PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1301

AIR EVAC EMS, INC., d/b/a Air Evac Lifeteam, d/b/a AirMedCare Network,

Plaintiff - Appellee,

v.

ALLAN MCVEY, in his official capacity as West Virginia Insurance Commissioner,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Irene C. Berger, District Judge. (2:21-cv-00105)

Argued: March 10, 2022 Decided: June 10, 2022

Before GREGORY, Chief Judge, and THACKER and QUATTLEBAUM, Circuit Judges.

Affirmed by published opinion. Judge Quattlebaum wrote the opinion, in which Chief Judge Gregory and Judge Thacker join.

ARGUED: Michael Ray Williams, OFFICE OF THE ATTORNEY GENERAL OF WEST VIRGINIA, Charleston, West Virginia, for Appellant. Charlotte Hemenway Taylor, JONES DAY, Washington, D.C., for Appellee. **ON BRIEF:** Patrick Morrisey, Attorney General, Lindsay S. See, Solicitor General, Katherine A. Schultz, Senior Deputy Attorney General, Caleb A. Seckman, Assistant Solicitor General, Thomas T. Lampman, Assistant Solicitor General, Cassandra L. Means, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF WEST VIRGINIA, Charleston, West Virginia, for

Appellant. Carte P. Goodwin, Alex J. Zurbuch, FROST BROWN TODD, LLC, Charleston, West Virginia; Benjamin J. Cassady, Washington, D.C., Joshua L. Fuchs, Nicole M. Perry, JONES DAY, Houston, Texas, for Appellee.

QUATTLEBAUM, Circuit Judge:

Federalism, a fundamental principle under our Constitution, requires that federal courts respect the sovereignty of their state counterparts. One way federal courts do this is through the doctrine of abstention. Under *Younger v. Harris*, 401 U.S. 37 (1971), federal courts should abstain from exercising jurisdiction to consider matters related to ongoing state criminal proceedings. And *Younger* abstention may also apply to quasi-criminal proceedings if the state proceeding is ongoing, implicates important state interests and provides an adequate opportunity to raise constitutional challenges. *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 81–82 (2013). However, there are exceptions to *Younger* abstention. Under one of those exceptions, a federal court should not abstain when confronted with "extraordinary circumstances." *Younger*, 401 U.S. at 53.

Here, a district court was confronted with a motion to preliminarily enjoin a state administrative proceeding on the grounds that the proceeding was preempted by federal law. Although the court found that the elements of *Younger* abstention may have been met, it did not abstain because it determined that the existence of extraordinary circumstances rendered *Younger* abstention inappropriate. We must decide if the district court abused its discretion in doing so. We reaffirm the importance of *Younger* abstention. But our deferential standard of review compels that we affirm the district court's application of the extraordinary circumstances exception to *Younger* abstention.

We also review another decision of the district court. After declining to abstain, the district court issued a preliminary injunction enjoining the state court administrative proceeding. That decision is also reviewed for abuse of discretion. And like its decision

concerning *Younger*, we find no abuse of discretion in the district court's preliminary injunction order.

I.

Air Evac EMS, Inc., is an emergency air ambulance provider operating throughout the United States, including West Virginia. Because air ambulance services are expensive and insurance does not always reimburse the full cost, Air Evac offers a membership program to West Virginia residents, businesses and municipalities. For anyone covered by the membership, which generally costs less than $100 per year for an individual, Air Evac cancels any portion of the bill not covered by insurance. Air Evac characterizes this program as a debt cancellation agreement.

According to Air Evac, this lawsuit "arises from West Virginia's longstanding campaign to assert regulatory dominance over Air Evac[]" in favor of Air Evac's in-state competitor, HealthNet. *See* Resp. Br. 9–10. To illustrate its point, Air Evac refers to a different lawsuit, *Air Evac EMS, Inc. v. Cheatham*, 910 F.3d 751 (4th Cir. 2018). At issue in *Cheatham* was a West Virginia statute that effectively capped what Air Evac could receive for transporting injured in-state workers and the state's own employees. *See id.* at 758. We affirmed the district court's decision to enjoin the enforcement of such legislation, concluding that the Airline Deregulation Act preempts West Virginia's enforcement efforts. *See id.* at 759, 769–70. From Air Evac's perspective, West Virginia's legislative efforts were a product of state officials "work[ing] close[ly]" with HealthNet. *See* Resp. Br. 14 (citing J.A. 97).

"Only months [after *Cheatham*], the OIC [West Virginia Offices of the Insurance Commissioner] initiated its investigation into another method of regulating Air Evac's pricing and compensation structure." J.A. 229. The OIC eventually filed an administrative complaint against Air Evac, alleging that Air Evac's membership program constituted an unauthorized transaction of "insurance" in West Virginia. *See id.* at 218. In particular, the administrative complaint alleged that Air Evac's membership program constitutes insurance, but Air Evac had not obtained a license to sell insurance as required by West Virginia law.

Air Evac, based on the documents it secured through state Freedom of Information Act requests, views this administrative complaint as a larger part of West Virginia officials' efforts to favor HealthNet. Those documents included an email exchange from the Commissioner to HealthNet's executives. The email stated:

> As far as an update on what we're doing, I currently have my legal team looking into a two-pronged approach. First, I want to determine whether, under my existing statutory authority, I can take action now to shut down the subscription plans on the basis they are unlicensed insurance products sold by unlicensed insurance producers. We know this will draw litigation. Second, I am working with the NAIC [National Association of Insurance Commissioners] on model legislation that we might be able to introduce in the upcoming legislative session.

Id. at 72. Air Evac's position, ever since the investigations preceding the eventual administrative complaint, has been that the Airline Deregulation Act preempts any state law applicable to Air Evac's membership program.

In response to the administrative action referenced in the email, Air Evac sued the Commissioner in federal court claiming the Airline Deregulation Act preempts the

Commissioner's enforcement efforts. *Air Evac EMS, Inc. v. Dodrill* ("*Dodrill I*"), 523 F. Supp. 3d 859 (S.D.W. Va. 2021). Air Evac also moved for a temporary restraining order and preliminary injunction to stop the administrative proceedings. The district court granted the preliminary injunction. *Id.* at 874. In doing so, the district court declined to abstain under *Younger*. *See id.* at 867–70. The district court reasoned that, "while the formal requirements of *Younger* may be present," the case presents an "extraordinary circumstance" in which abstention would be inappropriate. *See id.* at 869. In addition, the district court agreed with Air Evac that the Airline Deregulation Act preempts the state regulations, and that the McCarran-Ferguson Act (a federal law that preserves insurance regulation to the province of the states) does not save the enforcement at issue from preemption. *See id.* at 870–73.

Then, in response to the eventual legislation referenced in the email, Air Evac sued the Commissioner again in federal court once the new bill became law. *Air Evac EMS., Inc. v. Dodrill* ("*Dodrill II*"), 548 F. Supp. 3d 580 (S.D.W. Va. 2021). Citing to the bill's text and the Commissioner's testimony before the West Virginia House, Air Evac characterizes these new laws as "a legislative declaration that in fact [Air Evac's Membership Program] is insurance." *See* Resp. Br. 20 (alteration in original) (citing Addendum 7, 45–46, 54). The lawsuit sought to enjoin the Commissioner from enforcing these new laws against Air Evac. Here too, the district court sided with Air Evac and issued a preliminary injunction. It concluded Air Evac was likely to show that the Airline Deregulation Act preempts the state statutes, and that the McCarran-Ferguson Act does not save the laws from preemption. *Dodrill II*, 548 F. Supp. 3d at 588–94.

Dodrill II, however, is not before us. Before us is only the Commissioner's timely appeal in *Dodrill I*. The Commissioner argues the district court erred in declining to abstain under *Younger* and in enjoining the administrative proceedings. We have jurisdiction to hear the interlocutory appeal of the district court's injunction order pursuant to 28 U.S.C. § 1292(a)(1).

II.

We begin with the district court's decision not to abstain. We review for abuse of discretion the district court's decisions about whether or not to abstain under *Younger*. *Nivens v. Gilchrist*, 444 F.3d 237, 240 (4th Cir. 2006). Guided by that standard, we will first discuss when *Younger* applies and exceptions to abstention before determining if the district court abused its discretion in not abstaining here.

A.

Younger abstention expresses "the 'national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances.'" *Robinson v. Thomas*, 855 F.3d 278, 285 (4th Cir. 2017) (quoting *Younger*, 401 U.S. at 41). Two principles drive the doctrine: equity and comity. As for equity, "courts of equity should not act, and particularly should not act to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." *Younger*, 401 U.S. at 43–44. And for comity, federal courts must show "proper respect for state functions." *See id.* at 44.

Between equity and comity, *Younger* itself flags the proper respect for state functions as the "more vital consideration." *See id.* Rightfully so. "[O]ne familiar with the profound debates that ushered our Federal Constitution into existence is bound to respect those who remain loyal to the ideals and dreams of 'Our Federalism.'" *Id.* A proper extension of such respect is taking judicial federalism seriously, and not losing sight of the fact that "state courts are fully competent to decide issues of federal law."[1] *Harper v. Pub. Serv. Comm'n of W. Va.*, 396 F.3d 348, 355 (4th Cir. 2005) (quoting *Richmond, Fredericksburg & Potomac R.R. Co. v. Forst*, 4 F.3d 244, 251 (4th Cir. 1993)).

Of course, abstention is an exception to the general rule that federal courts must decide cases over which they have jurisdiction. *See, e.g.*, *Sprint*, 571 U.S. at 77; *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821). Further, what we have here is not a proceeding in front of a state court. Instead, we have a state administrative proceeding that appears adjudicatory in nature, with the opportunity for the state court to review the agency's decision. The Supreme Court in *Sprint* clarified the appropriate steps to determine whether *Younger* abstention applies in such circumstances. First, we must determine whether the proceeding we review on appeal falls under the three types of proceedings that warrant *Younger* abstention: (1) "ongoing state criminal prosecutions," (2) "certain 'civil enforcement proceedings'" that are "'akin to a criminal prosecution' in 'important respects'" (commonly referred to as "quasi-criminal" proceedings), and (3) "pending 'civil

[1] Otherwise, one might ask if Brutus' predictions could become reality. *See generally The Anti-Federalist Papers* 230, 230–36 (Morton Borden ed., 1965) (expressing concerns over the federal judiciary's intrusion in states' rights).

proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions.'" *See* 571 U.S. at 78–79, 81 (omission in original) (quoting *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans* ("*NOPSI*"), 491 U.S. 350, 368 (1989); *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975)).

Next, we consider the "*additional* factors" provided by *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 432 (1982), commonly known as the *Middlesex* factors. *See Sprint*, 571 U.S. at 81 (emphasis in original). The three *Middlesex* factors are: (1) whether there is "an ongoing state judicial proceeding"; (2) whether that state proceeding "implicate[s] important state interests"; and (3) whether that state proceeding provides "an adequate opportunity . . . to raise constitutional challenges." 457 U.S. at 432; *see also Sprint*, 571 U.S. at 81; *cf. Harper*, 396 F.3d at 351–52 (discussing the three *Middlesex* factors "for a case to merit abstention under *Younger*").[2]

But even when both steps are satisfied, *Younger* identifies three exceptions to the court's duty to abstain: (1) "bad faith or harassment" by state officials responsible for the prosecution; (2) a statute that is "flagrantly and patently violative of express constitutional prohibitions"; and (3) other "extraordinary circumstances" or "unusual situations." *See* 401

[2] Our prior cases never had the opportunity to account for the Supreme Court's decision in *Sprint*. As an illustration, *Robinson*, a decision that came after *Sprint*, went straight to analyze the three *Middlesex* factors. *See Robinson*, 855 F.3d at 285. This was because *Robinson* involved a state criminal prosecution, which squarely falls under the scope of *Younger* abstention, and thus *Sprint*'s first-step inquiry was unnecessary. The state proceeding before us is not a criminal prosecution, so undergoing both steps of the analysis is important. *Cf. Malhan v. Sec'y U.S. Dep't of State*, 938 F.3d 453, 462 (3d Cir. 2019) (adopting the two-step inquiry provided by *Sprint* and abrogating the circuit's precedents which only analyzed the three *Middlesex* factors to rule on *Younger* abstention).

U.S. at 49–54; *see also Nivens*, 444 F.3d at 241 (same three exceptions). *See generally* Richard H. Fallon, Jr. et al., *Hart and Wechsler's The Federal Courts and the Federal System* 1141–43 (7th ed. 2015).

Having reviewed these general principles for *Younger* abstention, we now address whether the district court appropriately analyzed and applied them.

B.

Regarding the first step, the district court concluded that the proceeding here warrants *Younger* abstention because the action is "quasi-criminal," and "akin to a criminal prosecution." *See Dodrill I*, 523 F. Supp. 3d at 867–68. The parties agree. *See* Opening Br. 14; Resp. Br. 27 ("Air Evac does not contest that Defendant has attempted to initiate a quasi-criminal enforcement proceeding . . . ."). And we also agree that the district court's decision is consistent with Supreme Court precedent. *Sprint* "assum[ed] without deciding . . . that an administrative adjudication and the subsequent state court's review of it count as a 'unitary process' for *Younger* purposes." 571 U.S. at 78. The Supreme Court then listed several factors that make a state civil enforcement "akin to a criminal prosecution": whether the enforcement is "initiated to sanction the federal plaintiff," the "state actor is routinely a party to the state proceeding and often initiates the action" and "[i]nvestigations are commonly involved, often culminating in the filing of a formal complaint or charges." *Id.* at 79–80. The proceedings here satisfy those factors.

C.

We now turn to the second step, assessing the three *Middlesex* factors. Here, the district court did not reach a firm conclusion on these factors. Instead, it stated the

Middlesex factors "may be present." *See Dodrill I*, 523 F. Supp. 3d at 869. However, the Commissioner insists all three factors are satisfied.[3] In response to the Commissioner's arguments, Air Evac focuses on the second factor—an important state interest—conceding that the Commissioner's administrative proceeding satisfies the ongoing-proceeding requirement and that both the West Virginia administrative proceeding and the state courts, if Air Evac wishes to appeal, provide an adequate opportunity to raise constitutional challenges.

The Commissioner claims the administrative proceedings involve the regulation of insurance which he insists is an important state interest. And to be sure, the regulation of insurance implicates an important state interest. *See Life Partners, Inc. v. Morrison*, 484 F.3d 284, 292 (4th Cir. 2007) (holding that Congress, by passing the McCarran-Ferguson Act, made it "unmistakably clear" that insurance regulation is an important state interest).

[3] As a preliminary matter, Air Evac contends that the separate injunction issued in *Dodrill II* undermines all three *Middlesex* factors. It does not. The district court's order makes clear that the court enjoined the enforcement of the new West Virginia statutes declaring Air Evac's membership program to be insurance, not more. *See* 548 F. Supp. 3d at 595 ("Accordingly, the Court ORDERS that Defendant be ENJOINED from enforcing the Membership Laws, (HB 2776, to be codified at W. Va. Code § 33-11B-1; W. Va. Code § 33-3-1; and W. Va. Code § 33-44-1 *et seq.*), against Plaintiff Air Evac EMS, Inc. during the pendency of the case."). That means *Dodrill II* merely puts the litigants back in the same position they were in before this new legislation passed. And that status quo ante is what is what this appeal is all about. The whole point of the state administrative proceeding in *Dodrill I*—which preceded the passage of the new laws—was that regardless of this supplemental legislation, the Commissioner thought he could regulate Air Evac's membership program under the laws already in place. Indeed, Air Evac even admits in its brief that "*Dodrill II* did not address whether Defendant can apply the general definition of insurance, W. Va. Code § 33-1-1, to Air Evac's Membership Program." Resp. Br. 28. Thus, *Dodrill II* has little bearing on the issues before us.

Air Evac responds with two primary arguments. First, Air Evac argues that West Virginia's purported interest of insurance regulation is effectively a farce. While conceding insurance regulation may be an important state interest, Air Evac insists the Commissioner mischaracterizes the state interest for *Younger* abstention purposes since Air Evac's membership program should not be categorized as an insurance scheme to begin with.

In advancing this argument, Air Evac primarily relies on our decision in *Harper*, 396 F.3d 348. There, a waste disposal company from Ohio sued the West Virginian Public Service Commission in federal court challenging the Commission's decision requiring the company to obtain a certificate to haul waste in West Virginia. West Virginia claimed the federal court should abstain under *Younger*. With respect to the important state interest requirement, West Virginia pointed to its interest in "protecting the health and welfare of its citizens." *Id*. at 354. *Harper* rejected that characterization, explaining that "any interest can at least tangentially relate to health and welfare." *Id*. It further reasoned that characterizations of the state interest in such general terms "render[] the *Middlesex County* test meaningless." *Id*. Instead, because the certification proceedings by their nature "impede interstate commerce," *Harper* recharacterized the state interest as "limiting interstate access to the waste removal market." *Id*. at 355. And in such cases of protectionism, the court held that the state interest is narrower, making abstention less warranted. *See id.* at 355–57. Air Evac argues that West Virginia's purported interest in regulating insurance should likewise be recharacterized as a protectionist measure.

While there are some similarities, there are important differences between our case and *Harper*. First, the interest in regulating insurance is far more specific than protecting

the health and safety of citizens. Second, the analysis in *Harper* focused on the protectionist effect: the regulatory process itself effectively served as a monopoly, and thus allegedly impeded interstate trade in solid waste hauling. *See id*. at 350. Here, Air Evac questions the Commissioner's motives, which we will address in our analysis of the extraordinary circumstances exception. But it does not argue, and the record does not show, that West Virginia's insurance regulatory system when assessed in a vacuum has baked-in protectionist effects. Therefore, *Harper* does not offer the support Air Evac claims.

Second, Air Evac argues that West Virginia's interest in enforcing its insurance laws in this context is not important because any enforcement action by the Commissioner would be preempted by the Airline Deregulation Act. Air Evac may be correct that serious preemption issues linger in the Commissioner's enforcement scheme. *See, e.g.*, *Guardian Flight LLC v. Godfread*, 991 F.3d 916, 921 (8th Cir. 2021) (citing first to *Cheatham* and then stating, "[t]he McCarran-Ferguson Act thus does not save the subscription agreement from ADA [Airline Deregulation Act] preemption"); *Air Evac EMS, Inc. v. Sullivan*, 8 F.4th 346, 350, 355 (5th Cir. 2021) ("We hold that the [Texas Workers' Compensation Act] regulations concerning the reimbursement of air ambulance providers like Air Evac are preempted by the ADA, and are not saved by the McCarran-Ferguson Act.").

But preemption alone does not defeat *Younger* abstention. *See, e.g.*, *NOPSI*, 491 U.S. at 367 (rejecting petitioner's opposition to *Younger* abstention when petitioner argued that the state statute violated the Constitution, and pointing out that the constitutional issue arises "only because it violates . . . the Supremacy Clause"); *Emps. Res. Mgmt. Co. v. Shannon*, 65 F.3d 1126, 1136 (4th Cir. 1995) (observing that "substantial claims of

preemption do not automatically preclude abstention"). One of the foundational virtues underlying *Younger* abstention is that states are perfectly able to provide adequate forums to adjudicate federal law issues—including whether a particular matter is preempted by a federal statute. Air Evac does not even argue that the West Virginia proceeding at issue is not capable of addressing preemption challenges. Indeed, Air Evac raised the preemption issue at the investigative hearing in front of the OIC. In addition, Air Evac would have had the opportunity to press the issue at the formal hearing before the Commissioner as well. *See* W. Va. Code § 33-2-13. Any adverse agency decision on preemption could be appealed to the appropriate state court for de novo review, which would have eventually been appealable to the highest court of West Virginia. *See id.* §§ 29A-5-4, 33-2-14. Thus, federal courts must not trivialize the important state interest of regulating insurance by the mere fact that such regulation may be preempted by a different federal statute.

In sum, we agree with the Commissioner that the administrative proceedings involve an important state interest. And based on the Air Evac's concessions about the other *Middlesex* factors, we also agree with the Commissioner that the requirements for *Younger* abstention were satisfied.

D.

But that does not end our *Younger* inquiry. We must still review the district court's decision concerning the exceptions to *Younger* abstention. The district court declined abstention based on the third exception, "extraordinary circumstances" or "unusual situations."

Neither the Supreme Court nor our Circuit has delineated an exhaustive list of situations that rise to the level of extraordinary circumstances. Indeed, as the Supreme Court has instructed, "[t]he very nature of 'extraordinary circumstances,' . . . makes it impossible to anticipate and define every situation that might create a sufficient threat of such great, immediate, and irreparable injury as to warrant intervention . . . ." *Kugler v. Helfant*, 421 U.S. 117, 124–25 (1975). But several Fourth Circuit cases provide clues about what is required. *See Forst*, 4 F.3d 244; *Emps. Res. Mgmt.*, 65 F.3d 1126; *Martin Marietta Corp. v. Md. Comm'n on Hum. Rels.*, 38 F.3d 1392 (4th Cir. 1994).

In *Forst*, a railroad sued Virginia taxing authorities in federal court seeking to prevent those authorities from assessing taxes in violation of federal law. The federal statute contained an express provision allowing district courts to enjoin the collection of the type of state taxes at issue. In response to the Virginia taxing authorities' request for the federal courts to abstain, we found extraordinary circumstances that made abstention inappropriate even though the action satisfied "the formal requirements of the *Younger* doctrine." 4 F.3d at 251. "Congress was clearly concerned that the states were not providing an 'adequate' opportunity for railroads to remedy discriminatory taxation." *Id.* at 252. The court explained how "[t]he history of state discrimination against railroads—including the railroads' experience in the state courts—convinced Congress to restore the power of the federal courts to enjoin discriminatory state taxation of railroads." *Id.* As a result, the congressional intent was "explicit," manifested in a federal statute that provided a "clear exception to the principles of comity." *See id.* at 251–52.

In *Employers Resource Management*, a company doing business in Maryland sued state regulatory authorities in federal court to enjoin a state proceeding over insurance matters. *See* 65 F.3d at 1129. Maryland asked the federal courts to abstain from exercising jurisdiction arguing federal ERISA law controlled the issues in dispute. We held that the extraordinary circumstances exception to *Younger* abstention did not apply. In doing so, we distinguished *Forst* in concluding that preemption alone does not confer the extraordinary circumstances exception. Rather, we held there that the federal statute must also make clear that Congress intended that federal law be exclusively under a federal forum. *See* 65 F.3d at 1135–36 ("The problem for ERM is that it has not shown, as the railroad company in *Forst* did, how it would be injured by having to raise its preemption defense in the state proceedings rather than in federal district court."); *see also Martin Marietta*, 38 F.3d at 1396 ("[*NOPSI*] rejected the argument that substantial claims of preemption automatically preclude abstention.").

These cases teach us that the path to extraordinary circumstances is exceedingly narrow. A preemption defense is plainly not enough. After all, states are fully capable of determining when federal law preempts state claims. And logically, the availability of other defenses or claims—even constitutional ones—likewise will not do. Those circumstances will exist in many state criminal prosecutions and quasi-criminal regulatory matters. Declining to abstain because of the presence of constitutional defenses would intrude into the sovereignty of states.

Instead, the circumstances must be, as the phrase suggests, extraordinary. While we have not provided a definitive or exhaustive set of criteria as to what constitutes an

extraordinary circumstance, our prior decisions suggest there must be actual impediments to the state's ability to address the federal issues. *Cf. Simopoulos v. Virginia State Bd. of Med.*, 644 F.2d 321, 327–29 (4th Cir. 1981) (explaining that the bad faith and patent unconstitutionality exceptions to *Younger* abstention apply "if the state procedure fails to provide the federal plaintiff with an adequate opportunity to litigate in the state forum"); *Mulholland v. Marion Cnty. Election Bd.*, 746 F.3d 811, 819 (7th Cir. 2014) (finding extraordinary circumstance when "the Election Board[] attempt[ed] to enforce a law that a federal court has already told the Board in a final judgment is unconstitutional").[4]

With that background, we review the district court's finding of extraordinary circumstances here. In concluding that extraordinary circumstances exist, the district court relied on the extensive communication between the Commissioner and Air Evac's main in-state competitor, HealthNet, and the enforcement efforts that followed such communications. *See Dodrill I*, 523 F. Supp. 3d at 869–70 ("The emails mix discussion of regulation of the Membership Program as insurance with discussion regarding efforts to curtail balance billing. An OIC employee reached out to a HealthNet vice president to obtain copies of Air Evac's membership contracts."). The Commissioner emailed HealthNet that he is assessing whether he "can take action now to *shut down* the

[4] Admittedly, what we suggest here—extraordinary circumstances requiring an actual impediment to the state's ability to address the federal issues—overlaps with the third *Middlesex* factor, which is something we consider *before* analyzing the exceptions to *Younger* abstention. *Cf.* 457 U.S. at 432 ("adequate opportunity in the state proceedings to raise constitutional challenges"). But this overlap merely highlights the importance of deferring to the state proceedings as long as the litigants have a fair shot at advancing their positions.

subscription plans on the basis they are unlicensed insurance products." J.A. 72 (emphasis added). Further, he expressed: "We know this will draw litigation." *Id.*

The district court drew two conclusions from the emails. First, the district court found the emails supported Air Evac's allegations that the Commissioner "has prejudged the outcome of the state administrative proceeding." *See Dodrill I*, 523 F. Supp. 3d at 868–69. Second, the district court found the timing of the emails problematic. It noted that only months after *Cheatham*, which held that the Airline Deregulation Act preempted West Virginia's attempts to regulate Air Evac's pricing structure, the Commissioner effectively "tweak[ed] its case" to prosecute Air Evac's membership program as a violation of West Virginia's insurance laws. *See id.* at 870. To the district court, this "timeline of the Commissioner's investigation," *id.* at 869, suggested favoritism towards an in-state competitor.

In challenging the district court's decision, the Commissioner insists that nothing about the Commission's regulatory efforts is sinister, much less extraordinary. He maintains that the proceedings against Air Evac merely involve West Virginia's exercise of sovereign right and responsibility to regulate insurance within the state's borders. The Commissioner also argues that West Virginia is fully capable of addressing the issues on which much of Air Evac's arguments rest—whether the membership program is or is not insurance and whether the Air Deregulation Act preempts West Virginia's regulatory efforts. And the Commissioner contends that considering those issues in the context of whether to abstain puts the cart before the horse. In other words, he claims that Air Evac conflates the decision about abstention with the merits of the regulatory questions.

Air Evac responds by arguing the district court's decision was correct and certainly not an abuse of discretion. In doing so, it adds two reasons that it contends require us to affirm the district court's decision. First, it questions the Commissioner's claim that his office received "numerous complaints" over Air Evac's conduct. *See* Opening Br. 1. Second, Air Evac questions the legitimacy of the Commissioner's claim that the membership program constitutes insurance. In support of this position, Air Evac points out that every circuit that heard this matter has concluded that Air Evac's membership program is not insurance, and therefore the Airline Deregulation Act's broad preemption provisions control. *See, e.g.*, *Guardian Flight*, 991 F.3d at 921; *Sullivan*, 8 F.4th at 350, 355.

In considering those arguments, we reiterate that our review of a district court's *Younger* abstention determination is for abuse of discretion. Under that standard, if there is evidence supporting the court's finding, we must affirm regardless of whether we would have decided the question in the same way were we sitting in the district court's shoes. And given that deferential standard, we cannot say the district court abused its discretion.

The emails from the Commissioner to Air Evac's in-state competitor provide support for the district court's abstention decision. To be sure, there is nothing inherently wrong with a regulatory agency communicating with one of its citizens even if that citizen competes with the target of the investigation. But here the Commissioner expressed an interest in "shut[ting] down" Air Evac even though he knew doing so would "draw litigation." J.A. 72. These statements constitute record evidence on which the court could have reasonably concluded that the Commissioner's actions were to favor a local business over out-of-state competition and that the state agency had prejudged the outcome of the

administrative proceedings. Allegations of a protectionist measure and a prejudged outcome are not run-of-the-mill defenses in an enforcement proceeding. They involve pursuing an investigation about insurance to squelch a constituent's competition. And they involve deciding the case before the evidence is presented, effectively negating an otherwise adequate state forum.[5]

In addition, although the Commissioner claimed to have received numerous complaints about Air Evac, the only record of any complaint was from HealthNet. Indeed, when pressed at oral argument, the Commissioner admitted that the state proceeding started with a complaint from HealthNet. And while the Commissioner allegedly heard on social media certain concerns, he has not produced concrete evidence or any detail on what exactly Air Evac was doing wrong. Investigating a complaint from an in-state competitor is not necessarily problematic. But the Commissioner's overstatement of the complaints undermines his claim that this was a business-as-usual regulatory investigation. *See also Dodrill II*, 548 F. Supp. 3d at 591 n.8 (rejecting the Commissioner's claim that he is

[5] Even if a state appellate court could eventually rectify such abuses under de novo review, the district court did not abuse its discretion in finding the administrative enforcement itself problematic. *See Gibson v. Berryhill*, 411 U.S. 564, 577 (1973) (affirming the district court's decision even if "judicial review, de novo or otherwise, would be forthcoming at the conclusion of the administrative proceedings").

prosecuting Air Evac "due, in part, to complaints received" because "the Court has not yet seen evidence to support this").[6]

In conclusion, the district court relied on evidence in the record from which it is not unreasonable to conclude that the circumstances presented an actual impediment to West Virginia's ability to address the applicable federal issues. As a result, we find no abuse of discretion. But we emphasize that our decision should not be construed as a license to broadly interpret the extraordinary circumstances exception. Otherwise, the exception will improperly swallow the abstention rule and undermine the important principles of federalism on which *Younger* abstention is based.

III.

Having addressed the Commissioner's challenge to the district court's decision on *Younger* abstention, we still must resolve the other part of the Commissioner's appeal. The Commissioner also argues that the district court erred in granting a preliminary injunction enjoining the administrative proceedings. We review the district court's decision for abuse of discretion and the related legal conclusions involved in that decision de novo. *See Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013).

[6] Air Evac correctly points out that all our sister circuits that have addressed the issue have concluded that Air Evac's membership program does not constitute insurance. While that consensus may potentially cut against the Commissioner's allegation, at least for now, we do not give this observation too much weight. After all, those cases are still out-of-circuit decisions—none of which existed when the Commissioner initiated the enforcement.

The requirements for a preliminary injunction are well-settled. "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC*, 555 U.S. 7, 20 (2008). The district court found all four factors in favor of Air Evac.

The district court concluded that Air Evac is likely to succeed on the merits after determining that the Airline Deregulation Act likely preempts the Commissioner's enforcement of West Virginia's insurance laws against Air Evac's membership program, notwithstanding the McCarran-Ferguson Act. *See, e.g.*, *Guardian Flight*, 991 F.3d at 921; *Sullivan*, 8 F.4th at 350, 353; *cf. Cheatham*, 910 F.3d at 766–67. This is a legal issue, which as noted above, we review de novo. But the Commissioner does not challenge this aspect of the district court's decision. Instead, the Commissioner challenges the district court's findings on irreparable harm, the balance of equities and the public interest. We review those matters for abuse of discretion.

We find no such abuse of discretion in the district court's conclusion that Air Evac is likely to suffer irreparable harm. Relying on evidence in the record, the district court explained that the Commissioner was likely to shut down Air Evac's membership program which would result in the loss of customers and employees, damages that could not be remedied by money damages. Besides, the prospect of an unconstitutional enforcement "supplies the necessary irreparable injury." *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381–82 (1992); *see also Ex Parte Young*, 209 U.S. 123, 165 (1908) (discussing

how awaiting proceedings violating the Constitution is a "risk the company ought not to be required to take").

Likewise, the district court's decision that the balance of equities and the public interest favor Air Evac was not an abuse of discretion. The district court found that Air Evac's interest in an uninterrupted membership program and in preserving the company's preemption rights under the Airline Deregulation Act outweighs West Virginia's interest in the appropriate regulation of insurance. It reasoned that an injunction merely delays any enforcement efforts pending resolution of whether West Virginia's interest is appropriate in the first place. It also found that enjoining Air Evac's membership program would leave its customers to foot the entire bill for air ambulance services despite having signed up for and paid for the membership program. For similar reasons, the district court also found that the public interest favors an injunction to preserve the status quo.

We hesitate to give too much credence to the district court's reasoning about an injunction merely delaying the state proceedings. That would almost always be the case when a party sues in federal court to enjoin a state proceeding. But the court legitimately considered Air Evac's interest in an uninterrupted program and the impact on Air Evac's consumers, both of which are supported in the record. Also, absent any legal error, the district court's finding on these matters is entitled to deference. *Cf. Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021) ("[T]he balance of the equities favors preliminary relief because . . . []a state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be

found unconstitutional. . . . Finally, it is well-established that the public interest favors protecting constitutional rights.").

In sum, we affirm the district court's preliminary injunction as well. The Commissioner does not contest the one legal issue we review de novo: whether the Airline Deregulation Act preempts the Commissioner's enforcement efforts. As to the issues the Commissioner does contest—the district court's findings on irreparable harm, the balance of equities and the public interest—we find the district court did not abuse its discretion.

IV.

For the foregoing reasons, the district court's order is

AFFIRMED.