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CONSERVATION, DEVELOPMENT AND PLANNING COMMISSION
OF THE COUNTY OF NAPA

In Re: Item 10 - One True Vine LLC Use Permit Request P04-0551

SUPPLEMENTAL BRIEF IN SUPPORT OF ONE TRUE VINE LLC'S MOTION TO DISQUALIFY COMMISSIONER DAVID GRAVES

ORAL ARGUMENT REQUESTED

Date: January 18, 2006
Time: 9:15 a.m.

MOTION TO DISQUALIFY

One True Vine LLC ("One True Vine") moves the Napa County Conservation, Development and Planning Commission ("Planning Commission") for an order disqualifying Commissioner David Graves ("Graves") from participating in any manner in the hearing and disposition of the above-captioned matter.

The motion is made on the ground that Graves has an appearance of bias, in that he has a direct and substantial financial interest in the outcome, because his winery's wine competes with One True Vine's wine, and if One True Vine's Winery Use Permit is revoked then sales of One True Vine's wine will be significantly adversely affected, potentially shifting customers to Graves' wines.

The motion is based on this motion and memorandum of points and authorities, the Declaration of Jayson Woodbridge, and the Declaration of Mike Fisher.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

One True Vine owns and operates a Napa County winery. One True Vine has a Winery Use Permit, which it needs and relies on to produce wine. On December 21 2005, Defendant Napa County Conservation, Development and Planning Commission ("Planning Commission") notified One True Vine by phone that the Planning Commission would hold a hearing on January 18, 2006 (later moved to February 1, 2006) to decide whether to revoke One True Vine's Winery Use Permit. Graves, one of the members of the five-member Planning Commission, has a direct and substantial pecuniary interest in the outcome of the hearing, in that he owns a Napa County winery that makes wines that compete with wines produced by One True Vine. Although One True Vine does not claim that Graves is actually biased, Graves' ownership of his vineyard in competition with One True Vine gives the appearance of bias that violates Due Process. Because One True Vine has a Due Process right to a hearing by Planning Commissioners free from personal interest and appearance of bias in the outcome, Graves should be disqualified from the hearing and all other proceedings relating to One True Vine's Winery Use Permit, and should not discuss the matter with his colleagues, the County, or its officers, save for County counsel.

II. FACTS

A. Parties.

One True Vine is a limited liability company doing business in the County of Napa. Declaration of Jayson Woodbridge, ¶ 2 ("Woodbridge Dec"). The Planning Commission is the governing body that will determine whether to revoke One True Vine's Winery Use Permit. Woodbridge Dec, ¶ 3. Graves is a Commissioner of the Planning Commission. Woodbridge Dec, ¶ 4.

B. Background facts.

One True Vine obtained a Use Permit on July 20, 2005 that entitles One True Vine to make wine at 565 Crystal Springs Road, St. Helena, California. Woodbridge Dec, ¶ 5. One True Vine produces a number of wines and sells them at retail in California and other locations throughout the United States. Woodbridge Dec, ¶ 6. In addition to other products, One True Vine produces two

wines named "Gold." Declaration of Mike Fisher, ¶ 6. ("Fisher Dec"). One Gold is a white table wine made of grapes grown in California and bottled in the Napa Valley that contains approximately 70% Chardonnay and is sold to the public at retail for around $20 per bottle. Id. The second Gold is a white table wine made of grapes grown in Australia and bottled in the Napa Valley that contains over 50% Chardonnay and is sold to the public at retail also for around $20 per bottle. Id.

C. Graves has a personal interest in the outcome of the revocation hearing.

Graves is also the co-founder, owner, and general manager of Saintsbury Vineyard, a Napa County winery. Woodbridge Dec, ¶ 7. Saintsbury's wines are known to compete with One True Vine's wines, including a Saintsbury Chardonnay that is also sold to the public at around $20 per bottle, as advertised on Saintsbury's website. Woodbridge Dec, ¶ 7 and Exhibit A. Graves knows that his wines and his Chardonnay in particular compete in retail stores with One True Vine's offerings, including Gold. Woodbridge Dec, ¶ 7.

The wine industry is a very competitive business sector. Fisher Dec, ¶ 5. The most important completive factor is price. Id. Placement on wine lists and on retail shelves is also of considerable importance because these are the two main ways to get product in the hands of consumers. Id. Wine lists at fine restaurants such as Press in St. Helena are where customers select wines to consume with their dinner at the restaurant. Id. Retail shelves at such outlets as Dean and Deluca are where ordinary purchasers make buying decisions for wine that they plan to consume at home, give to others as gifts, or the like. Id.

Saintsbury produces a Chardonnay that is made of grapes grown in California, that is bottled in the Napa Valley, and that is sold to the public at around $20 per bottle. Id., ¶ 7. Both Saintsbury's and One True Vine's products, in other words, are similarly priced wines containing a majority of Chardonnay grapes from California and bottled in the Napa Valley. Id.

Both Saintsbury and Gold compete with each other when they are placed together on wine lists or on store shelves. Id., ¶ 8. For example, the wine list at Press in St. Helena includes both Gold and Saintsbury as white wine options labeled as Chardonnay. Id. A customer at Press who chooses to purchase Gold will of necessity not purchase the Saintsbury Chardonnay and vice versa. Id. Both

brands are also available at high end retail stores such as Dean and Deluca in St. Helena, and can be found there in close proximity on store shelves. Id.

Thus, Saintsbury's Chardonnay competes directly with One True Vine's Gold wines. Id., ¶ 9. For this reason, Saintsbury stands to benefit by the elimination of Gold as competing wines. Id. It is in Saintsbury's best financial interest to not have Gold wines competing with the Saintsbury Chardonnay. Id.

On November 16, 2005 the Planning Commission notified One True Vine that the Planning Commission will consider revoking One True Vine's Use Permit, on the grounds that One True Vine had failed to obtain a Temporary Certificate of Occupancy before occupying the physically completed winery. Woodbridge Dec, ¶ 8.

If One True Vine's Use Permit is revoked, catastrophic consequences for One True Vine will follow. Woodbridge Dec, ¶ 9. One True Vine will not be able to make wine and One True Vine's reputation will be significantly damaged. Woodbridge Dec, ¶ 9. The potential cost to One True Vine would be measured in millions of dollars. Fisher Dec, ¶ 2. This will directly affect the sales of Graves' wines including his Chardonnay, given that Graves' wines compete with One True Vine's wines, including Gold. Woodbridge Dec, ¶ 9.

III. ARGUMENT

A. The Commission should use the California APA as a model for ruling on this motion.

"In proceedings not governed by the APA that do not have a specific procedure to raise the issue of bias, the APA procedures in Govt. Code Section 11512(c) provide a useful model." California Administrative Hearing Practice, § 6.27 at 264 (CEB 2d ed. 2005). Under Section 11512(c), this Motion is necessary, proper, and timely. "If the motion is to disqualify an agency member, the agency members other than the one challenged decide the issue." Govt. Code Section 11512(c).

B. Graves has a personal financial interest in the outcome of the revocation proceedings so Due Process requires his disqualification.

"[D]ue process requires fair adjudicators in courts and administrative tribunals alike." Haas v. County of San Bernardino, 27 Cal.4th 1017, 1024, 119 Cal.Rptr.2d 341 (2002). "While the rules

governing the disqualification of administrative hearing officers are in some respects more flexible than those governing judges, the rules are not more flexible on the subject of financial interest." Id. Thus, "[w]hen due process requires a hearing, the adjudicator must be impartial." Id. at 1025. "[A] fair trial in a fair tribunal is a basic requirement of due process." Id. "Speaking of administrative hearings, and articulating the procedural requirements demanded by rudimentary due process in that setting, the [U.S. Supreme Court] has said that, of course, an impartial decision maker is essential." Id. at 1025.

"Of all the types of bias that can affect adjudication, pecuniary interest has long received the most unequivocal condemnation and the least forgiving scrutiny." Id. at 1025. "Thus, while adjudicators challenged for reasons other than financial interest have in effect been afforded a presumption of impartiality, adjudicators challenged for financial interest have not." Id. at 1025. "Indeed, the law is emphatically to the contrary." Id. at 1025. "The high court has made clear that a reviewing court is not required to decide whether in fact an adjudicator challenged for financial interest was influenced, but only whether sitting on the case would offer a possible temptation to the average judge to lead him not to hold the balance nice, clear and true." Id. at 1025 (brackets and ellipses omitted).

"It has also come to be the prevailing view that most of the law concerning disqualification because of interest applies with equal force to administrative adjudicators." Id. at 1027. "The high court has taken pains to make this clear, even while holding that due process permits, for example, the combination of investigative and adjudicative functions in administrative proceedings." Id. "[T]he adjudicator's financial interest in the outcome presents a situation in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." Id. "On this point, the court has applied the same rules to administrative hearing officers and judges alike." Id. See also Andrews v. Agricultural Labor Relations Board, 28 Cal.3d 781, 793 n.5, 171 Cal.Rptr. 590 (1981) (financial stake in the outcome is a situation "in which the probability or likelihood of the existence of actual bias is so great that disqualification of a judicial officer is required to preserve the integrity of the legal system, even without proof that the judicial officer is actually biased towards a party").

It is no matter that Commissioner Graves has only one vote. "[W]here one member of a tribunal is actually biased, or where circumstances create the appearance that one member is biased, the proceedings violate due process." Stivers v. Pierce, 71 F.3d 732, 748 (9th Cir. 1995). "The plaintiff need not demonstrate that the biased member's vote was decisive or that his views influenced those of other members." Id. "Whether actual or apparent, bias on the part of a single member of a tribunal taints the proceedings and violates due process." Id. Each member of an administrative panel must be free of financial interest to comport with Due Process.

Due process prohibits a member of an administrative body from determining whether to revoke the license of an entity which he or she competes in business. In Gibson v. Berryhill, 411 U.S. 564, 578-79 (1973) (attached as Exhibit A), for example, an organization of independent optometrists filed charges with the Alabama Board of Optometry against optometrists employed by Lee Optical Co. and other business entities, seeking to revoke their licenses, on the ground that optometrists employed by a company allegedly violated state law. The respondents in the state administrative proceedings filed a federal lawsuit under Section 1983 to enjoin the proceedings, arguing that the Board was biased because of financial interest in the outcome. A three-judge district court agreed and enjoined the proceedings, and the U.S. Supreme Court affirmed. The Board was composed solely of optometrists in private practice for their own account. The Board's aim was to revoke the licenses of all optometrists in the state who were employed by business corporations such as Lee Optical. Under these circumstances, the Supreme Court held that the district court was warranted in concluding that success in the Board's efforts would possibly redound to the personal benefit of members of the Board, in that the respondents' business may shift to the Board members'. The Supreme Court affirmed the district court's conclusion that the Board was constitutionally disqualified from hearing the charges.

Here, as in Gibson, Graves also has a personal financial interest in the outcome of the revocation hearing proceedings. Saintsbury's Chardonnay competes directly with One True Vine's Gold wines. Indeed, the wine list at Press in St. Helena includes both Gold and Saintsbury as white wine options labeled as Chardonnay, and both brands are also available at high end retail stores and are found in close proximity. Thus, Saintsbury stands to benefit by the elimination of Gold as

competing wines, and it is in Saintsbury's best financial interest to not have Gold wines competing with the Saintsbury Chardonnay.

If Graves votes to revoke One True Vine's Use Permit, One True Vine will not be able to produce and sell wine, severely damaging One True Vine. Graves' winery Saintsbury stands to profit from increased sales of Saintsbury wines that are lost to One True Vine. Under these circumstances, Graves has a direct and substantial financial interest in the outcome of the revocation hearing, raising an appearance of bias, and Due Process requires his disqualification.

IV. CONCLUSION

For the above reasons, the Commission should disqualify Commissioner Graves from participating in any part of the proceedings to determine whether to revoke One True Vine's Use Permit.

Respectfully submitted,

KIRKPATRICK & LOCKHART
NICHOLSON GRAHAM LLP

Dated: January 17, 2006 By: _____

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EXHIBIT A

Westlaw.
93 S.Ct. 1689
411 U.S. 564, 93 S.Ct. 1689, 36 L.Ed.2d 488
(Cite as: 411 U.S. 564, 93 S.Ct. 1689)

P

Supreme Court of the United States
Thomas S. GIBSON et al., Appellants,
v.
L. M. BERRYHILL et al.
No. 71--653.

Argued Jan. 9 and 10, 1973.
Decided May 7, 1973

Suit by licensed optometrists seeking injunction under the Civil Rights Act to stop hearings before the Alabama Board of Optometry on charges of unprofessional conduct within meaning of Alabama optometry statute because of their employment with a corporation. A Three-Judge District Court for the Middle District of Alabama, 331 F.Supp. 122, enjoined the board proceeding, and defendants appealed. The Supreme Court, Mr. Justice White, held that the Three-Judge Court was warranted in concluding that the board members' pecuniary interest disqualified them from passing on the issues. The Supreme Court further held that although the Three-Judge Court did not abuse its discretion in not abstaining until Alabama Supreme Court rendered decision holding that nothing in Alabama's optometry law prohibited licensed optometrist from accepting employment from a business corporation, principles of equity, comity and federalism warranted reconsideration of subject case in light of such decision.

Vacated and remanded.

Mr. Chief Justice Burger filed concurring opinion.

Mr. Justice Marshall filed concurring opinion in which Mr. Justice Brennan joined.

West Headnotes

[1] **Courts** 508(2.1)
106k508(2.1) Most Cited Cases
(Formerly 212k108, 106k262.4(7))

[1] **Civil Rights** 1456
78k1456 Most Cited Cases
(Formerly 78k262.1, 78k262, 78k13.2(1), 106k262.4(7))
Federal antiinjunction statute did not bar federal district court from issuing injunction in suit which was brought on due process grounds under the Civil Rights Act by licensed optometrists seeking to stop hearings before Alabama Board of Optometry on charges of unprofessional conduct within meaning of state optometry statute because of such optometrists' employment with a corporation. Code of Ala., Tit. 46, § § 191, 192, 203, 206, 210, 211; 28 U.S.C.A. § 2283; 42 U.S.C.A. § 1983. .

[2] **Civil Rights** 1316
78k1316 Most Cited Cases
(Formerly 78k194, 78k13.2(1), 106k262.4(7))

[2] **Injunction** 108
212k108 Most Cited Cases
(Formerly 106k262.4(7))
Normally when a state has instituted administrative proceedings against an individual who then seeks an injunction in federal court, exhaustion of administrative remedies doctrine would require court to delay action until the administrative phase of the state proceedings is terminated, at least where coverage or liability is contested and administrative expertise, discretion or factfinding is involved.

[3] **Administrative Law and Procedure** 229
15Ak229 Most Cited Cases
Requirement of exhaustion of administrative remedies does not apply generally to state "judicial," as opposed to "administrative," remedies.

[4] **Civil Rights** 1321
78k1321 Most Cited Cases
(Formerly 78k209, 78k13.9)
Where clear purport of complaint, by licensed optometrists in their action under the Civil Rights Act seeking to enjoin hearings before Alabama Board of Optometry on charges of unprofessional conduct within meaning of Alabama optometry statute because of their employment with a corporation, was that the Board of Optometry was unconstitutionally constituted and did not provide the optometrists with adequate administrative remedy requiring exhaustion, question of adequacy of administrative remedies was for all practical purposes identical with merits of optometrists' suit, and thus the optometrists were not required to have exhausted their state administrative remedies. Code of Ala., Tit. 46, § § 190-213; 42 U.S.C.A. § 1983.

[5] Courts 490
106k490 Most Cited Cases

[5] Federal Courts 49
170Bk42 Most Cited Cases
(Formerly 106k262.4(7))
Neither principles of comity nor rule of United States Supreme Court decisions on not enjoining a pending state criminal proceeding in absence of special circumstances required federal district court to dismiss optometrists' suit under the Civil Rights Act seeking to enjoin hearings before Alabama Board of Optometry on charges of unprofessional conduct within meaning of Alabama optometry statute because of their employment with a corporation, even if judicial review was forthcoming at conclusion of the administrative proceeding, where the optometrists alleged, and the district court concluded, that the Board's bias rendered it incompetent to adjudicate the issues. Code of Ala., Tit. 46, § § 190-213.

[6] Health 220
198Hk220 Most Cited Cases
(Formerly 299k11.1 Physicians and Surgeons)
In view of fact that Alabama Board of Optometry was composed solely of private practitioners and of fact that corporate employees whom the Board sought to bar from practice constituted nearly half the optometrists in state, federal district court was warranted in concluding that board member's possible personal interest with respect to pecuniary gain should licenses of such optometrists be revoked disqualified the Board members from passing on the issues. Code of Ala., Tit. 46, § § 190-213.

[7] Administrative Law and Procedure 314
15Ak314 Most Cited Cases
Those with substantial pecuniary interest in legal proceedings should not adjudicate such disputes.

[8] Federal Courts 55
170Bk55 Most Cited Cases
Where, even though decision in case which was on appeal to Alabama Supreme Court might have obviated need for injunction in optometrists' action to stop hearings before Alabama Board of Optometry on charges of unprofessional conduct within meaning of Alabama optometry statute because of their employment with a
corporation, plaintiff optometrists had been dismissed from the state suit and the Optometry Board was pressing its charges against the optometrists without awaiting outcome of such appeal, and where at least some of charges pending against the optometrists might have survived a reversal by the Alabama Supreme Court of the state trial court's judgment adverse to the optometrists' employer, federal district court did not abuse its discretion in not abstaining until such decision on appeal was rendered by the Alabama Supreme Court.

[9] Federal Courts 478
170Bk478 Most Cited Cases
(Formerly 30k1107)
Principles of equity, comity and federalism warranted reconsideration of suit, by licensed optometrists seeking to enjoin hearings before Alabama Board of Optometry on charges of unprofessional conduct within meaning of Alabama optometry statute because of their employment with a corporation, in the light of Alabama Supreme Court decision holding that nothing in Alabama's optometry law prohibited licensed optometrist from accepting employment from a business corporation. Code of Ala., Tit. 46, § § 190-213.

**1690 *564 Syllabus [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Appellees, licensed optometrists employed by Lee Optical Co., who were not members of the Alabama Optometric Association (Association), were charged by the Association with unprofessional conduct within the meaning of the state optometry statute because of their employment with the company. The complaint was filed with the Alabama Board of Optometry (Board), all members of which were Association members. The Board deferred proceedings while a suit it had brought against Lee Optical and optometrists employed by it to enjoin the company from practicing optometry was litigated in the state trial court. The charges against the individual defendants were dismissed but the court enjoined Lee Optical from engaging in the practice of optometry. The company appealed. When the Board revived the Association's charges against appellees, they sought an injunction in the Federal District Court under the Civil Rights Act claiming that the Board was biased. **1691 The court concluded that it was not barred from acting by the federal anti-injunction statute since only administrative proceedings were involved and that exhaustion of

administrative remedies was not mandated where the administrative process was biased in that the Board by its litigation in the state courts had prejudged the case against appellees and the Board members had an indirect pecuniary interest in the outcome. The District Court enjoined the Board proceedings but thereafter and before this appeal was taken, the State's highest court reversed the judgment against Lee Optical and held that the optometry law did not prohibit a licensed optometrist from working for a corporation. Held:

1. The anti-injunction statute did not bar the District Court from issuing the injunction since appellees brought suit under the Civil Rights Act, 42 U.S.C. s 1983. Pp. 1694--1695.

2. Nor did the rule of Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 or principles of comity require the District Court to dismiss appellees' suit in view of the pending Board proceeding since the appellees *565 alleged and the District Court concluded that the Board's bias rendered it incompetent to adjudicate the issues. Pp. 1696--1697.

3. Since the board was composed solely of private practitioners and the corporate employees it sought to bar from practice constituted half the optometrists in the State, the District Court was warranted in concluding that the Board members' pecuniary interest disqualified them from passing on the issues. Pp. 1697--1698.

4. Though the District Court did not abuse its discretion in not abstaining until the Lee Optical decision was rendered by the Alabama Supreme Court, the principles of equity, comity, and federalism warrant reconsideration of this case in the light of that decision. Pp. 1698--1699.

331 F.Supp. 122, vacated and remanded.

Richard A. Dillups, Jr., Jackson, Miss., for appellants.

Harry Cole, Montgomery, Ala., for appellees.

Mr. Justice WHITE delivered the opinion of the Court.

Prior to 1965, the laws of Alabama relating to the practice of optometry permitted any person, including a business firm or corporation, to maintain a department in which 'eyes are examined or glasses fitted,' provided that such department was in the charge of a duly licensed optometrist. The permission was expressly conferred by s 210 of Title 46 of the Alabama Code of 940, and also inferentially by s 211 of the Code which regulates the *566 advertising practices of optometrists, and which, until 1965, appeared to contemplate the existence of commercial stores with optical departments. [FN1] In 1965, s 210 was repealed in **1692 its entirety by the Alabama Legislature, and s 211 was amended so as to eliminate any direct reference *567 to optical departments maintained by corporations or other business establishments under the direction of employee optometrists. [FN2]

FN1. Sections 210 and 211 of c. 11, Tit. 46, of the Code of Alabama, 1940, provided, prior to 1965, as follows:
's 210. Store where glasses are sold; how department conducted -- Nothing in this chapter shall be so construed as to prevent any person, firm, or corporation from owning or operating a store or business establishment wherein eyes are examined or glasses fitted; provided, that such store, establishment, or optometric department shall be in charge of a duly licensed optometrist, whose name must appear on and in all optometry advertising of whatsoever nature done by said person, firm or corporation.'
's 211. False or misleading statements in advertisements or stores having optometry department.--It shall be unlawful for any person, firm or corporation, engaged in the practice of optometry in this state, to print or cause to be printed, or circulate or cause to be circulated, or publish, by any means whatsoever, any advertisement or circular in which appears any untruthful, impossible, or improbable or misleading statement or statements, or anything calculated or intended to mislead or deceive the public. And it shall be unlawful for any individual, firm or corporation, engaged in the sale of goods, wares or merchandise who maintains or operates, or who allows to be maintained and operated in connection with said mercantile business an optometry department; or who rents or subleases to any person or persons for the purpose of engaging in the practice of optometry therein, any portion of or space in said store, premises or establishment in which such person, firm or corporation is engaged in

said mercantile business, to publish, or circulate, or print or cause to be printed, by any means whatsoever, any advertisement or notice of the optometry department maintained, operated, or conducted in said establishment or place of business, in which said advertisement or notice appear any untruthful, improbable, impossible, or misleading statement or statements, or anything calculated to mislead or deceive the public.'

Sections 190--213, regulating the practice of optometry in Alabama, were originally adopted in 1919.

FN2. Section 211, as amended, reads as follows:

's 211. False or misleading statements in advertisements or circulars.--It shall be unlawful for any person engaged in the practice of optometry in this state to print or cause to be printed, or circulate or cause to be circulated, or published, by any means whatsoever, any advertisement or circular in which appears any untruthful, impossible, or improbable or misleading statement or statements, or anything calculated or intended to mislead or deceive the public.

Soon after these statutory changes, the Alabama Optometric Association, a professional organization whose membership is limited to independent practitioners of optometry not employed by others, filed charges against various named optometrists, all of whom were duly licensed under Alabama law but were the salaried employees of Lee Optical Co. The charges were filed with the Alabama Board of Optometry, the statutory body with authority to issue, suspend, and revoke licenses for the practice of optometry. The gravamen of these charges was that the named optometrists, by accepting employment from Lee Optical, a corporation, had engaged in 'unprofessional conduct' within the meaning of s 206 of the Alabama optometry statute and hence were practicing their profession unlawfully. [FN3] More particularly, *568 the Association charged the named individuals with, among other things, aiding and abetting a corporation in the illegal practice of optometry; practicing optometry under a false name, that is, Lee Optical Co.; unlawfully soliciting the sale of glasses; lending their licenses to Lee Optical Co.; and splitting or dividing fees with Lee Optical. [FN4] It was apparently the Association's position that, following the repeal **1693 of s 210 and the amendment of s 211, the practice of optometry by individuals as employees of business corporations was no longer permissible in Alabama, and that, by accepting such employment the named optometrists had violated the ethics of their profession. It was prayed that the Board revoke the licenses of the individuals charged following due notice and a proper hearing.

FN3. Section 206, insofar as relevant here, provides as follows:

's 206. License may be suspended or revoked.--A license issued to any person may be suspended for a definite period of time, or revoked by the state board of optometry for any of the following reasons; to-wit: . . . For unprofessional conduct. 'Unprofessional conduct' shall be defined to mean any conduct of a character likely to deceive or defraud the public, lending his license by any licensed optometrist to any person, the employment of 'cappers,' or 'steerers' to that do not adequately appear in the fee with any person or persons, the obtaining of any fee or compensation by fraud or misrepresentation, employing directly or indirectly any suspended or unlicensed optometrist to do any optometrical work, by use of any advertising, carrying the advertising of articles not connected with the profession, the employment of any drugs or medicines in his practice unless authorized to do so by the laws covering the practice of medicine of this state, or the doing or performing of any acts in his profession declared by the Alabama Optometric Association to be unethical or contrary to good practice.'

The section also provides for a hearing before the Board upon due notice of an accused license holder. At such a hearing the accused is entitled to be represented by counsel, to cross-examine the witnesses against him, and to have all testimony taken down by a stenographer.

FN4. Some of the charges leveled against the named optometrists are covered by sections of the Alabama optometry statute other than s 206, e.g., 'practicing optometry under a false name' (s 191), 'unlawfully soliciting the sale of glasses' (s 203), etc.

Two days after these charges were filed by the Association in October 1965, the Board filed a suit of its own in state court against Lee Optical, seeking to

enjoin the company from engaging in the 'unlawful practice of optometry.' The Board's complaint also named 13 optometrists employed by Lee Optical as parties defendant, *569 charging them with aiding and abetting the company in its illegal activities, as well as with other improper conduct very similar to that charged by the Association in its complaint to the Board.

Proceedings on the Association's charges were held in abeyance by the Board while its own state court suit progressed. The individual defendants in that suit were dismissed on grounds that do not adequately appear in the record before us; and, eventually, on March 17, 1971, the state trial court rendered judgment for the Board, and enjoined Lee Optical both from practicing optometry without a license and from employing licensed optometrists. [FN5] The company appealed this judgment.

> FN5. A period of nearly five and one-half years passed between the filing of the Board's complaint against Lee Optical and the decision of the state trial court. Much of this delay appears to be attributable to certain procedural wranglings in the court concerning whether the Board had the power to bring an injunctive action against those it believed to be practicing optometry unlawfully. During the pendency of the litigation, the Alabama Legislature passed a statute expressly conferring such power, both prospectively and retroactively, on state licensing boards, and the suit appears to have proceeded expeditiously thereafter.

Meanwhile, following its victory in the trial court, the Board reactivated the proceedings pending before it since 1965 against the individual optometrists employed by Lee, noticing them for hearings to be held on May 26 and 27, 1971. Those individuals countered on May 14, 1971, by filing a complaint in the United States District Court naming as defendants the Board of Optometry and its individual members, as well as the Alabama Optometric Association and other individuals. The suit, brought under the Civil Rights Act of 1871, 42 U.S.C. s 1983, sought an injunction against the scheduled hearings on the grounds that the statutory scheme regulating the practice of optometry in Alabama [FN6] was unconstitutional *570 insofar as it permitted the Board to hear the pending charges against the individual plaintiffs in the federal suit. [FN7] The thrust of the complaint was that the Board was biased and could not provide the plaintiffs with a fair and impartial hearing in conformity with due process of law.

> FN6. ss 190--213 of c. 11, Tit. 46, of the Alabama Code of 1940.
>
> FN7. More specifically, the plaintiffs attacked ss 206 and 192 of the statute which provide, respectively, that the Board shall have the power to entertain delicensing proceedings and that its membership shall be limited to members of the Alabama Optometric Association.

A three-judge court was convened in August 1971, and shortly thereafter entered judgment for plaintiffs, enjoining members of the State Board and their successors 'from conducting a hearing on the charges heretofore preferred against the Plaintiffs' and from revoking their licenses to practice optometry in the State of Alabama.

In its supporting opinion, 331 F.Supp. 122, the District Court first considered whether it should stay its hand and defer to the then-pending state proceedings--that is, whether the situation presented was one which would permit of immediate federal intervention to restrain the actions of a state administrative body. That question was answered in the affirmative, the court holding **1694 that 28 U.S.C. s 2283, the federal antiinjunction statute, was not applicable to state administrative proceedings even where those proceedings were adjudicatory in character. Moreover, the District Court also held that neither Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), nor the doctrine normally requiring exhaustion of administrative remedies forbade a federal injunction where, as the court found to be true here, the administrative process was so defective and inadequate as to deprive the plaintiffs of due process of law.

This conclusion with respect to the deficiencies in the pending proceedings against plaintiffs, although an amalgam of several elements, amounted basically to a sustaining *571 of the plaintiffs' allegation of bias. For the District Court, the inquiry was not whether the Board members were 'actually biased but whether, in the natural course of events, there is an indication of a possible temptation to an average man sitting as a judge to try the case with bias for or against any issue presented to him.' 331 F.Supp., at 125. Such a possibility of bias was found to arise in the present case from a number of factors. , first, was the fact that the Board, which acts as both prosecutor

and judge in delicensing proceedings, had previously brought suit against the plaintiffs on virtually identical charges in the state courts. This the District Court took to indicate that members of the Board might have 'preconceived opinions' with regard to the cases pending before them. Second, the court found as a fact that Lee Optical Co. did a large business in Alabama, and that if it were forced to suspend operations the individual members of the Board, along with other private practitioners of optometry, would fall heir to this business. Thus, a serious question of a personal financial stake in the matter in controversy was raised. Finally, the District Court appeared to regard the Board as a suspect adjudicative body in the cases then pending before it, because only members of the Alabama Optometric Association could be members of the Board, and because the Association excluded from membership optometrists such as the plaintiffs who were employed by other persons or entities. The result was that 92 of the 192 practicing optometrists in Alabama were denied participation in the governance of their own profession.

The court's ultimate conclusion was 'that to require the Plaintiffs to resort to the protection offered by state law in these cases would effectively deprive them of their property, that is, their right to practice their professions, without due process of law and that irreparable injury *572 would follow in the normal course of events.' [FN8] 331 F.Supp., at 126.

FN8. The District Court also dismissed, without prejudice, the Board's counterclaim in the present suit which sought a judgment barring the plaintiffs from practicing optometry in Alabama.

Appeal was taken to this Court and probable jurisdiction noted on June 26, 1972. 408 U.S. 920, 92 S.Ct. 2487, 33 L.Ed.2d 331. Meanwhile, on March 30, 1972, the Supreme Court of Alabama reversed the judgment of the state trial court in the Lee Optical Co. case, [FN9] holding that nothing in the Alabama statutes pertaining to optometry evidenced 'a legislative policy that an optometrist duly qualified and licensed under the laws of this state, may not be employed by another to examine eyes for the purpose of prescribing eyeglasses.' [FN10] 288 Ala. 338, 346, 261 So.2d 17, 24.

FN9. See Lee Optical Co. of Alabama v. State Board of Optometry, 288 Ala. 338, 261 So.2d 17, rehearing denied Apr. 27, 1972.

FN10. In a companion case, House of $8.50 Eyeglasses v. State Board of Optometry, 288 Ala. 349, 261 So.2d 27 (1972), the Alabama Supreme Court reversed the judgment of another lower state court which had enjoined a corporation from unlawfully practicing optometry through its optometrist employees. In that case, the individual optometrists involved were also enjoined from unlawfully practicing their profession. Both injunctions were dissolved by the Alabama Supreme Court.

**1695 It is against this procedural background that we turn to a consideration of the issues presented by this appeal.

I

[1] We agree with the District Court that neither statute nor case law precluded it from adjudicating the issues before it and from issuing the injunction if its decision on the merits was correct.

Title 28 U.S.C. s 2283, the anti-injunction statute, prohibits federal courts from enjoining state court proceedings, but the statute excepts from its prohibition injunctions *573 which are 'expressly authorized' by another Act of Congress. [FN11] Last Term, after the District Court's decision here, this Court determined that actions brought under the Civil Rights Act of 1871, 42 U.S.C. s 1983, were within the 'expressly authorized' exception to the ban on federal injunctions. [FN12] Mitchum v. Foster, 407 U.S. 225, 92 S.Ct. 2151, 32 L.Ed.2d 1 (1972).

FN11. Title 28 U.S.C. s 2283 provides:
'A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.'

FN12. The District Court held s 2283 inapplicable in the present case because the plaintiffs sought an injunction against a state administrative body and not a state court. Whether this distinction is tenable in all circumstances--even where the administrative proceeding is adjudicatory or quasi-judicial in character--we need not decide here since the present action was brought under 42 U.S.C. s 1983.

Our decision in Mitchum, however, held only that a district court was not absolutely barred by statute from enjoining a state court proceeding when called upon to do so in a s 1983 suit. As we expressly stated in Mitchum, nothing in that decision purported to call into question the established principles of equity, comity, and federalism which must, under appropriate circumstances, restrain a federal court from issuing such injunctions. Id., at 243, 92 S.Ct. 2151, 2162, 2163. These principles have been emphasized by this Court many times in the past, albeit under a variety of different rubrics. First of all, there is the doctrine, usually applicable when an injunction is sought, that a party must exhaust his available administrative remedies before invoking the equitable jurisdiction of a court. See, e.g., Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 29 S.Ct. 67, 53 L.Ed. 150 (1908); Illinois Commerce Comm'n v. Thomson, 318 U.S. 675, 63 S.Ct. 834, 87 L.Ed. 1075 (1943). Secondly, there is the basic principle of federalism, restated as recently as 1971 in Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669, that a federal court may not *574 enjoin a pending state criminal proceeding in the absence of special circumstances suggesting bad faith, harassment or irreparable injury that is both serious and immediate. And finally, there is the doctrine, developed in our cases at least since Railroad Comm'n v. Pullman Co., 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941), that when confronted with issues of constitutional dimension which implicate or depend upon unsettled questions of state law, a federal court ought to abstain and stay its proceedings until those state law questions are definitively resolved.

[2][3][4] In the instant case the matter of exhaustion of administrative remedies need not detain us long. Normally when a State has instituted administrative proceedings against an individual who then seeks an injunction in federal court, the exhaustion doctrine would require the court to delay action until the administrative phase of the state proceedings is terminated, at least where coverage or liability is contested and administrative expertise, discretion, or factfinding is involved. [FN13] But this **1696 Court has expressly held in recent years that state administrative remedies need not be exhausted where the federal court plaintiff states an otherwise good cause of action under 42 U.S.C. s 1983. McNeese v. Board of Education, 373 U.S. 668, 83 S.Ct. 1433, 10 L.Ed.2d 622 (1963); Damico v. California, 389 U.S. 416, 88 S.Ct. 526, 19 L.Ed.2d 647 (1967). Whether this is invariably the case even where, as here, a license revocation proceeding has been brought by the State and is pending before one of its own agencies and where the individual charged is to be deprived of *575 nothing until the completion of that proceeding, is a question we need not now decide, for the clear purport of appellees' complaint was that the State Board of Optometry was unconstitutionally constituted and so did not provide them with an adequate administrative remedy requiring exhaustion. Thus, the question of the adequacy of the administrative remedy, an issue which under federal law the District Court was required to decide, was for all practical purposes identical with the merits of appellees' lawsuit. [FN14]

FN13. This exhaustion requirement does not apply generally to state 'judicial,' as opposed to 'administrative,' remedies. See Bacon v. Rutland R. Co., 232 U.S. 134, 34 S.Ct. 283, 58 L.Ed. 538 (1914); City Bank Farmers Trust Co. v. Schnader, 291 U.S. 24, 54 S.Ct. 259, 78 L.Ed. 628 (1934). The doctrine of exhaustion of administrative remedies should, however, be kept distinct from other equitable doctrines such as those exemplified in Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), and Railroad Comm'n v. Pullman Co., 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941), which do require a federal court to defer in appropriate circumstances to state judicial proceedings

FN14. State administrative remedies have been deemed inadequate by federal courts and hence not subject to the exhaustion requirement, on a variety of grounds. Most often this has bene because of delay by the agency, Smith v. Illinois Bell Tel. Co., 270 U.S. 587, 46 S.Ct. 408, 70 L.Ed. 747 (1926), or because of some doubt as to whether the agency was empowered to grant effective relief, Union Pac. R. Co. v. Board of Comm'rs of Weld County, 247 U.S. 282, 38 S.Ct. 510, 62 L.Ed. 1110 (1918); McNeese v. Board of Education, 373 U.S. 668, 83 S.Ct. 1433, 10 L.Ed.2d 622 (1963). State administrative remedies have also been held inadequate, however, where the state administrative body was found to be biased or to have predetermined the issue before it. Kelly v. Board of Education, 159 F.Supp. 272 (MD Tenn 1958).

II

[5] This brings us to the question of whether Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746 (1971);

Samuels v. Mackell, 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed.2d 741 (1971), or the principles of equity, comity, and federalism for which those cases stand, precluded the District Court from acting, in view of the fact that proceedings against appellees were pending before the Alabama Board of Optometry. Those cases and principles would, under ordinary circumstances, forbid either a declaratory judgment or injunction with respect to the validity or enforcement of a state statute when a criminal proceeding under the statute has been commenced. Whether a like rule obtains where state civil proceedings are pending was left open in Younger and its companion cases.

*576 Appellants now insist, not only that the issue is posed here by the pendency of proceedings before the state board, but also that the issue was actually decided following Younger by our summary affirmance in the case of Geiger v. Jenkins, 401 U.S. 985, 91 S.Ct. 1236, 28 L.Ed.2d 525 (1971). In that case, the State Medical Board of Georgia noticed hearings on charges filed against a medical practitioner who immediately brought suit in federal court under s 1983 seeking an injunction on the ground that the underlying statute the Medical Board sought to enforce was unconstitutional. The District Court dismissed the action without reaching the merits, holding that the state proceedings were 'in the nature of criminal proceedings,' sufficiently so in any event to trigger the 28 U.S.C. s 2283 bar to federal intervention. 316 F.Supp. 370, 372 (ND Ga.1970). The decision was appealed to this Court and summarily affirmed without opinion but with citation to Younger and Mackell.

**1697 As frequently occurs in the case of summary affirmance, the decision in Geiger is somewhat opaque. We doubt, however, that it is controlling here. First of all, it apears from the jurisdictional statement and motion to affirm in Geiger that state criminal proceedings were pending at the time of the challenged dismissal of the federal case. Moreover, it also appears that subsequent to that dismissal the State Medical Board completed its proceedings and revoked Geiger's license, and that judicial proceedings to review that order were already under way in the state courts. Secondly, there is no judicial finding here as there was in Geiger that under applicable state law license revocation proceedings are quasi-criminal in nature; nor is the Alabama case law now cited for this proposition persuasive. See State v. Keel, 33 Ala.App. 609, 35 So.2d 625 (1948). Finally, although it is apparent from Geiger that administrative proceedings looking toward the revocation of a license to practice *577 medicine may in proper circumstances command the respect due court proceedings, there remains the claim here, not present in Geiger, that the administrative body itself was unconstitutionally constituted, and so not entitled to hear the charges filed against the appellees.

Unlike those situations where a federal court merely abstains from decision on federal questions until the resolution of underlying or related state law issues [FN15]--a subject we shall consider shortly in the context of the present case--Younger v. Harris contemplates the outright dismissal of the federal suit, and the presentation of all claims, both state and federal, to the state courts. Such a course naturally presupposes the opportunity to raise and have timely decided by a competent state tribunal the federal issues involved. Here the predicate for a Younger v. Harris dismissal was lacking, for the appellees alleged, and the District Court concluded, that the State Board of Optometry was incompetent by reason of bias to adjudicate the issues pending before it. If the District Court's conclusion was correct in this regard, it was also correct that it need not defer to the Board. Nor, in these circumstances, would a different result be required simply because judicial review, de novo or otherwise, would be forthcoming at the conclusion of the administrative proceedings. [FN16] Cf. Ward v. Village of Monroeville, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972).

FN15. See, e.g., Railroad Comm'n v. Pullman Co., supra; England v. Louisiana State Bd. of Medical Exam'rs, 375 U.S. 411, 84 S.Ct. 461, 11 L.Ed.2d 440 (1964); Lake Carriers' Assn. v. MacMullan, 406 U.S. 498, 92 S.Ct. 1749, 32 L.Ed.2d 257 (1972).

FN16. This Court was assured at oral argument by counsel for both parties that Alabama law provides for de novo court review of delicensing orders issued by the Board. Tr. of Oral Arg. 5, 19. Nonetheless, the District Court expressly found that the revocation by the Board of appellees' licenses to practice their profession, 'together with the attendant publicity which would inevitably be associated therewith, would cause irreparable damage' to the appellees for which no adequate remedy is afforded by state law. 331 F.Supp. 122, 126.

*578 III

[6] It is appropriate, therefore, that we consider the

District Court's conclusions that the State Board of Optometry was so biased by prejudgment and pecuniary interest that it could not constitutionally conduct hearings looking toward the revocation of appellees' licenses to practice optometry. We affirm the District Court in this respect.

The District Court thought the Board to be impermissibly biased for two reasons. First, the Board had filed a complaint in state court alleging that appellees had aided and abetted Lee Optical Co. in the unlawful practice of optometry and also that they had engaged in other forms of 'unprofessional conduct' which, if proved, would justify revocation of their licenses. These charges were substantially similar to **1698 those pending against appellees before the Board and concerning which the Board had noticed hearings following its successful prosecution of Lee Optical in the state trial court.

Secondly, the District Court determined that the aim of the Board was to revoke the licenses of all optometrists in the State who were employed by business corporations such as Lee Optical, and that these optometrists accounted for nearly half of all the optometrists practicing in Alabama. Because the Board of Optometry was composed solely of optometrists in private practice for their own account, the District Court concluded that success in the Board's efforts would possibly redound to the personal benefit of members of the Board, sufficiently so that in the opinion of the District Court the Board was constitutionally disqualified from hearing the charges filed against the appellees.

The District Court apparently considered either source of possible bias-- prejudgment of the facts or personal interest--sufficient to disqualify the members of the Board. *579 Arguably, the District Court was right on both scores, but we need reach, and we affirm, only the latter ground of possible personal interest. [FN17]

FN17. The extent to which an administrative agency may investigate and act upon the material facts of a case and then, consistent with due process, sit as an adjudicative body to determine those facts finally has occasioned some divergence of views among federal courts. Compare Amos Treat & Co. v. SEC, 113 U.S.App.D.C. 100, 306 F.2d 260 (1962), and Trans World Airlines v. CAB, 102 U.S.App.D.C. 391, 254 F.2d 90 (1958), with Pangburn v. CAB, 311 F.2d 349 (CA1 1962). See also Mack v. Florida State Board of Dentistry, 296 F.Supp. 1259 (SD Fla.1969). We have no occasion to pass upon this issue here in view of our disposition of the present case.

[7] It is sufficiently clear from our cases that those with substantial pecuniary interest in legal proceedings should not adjudicate these disputes. Tumey v. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927). And Ward v. Village of Monroeville, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972), indicates that the financial stake need not be as direct or positive as it appeared to be in Tumey. It has also come to be the prevailing view that '(m)ost of the law concerning disqualification because of interest applies with equal force to . . . administrative adjudicators.' K. Davis, Administrative Law Text s 12.04, p. 250 (1972), and cases cited. The District Court proceeded on this basis and, applying the standards taken from our cases, concluded that the pecuniary interest of the members of the Board of Optometry had sufficient substance to disqualify them, given the context in which this case arose. As remote as we are from the local realities underlying this case and it being very likely that the District Court has a firmer grasp of the facts and of their significance to the issues presented, we have no good reason on this record to overturn its conclusion and we affirm it.

IV

[8] Finally, we do not think that the doctrine of abstention, as developed in our cases from *580Railroad Comm'n v. Pullman Co., 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941), to Lake Carriers' Assn. v. MacMullan, 406 U.S. 498, 92 S.Ct. 1749, 32 L.Ed.2d 257 (1972), required the District Court to stay its proceedings until the appellees had presented unsettled questions of state law to the state courts. Those questions went to the reach and effect of the state optometry law and concerned the merits of the charges pending against the appellees, at the heart of which was the issue whether Alabama law permitted licensed optometrists to be employed by business corporations and others. That central question was pending in the Alabama Supreme Court in the Lee Optical Co. case at the time the District Court entered its order. As was noted earlier, however, appellees here had been **1699 dismissed from that case by the state trial court, and it was only after this dismissal, and after the Board had reactivated its charges against them, that appellees sought relief in federal court.

Arguably, the District Court should have awaited the

outcome of the Lee Optical Co. appeal, a decision which might have obviated the need for an injunction in this case. [FN18] But the Board was pressing its charges against appellees without awaiting that outcome and, in any event, it appears that at least some of the charges pending against appellees might have survived a reversal of the state trial court's judgment by the Alabama Supreme Court. Under these circumstances, it was not an abuse of discretion for the District Court to proceed as it did.

FN18. See Askew v. Hargrave, 401 U.S. 476, 91 S.Ct. 856, 28 L.Ed.2d 196 (1971).

[9] Nevertheless, the Alabama Supreme Court has since rendered its decision, not only in the Lee Optical Co. case, but also in a companion case, House of $8.50 Eyeglasses v. State Board of Optometry, 288 Ala. 349, 261 So.2d 27 (1972). See n. 10, supra. Individual optometrists were parties to that latter case, and the Alabama Supreme Court entered judgment in their behalf, holding that nothing *581 in the State's optometry law prohibited a licensed optometrist from accepting employment from a business corporation. Whether this judgment substantially devitalizes the position of the Board with respect to the appellees here, or in any way makes unnecessary or removes the 'equity' from the injunction entered by the District Court, we are unable to determine. But we do think that considerations of equity, comity, and federalism warrant vacating the judgment of the District Court and remanding the case to that court for reconsideration in light of the Alabama Supreme Court's judgments in the Lee Optical Co. and House of $8.50 Eyeglasses cases. We in no way intimate whether or not the injunction should be reinstated by the District Court.

It is so ordered.

Vacated and remanded.

Mr. Chief Justice BURGER, concurring.

I concur, although in my view the three-judge District Court would have been better advised, as a matter of sound judicial discretion, to have refrained from acting until the outcome of the Lee Optical appeal. See my dissenting opinion in Wisconsin v. Constantineau, 400 U.S. 433, 443, 91 S.Ct. 507, 513, 27 L.Ed.2d 515 (1971).

Mr. Justice MARSHALL, with whom Mr. Justice BRENNAN joins, concurring.

I join the opinion of the Court except insofar as it suggests that the question remains open whether plaintiffs in some suits brought under 42 U.S.C. s 1983 may have to exhaust administrative remedies. See ante, at 1696. In my opinion, the inapplicability of the exhaustion requirement to any suit brought under s 1983 has been firmly settled by this Court's prior decisions, McNeese v. Board of Education, 373 U.S. 668, 671–672, 83 S.Ct. 1433, 1435, 10 L.Ed.2d 622 (1963). See also Houghton v. Shafer, 392 U.S. 639, 88 S.Ct. 2119, 20 L.Ed.2d 1319 (1968); King v. Smith, 392 U.S. 309, 312 n. 4, 88 S.Ct. 2128, 2131, 20 L.Ed.2d 1118 (1968); Damico v. California, 389 U.S. 416, 88 S.Ct. 526, 19 L.Ed.2d 647 (1967).

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