

Case No. 11-1441

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MASSACHUSETTS DELIVERY ASSOCIATION,
Plaintiff-Appellant

v.

MARTHA COAKLEY, in her official capacity as Attorney General of
the Commonwealth Of Massachusetts,
Defendant-Appellee

On Appeal from the United States District Court
for the District of Massachusetts
Civil Case No. 10-11521-DJC

**BRIEF OF *AMICI CURIAE* THE MESSENGER COURIER
ASSOCIATION OF AMERICA AND THE AIR AND EXPEDITED
MOTOR CARRIER ASSOCIATION IN SUPPORT OF APPELLANT
MASSACHUSETTS DELIVERY ASSOCIATION AND REVERSAL**

**SCOPELITIS, GARVIN, LIGHT
HANSON & FEARY, P.C.**

Steven A. Pletcher (1st Cir. No. 1148494)
Lynne D. Lidke (1st Cir. No. 1148491)
Braden K. Core (1st Cir. No. 1148493)
10 West Market Street, Suite 1500
Indianapolis, IN 46204-2968
Tel: (317) 637-1777

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(c)(1), *Amici Curiae* the Messenger Courier Association of America (“MCAA”) and the Air and Expedited Motor Carrier Association (“AEMCA”) state that they are both non-profit corporations. Neither MCAA nor AEMCA has a parent corporation, and no publicly-held company owns 10% or more of MCAA or AEMCA.

TABLE OF CONTENTS

Corporate Disclosure Statement..... i

Table of Contents..... ii

Table of Authorities iii

Statement of Identity, Interest, and Authority to File1

Statement of Authorship and Funding.....2

Summary of Argument2

Argument.....3

I. The District Court’s Holding that an Advocacy Group May Be Barred from Federal Court Simply Because Certain of its Members are Involved in State Proceedings Represents an Unwarranted Expansion of the *Younger* Doctrine.....3

II. The District Court’s Holding Is Rooted in the Inaccurate Premise that Members Will Sufficiently Advocate the Group’s Common Interests in Individual State Proceedings.....7

III. For Advocacy Groups, the Possibility of Intervention in State Proceedings is No Substitute for Access to the Federal Courts.....10

Conclusion.....13

Certificate of Compliance with Rule 23(a).....14

Certificate of Service15

TABLE OF AUTHORITIES

CASES

Casa Marie, Inc. v. Sup. Ct. of Puerto Rico for the Dist. of Arecibo,
988 F.2d 252 (1st Cir. 1993) 11

Citizens for a Better Environment, Inc. v. Nassau County,
488 F.2d 1353 (2d Cir. 1973)..... 5

Gilbertson v. Albright, 381 F.3d 965 (9th Cir. 2004) 4

Gottfried v. Med. Planning Servs. Inc., 142 F.3d 326 (6th Cir. 1998) 12

Green v. City of Tucson, 255 F.3d 1086 (9th Cir. 2001)..... 4, 11, 13

Hicks v. Miranda, 422 U.S. 332 (1975)..... 3, 4, 5, 6, 7

Hoover v. Wagner, 47 F.3d 845 (7th Cir. 1995) 11

Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n,
457 U.S. 423 (1982)..... 2, 3

New Jersey-Philadelphia Presbytery of the Bible Presbyterian Church v.
New Jersey State Bd. of Higher Educ., 654 F.2d 868 (3d Cir. 1981) 5, 12

Richards v. Jefferson County, 517 U.S. 793 (1996)..... 11, 12

Wooley v. Maynard, 430 U.S. 705 (1977) 12

Younger v. Harris, 401 U.S. 37 (1971) *passim*

STATUTES

49 U.S.C. §§ 14501, *et seq.*..... 1

Mass. Gen. Laws ch. 149, § 148B 1

RULES

Fed. R. App. P. 29(c)(5)..... 2

Mass. R. Civ. P. 24 10

STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE

MCAA is a nonprofit association which, since 1987, has worked to promote and maintain the common interests of those engaged in the messenger-courier industry throughout the United States and abroad. AEMCA is a national trade association that has represented the interests of the air and expedited freight trucking community for over 45 years.

MCAA and AEMCA share twin interests in this case. Both groups' members, as same-day delivery and courier companies, have been impacted—directly and indirectly—by the Massachusetts Attorney General's enforcement of the Massachusetts Independent Contractor Law, Mass. Gen. Laws ch. 149, § 148B. Second, as is more immediately implicated by the decision under review, MCAA and AEMCA – as advocacy groups – have an interest in challenging the District Court's expansion of the *Younger* doctrine to bar such advocacy groups from pursuing and vindicating important common interests in federal court simply because certain of their members are involved in state proceedings.¹

¹ While MCAA and AEMCA support the general position of Appellant Massachusetts Delivery Association (“MDA”) that the Massachusetts Independent Contractor Law cannot be enforced against same-day delivery and courier companies because it is preempted by the Federal Aviation Administration Authorization Act (“FAAAA”), 49 U.S.C. §§ 14501 *et seq.*, MCAA and AEMCA confine their argument here to the District Court's abstention ruling and its implications for legal advocacy by advocacy groups across the nation.

MCAA and AEMCA are informed and hereby represent that all parties to this appeal consent to their filing of this brief.

STATEMENT OF AUTHORSHIP AND FUNDING

Pursuant to Federal Rule of Appellate Procedure 29(c)(5), MCAA and AEMCA state that no party's counsel authored this brief in whole or in part, and that no party, or its counsel, and no person – other than *amici curiae*, their members, or their counsel – contributed money that was intended to fund the preparation or submission of this brief.²

SUMMARY OF ARGUMENT

The District Court held that it must abstain under *Younger v. Harris*, 401 U.S. 37 (1971), because certain of MDA's members are defendants in state proceedings where the FAAAA preemption argument has been raised. In reaching this holding, the District Court applied the three-prong test set forth in *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982). The first of the three *Middlesex* prongs requires that the federal plaintiff be involved in an ongoing state proceeding. Though acknowledging that MDA is not a party to any state proceeding, the District Court nonetheless found this prong satisfied because

² MCAA, in the spirit of full disclosure, does note that 9 MCAA members are also members of MDA who, along with 76 other MCAA members, donated to MCAA's general advocacy fund in 2011 and thus contributed money that in part funded the preparation and submission of this brief as well as other advocacy projects nationwide.

the interests of MDA and its members involved in the state proceedings were “intertwined,” citing *Hicks v. Miranda*, 422 U.S. 332 (1975).

While MCAA and AEMCA share MDA’s view that the District Court erred in finding any requirement of the *Younger* doctrine satisfied, this brief deals only with the first of the three *Middlesex* prongs. The District Court’s holding on this point amounts to an unwarranted expansion of the *Younger* abstention doctrine that, if left undisturbed, will have the effect of preventing advocacy groups from seeking to pursue and vindicate important common interests in federal court. MCAA and AEMCA respectfully submit that the District Court’s decision to deny advocacy groups their day in federal court finds no basis in *Younger* and its progeny, stands to do violence to such groups’ First Amendment rights and the due process rights of its members, and should be reversed.

ARGUMENT

I. The District Court’s Holding that an Advocacy Group May Be Barred from Federal Court Simply Because Certain of its Members are Involved in State Proceedings Represents an Unwarranted Expansion of the *Younger* Doctrine

Younger and its progeny have carved out a circumscribed exception to mandatory federal jurisdiction. The abstention doctrine emanating from these cases “is not intended to cut a broad swath through the fabric of federal jurisdiction, relegating parties to state court whenever state court litigation could resolve a federal question.” *Green v. City of Tucson*, 255 F.3d 1086, 1102 (9th Cir.

2001) (en banc), *overruled, in part, on other grounds Gilbertson v. Albright*, 381 F.3d 965, 978 (9th Cir. 2004) (en banc). To the contrary, “the Supreme Court has indicated that, usually, federal plaintiffs who are not also parties to pending litigation in state court may proceed with their federal litigation.” *Id.* While there undoubtedly exist narrow circumstances in which the connection between the plaintiffs in federal court and parties to the litigation in state proceedings is so close that *Younger* may apply to the non-parties, those circumstances are not present in cases like this one.

The only Supreme Court case cited by the District Court in support of its expansion of the *Younger* doctrine is *Hicks v. Miranda*, 422 U.S. 332 (1975). *See* Mem. & Order, Dist. Ct. ECF No. 37, at 13. In *Hicks*, four employees of a theater were charged with misdemeanors for displaying an allegedly obscene film in violation a California statute. The owners of the theater brought suit in federal court seeking a declaration that the statute was unconstitutional and injunctive relief against its enforcement. Two months after the owners filed suit, the state criminal complaint was amended to include charges against the owners. On these facts, the Supreme Court held that the interests of the owners and their employees were “[o]bviously . . . intertwined.” Among other reasons (which are detailed in Appellant’s Br. at 39), *Hicks* is inapposite because, at the time the Supreme Court delivered its opinion, the federal court plaintiffs were also defendants in a state

criminal proceeding based on the statute they were challenging in federal court. *Hicks* thus does not support the District Court's expansion of the *Younger* doctrine, given that MDA is not a party to any state action related to this case.

Moreover, on far more analogous fact patterns, the Second and Third Circuits have held that *Younger* abstention is not appropriate. In *Citizens for a Better Environment, Inc. v. Nassau County*, 488 F.2d 1353 (2d Cir. 1973), a nonprofit environmental organization and some of its employees brought suit pursuant to 42 U.S.C. § 1983 to restrain police departments from enforcing local ordinances prohibiting door-to-door solicitation for education and fund-raising campaigns. Some of the organization's other employees had been cited for violating the ordinances and were involved in state court proceedings. *Id.* at 1355-56. Notwithstanding this, the Second Circuit held that the organization was not barred from seeking prospective injunctive relief from enforcement of the ordinance under *Younger*. *Id.* at 1360-61.

The Third Circuit confronted a similar situation in *New Jersey-Philadelphia Presbytery of the Bible Presbyterian Church v. New Jersey State Bd. of Higher Educ.*, 654 F.2d 868 (3d Cir. 1981). Suit was brought in federal court by a church, a religious college affiliated with the church, and students and parents of students at the college challenging the constitutionality of the state Board of Education's enforcement of licensing regulations for higher educational institutions. The Board

of Education had previously filed suit against the college's board of directors and several of its officers in state court. *Id.* at 870-72, 877. The Board argued that the plaintiffs in the federal suit were so closely related to the state defendants that the court should abstain on *Younger* grounds. Relying on *Doran v. Salem Inn, Inc.*, 422 U.S. 922 (1975) (and distinguishing *Hicks*), the Third Circuit held that the federal plaintiffs were not precluded from maintaining their suit against the Board under *Younger* because the Board "had not shown to what extent . . . *in fact*" the federal plaintiffs "manage[d] and control[led]" the parties to the state proceedings. *Id.* at 878 (emphasis added).

Thus, the District Court's holding that advocacy groups are barred from seeking to vindicate in federal court important collective interests simply because certain of the groups' members are engaged in state proceedings finds no support in *Hicks* (the only case cited in support of its holding on this point), and runs afoul of the approach adopted in similar cases before the Second and Third Circuits. It thus represents an unwarranted expansion of the *Younger* doctrine that, as shown below, threatens to stifle issue advocacy on the basis of an inaccurate premise.

II. The District Court's Holding Is Rooted in the Inaccurate Premise that Members Will Sufficiently Advocate the Group's Common Interests in Individual State Proceedings

The District Court based its holding, in part, on the idea that the members currently engaged in state proceedings can effectively advocate the same interest pursued by MDA in federal court. *See* Mem. & Order, Dist. Ct. ECF No. 37, at 14 (noting MDA may intervene in the state proceedings if its members “*fail to adequately represent their and MDA's shared interest*”) & n.7 (noting “defendants in nearly all of the relevant state court actions have in fact put forth an FAAAA preemption defense”) (emphasis added). That is not true in this case, and it is not true for advocacy groups generally.

One premise of the Supreme Court's holding in *Hicks* was that the federal plaintiffs “could see to it that their federal claims were presented in the state proceedings . . . ,” 422 U.S. at 349, a point the District Court noted in its discussion of the Court's opinion, Mem. & Order, Dist. Ct. ECF No. 37, at 13. This is because the federal plaintiffs in *Hicks* were eventually defendants in the state proceeding and could assert as one of their defenses to the criminal charges that the obscenity statute was unconstitutional. In other words, in *Hicks*, the interests of the federal plaintiffs and state defendants were essentially identical: both wanted the obscenity statute declared unconstitutional so as to enjoin the criminal

prosecutions against them. Preclusion from federal court did not limit in any way the federal plaintiffs' ability to secure the same result in the state proceeding.

The same is not true when an advocacy group is involved. The interest of an advocacy group in pursuing declaratory and injunctive relief with respect to a state law extends collectively to all of its members, whereas the interest of a state defendant in a state action involving the challenged statute extends only as far as itself. The advocacy group cannot effectively pursue this interest through its members' case-by-case attack on the statute (by way of affirmative defenses, for example) for obvious reasons. As defendants in state proceedings, the members must prioritize their own interests in mounting a defense, which may not always be aligned with those of the advocacy group to which they belong. This is especially true when, as here, the state proceedings involve private suits for monetary damages. Thus, the members may be required to take positions or make arguments contrary to the interests of the advocacy group in order to best defend their own priorities and concerns.

By contrast, a trade association's principal interest is in advancing the collective policy goals of the industry participants it represents, not necessarily in gaining member-by-member victories in individual cases. The District Court held "MDA's express interest in protecting the industry's use of independent contractors is clearly intertwined with the individual state defendants' interest in

protecting their own use of independent contractors.” Mem. & Order, Dist. Ct. ECF No. 37, at 14 (quotation omitted). But to say that there is a “shared interest” between the federal plaintiff and the state defendants does not mean that their interests are identical, or that a favorable ruling gained by one of the state defendants is tantamount to a declaration and injunction issued at the federal level. A state defendant’s interest in successfully defending a private suit for damages is hardly the same as an advocacy group’s interest in enjoining prospective enforcement of a preempted state law. The District Court’s holding does violence to the latter by assuming it is identical with the former, when in fact the opposite is true.³

Moreover, by drawing a distinction between the “threatened injury” to MDA’s members its federal suit is designed to address, and the “actual injury” sustained by those of MDA’s members currently defending private suits in state court, the District Court gives up the game. *See* Mem. & Order, Dist. Ct. ECF No. 37, at 13. An advocacy group’s interest in redressing the “threatened injury” to its

³ This asymmetry is a strong indication that *Younger* abstention is not warranted in cases such as this. As MDA points out, the abstention doctrine introduced in *Younger* was originally intended to preclude a criminal defendant from running to federal court to enjoin his or her state criminal prosecution. *See* Appellant’s Br. at 15-16. Here, as is typical of such cases, MDA is not seeking to enjoin any state proceedings (*see id.* at 10-11) but instead to enjoin *prospective* enforcement of a portion of a state law as applied to a specific industry. Such is the bread and butter of advocacy groups, like MCAA and AEMCA, who for decades have advocated their members’ common interests in statehouses and courthouses across the nation.

members is distinct from those it shares with the members involved in state proceedings. The District Court's holding, if allowed to stand, would effectively bar advocacy groups from pursuing in federal court these important interests in similar cases, thus chilling the group's speech and potentially impinging upon the due process rights of members not involved in state proceedings, whose right to assemble and collectively petition their government now stands imperiled.

III. For Advocacy Groups, the Possibility of Intervention in State Proceedings is No Substitute for Access to the Federal Courts

One basis for the District Court's holding was its suggestion that, if MDA's interests are not being served in the state proceedings, it could intervene in those cases pursuant to Rule 24 of the Massachusetts Rules of Civil Procedure. Mem. & Order, Dist. Ct. ECF No. 37, at 14. Even assuming MDA could intervene in the pending state proceedings, in none of those cases could MDA efficiently pursue its interest in redressing the "threatened injury" to its members presented by the Attorney General's future enforcement of Massachusetts Independent Contractor Law. Common interests of this nature—which as shown above are distinct from and broader than the member-specific interests at issue in the state proceedings—entitle advocacy groups generally (and MDA specifically) to have their claims heard in federal court.

A federal plaintiff has "no obligation to intervene in state court litigation raising issues similar to those that the plaintiff wishes to raise in federal court."

Green, 255 F.3d at 1102-03 (citing *Richards v. Jefferson County*, 517 U.S. 793 (1996)).⁴ Applying this principle, several courts have held that *Younger* abstention is not warranted simply because the federal plaintiff could intervene in a state proceeding. *See id.* at 1100; *Hoover v. Wagner*, 47 F.3d 845, 848 (7th Cir. 1995) (“[N]othing in *Younger* or the cases following it suggests that persons claiming a violation of their federal rights have an obligation before turning to federal court to see whether there is some state court proceeding that they might join in order to present their federal claims there.”); *New Jersey-Philadelphia*, 654 F.2d at 882 (rejecting the argument that *Younger* abstention is warranted where the federal plaintiff could intervene in the state proceeding because “a federal forum is available to litigants threatened with violations of federally protected rights and not presently parties to a state court proceeding”) (citing *Wooley v. Maynard*, 430 U.S. 705, 710 (1977)); *Gottfried v. Med. Planning Servs. Inc.*, 142 F.3d 326, 329 (6th

⁴ In *Richards*, the Supreme Court held that, although three plaintiffs challenging a state tax represented “essentially identical” interests to distinct individuals who brought a subsequent challenge to the tax, the latter group of plaintiffs was denied due process when it was barred from asserting its claims because of the earlier litigation. 517 U.S. at 796, 802. *Richards* and its progeny “stand for the rejection of the notion that the mere fact that a litigant in another case represented ‘essentially identical’ interests to those of the plaintiff can pose a bar to a separate plaintiff pursuing his own cause of action.” *Green*, 255 F.3d at 1101.

Cir. 1998) (“*Younger* abstention cannot apply to one . . . who is a stranger to the state proceeding.”) (citing *Richards*, 517 U.S. at 796-800).⁵

Accordingly, the District Court’s implied holding that a plaintiff forfeits its right to proceed in federal court if there is any state court case pending in which it could intervene to adjudicate federal issues runs afoul of the principles announced in *Richards* and routinely applied in the *Younger* setting. “The consequence of such a required-intervention principle would be that entirely independent individuals could be bound by the forum choice of strangers, and could also be required to survey all litigation pending in the state to determine whether there is any case, however far from home, in which the same federal issue is being litigated.” *Green*, 255 F.3d at 1101. Regardless of whether it is possible for an advocacy group to intervene in a pending state proceeding, this does not support the District Court’s expansion of *Younger*.

⁵ For reasons best explained by MDA (*see* Appellant’s Br. at 46-48), the unique setting of *Casa Marie, Inc. v. Sup. Ct. of Puerto Rico for the Dist. of Arecibo*, 988 F.2d 252 (1st Cir. 1993), does not support the District Court’s unqualified assumption that a federal plaintiff’s ability to intervene in a pending state action triggers *Younger* abstention. This Court’s analysis in *Casa Marie* was far more complex than the District Court’s citation suggests, given that the non-intervening federal plaintiffs in *Casa Marie* possessed interests that were identical to those of the state court defendants and, by reason of their unreasonable delay in challenging a state court judgment and post-judgment contempt order, sought a federal remedy that would have effectively placed the federal court “in the apparent position of actively condoning Casa Marie’s contumacious disregard of the [state court] judgment.” *Id.* at 268. Such considerations, among others, distinguish *Casa Marie* from MDA’s action in this case because its interests are different from those of the state court parties and it seeks only prospective relief.

CONCLUSION

The District Court's expansion of the *Younger* doctrine imperils the right of advocacy groups to pursue and vindicate important common interests in federal court. It is also unwarranted and unsupported by precedent. *Amici Curiae* therefore support MDA's request that the Court reverse the dismissal of MDA's Complaint and remand this action to the District Court to proceed on its merits.

Date: August 22, 2011

Respectfully submitted,

By: s/Steven A. Pletcher
Steven A. Pletcher (1st Cir. No. 1148494)
Lynne D. Lidke (1st Cir. No. 1148491)
Braden K. Core (1st Cir. No. 1148493)
SCOPELITIS, GARVIN, LIGHT,
HANSON & FEARY, P.C.
10 West Market Street, Suite 1500
Indianapolis, IN 46204-2968
Tel: (317) 637-1777

Attorneys for *Amici Curiae* the Messenger
Courier Association of America and the Air
and Expedited Motor Carrier Association

CERTIFICATE OF COMPLIANCE WITH RULE 32(A)

Certificate of Compliance With Type-Volume Limitation,
Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

- this brief contains 3,117 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), *or*
- this brief uses a monospaced typeface and contains lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

- this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font, *or*
- this brief has been prepared in a monospaced typeface using _____ with _____.

Date: August 22, 2011

By: s/Steven A. Pletcher
Steven A. Pletcher

Attorney for *Amici Curiae* the
Messenger Courier Association of
America and the Air and Expedited
Motor Carrier Association

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2011, I electronically filed the foregoing document with the United States Court of Appeals for the First Circuit using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF filers and that they will be served by the CM/ECF system:

Pierce Owen Cray
Douglas Martland
MASSACHUSETTS ATTORNEY
GENERAL'S OFFICE
1 Ashburton Place
Boston, MA 02108

Kate J. Fitzpatrick
MASSACHUSETTS ATTORNEY
GENERAL'S OFFICE
10 Mechanic Street, Suite 301
Worcester, MA 01608

David C. Casey
Vanessa K. Hackett
Walter C. Hunter
Carie A. Torrence
LITTLER MENDELSON, P.C.
One International Place, Suite 2700
Boston, MA 02110

Harold L. Lichten
LICHTEN & LISS-RIORDAN, P.C.
100 Cambridge Street, 20th Floor
Boston, MA 02114

By: s/Steven A. Pletcher
Steven A. Pletcher

Attorney for *Amici Curiae* the
Messenger Courier Association of
America and the Air and Expedited
Motor Carrier Association