nary circumstances had existed. Thus, Justice Black, with considerable support from the other Justices,[1335] went on to affirm that, where a criminal proceeding is already pending in a state court, if there is no allegation that the prosecution was brought in bad faith or that it was one of a series of repeated prosecutions that would be brought, and if the defendant may put in issue his federal-constitutional defense at the trial, then federal injunctive relief is improper, even if it is alleged that the statute on which the prosecution was based regulated expression and was overbroad.

Many statutes regulating expression were valid and some overbroad statutes could be validly applied, Justice Black explained, so findings of facial unconstitutionality abstracted from concrete factual situations was not a sound judicial method. "It is sufficient for purposes of the present case to hold, as we do, that the possible unconstitutionality of a statute 'on its face' does not in itself justify an injunction against good-faith attempts to enforce it, and that appellee Harris has failed to make any showing of bad faith, harassment, or any other unusual circumstance that would call for equitable relief." [1336]

The reason for the principle, said Justice Black, flows from "Our Federalism," which requires federal courts to defer to state courts when there are proceedings pending in them.[1337]

Moreover, in a companion case, the Court held that, when prosecutions are pending in state court, the propriety of injunctive and declaratory relief should ordinarily be judged by the same standards.[1338] A declaratory judgment is as likely to interfere with state proceedings as an injunction, whether the federal decision be treated as *res judicata* or viewed as a strong precedent guiding the state court. Additionally, "the Declaratory Judgment Act provides that after a declaratory judgment is issued the district court may enforce it by granting '[f]urther necessary or proper relief,' 28 U.S.C. § 2202, and therefore a declaratory judgment issued while state proceedings are pending might serve as the basis for a subsequent injunction against those proceedings to 'protect or effectuate' the declara-

---

[1335] Only Justice Douglas dissented. 401 U.S. at 58. Justices Brennan, White, and Marshall generally concurred in a restrained fashion. Id. at 56, 75, 93.

[1336] 401 U.S. at 54. On bad faith enforcement, *see* id. at 56 (Justices Stewart and Harlan concurring); 97 (Justices Brennan, White, and Marshall concurring in part and dissenting in part). For an example, *see* Universal Amusement Co. v. Vance, 559 F.2d 1286, 1293–1301 (5th Cir. 1977), *aff'd per curiam sub nom.* Dexter v. Butler, 587 F.2d 176 (5th Cir.) (en banc), *cert. denied*, 442 U.S. 929 (1979).

[1337] 401 U.S. at 44.

[1338] Samuels v. Mackell, 401 U.S. 66 (1971). The holding was in line with Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293 (1943).