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To Hear or Not to Hear?—Resolving a Federal Court's Obligation to Hear a Case Involving Both Legal and Declaratory Judgment Claims

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TO HEAR OR NOT TO HEAR?—RESOLVING A FEDERAL COURT'S OBLIGATION TO HEAR A CASE INVOLVING BOTH LEGAL AND DECLARATORY JUDGMENT CLAIMS

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I. INTRODUCTION

It depends. It's the law school answer that makes students cringe. As exasperating as it is to receive this answer, it is frequently the correct answer. As attorneys, we understand that most legal questions do not have simple and straightforward answers. However, the complexity of the law is, for countless attorneys, part of its allure. Although there are some hard and fast rules, the answer to almost every legal question is: it depends. But some of those clear-cut rules involve jurisdictional questions. Federal courts are courts of limited jurisdiction.[1] When a lawsuit seeking a legal remedy is brought in federal court with a parallel state proceeding pending, the federal court has no authority to dismiss or stay the claim in favor of the related state court litigation unless an abstention doctrine applies.[2] We also know that when an action seeks declaratory judgment in federal court, the court has discretion to stay or dismiss the claim.[3] So, what happens when such a case seeks both a legal remedy and declaratory judgment? Should the court have discretion to dismiss the case, or should the court be obligated to hear the case absent some extraordinary circumstances?

The United States Supreme Court has not considered the obligation of a federal court to exercise its jurisdiction over this type of mixed case.[4] The circuits that have considered this question have not reached any sort of consensus, instead splitting themselves into four different approaches: the Bright Line test,[5] the Independent Claim test,[6] the Heart of the Matter test,[7] and the Surgical test.[8] Which test is the appropriate test for federal courts to use? Well, it depends.

This article proposes that when a federal court is faced with a case seeking both declaratory judgment and a legal remedy, it should determine its obligation to exercise jurisdiction by applying the

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1. Henry v. Off. of Thrift Supervision, 43 F.3d 507, 511 (10th Cir. 1994).
2. Mass. Biologic Lab'ys of the Univ. of Mass. v. Medimmune, LLC, 871 F. Supp. 2d 29, 32–33 (D. Mass. 2012).
3. *Id.* at 33.
4. Wilton v. Seven Falls Co., 515 U.S. 277, 290 (1995).
5. *See infra* Section III.B.
6. *See infra* Section III.A.
7. *See infra* Section III.C.
8. *See infra* Section III.D.

Independent Claim test.[9] Under this test, the court must determine whether the legal claim "alone [is] sufficient to invoke the court's subject matter jurisdiction and can be adjudicated without the requested declaratory relief."[10] If the legal claim is independent, the court must adjudicate the legal claim absent extraordinary circumstances.[11] The court has discretion to abstain from hearing the declaratory claim.[12] However, if the legal claim is dependent on the declaratory relief claim, the court has discretion to abstain from hearing the entire action.[13]

Part II of this article will provide background on the Declaratory Judgment Act in order to show how this procedural remedy authorizes application of a declaratory judgment and how it confers discretion on the court to have a case heard in federal court.[14] Part II will further show the development of the *Brillhart*/*Wilton* and *Colorado River* doctrines to show how courts have traditionally dealt with parallel litigation available under the Declaratory Judgment Act.[15] Part III will show the development of the four primary tests federal courts have applied when faced with a mixed claim.[16] Part III will establish why a federal court should apply the Independent Claim test when faced with a mixed claim.[17] Part III further explains why the other three tests federal courts have applied do not appropriately balance *Colorado River*'s unflagging jurisdiction with the discretionary abstention allowed under the Declaratory Judgment Act.[18]

II. BACKGROUND

A. Declaratory Judgment Act

The Declaratory Judgment Act, 28 U.S.C. § 2201, provides a method to determine the existence or nonexistence of a right, duty,

9. *See infra* Section III.A.
10. R.R. St. & Co. v. Vulcan Materials Co., 569 F.3d 711, 715 (7th Cir. 2009).
11. *Id.* at 716–17.
12. *Id.*
13. *Id.* at 716.
14. *See infra* Part II.
15. *See infra* Part II.
16. *See infra* Part III.
17. *See infra* Section III.A.
18. *See infra* Sections III.B–D.

power, liability, privilege, disability, immunity, status, or any fact on which such legal relations depend.[19] Specifically, the Act provides:

> In a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.[20]

The Act is intended to be liberally construed to accomplish its purpose of providing litigants a speedy and inexpensive process to adjudicate legal disputes and to settle legal rights without invoking coercive remedies.[21]

Although the Act is intended to be liberally construed, its provisions are not completely without limitations.[22] Before the remedy can be invoked, there must be some question as to the existence or nonexistence of a right, status, immunity, power, or privilege.[23] This actual controversy requirement of the Declaratory Judgment Act does not create a higher threshold of justiciability than the basic Article III requirement that federal courts only decide cases or controversies.[24] Therefore, to establish a case or controversy, a plaintiff must allege facts "from which it appears there is a substantial likelihood that he will suffer injury in the future."[25] Further, the relief requested must redress the alleged harm.[26]

19. Am. Macaroni Mfg. Co. v. Niagra Fire Ins. Co. of N.Y., 43 F. Supp. 933, 935 (N.D. Ala. 1942) (consolidating three declaratory judgment actions wherein each defendant was a fire insurance company with which plaintiffs had a fire insurance policy at the time of a fire at their factory).
20. 28 U.S.C. § 2201(a).
21. *See* Sherwood Med. Indus., Inc. v. Deknatel, Inc., 512 F.2d 724, 729 (8th Cir. 1975); s*ee also* Printing Plate Supply Co. v. Curtis Publ'g Co., 278 F. Supp. 642, 645–46 (E.D. Pa. 1968); Foster Grant Co. v. Polymer Corp., 185 F. Supp. 619, 621 (E.D. Pa. 1960); M. Swift & Sons, Inc. v. Lemon, 24 F.R.D. 43, 46 (S.D.N.Y. 1959).
22. N.C. Consumers Power, Inc. v. Duke Power Co., 206 S.E.2d. 178, 186 (N.C. 1974) (holding that there was no actual controversy where the complaint did not establish with practical certainty that the plaintiffs had the capacity or power to perform any acts that would generate a controversy).
23. *See id.* at 186–87.
24. Fusco v. Rome Cable Corp., 859 F. Supp. 624, 629–30 (N.D.N.Y. 1994).
25. Bowen v. First Fam. Fin. Servs., Inc., 233 F.3d 1331, 1340 (11th Cir. 2000) (quoting Malowney v. Fed. Collection Deposit Grp., 193 F.3d 1342, 1346 (11th Cir. 1999)).
26. *See* Sully v. Scottsdale Ins., 533 F. Supp. 3d 1242, 1247–48 (S.D. Fla. 2021) (finding that insured homeowners did not have Article III standing under the Declaratory

The Declaratory Judgment Act is "'intended as a speedy and effective remedy' for settling disputes before substantial damages are incurred and is 'intended to provide a remedy that is simpler and less harsh than coercive relief, if it appears that a declaration might terminate the potential controversy.'"[27] However, the Declaratory Judgment Act is an enabling act that entrusts the courts with discretion rather than providing litigants an absolute right.[28] A district court's discretion to entertain a suit for declaratory judgment does not depend solely on the jurisdictional basis of the suit because the Declaratory Judgment Act confers this discretion regardless of the jurisdictional basis on which the suit is brought.[29] Nevertheless, this discretion must be exercised reasonably.[30] "In the declaratory judgment context, the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration."[31]

The Declaratory Judgment Act serves several purposes, including reducing the need for litigation by promoting settlement of actual controversies before they become violations of law or of contractual duty,[32] it often provides remedies that are less harsh than coercive remedies,[33] it provides certainty with respect to legal rights and

Judgment Act where the insureds were only seeking prospective relief). The court concluded that a separate action in state court would be required to obtain monetary relief. *Id.* Here, the court found that the insureds alleged only past injury in that insurer's delay in adjusting a claim was equivalent to denial of coverage. *Id.* The court concluded it could not infer that future injury was imminent as any possible denial of the insureds' claim, which was merely hypothetical, was the only remaining threat of injury. *Id.* at 1247.

27. Town of Annetta S. v. Seadrift Dev., L.P., 446 S.W.3d 823, 832 (Tex. App. 2014) (quoting MBM Fin. Corp. v. Woodlands Operating Co., 292 S.W.3d 660, 670 (Tex. 2009)).

28. Serco Servs. Co. v. Kelley Co., 51 F.3d 1037, 1039 (Fed. Cir. 1995) ("[T]here is no absolute right to a declaratory judgment, for the statute specifically entrusts courts with discretion to hear declaratory suits or not depending on the circumstances." (citing Minn. Mining & Mfg. Co. v. Norton Co., 929 F.2d 670, 672 (Fed. Cir. 1991))).

29. United States v. City of Las Cruces, 289 F.3d 1170, 1180 (10th Cir. 2002).

30. *See* Am. Airlines, Inc. v. Louisville & Jefferson Cnty. Air Bd., 269 F.2d 811, 824–25 (6th Cir. 1959).

31. Wilton v. Seven Falls Co., 515 U.S. 277, 288 (1995).

32. Hardware Mut. Cas. Co. v. Schantz, 178 F.2d 779, 780 (5th Cir. 1949); Bacardi USA, Inc. v. Young's Mkt. Co., 273 F. Supp. 3d 1120, 1127 (S.D. Fla. 2016).

33. LB Steel, LLC (*In re* LB Steel) v. Walsh Constr. Co., 572 B.R. 690, 702 (Bankr. N.D. Ill. 2017); Stericycle, Inc. v. City of Delavan, 120 F.3d 657, 659 (7th Cir. 1997); Mandarino v. Pollard, 718 F.2d 845, 848 (7th Cir. 1983).

responsibilities,[34] it provides an economical method to adjudicate disputes before damage has actually been suffered,[35] and it improves judicial efficiency.[36] Although the Declaratory Judgment Act expands the range of remedies available in federal court, the Act is not an independent source of subject matter jurisdiction.[37] Therefore, although the Declaratory Judgment Act enlarges the range of remedies available in federal courts, it does not create or expand the scope of subject matter jurisdiction.[38]

Where a declaratory judgment would settle the legal relations between parties and would provide relief from uncertainty, declaratory judgment is appropriate.[39] In *Lehigh Coal*, a railroad lessor agreed to ship certain amounts of coal mined from its lands in Pennsylvania over the leased railroad lines.[40] The parties further agreed to submit to arbitration any alleged diversions of the tonnage of coal mined by the lessor.[41] When the lessee gave notice to submit to arbitration alleged coal diversions over thirteen years, the lessor denied the lessee's right to submit to arbitration any demands before the thirteenth year.[42] In denying the lessee's motion to dismiss the declaratory judgment action to determine the parties' rights under the contract, the court concluded that there did exist an actual controversy and that if arbitration was allowed to encompass all thirteen years, and that turned out to be an error—the parties would be needlessly subject to tremendous expense.[43] The court reasoned that:

34. Sears, Roebuck & Co. v. Zurich Ins. Co., 422 F.2d 587, 589 (7th Cir. 1970); Soos & Assocs. v. Five Guys Enters., 425 F. Supp. 3d 1004, 1013 (N.D. Ill. 2019).
35. Johnson v. Interstate Transit Lines, 163 F.2d 125, 128–29 (10th Cir. 1947); Gen. Elec. Co. v. Refrigeration Pats. Corp., 65 F. Supp. 75, 77–78 (W.D.N.Y. 1946).
36. AvePoint, Inc. v. Knickerbocker, 475 F. Supp. 3d 483, 488 (E.D. Va. 2020); Aetna Cas. & Sur. Co. v. Ind-Com Elec. Co., 139 F.3d 419, 422–23 (4th Cir. 1998).
37. Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671–72 (1950) (stating that the Declaratory Judgment Act allows relief by way of recognizing a plaintiff's right even though no enforcement of the right was sought); *see also* Borden v. Katzman, 881 F.2d 1035, 1037 (11th Cir. 1989).
38. *Skelly Oil Co.*, 339 U.S. at 671–72; Davis v. United States, 499 F.3d 590, 594 (6th Cir. 2007); Toledo v. Jackson, 485 F.3d 836, 839 (6th Cir. 2007); Mich. S. R.R. Co. v. Branch & St. Joseph Cntys. Rail Users Ass'n, 287 F.3d 568, 575 (6th Cir. 2002).
39. Lehigh Coal & Navigation Co. v. Cent. R.R. of N.J., 33 F. Supp 362, 366 (E.D. Pa. 1940).
40. *Id.* at 363.
41. *Id.* at 364.
42. *Id.*
43. *Id.* at 365.

> Decisions interpretive of the Declaratory Judgment Act have established the following principles:
> (1) Existence of an actual controversy is a prerequisite to declaratory relief—the controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests;
> (2) A declaratory judgment should be granted where it will serve a useful purpose in clarifying and settling legal relations and will terminate and afford relief from insecurity, uncertainty and controversy;
> (3) The discretion to grant or refuse declaratory relief should be liberally exercised to effectuate the purposes of the Declaratory Judgment Act and thereby afford relief from uncertainty and insecurity with respect to rights, status and other legal relations;
> (4) The granting of declaratory relief is a matter resting in the court's discretion;
> (5) The primary object of the Declaratory Judgment Act is to afford a speedy and inexpensive method of adjudicating legal disputes before damage of adjudicating legal disputes before damage has actually been suffered, and the statute should be liberally construed to that end;
> (6) Construction and interpretation of written instruments (including contracts, insurance policies, statutes, ordinances, wills, and trusts) is the principle function of a declaratory judgment proceeding;
> (7) Existence of another remedy does not preclude relief by way of declaratory judgment.[44]

B. Brillhart

As far back as 1942, the U.S. Supreme Court recognized that, even when a suit satisfies subject-matter jurisdictional requirements, district courts have discretion in determining whether to hear a case under the Declaratory Judgment Act.[45] In *Brillhart*, Excess Insurance Company brought an action against an estate administrator for a declaratory judgment to determine rights under a reinsurance agreement with another insurance company.[46] After an accident

44. *Id.*
45. Brillhart v. Excess Ins. Co. of Am., 316 U.S. 491, 494 (1942).
46. *Id.* at 492.

killed the estate administrator's decedent, the estate brought an action in state court against the insurance company's insured.[47] The insurance company refused to defend the suit, claiming that the policy did not cover the accident.[48] After a default judgment was granted against the insurance company, the estate administrator made the excess insurance company a party to the garnishment proceeding.[49] However, in the meantime, the Excess Insurance Company filed a suit for declaratory judgment in the United States District Court for the District of Kansas.[50] The estate administrator moved to dismiss the federal suit, contending that the issues involved could be decided in the garnishment proceeding pending in the Missouri state court.[51]

The District Court dismissed the action, but the United States Court of Appeals for the Tenth Circuit reversed with directions to proceed on the merits.[52] The U.S. Supreme Court reversed and remanded the case back to the district court to properly exercise its discretion in passing upon the petitioner's motion to dismiss the suit.[53] The Court reasoned that the jurisdiction conferred by the Declaratory Judgment Act was discretionary, and district courts were under no compulsion to exercise it.[54] The Court acknowledged that the motion to dismiss rested upon the claim that a declaratory judgment in the federal court was unwarranted because another proceeding was pending in a state court in which all matters in controversy between the parties could be fully adjudicated.[55] The Court reasoned that "[o]rdinarily it would be uneconomical as well as vexatious for a federal court to proceed in a declaratory judgment suit where another suit is pending in a state court presenting the same issues, not governed by federal law, between the same parties."[56] In determining the appropriateness of abstention, the Court looked at various factors, including whether all claims could be satisfactorily adjudicated in the state court proceedings, whether the issues implicated state or federal law, whether all necessary parties had been joined, and whether necessary parties were amenable to process in that forum.[57]

47. *Id.*
48. *Id.*
49. *Id.*
50. *Id.* at 493.
51. *Id.*
52. *Id.* at 493–94.
53. *Id.* at 498.
54. *Id.* at 494.
55. *Id.* at 494–95.
56. *Id.* at 495.
57. *Id.* at 495–96.

C. Colorado River

More than thirty years later, the Supreme Court again dealt with the scope of a court's discretion to decline jurisdiction over a case that was otherwise within the federal court's original jurisdiction.[58] In *Colorado River*, the United States brought an action to declare its rights and the rights of two Native American tribes relating to the waters of the San Juan River and its tributary rivers in the state of Colorado.[59] The Government sought a declaration of its water rights, the appointment of a water master, and an order enjoining all uses and diversions of water by other parties.[60] District Court jurisdiction was invoked under 28 U.S.C. § 1345.[61] Subsequently, a federal-suit defendant sought in the state court to make the Government a party to adjudicate all the Government's claims (state and federal) under the McCarran Amendment.[62] The United States District Court for the District of Colorado granted a motion to dismiss, concluding that the doctrine of abstention required deference to the state court proceedings.[63] The Court of Appeals reversed, finding that abstention was inappropriate.[64]

In finding that abstention was inappropriate, the Court reasoned that abstention from federal jurisdiction is the exception rather than the rule and that it "was never a doctrine of equity that a federal court should exercise its judicial discretion to dismiss a suit merely because a State court could entertain it."[65] The Court determined that, where a concurrent state proceeding is pending, a district court may abstain from exercising jurisdiction if the circumstances are exceptional and if abstention would promote wise jurisdictional administration.[66] The Court provided several factors that would support this type of abstention but cautioned that no single factor was determinative.[67] The factors the Court considered in dismissing the declaratory

58. Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 803 (1976).
59. *Id.* at 805–06.
60. *See generally* Brief for Petitioner at 13–14, Colo. River Water Conservation Dist. v. United States, 424 U.S. 800 (1976) (Nos. 74-940, 74-949), 1975 WL 17374, at *13–14.
61. *Colo. River*, 424 U.S. at 803.
62. *Id.*
63. *Id.* at 806.
64. *Id.*
65. *Id.* at 813–14 (quoting Ala. Pub. Serv. Comm'n. v. S. Ry. Co., 341 U.S. 341, 361 (1951) (Frankfurter & Jackson, JJ., concurring in result)).
66. *Id.* at 817–18.
67. *Id.* at 818–19.

judgment action included the inconvenience of the federal forum, the desirability of avoiding piecemeal litigation, the order in which fora obtained jurisdiction and progress achieved in each action, whether there were any federal issues in the pending state case, whether the state court proceedings would most likely protect the rights of both parties, and whether either court had assumed jurisdiction over property.[68] However, in describing the justification for this abstention, subsequently referred to as the *Colorado River* doctrine, the Court clarified that abstention was an exception and not the rule.[69] The Court reasoned that district courts have a "virtually unflagging" duty to exercise federal jurisdiction when it exists.[70]

Although routinely referred to as an abstention doctrine, some commentators have pointed out that the *Colorado River* doctrine is not technically an abstention doctrine as it is based on considerations of wise judicial administration rather than on principles of comity.[71] Regardless of any debate as to whether or not it is a true abstention doctrine, the vast majority of courts, and this article, refer to it as an abstention doctrine.[72] In *Roden*, the concurring opinion explained:

> *Colorado River* enumerated four factors that courts may consider in determining whether "considerations of wise judicial administration" outweigh the duty to exercise federal jurisdiction: (1) whether the state court was the first to assume jurisdiction over a property; (2) the relative inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; and (4) the order in which the courts obtained jurisdiction.[73]

Subsequently, the court clarified that "the Supreme Court added two additional considerations: (5) whether federal law provides the rule

68. *Id.* at 817–19.

69. *Id.* at 817–18.

70. *Id.* at 817; *see also* JOHN KENNETH FELTER, ABSTENTION DOCTRINES–*COLORADO RIVER*, BUS. & COM. LITIG. FED. CTS. § 149:18 (5th ed. 2022) (describing the "virtually" modifier as critical "because there are situations where federal district courts must dismiss cases that are proceeding concurrently in state courts").

71. FELTER, *supra* note 70; AmerisourceBergen Corp. v. Roden, 495 F.3d 1143, 1155 (9th Cir. 2007) (Ferguson, J., concurring); *see also* Eric C. Surette, Annotation, *When Are Proceedings Parallel so as to Permit Federal Court Abstention Under* Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483, 9 Env't Rep. Cas. (BNA) 1016*, 176 A.L.R. Fed. 517, at § 2(a) (2002).

72. Surette, *supra* note 71.

73. *Roden*, 495 F.3d at 1155 (Ferguson, J., concurring).

of decision on the merits, and (6) whether the state court proceeding can adequately address the rights of the federal plaintiff."[74]

The *Colorado River* doctrine requires that the underlying federal and state claims be parallel—meaning that the parties and litigation interests are substantially the same.[75] However, the parties and claims need not be identical as long as the parties and their litigation interests are substantially similar.[76] If there is a substantial likelihood that the state claim will dispose of all of the claims in the federal case, the courts will conclude that the issues are substantially similar.[77] But as the *Roden* concurrence pointed out, the determination of parallelism is a threshold inquiry that must be sorted out before weighing the factors related to abstention.[78]

Although many courts subsequently applied the *Colorado River* doctrine in exercising their discretion to decline jurisdiction over declaratory judgment claims, *Colorado River* did not specifically address declaratory judgment claims.[79] Consequently, a great deal of confusion arose over the appropriate standard to govern a district court's decision to stay a declaratory judgment action in favor of parallel state litigation.[80] The question was resolved in 1995 when the U.S. Supreme Court stated that by enacting the Declaratory Judgment Act, Congress created an opportunity, not a duty, "to grant a new form of relief to qualifying litigants."[81]

D. Wilton

In *Wilton*, petitioner underwriters sought a declaratory judgment that their commercial liability insurance policies did not cover respondent's liability for a state-court judgment regarding the

74. *Id.* (referencing Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 23, 26 (1983)).
75. Ambrosia Coal & Constr. Co. v. Pagés Morales, 368 F.3d 1320, 1330 (11th Cir. 2004).
76. *See id.*
77. Adkins v. VIM Recycling, Inc., 644 F.3d 483, 498 (7th Cir. 2011).
78. Toll Brothers, Inc. v. Twp. of Readington, 555 F.3d 131, 136 n.3 (3d Cir. 2009) (quoting Yang v. Tsui, 416 F.3d 199, 204 n.5 (3d Cir. 2005)).
79. R. Brandon McCullough & Robert H. Owen, *Understanding and Applying Diverging Standards Federal Jurisdiction in Declaratory Judgment Actions Involving Insurance*, DRI FOR THE DEF., Oct. 2017, at 54.
80. Wilton v. Seven Falls Co., 515 U.S. 277, 287 (1995).
81. Eric C. Surette, Annotation, *Propriety and Extent of Application of* Brillhart/Wilton *Abstention Doctrine to "Mixed Claims" Involving Both Declaratory and Coercive Relief*, 66 A.L.R. Fed. 2d 467, at § 2 (2012) [hereinafter *Mixed Claims*] (referencing *Wilton*, 515 U.S. at 288); *see also Wilton*, 515 U.S. at 288.

ownership and operation of oil and gas properties.[82] The district court entered a stay, holding that the pending state lawsuit encompassed the same coverage issues raised in the declaratory judgment action.[83] The district court concluded that a stay was warranted in order to avoid piecemeal litigation and to bar forum-shopping attempts.[84] After the United States Court of Appeals for the Fifth Circuit affirmed, the Supreme Court granted certiorari to "resolve Circuit conflicts concerning the standard governing a district court's decision to stay a declaratory judgment action in favor of parallel state litigation."[85]

The Court rejected petitioner's contention that the *Brillhart* doctrine, which allowed district courts substantial latitude in dismissing a declaratory judgment action without showing exceptional circumstances, was an outmoded relic of another era.[86] The Court reasoned that, under the *Brillhart* standard, a district court must determine whether the questions in controversy could be better settled in a proceeding pending in the state court.[87] The court rejected petitioners' contention that intervening case law supplanted the broad discretion of *Brillhart* with a test allowing district courts to stay or dismiss actions that are within their jurisdiction only in exceptional circumstances.[88] Instead, the Court explained that district courts possess discretion in such declaratory judgment actions even when the suit satisfies subject-matter jurisdictional prerequisites.[89] The Court clarified that the Declaratory Judgment Act "has repeatedly been characterized as an enabling Act, which confers a discretion on the courts rather than an absolute right upon the litigant."[90] The Court reasoned that "a district court is authorized, in the sound exercise of its discretion, to stay or to dismiss an action seeking a declaratory judgment . . . . In the declaratory judgment context, the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration."[91]

82. *Wilton*, 515 U.S. at 280.
83. *Id.*
84. *Id.*
85. *Id.* at 281.
86. *Id.* at 286.
87. *See id.* at 283.
88. *Id.*
89. *Id.* at 282.
90. *Id.* at 278.
91. *Id.* at 288.

In summary, the *Brillhart*/*Wilton* doctrine provides that district courts have discretion as to whether and when to entertain actions under the Declaratory Judgment Act, even if the suit satisfies subject matter jurisdictional prerequisites.[92] Discretion is provided because Congress intended to provide an opportunity, not an obligation, for a new form of relief.[93] Therefore, a district court may stay or dismiss an action for declaratory judgment.[94]

E. Mixed Claim Confusion

Subsequently, yet another question arose as to whether this *Brillhart*/*Wilton* doctrine applies in cases where a party seeks declaratory and coercive relief.[95] Some courts have circumvented the issue, and those deciding the issue are split on their approaches.[96] Through the courts' attempts to find an appropriate balance between the "unflagging" jurisdiction of the *Colorado River* doctrine and the discretionary abstention standard of the *Brillhart*/*Wilton* doctrine, four primary tests have evolved.

The first test employs a bright-line rule that prioritizes a federal court's duty to hear claims for legal relief over its discretion to decline jurisdiction to hear declaratory judgment actions.[97] Here, courts contend that when a federal case combines a legal claim with a declaratory judgment claim, the court must exercise jurisdiction over both the legal and the declaratory judgment claims.[98] As one court put it,

> [w]hen a party seeks both injunctive and declaratory relief, the appropriateness of abstention must be assessed according to the doctrine of *Colorado River*; the only potential exception to this general rule arises when a party's request for injunctive relief is either frivolous or is made solely to avoid application of the *Brillhart* standard.[99]

92. Brillhart v. Excess Ins. Co. of Am., 316 U.S. 491, 499 (1942).
93. *Wilton*, 515 U.S. at 288.
94. *Id.*
95. *See infra* Section II.E.
96. *See infra* Section II.E.
97. Rarick v. Federated Serv. Ins. Co., 852 F.3d 223, 228 (3d Cir. 2017).
98. *Mixed Claims*, *supra* note 81, § 7.
99. Black Sea Inv. v. United Heritage Corp., 204 F.3d 647, 652 (5th Cir. 2000).

The United States Courts of Appeals for the Second, Fourth, Fifth, and Tenth Circuits have adopted this Bright Line test.[100] The Third, Seventh, and Ninth Circuits have taken a slightly different spin on their approach.[101] These circuits apply an "Independent Claim" test, which requires the district court to determine whether the legal claims are independent of the declaratory claims.[102] In other words, the court must determine whether the legal claims alone are sufficient to invoke the court's subject matter jurisdiction and can be adjudicated without the requested declaratory relief.[103] Under this test, if the legal claims are independent, the *Colorado River* doctrine governs the legal claims and the *Brillhart*/*Wilton* doctrine governs the declaratory claims.[104] Non-declaratory claims[105] are considered independent of a declaratory claim if the non-declaratory claim alone is sufficient to invoke subject-matter jurisdiction and can be decided without declaratory relief.[106] Even if the declaratory judgment claims involve the same or similar issues, a legal claim can be "independent."[107] However, if the claims are dependent, the *Brillhart*/*Wilhart* doctrine is applied to both claims and the court has discretion to abstain from hearing the entire action.[108]

The Eighth Circuit, along with some district courts in circuits that remained unsettled, have applied the "Heart of the Matter" or "Essence of the Lawsuit" test.[109] This test looks at the relationship between the claims and seeks to determine what the heart of the dispute concerns.[110] Under this test, if the heart of the matter is for a declaratory judgment, then the *Brillhart*/*Wilton* doctrine applies, but if the heart of the matter is for non-declaratory relief, the *Colorado*

100. *Rarick*, 852 F.3d at 228; *see also* Perelman v. Perelman, 688 F. Supp. 2d 367, 374 (E.D. Pa. 2010).
101. *Rarick*, 852 F.3d at 228–29.
102. *Id.*
103. R.R. St. & Co. v. Vulcan Materials Co., 569 F.3d 711, 715 (7th Cir. 2009).
104. *Id.*
105. Non-declaratory relief refers to any type of relief other than a declaratory judgment. Examples of non-declaratory relief include money damages and injunctions. SafePort Ins. Co. v. Macko, No. 21-CV-00131, 2021 WL 5828045, at *4 (D.S.C. Dec. 8, 2021).
106. United Nat'l Ins. Co. v. R&D Latex Corp., 242 F.3d 1102, 1113 (9th Cir. 2001).
107. *See id.* at 1112 (reversing a district court which had found claims to be independent of one another only "if one [claim] can be resolved without disposing of the legal issues raised in the other").
108. *R.R. St.*, 569 F.3d at 716.
109. *See* Rarick v. Federated Serv. Ins. Co., 852 F.3d 223, 228 (3d Cir. 2017).
110. ITT Indus., Inc. v. Pac. Emps. Ins. Co., 427 F. Supp. 2d 552, 556 (E.D. Pa. 2006), *abrogated by Rarick*, 852 F.3d at 229–30.

River doctrine applies.[111] A court can determine what type of claims constitute the heart of the matter by looking at whether the outcome of the coercive claim hinges on the outcome of the declaratory claim.[112] Courts applying this test reason that it is fundamentally reasonable to pull a dependent non-declaratory claim within the ambit of the discretion afforded its declaratory counterpart given administrative, jurisprudential, and other concerns of mixed-action litigation.[113] However, in practice, courts have uniformly found that the "heart" of the claims are declaratory and the courts therefore had discretion to dismiss both the non-declaratory and the declaratory claims.[114]

The final test is an almost surgical approach that seeks to separate the declaratory claims from the non-declaratory claims and apply different standards to each type of claim.[115] The First Circuit provides that the *Brillhart*/*Wilton* doctrine should always be applied but only to the claims for declaratory relief.[116] The *Colorado River* standard then applies to any claims that seek non-declaratory relief.[117] The First Circuit is the only circuit that has applied this test, and even it has not done so expressly.[118]

It is hardly surprising that there is a lack of consensus among the circuits, given that courts are attempting to find a compromise between a strict duty to exercise jurisdiction over non-declaratory claims versus the discretion to exercise jurisdiction over declaratory

111. Elec. Claims Processing, Inc. v. M.R. Sethi, M.D., S.C., No. 12-CV-249, 2013 WL 243594, at *3–4 (W.D. Pa. Jan. 22, 2013), *abrogated by Rarick*, 852 F.3d at 229–30.

112. Coltec Indus. Inc. v. Cont'l Ins. Co., No. 04-5718, 2005 WL 1126951, at *2–3 (E.D. Pa. May 11, 2005) (finding that coercive bad faith and breach of contract claims "hinged" on the declaratory claims because their outcome was "dependent" on how the insurance contracts at issue were interpreted in the declaratory judgment claim).

113. Columbia Gas of Pa. v. Am. Int'l Grp., No. 10-1131, 2011 WL 294520, at *2 (W.D. Pa. Jan. 27, 2011), *abrogated by Rarick*, 852 F.3d at 229–30.

114. *See ITT*, 427 F. Supp. 2d at 556–57 (finding the "heart" of the action to be declaratory and declining to exercise jurisdiction); *see also Coltec Indus. Inc.*, 2005 WL 1126951, at *3–4 (holding the action to be declaratory and that the Court has no jurisdiction over it); Lexington Ins. Co. v. Rolison, 434 F. Supp. 2d 1228, 1236–38 (S.D. Ala. 2006) (holding same); *cf.* Parsons & Whittemore, Enters. Corp. v. Cello Energy, LLC, No. 07-0743-B, 2008 WL 227952, at *15–17 (S.D. Ala. Jan. 25, 2008) (holding that the "heart" of the action was declaratory, but it still retained jurisdiction).

115. *See, e.g.*, Rossi v. Gemma, 489 F.3d 26 (1st Cir. 2007).

116. *Id.* at 38–39.

117. William Grayson Lambert, *Unmixing the Mess: Resolving the Circuit Split Over the* Brillhart/Wilton *Doctrine and Mixed Complaints*, 64 U. KAN. L. REV. 793, 809 (2016).

118. *Id.* at 819–20.

claims.[119] However, three of these four approaches, while having some fundamental logic, fail to appropriately balance *Colorado River*'s unflagging jurisdiction with *Brillhart*/*Wilton*'s discretionary jurisdiction.[120] The only test that appropriately balances the competing interests is the Independent Claim test.

III. ANALYSIS

A uniform approach to determining whether a federal court should exercise its discretionary jurisdiction in cases where a party seeks both declaratory relief and non-declaratory relief is essential. Although each of the four predominant tests has advantages and disadvantages, the test that most closely finds an appropriate balance between the "unflagging" jurisdiction of the *Colorado River* doctrine and the discretionary jurisdiction of the *Brillhart*/*Wilton* doctrine is the Independent Claim Test.

A. Independent Claim Test

One of the first cases to apply the Independent Claim test arose out of an estate's claim for underinsured motorist benefits under an insurance policy issued to the decedent's brother, which purported to cover relatives of the policyholder.[121] In this action, an intoxicated driver and a passenger were killed in a one-car collision on a Hawaiian highway.[122] The passenger's estate settled with the driver's insurance company and the bar where the driver had been drinking before the accident.[123] The estate further received no-fault and underinsurance benefits from another insurer.[124] The controversy arose out of the estate's claim for underinsured motorist benefits under an insurance policy issued to the passenger's brother, which covered relatives of the policyholder.[125] The insurer filed a complaint in federal court pursuant to the Declaratory Judgment Act, seeking a declaration that the passenger's estate was not entitled to any recovery under the policy because the statute of limitations barred the claims and the estate violated a policy prohibition against

119. *Id.* at 821.
120. *See id.* at 834–35 (discussing that although the heart of the complaint approach is the best, each approach has a multitude of valuable components, as well as drawbacks to assess).
121. Gov't Emps. Ins. Co. v. Dizol, 133 F.3d 1220, 1222 (9th Cir. 1998).
122. *Id.*
123. *Id.*
124. *Id.*
125. *Id.*

unauthorized settlements.[126] Neither party objected to federal court jurisdiction and the estate did not move for abstention.[127] The court concluded that the district court had jurisdiction, reasoning that when additional claims, such as bad faith, breach of contract, breach of fiduciary duty, and recission are joined with an action for declaratory relief, the district court is not required to decline to entertain the claim for declaratory relief.[128] Further, the court held that if "a federal court is required to determine major issues of state law because of the existence of non-discretionary claims, the declaratory action should be retained to avoid piecemeal litigation."[129]

Subsequently, in another insurance case, the Ninth Circuit concluded that the district court in a declaratory judgment action had no discretion to decline to hear a party's claims for tort damages where the tort claims were within the court's diversity jurisdiction.[130] In *Kaneshiro*, an insurer appealed the district court's order abstaining under the Declaratory Judgment Act and dismissing the insurer's original federal action for declaratory relief and the insured's counterclaims.[131] The district court remanded the removed action for common law and statutory damages and declaratory relief to state court.[132] The district court reasoned that abstention was appropriate, in part, because the insured's damages claims were "wholly dependent" upon the declaratory relief claims.[133] The court vacated the district court's judgment and remanded for reconsideration, reminding the lower court that it had no discretion to decline to hear the insured's claims for tort damages within its diversity jurisdiction and because the resolution of the claims did not necessarily follow the insurance coverage determination if the insurance coverage determination was adverse to the insurer.[134] The court reiterated its assertion that where a federal court is required to determine major issues of state law because of the existence of non-discretionary claims, the declaratory action should be retained to avoid piecemeal litigation.[135]

126. *Id.*
127. *Id.*
128. *Id.* at 1225.
129. *Id.* at 1225–26.
130. Allstate Ins. Co. v. Kaneshiro, 152 F.3d 923, at *1 (9th Cir. 1998) (unpublished table decision).
131. *Id.*
132. *Id.*
133. *Id.*
134. *Id.*
135. *Id.*

A similar action arose in the Seventh Circuit, where plaintiffs brought claims for breach of contract and declaratory judgment.[136] In *Delta Asphalt*, the plaintiffs filed a three-count complaint that included two breach-of-contract claims and sought a declaration that the defendant owed a duty to indemnify the plaintiffs for costs associated with an asbestos bodily injury suit.[137] After the case was removed from state court on diversity jurisdiction, the plaintiffs sought remand, relying on the U.S. Supreme Court's decision in *Wilton*.[138] The plaintiffs argued that the court should abstain from exercising its jurisdiction under the Declaratory Judgment Act because the dispute involved purely state-law issues.[139] The court rejected the plaintiffs' contention, holding that abstention was not proper here where the damages claims were within the court's subject-matter jurisdiction.[140]

More recently, the Third Circuit has concluded that the Independent Claim test is the applicable legal standard for review of a complaint seeking both legal and declaratory relief.[141] In *Rarick*, the plaintiffs, injured employees, brought state court actions against their insurers.[142] The actions, which sought declaratory relief and damages for breach of contract, were based on the defendants' denial of claims for uninsured-motorist and underinsured-motorist benefits.[143] Plaintiffs sought a judgment declaring that Pennsylvania's Motor Vehicle Financial Responsibility Law required defendants to provide them with uninsured-motorist coverage.[144] Plaintiffs further sought, in nearly identical language to the declaratory-relief prayer, damages for breach of contract.[145]

The actions were originally brought in state court but were removed based on diversity jurisdiction.[146] No related case remained pending in state court after removal.[147] Following removal, the district court declined to exercise jurisdiction and remanded the

136. Delta Asphalt, Inc. v. Travelers Cas. & Sur. Co., No. 05-CV-0543, 2005 WL 2808909, at *1 (S.D. Ill. Oct. 27, 2005).
137. *Id.*
138. *Id.*
139. *Id.*
140. *Id.* at *2.
141. Rarick v. Federated Serv. Ins. Co., 852 F.3d 223, 230 (3d Cir. 2017).
142. *Id.* at 225–26.
143. *Id.*
144. *Id.* at 226.
145. *Id.*
146. *Id.*
147. *Id.*

actions.[148] The district court's refusal to exercise jurisdiction was based on its conclusion that, under the Heart of the Matter test, the essence of the action was declaratory because plaintiff sought a declaration that he was entitled to uninsured motorist benefits.[149]

On appeal, the Third Circuit acknowledged that it had not previously ruled on the legal standard applicable when both declaratory and legal relief were claimed.[150] The court discussed what it saw as the three main approaches[151] that had been taken by different circuits but concluded that the Independent Claim test was the most appropriate test "because it prevents plaintiffs from evading federal jurisdiction through artful pleading."[152] The court reasoned that, although plaintiffs included declaratory claims, they sought a legal remedy—damages.[153] As both cases satisfied diversity jurisdiction requirements, plaintiffs could have obtained the desired relief in federal court without seeking a declaratory judgment.[154] However, plaintiffs' addition of the declaratory judgment in the pleadings invited the lower court to avoid *Colorado River*'s "virtually unflagging obligation" in favor of more expansive discretion.[155] The court found this outcome wholly inconsistent with the purpose of the Declaratory Judgment Act, which "was intended to '*enlarge*[ ] the range of remedies available in the federal courts' by authorizing them to adjudicate rights and obligations even though no immediate remedy is requested."[156]

The court concluded that in both cases the plaintiffs' legal claims were independent of their declaratory claims because both cases satisfied the requirements for diversity jurisdiction.[157] Therefore, the court held that the district court should have adjudicated the cases absent a showing of exceptional circumstances.[158]

148. *Id.*
149. *Id.*
150. *Id.* at 227–28.
151. *Id.* (reviewing the Bright Line test, the Independent Claim test, and the Heart of the Matter test, but not the Surgical test).
152. *Id.* at 229.
153. *Id.*
154. *Id.*
155. *Id.*
156. *Id.* (quoting Skelly Oil Co. v. Phillips Petroleum Co., 70 S. Ct. 876, 879 (1950)). The court reasoned that another benefit of the Independent Claim test was that it gave district courts more flexibility than the Bright Line test. *Id.* at 230.
157. *Id.*
158. *Id.*

A Ninth Circuit case clarified that a legal claim raised in a declaratory judgment action is independent of the declaratory claim where the claim is within the district court's subject-matter jurisdiction and could be brought even if it were not joined with the declaratory-relief request.[159] In *United National Insurance Company*, carpet makers brought an action against a carpet-glue manufacturer alleging that the glue was defective.[160] One of the manufacturer's insurers agreed to defend the manufacturer but reserved the right to reimbursement of its costs if it was determined that there was no coverage.[161] The insurer subsequently filed a declaratory judgment action seeking a declaration that it had no duty to defend the manufacturer.[162] The insurer further sought reimbursement of its defense costs.[163] After the action was dismissed with prejudice, the manufacturer sued the insurer in state court seeking a declaration that the insurer had a duty to defend and provide indemnification.[164] The insurer removed the case to federal court and filed a counterclaim for reimbursement of the money paid to the manufacturer.[165]

The district court declined to exercise jurisdiction, holding that the counterclaim was derivative of the manufacturer's claim for declaratory relief and "did not provide an independent, nondiscretionary basis for jurisdiction."[166] On appeal, the court acknowledged that "cases concerning the scope of the district court's discretion to decline jurisdiction over declaratory claims joined with other causes of action have been less than crystal clear."[167] However, the court explained that, when legal claims are joined with an action for declaratory relief, a "district court should not, as a general rule, remand or decline to entertain the claim for declaratory relief," where the other claims are independent.[168] Claims are independent if they "would continue to exist if the request for a declaration simply dropped from the case."[169] It reasoned that the district court erred in assuming that claims are independent only if one can be decided

159. United Nat'l Ins. Co. v. R&D Latex Corp., 242 F.3d 1102, 1112–13 (9th Cir. 2001).
160. *Id.* at 1106.
161. *Id.*
162. *Id.*
163. *Id.*
164. *Id.* at 1108.
165. *Id.*
166. *Id.* at 1109.
167. *Id.* at 1112.
168. *Id.* (quoting Gov't Emps. Ins. Co. v. Dizol, 133 F.3d 1220, 1225 (9th Cir. 1998)).
169. *Id.* (quoting Snodgrass v. Provident Life & Accident Ins. Co., 147 F.3d 1163, 1167–68 (9th Cir. 1998)).

without resolving the legal issues raised in the other. [170] Instead, the court clarified that the district court should have looked at whether the legal claim was independent in the sense that it could have been brought in federal court even if no declaratory claim had been filed.[171]

In a more recent case, a Third Circuit district court again analyzed a motion to remand using the Independent Claim test.[172] In *Newtown*, a private club brought an action against its insurer in response to the insurer's rejection of insurance claims arising from the club's suspension of business operations during the COVID-19 pandemic.[173] The insurer removed the action from state court on the basis of diversity of citizenship and filed a motion to dismiss.[174] The club moved to remand the case to state court.[175] The court explained that, because the club sought both a declaratory judgment and legal relief, the motion should be analyzed under the Independent Claim test.[176] This test, in the court's view, "balances the court's duty to hear legal claims with its discretion to decline jurisdiction over claims for declaratory relief."[177] The court held that the club's legal claims were independent of the declaratory claim.[178] However, the court concluded that there were no exceptional circumstances that justified remanding the action "in face of the Court's 'virtually unflagging' obligation to exercise jurisdiction."[179]

The aforementioned cases demonstrate why the Independent Claim test is the most appropriate test to determine whether a federal court should exercise its discretionary jurisdiction when a party seeks both declaratory relief and legal relief. In each case, the court examined whether the claim or claims seeking legal relief were independent of the claim for declaratory relief.[180] Where the legal claims were independent—that is, they had subject-matter jurisdiction all on their own—the court adjudicated the claim absent any extraordinary

170. *Id.* at 1112–13.
171. *Id.* at 1113.
172. Newtown Athletic Club v. Cincinnati Ins. Cos., No. 21-2662, 2022 WL 866410, at *2 (E.D. Pa. Mar. 23, 2022).
173. *Id.* at *1–2.
174. *Id.* at *2–3.
175. *Id.* at *2.
176. *Id.*
177. *Id.* (quoting Rarick v. Federated Serv. Ins. Co., 852 F.3d 223, 228 (3d Cir. 2017)).
178. *Id.*
179. *Id.* at *3 (citation omitted).
180. *See, e.g.*, *id.* at *2.

circumstances.[181] Where the claims were not independent, the court applied the *Brillhart*/*Wilton* doctrine to both claims and had discretion to abstain from hearing the entire action.[182]

Federal courts are empowered to hear only those cases that are: (1) within the judicial power of the United States, as defined in the Constitution, and (2) that have been entrusted to them by a jurisdictional grant by Congress.[183] However, when a case falls within these two requirements, the federal courts have a "virtually unflagging obligation" to exercise federal jurisdiction.[184] Although there are situations in which the courts may abstain, abstention must be the exception and not the rule.[185] Abstention

> . . . is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it. Abdication of the obligation to decide cases can be justified . . . only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest.[186]

The Independent Claim test requires the court to balance this obligation to exercise jurisdiction with the discretion granted by the Declaratory Judgment Act.[187] As said by Chief Justice John Marshall back in 1821, "[w]e have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution."[188] The Independent Claim test requires courts to ensure that they are neither declining jurisdiction given to the federal courts nor usurping jurisdiction that is not given.[189]

It is not a novel idea to say that, where a federal court can show that it has subject matter jurisdiction over a claim, the court should hear that claim absent extraordinary circumstances weighing in favor

181. *See supra* notes 121–79 and accompanying text.
182. *See supra* notes 121–79 and accompanying text.
183. Henry v. Off. of Thrift Supervision, 43 F.3d 507, 511 (10th Cir. 1994) (first citing Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 541 (1986); then citing United States v. Nixon, 418 U.S. 683 (1974); and then citing Tafoya v. U.S. Dep't of Just., L. Enf't Assistance Admin., 748 F.2d 1389, 1390 (10th Cir. 1984)).
184. Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976).
185. *Id.* at 813.
186. *Id.* (quoting County of Allegheny v. Frank Mashuda Co., 360 U.S. 185, 188–89 (1959)).
187. Gov't Emps. Ins. Co. v. Dizol, 133 F.3d 1220, 1224 (9th Cir. 1998).
188. Cohens v. Virginia, 19 U.S. 264, 404 (1821).
189. *Dizol*, 133 F.3d at 1224.

of abstention.[190] This is precisely what the Independent Claim test requires.[191] The court must first determine if there is subject matter jurisdiction for a claim.[192] If subject-matter jurisdiction exists, the court then looks to see if there are extraordinary circumstances weighing against jurisdiction over the claim.[193] If no extraordinary circumstances exist, the court will hear the claim.[194] There is no cause to change this principle simply because the litigant is also bringing a claim for declaratory judgment.[195]

However, if the court determines that it would not have subject-matter jurisdiction over the legal claim that was brought with the declaratory-judgment claim, the court can use its discretion to decline jurisdiction over the entire matter.[196] In this situation, the court would apply the *Brillhart*/*Wilton* doctrine to determine whether it is appropriate to hear the entire case.[197] Therefore, the court is not required to focus almost exclusively on its obligation to exercise jurisdiction over claims for non-declaratory relief and can instead balance its obligation to exercise jurisdiction with the appropriate discretion to decline jurisdiction.[198] This balances the discretion provided by the Declaratory Judgment Act with the *Colorado River* doctrine's requirement of "unflagging" jurisdiction.

Additionally, the Independent Claim test allows courts to avoid piecemeal litigation by retaining jurisdiction over independent coercive claims that are joined with declaratory claims.[199] In an age where dockets are crowded and judicial resources are scarce, avoiding piecemeal litigation is critical for our system of justice.[200] Public policy dictates that courts and litigants should avoid, if possible, the maintenance of two identical lawsuits in two separate forums.[201] Courts that have adopted the Independent Claim test have found that factors such as the convenience of the parties, judicial economy, and the avoidance of duplicative and piecemeal litigation

190. *Colo. River*, 424 U.S. at 813.
191. Newtown Athletic Club v. Cincinnati Ins. Cos., No. 21-2662, 2022 WL 866410, at *3 (E.D. Pa. Mar. 23, 2022).
192. *Id.* at *2.
193. *See* Tully v. Mott Supermarkets, Inc., 540 F.2d 187, 196 (3d Cir. 1976).
194. *See id.*
195. *See id.*
196. Wilton v. Seven Falls Co., 515 U.S. 277, 277 (1995).
197. *Id.* at 289–90.
198. *Id*. at 282–83.
199. *Id.* at 283.
200. *Id.* at 280.
201. Lopez v. Martin Luther King, Jr. Hosp., 97 F.R.D. 24, 33 (C.D. Cal. 1983).

frequently point to retaining jurisdiction over declaratory claims when they are joined with coercive claims that remain in federal court.[202]

B. Bright Line Test

Some opponents of the Independent Claim test propose that a more appropriate test would be the Bright Line test. The Bright Line test provides that, when a federal case combines a coercive claim with a declaratory-judgment claim, "the court must exercise jurisdiction over both the coercive and the declaratory judgment claims and cannot exercise discretion under the *Brillhart*/*Wilton* abstention doctrine to dismiss or stay the declaratory judgment action."[203] This test provides that, rather than exercising discretion under the *Brillhart*/*Wilton* doctrine, courts should use the more stringent *Colorado River* doctrine in mixed claims.[204] Even the circuits applying this test disagree on whether the *Colorado River* doctrine or the *Brillhart*/*Wilton* doctrine should apply when the coercive claim is brought as part of a counterclaim rather than in the original claim.[205] However, as the cases below illustrate, requiring courts to apply the *Colorado River* doctrine in every situation where a declaratory judgment action is brought along with a coercive claim needlessly strips away the discretion granted to federal courts by the Declaratory Judgment Act.[206]

In *State Farm Mutual Automobile Insurance Company v. Schepp,* insurers brought an action against the providers of radiology services to recover benefits that were paid on allegedly fraudulent insurance claims and for a declaration that the insurers were not obligated to pay the providers for claims that had not yet been paid.[207] The providers asked the court to abstain from jurisdiction on multiple grounds, including abstention under the *Brillhart*/*Wilton* doctrine, the *Burford* doctrine,[208] and the *Colorado River* doctrine.[209] The court

202. Perelman v. Perelman, 688 F. Supp. 2d 367, 375, 378–79 (E.D. Pa. 2010). *See also* R.R. Street & Co. v. Vulcan Materials Co., 569 F.3d 711, 715 (7th Cir. 2009).

203. *Mixed Claims*, *supra* note 81.

204. *Id.*

205. *See Wilton*, 515 U.S. at 279.

206. *Id.* at 286.

207. State Farm Mut. Auto. Ins. Co. v. Schepp, 616 F. Supp. 2d 340, 342–43 (E.D.N.Y. 2008). The claims were based on a New York law that prohibited professional corporations from collecting "no-fault" benefits if the professional corporation was fraudulently incorporated. *Id.* at 343. New York law also barred payment of no-fault benefits to anyone other than the patient or his or her actual healthcare provider. *Id.*

208. *Id.* at 345. The *Burford* Doctrine provides that

declined to abstain, holding that the *Brillhart*/*Wilton* doctrine did not apply because the insurers were seeking both declaratory relief as well as damages based on theories of fraud and unjust enrichment.[210] Referencing the *Colorado River* doctrine, the court concluded that there were no exceptional circumstances that justified the surrender of federal-court jurisdiction.[211]

Similarly, a Fourth Circuit panel also concluded that applying the *Colorado River* doctrine was appropriate in cases where a federal case combined a coercive claim with a declaratory judgment claim.[212] In *Gross*, a liability insurer brought an action against defunct reciprocal insurers seeking rescission of a reciprocal insurance policy and the increased limit, recovery of certain defense costs advanced in the pending civil litigation, and a variety of declarations.[213] The liability insurer contended that the district court erred in abstaining from entering its claims that also requested non-declaratory relief.[214] The liability insurer argued that because the complaint alleged both declaratory and non-declaratory claims, the court could apply the more relaxed *Brillhart*/*Wilton* doctrine to the entire complaint.[215] The court disagreed, holding that the *Brillhart*/*Wilton* doctrine did not apply when a declaratory-judgment

> [w]here timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are 'difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar'; or (2) where the 'exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.'

New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 U.S. 350, 361 (1989) (quoting Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 814 (1976)). The court reasoned that the *Burford* abstention doctrine only applies "in narrowly circumscribed situations where deference to a state's administrative processes for the determination of complex, policy-laden, state-law issues would serve a significant local interest and would render federal-court review inappropriate." *Schepp*, 616 F. Supp. 2d at 345; Fragoso v. Lopez, 991 F.2d 878, 882 (1st Cir. 1993).

209. *Schepp*, 616 F. Supp. 2d at 346.
210. *Id.* at 347.
211. *Id.* at 349.
212. Great Am. Ins. Co. v. Gross, 468 F.3d 199, 210–11 (4th Cir. 2006).
213. *Id.* at 201.
214. *Id.* at 205.
215. *Id.* at 210.

claim was joined with a non-declaratory claim.[216] The court reasoned that, because it was required to address non-declaratory claims, per *Colorado River*, any benefit stemming from exercising discretion not to grant declaratory relief was frustrated.[217] Again, the case did not present exceptional circumstances justifying a federal court surrendering its jurisdiction.[218]

This case illustrates the primary shortcoming of the Bright Line test. Where, as here, a case contains both coercive and declaratory claims, the court is barred from exercising the discretion permissible under the Declaratory Judgment Act.[219] In these situations, the court applies *Colorado River*'s more stringent standard to the entire action, stripping the court of its appropriate discretion.[220]

However, some authorities applying the Bright Line test have circumvented this shortcoming by applying the *Colorado River* abstention doctrine to mixed claims only when the coercive claim is either frivolous or is brought solely to secure federal jurisdiction.[221] One Fifth Circuit panel concluded that the *Colorado River* doctrine applies to any action that includes both a declaratory-relief claim and a non-frivolous claim for coercive relief.[222] In *Barnett*, an insurer sought a declaration that an assignment of rights under a policy was invalid and the assignee could not enforce a settlement or consent judgment against the insurer.[223] The assignee had initially filed a motion to stay the declaratory judgment action but subsequently withdrew the motion and filed an answer and counterclaim that sought a determination of the issues in his favor and all damages resulting therefrom.[224] The district court, reasoning that the *Brillhart*/*Wilton* doctrine applied, sua sponte stayed the declaratory-judgment action.[225] On appeal, the court considered the counterclaim in determining the nature of the action.[226] The court vacated and remanded the action, reasoning that the action included both a declaratory and a non-frivolous coercive claim for relief, and

216. *Id.* at 210–11.
217. *Id.* at 211.
218. *Id.* at 209.
219. *See id.* at 209–11.
220. *See id.* at 211.
221. *See* New England Ins. Co. v. Barnett, 561 F.3d 392, 395–96 (5th Cir. 2009).
222. *Id.* at 396 (citing Transocean Offshore USA, Inc. v. Catrette, 239 F. App'x 9, 14 (5th Cir. 2007)).
223. *Id.* at 394.
224. *Id.*
225. *Id.*
226. *Id.* at 395.

therefore, the *Colorado River* doctrine controlled.[227] The court opted to consider the insurer's claim for coercive relief as part of the declaratory judgment action even though the coercive claim was brought in as a counterclaim.[228]

Not all courts applying the Bright Line test agree on its application where the coercive claim only arises in the counterclaim.[229] In *Melancon*, the district court concluded that, while the *Colorado River* doctrine is generally appropriate where a plaintiff is seeking both coercive and declaratory remedies, if the coercive claim arises in a counterclaim, the *Billhart*/*Wilton* abstention doctrine should be applied.[230] Here, an insurer filed an action seeking a declaration that an insured was not entitled to recover under an insurance policy on the grounds that the accident was not a covered event.[231] The insured filed a counterclaim seeking both a declaration that coverage existed under the policy and damages against the insurer.[232] The insured also brought a third-party complaint against the agent who sold the policy.[233]

The court granted the insured's motion to dismiss or stay pending the disposition of the state court proceedings, reasoning that because the Declaratory Judgment Act created an opportunity—not a duty—to grant a new form of relief, a district court had discretion to stay or dismiss an action seeking declaratory relief.[234] The court acknowledged that, if a coercive claim were brought with the declaratory action, the appropriate standard would be the *Colorado River* doctrine.[235] However, the court reasoned that to "determine whether *Brillhart* or *Colorado River* is applicable, the Court need only look to whether there is non-frivolous coercive relief sought by the party plaintiff, regardless of whether such relief is sought by other parties."[236] In so holding, the court acknowledged that previous cases did not explicitly address whether coercive relief sought in a counterclaim should be considered, but reasoned that "the articulation of the *Brillhart*/*Wilton* standard clearly implies that the

227. *Id.* at 397–98.
228. *Id.* at 397.
229. *See, e.g.*, Axis Reinsurance Co. v. Melancon, Nos. 05-2712, 06-7539, 2007 WL 274805, at *3 (E.D. La. Jan. 26, 2007).
230. *See id.*
231. *Id.* at *1.
232. *Id.*
233. *Id.*
234. *Id.* at *2, *5.
235. *Id.* at *3.
236. *Id.*

Court need only examine whether the Plaintiff's action seeks coercive relief or not."[237]

However, where a coercive claim was determined to be frivolous, another Fifth Circuit case applied the *Brillhart*/*Wilton* standard.[238] In *Trent*, a trust beneficiary brought an action against the trustee for declaratory relief and the return of funds to heirs or succession.[239] The district court dismissed the action after applying the *Brillhart*/*Wilton* doctrine.[240] On appeal, the trust beneficiary contended that the district court erred in applying the *Brillhart*/*Wilton* abstention doctrine because his complaint sought both coercive and declaratory relief.[241] The court rejected this contention, reasoning that when a party seeks both coercive and declaratory relief, the court may apply the *Brillhart*/*Wilton* doctrine where the request for coercive relief is "frivolous."[242] The court concluded that the coercive relief requested was frivolous because the federal court did not have jurisdiction to probate a will or administer an estate.[243]

As these cases aptly demonstrate, the weakness of the Bright Line test is that it allows parties to manipulate jurisdiction by artful pleading. In these cases, if the coercive claims had not been included in the analysis, the courts would have been permitted to follow the *Brillhart*/*Wilton* doctrine, allowing for discretion to hear the cases.[244] However, the addition of the coercive claims changed the results.[245] The courts were then required to follow the *Colorado River* doctrine.[246] The discretion granted by Congress in the Declaratory Judgment Act is stripped away simply because a coercive claim was added to a declaratory judgment action.[247] This "bright-line approach appears so myopically concerned with courts' obligation to exercise

237. *Id.*
238. Trent v. Nat'l City Bank of Ind., 145 Fed. App'x 896, 898–99 (5th Cir. 2005).
239. *Id.* at 897.
240. *Id.*
241. *Id.* at 898.
242. *Id.*
243. *Id.*
244. *See id.*; *see also* Axis Reinsurance Co. v. Melancon, Nos. 05-2712, 06-7539, 2007 WL 274805, at *3 (E.D. La. Jan. 26, 2007).
245. *See Trent*, 145 F. App'x at 898; *Axis Reinsurance*, 2007 WL 274805, at *3.
246. *Cf. Trent*, 145 F. App'x at 898 (declining to follow *Colorado River* because the coercive claim was frivolous); *Axis Reinsurance*, 2007 WL 274805, at *3 (declining to follow *Colorado River* because the coercive claim was in the defendant's counterclaim, not in the plaintiff's claim).
247. *Cf. Axis Reinsurance*, 2007 WL 274805, at *2 (mentioning the Declaratory Judgment Act but choosing not to apply it to the facts of the case). *But cf. Trent*, 145 F. App'x at 899 (applying the Declaratory Judgment Act to the facts of the case).

their jurisdiction over claims for non-declaratory relief absent the application of *Colorado River* that it ignores the equally legitimate discretion granted by Congress in § 2201."[248]

Even outside the context of coercive claims brought along with declaratory judgment actions, the Bright Line test presents problems. In *American Guarantee & Liability Insurance Company v. Anco Insulations, Inc.*, a liability insurance company sought declaratory relief against and restitution from its insured.[249] The district court stayed the action, surrendering the determination of the issues common to the federal and state suits to the state court.[250] The court found that, because there was no indication of any intent by the district court to revisit its decision to stay the case, the order was a conclusive determination with the court's jurisdiction as an appealable collateral order.[251]

On appeal, the court found that it was unclear whether the district court was attempting to follow the *Colorado River* doctrine or the *Brillhart* doctrine in entering the stay.[252] However, it held that regardless, the stay was an abuse of discretion.[253] The court pointed out that the insurance company was seeking both a declaration of rights and liabilities under a policy as well as restitution.[254] Therefore, the court concluded that the "district court's discretion to stay based only on concerns of wise judicial administration was therefore governed by the *Colorado River* standard, and application of the *Brillhart* standard was inappropriate."[255]

The primary concern with following this Bright Line test is that it necessarily restricts district courts' discretion to stay action.[256] This restriction, in essence, forces courts to base their decisions on a meaninglessly formalistic and mechanical analysis of whether a case fits into a certain legal pigeonhole and not by the equities.[257] Such a forced, mechanical approach defeats the intent of the discretion

248. Lambert, *supra* note 117, at 825; *see also* Lexington Ins. Co. v. Rolison, 434 F. Supp. 2d 1228, 1237 (S.D. Ala. 2006).
249. Am. Guarantee & Liab. Ins. Co. v. Anco Insulations, Inc., 408 F.3d 248, 250 (5th Cir. 2005).
250. *Id.*
251. *Id.*
252. *Id.* at 251.
253. *Id.*
254. *Id.*
255. *Id.*
256. *See generally* Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1 (1983).
257. *See generally id.*

provided to the federal courts.[258] As stated by the U.S. Supreme Court in *Moses H. Cone,* "the decision whether to dismiss a federal action because of parallel state-court litigation does not rest on a mechanical checklist, but on a careful balancing of the important factors as they apply in a given case, with the balance heavily weighted in favor of the exercise of jurisdiction."[259] The Bright Line test allows a party to completely obviate the *Brillhart*/*Wilton* doctrine simply by including a claim for any nonfrivolous, non-declaratory relief.[260] It is unacceptable to allow a party to defeat the discretion provided by Congress to the federal courts by artful manipulation of the pleadings.[261] Unfortunately, as illustrated in the cases discussed, this is the situation created by the Bright Line test.[262]

In addition to allowing parties to manipulate the court's discretion by artful pleading, the test's application is not as clear as its name would suggest. Not only is there a dispute as to how to apply the test when the coercive claim is not raised in the original complaint, but there are also exceptions when the coercive claim is frivolous.[263] In sum, the Bright Line test fails to allow courts the ability to appropriately balance *Colorado River*'s unflagging jurisdiction with the *Brillhart*/*Wilton* doctrine's discretion.

C. Heart of the Matter or Essence of the Lawsuit Test

Other opponents of the Independent Claim test suggest that courts should follow the Heart of the Matter or Essence of the Lawsuit test. The Eighth Circuit, along with a few district courts in undecided jurisdictions, follows this approach.[264] Courts following this rule have determined that, when both declaratory and non-declaratory relief are sought, if the "heart of the action" is for a declaratory judgment, then the *Brillhart*/*Wilton* doctrine, as opposed to the *Colorado River* doctrine, applies.[265] However, if the heart of the action is for something other than declaratory relief, the *Colorado River* doctrine applies.[266] Proponents of this test praise its flexibility, pointing out that it provides district courts the ability to treat distinct

258. *See generally id.*
259. *Id.* at 16.
260. *See supra* Section III.B.
261. *See supra* Section III.B.
262. *See supra* Section III.B.
263. *See supra* notes 221–28 and accompanying text.
264. *See infra* notes 268–81 and accompanying text.
265. *See infra* notes 268–81 and accompanying text.
266. *See infra* notes 288–98 and accompanying text.

cases differently based on the fundamental character of an action.[267] Unfortunately, as the following cases illustrate, the Heart of the Matter or Essence of the Lawsuit test suffers from one of the same problems as the Bright Line test in that it enables plaintiffs to avoid federal subject-matter jurisdiction through artful pleading.

In *Royal Indemnity Company v. Apex Oil Company*, insurers brought an action seeking to declare the rights and obligations of the insurers under policies issued to the insured.[268] The insurer further sought a declaration of the rights and responsibilities of the parties based on claims of equitable contribution, subrogation, unjust enrichment or equitable estoppel for the costs the insurer incurred in defending the insured, as well as attorneys' fees, costs, and interest.[269] The district court dismissed the action, finding that an Illinois lawsuit brought by the insured was parallel, that the insurer's claim was essentially one for declaratory judgment, and that the court had the discretion to abstain under the *Brillhart*/*Wilton* doctrine.[270]

On appeal, the court affirmed the decision to abstain but vacated the dismissal and remanded to allow the district court to enter an order staying the proceedings in the lawsuit.[271] The court reasoned that the fact that the insurer sought monetary damages in addition to declaratory relief did not require a federal court to automatically apply the exceptional-circumstances test from *Colorado River*.[272] A court could still abstain where a party sought damages and a declaratory judgment as long as "the further necessary or proper relief would be based on the court's decree so that the essence of the suit remains a declaratory judgment action."[273] The court looked at the fact that the insurer sought monetary damages in addition to the declaratory judgment and concluded that those damages could be characterized as "further necessary or proper relief" that the insurer sought based on the declaratory judgment action.[274] The court reasoned if the district court rejected the insurer's declaratory judgment claims, the insurer could not recover on the claims for contribution, subrogation, unjust enrichment, and equitable

267. *See infra* notes 288–98 and accompanying text.
268. Royal Indem. Co. v. Apex Oil Co., 511 F.3d 788, 791 (8th Cir. 2008).
269. *Id.*
270. *Id.* at 792.
271. *Id.*
272. *Id.* at 792–93.
273. *Id.* at 793–94.
274. *Id.* at 795–96.

estoppel.[275] Therefore, the damages, rather than being independent, were closely linked to the declaratory judgment action.[276] Therefore, the court concluded, because the essence of the lawsuit was for declaratory judgment, the district court correctly applied the *Brillhart*/*Wilton* doctrine.[277]

In another Eighth Circuit case, the court appears to have applied the Heart of the Matter test in concluding that the *Brillhart*/*Wilton* doctrine applied.[278] In *Clay Regional Water*, the court concluded that plaintiff water district's action was essentially one for declaratory judgment even though the complaint also included a 42 U.S.C. § 1983 cause of action.[279] Although not using the phrase "heart of the matter," the court held "in light of the purely equitable nature of the relief sought and the potential, but not actual, harm alleged . . . , application of the *Brillhart* standard of discretion is the appropriate course of action . . . ."[280] Although the court did not label its approach as seeking the heart of the matter, it concluded that the action was primarily one for declaratory relief, so the *Brillhart*/*Wilton* doctrine was applicable.[281]

A district court within the Third Circuit determined where the heart of the amended complaint was the declaratory judgment claim, the *Brillhart*/*Wilton* doctrine was appropriate.[282] In *Coltec*, plaintiff manufacturers claimed that insurance contracts issued by the defendant insurer obligated it to indemnify plaintiffs for damages and defense costs involved in asbestos claims.[283] The plaintiffs' complaint alleged breach of contract and bad faith, and sought a declaration that the defendant must indemnify the plaintiffs.[284] The court reviewed what it saw as the three approaches other courts had taken when a complaint sought both declaratory and coercive relief.[285] Concluding the Heart of the Matter approach was appropriate, the court reasoned that this approach was the "most

275. *Id.* at 794.
276. *Id.*
277. *Id.* at 796.
278. Clay Reg'l Water v. City of Spirit Lake, 193 F. Supp. 2d 1129, 1155 (N.D. Iowa 2002).
279. *Id.* at 1154.
280. *Id.* at 1144–45.
281. *Id.* at 1155.
282. Coltec Indus. Inc. v. Cont'l Ins. Co., No. 04-5718, 2005 WL 1126951, at *2–3 (E.D. Pa. May 11, 2005).
283. *Id.* at *1.
284. *Id.* at *2.
285. *Id.*

faithful to the concerns that animated *Wilton*."[286] The court reasoned "courts should not elevate form over substance, and so if the declaratory judgment would 'serve no useful purpose,' abstention would not avert a 'wasteful expenditure of judicial resources.'"[287]

A subsequent district court opinion rejected this approach, reasoning that "in seeking to preserve the discretion allowed by *Wilton*, the 'heart of the matter' test fails to give adequate consideration to *Colorado River*."[288] In *Perelman*, a son brought an action against his father alleging defamation and seeking a declaratory judgment regarding the formation and management of a trust to benefit the son's daughter.[289] The court, finding that neither the U.S. Supreme Court nor the Third Circuit had determined a federal court's obligation to exercise jurisdiction over a mixed case, reviewed the approaches taken by the circuit courts of appeal that had tackled the issue.[290] Rejecting the Heart of the Matter test, the court reasoned that by:

> allowing courts to decline jurisdiction over coercive claims merely because they are combined with declaratory claims and because their outcome can be said to "hinge" on the declaratory judgment, the Court believes the "heart of the matter" test improperly expands the discretion of the courts and ignores the "strict duty" imposed upon them to exercise jurisdiction "that is conferred upon them by Congress."[291]

After rejecting the Heart of the Matter test, the court concluded that the best test to "reconcile the competing imperatives" of *Brillhart*/*Wilton* and *Colorado River* was the Independent Claim test.[292]

The trouble with the Heart of the Matter test is that while the test is designed to be flexible, the reality is that in almost all cases, the courts have determined that the heart of the claims are declaratory thus allowing courts to dismiss both the coercive and declaratory claims.[293] Although this test is praised as a more flexible approach to

286. *Id.* at *3.
287. *Id.* (quoting Wilton v. Seven Falls Co., 515 U.S. 277, 288 (1995)).
288. Perelman v. Perelman, 688 F. Supp. 2d 367, 376 (E.D. Pa. 2010).
289. *Id.* at 369.
290. *Id.* at 374.
291. *Id.* at 376 (quoting Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 716 (1996)).
292. *Id.* at 376–77.
293. *See supra* notes 109–14 and accompanying text.

the dilemma,[294] the reality is that this test is not a test at all. It is simply a proclamation that courts should have discretion in cases where a party is seeking both declaratory and coercive relief.[295] Such a proclamation fails to strike any balance, let alone the appropriate balance, between *Colorado River*'s unflagging jurisdiction and *Brillhart*/*Wilton*'s discretionary abstention.

The Heart of the Matter test gives plaintiffs' pleadings too much control over federal jurisdictional standards by prioritizing discretion over the unflagging jurisdiction.[296] A plaintiff is able to avoid federal jurisdiction by simply artfully pleading a declaratory judgment claim that is unnecessary to achieve the relief sought.[297] When the declaratory judgment claim is included, most courts have determined that that heart of the matter is declaratory and thus dismiss both the declaratory and the coercive claim.[298]

D. Surgical Test

One First Circuit case took an almost surgical approach to the various claims.[299] The court applied the *Brillhart*/*Wilton* doctrine to the claim for declaratory relief and applied a different abstention doctrine to claims for non-declaratory relief.[300] In this procedurally and factually convoluted case, after respondent landowners were named in a state-court lien-enforcement petition, they raised a due-process argument that the Rhode Island Mechanic's Lien Law was unconstitutional.[301] While that challenge was pending in state court, respondents brought a 42 U.S.C. § 1983 action in federal court raising similar constitutional challenges.[302] The action sought a declaration that the Rhode Island Mechanic's Lien Law was unconstitutional, as well as money damages and an injunction.[303] The district court concluded that it should refrain from deciding the federal claims under the *Colorado River* abstention doctrine.[304] The

294. *Perelman*, 688 F. Supp. 2d at 376.
295. *See id.* at 375–76.
296. *Id.* at 376.
297. *Id.*
298. *Id.* at 375–76.
299. Rossi v. Gemma, 489 F.3d 26, 37–40 (1st Cir. 2007).
300. *Id.*
301. *Id.* at 31.
302. *Id.*
303. *Id.* at 31–32.
304. *Id.* at 34–35.

district court further declined to exercise supplemental jurisdiction over the state-law claims.[305]

On appeal, the First Circuit declined to apply the *Colorado River* doctrine to the claims for non-declaratory relief, instead determining that the *Younger* abstention doctrine[306] was appropriate.[307] The court explained that the *Younger* abstention doctrine is appropriate where the requested relief would "interfere (1) with an ongoing state judicial proceeding; (2) that implicates an important state interest; and (3) that provides an adequate opportunity for the federal plaintiff to advance his federal constitutional challenge."[308] The court, when analyzing the non-declaratory relief claims, concluded that the first and third requirements of the *Younger* doctrine were clearly satisfied and that respondents satisfied the second requirement because they sought to interfere with a state proceeding in a way that implicated an important state interest.[309]

In approaching the declaratory judgment claim, the court concluded that it was unnecessary for the district court to have applied the *Colorado River* doctrine to abstain because the *Brillhart*/*Wilton* doctrine applied, which allowed the district court broad discretion on whether to abstain.[310] Interestingly, the court did not address that the case presented a mixed-complaint question.[311] However, subsequent decisions have interpreted the case as approving of this "surgical" approach but not requiring it.[312]

Although the Surgical test strikes a better balance between unflagging jurisdiction and discretion, it still suffers from a similar problem as the Bright Line test in that it allows litigants to manipulate jurisdiction by artful pleading.[313] For example, if a party

305. *Id.* at 38–39.

306. *Id.* at 37. *See also* FreeEats.com, Inc. v. Indiana, 502 F.3d 590, 595 (7th Cir. 2007) ("[The *Younger* abstention doctrine] generally requires federal courts to abstain from taking jurisdiction over federal constitutional claims that involve or call into question ongoing state proceedings.").

307. *Id.* at 37.

308. *Id.* at 34–35.

309. *Id.* at 35–36.

310. *Id.* at 38–39.

311. *See id.* at 33.

312. *See* Mass. Biologic Lab'ys of the Univ. of Mass. v. MedImmune, LLC, 871 F. Supp. 2d 29, 35 (D. Mass. 2012) (providing that the First Circuit had not staked a clear position but that it appeared to at least approve of the surgical approach even if it did not require it). *See also* Teknor Apex Co. v. Hartford Accident & Indem. Co., No. 12-417S, 2012 WL 6840498, at *2 (D.R.I. Dec. 14, 2012).

313. *See supra* notes 260–63 and accompanying text.

brings a mixed action in federal court, although the court could decline to hear the claims for declaratory relief, the court will still be required to exercise jurisdiction over the non-declaratory claims unless the court can abstain under the narrow *Colorado River* doctrine.[314] Even though the declaratory claims are not heard, it still allows a party to obtain some strategic benefit.[315]

IV. CONCLUSION

It is a well-established principle that any court must have jurisdiction to enter a valid, enforceable judgment on a claim.[316] Numerous other jurisdictional questions are equally well-settled. For example, a federal court cannot entertain a case that is not within its subject-matter jurisdiction.[317] To do so would constitute an unconstitutional usurpation of state judicial power.[318] It is also well-settled that there is a more lenient abstention standard for declaratory judgment claims than for coercive claims that are seeking damages or injunctive relief.[319] However, the challenge arises when a claim seeks both declaratory and coercive relief.[320] In these situations, courts are faced with balancing the "unflagging" federal jurisdiction of the *Colorado River* doctrine with the discretionary abstention standard of the *Brillhart*/*Wilton* doctrine.[321] When approaching a mixed-claim situation, courts should apply the Independent Claim test.[322] If the legal claims are independent, the court should apply the *Colorado River* doctrine to the legal claims and the *Brillhart*/*Wilton* doctrine to the declaratory claims.[323] If the claims are dependent, the *Brillhart*/*Wilton* doctrine must be applied to both claims and the court has discretion to abstain from hearing the entire action.[324] This approach allows courts to appropriately balance the "unflagging" jurisdiction of the *Colorado River* doctrine with the discretionary abstention standard of the *Brillhart*/*Wilton* doctrine.[325]

314. *Mass. Biologic Lab'ys*, 871 F. Supp. at 33.
315. *Id.* at 34–35.
316. *See, e.g.*, 28 U.S.C §§ 1331–32.
317. *See supra* notes 1–3 and accompanying text.
318. *See supra* note 2 and accompanying text.
319. *See supra* Section II.A.
320. *See supra* Section II.E.
321. *See supra* Section II.E.
322. *See supra* Section III.A.
323. *See supra* notes 101–04 and accompanying text.
324. *See supra* note 108 and accompanying text.
325. *See supra* Section III.A.