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CASES NOTED

THE "EXPRESSLY AUTHORIZED" EXCEPTION TO THE ANTI-INJUNCTION ACT: SECTION 1983 CIVIL RIGHTS ACTIONS QUALIFY

Foster, the prosecuting attorney of Bay County, Florida, instituted proceedings to close Mitchum's bookstore as a public nuisance under Florida's general nuisance statutes.¹ Ruling that certain magazines offered for sale by Mitchum were obscene under Florida law,² the trial judge entered a temporary injunction prohibiting continued operation of the bookstore. While Mitchum's state appeal of the injunction was pending, he filed a complaint in federal district court. Relying on United States Code, title 42, section 1983,³ Mitchum asked for injunctive and declaratory relief against the state court proceedings, asserting that Florida law was being unconstitutionally applied by the state court so as to cause him great and irreparable harm.

Amidst further inconclusive proceedings in the state courts, a single federal district court judge entered temporary restraining orders, and a three-judge court was convened.⁴ The three-judge court denied Mitchum's prayer for injunctive relief and dissolved the single judge's orders, holding that the federal court was not empowered, in the face of the Anti-Injunction Act,⁵ to issue such injunctions.⁶

On direct appeal to the United States Supreme Court,⁷ *held*, reversed and remanded: United States Code, title 42, section 1983 is an Act of Congress that falls within the "expressly authorized" exception to the Anti-Injunction Act. *Mitchum v. Foster*, 92 S. Ct. 2151 (1972).

As a general practice, federal courts have avoided interference with threatened or pending state proceedings. This principle of noninterference is manifested in the doctrines of comity and abstention⁸ and has been

1. FLA. STAT. §§ 60.05, 823.05 (1971).

2. FLA. STAT. § 847.011 (1971).

3. Jurisdiction was based on section 1343(3), which provides in pertinent part:

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

...
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 of all persons within the jurisdiction of the United States. . . .

28 U.S.C. § 1343(3) (1970).

4. The three-judge court was convened pursuant to 28 U.S.C. §§ 2281, 2284 (1970).

5. 28 U.S.C. § 2283 (1970) [hereinafter referred to as the Anti-Injunction Act].

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

7. 28 U.S.C. § 1253 (1970) provides for direct appeal to the United States Supreme Court from decisions of three-judge courts.

8. A good discussion of these principles may be found in C. WRIGHT, *LAW OF FEDERAL COURTS* §§ 51, 52 (2d ed. 1970).

codified in the Anti-Injunction Act. *Mitchum*, of course, hinged upon whether United States Code, title 42, section 1983, is a statute that Congress had "expressly authorized" as falling outside the scope of the Anti-Injunction Act. A brief review of the history of the Act is necessary for an understanding of the significance of *Mitchum*.

The Constitution does not itself prohibit the federal courts from enjoining state proceedings. However, the Act of March 2, 1793 prohibited the issuance of a writ of injunction "to stay proceedings in any court of a state."⁹ With modification only in the area of bankruptcy,¹⁰ this language remained intact until the enactment of the Judicial Code of 1948.¹¹ Although the statute was phrased in clearly prohibitive language and was calculated "to prevent needless friction between state and federal courts,"¹² its effectiveness was lessened by many judicially-created exceptions.¹³

In 1941 the Supreme Court evidenced a stricter approach to the application of the Anti-Injunction Act. In the case of *Toucey v. New York Life Insurance Co.*,¹⁴ the precise issue was whether a federal court could enjoin a state court suit upon a cause of action previously litigated in the federal court and resolved against the assignor of the state court plaintiff.¹⁵ Without expressly overruling any prior cases cited as authority for the "relitigation" exception,¹⁶ the Court held that there was no exception to the statute for "relitigation" cases. Further, it stressed the statute's basic doctrine of noninterference with pending state court litigation.¹⁷

Legislative reaction to *Toucey* came with the enactment of section 2283 of the Judicial Code of 1948—the Anti-Injunction Act as it now exists. Section 2283 provides that:

9. Act of March 2, 1793, ch. 22, § 5, 1 Stat. 334.

10. Section 720 of the Revised Statutes, added in 1875, provided an express exception where bankruptcy laws authorized such injunction. Rev. Stat. § 720 (1875).

11. The provision survived as section 265 of the Judicial Code of 1911, formerly section 379 of title 28 of the United States Code. 28 U.S.C. § 379 (1940) (Act of March 3, 1911, ch. 231, § 265, 36 Stat. 1162).

12. *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.*, 309 U.S. 4, 9 (1940).

13. See Taylor & Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 YALE L.J. 1169 (1933); Note, *Federal Power to Enjoin State Court Proceedings*, 74 HARV. L. REV. 726 (1961).

14. 314 U.S. 118 (1941).

15. Prior to *Toucey*, the Supreme Court had indicated that, despite the Anti-Injunction Act, the federal courts could enjoin state courts from relitigating questions already determined by the federal courts. *E.g.*, *Julian v. Central Trust Co.*, 193 U.S. 93 (1904); *Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356 (1921). See *Toucey v. New York Life Ins. Co.*, 314 U.S. 118 (1941) (dissenting opinion).

16. The Court dealt with these and similar cases by dismissing some as in rem actions, *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 135 n.6 (1941), and saying of the others that "loose language and a sporadic, ill-considered decision cannot be held to have imbedded in our law a doctrine which so patently violates the express prohibition of Congress." *Id.* at 139.

17. *Id.* at 132.

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.¹⁸

As indicated in the Reviser's Note, the Anti-Injunction Act not only overruled *Toucey*, but "restore[d] the basic law as generally understood and interpreted prior to the *Toucy* [*sic*] decision."¹⁹

Despite its apparently clear language, the Anti-Injunction Act has presented many difficult questions of construction.²⁰ The "expressly authorized" exception itself is no model of legislative clarity, and judicial interpretation of the clause prior to *Mitchum* provided no definite test for the applicability of this exception. It did, however, furnish federal courts with some clues.

The exception does not require that the federal law invoked contain an express reference to the Anti-Injunction Act.²¹ It is sufficient if it specifically grants the power to enjoin state court proceedings;²² however, such a specific grant of power has not been considered necessary.²³ A statute enabling a federal court to stay *any* court proceedings also seemed adequate to constitute the express authorization necessary to come within the meaning of the Act.²⁴

18. 28 U.S.C. § 2283 (1970).

19. H.R. REP. NO. 308, 80 CONG., 1ST SESS. A181-82 (1947).

20. C. WRIGHT, LAW OF FEDERAL COURTS § 47 (2d ed. 1970).

21. Prior to the Judicial Code of 1948, the recognized statutory exceptions did not contain any express reference to the Anti-Injunction Act. *See* *Providence & N.Y.S.S. Co. v. Hill Mfg. Co.*, 109 U.S. 578 (1883) (statute imposing limitation on shipowners' liability); *Ex parte Royall*, 117 U.S. 241 (1886) (statute providing for federal habeas corpus proceedings); *Kline v. Burke Constr. Co.*, 260 U.S. 226 (1922) (statute granting removal jurisdiction); *Treinius v. Sunshine Mining Co.*, 308 U.S. 66 (1939) (statute providing for federal interpleader actions); *Kalb v. Feuerstein*, 308 U.S. 433 (1940) (statute conferring federal jurisdiction over farm mortgages); *Porter v. Dicken*, 328 U.S. 252 (1946) (price control legislation).

This same position was reaffirmed by the Court subsequent to the enactment of the Anti-Injunction Act. *Amalgamated Clothing Workers of America v. Richman Bros.*, 348 U.S. 511 (1955).

22. *Amalgamated Clothing Workers of America v. Richman Bros.*, 348 U.S. 511, 516 (1955) (dictum).

23. Three of the exceptions recognized prior to the Judicial Code of 1948 contained no such authorization. *See* *Providence & N.Y.S.S. Co. v. Hill Mfg. Co.*, 109 U.S. 578 (1883) (statute imposing limitation on shipowners' liability); *Kline v. Burke Constr. Co.*, 260 U.S. 266 (1922) (statute granting removal jurisdiction); *Porter v. Dicken*, 328 U.S. 252 (1946) (price control legislation).

24. The Bankruptcy Act provides that "[a] suit which is founded upon a claim for which a discharge would be a release . . . shall be stayed until an adjudication or the dismissal of the petition. . . ." 11 U.S.C. § 29 (1970). This language apparently authorizes injunction of state court proceedings. *See* H.R. REP. NO. 308, 80TH CONG., 1ST SESS. A181-82 (1947).

The Frazier-Lemke Farm-Mortgage Act provided that, where it applied, a federal court was to "stay all judicial or official proceedings in any court." 11 U.S.C. § 203(s)(2) (1958) (since the time for filing a petition under this section expired March 1, 1949, it has been omitted from the United States Code since 1958). This language was also regarded as sufficient to authorize federal court injunction of state court proceedings. *See* H.R. REP. NO. 308, 80TH CONG., 1ST SESS. A181-82 (1947).

In *Mitchum*, however, the Court was presented with a different question—whether an injunction against pending state court actions is “expressly authorized” when a federal statute grants merely a general injunctive power. The Civil Rights Act, section 1983, provides for “an action at law, suit in equity, or otherwise proper proceeding” against anyone acting under color of state law who has caused another to be deprived of his civil rights.²⁵ Whether this language is sufficient to bring section 1983 within the “expressly authorized” exception to the Anti-Injunction Act is a question which the Court had previously left open²⁶ and the lower courts had been left to dispute.²⁷

In *Mitchum*, the section 1983 question was faced squarely:

[I]f a § 1983 action is not an “expressly authorized” statutory exception, the anti-injunction law absolutely prohibits in such an action all federal equitable intervention in a pending state court proceeding, whether civil or criminal, and regardless of how extraordinary the particular circumstances may be.²⁸

Applying the pre-*Toucey* criteria,²⁹ the Court stated a positive rule for the application of the “expressly authorized” exception to the Anti-Injunction Act:

[I]t is clear that . . . in order to qualify as an “expressly authorized” exception to the anti-injunction statute, an 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.³⁰

This rule, the Court was quick to add, does not require that the act be “totally incompatible with the prohibitions of the anti-injunction statute.”³¹ Obliging, the Court provided a test for inclusion of a federal statute within the “expressly authorized” exception:

The test . . . 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 a state court proceeding.³²

25. 42 U.S.C. § 1983 (1970) [hereinafter referred to as section 1983].

26. See *Cameron v. Johnson*, 390 U.S. 611, 613 n.3 (1968); *Younger v. Harris*, 401 U.S. 37 (1971); *Lynch v. Household Fin. Corp.*, 92 S. Ct. 1113 (1972).

27. *Cooper v. Hutchinson*, 184 F.2d 119 (3d Cir. 1950) (section 1983 held an exception); *Baines v. City of Danville*, 337 F.2d 579 (4th Cir.), *cert. denied*, 381 U.S. 939 (1964) and *Machesky v. Bizzell*, 414 F.2d 283 (5th Cir. 1969) (section 1983 held not an exception).

28. 92 S. Ct. at 2155.

29. The Court referred to the Reviser's Note accompanying the Anti-Injunction Act. H.R. REP. NO. 308, 80th Cong., 1st Sess. A181 (1947).

30. 92 S. Ct. at 2159.

31. *Id.* at 2160.

32. *Id.* The Court referred to a number of previous decisions after stating the test, beginning with *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 132-34 (1941), where the

In applying the test to section 1983, the Court examined the "intended scope" of that statute—the legislative history. The Court found that the congressional concern in enacting section 1983 and its predecessor³³ was to protect federal rights which it feared were not being protected in state courts.³⁴

The Court also found that Congress, in furtherance of this concern, created in section 1983 a federal remedy.

In carrying out . . . [the purpose of § 1983 to protect the people from unconstitutional action under color of state law] Congress plainly authorized the federal courts to issue injunctions in § 1983 actions, by expressly authorizing "a suit in equity" as one of the means of redress.³⁵

In light of this reasoning, the Court concluded that section 1983 meets the test and is therefore within the "expressly authorized" exception to the Anti-Injunction Act.

Mitchum contributes substance and clarity to the law concerning the use of federal injunctions to stay pending state proceedings. First, in holding that section 1983 is an "expressly authorized" exception, *Mitchum* implies that a federal injunction against pending state court actions may be "expressly authorized" when a federal statute grants merely a general injunctive power.³⁶ Second, *Mitchum* gives the federal courts a much needed test for the "expressly authorized" exception to the Anti-Injunction Act. If the federal act in question clearly creates a federal right or remedy enforceable in a federal court of equity and can be given its intended scope only by the stay of state court proceedings, it is "expressly authorized."

Third, *Mitchum* indicates that the determinative criterion to be applied to the test is the legislative intent surrounding the enactment of the statute in question. The *Mitchum* court did not examine current state court attitudes and practices regarding application of an individual citizen's civil rights, restricting its opinion to the legislative history of section 1983 and its predecessor. While such an approach is far from unusual, it may well be that it fosters "needless friction" in this context.³⁷

Court discussed pre-1941 judicially-created exceptions to the Anti-Injunction Act. In none of the cases referred to had the *Mitchum* test been laid out.

33. Act of April 20, 1871, ch. 22, § 1, 17 Stat. 13.

34. Congress . . . was concerned that state instrumentalities could not protect . . . [federally created] rights; it realized that state officers might, in fact, be antipathetic to the vindication of those rights; and it believed that these failings extended to the state courts.

92 S. Ct. at 2162.

35. *Id.*

36. See note 25 *supra* and accompanying text.

37. Although reliance upon legislative intent for an interpretation of a statute is by no means unusual, it creates a paradox in situations involving the Anti-Injunction Act. For example, it may be argued that while the Civil Rights Act was, when originally enacted, a necessary exception, by implication from legislative intent, to the principle of avoiding "needless friction" between federal and state courts, a more enlightened judicial attitude in

Fourth, the Court reaffirmed the doctrines of comity, equity, and federalism.³⁸ Therefore, as Chief Justice Burger noted in his concurring opinion:

[O]n remand . . . the District Court . . . should properly consider whether general notions of equity or principles of federalism . . . prevent the issuance of an injunction against the state "nuisance abatement" proceedings in the circumstances of this case.³⁹

Finally, and most obviously, *Mitchum* holds that section 1983 is an exception to the Anti-Injunction Act. This ruling may have far-reaching effects.⁴⁰

There remain, however, at least two questions both raised and unanswered by *Mitchum*. First, whether the legislative intent criteria is always to be applied to the *Mitchum* "expressly authorized" test. The *Mitchum* court did in fact apply only this criterion, although the language of the test is broad enough to permit current state court practices to be considered, and even to be determinative.⁴¹ Even if legislative intent is the sole prism through which the *Mitchum* test is to be applied to federal statutes, it does not necessarily follow that current state court practices will be ignored. Where the *Mitchum* test is met, the federal court must still consider principles of equity, comity and federalism. If state court abuse of the federally created rights is not an apparent danger—and here current state judicial practices will certainly be examined—an injunction may be denied.

A final question, to be resolved by the district court on remand, is whether the plaintiff, *Mitchum*, will surmount the principles of comity, equity, and federalism, and obtain the injunction sought. While *Mitchum* still awaits the decision, the federal courts have marked the existence of an "expressly authorized" test and an apparently more liberal Supreme Court approach towards construction of the Anti-Injunction Act.

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state courts towards the constitutional rights of its citizens now exists. If such is now the case, it may be argued that the principle of avoiding "needless friction," as codified in the Anti-Injunction Act, should take precedence over an exception not really "express," but merely inferred from legislative intent.

38. "In so concluding, we do not question or qualify in any way the principles of equity, comity and federalism that must restrain a federal court when asked to enjoin a state court proceeding." 92 S. Ct. at 2162. The Court expressly reaffirmed its earlier group of decisions typified by *Younger v. Harris*, 91 S. Ct. 746 (1971).

39. 92 S. Ct. at 2163. Justices White and Blackmun joined in Chief Justice Burger's concurring opinion.

40. *Younger v. Harris*, 91 S. Ct. 746 (1971), with its requirement of a threat of irreparable injury both "great and immediate," or bad faith and harrassment in a statute's enforcement, may well limit *Mitchum's* practical effect. There is, however, no point in attempting to analyze herein the possible post-*Mitchum* consequences of *Younger* on section 1983 actions.

41. Thus, "whether an Act of Congress . . . could be given its intended scope only by the stay of a state court proceeding." 92 S. Ct. at 2160 (emphasis added).