however, where the relevant state law is settled,[1279] or where it is clear that the state statute or action challenged is unconstitutional no matter how the state court construes state law.[1280] Federal jurisdiction is not ousted by abstention; rather it is postponed.[1281] Abstention ameliorates tensions by deferring to state courts as adequate protectors of constitutional liberties in cases that potentially may be resolved on independent state law grounds. It also diminishes the likelihood that state programs are thwarted by federal intercession. Federal courts benefit, so the rationale goes, by saving time and effort making unnecessary constitutional decisions.[1282]

During the 1960s, the abstention doctrine was in disfavor with the Supreme Court, suffering rejection in numerous cases, most of

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350 (1989) (carefully reviewing the scope of the doctrine), especially where state law is unsettled. Meredith v. City of Winter Haven, 320 U.S. 228 (1943); County of Allegheny v. Frank Mashuda Co., 360 U.S. 185 (1959); Louisiana Power & Light Co. v. City of Thibodaux, 360 U.S. 25 (1959). *See also* Clay v. Sun Insurance Office Ltd., 363 U.S. 207 (1960). Also, although pendency of an action in state court will not ordinarily cause a federal court to abstain, there are "exceptional" circumstances in which it should. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Will v. Calvert Fire Insurance Co., 437 U.S. 655 (1978); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983). But, in Quackenbush v. Allstate Ins. Co., 517 U.S. 706 (1996), an exercise in *Burford* abstention, the Court held that federal courts have power to dismiss or remand cases based on abstention principles only where relief being sought is equitable or otherwise discretionary but may not do so in common-law actions for damages.

[1279] City of Chicago v. Atchison, T. & S.F. Ry., 357 U.S. 77 (1958); Zwickler v. Koota, 389 U.S. 241, 249–51 (1967). *See* Babbitt v. United Farm Workers Nat'l. Union, 442 U.S. 289, 306 (1979) (quoting Harman v. Forssenius, 380 U.S. 528, 534–35 (1965)).

[1280] Harman v. Forssenius, 380 U.S. 528, 534–35 (1965); Babbitt v. United Farm Workers Nat'l., 442 U.S. 289, 305–12 (1979). Abstention is not proper simply to afford a state court the opportunity to hold that a state law violates the federal Constitution. Wisconsin v. Constantineau, 400 U.S. 433 (1971); Zablocki v. Redhail, 434 U.S. 374, 379 n.5 (1978); Douglas v. Seacoast Products, Inc., 431 U.S. 265, 271 n.4 (1977); City of Houston v. Hill, 482 U.S. 451 (1987) ("A federal court may not properly ask a state court if it would care in effect to rewrite a statute"). But if the statute is clear and there is a reasonable possibility that the state court would find it in violation of a distinct or specialized state constitutional provision, abstention may be proper, Harris County Comm'rs Court v. Moore, 420 U.S. 77 (1975); Reetz v. Bozanich, 397 U.S. 82 (1970), although not if the state and federal constitutional provisions are alike. Examining Bd. v. Flores de Otero, 426 U.S. 572, 598 (1976).

[1281] American Trial Lawyers Ass'n v. New Jersey Supreme Court, 409 U.S. 467, 469 (1973); Harrison v. NAACP, 360 U.S. 167 (1959). Dismissal may be necessary if the state court will not accept jurisdiction while the case is pending in federal court. Harris County Comm'rs v. Moore, 420 U.S. 77, 88 n.14 (1975).

[1282] *E.g.*, Spector Motor Service v. McLaughlin, 323 U.S. 101 (1944); Louisiana Power & Light Co. v. City of Thibodaux, 360 U.S. 25 (1959); Harrison v. NAACP, 360 U.S. 167 (1959).