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1991 WL 132231

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770 F.Supp. 994
United States District Court,
M.D. Pennsylvania.

John E. TRONE, an individual, and Case Beer
and Soda Outlet, Inc. d/b/a Beer World, 520
South 29th Street, **Harrisburg**, Pennsylvania,
a Pennsylvania Corporation, Plaintiffs,
v.

Ernest PREATE, Jr., Attorney General of the
Commonwealth of Pennsylvania, in his official
capacity, Lawrence N. Claus, Deputy Attorney
General, in his official capacity, Glenn Walp,
Acting State Police Commissioner, in his official
capacity, Major William A. Mericle, Director of the
Pennsylvania Bureau of Liquor Control Enforcement,
in his official capacity, and Major George P. March,
Director of the Pennsylvania Bureau of Criminal
Investigation, in his official capacity, Defendants.

Civ. A. No. 1:CV-91-0429.

|

April 12, 1991.

Synopsis

Action was brought challenging constitutionality of provision of state liquor code requiring applicant for distributor's license to be only person with "pecuniary interest" in licensed business for term of license. On motion for injunctive relief, the District Court, *Rambo*, J., held that, although *Younger* abstention was not appropriate, *Pullman* abstention was since state court had not resolved state-law issue of whether statute applied to arrangement in question.

Ordered accordingly.

West Headnotes (6)

[1] Federal Courts ➔ Younger abstention

170B Federal Courts
170BIX Right to Decline Jurisdiction; Abstention
170BIX(A) In General
170Bk2578 Younger abstention

(Formerly 170Bk46)

Under "*Younger* abstention," federal court may not adjudicate constitutional claim if plaintiff is party to ongoing state proceedings in which constitutional claim may be adjudicated, provided that state proceedings have not been brought in bad faith; there must be adequate remedy available in state proceedings, and state's interest in proceedings must be important enough that intrusion of federal jurisdiction would disregard comity between state and federal governments.

[2] Federal Courts ➔ Younger abstention

170B Federal Courts
170BIX Right to Decline Jurisdiction; Abstention
170BIX(A) In General
170Bk2578 Younger abstention

(Formerly 170Bk46)

Younger abstention is appropriate even if ongoing state proceedings are administrative and plaintiff must wait for state court review to have constitutional claim heard.

[3] Federal Courts ➔ Liquor; public amusement and entertainment

170B Federal Courts
170BIX Right to Decline Jurisdiction; Abstention
170BIX(B) Particular Cases, Contexts, and Questions
170Bk2625 Trade, Business, and Finance
170Bk2627 License and Regulation of Occupations
170Bk2627(3) Liquor; public amusement and entertainment

(Formerly 170Bk47.1, 170Bk47)

"*Younger* abstention" was not appropriate in action challenging provision of state liquor code requiring applicant for distributor's license to be only person with "pecuniary interest" in licensed business for term of license, even though state argued that state investigative grand jury proceeding could be considered ongoing state proceedings in which challengers' constitutional claims could be addressed and even though

challengers failed to raise constitutional claims in other state administrative proceedings.

2 Cases that cite this headnote

[4] **Federal Courts ➔ Pullman abstention**

170B Federal Courts

170BIX Right to Decline Jurisdiction; Abstention

170BIX(A) In General

170Bk2575 Pullman abstention

(Formerly 170Bk46)

“*Pullman abstention*” is appropriate where challenged state statute is susceptible of construction by state courts that would moot, avoid, or modify federal constitutional question, and federal court should abstain pending state court determination of pertinent state law.

1 Cases that cite this headnote

[5] **Federal Courts ➔ Liquor; public amusement and entertainment**

170B Federal Courts

170BIX Right to Decline Jurisdiction; Abstention

170BIX(B) Particular Cases, Contexts, and Questions

170Bk2625 Trade, Business, and Finance

170Bk2627 License and Regulation of Occupations

170Bk2627(3) Liquor; public amusement and entertainment

(Formerly 170Bk47.1, 170Bk47)

“*Pullman abstention*” was appropriate in action challenging constitutionality of provision of state liquor code requiring applicant for distributor's license to be only person with “pecuniary interest” in licensed business for term of license;

challenge was based on alleged vagueness of term “pecuniary interest” as applied to arrangement between applicant and consultant, and there was no authoritative state case law indicating whether statute would in fact apply to arrangement; moreover, regulatory scheme governing liquor licensing was of paramount interest to state, and, although challengers expressed fear that they would be prosecuted criminally under statute before it was determined whether it applied to them, there was no indication that state in fact intended to prosecute challengers criminally.  47 P.S. § 4-436(f); U.S.C.A. Const.Amends. 1, 14.

[6] **Federal Courts ➔ Pullman abstention**

170B Federal Courts

170BIX Right to Decline Jurisdiction; Abstention

170BIX(A) In General

170Bk2575 Pullman abstention

(Formerly 170Bk46)

Pullman abstention is rarely appropriate in facial challenge to statute based on vagueness since facial challenge requires plaintiff to show that there is no set of circumstances under which statute would be valid and since no single adjudication by state court would thus settle overriding constitutional difficulty.

All Citations

770 F.Supp. 994