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Recommended Citation
Available at: https://digital.sandiego.edu/sdlr/vol29/iss2/7

In order to deter parallel state and federal suits involving the same parties and issues in declaratory judgment actions, the Brilhart doctrine requires a balancing test to determine the propriety of exercising federal jurisdictions to grant relief. This standard was expanded and crystallized in 1991. In Continental Casualty Co. v. Robsac Industries, the Ninth Circuit held that federal district courts should generally decline to exercise jurisdiction in insurance coverage and other suits brought under the Federal Declaratory Judgments Act. The Robsac court replaced the former fact-specific balancing test with a general rule. The Robsac analysis of declaratory judgment actions involving parallel state court suits filed by particular categories of litigants whom the court deems "reactive" translates into a per se rule favoring federal court abstention. Whether Robsac's new standard will in fact deter federal courts from exercising their congressionally-conferred jurisdiction is unclear.

I. INTRODUCTION

The Ninth Circuit recently narrowed federal jurisdiction by expanding a new branch of abstention doctrine. In Continental Casualty Co. v. Robsac Industries,¹ the Court of Appeals for the Ninth

¹. Continental Casualty Co. v. Robsac Indus., 947 F.2d 1367 (9th Cir. 1991).
Circuit held that federal district courts should generally decline to exercise jurisdiction in insurance coverage and other suits brought under the Federal Declaratory Judgments Act presenting only state law issues during the pendency of parallel state proceedings. The split decision crystallized a fifth branch of abstention doctrine by establishing a general rule of abstention during the pendency of parallel state court proceedings, with limited exceptions. By formulating a strict standard for federal court jurisdiction in declaratory relief actions, Robsac effectively creates a per se rule which virtually slams shut the doors of the federal courts. Litigants who may otherwise satisfy federal jurisdictional requirements lose access to a federal forum and must litigate in a state court.

The Federal Declaratory Judgments Act is a procedural device that enlarges the range of remedies available to the federal courts. The Act seeks to provide an immediate forum for adjudication of rights and obligations in an actual controversy so that parties may resolve disputes with expediency and economy in their entirety. This discretionary remedy is liberally construed to accomplish its intended purpose. As a discretionary procedural device, the Act does not increase the United States district courts' jurisdiction over substantive rights of litigants or create any new causes of action. Therefore, to invoke declaratory relief under the Act, a plaintiff must establish federal jurisdiction independently.

Application of the Act during the pendency of parallel state proceedings can prove particularly complex. Concerns of federalism, comity, and fairness require a balancing of competing values to determine whether to grant federal declaratory relief. Congress has accorded the district courts great discretion in deciding whether to

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3. 947 F.2d at 1374. "Courts should generally decline to assert jurisdiction in insurance coverage and other declaratory relief actions presenting only issues of state law during the pendency of parallel proceedings in state court." Id.
7. This refers to the interrelationships among the states and the federal government. BLACK'S LAW DICTIONARY 315 (5th ed. 1983).
8. [Comity is] a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.
exercise their power under existing law.\textsuperscript{10} Circuits have split over whether parallel state proceedings require abstention and what the appropriate standard of review for the district court’s exercise of discretion should be.\textsuperscript{11} In establishing essentially a per se rule, \textit{Robsac} has deprived district courts the discretion to hear such disputes already pending in state courts.

This Note examines the \textit{Robsac} decision in light of abstention doctrine history and previous Ninth Circuit decisions. This Note then explores the potential impact of the \textit{Robsac} decision with respect to enlarging this branch of abstention doctrine and the competing concerns over the retention of district court discretion in granting declaratory relief.

II. Background

A. Federal Abstention Doctrine

There is a widespread belief that the forum of litigation may contribute as much to the outcome of a case as the underlying merits of the case.\textsuperscript{12} For example, a foreign litigant may seek a neutral federal forum attempting to avoid local prejudice. This belief accounts for the importance of the abstention doctrines that act as a bar to the

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\item Brillhart v. Excess Ins. Co. of America, 316 U.S. 491, 494 (1942).
\item Some circuits have concluded that the decision to abstain in declaratory judgment actions because of parallel litigation in another forum is limited by the \textit{Colorado River} abstention doctrine. \textit{See} \textit{Colorado River} Water Conservation Dist. v. United States, 424 U.S. 800 (1976); \textit{see also} Lumbermens Mutual Casualty Co. v. Connecticut Bank & Trust Co., 806 F.2d 411 (2d Cir. 1986). Others follow the view that the discretion generated by the \textit{Declaratory Judgments Act} and recognized by the Supreme Court in \textit{Brillhart} remains unaffected by the “exceptional circumstances” analysis of \textit{Colorado River}. \textit{See}, \textit{e.g.}, Terra Nova Ins. Co. v. 900 Bar, Inc., 887 F.2d 1213, 1224 (3rd Cir. 1989). Still others have tried to fashion some form of “middle ground” between the two positions. \textit{See}, \textit{e.g.}, Fuller Co. v. Ramon I. Gil, Inc., 782 F.2d 306, 308-11 (1st Cir. 1986).
\end{enumerate}

There are several reasons for Congress’ determination that the federal judicial power should be expanded to the limits permissible by the Constitution. . . . First, it was thought necessary to enable a plaintiff to avoid the perceived prejudices of a local forum. A second reason was to deal with local opposition to, or disregard of, the federal law. \textit{Id.} at 1198 n.66. \textit{See also} David A. Sonenshein, \textit{Abstention: The Crooked Course of Colorado River}, 59 \textit{Tul. L. Rev.} 651 (1985) (“[I]n enacting the statute . . . [C]ongress has deemed the federal courts, with life-tenured judges who are less subject to the vagaries and pressures of local public opinion, to be an option well worth preserving for the litigant.”); Martin H. Redish, \textit{Abstention, Separation of Powers, and the Limits of the Judicial Function}, 94 \textit{Yale L.J.} 71, 112 (1984) (“The Supreme Court has recognized
federal forum. In abstention cases, a federal court declines to exercise jurisdiction it unquestionably possesses in favor of a state court’s exercise of jurisdiction. Thus, the party who has chosen to litigate in a federal forum is forced into a state court.

Abstention is controversial because it hampers a plaintiff’s access to a federal court, even though the federal court has jurisdiction over the parties and the case. Sometimes abstention merely delays federal resolution. An issue initially presented to a state court may return to federal court for final resolution of federal questions. More commonly, however, abstention abdicates jurisdiction by the lower federal courts. Issue and claim preclusion principles generally bar federal reconsideration of questions resolved in state court proceedings.

Commentators almost uniformly condemn the Supreme Court’s abstention doctrines. Abstention consistently relegates federal cases to the state courts despite the virtually “unflagging obligation” of

the important interrelations between congressional jurisdictional allocations and substantive congressional programs . . . ."; Paul M. Bator, The State Courts and Federal Constitutional Litigation, 22 Wm. & MARY L. REV. 605, 607 (1981) (discussing the argument that enforcing federal constitutional principles should be regarded as the task of the federal courts).

The federal courts are to be preferred because, we are told, federal judges are more competent and expert in adjudicating issues of federal law; are more independent in resisting popular and political pressures; and are likely, through institutional perspective, to be even more sensitive to claims of federal right and more zealous and conscientious in upholding them against assertions of state power, than are state judges.

Bator, supra, at 607.

13. The controversial nature of abstention doctrines arises in great part from the pervasive sentiment that state courts are less receptive than are federal courts to federal claims of right.

14. This is the case with Pullman abstention. See Railroad Comm’n. v. Pullman Co., 312 U.S. 496 (1941). The Texas Railroad Commission issued orders requiring certain numbers of white conductors on each train. A group of black railroad employees sued in federal district court claiming this order violated their Fourteenth Amendment rights. Id. at 497-98. In Pullman, the Supreme Court ordered federal abstention so the Texas courts could determine whether the Commission had authority to issue the order under Texas law. If the Texas courts decided no, the constitutional issue became moot. If the state courts upheld the Commission’s authority under Texas law, the case could then return to federal court for resolution of the federal issue. Id. at 501.


federal courts to exercise the jurisdiction bestowed on them by Congress and plaintiffs’ repeated choice of federal fora in which to vindicate their federal rights.17

The Supreme Court justifies abstention doctrines by relying primarily upon a concern for comity and federalism interests.18 Comity refers to the relations between coordinate state and federal judicial systems. When federal courts decide issues that state courts could resolve, the federal courts may implicitly call into question the ability or willingness of state courts to apply federal law faithfully.19 Federalism, in turn, refers to the relations between state and federal sovereigns. The federal courts could usurp the role of state courts in addressing matters of state policy.20 Finally, sound judicial administration raises concerns: state courts, and the litigants before them, should not be subject to the disruptive effect of parallel or pre-emptive federal proceedings.21

17. Generally, as between state and federal courts, the rule is that ‘the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction ’ . . . . ‘ This difference in this general approach between state-federal concurrent jurisdiction and wholly federal concurrent jurisdiction stems from the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them. Colorado River, 424 U.S. at 817 (emphasis added).


19. Trainor v. Hernandez, 431 U.S. 434, 446 (1977) (noting that when a federal court proceeds with its case rather than remitting litigants to their remedies in a pending state enforcement suit, it negatively reflects upon the state’s ability to adjudicate federal claims); Steffel v. Thompson, 415 U.S. 452, 462 (1974) (federal court intervention in state criminal proceedings may be interpreted as negatively reflecting upon state courts’ ability to enforce constitutional principles).


21. Abstention is also appropriate where there have been presented difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar . . . . In some cases, however, the state question itself need not be determinative of state policy. It is enough that exercise of federal review of the question in a case . . . . would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern. Colorado River, 424 U.S. at 814 (see cases cited therein) (citations omitted).
B. Main Categories of Abstention Doctrine

Although the abstention doctrines defy strict categorization, the cases relying on the abstention principle are commonly divided into several doctrinal groups. First, the Pullman\textsuperscript{22} abstention doctrine generally requires a lower federal court to stay its hand to permit state courts to resolve unsettled state law questions which may obviate the need to reach the federal questions presented in a case. Second, the Younger\textsuperscript{23} abstention doctrine holds that, absent specified circumstances, a federal court should not enjoin an ongoing state criminal proceeding. Third, the Burford\textsuperscript{24} abstention doctrine requires abstention to avoid federal court interference in complex state administrative schemes. Fourth, the Colorado River\textsuperscript{25} abstention doctrine, commonly called “fourth branch abstention,” counsels federal court restraint when parallel state court proceedings and “exceptional circumstances” exist.

This fourth branch of abstention stands for the principle that federal courts may, in their discretion, abstain from exercising properly invoked federal jurisdiction for reasons of judicial economy or wise judicial administration. This branch has often been applied to declaratory judgment actions.\textsuperscript{26}

In creating a new branch of abstention based on considerations of wise judicial administration, the Supreme Court in \textit{Colorado River Conservation District v. United States} emphasized the “virtually unflagging obligation of the federal courts to exercise the jurisdiction given to them,” and held that “only the clearest of justifications will

\begin{itemize}
  \item \textsuperscript{22} Pullman abstention was developed in \textit{Railroad Comm’n v. Pullman Co.}, 312 U.S. 496 (1941). Under this doctrine, a federal court will delay its exercise of jurisdiction to allow a state court to interpret an ambiguous state statute subjected to a constitutional challenge. The doctrine is invoked only when the challenged statute is capable of at least two constructions, one which would render the law unconstitutional, and one which would not. After the state court has definitively interpreted the statute, the case may ultimately return to the federal court for adjudication of the constitutional claim.
  \item \textsuperscript{23} Younger abstention was developed in \textit{Younger v. Harris}, 401 U.S. 37 (1971). Under this doctrine, a federal court may not enjoin state criminal proceedings, even to protect federal constitutional rights.
  \item \textsuperscript{24} Burford abstention was developed in \textit{Burford v. Sun Oil Co.}, 319 U.S. 315 (1943). This doctrine requires a federal court to dismiss a case involving an area of traditional state power when the exercise of federal jurisdiction would have a disruptive effect upon state efforts to establish a coherent policy regarding a matter of substantial public concern. To invoke this doctrine, state law must be unsettled and the matter must bear on a substantial state policy. \textit{Id.} at 332-34.
  \item \textsuperscript{25} Colorado River abstention was developed in \textit{Colorado River Water Conservation Dist. v. United States}, 424 U.S. 800 (1976). Although the presence of a parallel state court proceeding generally does not justify dismissal of a federal suit, under this doctrine “exceptional circumstances” may justify a stay, which is often functionally a dismissal.
  \item \textsuperscript{26} See supra note 11.
\end{itemize}
warrant dismissal." The Court further noted that although wise judicial administration permitted dismissal of a federal suit because of a pending concurrent state proceeding, this was under circumstances considerably more limited than those appropriate under ordinary abstention doctrines. The Court developed an "exceptional circumstances" test: a balancing test with the balance weighted heavily in favor of the exercise of federal jurisdiction. Furthermore, under Colorado River abstention, appellate courts review the district court's exercise of such discretion under an "abuse of discretion" standard.

A different but related doctrine also applies to declaratory judgment actions. This doctrine was first set forth by the United States Supreme Court in Brillhart v. Excess Insurance Co. By its express terms, the Declaratory Judgments Act makes the granting of declaratory relief discretionary. Because of this feature, a whole new branch of abstention developed. In contrast, generally when litigants have satisfied the federal jurisdictional requirements, the district courts' exercise of congressionally-defined jurisdiction is mandatory, barring some basis for abstention.

C. Ninth Circuit Principles

In the Ninth Circuit prior to 1991, the principles established by the United States Supreme Court in Colorado River governed the propriety of granting declaratory relief in the face of pending parallel state proceedings. Because Colorado River required "extraordinary circumstances" to justify abstention, only narrowly defined situations warranted such action.

In Chamberlain v. Allstate Insurance Co., however, the Ninth Circuit recognized the "special status" of declaratory relief suits and

28. Id.; see supra notes 22-25 and accompanying text.
30. Mobil Oil Corp. v. City of Long Beach, 772 F.2d 534, 540 (9th Cir. 1985);
Moses H. Cone, 460 U.S. at 19.
31. 316 U.S. 491 (1942).
33. See supra note 17.
34. Mobil Oil Corp., 772 F.2d at 540-41; see also Chamberlain v. Allstate Ins. Co., 931 F.2d 1361, 1366 (9th Cir. 1991) ("The Colorado River test, however, does not apply where the Declaratory Judgments Act is involved." (citations omitted)).
36. Chamberlain, 931 F.2d at 1366 n.1.
held that *Colorado River* abstention principles do not apply to suits brought under the Declaratory Judgments Act. The court held that the principles set forth by the United States Supreme Court in *Brillhart* determine whether declaratory relief is warranted. *Brillhart*, however, provided a much lower threshold of justification necessary to warrant abstention.

*Brillhart* involved an unsettled technical issue of state law. The *Brillhart* opinion had two important features. *Brillhart* established both a three-prong balancing test for determining when abstention is appropriate and a de novo standard of review in federal declaratory relief cases.

The *Brillhart* test considers: (1) the interest in avoiding needless determinations of state law, (2) the interest in avoiding forum shopping, and (3) the interest in avoiding duplicative litigation. In *Brillhart*, the Supreme Court remanded the issue to the district court to determine whether jurisdiction was proper in light of the

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37. Id.
38. Id. at 1366-67.
39. *Brillhart*, 316 U.S. at 495; *Chamberlain*, 931 F.2d at 1367.
40. *Brillhart* involved the scope of state garnishment proceedings. In *Brillhart*, the Excess Insurance Co. of America brought a declaratory judgment action in 1940 to determine its rights under a 1932 reinsurance contract made with Central Mutual Insurance Co. of Chicago. Under that contract, Excess agreed to reimburse Central, within specified limits, for any “ultimate net loss” sustained by Central under certain liability policies. Central undertook to notify Excess of any accident that might be covered by the policies. In 1934, Central issued a liability policy to Cooper-Jarrett, Inc. Later that year, Brillhart’s decedent was killed by a truck leased by Cooper-Jarrett. Brillhart brought suit against Cooper-Jarrett in a Missouri state court. Central refused to defend the suit on grounds that the policy did not cover the accident.

While the suit was pending, both Central and Cooper-Jarrett encountered financial difficulties. Central was liquidated and all claims against it barred by order of an Illinois state court. Cooper-Jarrett filed a reorganization petition in a Missouri district court and the proceeding’s final decree discharged it from any past or future judgment by Brillhart. In 1939, Brillhart obtained a twenty-thousand dollar default judgment against Cooper-Jarrett, who had abandoned defense of the suit. Brillhart subsequently instituted garnishment proceedings against Central in a Missouri state court. Being unable to recover any part of the judgment from either Cooper-Jarrett or Central, Brillhart then made Excess a party to the garnishment proceeding in 1940.

Meanwhile, Excess filed a declaratory judgment action in the Kansas federal district court. Excess alleged that it could not be obligated under the reinsurance contract because Central violated the terms by failing to notify Excess of the fatal accident and that, in any event, the default judgment had been fraudulently obtained. Jurisdiction was based on diversity of citizenship.

Brillhart moved to dismiss the suit primarily because the issues involved in the federal suit could now be decided in the pending Missouri state court garnishment proceeding.

The district court dismissed the suit likely because of a reluctance to prolong the litigation; it had been six years since the decedent’s death. The Court of Appeals for the Tenth Circuit held that dismissal of the suit was an abuse of discretion. However, instead of remitting the case for a proper exercise of district court discretion, the court of appeals reversed the judgment with instructions that the district court proceed to a redetermination on the merits. The Supreme Court then took the case. *Brillhart*, 316 U.S. at 492-94.

41. See supra note 39 and accompanying text.
42. Id. at 498; *Chamberlain*, 931 F.2d at 1367.
relevant principles.\(^{43}\)

While incorporating the three Brillhart principles, Chamberlain developed an additional prong for the court to balance: the interest in avoiding piecemeal litigation.\(^{44}\) Chamberlain involved a situation where only the federal court could adjudicate the entire case.\(^{46}\) Thus, the Ninth Circuit held the federal district court properly and efficiently exercised its jurisdiction. The Chamberlain court further noted that \[\text{the pendency of a state action, however, does not of itself require a district court to refuse declaratory relief in federal court.}\]\(^{47}\)

Chamberlain considerably narrowed the discretion that district courts in the Ninth Circuit have to issue declaratory relief. Under Chamberlain, district courts ordinarily should decline to grant declaratory relief where a state suit is pending concerning the same issues and parties, unless the suit is governed by federal law.\(^{47}\) As a result, the court abandoned the relatively high threshold of "extraordinary circumstances" required to justify abstention under Colorado River. Consequently, a federal court can abstain more readily from exercising jurisdiction in suits involving the Declaratory Judgments Act than in suits involving coercive relief.\(^{48}\)
The Court of Appeals for the Ninth Circuit significantly expanded the Brillhart and Chamberlain abstention principles in Robsac. In Robsac, the court identified a five-prong inquiry for determining the propriety of abstention in declaratory relief cases. The inquiry considers: (1) the interest in avoiding needless federal court determinations of state law; (2) the interest in avoiding the use by litigants of declaratory judgment actions as a means of forum shopping; (3) the interest in avoiding duplicative litigation; (4) the interest in avoiding piecemeal litigation; and (5) the interest in avoiding violation of the spirit, if not the letter, of the diversity removal provision. This new test extends the Brillhart and Chamberlain principles, forming a comprehensive Ninth Circuit guideline for exercising jurisdiction in declaratory judgment actions. Thus, Robsac expands and defines a fifth branch of abstention doctrine.

III. CONTINENTAL CASUALTY CO. v. ROBSAC INDUSTRIES

A. Case Facts


On December 2, 1987, Robsac filed a breach of contract suit against Continental in Los Angeles Superior Court. Robsac also

end in an immediate direct order to the defendant. DOUGLAS LAYCOCK, MODERN AMERICAN REMEDIES 3 (1985).

49. The development of the Robsac 5-prong inquiry can be traced to prior case law. The first three factors were developed in Brillhart, 316 U.S. at 494. The fourth factor was added by Chamberlain, 931 F.2d at 1367. Finally, the fifth factor was suggested in Robsac, 947 F.2d at 1371-73.

50. Robsac, 947 F.2d at 1370-74.
51. Id. at 1368.
52. Id. The insurance policy was issued to Robsac along with five other named subsidiaries.
53. Id.
54. Id. As instructed by Robsac’s insurance agent, Robsac hired a private investigator to investigate the claim. Robsac submitted the official “proof of loss” form to Continental on June 17, 1987. Id.
55. Id.
56. Id.
named as defendants "Does 1 through 50" identified as fifty of Continental's managerial-level employees. The parties agreed that some of the employees worked and resided in California. Under the prevailing diversity removal statute, the presence of the Doe defendants destroyed complete diversity. Thus, Continental was unable to remove the suit to federal court.

Twenty-six days later, Continental filed a declaratory judgment action in the United States District Court for the Eastern District of Illinois. Continental sought a declaration that it was not liable on the policy. The sole basis for federal subject matter jurisdiction was diversity of citizenship.

On June 1, 1988, Robsac moved to stay the federal action or, alternatively, to transfer it to the Central District of California. Robsac's alternative motion was granted, and the case was transferred to the California federal court.

Continental moved for summary judgment on June 6, 1988. Continental argued that Robsac had either assigned its entire interest in the claim to a third party or waived any remaining interest.

On March 7, 1989, Robsac again moved to stay the federal action.

57. Id. at 1368-69, 1372 n.5.
58. Id. at 1369.
59. 28 U.S.C. § 1441(a) (1988); see Bryant v. Ford Motor Co., 844 F.2d 602, 605 (9th Cir. 1987) (en banc).
60. Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.
28 U.S.C. § 1441(b) (1988) (emphasis added). While Robsac was pending, Congress amended the diversity removal provision. See Judicial Improvements and Access to Justice Act, Pub. L. No. 100-702, 102 Stat. 4642 (1988). The amendment provided that citizenship is unaffected by the presence of Doe defendants. Id.; 28 U.S.C. § 1441(a) (1988) ("For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded."). This amendment, if in effect in December 1987, would have permitted Robsac to remove the case to federal court at that time.
62. Id.
63. Id.
64. Id. "Continental argued that Robsac had assigned its entire interest in the claim to a third party or had waived any remaining interest, and that in any event Robsac" failed to "introduce any admissible evidence to prove its alleged theft loss". Id.
65. Id.
this time before the California district court. At this point the federal proceedings had progressed further than the state proceedings. Robsac’s motion to stay based upon the pendency of the state proceedings was summarily denied on April 3, 1989.

The district court heard Continental’s summary judgment motion on April 28, 1989. The court entered judgment in favor of Continental and against Robsac on the assignment-waiver issue. Robsac appealed the district court’s entry of summary judgment on Continental’s declaratory relief action and its summary denial of Robsac’s motion to stay pending the outcome of state proceedings. The United States Court of Appeals for the Ninth Circuit reversed, holding that because of the pending state action, the district court should have refrained from exercising jurisdiction to grant declaratory relief.

B. Opinion

A divided Ninth Circuit reversed the district court’s entry of summary judgment and remanded with instructions to dismiss the case. The court held that the district court’s exercise of jurisdiction contravened the exercise of sound judicial discretion. The court further held that “[c]ourts should generally decline to assert jurisdiction in insurance coverage and other declaratory relief actions presenting only issues of state law during the pendency of parallel proceedings in state court.”

After a brief review of decisional law since Colorado River, the court reaffirmed its holding in Chamberlain that Colorado River principles are entirely inapplicable to suits brought under the Declaratory Judgments Act. The court then stated that Brillhart controls declaratory relief actions. Brillhart provides for de novo review as opposed to Colorado River’s abuse of discretion standard. The court elected to conduct the review itself, in lieu of remanding the case to the district court for reconsideration.

66. Id. This time Robsac made “its motion before the United States District Court for the Central District of California.” Id.
67. Id. at 1376 (Hall, J., dissenting).
68. Robsac, 947 F.2d at 1369.
69. Id. “The court did not reach the underlying question whether Continental was liable (to Robsac or an assignee) under the policy. Robsac made an untimely motion for a new trial or in the alternative, for reconsideration, which the court denied.” Id.
70. Id.
71. Id. at 1374.
72. Id.
73. Id.
74. Id.
75. Id. at 1369.
76. Id. at 1370.
77. Id.
Robsac asserted that the district court had abused its discretion by granting declaratory relief during the pendency of the state court proceedings. The court of appeals found that in light of Robsac's stay request, Brillhart's "sound judicial discretion" standard required abstention. The court applied a five-prong test in determining whether the exercise of jurisdiction was proper.

First, the court asked whether exercising federal jurisdiction would frustrate the policy of avoiding unnecessary declarations of state law. State law provided the rule of decision in this diversity case. Because the case involved insurance law, the court found that a complex scheme of state administrative processes and insurance regulation was involved. The dependence on complex state administrative schemes supported resolution by the state court. Further, the court noted the federal interest is at its "nadir" when the "sole basis for jurisdiction is diversity of citizenship." Thus, the court found the policy of avoiding unnecessary declarations of state law especially strong here.

Second, in analyzing the interest in avoiding forum shopping, the court focused on the potentially "'defensive' or 'reactive' nature of a federal declaratory judgment suit." "Defensive or reactive" litigation may be characterized as a vexatious tactical maneuver based on a contrived federal claim or an attempt to avoid adverse rulings.

The record does not indicate why the district court decided to exercise its jurisdiction . . . . "[W]e review de novo the district court's decision to exercise its jurisdiction under the Declaratory Judgments Act when a state action is pending." . . . . We may conduct that review now or remand and delay doing so until after another appeal is taken. Whether we retain jurisdiction and proceed to decide the issue before us or whether we remand to the district court . . . . ultimately we will still be obligated to exercise our own discretion in considering the propriety of the district court's grant or denial of declaratory relief . . . . [W]e elect to review the district court's exercise of jurisdiction now.

Id. (citations omitted).
78. Id. at 1369.
79. Id. at 1374.
80. Id. at 1370–74.
81. See 28 U.S.C. § 1652 (1988) ("The laws of the several states, except where the Constitution on treaties of the United States otherwise require or provide, shall be regarded as the rules of decisions in civil actions in the courts of the United States, in cases where they apply."); Erie R.R. v. Tompkins, 304 U.S. 64 (1938) (requiring federal courts to apply the substantive law of the forum state in diversity actions).
82. Robsac, 947 F.2d at 1371 (discussing the fact that this case involves insurance law and California has established a complex scheme of insurance regulation).
83. Id.
84. Id.
85. Id.
made by the state court. Such a posture encourages forum shopping in an effort to gain a tactical advantage from the application of federal court rules and, therefore, would justify abstention. Regardless of whether an insurer's declaratory relief action was filed first or second, the court labeled such actions "reactive" and found abstention appropriate.

Third, the court found that because the federal declaratory relief suit mirrored the state suit, to permit the federal suit to proceed would frustrate the policy of avoiding duplicative litigation. Because the state court could resolve all the issues presented by the declaratory relief action, allowing the federal action to proceed would waste judicial resources.

Fourth, the court noted that piecemeal litigation would result if the federal court determined Robsac's rights against Continental, but not against the individual defendants who were not parties to the federal action. Thus, complete relief seemed available exclusively within the state court.

Fifth, the court considered the federal interest in maintaining the spirit of the diversity removal provision. The court asserted that allowing the action to proceed would violate "the spirit" of diversity jurisdiction. Because the state suit included nondiverse parties, allowing the federal action to proceed would "sanction partial removal."

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86. Reactive litigation may occur in response to a claim an insurer believes is not subject to coverage although the claimant has not yet filed his or her state court action: the insurer may anticipate that its insured intends to file a non-removeable state court action and rush to file a federal action in a race to the courthouse. Id.

87. Id. "[I]f a declaratory judgment suit is defensive or reactive, that would justify a court's decision not to exercise jurisdiction." Id.

88. A declaratory judgment action by an insurance company against its insured during the pendency of a non-removeable state court action presenting the same issues of state law is an archetype of what we have termed "reactive" litigation . . . . Whether the federal declaratory judgment action regarding insurance coverage is filed first or second, it is reactive, and permitting it to go forward when there is a pending state court case presenting the identical issue would encourage forum shopping . . . .

Id. at 1372-73 (quoting Transamerica Occidental Life Ins. Co. v. Digregorio, 811 F.2d 1249, 1254 n.4 (9th Cir. 1987)); but cf. Mobil Oil Corp. v. City of Long Beach, 772 F.2d 534, 542-43 (9th Cir. 1985) ("We see nothing invidious about a plaintiff filing suit in federal court before his opponent files a similar suit in state court . . . . For those plaintiffs with diversity, that preference is their right.") (citations omitted). The Mobil Oil court further noted that "attempts to characterize the federal diversity suits as "reactive" or " vexatious" are unwarranted, and that the plaintiff "is no more entitled to its choice of forum" than the defendant. Id. at 542-43.

89. Robsac, 947 F.2d at 1373.

90. Id.

91. Id.

92. Id.

93. Id. “To permit the present declaratory judgment action to proceed while there are non-diverse defendants in the state suit who are not parties to the federal action would be to sanction partial removal in all but name.” Id.
Finally, the court applied the *Brillhart* presumption that the state court should hear the entire suit.\(^4\) Failing to find any factors favoring federal jurisdiction sufficient to rebut this presumption, the court held abstention to be proper.\(^5\)

One judge dissented. She observed that the majority's decision would have a crippling effect upon the district courts' independent exercise of jurisdiction.\(^6\) She noted that creating a per se rule that insurers' requests for federal declaratory relief are "reactive" and to require abstention will deter district courts from the discretionary exercise of jurisdiction.\(^7\)

**IV. ANALYSIS**

*Robzac* utilizes the *Brillhart* and *Chamberlain* principles to significantly expand existing abstention doctrine. *Robzac* extended these principles by concluding that the involvement of solely state law, and pending parallel state proceedings between the same parties, generally requires district court abstention.\(^8\) Prior to *Robzac*, rulings such as *Brillhart* and *Chamberlain* combined to create a balancing test which was applied fact-specifically, with no single dispositive factor.\(^9\) *Robzac*, however, appears to adopt a broad general rule, requiring a high threshold of justification to avoid its application.

First, in finding that a complex administrative scheme is implicated by the presence of settled insurance law issues, the court renders all federal declaratory relief suits involving issues of solely state law vulnerable to abstention.\(^0\) *Brillhart* involved unsettled state law issues, while *Robzac* applied an absolute rule to all federal declaratory relief suits involving issues of solely state law during the pendency of parallel proceedings in state court.\(^9\) "Courts should generally decline to assert jurisdiction in insurance coverage and other declaratory relief actions presenting only issues of state law during the pendency of parallel proceedings in state court." *Id.* at 1377.

Judge Hall takes issue with the majority's characterization of "defensive or reactive" litigation as a dispositive factor in determining whether to grant declaratory relief, as opposed to only one of several factors a court must balance. *Id.* at 1377.

100. *Robzac* extends the *Brillhart* factor of avoiding needless determinations of state law which was formerly implicated only when complex state law issues were presented. This factor now extends to all parallel state court proceedings in which state law provides the rule of decision. Thus, all diversity cases may be deemed to implicate

\(^{94}\) *Id.; see Chamberlain*, 931 F.2d at 1367 ("[W]hen a party requests declaratory relief in federal court and a suit is pending in state court presenting the same issues, there exists a presumption that the entire suit should be heard in state court.").

\(^{95}\) *Robzac*, 947 F.2d at 1374.

\(^{96}\) *Id.* at 1378 (Hall, J., dissenting). "There is no escaping the conclusion that in the future, district courts will feel bound by this decision and choose not to take jurisdiction over declaratory judgment actions by insurers." *Id.*

\(^{97}\) Judge Hall takes issue with the majority's characterization of "defensive or reactive" litigation as a dispositive factor in determining whether to grant declaratory relief, as opposed to only one of several factors a court must balance. *Id.* at 1377.

\(^{98}\) *Id.* at 1374. "Courts should generally decline to assert jurisdiction in insurance coverage and other declaratory relief actions presenting only issues of state law during the pendency of parallel proceedings in state court." *Id.*

\(^{99}\) *Brillhart*, 316 U.S. at 494; *Chamberlain*, 931 F.2d at 1367; *see also Moses H. Cone.*, 460 U.S. at 16.
garnishment law, which the federal court would have had to predict in order to resolve the suit. The Court held that such state law determinations were properly for the individual states to decide.

Unlike Brillhart, Robsac involved a factual dispute over whether the appellant had an ownership interest in the policy at the time the claim was filed. The court was not called upon to decide any unsettled issues of state law. Further, no important state law question or sensitive area of state policy was at issue, such as the water rights in Colorado River. When litigants properly invoke their jurisdiction, the federal courts have a duty to decide questions of state law whenever necessary to render a judgment. The Ninth Circuit court, however, asserted that the complex nature of the law involved justified deference to the state court. As the dissent so eloquently states, "[S]urely the majority does not mean to suggest that every breach of contract claim against an insurer requires a court to plumb the depths of some byzantine administrative apparatus." Robsac may not implicate the first principle of avoiding unnecessary declarations of state law at all. Yet, the majority found this prong especially strong.

In linking settled local insurance law with complex administrative schemes, the court effectively suggests that all matters involving solely state law belong within state courts. Robsac essentially creates a per se rule because in diversity cases state law almost always provides the rule of decision. Therefore, all diversity cases which implicate complex state law issues to the same degree Robsac did will always weigh heavily in favor of abstention.

Second, the Robsac court accorded great weight to the "reactive"

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1. Brillhart, 316 U.S. at 497. "It is not our function to find our way through a maze of local statutes and decisions on so technical and specialized a subject as the scope of garnishment proceedings in a particular jurisdiction... It is too easy to lose our way." Id.
2. Id.
3. Robsac, 947 F.2d at 1368-69. This case is essentially a factual dispute over whether, at the time the claim was filed, Robsac had an ownership interest in the policy.
4. Colorado River, 424 U.S. at 820 (discussing the state's extensive involvement in state water rights and the McCarran Amendment which justify the district court's dismissal). The Court also found significant the apparent absence of any district court proceedings beyond the filing of a complaint prior to the motion to dismiss. Id.
5. Meredith v. Winter Haven, 320 U.S. 228, 234 (1943). "[I]t has from the first been deemed to be the duty of the federal courts, if their jurisdiction is properly invoked, to decide questions of state law whenever necessary to the rendition of a judgment." Id.
6. Robsac, 947 F.2d at 1371.
7. Id. at 1376 (Hall, J., dissenting).
8. See supra note 100.
9. Robsac, 947 F.2d at 1371.
nature of Continental's claim. The court asserted that the characterization of litigation as "defensive or reactive" was sufficient to warrant abstention. The court then proceeded to classify declaratory relief actions by insurers generally as "reactive," regardless of whether the insurer filed suit first or second. As a practical matter, this creates a per se rule that insurers' requests for federal declaratory relief against insureds are "reactive" and, thus, should be viewed with suspicion or denied federal relief completely.

Third, in examining the potential for duplicative litigation, the court placed no weight on the relative stages of the two actions. At the time Robsac filed its second motion to stay, the federal proceedings had progressed further than the state proceedings. In determining whether abstention is proper, a relevant inquiry is the priority of the respective proceedings and whether "substantial proceedings" have occurred in the state court such that a waste of judicial resources is likely to occur. As the United States Supreme Court has noted, "Priority should not be measured exclusively by which complaint was filed first, but rather in terms of how much progress has been made in the two actions." Continental filed its federal suit only twenty-six days after Robsac filed its state action. The federal suit had progressed much further than the parallel state suit.

Brillhart provides a general presumption in favor of state court proceedings when the parallel federal action involves the same state

110. Id. at 1372. Nowhere has the Supreme Court sanctioned abstention on the ground of vexatious litigation. See Linda S. Mullenix, A Branch Too Far: Pruning the Abstention Doctrine, 75 Geo. L.J. 99, 109-13 (1986) (discussing how the lower federal court quietly added the element of vexatious litigation as a basis for abstention in the case of Will v. Calvert, 560 F.2d 792 (7th Cir. 1977)).

111. Robsac, 947 F.2d at 1371. "[T]he "defensive" or reactive nature of a federal declaratory judgment suit... would justify a court's decision not to exercise jurisdiction." Id. (quoting Transamerica Occidental Life Insurance Co. v. Digregorio, 811 F.2d 1249, 1254 n.4 (9th Cir. 1987)).

112. See supra note 88 and accompanying text.

113. Robsac, 947 F.2d at 1376 (Hall, J., dissenting).

114. See Moses H. Cone, 460 U.S. at 21-22. In Moses H. Cone, no substantial proceedings had taken place at the time of the decision to stay the federal action. In contrast, the parties had taken most of the necessary steps to resolution of the issue and the federal suit was running well ahead of the state suit at the time the district court refused to adjudicate the suit. The appeals court reversed the district court's stay order and remanded the case with instructions to enter an order to arbitrate. Id. at 8; cf. Colorado River, 424 U.S. at 820. Although the federal suit was filed first, "the apparent absence of any proceedings in the District Court, other than the filing of the complaint, prior to the motion to dismiss" was a factor favoring dismissal. 460 U.S. at 8.


116. See supra note 61 and accompanying text.
law issues. In *Brillhart*, the parallel federal action was filed several years after the underlying state action. Consequently, a presumption in favor of state court retention of jurisdiction seems particularly appropriate to avoid disruption of an ongoing suit in which the parties had invested several years. Before adoption of the *Brillhart* principles, the Ninth Circuit had dismissed a declaratory relief claim sought in the midst of ongoing state court litigation begun three years earlier. Therefore, regardless of the branch of abstention doctrine, standard of review, or method of analysis, courts have generally refused to allow a declaratory relief claim to disrupt an ongoing action in which parties have invested many years.

In *Rob sac*, however, both the state and federal actions were filed within the same month. Under *Colorado River* analysis, the Ninth Circuit has held it to be an abuse of discretion to stay a federal action in favor of an "almost simultaneously" filed state court action which was neither in an advanced state nor more actively pursued by the plaintiffs. The filing date and order of priority becomes a neutral consideration when neither case has significantly progressed. Even when the state action is filed first, there is no compelling reason for giving priority to the state in the absence of a heavy investment of resources in the state action.

Likewise, it seems logical to extend the Ninth Circuit's neutral treatment of the filing priority factor regarding actions filed "almost simultaneously" to *Rob sac*. Merely twenty-six days had elapsed

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117. See supra note 94 and accompanying text.
118. *Brillhart*, 316 U.S. at 492-93.
119. Shell Oil v. Frusetta, 290 F.2d 689 (9th Cir. 1961).
120. See supra notes 56-61 and accompanying text.
121. See *Herrington v. County of Sonoma*, 706 F.2d 938, 940 (9th Cir. 1983) (state action filed on day after the federal action); cf. *Travelers Indem. Co. v. Madonna*, 914 F.2d 1364 (9th Cir. 1990) (the district court found the priority factor neutral because the state action was filed three days before the federal action).
122. A twenty-six day lapse between the filing of successive complaints should be treated equally under both *Colorado River* and *Brillhart* analysis. *Colorado River* analysis treats actions filed in close succession as a neutral factor because of the nonexistence of investment of resources to be given weight. The finding of a neutral factor furnishes a neutral presumption. The ascertainment of how much weight a specific factor has, or whether a factor is neutral, is unaffected by the underlying presumptions of the respective doctrines. For example, assuming all factors were neutral, apply the underlying presumptions that: (1) *Colorado River* would discourage abstention, and (2) *Brillhart* would not discourage abstention. Although cases arising under *Colorado River* and *Brillhart* may differ regarding the subsequent treatment of a neutral factor, the value of protecting state court investment does not vary between the two types of cases. Consequently, the absence of any significant state court investment in *Rob sac* suggests that the order and priority of filing was a neutral factor raising a neutral presumption. Thus, nothing favors abstention because of the absence of any state court investment.

Further, applying a strong presumption in favor of state court jurisdiction is difficult to justify absent any: (1) involvement of complex or unsettled state law as in *Brillhart*, 316 U.S. at 494; (2) important state policy such as the water rights in *Colorado River*, 424 U.S. at 820; or (3) a heavy investment of resources, judicial or otherwise, as in the three-
between the filing of the respective suits in Robsac. In contrast, Brillhart involved a span of several years between suits and the court record indicated a reluctance to further prolong litigation as a persuasive consideration in the court’s decision to abstain. Thus, the propriety of applying the Brillhart pro-state court presumption in cases not involving a heavy investment of resources in the parallel state action appears less persuasive.

Furthermore, permitting the federal action to proceed in Robsac may have resulted in a net gain in judicial resources. The federal action was more advanced than the parallel state action. By proceeding to judgment, the federal court could have resolved the issues sooner, without the need for the state court to address the same issues already settled in federal court. It is unclear whether permitting the federal action to proceed would have wasted additional judicial resources. On the contrary, assuming a similar state court outcome, no further state court action regarding the Doe defendants would have been necessary, and the federal action may have more efficiently disposed of the entire suit.

Fourth, by allowing the federal action to progress the court’s interest in avoiding piecemeal litigation also may have been satisfied. The relevant inquiry is whether the Doe defendants named by Robsac belonged in the action. It is curious that while Robsac sued a wealthy insurer, it also chose to join the shallow pockets of Continental’s managers. If one believes that the Does in fact belonged in the suit, then piecemeal litigation will result from federal court retention of the action because the federal court cannot grant complete relief. If, however, the Does did not belong in the suit, then there were only two real parties in the lawsuit, Robsac and Continental. Either court could have afforded complete relief. Under the latter view, resolution of the dispute in its entirety would have been available in the federal forum and the court’s argument against complete disposal of the case becomes far less compelling.

Similarly, the court asserted that permitting the federal action to

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year span between actions in Frusetta, 290 F.2d at 689.

123. See supra note 40.

124. Even if one is willing to dismiss the idea of local prejudice to the foreign party and assume a similar outcome in the state court, permitting the federal court to retain jurisdiction would ultimately preserve judicial resources because the dispute had already been resolved in the federal court.

125. If the only real parties were Robsac and Continental; then the federal court could have completely disposed of this issue because all the interested parties were before the court.

126. In such case, the Does can only appear before the state court.
proceed would violate "the spirit, if not the letter" of the diversity removal provision and would sanction partial removal. After Continental had filed its declaratory relief action, Congress amended the diversity removal provision specifically to provide that the presence of Doe defendants does not destroy complete diversity for removal purposes. Because the court perceived a tactical maneuver by Continental to defeat Robsac's choice of forum, it proceeded to narrow the availability of federal jurisdiction in declaratory relief actions when particular parties are involved.

When it required complete diversity for removal, Congress had decided that the presence of one local defendant sufficiently eliminates any chance of local prejudice. In cases involving a nondiverse defendant under the old removal statute, removal only applied when either the diverse party had a separate and independent claim from the nondiverse party, or the nondiverse party had been fraudulently joined to prevent removal, as by joining fictitious Does. Thus, the declaratory relief action served to either circumvent the complete diversity rule or retaliate against a plaintiff who had tried to prevent removal by joining Doe defendants. The artificial destruction of diversity deprives an opposing litigant of the right to access the federal courts. The crucial inquiry becomes whether the Does are in fact fictional. This may be determined by questioning whether the nondiverse parties belong in the suit. It is unclear whether Continental's managers belonged in Robsac's suit.

Now, under the amended removal statute, complete diversity is only destroyed, and removal prevented, if a real party, as opposed to

127. See supra note 93.
128. See supra note 60.
129. Robsac, 947 F.2d at 1371. "The present suit was filed in federal court because the insurer apparently perceived a tactical advantage from litigating in a federal forum." Id.
130. This is the complete diversity rule. In multiparty suits, the presence of a single plaintiff who is a citizen of the same state as any defendant will defeat diversity. 28 U.S.C. § 1332 (1988). The complete diversity rule was first enunciated by Chief Justice Marshall in Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806) (interpreting the language of the 1789 Judiciary Act).
a Doe defendant, is nondiverse.\textsuperscript{134} Only those parties who cannot remove their suits will file declaratory judgment actions.\textsuperscript{138} Such actions will involve only real parties because Does will not prevent removal.\textsuperscript{136} Every declaratory relief claim filed by a person already sued in a state court will now involve a nondiverse party who is before the state court but who cannot be brought before the federal court via removal. Therefore, because the issue will arise only when the state court case involves a nondiverse party, \textit{Robsac}'s rule against incomplete relief is tantamount to a per se rule that compels abstention.\textsuperscript{137}

The real issue in the \textit{Robsac} case should be which party attempted to live up to the spirit of the removal statute and which party attempted to manipulate it.\textsuperscript{138} If the named Does were in fact fictional, then Robsac attempted to manipulate the removal statute through a technicality, as the presence of nondiverse Does prevented Continental from removing the action to federal court.\textsuperscript{139} Therefore, Robsac's attempt to exploit this statute warrants scrutiny.

The court's argument that Continental attempted to circumvent the removal statute relies on an anachronism. Continental did not circumvent the removal statute based on the newly amended provision.\textsuperscript{140} This new provision even more clearly expressed Congress' intent to permit federal jurisdiction via removal regardless of whether any fictional Does exist.\textsuperscript{141} Thus, Robsac's tactics should not prevent

\begin{footnotes}
\footnote{134. See 28 U.S.C. § 1441(a) (1988).}
\footnote{135. Because the federal courts' exercise of jurisdiction under the removal provision is mandatory, as opposed to discretionary, litigants seeking a federal forum will likely choose removal to ensure federal jurisdiction. See supra notes 17 and 32 and accompanying text.}
\footnote{136. Only those defendants who are unable to remove will seek a federal forum by way of requesting federal declaratory relief. Such actions will necessarily involve a nondiverse defendant that is simultaneously before a state court because otherwise, complete diversity would exist and the case could be removed.}
\footnote{137. Every declaratory relief action will likely involve a nondiverse defendant who is unable to come before the federal court. See supra notes 135-36. Thus, a rule which counsels against jurisdiction when fewer than all parties can appear before the federal court will likely bar most declaratory relief actions.}
\footnote{138. The \textit{Robsac} court completely ignores this issue.}
\footnote{139. Joining the Does destroyed complete diversity under the pre-amended diversity removal provision.}
\footnote{140. See 28 U.S.C. § 1441(a) (1988).}
\footnote{141. Congress' intent is clearly to prevent the defeat of complete diversity by the presence of Doe defendants regardless of whether the Does are added only to destroy diversity or represent real parties not yet discovered or served.}
\end{footnotes}
removal. If the Does were in fact fictional, Continental did not attempt to circumvent removal even under the old removal provision.\footnote{142} In that case, Robsac tried to exploit the removal statute through a technicality.

A possible alternative to Robsac's strict rule is a case-by-case analysis as opposed to essentially a per se rule. This requires an inquiry into whether the nondiverse party truly belongs in the present suit or is merely joined to artificially destroy diversity to deny an opposing litigant access to the federal courts.\footnote{143} If the nondiverse party does in fact belong in the suit, the case should be heard in the state court. Congress has intended state courts to hear such cases because the presence of a local defendant eliminates any risk of prejudice.\footnote{144} If, in this case, Continental tried to circumvent the removal provision, the case should be sent back to the state court. If, however, Robsac tried to exploit the removal statute, then Robsac should be penalized and its choice of forum denied.

Acting as guardian in protecting plaintiff Robsac's initial choice of a state forum, the court used abstention principles to deny Continental's attempt to secure a federal forum, even though Congress has expressly provided for removal.\footnote{145} Until Congress chooses to amend the removal statutes to bar insurers and other "defensive or reactive" litigants from invoking diversity jurisdiction, the foreign insurer is entitled to the benefits of a federal forum.\footnote{146} Absent an amendment by Congress, when litigants have met the diversity requirements, the courts should not act to bar access to the federal courts in an effort to further "the spirit" of diversity jurisdiction.\footnote{147} In Robsac, the court undermined congressional efforts to grant a federal forum; it did not protect the spirit of the Congressional Act.

Because Congress has not abolished diversity jurisdiction, it must still believe that the state courts may fail to protect foreign parties from local prejudice. The Robsac court argued that the state court could adequately resolve the issue and should be shown deference by the federal court.\footnote{148} Continental, however, is in fact a foreign party and as such should be able to exercise its right to a federal forum to avoid local prejudice. Only Congress can abolish diversity jurisdiction. Until it does, the parties are entitled to exercise their rights

\footnote{142} If in fact the Does were joined to defeat diversity jurisdiction, then such defendants are not "properly joined" within the meaning of the diversity removal statute and, thus, ought to be disregarded for purposes of determining diversity of citizenship. See supra note 60.

\footnote{143} See supra note 133.

\footnote{144} See supra note 130.

\footnote{145} See supra note 130.

\footnote{146} See supra note 110.

\footnote{147} Robsac, 947 F.2d at 1373.

\footnote{148} Id. at 1373-74.
under existing diversity jurisdiction and removal provisions.149

Finally, *Robsac* further erodes the degree of discretion retained by the district courts in granting declaratory relief. In choosing to re-
view the case de novo, as opposed to remanding to the district court for reconsideration, the *Robsac* court failed to exhibit any deference to the lower court’s exercise of discretion.150 Because of an in-
complete record, the appeals court was unable to consider those factors which the lower court found persuasive in choosing to grant relief.151

Allowing the lower court to make its own redetermination would leave the district court’s discretion intact.152 By opting to consider the case itself, however, the appeals court further narrowed the dis-
trict court’s discretion to grant declaratory relief.

By adopting, in essence, a per se rule in place of a fact-specific balancing test, the court narrowed the window of federal forum op-
portunity for that category of litigants the court deems “defensive or reactive” and thereby defines a new branch of abstention doctrine.153

Such a rule heavily affects insurers, who are regarded by the court as generally “reactive,” among other potentially suspect groups who may desire a neutral federal forum.154 This rule denies federal courts the option of exercising their power under existing law.

V. CONCLUSION

The Declaratory Judgments Act provides the federal courts with an additional discretionary remedy. The Act’s central purpose is to provide litigants an expedient and economical forum in which to clarify legal relations and issues and to afford relief from uncertainty. This purpose is achieved through a binding adjudication of the rights and status of litigants, although no immediate consequent-
ial relief is awarded.155

The *Robsac* decision further encroached upon the district courts’

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149. See, e.g., County of Allegheny v. Frank Mashuda Co., 360 U.S. 185, 196-97 (1959) (quoting Forsyth v. Hammond, 166 U.S. 506, 513 (1897)) (“It exacts a severe penalty from citizens for their attempt to exercise rights of access to the federal courts granted them by Congress to deny them that promptness of decision which in all judicial actions is one of the elements of justice.”).
150. See supra note 77.
151. *Robsac*, 947 F.2d at 1370.
152. The district court could have then applied the appellate courts’ new standard on remand in deciding whether to exercise jurisdiction.
153. *Robsac*, 947 F.2d at 1371-73. Those litigants the court deems “defensive or reactive” are thus categorically denied access to the federal courts.
154. See supra note 87.
155. See supra note 48.
discretion to entertain declaratory actions during the pendency of parallel state proceedings by expanding existing abstention principles in three ways. First, it characterizes settled state insurance law as a complex administrative scheme, thus placing it within the exclusive province of the state. Second, it identifies a class of litigants as “defensive or reactive” and justifies abstention when that class requests declaratory relief. Third, it finds “the spirit of the diversity removal provision” violated by the presence of fictional, non-diverse Doe defendants. Congress, however, has expressly provided that the presence of Doe defendants has no effect upon citizenship for removal purposes.

Robzac replaces the former fact-specific balancing tests of Brillhart and Chamberlain with a general rule. Robzac requires abstention in declaratory relief cases when parallel state proceedings involving solely state law are pending, absent extenuating circumstances. The Robzac court proceeded to engage in a case-by-case balancing approach, and yet it identified a whole category of litigants to which it admonished the district courts to refuse relief. Whether Robzac will in fact deter the district courts from exercising their discretionary power under existing law to grant declaratory relief in such instances remains an open question. Until it is answered, the Ninth Circuit’s message is clear: Any district court failing to abstain from granting declaratory relief during the pendency of parallel state proceedings, involving issues of solely state law, faces rigorous examination on appeal.

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156. Robzac, 947 F.2d at 1371.
157. Id. at 1372.
158. Id. at 1373.
159. See supra note 60.
160. See supra note 3.
161. Robzac, 947 F.2d at 1374.
162. The litigants whom the court deems “defensive or reactive” are per se undeserving of a federal forum. Id. at 1372-73.