FEDERAL PROCEDURE—THE CIVIL RIGHTS ACT AND THE FEDERAL ANTI-INJUNCTION STATUTE

Mitchum v. Foster, 407 U.S. 225 (1972)

A county prosecutor brought suit in a state court to close petitioner's bookstore as a public nuisance.[1] A preliminary order preventing operation of the store was granted. While his appeal was pending in the state courts, petitioner filed an action under 42 U.S.C. section 1983 in federal district court seeking declaratory and injunctive relief against the state court proceedings on the ground that the state statute was being unconstitutionally applied to him, causing great and irreparable injury. A three-judge court[2] refused to enjoin the state proceedings, holding that it was without power to grant such relief in a section 1983 case due to the federal anti-injunction statute.[3] The Supreme Court reversed, *held*: section 1983 constitutes an express exception to the anti-injunction statute.[4]

Traditionally, to secure an injunction under section 1983 against a state court, a plaintiff had to overcome three obstacles: the abstention

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1. FLA. STAT. ANN. § 823.05 (1962):

> Whoever shall erect, establish, continue or maintain, own or lease any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people . . . or any house or place of prostitution, assignation, lewdness or place or building where games of chance are engaged in violation of law or any place where any law of the state is violated, shall be deemed guilty of maintaining a nuisance, and the building, erection, place, tent or booth and the furniture, fixtures and contents are declared a nuisance. All such persons or places shall be abated or enjoined . . . .

FLA. STAT. ANN. § 60.05(1) & (2) (1962):

> (1) When any nuisance as defined in § 823.05, exists, the state attorney, county solicitor, county prosecutor, or any citizen of the county may sue in the name of the state on his relation to enjoin the nuisance, the person or persons maintaining it and the owner or agent of the building or ground on which the nuisance exists.
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> (2) The court may allow a temporary injunction without bond on proper proof being made.

2. 28 U.S.C. § 2281 (1970) requires that a three-judge court be convened whenever an injunction is sought to restrain a state officer from enforcing or executing an allegedly unconstitutional state statute.

3. Mitchum v. Foster, 315 F. Supp. 1387 (N.D. Fla. 1970).

4. Mitchum v. Foster, 407 U.S. 225 (1972).

doctrines;[5] the federal anti-injunction statute; and requirements of equity. The first hurdle applies to all cases coming before the federal courts, and involves the refusal by a court to proceed though it admittedly has jurisdiction.[6] The second two obstacles are of concern here.

Some form of anti-injunction statute directed against federal court interference in state court proceedings has existed since the inception of the federal system.[7] While the precise reasons for the passage of the original act are unclear, it is generally accepted that among the most important contributing factors were strong notions of federal-state comity and a general hostility toward equity jurisdiction.[8] Given this basis, the original statute was worded as an absolute prohibition against the issuance of federal injunctions to stay state court proceedings.[9] Over the years, however, certain statutory exceptions to the anti-injunction statute were enacted,[10] and a few judicially created exceptions were recognized.[11] The present wording of the statute[12] was adopted by

5. There are four separate abstention doctrines, based on different factual situations and having different procedural consequences, but to some extent overlapping: (1) avoid deciding a federal constitutional question if it is possible to dispose of the issue on adequate state grounds; (2) avoid needless conflict with a state's administration of its own affairs; (3) leave to state courts unresolved questions of state law; and (4) ease congestion in court dockets. C. WRIGHT, HANDBOOK OF THE LAW OF FEDERAL COURTS § 52 (2d ed. 1970).

6. For an explanation of the rationale underlying the abstention doctrine, *see* Ashwander v. TVA, 297 U.S. 288, 346-48 (1936) (Brandeis, J., concurring); Landry v. Daley, 288 F. Supp. 200, 209-12 (N.D. Ill. 1968).

7. The original statute was enacted in 1793.

8. *See* Toucey v. New York Life Ins. Co., 314 U.S. 118, 130-31 (1941). For a thorough discussion of the early history of this statute, see 1a J. MOORE, FEDERAL PRACTICE ¶ 0.208 [1] & [2] (1965); Warren, *Federal and State Court Interferences*, 43 HARV. L. REV. 345, 347-49 (1930).

9. Act of March 2, 1793, ch. 22, § 5, 1 Stat. 335: "[N]or shall a writ of injunction be granted to stay proceedings in any court of a state."

10. Prior to 1941, the courts recognized five statutory exceptions: The Bankruptcy Act, 11 U.S.C. § 29(a) (1970); Statutory Interpleader, 28 U.S.C. § 2361 (1970); Removal Statutes, 28 U.S.C. §§ 1441-1450 (1970); Frazier-Lemke Farm Mortgage Act, 11 U.S.C. § 203(s)(2) (1970); and the Shipowners' Liability Act, 46 U.S.C. § 185 (1970).

Of these exceptions, only the Bankruptcy Act was specifically referred to in the anti-injunction statute. The others were recognized as exceptions because of statutory language referring either to state courts specifically (Interpleader and Removal Acts), or to courts in general (Shipowners' Liability and Frazier-Lemke Acts).

11. There were two judicially created exceptions prior to 1941. (1) In cases in which either a state or federal court first obtained jurisdiction over the res involved in an in rem action, the other court was precluded from proceeding against the same res. *See, e.g.*, Kline v. Burke Constr. Co., 260 U.S. 226 (1922). (2) An injunction

Congress to legislatively acknowledge these "exceptions" to the anti-injunction statute.[13]

Following a strict approach in interpreting the statute,[14] the Supreme Court recently held that further exceptions are not to be created by the courts.[15] Rather, an injunction will be issued against state court proceedings only if it falls within one of the three exceptions listed in the statute.[16] In most cases, the injunction will have to be "expressly authorized by Act of Congress."[17] What constitutes an express exception

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would issue to prevent relitigation in a state court of issues already decided in a federal court. *See, e.g.*, Supreme Tribe of Ben-Hur v. Cauble, 255 U.S. 356 (1921); Looney v. Eastern Texas Ry., 247 U.S. 214 (1918).

12. "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283 (1970).

13. The Supreme Court rejected these exceptions and took a strict "hands-off" approach in Toucey v. New York Life Ins. Co., 314 U.S. 118 (1941), in which it struck down the relitigation exception. The Court did accept the in rem exception because the rationale behind that exception, the avoidance of federal-state conflict, is the same as the purpose of the anti-injunction statute. The five statutory exceptions were also accepted on the grounds that they constituted, by their terms, express authorization by Congress.

The Reviser's Note, printed following 28 U.S.C. § 2283 (1970), states that the revision was specifically designed to "restore the basic law as generally understood and interpreted prior to the Toucey decision." The "in aid of its jurisdiction exception" was meant to apply to removal cases (cases removed to federal court) and the "protect or effectuate its judgments" language to the relitigation cases. The "expressly authorized" exception was a general substitution for the previous bankruptcy exception and apparently comprehended the five statutory exceptions recognized prior to *Toucey*.

14. The first decision in which the Supreme Court applied § 2283 as currently worded indicated that its "hands-off" approach in *Toucey* had not been altered by the new wording. The Court emphasized that § 2283 was not merely an expression of comity but a clear congressional prohibition, and ". . . Congress made clear beyond cavil that the prohibition is not meant to be whittled away by judicial improvisation . . . ." Amalgamated Clothing Workers v. Richman Bros. Co., 348 U.S. 511, 514 (1955). But this stand acquired an apparent ambiguity two years later when the Court held that the prohibitions of § 2283 were inapplicable to stays sought by the federal government, relying on the reasoning that to hold otherwise would result in "frustration of superior federal interests." Leiter Minerals, Inc. v. United States, 352 U.S. 220, 226 (1957).

15. Atlantic Coast Line R.R. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281 (1970).

16. The Court held that federal courts could not ignore § 2283 and enjoin state court proceedings "merely because those proceedings interfere with a protected federal right or invade an area pre-empted by federal law, even when the interference is unmistakably clear." *Id.* at 294.

17. 28 U.S.C. § 2283 (1970).

within the meaning of the statute thus becomes crucial, but that question has proven difficult to answer.[18] Looking to the common thread running through the previously recognized exceptions, the Court in *Mitchum* formulated a test to resolve this issue, determining that an express exception would exist ". . . wherever an Act of Congress, clearly creating a federal right or remedy enforceable in a federal court of equity could be given its intended scope only by the stay of a state court proceeding."[19] Because section 1983 met these criteria, the Court in *Mitchum* found it to be an express exception within the meaning of the anti-injunction statute.

Section 1983[20] was a product of the Reconstruction era and was passed because many citizens were being deprived of federally guaranteed rights, either by the terms of state laws or by the inadequacy or unavailability of redress in state courts.[21] Early cases construing section 1983 established that the state judiciary enjoyed no immunity from the Act's provisions[22] and that the eleventh amendment[23] presented no serious limitation on equitable relief.[24] Injunctions requested under

18. Instead of focusing on what is necessary to constitute an express exception, courts and commentators have generally spoken in terms of what factors were *not* necessary, *i.e.* the act need not refer specifically to the anti-injunction statute nor need it expressly allow a stay of a state court proceeding. *See, e.g.*, Amalgamated Clothing Workers v. Richman Bros. Co., 348 U.S. 511, 516 (1955); Dilworth v. Riner, 343 F.2d 226, 230-31 (5th Cir. 1965). *See also* C. WRIGHT, *supra* note 5, at § 47; Note, *Federal Power to Enjoin State Court Proceedings*, 74 HARV. L. REV. 726 (1961).

19. Mitchum v. Foster, 407 U.S. 225, 238 (1972).

20. 42 U.S.C. § 1983 (1970):

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

21. For a discussion of the history and purposes of § 1983, *see* Monroe v. Pape, 365 U.S. 167 (1961).

22. *Ex parte* Virginia, 100 U.S. 339 (1879), held a state judge subject to criminal conviction under the Civil Rights Act. *See also* C. ANTIEAU, FEDERAL CIVIL RIGHTS ACTS: CIVIL PRACTICE §§ 39-40 (1971).

23. "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. CONST. amend. XI.

24. In *Ex parte* Young, 209 U.S. 123, 159 (1908), it was determined that a federal court could enjoin a state attorney general from enforcing a statute which imposed criminal sanctions upon railroad employees who violated a state law setting allegedly unconstitutional railroad rates as an illegal act by the official in an individual capacity.

section 1983 were granted in accordance with the general requirements of equity,[25] and those requirements were defined with reference to principles of comity.[26] In *Younger v. Harris*,[27] the Supreme Court, relying heavily on the principle of comity, held that the equitable requirements could be met in a section 1983 suit to enjoin a state criminal proceeding only on a showing of bad faith or other "extraordinary circumstances."[28]

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25. The two most fundamental requirements of equity, that there be no adequate remedy at law, and that one will suffer irreparable injury if the requested relief is not granted, have always been prerequisites to federal injunctive relief against state action. *See, e.g.*, Douglas v. City of Jeannette, 319 U.S. 157 (1943); Beal v. Missouri Pac. R.R., 312 U.S. 45 (1941); Hague v. CIO, 307 U.S. 496 (1939); Spielman Motor Sales Co. v. Dodge, 295 U.S. 89 (1935); Fenner v. Boykin, 271 U.S. 240 (1926); *Ex parte* Young, 209 U.S. 123 (1908).

When the state proceeding sought to be enjoined is a criminal one, the equitable requirements have been traditionally more strict:

> It is very commonly stated by courts that equity has no jurisdiction to enjoin prosecutions under statutes or ordinances creating criminal offenses. One of the reasons for the rule is that the enforcement of the criminal law is a matter beyond the jurisdiction of a court of equity.

H. McCLINTOCK, HANDBOOK OF THE PRINCIPLES OF EQUITY § 173 (2d ed. 1948). "[F]ederal interference with a State's good faith administration of its criminal laws is peculiarly inconsistent with our federal framework . . . ." Dombrowski v. Pfister, 380 U.S. 479, 484 (1965). *See* Stefanelli v. Minard, 342 U.S. 117 (1951); Douglas v. City of Jeannette, 319 U.S. 157 (1943); *Ex parte* Young, 209 U.S. 123 (1908). *Cf.* Cooper v. Hutchinson, 184 F.2d 119 (3d Cir. 1950).

26. In Douglas v. City of Jeannette, 319 U.S. 157 (1943), the Court held that the irreparable injury must be both great and immediate, and present some dangers other than those incident to any criminal prosecution brought in good faith. The Court stated:

> [C]ourts of equity in the exercise of their discretionary powers should conform to this policy [of non-interference] by refusing to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is clear and imminent; and equitable remedies infringing this independence of the states—though they might otherwise be given—should be withheld if sought on slight or inconsequential grounds.

Id. at 163.

27. 401 U.S. 37 (1971).

28. The Court determined that mere allegations that a statute was invalid on its face are insufficient to meet the requirements of equity. As an example of what "extraordinary circumstances" might merit relief, the Court suggested a situation involving a statute flagrantly and patently violative of Constitutional rights. *Id.* at 53-54.

The *Younger* case cleared away the doubts remaining as to equitable requirements in § 1983 suits. In Dombrowski v. Pfister, 380 U.S. 479 (1965), the Court had appeared to relax those standards by holding that an injunction would issue where it was alleged that a facially invalid state statute was being enforced in bad faith as part of a plan of harassment. The decision was widely interpreted to mean that an injunction would lie if either of these allegations were present. *See* Sedler, *The Dombrowski-Type*

For years, whenever an injunction against state court proceedings was sought, the Supreme Court deftly avoided deciding whether section 1983 constituted an express exception to the anti-injunction statute. It accomplished this either by finding that there was no proceeding within the meaning of section 1983,[29] or by holding that the equitable criteria of section 1983 were not met.[30] Absent guidance from the Supreme Court, lower federal courts were split on the question of whether section 1983 constituted an express exception to the anti-injunction statute, section 2283.[31]

Because the Court had already decided that section 2283 was to be strictly construed,[32] and because it had already delineated the equities involved in granting an injunction against a state court in a criminal case,[33] the Supreme Court was virtually forced in *Mitchum* to decide

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Suit as an Effective Weapon for Social Change: Reflections from Without and Within, 18 KAN. L. REV. 237 (1970). However, the *Younger* decision was not totally unexpected, because in Cameron v. Johnson, 390 U.S. 611 (1968), the Court did not accept petitioners' allegation of selective enforcement, but rather made an independent examination of the record and concluded that no irreparable injury was shown.

29. "A court of the United States may not grant an injunction to stay *proceedings* in a state court . . . ." 28 U.S.C. § 2283 (1970) (emphasis added). The Court avoided the question in *Dombrowski* because the grand jury had not yet returned indictments against petitioners at the time the federal suit was filed. Douglas v. City of Jeannette, 319 U.S. 157 (1943), and *Ex parte* Young, 209 U.S. 123 (1908), also involved threatened prosecutions. This distinction between pending and threatened prosecutions has been heavily criticized as predicating relief on a race to the courthouse. *See, e.g.*, Sheridan v. Garrison, 415 F.2d 699 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970); Note, *The Civil Rights Act of 1871 Versus the Anti-Injunction Statute: The Need for a Federal Forum*, 1971 WASH. U.L.Q. 625.

Two recent cases indicate that the definition of what constitutes a "proceeding" may continue to be determinative of the applicability of § 2283 to § 1983 suits. Roudebush v. Hartke, 405 U.S. 15 (1972) (Indiana provision for recount of election ballots held not a proceeding); Lynch v. Household Fin. Corp., 405 U.S. 538 (1972) (Connecticut garnishment action held not a proceeding).

30. *See, e.g.*, Younger v. Harris, 401 U.S. 37 (1971); Perez v. Ledesma, 401 U.S. 82 (1971); Dyson v. Stein, 401 U.S. 200 (1971); Cameron v. Johnson, 390 U.S. 611 (1968).

31. Is not an express exception: Baines v. City of Danville, 337 F.2d 579 (4th Cir. 1964), *cert. denied*, 381 U.S. 939 (1965); Goss v. Illinois, 312 F.2d 259 (7th Cir. 1963); Smith v. Village of Lansing, 241 F.2d 856 (7th Cir. 1957).

Is an express exception: Honey v. Goodman, 432 F.2d 333 (6th Cir. 1970); Machesky v. Bizzell, 414 F.2d 283 (5th Cir. 1969); Sheridan v. Garrison, 415 F.2d 699 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970); Cooper v. Hutchinson, 184 F.2d 119 (3d Cir. 1950).

32. Atlantic Coast Line R.R. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281 (1970). *See* note 16 *supra* and accompanying text.

33. Younger v. Harris, 401 U.S. 37 (1971). *See* note 28 *supra* and accompanying text.

that section 1983 does constitute an express exception to section 2283.[34] If the Court had held otherwise, it would have seriously crippled the effectiveness of the Civil Rights Act, for then an injunction could not issue, no matter how extraordinary the circumstances.[35] The impact of the Court's decision that section 1983 constitutes an express exception to the anti-injunction statute is tempered, however, by the recognition that the Court was deciding *only* that federal courts are not without power to issue injunctions against state court proceedings pursuant to section 1983.[36] The principles of comity, equity, and federalism are still applicable to requests for such relief.[37]

In its prior attempts to avoid the "express exception" issue, the Court created a substantial body of law concerning the remaining requirements, which are to be considered independently. Abstention will be appropriate except in cases involving a statute invalid on its face that chills free expression.[38] Furthermore, strong notions against federal interference in state criminal proceedings will continue to be a factor.[39] The strictness of the equitable requirements adopted by the Court[40] indicates that irreparable injury can only be shown through bad faith or other extraordinary circumstances that would preclude ade-

34. *See, e.g.*, Note, *The Federal Anti-Injunction Statute in Pending State Criminal Prosecutions*, 8 WAKE FOREST L. REV. 107, 118 (1971); Comment, 46 NOTRE DAME LAW. 616, 629 (1971).

35. Mitchum v. Foster, 407 U.S. 225, 231 (1972). The opinion relies heavily on the difficulty of attempting to reconcile a statute that was the product of the Federalist era (§ 2283) with one that resulted from the tremendous reallocation of federal-state power that grew out of the Civil War (§ 1983). This theory was the basis for Justice Douglas's vigorous dissent in Younger v. Harris, 401 U.S. 37, 61-62 (1971).

36. Mitchum v. Foster, 407 U.S. 225, 243 (1972).

37. *See* notes 5-6, 25-28 *supra* and accompanying text.

38. Zwickler v. Koota, 389 U.S. 241 (1967). Wright contends there are several principles of abstention: (1) the court should render a declaratory judgment if the statute is clearly valid or invalid on its face; (2) the court should abstain if the ambiguities in the statute can be clarified in a single prosecution; (3) abstention is not appropriate where the statute is not clear on its face, and free expression will be inhibited while a series of decisions clarifies the ambiguities. C. WRIGHT, *supra* note 5, at 207-08. *See* Cameron v. Johnson, 390 U.S. 611 (1968); Dombrowski v. Pfister, 380 U.S. 479 (1965).

39. This may be even more heavily relied upon after *Mitchum* in order to prevent constant disruption of state administration of justice if every alleged denial of procedural due process is subject to a federal injunction. *See* cases cited in note 24 *supra*. *See also* Cooper v. Hutchinson, 184 F.2d 119 (3d Cir. 1950); Mayberry v. Weinrott, 255 F. Supp. 80 (E.D. Pa. 1966); Note, *Federal Power to Enjoin State Court Proceedings*, 74 HARV. L. REV. 726, 728 (1961).

40. *See* notes 25-28 *supra*.

quate vindication of rights through the usual channels.[41]

In light of the strength of these considerations, and since very few injunctions have been denied solely on the ground that section 2283 bars the relief sought,[42] it is difficult to conclude that *Mitchum* will drastically alter the law in this area. While *Mitchum* may result in an increase in the use of section 1983 to halt harassment, mere allegations in the complaint will not be sufficient.[43] Decisions whether to grant or deny equitable relief will still depend largely on judicial application of discretionary doctrines, thus circumscribing the scope of judicial review. As a result, *Mitchum* may simply prevent summary treatment of section 1983 suits by requiring courts to consider requests for injunctive relief in light of the purposes behind section 1983, without violating policy considerations deemed essential to the smooth functioning of the federal system.

41. Younger v. Harris, 401 U.S. 37 (1971).

42. *See* Cole v. Graybeal, 313 F. Supp. 48 (W.D. Va. 1970); Nichols v. Vance, 293 F. Supp. 680 (S.D. Tex. 1968); Cameron v. Johnson, 262 F. Supp. 873 (S.D. Miss. 1966).

43. Cameron v. Johnson, 390 U.S. 611 (1968). *See* note 28 *supra.*