

FILED

SEP 04 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BIG SKY SCIENTIFIC LLC,

Plaintiff-Appellant,

v.

JAN M. BENNETTS, in her official
capacity as Ada County Prosecuting
Attorney; IDAHO STATE POLICE; ADA
COUNTY,

Defendants-Appellees.

No. 19-35138

D.C. No. 1:19-cv-00040-REB

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Ronald E. Bush, Magistrate Judge, Presiding

Argued and Submitted August 28, 2019
Seattle, Washington

Before: HAWKINS, McKEOWN, and BYBEE, Circuit Judges.

Big Sky Scientific LLC (Big Sky) challenges the district court's denial of its motion for a preliminary injunction. It argues that the district court erred in

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

concluding it was unlikely to succeed on the merits of its claim that federal law prohibits the seizure of a shipment of hemp it was transporting through Idaho from Oregon to Colorado. Defendants Idaho State Police, Ada County, and Jan Bennetts, the Ada County Prosecuting Attorney, argue that the district court abused its discretion in not abstaining from this case under *Younger v. Harris*, 401 U.S. 37 (1971), because there is an in rem forfeiture proceeding pending in Idaho state court in which Big Sky can raise its federal claims. We review for abuse of discretion a district court's abstention decision. *McIntyre v. McIntyre*, 771 F.2d 1316, 1319 (9th Cir. 1985).

Younger abstention is appropriate when “(1) there is ‘an ongoing state judicial proceeding’; (2) the proceeding ‘implicates important state interests’; (3) there is ‘an adequate opportunity in the state proceedings to raise constitutional challenges’; and (4) the requested relief ‘seeks to enjoin’ or has ‘the practical effect of enjoining’ the ongoing state judicial proceeding.” *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018) (quoting *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014)) (alterations adopted).

We reverse the district court's decision not to apply *Younger* abstention. Our decision is based in part on (1) Defendants' counsels' representation at oral argument that Idaho will immediately move to lift the stay in the in rem forfeiture

action, and (2) the assumption that, apart from any criminal proceedings, the Idaho District Court will proceed expeditiously with the in rem action, including Big Sky's challenge to Idaho's interpretation of the federal Agricultural Improvement Act of 2018 (known as the 2018 Farm Bill), and Big Sky's Commerce Clause claims. The panel will retain jurisdiction over further proceedings in this matter.

REVERSED.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 10. Bill of Costs**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to (*party name(s)*):

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

| COST TAXABLE | REQUESTED <i>(each column must be completed)</i> | | | |
|--|--|---|--|--|
| DOCUMENTS / FEE PAID | No. of Copies | Pages per Copy | Cost per Page | TOTAL COST |
| Excerpts of Record* | <input style="width: 100%; height: 25px;" type="text"/> | <input style="width: 100%; height: 25px;" type="text"/> | \$ <input style="width: 100%; height: 25px;" type="text"/> | \$ <input style="width: 100%; height: 25px;" type="text"/> |
| Principal Brief(s) (<i>Opening Brief; Answering Brief; 1st, 2nd, and/or 3rd Brief on Cross-Appeal; Intervenor Brief</i>) | <input style="width: 50px; height: 25px;" type="text"/> | <input style="width: 50px; height: 25px;" type="text"/> | \$ <input style="width: 50px; height: 25px;" type="text"/> | \$ <input style="width: 50px; height: 25px;" type="text"/> |
| Reply Brief / Cross-Appeal Reply Brief | <input style="width: 50px; height: 25px;" type="text"/> | <input style="width: 50px; height: 25px;" type="text"/> | \$ <input style="width: 50px; height: 25px;" type="text"/> | \$ <input style="width: 50px; height: 25px;" type="text"/> |
| Supplemental Brief(s) | <input style="width: 50px; height: 25px;" type="text"/> | <input style="width: 50px; height: 25px;" type="text"/> | \$ <input style="width: 50px; height: 25px;" type="text"/> | \$ <input style="width: 50px; height: 25px;" type="text"/> |
| Petition for Review Docket Fee / Petition for Writ of Mandamus Docket Fee | | | | \$ <input style="width: 50px; height: 25px;" type="text"/> |
| TOTAL: | | | | \$ <input style="width: 50px; height: 25px;" type="text"/> |

***Example:** Calculate 4 copies of 3 volumes of excerpts of record that total 500 pages [Vol. 1 (10 pgs.) + Vol. 2 (250 pgs.) + Vol. 3 (240 pgs.)] as:

No. of Copies: 4; Pages per Copy: 500; Cost per Page: \$.10 (or actual cost IF less than \$.10);

TOTAL: 4 x 500 x \$.10 = \$200.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov