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Mitchum v. Foster: The Civil Rights Act Is a Statutory Exception to the Anti-Injunction Statute, 6 J. Marshall J. of Prac. & Proc. 179 (1972)

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RECENT DECISIONS

MITCHUM v. FOSTER: THE CIVIL RIGHTS ACT IS A STATUTORY EXCEPTION TO THE ANTI-INJUNCTION STATUTE

The Anti-Injunction Statute[1] operates as a bar to federal interference in state court proceedings to the extent that such interference constitutes a *stay of proceedings*. The statute, however, provides for the following three exceptions:

> 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.[2]

To appreciate the extent of the prohibition, a distinction must be drawn between threatened and pending proceedings,[3] inasmuch as an injunction that does not stay proceedings in a state court need not be justified by reference to the statutory exceptions.[4] An injunction against the initiation of proceedings does not directly impinge on the state judiciary, since the state judge is not yet personally involved in the case. Accordingly, the propriety of such injunctions is determined by reference to equitable discretion and federal-state comity, rather than to the statutory command.

The background and purpose of the initial Anti-Injunction Statute remains obscure, causing speculation concerning its faithful application.[5] However, regardless of the obscurity of

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[1] 28 U.S.C. §2283 (1948).

[2] *See* Toucey v. New York Life Ins. Co., 314 U.S. 118 (1941), for a comprehensive discussion of the few recognized exceptions to the original statute. In that case, Justice Frankfurter, speaking for the Court, erased all the judicially created exceptions to the original act prompting Congress to draft its modern counterpart. *See generally,* Durfee and Sloss, *Federal Injunction Against Proceedings in State Courts: The Life History of a Statute,* 30 MICH. L. REV. 1145 (1932).

[3] Fundamental to the question of when and under what circumstances a federal court may enjoin normal state judicial processes in protection of civil rights is the determination of at what point federal intervention will be classified as a stay of a pending proceeding. The term "proceeding" is comprehensive. It includes all steps in the state court from the convening of the grand jury and the obtaining of indictments to the disposition of the case on appeal. Hill v. Martin, 296 U.S. 393 (1935); *but see,* Simon v. Southern Ry., 236 U.S. 115, 124-25 (1915).

[4] Federal injunctions against state officials restraining them from instituting criminal actions fall short of a stay of proceedings, *Ex parte* Young, 209 U.S. 123 (1908). This case is noted for drawing the distinction between the power to enjoin a state officer from pursuing a threatened prosecution and the power to enjoin a state court from exercising its jurisdiction already invoked.

[5] As originally enacted in 1793 it provided: "[N]or shall a writ of

its origin, the statute plays an important role in the continual conflict between the concepts of states' rights and federalism.[6] Moreover, the recognition that the federal government will function best if the states, as separate and distinct governments, are free to perform their individual functions without interference, is inherent in our dual system of government.[7]

Both the concepts of federalism, specifically, federal respect for state institutions, and denial of injunctive relief on grounds distinct from the statutory prohibition[8] have succumbed to the judicial exception that federal courts may enjoin state officials from instituting criminal actions[9] when absolutely necessary to protect constitutional rights. Circumstances necessitating such an exception require that the danger of irreparable loss be both great and immediate;[10] or, in other words, a showing of a bad faith prosecution.[11]

Typically, the federal courts' equitable jurisdiction is invoked via the Civil Rights Act.[12] Section 1983 provides both

injunction be granted to stay proceedings in any court of a state." Act of March 2, 1793, ch. 22, §5, 1 Stat. 334. A comparison of the present day statute, 28 U.S.C. §2283 (1948), and its 1793 predecessor pinpoints the infrequency with which the legislature has sought to engraft exceptions to the original congressional ban. In addition, it would mistakenly indicate that its original purpose and function is fully known and understood as well as faithfully applied. *See* 3 ANNALS OF CONG. (1791-93). The lack of any congressional record has lead to speculation as to the true purpose of its enactment. On the other hand, the purpose of the 1948 version of the statute is recognized as to restore the basic law as generally understood and interpreted prior to the *Toucey* decision. *See* the revisory committee note, reprinted following text of 28 U.S.C. §2283 (1964). It has been suggested that the original statute reflects a rising fear of federal intrusion on state sovereignty, Warren, *Federal and State Court Interference*, 43 HARV. L. REV. 345, 347-48 (1930). For additional theories see Taylor and Willis, *The Power of Federal Courts To Enjoin Proceedings in State Courts*, 42 YALE L.J. 1169, 1171 (1933).

[6] Oklahoma Packing Co. v. Oklahoma Gas & Electric Co., 309 U.S. 4, 8-9 (1940). The decision emphasized that the statute prevents needless friction between federal and state courts.

[7] Younger v. Harris, 401 U.S. 37 (1971). "This, perhaps, for lack of a better and clearer way to describe it, is referred to by many as 'Our Federalism.'"

[8] *See* Orton v. Smith, 59 U.S. (18 How.) 263 (1865); Diggs v. Wolcott, 8 U.S. (4 Cranch) 178 (1807).

[9] *Ex parte* Young, 209 U.S. 123 (1908); Speilman Motor Sales Co., v. Dodge, 295 U.S. 89 (1935); Beal v. Missouri Pac. R. Co., 312 U.S. 45 (1941); Watson v. Buck, 313 U.S. 387 (1941); Williams v. Miller, 317 U.S. 599 (1942); Douglas v. City of Jeannette, 319 U.S. 157 (1943).

[10] Fenner v. Boykin, 271 U.S. 240, 243 (1926).

[11] Cameron v. Johnson, 390 U.S. 611 (1968); *see also* Dombrowski v. Pfister, 380 U.S. 479 (1965), containing an excellent discussion of the abstention doctrine underscoring the necessity for reconsideration of principles under which federal courts have traditionally declined to interfere with state judicial proceedings.

[12] 42 U.S.C. §1983 (1964) provides:

> 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

legal and equitable remedies for abuses by state officials in matters of personal rights protected by the United States Constitution or federal laws.[13] The necessary allegations for this type of action must show both a constitutional right guaranteed by the fourteenth amendment, and a deprivation or abridgment of that right under color of a state statute or ordinance.[14]

SIGNIFICANCE OF MITCHUM V. FOSTER

The Supreme Court, in *Mitchum v. Foster*,[15] held that section 1983 is an Act of Congress which falls within the expressly authorized exception to the Anti-Injunction Statute.[16] Although this interpretation of section 1983 had repeatedly divided the federal courts in the past,[17] the Supreme Court had declined to make a determination on this question prior to *Mitchum*.[18] The primary significance of *Mitchum* is that it has abolished the formalistic distinction between a threatened bad faith state prosecution and one which has technically begun. In either case the very concept of federalism has been eroded. To enjoin pending as well as threatened proceedings, rather than to permit state courts to be used as instrumentalities for the suppression of unpopular ideas, will serve to minimize existing federal-state friction, not generate it.[19] Of additional consequence is the clarification of the specific criteria to be applied in determining whether an Act of Congress comes within the expressly authorized exception to the Anti-Injunction Statute.[20]

The defendant, Foster, prosecutor for Bay County, Florida, brought a suit to restrain the operation of Mitchum's business, "The Book Mart," on the ground that it constituted a nuisance.[21] Fitzpatrick, also a defendant, and a judge of the state circuit court, held that certain books being offered for

party injured in an action at law, suit in equity, or other proper proceeding for redress.

[13] Monroe v. Pape, 365 U.S. 167 (1961); Mc Neese v. Board of Education, 373 U.S. 668 (1963); Shelley v. Kraemer, 334 U.S. 1 (1948); Zwickler v. Koota, 389 U.S. 241 (1967).

[14] Douglas v. City of Jeannette, 319 U.S. 157 (1943).

[15] 92 S.Ct. 2151 (1972). The opinion of the Supreme Court hereafter referred to in the text as *Mitchum*.

[16] *Id.* at 2162.

[17] Compare Cooper v. Hutchinson, 184 F.2d 119 (3d Cir. 1950) and Honey v. Goodman, 432 F.2d 333 (6th Cir. 1970), (holding §1983 is an expressly authorized exception), with Baines v. City of Danville, 337 F.2d 579, (4th Cir. 1964) and Goss v. Illinois, 312 F.2d 257 (7th Cir. 1963), (§1983 is not an expressly authorized exception.)

[18] *See* Dombrowski v. Pfister, 380 U.S. 479, 484, n.2 (1965); Cameron v. Johnson, 390 U.S. 611, 613, n.3 (1968); Younger v. Harris, 401 U.S. 37, 54 (1971).

[19] Honey v. Goodman, 432 F.2d 333, 343 (6th Cir. 1970).

[20] Mitchum v. Foster, 92 S. Ct. 2151, 2158 (1972).

[21] F.S.A. §§823.05, 60.05 (1965).

sale by Mitchum were obscene and granted interlocutory relief by enjoining the operation of the bookstore.[22] While appellate review of the preliminary order was pending, Mitchum filed a complaint based upon 42 U.S.C. §1983 in the United States District Court for the Northern District of Florida,[23] seeking injunctive relief against the state court proceedings on the theory that the unconstitutional application of the Florida laws caused him great and irreparable harm.[24]

A single district court judge entered a temporary restraining order directed to the defendants, Foster, Fitzpatrick, and the executive officer of the state court, staying the state proceedings. Thereafter, a three-judge district court panel[25] granted the defendants' motion to dismiss the complaint and dissolved the temporary restraining order,[26] noting:

> The injunctive relief sought here as to the proceedings pending in the Florida Courts does not come under any of the exceptions set forth in Section 2283. It is not expressly authorized by Act of Congress, it is not necessary in aid of this court's jurisdiction, and it is not sought in order to protect or effectuate any judgment of the court.[27]

The court reasoned that the dissolution of the temporary restraining order was required by the decision of the Supreme Court in *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers.*[28] A direct appeal from that decision was taken to the United States Supreme Court under 28 U.S.C. §1253, and probable jurisdiction was noted by the Court.

The *Atlantic* decision, relied on by the district court, served to delineate the constructional issue presented in *Mitchum.*[29] Moreover, the *Atlantic* decision stands for the proposition that

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[22] The books being sold were found to be obscene under F.S.A. §847.011 (1965).

[23] Federal jurisdiction was based on 28 U.S.C. 1343(3) (1957). The statute in relevant part provides:

> The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
> (3) To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom, or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of Citizens or all persons within the jurisdiction of the United States.

[24] Plaintiff Mitchum, alleged the actions of the state prosecutor and judicial officials were depriving him of state rights protected by the first and fourteenth amendments.

[25] Pursuant to 28 U.S.C. §2281 (1948) and 28 U.S.C. §2284 (1948).

[26] Mitchum v. Foster, 315 F. Supp. 1387 (N.D. Fla. 1970).

[27] *Id.* at 1389.

[28] 398 U.S. 281 (1970). Hereafter noted in text as *Atlantic.*

[29] In the *Atlantic* case, the railroad sought and was denied, in a Federal District Court in Florida, an injunction against the unions picketing a switchyard. However, such an injunction was obtained in the Florida courts. After the union failed in dissolving the injunction in the Florida courts, it sought an injunction against its enforcement in the Federal District Court. The case brought to issue the two other exceptions, "where necessary in aid of its jurisdiction, or to protect or effectuate its judgment."

the Anti-Injunction Statute does not express a rule of comity dependent upon circumstances.[30] With unquestionable language, the Court stated:

> [S]ince the statutory prohibition against such injunctions in part rests on the fundamental constitutional independence of the states and their courts, the exceptions should not be enlarged by loose statutory construction. Proceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately this court.[31]

Restated, *Atlantic* sanctions the rule that, with indifference to the consequences, the Anti-Injunction Statute is an absolute bar to federal injunctions staying state proceedings, unless the basis of the injunction fits within one of the three statutory exceptions.

Prior to *Mitchum*, the Supreme Court had ruled on the question of federal intervention in state criminal prosecutions. In *Younger v. Harris*[32] and its companion cases,[33] the Court declined to decide whether an injunction to stay proceedings in a state court is "expressly authorized" by 42 U.S.C. §1983.[34] However, its abstention on grounds of federalism *implied* the existence of such a power in limited circumstances.[35] As interpreted by *Mitchum*, the basis of this implication is that if section 1983 is not a statutory exception, then the Anti-Injunction Statute would have been an automatic bar to the injunction, rendering it perfunctory to exclude relief on grounds of federalism.[36]

The effect of the *Atlantic* and *Younger* decisions was to straddle the *Mitchum* Court between two alternatives: overrule *Younger*, at least to the extent it impliedly authorized federal interference with state proceedings; or, proceed to construe the Civil Rights Act as an Act of Congress "expressly authorizing" federal courts of equity to stay proceedings in state courts.

In its entirety, the finding of an implication in *Younger* authorizing federal injunctions to stay state proceedings could be criticized as nothing more than a reverbalization of the judicial policy recognized by the federal courts since *Ex parte*

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[30] The respondents in *Atlantic* argued that the act established only a principle of comity not binding on the power of federal courts. 398 U.S. 281, 286 (1970).

[31] *Id.* at 287.

[32] 401 U.S. 37 (1971). Hereafter referred to as *Younger*.

[33] Samuels v. Mackell, 401 U.S. 66 (1971); Boyle v. Landry, 401 U.S. 77 (1971); Perez v. Ledesma, 401 U.S. 82 (1971); Byrne v. Karalexis, 401 U.S. 216 (1971).

[34] 401 U.S. 37 (1971), *see* concurring opinion of Justices Stewart and Harlan, at 54.

[35] *Id.* at 55.

[36] 92 S. Ct. 2151 at 2156 (1972).

Young.[37] The nature of the circumstances asserted as justifying a stay of proceedings is substantially the same as those the Supreme Court has recognized in actions to enjoin the "institution" of proceedings which threaten to violate constitutional rights;[38] namely, "cases of proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction and perhaps in other extraordinary circumstances where irreparable injury can be shown."[39]

A discriminating inquiry and analysis into the reasoning of the *Mitchum* Court reveals both weakness and discrepancy. The Court quoted *Younger* as authorizing an injunction to stay state court proceedings "where irreparable injury is both great and immediate." However, the *Younger* Court was quoting *Fenner v. Boykin*[40] which defined the circumstances upon which the doctrine of *Ex parte Young*[41] was applicable. The *Mitchum* Court also quoted *Younger* as authorizing an injunction "where state law is flagrantly and patently violative of express constitutional prohibitions." In this language, the *Younger* Court was both construing the scope of *Dombrowski v. Pfister*,[42] involving injunctions against threatened proceedings, and quoting directly from *Watson v. Buck*,[43] another decision patterned after *Ex parte Young*.[44] While the *Younger* Court apparently authorized such injunctions in limited circumstances, this authorization was made subject to the limitations of the Anti-Injunction Statute.[45] It must be considered that such reasoning encompasses a fundamental change of policy. The implication that federal power to stay state proceedings exists from the denial of intervention itself, when based on grounds distinct from the Congressional ban, represents a major change from the prior tenet that such denial was an additional factor calling for prohibition against federal-state injunctions.[46]

The *Mitchum* Court signified that the following criteria are to be applied in determining whether an Act of Congress comes within the expressly authorized exception to the Anti-

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[37] 209 U.S. 123 (1908); *see* note 4 *supra*.
[38] See notes 10 and 11, and text *supra*.
[39] Perez v. Ledesma, 401 U.S. 82 at 85 (1971); *see also* Dyson v. Stein, 401 U.S. 200, 203 (1971).
[40] 271 U.S. 240, 243 (1926).
[41] 209 U.S. 123 (1908).
[42] 380 U.S. 479 (1965).
[43] 313 U.S. 387 (1941).
[44] 209 U.S. 123 (1908).
[45] 401 U.S. 37, n.3 (1971).
[46] Douglas v. City of Jeannette, 319 U.S. 157, 165 (1943), (federal interference denied solely on the basis of equity and comity). *See* Baines v. City of Danville, 337 F.2d 579 (4th Cir. 1964), noting that injunctive relief is often denied on principles of equity and comity, the same principles which underlie the Anti-Injunction Statute.

Injunction Statute:[47] (1) the Act need not make an express reference to the Anti-Injunction Statute; (2) the federal law need not expressly authorize an injunction of a state court proceeding; and (3) the Act must have created a federal right, which would be frustrated if the federal courts were not empowered to enjoin state proceedings.

The first criterion was established in *Amalgamated Clothing Workers v. Richmond Brothers Co.*,[48] where it was noted that "no prescribed formula is required; an authorization need not expressly refer to section 2283." In fact, none of the pre-1948 exceptions contained an explicit reference to the Anti-Injunction Statute.[49]

The second criterion solves problems of earlier conflicting decisions. Some statutes, like the Interpleader Act,[50] explicitly authorize injunctions of state proceedings, while others, such as the act limiting shipowners' liability, provide only that no other proceedings may be instituted or maintained once federal proceedings begin.[51] The opinions upholding injunctions under these statutes waver between the narrow ground that the injunctive power can be inferred from the statutory language and the broader ground that a state court may be enjoined from invading any area of exclusive federal jurisdiction.[52]

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[47] 92 S. Ct. 2151, 2159 (1972).

[48] 348 U.S. 511, 516 (1955).

[49] One, removal act providing for removal of litigation from state to federal courts, 28 U.S.C. §§ 1441-50 (1948). This Anti-Injunction Statute has always been deemed inapplicable to removal proceedings. *See* Madisonville Traction Co. v. St. Bernard Min. Co., 196 U.S. 239 (1905); French v. Hay, 89 U.S. (22 Wall.) 250 (1874); Kline v. Burke Construction Co., 260 U.S. 226 (1922). The removal acts have provided for the filing in the state court of a petition for removal and a bond. It is then the duty of the state court to accept a proper petition and bond and proceed no further.

Two, an Act of Congress limiting the liability of shipowners, Act of 1851, 9 Stat. 635. The Act as amended provides that once a shipowner has deposited with the court an amount equal to the value of his interest in the ship, "All claims and proceedings against the owner with respect to the matter in question shall cease." 46 U.S.C. §185 (1958). *See* Providence & N.Y.S.S. Co. v. Hill Mfg. Co., 109 U.S. 578, 599 (1883); and Admiralty Rule 51, 254 U.S. 26 (1920).

Three, legislation providing for federal interpleader actions, the Interpleader Act of 1926, 46 Stat. 416, as amended 28 U.S.C. §2361 (1958). *See* Dugas v. American Surety Co., 300 U.S. 414, 428 (1937); Treinies v. Sunshine Mining Co., 308 U.S. 66 (1939).

Four, legislation conferring federal jurisdiction over farm mortgages, the Frazier-Lemke Farm Mortgage Act, 47 Stat. 1473, as amended 11 U.S.C. §203 (1938). *See* Kalb v. Feuerstein, 308 U.S. 433 (1940).

Five, legislation governing federal habeas corpus proceedings, 28 U.S.C. §2251 (1948). *See Ex parte* Royall, 117 U.S. 241, 248-49 (1886).

Six, legislation providing for control of prices, Section 205(a) of the Emergency Price Control Act of 1942, 56 Stat. 33. *See* Porter v. Dickens, 328 U.S. 252 (1946) and Bowles v. Willingham, 321 U.S. 503 (1944). Section 205(a) expired in 1947, Act of July 25, 1946, 60 Stat. 664.

[50] 46 Stat. 416, as amended 28 U.S.C. §2361 (1958).

[51] 9 Stat. 635, as amended 46 U.S.C. §185 (1958).

[52] *See, e.g.*, Bowles v. Willingham, 321 U.S. 503. 510-11 (1944), dealing with the Emergency Price Control Act of 1942. French v. Hay, 89 U.S.

The third criterion, quite significantly, bases the exception upon the necessary frustration of an equitably enforceable federal right due to a federal injunctive prohibition.[53] The substantive right or remedy created by the Civil Rights Act is in the nature of a general jurisdictional grant which may or may not call for equitable relief.[54] The creation of such a grant is not adverse to statutory or judicial limitations upon its exercise.[55] In fact, the Civil Rights Act presents a sharp contrast to statutory exceptions, such as the Removal Acts.[56] Effective removal of a cause of action from a state court to a federal court is incompatible with a literal application of the Anti-Injunction Statute.[57] Moreover, there is no incompatibility between legislation which generally defines the equity jurisdiction of federal courts and legislation which specifically limits a judge's discretion to exercise such jurisdiction.[58] However, it is not necessary for an Act of Congress to be wholly inconsonant with the ban of the Anti-Injunction Statute for its remedy to be frustrated.[59] The test as enounced in *Mitchum* is "whether 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 state court proceeding . . . ."[60]

With the federal courts' function in mind, it is evident that the remedy provided by section 1983 of the Civil Rights Act would be ineffectual if the Act were construed as not authorizing a federal court to stay state proceedings. In pointed contrast to the Anti-Injunction Statute, the scope of section 1983 of the Civil Rights Act is clearly defined. That Act is a product of the Reconstruction era, reflecting a movement away from the concept of state's rights so prevalent during our nation's beginning, when the Anti-Injunction Statute was first enacted.[61] The Civil Rights Act was designed to alter, to a

(22 Wall.) 250, 253 (1874), dealing with the exclusive jurisdiction of the federal courts under the removal act.

[53] Mitchum v. Foster, 92 S. Ct. 2151, 2159 (1972):

> [A]n Act of Congress must have created a specific and uniquely federal right or remedy, enforceable in a federal court of equity, which could be frustrated if the federal court were not empowered to enjoin a state court proceeding.

[54] Jordan v. Hutcheson, 323 F.2d 597 (4th Cir. 1963).

[55] Baines v. City of Danville, 337 F.2d 579, 589 (4th Cir. 1966).

[56] *Id.* at 589.

[57] *Id.*

[58] *Id.*

[59] Mitchum v. Foster, 92 S. Ct. 2151, 2159 (1972). *See also* Porter v. Dickens, 328 U.S. 252 (1946), dealing with legislation controlling prices, no conflict between the Emergency Price Control Act and the Anti-Injunction Statute was necessary.

[60] 92 S. Ct. 2151, 2160 (1972).

[61] Section 1983 was originally section 1 of the Civil Rights Act of 1871. The act was passed by a reconstruction Congress. 17 Stat. 13.

limited extent, the balance of power between state and federal courts.[62] This alteration was necessary to guarantee the availability of fourteenth amendment freedoms to litigants in both state and federal proceedings.[63] The state courts must share equally in the responsibilty of guarding and enforcing rights protected by the United States Constitution.[64] To the extent that state courts are unable to divest themselves of local prejudice and pressure in performing this function, federal courts bear the burden of providing the external force to the state courts.[65]

CONCLUSION

The Supreme Court's decision in *Mitchum* adds impetus to the ability of federal courts to guarantee constitutional rights. It allows the interposition of federal power, not only at the threshold stage of state criminal proceedings, but at any step warranted by the circumstances.

While holding that section 1983 is within the "expressly authorized" exception to the Anti-Injunction Statute, the Court clearly indicated that it did not alter the principles of comity, equity, or state's rights which act as restraints on federal intervention. Those who seek federal intervention bear a heavy burden in having to establish that the state, in prosecuting, deliberately acted to harass or suppress first amendment rights. Ordinarily, the presumption that the state was in use of its police power for legitimate ends may be sufficient to prevent federal intervention.[66] No person is immune from a good faith prosecution under a valid statute.[67]

It presently seems that the lengthy list of Supreme Court decisions requiring extraordinary circumstances and the dan-

[62] For legislative history concerning the Civil Rights Act of 1871, see the CONG. GLOBE, 42d Cong. 1st Sess., App. 69 (1871), and generally Gressman, *The Unhappy History of Civil Rights Legislation*, 50 MICH. L. REV. 1323 (1952).

[63] The Civil Rights Act is construed as enacted for the express purpose of enforcing the provisions of the fourteenth amendment. Monroe v. Pape, 365 U.S. 167 (1961); Mc Neese v. Board of Education, 373 U.S. 668 (1963); Shelley v. Kraemer, 334 U.S. 1 (1948).

[64] Zwickler v. Koota, 389 U.S. 241 (1967).

[65] *Id.* at 248.

[66] Atlantic Coast Line R.R. Co. v. Bhd. of Locomotive Engineers, 398 U.S. 281, 297 (1970):

> Any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy. The explicit wording of §2283 itself implies as much, and the fundamental principle of a dual system of courts leads inevitably to that conclusion.

[67] Douglas v. City of Jeannette, 319 U.S. 157, 163 (1943); Cameron v. Johnson, 390 U.S. 611 (1968).

ger of irreparable harm, both great and immediate,[68] is not likely to be qualified in the near future. In the ordinary case, the state courts remain the final arbiter of their own law. However, the realization that federal injunctions staying bad faith state prosecutions do not needlessly generate friction between the federal and state governments, but serve to minimize it, is a beneficial departure from prior law.

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[68] *E.g.*, *Ex parte* Young, 209 U.S. 123 (1908); Spielman Motor Sales Co. v. Dodge, 295 U.S. 89 (1935); Douglas v. City of Jeannette, 319 U.S. 157 (1943); Dombrowski v. Pfister, 380 U.S. 479 (1965); Mitchum v. Foster, 92 S. Ct. 2151 (1972).