F. 4th 85 (2d Cir. 2023) is sufficiently comprehensive to effectuate the objective of the Supremacy Clause (U.S. Const. VI, cl. 2) here, where a §1983 civil rights plaintiff sought a declaratory decree finding State law unconstitutional under the Due Process Clause and the First Amendment, like *Zwickler v. Koota,* 389 U.S. 241 (1967).

Admiral surveyed a variety of balancing tests that some Circuit Courts presently utilize. Although *Admiral* identified one of the factors to be a consideration about "comity", *Admiral* did not express that the related concept of "federalism" could also be a factor to consider and how that plays into the balancing test. "Comity" can involve a competition between different states having jurisdiction, but "federalism" involves a different balance between the federal Constitution and those of a particular State. See *Idaho v. Coeur d'Alene Tribe* (1997) ("The Constitution and laws of the United States are not a body of law external to the States, acknowledged and enforced simply as matter of comity.")

When the issue concerns whether a State may reap the benefit of a civil fine imposed on a citizen (whether it the amount is $2,845.00, $10,000.00, $400,000.00+, or somewhere in between), a federal district court should welcome the opportunity to review and determine whether the State law or rule that provides for that civil fine is unconstitutional because a State case should not proceed if the underlying state law is unconstitutional, particularly where the State can gain a financial advantage by the imposition of a civil fine. See *Hamelin v. Michigan*, 501 U.S. 957, n. 9 (1991) (Scalia, J. ("[I]t makes sense to scrutinize governmental action more closely when the State stands to benefit.").

This Petition relies on the writings of various law professors because, as stated, the issues about §1983's 1996 amendment are "novel". Legal scholars suggest that the first step is for a court to look carefully at the statute or rule as early as possible, however, the method for doing so in a *federal* court, based on the text of §1983's 1996 amendment, requires clarification from this Court. Congress did not express *how* the Declaratory Judgment Act impacts the 1996 amendment. But Congress did not restrict *federal* courts from making "decrees" about a State civil law. Yet the Second Circuit held that federal courts lacked *any* subject matter jurisdiction. This is troubling for a case challenging State law and State court rules because New York has "jurisdiction stripping" procedural rules that limit what, and when, its highest court can decide *en banc*: only "*substantial*" federal constitutional issues are reviewable but that qualifier is still undefined. This State "policy" perpetuates future State decisions based on outdated, unconstitutional State law and procedures. For example, legal scholars have questioned the constitutionality of New York Executive Law § 63(12). In 11-21-2023 CLS Blue Sky Blog, Columbia Law School Professor John C. Coffee, Jr. wrote about "The Trump Civil Trial: Has Anyone Looked at the Statute?" §1983's 1996 text allows *federal jurisdiction* for those *declaratory decrees.*

The State's law or rule may be unconstitutional under a modern day federal judicial analysis due to vagueness, absence of standards, and/or other due process concerns, which affect more than me, or any single litigant. Rather, the State process involves a combination of factors that embolden States to enforce their own older laws and court rules without due regard for developing principles of constitutional law which this Court has later announced after their enactment. If federal district courts lack any *declaratory decree* framework to keep State Judges and State Attorney Generals in check at an earlier pre-judgment stage of state court civil proceedings, then 42 USC §1983's 1996 amendment, (which refers to a preexisting *declaratory decree* as a prerequisite for injunctive relief against a State Judge) would have no practical meaning. That would be contrary to Congress's design that litigants may seek to demonstrate a State Judge's "bad faith" use of a perceived inherent judicial authority by, *inter alia*, the imposition of excessive civil fines, and/or attorney fee-shifting, based upon state judicial enforcement of a state law or court rule that federal judges previously declared to be unconstitutional.

If there is judicial review in a federal court, not every State law would pass constitutional muster. That is particularly true because of the deficient unguided State legal procedures which implement such state laws. That leaves it up to State Judges to rely on some vague, unidentifiable "inherent judicial authority" that is either *unauthorized* by Congress (e.g., *Anderson v. Trump,* 601 US 100 (2024) re Colorado's federal elections), or perpetuates old law that directly conflicts with the civil rights statute that Congress *did* authorize, 42 USC §1983, such as prohibiting excessive civil fines under the 8th Amendment, which has by now been expressly incorporated into §1983 to prohibit State Judges from the imposition of certain excessive civil fines since *Timbs v. Indiana,* 586 U.S. 146 (2019).

3. Petitioner asks for the Court to correct a Second Circuit summary order that directly conflicts with *Sprint v. Jacobs* (SCOTUS Rule 10 (a)) and better explain the meaning of text that is recited in the narrow category 3 of *Sprint v. Jacobs* which excepts from a federal court's "unflagging duty" the type of state "civil proceedings involving certain orders that are uniquely in furtherance of the state court's ability to perform their judicial functions", described by 2 scenarios in only 2 cases: *Pennzoil v. Texaco*, 481 U.S. 1 (1987) and *Juidice v. Vail,* 430 U.S. 327 (1977). Neither of those unique procedural scenarios are present here. This is so because (1) I first asked the New York Appellate Division Court for a stay (as *Pennzoil* requires) but it was refused and (2) the arbitrary non-final and anticipated sanctions-type order against me for my "pure speech" (the expressive conduct of filing a "notice of pendency" [*lis pendens*] [related to seeking enforcement of a previously recorded restrictive environmental covenant, as other States allow and do not consider to be frivolous, see *Hammersley v. Dist. Ct.*, 199 Colo. 442, 610 P.2d 94 (1980)] was *not* based on any prior court order that had already directed me to take (or refrain from) a certain act nor to pay money, and I had not been found to be in "contempt of court" based on any violation of a prior order issued against me by the State court nor was I a party. There should be a litigation privilege here.

The State Judge's non-final order related to "sanctions" and it was based on a "notice of pendency" that I filed related to my clients' *equitable* rights to seek full enforcement of a previously recorded restrictive covenant, signed by the adjacent waterfront landowner. It related to State and federal environmental concerns for the protection of tidal wetlands, requiring State governmental pre-approval for the application of all chemicals to the land. In 2021, New York joined several other States in creating a "Green Amendment", i.e., a state constitutional right to clean air and water. (NY Const. Art. I, § 19). The filing of the "notice of pendency" is, in turn, a First Amendment right (Speech, Petition Clauses) to engage in "pure speech". No part of the State government, including the State Judiciary acting with delegated administrative authority, is permitted to retaliatory transgress the exercise of that state-created right under the guise of the exercise of some standardless inherent State judicial authority, the process of which remains completely untethered to federal standards of Due Process (i.e, fair adequate notice and opportunity to be heard).

At my oral argument at CA2 and in the petition for rehearing, I mentioned to the panel that there is a circuit-split with the Ninth Circuit. *Cook v. Harding*, 879 F. 3d 1035 (9th Cir. 2017) explained that *Younger* abstention in a §1983 case in deference to a California Family Court on a matter of *in vitro* fertilization and of triplet embryos was an error. *Cook* expressed a concern that expanding *Sprint*'s Category 3 to foreclosure federal courts from exercising jurisdiction in 42 USC § 1983 cases challenging unconstitutional laws would "swallow the rule" that protects the principles of federalism: "We emphasize that federal courts cannot ignore *Sprint*'s strict limitations on *Younger* abstention simply because states have an undeniable interest in family law." *Cook* correctly upholds *Sprint*'s reliance on a court's "unflagging duty" to adjudicate cases within its subject matter jurisdiction even if the State deems an area of law as an "important State interest".

A State no doubt has many interests that pertain to its own courts. But *Sprint* did not provide blanket immunity to States, State officials, and State Judges for everything they do in every situation. "The State has no right to an unconstitutional policy, coherent or otherwise." *Shuttlesworth v. City of Birmingham*, 394 US 147 (1969). (CA2 Brief at 37). New York has an interest in the professional conduct of attorneys, but "[a] statute may not advance a government interest at the expense of a fundamental constitutional right if that interest may be advanced by a less drastic abridgement. See, e.g., United *States v. Robel*, 389 U.S. 258" [1967], cited in *Abele v. Markle*, 352 F. Supp. 224 (D. Conn 1972).

New York can hold hearings that examine whether its licensed attorneys and its judges are conducting themselves properly. But those hearings must be performed as a *Sprint* category #2 (not a #3) because they are "coercive", "state-initiated" independent civil proceedings that protect a State interest. All parties must be afforded a full panoply of Due Process rights, including live cross-examination of adverse testimonial witnesses. It must be done in no less formal a manner compelled by *Hemphill v. New York*, 595 U.S. _, 142 S.Ct. 681 (2022), which considered procedures in criminal cases and relied on Justice Scalia's opinion in *Crawford v. Washington*, 641 U.S. 36 (2004), which had examined the history of criminal and civil cases back to colonial times,

allowing cross-examination. The court rule here, 22 NYCRR 130-1.1(d) states: "The form of the hearing shall depend upon the nature of the conduct and the circumstances of the case." The court rule, as written and in practice, shortchanges attorneys who file a "notice" with a county clerk about a pending civil court matter involving land use. The notion that State Judges can impose civil sanctions of *any* monetary amount for pure speech, and without the due process of cross-examination of testimonial evidence, is contrary to this Court's decisions. The New York court rule authorizing "sanctions" and "costs" of $10,000.00 per incident for "pure speech" (completely untethered to any violations of litigation-related discovery rule or frivolous *pleadings*) is untenable in the context of any civil matter involving a State's summary judgment practice and/or abbreviated judicial process where cross-examination is not expressly afforded by State law or rule and the State government is the intended recipient of a monetary award as a sanction, fine or judgment.

New York's State policy and administrative rule concerning such inherent judicial power to impose monetary sanctions on lawyers, untethered to any legislation, is contrary to the limitations placed upon such judicial power by other States. For example, in *City of Los Angeles v. Pricewaterhousecoopers, LLC,* #S277211 (8-22-24) the California Supreme Court recently affirmed its holding in *Baugess v. Paine* (1978), 22 Cal.3d 626, 634-638, that "a trial court lacked inherent authority to impose monetary sanctions in lieu of contempt sanctions in the absence of statutory authority guiding the exercise of the power" because that would be "without procedural limits and potentially subject to abuse". *Pricewaterhousecoopers* distinguished the situation when a judge is using his or her inherent judicial authority to "fill in the gaps" in the statutes *already enacted* by the State Legislature, as opposed to its own "power without procedural limits set by statutes".

Continued judicial enforcement of an unconstitutional State policy, through a State Judge's use of delegated administrative authority without any constitutionally adequate guidelines as to the "form of the hearing", is a §1983 violation, not a random act. 22 NYCRR Rule 130-1.1(d) formalized a State policy that is unconstitutional and it cannot legitimize a hearing policy about a deprivation of monetary property without guidelines. Here, 22 NYCRR 130-1.1 is State court rule that Petitioner sought to have declared unconstitutional, facially and as applied. The District Court did not follow the usual rules about rejecting *sua sponte* dismissals unless suits are demonstrably hopeless or filed by incarcerated inmates. *Brookins v. Figuccio*, 22-732-cv (2d Cir. Mar. 21, 2023).

Once a State Judge threatens use of such an inherent judicial power against an attorney or a party and has insisted that Rule 130-1.1(d) allows a judge an unbridled discretion about "the form of the hearing" in all respects, the plausibility of imminent future irreparable harm is vastly increased, unless a federal court promptly reviews that State's policy. *Gibson v. Berryhill*, 411 US 564, 573-574 (1973) recognized the right to injunctive relief against State criminal proceedings with "special circumstances suggesting bad faith, harassment, *or irreparable injury that is both serious and imminent*" (italics added).

Sprint recognized a right to injunctive relief where the State proceeding involves "a patently invalid state statute". "Patently" means "clearly". Federal judges provide clarity under 28 USC §2201. Instead of affirmance, the Circuit should have remanded the case to the Eastern District of New York so the District Judge can state (1) that the Declaratory Judgment Act is applicable here to the inquiry about the appropriateness of consideration of requests for declaratory decrees in light of 42 USC 1983's 1996 amendment, (2) that *Sprint*'s Category 3 does not categorically prohibit the §1983 plaintiff's statutory right to obtain the *declaratory decrees* of the unconstitutionality of the State law and court rules, and (3) why the Court is (or is not) exercising its judicial discretion to adjudicate a request for that relief based on the proper exercise of the Rule 57 procedure of balancing each of the relevant factors, including principles of "federalism".

All of these novel issues must be organized and addressed in a Petition. I need an extra 60 days to make that presentation in a manner worthy of this Court. I need additional time to research the existing law in other Circuits to present how the various Circuits align on their respective interpretations of the scope and extent of *Sprint*'s Category 3 and their balancing factors relied on in making the Rule 57 discretionary determinations. Because federal district judges may be reversed for an "abuse of discretion" if the correct law for the determination of a Rule 57 motion is not used, see *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990), federal district judges across the nation require more guidance from this Court and a specifically formed set of factors to balance (akin to the *Admiral* factors).

The objective of the anticipated petition for a writ of certiorari is to achieve a vacate and remand decision holding that federal district courts are authorized, and encouraged, by this Court's precedent to adjudicate a § 1983 claim about the unconstitutionality of a state law or state court rule and to issue a declaratory decree of unconstitutionality, in whole or in part, if it is warranted. That judicial decree would create the §1983 declaratory decree that serves as a condition precedent for a §1983 suit seeking future injunctive relief against a State Judge where the other elements of such claim for relief are also present. I require additional time and there are legitimate good faith reasons why a Petition is warranted, so this Court can opine on two federal statutes and try to achieve consistency amongst the Circuits. Congress used specific words when promulgating the 1996 amendment. It would be enormously helpful to many federal judges if this Court agreed with me that this case is the right vehicle to state what procedures should be employed to effect Congress's will insofar as attaining these prerequisite "declaratory decrees" and what factors make them "available" when the declaratory decree sought is one concerning the "unconstitutionality" of a State statutory law or State Court Rules.

Extra time also allows me to identify law professors and non-profit organizations wishing to file amicus briefs in support or opposition. The significance of the 1996 amendment's text is important after *Timbs* incorporated the 8th Amendment's prohibition of excessive civil fines in 2019. The separate issues of injunctive relief and declaratory relief are different forms of relief and present separate concerns. This Court has identified that distinction in past opinions. See *Zwickler v. Koota*, 389 U.S. 241 (1967).

Declaratory decrees are sometimes more easily achievable because they do not burden the federal courts with monitoring the day-to-day operations of a State agency, and in many instances, such relief will be sufficient to effectuate a change for the better. Former S.J. Quinney College of Law Professor Emily Chiang, "Reviving the Declaratory Judgment: A New Path to Structural Reform", 63 Buffalo L. Rev. 549 (2015), explained that "We stand on the cusp of a new era in public interest litigation" as "reformers and courts" prefer declaratory decrees over injunctions. Where, as here, a State Judge is exercising his or her *delegated administrative authority* insofar as considering the imposition of a monetary sanction against an attorney for "speech" presented in a public forum (the Suffolk County Clerk's Real Property Records), by using a Court Rule created by the Court Administrators rather than a statute created by the State Legislature, rather than making a decision in the civil case between the dueling parties, *Sprint*'s Category #3 does not categorically prohibit the issuance of a "declaratory decree" by a federal district court declaring that the Court Rule is unconstitutional, facially and as being applied.

After that, the declaratory decree of unconstitutionality can later be utilized as a predicate for injunctive relief against a State Judge if necessary, i.e., if there is evidence "bad faith", "harassment" or "irreparable harm" that accompanies a State Judge's enforcement of a State statute or rule identified in the declaratory decree as unconstitutional because a federal court has made it "patent", or "clear". (The federal complaint ¶32-35 identified the concerns about the State Judge's oral statements made at a recorded court conference less than a month before the federal complaint was filed, when the State Judge refused to sign subpoenas and implied Petitioner was mentally unfit to practice law due to pandemic related mental strain, thus establishing the likelihood of further future, imminent harm.)

I need extra time to explain the proper statutory interpretation of the 1996 amendment to 42 USC § 1983. That is a matter of law for this Court to consider *de novo*. This Court should opine on the correct statutory interpretation of 42 USC §1983's 1996 amendment because of its nationwide importance. I seek remand to the Circuit to reconsider its affirmance of a *sua sponte* improvident *Sprint* abstention. *Youell v. Exxon Corporation*, 74 F 3d 373, 374 (2d Cir. 1996) (reversing abstention again after remand): "*To resolve novel questions of federal law, however, is quintessentially our obligation*". Per Curiam. I am sending a copy of this letter request to the New York Attorney General, who is the only other "person" who filed anything in the Second Circuit (i.e., a letter explaining why no brief would be filed); no defendant filed anything in the District Court because the suit was *sua sponte* dismissed, immediately after service of the summons and complaint on the New York Attorney General's Office. I thank the Court for the consideration of this request for a 60 day extension of time to file the anticipated Petition for a writ of certiorari, such 60 day period to commence on the 90th day following July 9th.

Very truly yours,

Patricia Weiss *Patricia Weiss, Esq. /s/*

Patricia Weiss, Esq.

Attachment: 2

cc: New York Attorney General Letitia James (with attachment)

DECLARATION OF SERVICE

I, Patricia Weiss, state the following, pursuant to 28 USC §1746:

On September 20, 2024, I mailed a copy of this letter and the attachments, in a prepaid envelope marked USPS Priority Mail, and it was mailed from the post office in Sag Harbor, NY 11963, to:

Office of the Attorney General of the State of New York Letitia James
Attn: Managing Assistant Solicitor General Oren L. Zeve
28 Liberty Street – 16th Floor
New York, NY 10005

I, Patricia Weiss, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

September 20, 2024

Patricia Weiss
Patricia Weiss

22-2326-cv
Weiss v. State of New York, et al.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5th day of June, two thousand twenty-four.

PRESENT: JON O. NEWMAN,
SARAH A. L. MERRIAM,
Circuit Judges.
GARY S. KATZMANN,
Judge.[*]

PATRICIA WEISS,

Plaintiff-Appellant,

v. No. 22-2326-cv

STATE OF NEW YORK; HONORABLE JUSTICE JAMES HUDSON; JOHN BUSIELLO,

Defendants-Appellees.

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[*] Judge Gary S. Katzmann, of the United States Court of International Trade, sitting by designation.

FOR PLAINTIFF-APPELLANT: PATRICIA WEISS, Sag Harbor, NY.

Appeal from an order of the United States District Court for the Eastern District of New York (Brown, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the September 27, 2022, order of the District Court is **AFFIRMED.**

Plaintiff-appellant Patricia Weiss, a self-represented attorney, appeals from the September 27, 2022, order of the District Court sua sponte dismissing her complaint for lack of subject matter jurisdiction. We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision.

Acting New York Supreme Court Justice James Hudson imposed sanctions on Weiss in connection with a state court nuisance action in which Weiss represented nonparty plaintiffs against John Busiello. See Whelan v. Busiello, 195 N.Y.S.3d 87 (2d Dep't 2023). Weiss thereafter commenced this action for declaratory and injunctive relief pursuant to 42 U.S.C. §1983 against Acting Justice Hudson, Busiello, and the State of New York. Weiss's complaint asserted various civil rights violations and challenged the constitutionality of several New York State statutes and regulations governing the imposition of sanctions. Two days after Weiss filed the fee-paid complaint, the District

Court sua sponte dismissed the complaint for lack of subject matter jurisdiction based on the Rooker-Feldman and Younger abstention doctrines.[1] Weiss timely appealed.

We review de novo a district court's legal determination as to the existence of subject matter jurisdiction. See A&B Alt. Mktg. Inc. v. Int'l Quality Fruit Inc., 35 F.4th 913, 915 (2d Cir. 2022); see also Disability Rts. N.Y. v. New York, 916 F.3d 129, 133 (2d Cir. 2019) ("We review de novo the essentially legal determination of whether the requirements for abstention have been met." (citation and quotation marks omitted)). Because Weiss is an attorney, she is not entitled to the special solicitude ordinarily extended to self-represented litigants. See Tracy v. Freshwater, 623 F.3d 90, 102 (2d Cir. 2010).

We have previously recognized that a sua sponte dismissal without notice is a "bad practice in numerous contexts" and can be independent "grounds for reversal." Catzin v. Thank You & Good Luck Corp., 899 F.3d 77, 82-83 (2d Cir. 2018) (citation and quotation marks omitted); see also, e.g., Brookins v. Figuccio, No. 22-731-cv, 2023 WL 2579043, at *2 (2d Cir. Mar. 21, 2023) (summary order) (vacating no-notice sua sponte dismissal and remanding for further proceedings); Nwoye v. Obama, No. 22-1253-cv, 2023 WL 382950, at *1-2 (2d Cir. Jan. 25, 2023) (summary order) (same). Nevertheless, we have also recognized that such dismissals may be permissible where, inter alia, "it is unmistakably clear that the court lacks jurisdiction." Catzin, 899 F.3d at 82 (citation and

[1] These doctrines stem from Supreme Court decisions bearing the same names. See generally Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); D.C. Ct. of Appeals v. Feldman, 460 U.S. 462 (1983); Younger v. Harris, 401 U.S. 37 (1971).

quotation marks omitted). While permitting Weiss to respond to the defects in her complaint would have been preferable, we nonetheless conclude that vacatur is not warranted because the District Court properly abstained under Younger.[2]

The Younger abstention doctrine provides that "federal courts should generally refrain from enjoining or otherwise interfering in ongoing state proceedings." Spargo v. N.Y. State Comm'n on Jud. Conduct, 351 F.3d 65, 74 (2d Cir. 2003). Younger abstention applies to (1) state criminal prosecutions, (2) civil enforcement proceedings akin to criminal prosecutions, and (3) civil proceedings that implicate a state's interest in enforcing the orders and judgments of its courts. See Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69, 72-73 (2013).

Weiss's complaint unmistakenly falls within the third category because (1) the state proceedings remain pending, (2) those proceedings implicate an important state interest, namely, New York's interest in enforcing the orders of its courts, and (3) the complaint in this action attacks the state court's ability to impose sanctions on litigants and attorneys practicing before it, including Weiss.[3] See Disability Rts. N.Y., 916 F.3d at 133; see also Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423,

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[2] We agree with Weiss that the District Court incorrectly relied on the Rooker-Feldman doctrine in dismissing the complaint. State proceedings are insufficiently final to trigger Rooker-Feldman when, as here, an appeal before the state court remains pending. See Hunter v. McMahon, 75 F.4th 62, 70-71 (2d Cir. 2023). Nevertheless, "we may affirm on any ground supported by the record," NXIVM Corp. v. Ross Inst., 364 F.3d 471, 476 (2d Cir. 2004), and Younger abstention remains a sound basis for dismissal.

[3] Indeed, Weiss specifically sought injunctive and declaratory relief that would interfere with the resolution of the matter in state court by, for instance, barring the application of the statutes and rules under which sanctions were assessed against her.

434-35 (1982) ("The State's interest in the professional conduct of attorneys involved in the administration of criminal justice is of special importance . . . and . . . calls Younger abstention into play."); cf. Juidice v. Vail, 430 U.S. 327, 336 (1977) ("[I]nterference with the contempt process not only unduly interferes with the legitimate activities of the State, but also can readily be interpreted as reflecting negatively upon the state courts' ability to enforce constitutional principles." (citations, quotation marks, and footnote omitted)). Moreover, we see no reason why Weiss cannot raise her constitutional claims and arguments in her parallel state appeals. See Falco v. Justs. of the Matrimonial Parts of Sup. Ct. of Suffolk Cnty., 805 F.3d 425, 427 (2d Cir. 2015). Finally, Weiss has not identified "bad faith, harassment or any other unusual circumstance" that would counsel against abstaining under Younger. Diamond "D" Constr. Corp. v. McGowan, 282 F.3d 191, 198 (2d Cir. 2002).

"[W]hen Younger applies, abstention is mandatory and its application deprives the federal court of jurisdiction in the matter." Id. at 197. Accordingly, the District Court did not err in dismissing Weiss's complaint because "it is unmistakably clear that the court lack[ed] jurisdiction." Catzin, 899 F.3d at 82 (citation and quotation marks omitted); see also Weinstein v. Bogacz, 320 F. App'x 56, 57 (2d Cir. 2009) (summary order) ("Younger abstention was appropriate in light of the then-pending appeals of the various sanctions orders entered in the state court proceeding.").

* * *

We have considered Weiss's remaining arguments and find them to be without merit. Thus, for the foregoing reasons, we **AFFIRM** the September 27, 2022, order of the District Court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of July, two thousand twenty-four.

Patricia Weiss,

Plaintiff - Appellant,

v.

ORDER

Docket No: 22-2326

State of New York, Honorable Justice James Hudson, John Busiello,

Defendants - Appellees.

Appellant, Patricia Weiss, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc.*

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk