Benchmemo: Robinson v. Dahlstedt, CA 86-0325-R; Motion to be heard Tuesday, 2 September 86, at 2:00 p.m.

Attorneys: Plaintiff -- Sa'ad El-Amin
Defendant -- John L. Knight, Asst. County Atty

Judge, this comes before you on defendant's motion to dismiss, or, in the alternative, to abstain.

Facts

This case involves Henrico County's efforts to have the Robinsons bring their dwelling into compliance with the minimum and total side yard requirements of the local zoning ordinance. In 1977 the Robinsons received a building permit to construct a carport and kitchen extension to their home. During the construction County officials inspected the additions and found no violations of the zoning ordinance. But, in 1981, County officials informed the Robinsons that the improvements did indeed violate the ordinance. (Instead of the required 12 foot minimum side yard and 30 foot total side yard distances, the Robinsons' home had minimum side yards of 6.22 feet and 13.26 feet for a total side yard of 19.48 feet.) The Henrico County Board of Zoning Appeals ("BZA") subsequently denied a variance. In 1983 the Circuit Court of Henrico County also denied the Robinsons' request for a variance.

In November 1985, the defendant Robert Dahlstedt, the Planning Administrator and Director of Planning for Henrico County, filed a bill of complaint for injunctive relief against the Robinsons in Henrico County Circuit Court. In their Answer, the Robinsons made essentially the same allegations of wrongdoing

that are contained in their federal Complaint, namely, racial discrimination and deprivation of equal protection of the laws. In March 1986, the Robinsons filed a Motion for a Decree Directing Issue Out of Chancery on two affirmative defenses set out in their Answer (dt) Bill of Complaint for Injunctive Relief, i.e., on a plea of laches and on a plea that they had been discriminated against because of their race. Dahlstedt has objected to this Motion, and the matter is presently pending before the Henrico County Circuit Court.

In the action before you, Judge, the Robinsons are seeking injunctive relief, compensatory and punitive damages, and attorneys fees.

Motion to Dismiss

The Robinsons allege that the BZA denied them a variance while granting variances to similarly situated white persons. With respect to Dahlstedt himself, however, they make only two allegations. First, in para. 5 of the Complaint, they state that Dahlstedt is Henrico County Planning Administrator and Director of Planning. Second, in para. 28 of the Complaint, they acknowledge that Dahlstedt has filed a Bill of Complaint against them in state court. These allegations by themselves suggest no wrongdoing on the part of Dahlstedt or of anyone over whom Dahlstedt has responsibility.

At best, the Robinsons have alleged wrongdoing by other unnamed County officials and employees or the BZA. Dahlstedt

cannot be held liable for those acts. "Liability will only lie where it is affirmatively shown that the official charged acted personally in the deprivation of the plaintiffs' rights." Vinnedge v. Gibbs, 550 F.2d 926 (4th Cir. 1977).

The Robinsons' theory is that Dahlstedt is liable for the discriminatory conduct of the County officials or the BZA because his filing a Bill of Complaint in the state court constitutes an acquiescence in or a condonation of that conduct. They cite several cases for the proposition that supervisory officials may be held liable if they actually participate or acquiesce in the "discreet act" that deprives the plaintiffs of their civil rights. The Robinsons' argument seems to fail, however. First, there is no allegation in the Complaint that Dahlstedt is supervisory or superior to the BZA. Second, there is no allegation that Dahlstedt participated in the discreet act of discrimination, i.e., the variance process (neither the denial of the variance to the Robinsons nor the granting of variances to similarly situated whites). Third, there are no allegations that Dahlstedt knew or should have known of the alleged discreet act of discrimination on the part of the BZA. Therefore, it's hard to see how seeking an injunction against the Robinsons would constitute knowing acquiescence in the deprivation of the Robinsons' civil rights.

Accordingly, I would GRANT the defendant's motion to dismiss. If you do grant Dahlstedt's 12(b)(6) motion, there is, of course, no need to reach the motion to abstain.

Motion to Abstain

If you deny the defendant's motion to dismiss, you should GRANT his motion to abstain.

Abstention would be appropriate in this case on the basis of the admittedly narrow "parallel state proceeding" doctrine, enunciated in Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976). This doctrine, which is not actually a form of abstention but rather an independent exception to the general obligation of a federal court to exercise its jurisdiction, holds that under certain "exceptional circumstances" a federal court may stay or dismiss an action in deference to the presence of a concurrent state proceeding involving substantially identical issues, parties and requested relief. In this case, the issues, parties and requested relief are exactly identical.

Judge Warriner listed seven "factors" to be addressed in determining whether to apply the parallel state proceeding doctrine: (1) comity; (2) promotion of judicial efficiency; (3) adequacy and extent of relief available in the alternative forum; (4) identity of the parties and of the issues in both actions; (5) likelihood of prompt dispostition in the alternative forum; (6) convenience of the parties' counsel and witnesses; and (7) possible prejudice to a party as a result of the stay. Great American Insurance Co. v. Cavalier Printing Ink Co., 620 F. Supp. 1082, 1083 (E.D. Va. 1985).

Comity is a two-way street but in this case the question of racial discrimination was first presented to a State court almost a year ago (and is pending there).

With respect to judicial efficiency, pursuing actions in both state and federal courts will simply result in duplicative litigation. The evidence would be identical.

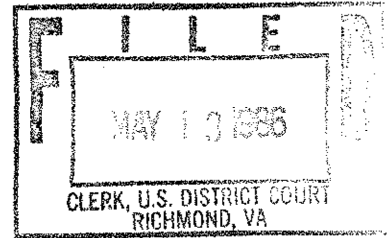
The relief available in the State forum is the same as the relief available here. The Robinsons will have a full and fair opportunity to raise their claims in the Henrico County Circuit Court. As noted, the parties and the issues are also identical.

I don't know when the State court is setting cases for, so I don't know if the difference would be significant. As far as convenience goes, I don't know where the Henrico County Courthouse is located but it's probably not too far from here, so there doesn't seem to be any difference in convenience.

Finally, the Robinsons do not say they would be prejudiced by a stay.

All things considered, this case presents circumstances exceptional enough to apply the doctrine of parallel state court proceedings. On these grounds, the motion to abstain may be granted.

LAF



IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

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JOSEPH E. SEAGRAM & SONS, INC., :

Plaintiff, :

v. : Civil Action No.

J. DAVID SHOBE, JR., J. YOUNGER COGGIN, LAURIE NAISMITH, COMMISSIONERS OF THE VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD OF THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF THE COMMONWEALTH OF VIRGINIA, : 86-0149-R

Defendants. :

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MEMORANDUM OF PLAINTIFF OF JOSEPH E. SEAGRAM & SONS, INC. IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND/OR STAY THIS ACTION ON GROUNDS OF ABSTENTION

In an apparent effort to avoid merits resolution of Seagram's constitutional claims, the defendants have now made a second motion to dismiss: this time on grounds of abstention. However, "[a]bstention from the exercise of federal jurisdiction is the exception, not the rule . . . '[It] is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it.'" Colorado River Water Conservation District v. United States, 424 U.S. 800, 813 (1976), quoting County of Allegheny v. Frank Mashuda Co., 360 U.S. 185, 188 (1959).

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Where, as here, a federal court has subject matter jurisdiction, it has a "virtually unflagging obligation" to exercise that jurisdiction. Colorado River, 424 U.S. at 817. Moreover, this "'unflagging obligation' . . . is particularly weighty when those seeking a hearing in federal court are asserting . . . their right to relief under 42 U.S.C. § 1983." Tovar v. Billmeyer, 609 F.2d 1291, 1293 (9th Cir. 1979), cert. denied, 105 S. Ct. 223 (1984).

The Supreme Court has specified only four narrow circumstances in which abstention may be appropriate.[1/] Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 13-16 (1983); Colorado River, 424 U.S. at 814-19. The defendants, in their motion, have failed to specify exactly which of these four circumstances they claim is applicable to the instant action. As shown below, however, none of these four limited circumstances are present in the instant action.

1/ As discussed below, only three of these four circumstances are actually grounds for abstention. The fourth represents an independent exception to the general obligation of a federal court to exercise its jurisdiction. See Section I infra.

I. THE PARALLEL STATE PROCEEDING DOCTRINE IS INAPPLICABLE BECAUSE THE HEUBLEIN PROCEEDING PRESENTS NEITHER AN IDENTITY OF PARTIES NOR AN IDENTITY OF ISSUES

Although the defendants appear confused as to the specific abstention doctrine on which they are relying in their motion to stay or dismiss, in their papers they emphasize the pending appeal of the decision in Heublein, Inc. v. Dep't of Alcoholic Beverage Control, et. al., Nos. 92943, 93041, 93412, slip op. (Va. Ch. Ct., January 9, 1986). See Defendants' Motion to Dismiss and/or Stay These Proceedings and to Otherwise Abstain from Exercising Jurisdiction ¶¶10-26 (hereinafter cited as "Def. Motion"). This emphasis on the Heublein appeal suggests that the defendants may be asking this Court to abstain on the basis of the narrow "parallel state proceeding" doctrine, enunciated in Colorado River, which is intended to avoid duplicative state and federal litigation. This doctrine, which is actually not a form of abstention,[2/] holds that under certain "exceptional circumstances" a federal court may stay or dismiss an action in deference to the presence

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2/ In Moses H. Cone, the Court explained that this parallel state proceeding doctrine does not rest "on considerations of state-federal comity or an avoidance of constitutional decisions," as does abstention, but on "considerations of '[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.'" 460 U.S. at 14-15 (footnote omitted). The three actual variants of the abstention doctrine are discussed in Sections II-IV infra.

of a concurrent state proceeding involving substantially identical issues, parties and requested relief. Colorado River, 424 U.S. at 817-19; Moses H. Cone, 460 U.S. at 13-28. The Supreme Court has emphasized, however, that this doctrine is applicable only in "exceptional circumstances", which "are considerably more limited than the circumstances appropriate for abstention." Colorado River, 424 U.S. at 818 (emphasis added); see also Moses H. Cone, 460 U.S. at 15. As shown below, however, the pendency of the Heublein appeal presents none of the "exceptional circumstances" necessary to justify abstention under the parallel state proceeding doctrine.

Although seven "factors" have been addressed by the courts in determining whether to apply the parallel state proceeding doctrine,[3/] the doctrine has been applied

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3/ The factors addressed by the courts include: "(1) comity, (2) promotion of judicial efficiency, (3) adequacy and extent of relief available in the alternative forum, (4) identity of the parties and of the issues in both actions, (5) likelihood of prompt disposition in the alternative forum, (6) convenience of parties' counsel and witnesses, and (7) possible prejudice to a party as a result of the stay." Great American Insurance Co. v. Cavalier Printing Ink Co., 620 F. Supp. 1082, 1083 (E.D. Va. 1985); see also Universal Gypsum of Georgia, Inc. v. American Cyanamid Co., 390 F. Supp. 824, 827 (S.D.N.Y. 1975); Nigro v. Blumberg, 373 F. Supp. 1206, 1212-13 (E.D. Pa. 1974). As the Supreme Court has emphasized, however, "the decision whether to dismiss a federal action because of parallel state-court litigation does not rest on a mechanical checklist, but on a careful balancing of the important factors as they apply in a given case, with the balance heavily weighted in favor of the exercise

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only in circumstances where the issues, the parties and the scope of relief sought in the federal and state proceedings are substantially identical or where a single res or fund of assets would become the subject of contradictory adjudications if concurrent actions were permitted to proceed in both the state and federal courts. See, e.g., Crawley v. Hamilton County Comm'rs, 744 F.2d 28, 31 (6th Cir. 1984); Illinois Bell Tel. Co. v. Illinois Commerce Comm'n, 740 F.2d 566, 569 n.4 (7th Cir. 1984); Tally Well Service, Inc. v. Mountain State Steel Foundries, Inc., 557 F. Supp. 261, 263 (N.D.W.Va. 1983); Burton v. Exxon Corp., 536 F. Supp. 617, 623-24 (S.D.N.Y. 1982); Universal Gypsum of Georgia, Inc. v. American Cyanamid Co., 390 F. Supp. 824, 826 (S.D.N.Y. 1975) ("the district court is possessed of power to stay its proceedings when there exists a simultaneously pending state court action in which the same dispute is being litigated by the same parties") (emphasis added). Cf. Brillhart v. Excess Insurance Co., 316 U.S. 491 (1942).[4/]

(Footnote Continued)

of jurisidiction." Moses H. Cone, 460 U.S. at 16 (emphasis added).

4/ In Brillhart, the Supreme Court wrote:

> "Ordinarily it would be uneconomical as well as vexatious for a federal court to proceed in a declaratory judgment suit where another suit is pending in a state court presenting the same issues, not governed by federal law, between the same parties. Gratuitous interference with the

(Footnote Continued)

Plainly, this action presents no danger of piecemeal or contradictory adjudication concerning a single res or fund of assets. Nor is there any parallel proceeding involving the same parties, issues, and scope of relief. Rather, this case presents straightforward issues of federal constitutional law involving claims peculiar to Seagram, which can, and should, be resolved in this Court.

A. The Heublein Action Involves Different Parties

1) Seagram not a party to the S proceeding.

Except in cases involving a single res or fund of assets, abstention in favor of a parallel state proceeding is appropriate only where the federal plaintiff is also a party to the state proceeding. Since Seagram is not a party to the Heublein action, the parallel state proceeding doctrine clearly has no application to this action. See, e.g., Crawley, 744 F.2d at 31; America's Best Family Showplace Corp. v. City of New York, 530 F. Supp. 607, 610 (E.D.N.Y. 1982); Tally Well Service, Inc., 557 F. Supp. at 263; Burton, 536 F. Supp. at 623. Cf. Doran v. Salem Inn, Inc., 422 U.S. 922, 930-31 (1975) (holding that abstention under Younger v. Harris, 410 U.S. 37 (1971) would be inappropriate where all of the plaintiffs were not parties

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> orderly and comprehensive disposition of a state court litigation should be avoided."

316 U.S. at 495 (emphasis added), quoted in Will v. Calvert Fire Insurance Co., 437 U.S. 655, 663-64 (1978).

to state criminal proceeding). As the district court stated in America's Best Family Showplace:

> "In a case . . . where the federal plaintiff is not involved in the state proceeding, and alleges different issues, the problem of delay would be even greater, justifying this Court in declining to abstain."

530 F. Supp. at 610 n.5. Cf. Brillhart, 316 U.S. at 495; Universal Gypsum, 390 F. Supp. at 826 (abstention in favor of state proceeding appropriate where "same issue is being litigated by same parties").

B. Seagram's Constitutional Challenge Is More Compelling Than That Presented In The Heublein Action

The courts have consistently recognized that the parallel state proceeding doctrine is also inapplicable where it is uncertain that the state court action will adjudicate all the issues presented by the plaintiff in the federal action. See, e.g., Tally Well Service, Inc., 557 F. Supp. at 263 (denying stay under Colorado River because of uncertainty that plaintiff could raise all his claims in state proceeding); Illinois Bell Tel. Co., 740 F.2d at 569 n.4; Crawley, 744 F.2d at 31; Burton, 536 F. Supp. at 623-24.

The Heublein action simply does not raise the same compelling issues as the instant action. Although both actions challenge the constitutionality of the Virginia Act on its face, this case also specifically challenges the Act's retroactive application to "at will" distribution contracts which Seagram lawfully terminated by letters

written in December 1984 -- before the Act was enacted (in March 1985) or even introduced into the state legislature (in January 1985). In contrast, the Heublein appeal involves a far less compelling constitutional challenge by a winery which terminated its pre-existing distribution contracts in July 1985 -- months after the Act had already become law. Since the Heublein appeal fails to raise (except facially) Seagram's claims relating to the Act's retroactivity provision, abstention in favor of the Heublein appeal would plainly deny Seagram a fair opportunity to have its constitutional claims heard.[5/]

The Supreme Court has emphasized that an important consideration underlying the Colorado River decision was a desire to avoid piecemeal litigation and to promote judicial economy. Colorado River, 424 U.S. at 819; Kruse v. Snowshoe Co., 715 F.2d 120, 123 (4th Cir. 1983). Since Heublein did not terminate any distributors during the Act's retroactive period, it does not have standing to raise all of the issues involved in this action (specifically whether the Act can constitutionally be applied, without notice, to terminations made before the date of enactment of the Act). Permitting

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5/ Indeed, the briefs submitted by the defendants in the Heublein action dismissed as "hypothetical" the facial claim Heublein raised in that action relating to the Act's retroactivity provision. See Virginia Wine Wholesalers Association's Amicus brief in Heublein at 44, annexed as Exhibit 5 to the defendants' "Motion to Dismiss and/or Stay These Proceeding and to Otherwise Abstain from Exercising Jurisdiction."

this action to proceed in federal court would therefore not result in duplicative litigation, but would simply ensure Seagram an adequate forum for all of its constitutional claims.

In short, inasmuch as the Heublein appeal presents neither an identity of parties nor an identity of issues, there is no basis for abstention under the parallel state proceeding doctrine.

II. PULLMAN ABSTENTION IS ALSO INAPPROPRIATE

Although the defendants appear to base their motion primarily on the "parallel state proceeding" doctrine, they cite the Supreme Court's decision in Railroad Comm'n v. Pullman, 312 U.S. 496 (1941). See Defendants' Brief in Support of Motion at 1-2 (hereinafter cited as "Def. Br.").

unsettled Qs of (S) Law.

In Pullman, the Supreme Court held that abstention may be appropriate "when difficult and unsettled questions of state law must be resolved before a substantial federal constitutional question can be decided." Hawaii Housing Authority v. Midkiff, 104 S. Ct. 2321, 2327 (1984). The case law is clear, however, that Pullman abstention is inappropriate where, as here, the issues before the district court include the facial constitutionality of a state statute. As the Supreme Court stated in Wisconsin v. Constantineau, 400 U.S. 433, 439 (1971), where "the naked question, uncomplicated by an unresolved state law, is whether that Act on its face is unconstitutional . . . the

federal court should not abstain but should proceed to decide the federal constitutional claim." Accord Hawaii Housing Authority, 104 S. Ct. at 2327; Zwickler v. Koota, 389 U.S. 241, 250-52 (1967). See also Fuller v. Hurley, 559 F. Supp. 313, 319-20 (W.D. Va. 1983).

Defendants appear to suggest that Pullman abstention is warranted because of the presence of state law issues concerning severability. See Def. Motion ¶35. However, federal courts have repeatedly decided issues of severability in actions challenging the constitutionality of state statutes, despite requests that the courts abstain on Pullman or other abstention grounds. See, e.g., Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 83-84 (1976); Spokane Arcades, Inc. v. Brockett, 631 F.2d 135, 137-39 (9th Cir. 1980), aff'd, 454 U.S. 1022 (1981); Record Revolution No. 6, Inc. v. City of Parma, 638 F.2d 916, 925-27 (6th Cir. 1980), vacated on other grounds, 451 U.S. 1013 (1981); Smith v. Paulk, 705 F.2d 1279, 1281-82, 1285 (10th Cir. 1983); Indiana Planned Parenthood Affiliated Ass'n v. Pearson, 716 F.2d 1127, 1133, 1143 (7th Cir. 1983); Cavanagh v. Brock, 577 F. Supp. 176, 180-82 & n.4 (E.D.N.C. 1983). Moreover, in this case it is clear that no decision as to severability can obviate the need to decide the principal constitutional questions.[6/]

6/ In fact, the severability issues need only be addressed

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Here, Seagram is challenging the facial (as well as the "as applied") constitutionality of certain clear and unambiguous provisions of the Virginia Wine Franchise Act. Va. Code Ann. § 4-118.21 et seq. (Repl. Vol. 1985). In particular, plaintiff challenges the Act's retroactivity provision which states that the Act will be applicable to any wine distribution agreement "in effect as of January 1, 1985, and any renewal or amendment of such agreement," Va. Code Ann. § 4-118.38 (Repl. Vol. 1985); and the provisions exempting Virginia wineries from the requirements of the Act. See Va. Code Ann. §§ 4-118.38, 4.25.1. Since, as set forth in Seagram's principal memorandum of law supporting its summary judgment motion, the challenged provisions are plainly unconstitutional, and since there are no unclear issues of construction which might remove the need to decide the federal constitutional questions, Pullman abstention obviously cannot be justified. See Educational Services, Inc. v. Maryland State Bd. for Higher Education, 710 F.2d 170 (4th Cir. 1983) ("To apply the Pullman doctrine, at a minimum it must appear that there is (1) an unclear issue of state law presented for decision (2) the resolution of which may moot or present in a different posture the federal constitutional issue such that the state law issue is 'potentially dispositive.'" (citations omitted)). Cf.

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if the challenged statutory provisions are found unconstitutional.

Hawaii Housing, 104 S. Ct. at 2327; Texaco Inc. v. Pennzoil Co., Nos. 86-7046, 86-7052, slip op. at 29-30 (2d Cir. February 20, 1986).

III. BURFORD ABSTENTION IS ALSO INAPPROPRIATE

Defendants also argue that the abstention doctrine enunciated in Burford v. Sun Oil Co., 319 U.S. 315 (1943), and Alabama Pub. Service Comm'n v. Southern R.R. Co., 341 U.S. 341 (1951) is applicable to this case. See Def. Br. at 2. Contrary to defendants' arguments, however, the Supreme Court in Burford merely held that abstention may be appropriate when a federal court decision involving difficult state law questions might significantly disrupt a complex state regulatory scheme. 319 U.S. at 323-27. See also Alabama Pub. Service Comm'n v. Southern R.R. Co., 341 U.S. 341 (1951); Zablocki v. Redhail, 434 U.S. 374, 380 n.5 (1978); Colorado River, 424 U.S. at 814-816; Knudsen Corp. v. Nevada State Dairy Commission, 676 F.2d 374, 377 (9th Cir. 1982). As the Court of Appeals for the Fourth Circuit stated in Educational Services, Inc. v. Maryland State Board for Higher Education, 710 F.2d 170, 173 (4th Cir. 1983): "The premise underlying the Burford doctrine is that the very act of review by a court other than the one purposely made familiar with the particularly complex . . . issues involved would upset a carefully crafted and integrated state system."

∃ regul. scheme.

issues could not be separated easily from complex state law issues with respect to which state courts might have special competence; and . . . that federal review might disrupt state efforts to establish a coherent policy."

The considerations which persuaded the Supreme Court to order abstention in Burford are clearly not present here. This action presents no complex state law issues that are inseparable from the federal issues and that justify application of the Burford doctrine. Knudsen Corp., 676 F.2d at 377. Indeed, the statute at issue in this action does not begin to approach in complexity the intricate legislation involved in Burford. See Moreno, 420 F. Supp. at 552. Moreover, a decision by this Court on the merits of plaintiff's complaint "will not conflict with a state regulatory scheme in the manner feared by the Court in Burford." Id.; cf. Knudsen Corp., 676 F.2d at 377. Thus, since none of factors found determinative in Burford exists here, abstention on that basis is not warranted.

AFA Distribution Co.

Defendants cite AFA Distribution Co. v. Pearl Brewing Co., 470 F.2d 1210 (4th Cir. 1973), apparently in support of the applicability of Burford abstention. See Def. Br. at 3. AFA Distribution Co. is easily distinguishable from the instant action, however. First, and most important, the Fourth Circuit in AFA Distribution Co. emphasized that abstention was warranted because the constitutional question might be avoided by a state court's interpretation of an ambiguous provision of the statute at

The case law makes clear, moreover, that the mere pendency of a state proceeding is not in itself sufficient to warrant abstention under Burford; the doctrine is intended to address solely situations where special regulatory bodies have been established by a state to address technically complicated issues vital to the state. See, e.g., Educational Services, Inc., 710 F.2d at 173. The district court in Moreno v. Univ. of Maryland, 420 F. Supp. 541 (D. Md. 1976) reviewed the extraordinary circumstances required for abstention in Burford:

> "The Burford case arose out of disputes concerning the application of a regulation of the Texas Railroad Commission establishing minimum spacing between oil wells. In Burford the Court stressed that abstention was appropriate because the Texas scheme of regulating oil and gas drilling was an extremely thorny problem involving certain 'non-legal complexities.' The Texas legislature had established a Commission to resolve these technically complicated geologic factual disputes, 'as a part of the entire conservation program with implications to the whole economy of the state.' Moreover the Texas legislature had also established a system of thorough judicial review by its own state courts which could provide as full relief as could the federal courts. By concentrating all direct review of the Commission's orders in the state district court of one county, the Texas legislature also sought to avoid the confusion of multiple review of the same general issues. Prior interference by federal courts in this regulatory scheme, the Burford Court noted, had previously caused such confusion and had created numerous problems for the Texas Governor, the Texas legislature and the Railroad Commission."

Id. at 552 (citations omitted). Similarly, in Knudson Corp. v. Nevada State Dairy Comm'n, 676 F.2d at 377, the Ninth Circuit held that two prerequisites for the proper application of Burford abstention were: "that federal

issue.[7/] 470 F.2d at 1213. In justifying the appropriateness of abstaining, the Fourth Circuit also stressed the fact that since the plaintiff was a Virginia corporation, abstention in favor of the state court was particularly appropriate. Id. Neither of these justifications apply in this case.

Much closer to the facts of this case than those in AFA Distribution Co. are those found in Vintage Imports, Ltd. v. Joseph E. Seagram & Sons, Inc., 409 F. Supp. 497 (E.D. Va. 1976), in which the district court, in a constitutional challenge to a predecessor version of the Act at issue here, distinguished AFA Distribution Co., rejected defendant's arguments in favor of abstention, 409 F. Supp. at 504-508, and held that the predecessor statute was unconstitutionally void for vagueness. Id. at 508-10.

IV. YOUNGER ABSTENTION IS INAPPROPRIATE WHERE THE STATE NEITHER INITIATED THE PROCEEDING NOR IS A PARTY THERETO

The final variant of the abstention doctrine, not specifically mentioned by defendants, was enunciated in Younger v. Harris, 410 U.S. 37 (1971). There, the Supreme Court held that, in order to avoid improperly intruding on the right of a state to enforce its laws in its own courts, a federal court should abstain from interfering in pending

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7/ The district court below had, in fact, interpreted the ambiguous provision so as to avoid reaching the constitutional question. See 470 F.2d at 1212.

state criminal prosecutions in the absence of bad faith, harassment or a patently invalid statute. Since Younger, the Supreme Court has on five occasions narrowly extended the doctrine to civil proceedings closely akin to criminal prosecutions and to a limited category of other state-initiated civil proceedings in which the state is a party and "vital" state interests are involved. See, e.g., Middlesex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423, 432 (1982); Moore v. Sims, 442 U.S. 415, 423 (1979).

Courts applying the Younger doctrine to state civil proceedings have required, inter alia: (1) that the state or its agents initiate the state proceeding, and (2) that the state or its agents be a party thereto. A state proceeding, as here, involving merely private parties in a private dispute does not raise sufficiently "important" or "vital" state interests so as to warrant Younger abstention. In Traughber v. Beauchane, 760 F.2d 673 (6th Cir. 1985), for example, the Sixth Circuit held that Younger abstention was improper because the state court action essentially involved a private tort suit between private parties. Id. at 680. In reaching this decision, the Sixth Circuit reviewed each of the six decisions in which the Supreme Court has ordered abstention under the Younger doctrine[8/] and concluded:

8/ The six cases in which the Supreme Court has held

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> "It is immediately obvious that the case at bar is vitally different from each of the cases in which the Supreme Court has permitted the extension of Younger to putatively 'civil' state proceedings. In each such case the state was a party to the underlying state judicial proceeding. In addition, each of those cases was criminal or quasi-criminal in nature or otherwise presented issues on matters essential to the operation of the state government."

Id. (citation omitted).

Similarly, in Miofsky v. Superior Court, 703 F.2d 332 (9th Cir. 1983), the Ninth Circuit, after reviewing the same Supreme Court decisions, stated:

> "In each of these cases, the state or an agent of the state was a party to the proceeding deemed insulated from federal intervention. In addition, each of these civil suits have similarities to criminal proceedings or otherwise implicated state interests vital to the operation of state government. In short, none of these cases authorizes our departure from the traditional distinction between civil and criminal proceedings

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abstention to be appropriate under the Younger doctrine all involve state-initiated proceedings, wherein the state or its agent was a party: Middlesex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423 (1982) (federal court should abstain from enjoining state bar disciplinary proceedings initiated by state's grievance committee functioning as "arm of the court"); Moore v. Sims, 442 U.S. 415 (1979) (federal court should abstain from enjoining emergency custody proceedings brought by state's Department of Human Resources); Trainor v. Hernandez, 431 U.S. 434 (1977) (federal court should abstain from enjoining civil attachment action brought by Illinois Department of Public Aid); Juidice v. Vail, 430 U.S. 327 (1977) (federal court should abstain from enjoining enforcement of state court's contempt proceeding by state judge); Huffman v. Pursue, Ltd., 420 U.S. 592 (1975) (federal court should abstain from enjoining sheriff and county prosecutor from enforcing state civil nuisance statute); Younger, 401 U.S. 37 (federal court should abstain from enjoining state criminal proceedings).

> as originally set forth in Younger. Indeed, in Middlesex, the Court carefully avoided the implication that the Younger doctrine applied indiscriminately to civil proceedings."

Id. at 337. Other courts have similarly held that Younger abstention does not apply to a state proceeding where the state is not a party, see, e.g., Cassidy v. Virginia Carolina Veneer Corp., 652 F.2d 380, 383 (4th Cir. 1981); Johnson v. Kelly, 583 F.2d 1242 (3d Cir. 1978); Texaco v. Pennzoil, slip op. at 32; Henry v. First Nat'l Bank of Clarksdale, 595 F.2d 291, 300-301 (5th Cir. 1979),[9/] or where the issues in dispute are purely private in nature. See, e.g., O'Hair v. White, 675 F.2d 680, 695 (5th Cir. 1982); Texaco v. Pennzoil, slip op. at 33; Henry v. First Nat'l Bank, 595 F.2d at 300-301.[10/]

The civil proceedings at issue in the present case are private actions for damages and equitable relief brought

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9/ Even where the state is nominally a party to the action courts have held that Younger abstention is inappropriate unless the state qua state is involved in the proceeding, since the state's interest is necessarily diminished otherwise. See, e.g., Traughber, 760 F.2d 673 (abstention inappropriate where state involved in action merely as tort party); Cate v. Oldham, 707 F.2d 1176 (11th Cir. 1983) (same).

10/ Indeed, some courts have held that abstention is improper even in cases where a state agency is directly involved in a proceeding, if the action were initiated by a private party rather than by the state, see Bally Mfg. Corp. v. Casino Control, F. Supp. 1213 (D.C.N.J. 1982); Doumani v. Casino Control, 614 F. Supp. 1465 (D.C.N.J. 1985), since the state's interest in cases initiated by private parties is necessarily weaker than in those cases initiated and actively pursued by the state.

by two terminated wine wholesalers against a winery. Although they are brought under an administrative regulation and in the context of an administrative proceeding, these actions are no different than any civil dispute between private litigants; Virginia's A.B.C. Board plays only the role of the adjudicator of the dispute following the presentation of evidence by the private parties. As the assistant attorney general representing the A.B.C. Board in this action has acknowledged:

> ". . .the ABC Board is an administrative tribunal with certain quasi-judicial authority granted pursuant to the Wine Franchise Act, and . . . it is impartial as to any dispute between Seagram and its present and/or former distributors concerning violations of said Wine Franchise Act."

Letter from Donald A. Lahy, Assistant Attorney General, Counsel for the Virginia A.B.C. Board, to John B. McCammon (March 26, 1986) (annexed hereto as Exhibit A). Thus, although the Virginia A.B.C. Board provides a forum for the resolution of these disputes, the state is clearly not a party to either action.

Where, as here, a state action consists of two private litigants merely making use of a state agency to resolve a disagreement, the policy considerations underlying Younger are plainly not applicable. Abstaining in deference to the proceedings before the A.B.C. Board might serve the personal interests of the private plaintiffs in these actions by depriving Seagram of an adequate forum to present

its constitutional claims,[11/] but it would contribute little to principles of comity or federalism, nor would it promote

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11/ That Seagram will not have an adequate opportunity to present its constitutional challenge before the A.B.C. Board presents another reason why abstention is inappropriate here. See Middlesex County Ethics Committee, 457 U.S. at 432; Younger, 401 U.S. at 45.

Nothing in the Wine Franchise Act nor in the Administrative Procedure Act authorizes the Board to consider a claim that the Act is unconstitutional as a defense to a charge of non-compliance with the Act. Indeed, at a pre-trial conference in the Heublein administrative proceeding, Mr. Zachary of the A.B.C. Board stated that "[t]his administrative hearing is not the one to bring the Constitutional issue forward, because we [the Board] do not have the authority to rule on the Constitutional issue," and he added that accordingly, "[w]e will not receive any evidence, including written briefs or arguments, about any Constitutional question." Transcript at 14, 18 (March 11, 1986) (annexed hereto as Exhibit B). Thus, there is no doubt that plaintiff will have no opportunity to present its constitutional claims before the A.B.C. Board. Cf. Fuller v. Hurley, 559 F. Supp. 313, 320 (W.D. Va. 1983).

That a state appellate court may subsequently consider the constitutionality of an administrative body's holdings, see Va. Code Ann. § 9-6.14:17, does not in itself remedy this problem. "Under Younger, the deference which is due is to [the pending proceeding], not to any future proceedings." Lewis v. Blackburn, 734 F.2d 1000, 1003 (4th Cir. 1984), rev'd on other grounds, 759 F.2d 1172 (4th Cir.) (en banc), cert. denied, 106 S. Ct. 228 (1985) (future recourse to state courts will not make nonjudicial decision-making process subject to abstention). See also Gabrilowitz v. Newman, 582 F.2d 100, 102 (1st Cir. 1978); Deck House v. New Jersey State Bd. of Architects, 531 F. Supp. 633, 643 (D.N.J. 1982); Ackerman v. State Bd. for Professional Medical Misconduct, No. 83 Civ. 7871 (S.D.N.Y. November 16, 1984) (available on Lexis). But see Simopoulos v. Virginia State Board of Medicine, 644 F.2d 321, 330 (4th Cir. 1981) (suggesting in dicta that the Younger doctrine may be applicable to certain administrative proceedings).

any significant state interest.

V. THERE IS NO REQUIREMENT THAT SEAGRAM EXHAUST ITS STATE COURT REMEDIES

Finally, the defendants suggest that abstention is warranted in this Section 1983 action, because Seagram "has not exhausted all its state remedies and seeks to completely bypass such remedies through this proceeding." Def. Motion ¶36. This is simply wrong; there is no requirement that a plaintiff exhaust its state remedies before seeking relief in federal court. The Supreme Court "has stated categorically that exhaustion [of state remedies] is not a prerequisite to an action under § 1983." Patsy v. Board of Regents, 457 U.S. 496, 500-501 (1982); Steffel v. Thompson, 415 U.S. 452, 472-73 (1974); McNeese v. Board of Education, 373 U.S. 668, 671-73 (1963).

Conclusion

For the reasons presented above, plaintiff Joseph E. Seagram & Sons, Inc. respectfully requests that defendants' motion to dismiss or stay this action on grounds of abstention be denied.

Respectfully submitted,

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