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NOTES

PROTECTION OF CIVIL RIGHTS: POWER OF THE FEDERAL JUDICIARY TO ENJOIN STATE COURT PROCEEDINGS VIOLATIVE OF BASIC CONSTITUTIONAL RIGHTS

INTRODUCTION

In recent years the question has arisen whether litigation is a meaningful avenue open to the masses for the protection and enforcement of federally created rights. "The right is there on paper; what is needed is the machinery to make the paper right a practical protection." The preceding statement serves well to summarize a major problem presently confronting the entire nation.

The general problem is that of achieving uniformity of practice among federal and state courts in the handling of questions involving the basic constitutional rights of individual litigants. This problem has been dramatized and enlarged during the past few years by the great number of cases which have arisen out of civil rights activities.

The role that the federal judiciary will assume in this area has been the concern of numerous individuals seeking injunctive relief against state criminal prosecutions. Yet, before the federal courts are able to assume a primary responsibility for the protection of civil rights, the obstacles of judicial and statutory abstention must be overcome. This note will analyze the development of judicial abstention, the history of the anti-injunction statute and the Civil Rights Act, the conflict between the two acts and the method by which the various circuits have attempted to resolve this conflict.

JUDICIAL ABSTENTION

Until recently the federal courts were virtually powerless to act

2. Id. at 793.
4. The terms "anti-injunction statute" and "statutory abstention" will be used interchangeably in this note, both referring to 28 U.S.C. § 2283 (1965).
upon state criminal prosecutions violative of basic constitutional rights.\(^5\)

Intervention by the federal judiciary into the state criminal process was first prevented by the *court-made* doctrine of abstention in *Railroad Commission of Texas v. Pullman.*\(^6\) *Pullman* represented the culmination of a judicial policy that, in order to prevent needless friction between state and federal courts, left the initial determination of issues to the state criminal courts without federal interference.\(^7\)

The *Pullman* case was followed two years later by *Douglas v. City of Jeannette,*\(^8\) which apparently qualified the *Pullman* doctrine by holding that judicial abstention is appropriate in those cases where the prosecution is in *good faith* with *no allegation or finding of irreparable injury.*\(^9\)

It was to this concept of *irreparable injury* that the United States Supreme Court addressed itself in *Dombrowski v. Pfister.*\(^10\) Where First

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6. 33 F. Supp. 675 (W.D. Texas 1940), aff'd, 312 U.S. 496 (1941). The Pullman Company instituted a suit in the federal district court to enjoin an order of the Texas Railroad Commission. Pullman claimed that the Commission violated the commerce equal protection and the due process clauses of the Constitution.

The federal district court enjoined enforcement of the order, but the Supreme Court reversed and remanded the case. Justice Frankfurter, speaking for the majority, stated that before the Supreme Court should involve itself in the constitutional issues, an opportunity should be given to the Texas state courts to determine whether the Texas Railroad Commission was authorized under Texas law to issue such an order.

7. *Id.* at 501.

8. 130 F.2d 652 (3d Cir. 1942), aff'd, 319 U.S. 157 (1943). In *Douglas,* a Pennsylvania statute prohibited the solicitation of orders of merchandise without first obtaining a license from the city authorities and paying a license tax. The plaintiffs were Jehovah's Witnesses who distributed religious literature without permits. They were indicted, prosecuted and convicted by the state authorities under the aforementioned statute. The plaintiffs then filed suit in the federal district court alleging that the city officials of Jeannette were threatening to continue to enforce the ordinance by arresting and prosecuting them. They asked the court to invalidate the ordinance and to enjoin the defendants from enforcing the ordinance against them. The district court ruled for the plaintiffs, but, as in the *Pullman* case, the Supreme Court reversed. The Court held that "no person is immune from prosecution in *good faith* for his alleged criminal acts." *Id.* at 163 (emphasis added). The Court added that the arrest of state criminal law processes by the federal judiciary should be undertaken "only on a showing of danger of irreparable injury," and that the trial court had made no finding that the Jehovah's Witnesses had or would suffer such irreparable injury. *Id.* at 163-64.

9. *Id.* at 163-64.

10. 227 F. Supp. 556 (E.D. La. 1964), rev'd and rem'd, 380 U.S. 479 (1965). James Dombrowski was the executive director of an organization with a program designed to promote civil rights for Negroes and to establish communication and understanding between Negro and white citizens. He was arrested under two Louisiana anti-subversion statutes. The warrant was later vacated for lack of proof.

Subsequently, Representative Pfister, Chairman of the Louisiana Joint Legislative Committee on Un-American Activities, demanded enforcement of the aforementioned statutes. Dombrowski filed a complaint in the Federal District Court for the Eastern District of Louisiana to enjoin this alleged malicious and unconstitutional harassment under color of statutes vague and unconstitutional on their face. Dombrowski invoked the Civil Rights Act, 42 U.S.C. § 1983 (1964), and sought a declaratory judgment and an injunction against further prosecution. Although the district court refused to hear
Amendment rights are involved, Dombrowski represents either an exception to or a breaking down of the doctrine of judicial abstention by allowing prompt judicial protection in the federal courts.\textsuperscript{11}

The Court in Dombrowski initially considered the rule that:

[i]t is generally to be assumed that state courts and prosecutors observe the constitutional limitations as expounded by this Court, and that the mere possibility of erroneous initial application of constitutional standards will usually not amount to the irreparable injury necessary to justify a disruption of orderly state proceedings.\textsuperscript{12}

The opinion of the Court, however, made a severe intrusion into the doctrine of abstention. Under the allegations of the complaint, the Dombrowski Court found what the Douglas Court had not found—irreparable injury.\textsuperscript{13} This is the essence of Dombrowski.

The Court held that irreparable injury is properly alleged and abstention inappropriate in free speech cases where the complaint contains either one of two allegations. First, that irreparable injury exists if the statute underpinning the prosecution suffers from vagueness or overbreadth.\textsuperscript{14} The Court stated that, although a criminal prosecution under a statute regulating the exercise of First Amendment freedoms usually involves imponderables, when these statutes also suffer from vagueness and overbreadth the danger of loss or substantial impairment of those rights may be critical. In such cases the statutes readily lend themselves to a denial of those rights.\textsuperscript{15} The Court concluded by stating:

So long as the statute remains available to the state, the threat of prosecutions of protected expression is a real and substantial one. Even the prospect of ultimate failure of such prosecutions by no means dispels its chilling effect on protected expression.\textsuperscript{16}

Secondly, irreparable injury exists where the complaint alleges that the prosecution is proceeding in bad faith for the purpose of discouraging persons from exercising their First Amendment rights.\textsuperscript{17} The Court held

\textsuperscript{11} 380 U.S. 479, 487 (1965).
\textsuperscript{12} Id. at 484-85, citing Douglas v. City of Jeannette, 319 U.S. 157 (1943).
\textsuperscript{13} 380 U.S. 479, 484-86 (1965).
\textsuperscript{14} Id. at 484-91.
\textsuperscript{15} Id.
\textsuperscript{16} Id. at 494 (emphasis added).
\textsuperscript{17} Id. at 490.
that such an allegation clearly states a claim under the Civil Rights Act.\textsuperscript{18} Irreparable injury exists in such a case because:

[A] substantial loss or impairment of expression will occur if appellants must await the state court’s disposition and ultimate review in this Court of any adverse determination. These allegations, if true, clearly show irreparable injury.\textsuperscript{19}

It therefore appears that federal district courts have jurisdiction in such cases and must decide the issue. The doctrine of judicial abstention is inappropriate where “statutes are justifiably attacked on their face as abridging free expression or as applied for the purpose of discouraging protected activities.”\textsuperscript{20} Accordingly, the heart of Dombrowski is that the delays inherent in judicial abstention may cause irreparable harm to rights protected under the First Amendment. “[W]e have, in effect, avoided making vindication of freedom of expression await the outcome of protracted litigation.”\textsuperscript{21}


The Dombrowski decision was limited to cases in which the federal injunctive proceeding is commenced prior to the institution of the state criminal proceedings, where the only bar to federal relief was the doctrine of judicial abstention. The policy arguments in Dombrowski, however, suggest a wider application. These arguments expressly concluded that judicial abstention is inappropriate where vagueness, overbreadth or bad faith is alleged.\textsuperscript{22} It would seem that such reasoning should exert a strong influence upon, and perhaps determine, the more technical statutory issue that will arise when the state criminal proceedings are commenced before application is made to the federal courts for injunctive relief. The precise question is whether suits under section 1983 of the Civil Rights Act of 1871\textsuperscript{23} come within the “expressly authorized” exception

\textsuperscript{18} Id.
\textsuperscript{19} Id. at 486 (emphasis added).
\textsuperscript{20} Id. at 489-90. The discussion of Dombrowski in this note is limited generally to the question of whether section 1983 is an expressly authorized exception to section 2283. For a more detailed examination of the case see Brewer, supra note 3; Stickgold, *Variations on the Theme of Dombrowski v. Pfister*, 1968 Wis. L. Rev. 369; Note, *Constitutional Law: Limitations Imposed on Traditional Use of Doctrine of Federal Judicial Abstention*, 1966 Duke L.J. 219.
\textsuperscript{21} 380 U.S. 479, 487 (1965).
\textsuperscript{22} Id. at 484-91. See also notes 13-19 supra and accompanying text.
\textsuperscript{23} 42 U.S.C. § 1983 (1964). The Act 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
to section 2283, the statutory counterpart of judicial abstention. The Court in *Dombrowski* found it unnecessary to resolve this question because the federal injunctive proceeding was commenced *prior* to the state criminal proceeding.  

To the extent that *Dombrowski* considers judicial abstention inappropriate in certain factual situations, it would appear unlikely that section 2283 could be allowed to stand as a bar to relief without substantially destroying the *Dombrowski* remedy. To hold that section 2283 is a bar to the federal injunctive relief would seem anomalous both with respect to the expansion of *Dombrowski* and the legislative debates on sections 2283 and 1983.

**Legislative History of 28 U.S.C. § 2283**

Section 5 of the Judiciary Act of 1793 imposed a limitation on the power of the federal courts by expressing an important Congressional policy of preventing "needless friction between state and federal courts."  

The history of section 5 is not fully known. Furthermore, there is no record of debates on the statute. On December 31, 1790, however, Attorney General Edmund Randolph reported to the House of Representatives on desirable changes in the Judiciary Act of 1782. This report suggested amendments dealing with procedural matters, one of which provided that "no injunction in equity shall be granted by a district

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laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

This portion of section 1983 was originally enacted in 1871 and remains in force today. Thus, reference to the Civil Rights Act indicates that part of the 1871 Act which is codified at 42 U.S.C. § 1983 (1964).

24. *Injunctions; Three Judge Courts Act, 28 U.S.C. § 2283 (1965).* The Act stipulates:

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.


27. Section 5 states in relevant part:

[Nor] shall a writ of injunction be granted (by any court of the United States) to stay proceedings in a court of a state . . .

I Stat. 335 (1793).


30. *See 3 Annals of Cong. (1791-93).*

court to a judgment at law of a state court." Randolph believed that because parties to a law suit rely upon the judgments of a state court, the jurisdiction of the state court should be retained. The proposed clause was intended to "debar the district court from interfering with the judgments at law in the state courts." As a direct result of Randolph's suggestions, as well as Justice Jay's complaint that circuit riding duties were too burdensome, the Act of March 2, 1793 was passed which contained section 5, the prohibition against staying state court proceedings.

One author suggests that section 5 "was a significant illustration of the strong apprehension felt by early Congresses at the danger of encroachment by federal courts on state jurisdiction." This apprehension was probably spawned by preceding decades of English oppression. The colonists feared a strong central government that had the possibility of becoming a tyrannical oligarchy or dictatorship. This view is supported by the reserved powers clause of the Constitution which delegates certain powers to the federal government while reserving all others to the states.

A more probable reason for the promulgation of the Act of 1793 was the prevailing prejudice against equity jurisdiction. In Toucey v. New York Life Ins. Co., the Court indicated that:

The Journal of William Maclay (1927 ed.), chronicling the proceedings of the Senate while he was one of its members (1789-1791), contains abundant evidence of a widespread hostility to chancery practice . . . . Moreover, Senator Ellsworth . . . the principal draftsman of both the 1789 and 1793 Judiciary Acts, often indicated a dislike for equity jurisdiction.

This prevailing fear of equity was apparently derived from our English ancestry, as evidenced by the debates between Coke and Ellesmere. Yet, if this distrust for equity was one of the primary reasons for the passage of the Act, such reasoning would seem questionable today.

Regardless of the various factors that gave rise to the enactment of

32. Id. at 26.
33. Id. at 34.
34. Id., No. 32, at 51.
36. U.S. Const. amend. X.
37. 314 U.S. 118 (1941).
section 5, the purpose and direction underlying the provision seems clear from its terms—state court proceedings should not be interrupted by federal injunctions. 40

Section 5 was revised as section 265 of the Judicial Code. 41 Although the only expressly mentioned exception to the statutory bar of section 265 was “proceedings in bankruptcy,” the Court in Toucey noted that certain congressional withdrawals from this sweeping prohibition resulted in four other exceptions: 1) removal of actions; 42 2) limitation of shipowner’s liability; 43 3) the Interpleader Act of 1926; 44 and 4) the Frazier-Lemke Farm Mortgage Act. 45 Judicial interpretation added two more exceptions. First, that the court originally acquiring jurisdiction shall proceed without interference from a court of the other jurisdiction. 46 Secondly, that a federal court may enjoin state court proceedings seeking to interfere with property in the custody of the federal court. 47

Section 265 was revised by Congress in 1948. 48 It is apparent that by enacting section 2283 Congress intended to further broaden the number of cases in which a federal court could enjoin state court proceedings. The earlier act merely mentioned bankruptcy as an exception, whereas

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43. Id. at 133.
44. Id. at 133-34.
45. Id. at 134.
46. Id. at 135.
47. Id. Two other groups of cases constitute an exception to section 265. First, an exception has been recognized allowing a federal court to enjoin litigants from enforcing judgments fraudulently obtained in the state courts. Secondly, an exception has been found in the so-called “relitigation” cases. Id. at 136-37. See also note 49 infra.

After the Toucey decision and before the 1948 revision, an exception to section 265 had been found in at least two instances where a grant of “exclusive” jurisdiction had been given to a federal court. See H. Hart & H. Wechsler, The Federal Courts and the Federal System 1076 (1953) (exclusive jurisdiction provisions of the Emergency Price Control Act of 1942 and the exclusive jurisdiction of courts of appeal in review of NLRB orders).

48. Injunctions; Three-Judge Courts Act, 28 U.S.C. § 2283 (1965). An apparent reason for this revision was that the statute did “not command the respect of the [federal] courts,” for numerous exceptions were carved into its statutory ban. Taylor & Willis, The Power of Federal Courts to Enjoin Proceedings in State Courts, 42 Yale L.J. 1169, 1194 (1933). One commentator suggests that it would have made no difference in practice if the statute had been repealed “since the judicial principle of comity between the federal and state courts would have the same limited and flexible effect as was found with the statutory restriction.” Note, The Dombrowski Remedy—Federal Injunctions Against State Court Proceedings Violative of Constitutional Rights, 21 Rutgers L. Rev. 92, 97-98 (1966) (emphasis added).
section 2283 states one broad exception classified into three general categories.49

It can readily be inferred that this authorization allows injunction of state court proceedings since the Revisor’s Note to section 2283 states that “an exception as to Acts of Congress relating to bankruptcy was omitted and the general exceptions substituted to cover all exceptions.”50

However, for the purposes of the present note and for a consideration of whether the Civil Rights Act is an “expressly authorized” exception to the anti-injunction statute, only the third category of exceptions is relevant. This category provides for injunctions “expressly authorized by Act of Congress.”51

The first question that arises is whether this language was intended to include only those statutes expressly granting an injunctive power or

49. The first of the three general categories of exceptions provides for injunctions which are necessary “in aid of” the jurisdiction of the federal court. This phrase was added to clarify the recognized power of the federal courts to stay proceedings in state cases removed to the district courts, although the removal acts were considered to be an exception to the predecessor statute, section 265. H.R. Rep. No. 308, 80th Cong., 1st Sess. A 181-82 (1947). See also Toucey v. New York Life Ins. Co., 314 U.S. 118, 133 (1941).

This general category was also designed to encompass the Act of 1851 limiting shipowner’s liability, which gives the federal courts exclusive jurisdiction over certain cases by providing that state courts shall not proceed once the federal courts have assumed jurisdiction. It is interesting to note that this latter statute, being a subsequent statute to the Act of 1793, had been held to amount to an implied legislative amendment to it. Toucey v. New York Life Ins. Co., 314 U.S. 118, 133 (1941).

The second of the general categories provides for injunctions “to protect or effectuate” the judgments of the federal court. Prior to this exception the Supreme Court held that the federal courts were without power to enjoin the relitigation of cases and controversies fully adjudicated by such courts. The Revisor’s Note, however, makes it clear that the present language now allows a federal court to enjoin a state court’s attempt to relitigate a federal decision. H.R. Rep. No. 308, 80th Cong., 1st Sess. A 181-82 (1947).

According to one commentator, there was no explanation of what prompted Congress to make these two changes.

[B]ut the inference may be proper that, by approving the pre-Toucey law, with its loose interpretation, Congress was indicating that the statute was not to be read strictly in accord with its language. The pre-Toucey decisions had made exceptions where considerations of equity and good judicial administration required, and Congress may have been approving this approach.


to encompass all of the implied legislative amendments. The Revisor's Note to section 2283 does not answer this question. One authority has, however, indicated:

The problems created by this ambiguity are . . . eliminated for the most part by the fact that the language allowing a federal court to enjoin a state proceeding "in aid of its jurisdiction" can easily be construed to allow a federal injunction to issue in any case where an implied legislative amendment would have allowed such a restraint.

Furthermore, in Amalgamated Clothing Workers of America v. Richman Bros., the Court held:

[There are] specific exemptions contained in § 2283. The first of these permits an injunction to issue "as expressly authorized by Act of Congress." Of course, no prescribed formula is required; an authorization need not expressly refer to § 2283.

Thus, through subsequent judicial opinions, the new language has been interpreted not only to embrace statutes expressly granting injunctive power, but also to encompass implied legislative amendments.

Secondly, an act of Congress is "expressly authorized" if the act contains an express grant of power to enjoin state court actions. Such a grant is found in the Interpleader Act, which, in certain cases, allows a federal district court to enter an "order restraining . . . any proceeding in any state or United States court . . . ."

Thirdly, "a federal statute which enables a federal court to stay any court proceeding also seems to constitute adequate express authorization to come within this exception to § 2283." This position is exemplified by the Bankruptcy Act which provides that "a suit which is founded upon a claim from which a discharge would be a release . . . shall be stayed until an adjudication or the dismissal . . . of the petition." It must be
noted, however, that although the 1948 Revisor's Note mentions the bankruptcy exception, that exception is not "expressly authorized" by the Bankruptcy Act unless an unqualified power to stay pending proceedings against a bankrupt refers specifically to state court proceedings.

Finally, judicial interpretation of section 2283 indicates that the Act is essentially a statutory adoption of the judicial abstention doctrine and that its demand is directed to the discretion of the federal court. This view points out that in spite of its absolute language, section 2283 does not prevent a federal court from enjoining state court proceedings where special circumstances justify such relief.

It is not clear, however, whether the Civil Rights Act, which provides for "an action at law, suit in equity or other proper proceedings," is an "expressly authorized" exception to the anti-injunction statute. The precise question is whether an injunction against state court action is "expressly authorized" when a federal statute grants general equitable or injunctive relief.

The Civil Rights Act does not refer to section 2283, nor does it seem that certain of the aforementioned requirements are met under a literal interpretation of section 1983's general grant of equity jurisdiction. These requirements, however, seem to be clearly satisfied by the congressional debates on the Civil Rights Act.

*Legislative History of 42 U.S.C. § 1983*

Section 1983 is derived from section 1 of the 1871 "Act to Enforce the Fourteenth Amendment," commonly referred to as the Ku Klux Klan or Civil Rights Act. Thus, it should be construed in light of the

the Frazer-Lemke Farm Mortgage Act is applicable it provides that a federal court shall "stay all judicial or official proceedings in any court." Provisions for the Relief of Debtors Act, 11 U.S.C. § 203(s)2 (1958). Accordingly, it should be read as containing express authority to enjoin state court actions. Note, supra note 50, at 738.

63. H.R. Rep. No. 308, supra note 49. Thus, to amount to an "expressly authorized" exception to section 2283 the authorizing statute need not refer to section 2283, and must either grant an express power to enjoin state court actions, or enable the federal court to stay any proceedings. Finally, "expressly authorized" exceptions have been found where special circumstances justify injunctive relief. See Landry v. Daley, 288 F. Supp. 200, 223 (N.D. Ill. 1968).


68. See note 63 supra and accompanying text.

Civil War amendments and other statutory protections passed by Congress during the Reconstruction Period.

One court, in reviewing the historical posture of the Civil Rights Act, characterized the legislation of the Reconstruction Period as "designed not only to secure the full rights of citizenship for all men, but also to alter the balance of power between state and federal authorities which had existed from the beginning of our federal system." The effect of this legislation on the balance of power was evident. For the first time, the federal government was vested with the major responsibility of securing the rights of person and property to every citizen of the United States. The Thirteenth, Fourteenth and Fifteenth Amendments not only placed clear prohibitions on the states, but also afforded Congress the affirmative power to enforce these prohibitions. "The Civil War Amendments, therefore, reflect a constitutional revolution in the nature of American federalism."

This "constitutional revolution" emphasized the overwhelming concern of Reconstruction Congresses for the newly won rights of the Negro. These Congresses sought to avoid nullification of those rights by altering the balance of power between the state and federal governments. The Civil Rights Act therefore represents not only the importance of protecting federal rights from infringement by the states, but also the desire to place the national government between the state and its citizens.

The impetus for an act to enforce the provisions of the Fourteenth Amendment came from a letter written by President Grant and delivered to Congress on March 23, 1871. Grant spoke of conditions existing in the states which rendered both life and property insecure. Grant considered these conditions so intolerable that he suggested Congress give them immediate and primary consideration. The eight hundred pages of debates

71. Id. One author, commenting on the purposes of the Fourteenth Amendment, stated:

The statutory plan which the Fourteenth Amendment was to place beyond all constitutional doubt and the substantive provisions of which it was to incorporate were intended "to protect every individual in the full enjoyment of the rights of person and property." The statutory plan did supply the means of vindicating those rights through the instrumentalities of the federal government. It did intrude the federal government between the state and its inhabitants. It did constitute the federal government the protector of the civil rights, that is, the natural rights, of the individual. It did interfere with the states' right to determine disputes over property, contracts, and crimes. It did "revolutionize the laws of the states everywhere." It did overturn the pre-existing division of powers between the state and the general government.

J. TEN BROEK, EQUAL UNDER LAW 202-03 (1965) (emphasis added).
73. Cong. Globe, 42d Cong., 1st Sess. 244 (1871).
surrounding the Act would indicate an equal congressional concern for the protection of basic constitutional rights in the states.

The President's most interesting statement was "that the power to correct these evils [was] beyond the control of state authorities . . ."74 Thus, one of the primary purposes of this legislation was to afford a federal right in federal courts. The Court in Monroe v. Pape75 noted:

[B]y reason of prejudice, passion, neglect, intolerance, or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by state agencies.76

The concern of the President was that former slaves and sympathetic whites were the objects of hatred and persecution. Both southern Democrats and many northerners sought to revive the servitude of former decades. Freedom had been declared, citizenship attained and sufferage established; implementation of these rights, however, was yet to be achieved. The dismal situation was described by Congressman Coburn of Indiana as:

[t]he man whose confederate flag has fallen, whose southern republic has vanished, whose lost cause has become a dream, now strives, in the Union, under a mask, in the dark, in secret, oath-bound . . . to rob him of political power who has recently stepped out from the burden of his chains and taken up the rights and privileges of citizenship, in the great, free, equal, constitutional Government of earth.77

The primary organization directing its hostility to citizens of the United States was the Ku Klux Klan or White Brotherhood.78 The debates constantly refer to this organization and its outrages, lawlessness and violence.79 The conclusions of the debates were that the Klan existed and that its ends were achieved by whatever means necessary to silence its opponents. The Klan members were protected against conviction and punishment by disguise and conspiracy, and as a result, in the majority of states (both northern and southern) not one of its members had ever been punished.80

74. Id. See also Landry v. Daley. 288 F. Supp. 200, 223 (N.D. Ill. 1968).
76. Id. at 180.
77. CONG. GLOBE, supra note 73, at 456.
78. See notes 80 and 83 infra.
79. Id.
80. CONG. GLOBE, supra note 73, at 456.
The purposes of the Klan are best summarized by its oath of allegiance.\textsuperscript{81} The members swore never to advocate the elevation of the Negro to a political equality with whites. Furthermore, the oath required members to assist one another in time of danger, such assistance to be rendered "in any manner the camp may direct," including murder, terrorism and perjury.\textsuperscript{82} Thus, Congress was dealing with an organization designed to destroy inalienable rights guaranteed by the Constitution of the United States, an organization completely evasive of state regulation. Moreover, in those states where prosecution was attempted, few convictions were ever attained. Judges, sheriffs, jurors and witnesses were often members of the Klan or influenced by either fear of that organization or unpopular sentiment.\textsuperscript{83}

Senator Morton of Indiana expressed the need for federal interference when he asked:

What protection can a [state] court afford against the crimes of such men, when their fellows are required to appear as

\begin{enumerate}
\item Id. at app. 166.
\item Id.
\item Id. at app. 252. The debates provide ample evidence of Klan outrages in North Carolina. The findings conclusively established that the Klan protected its members against conviction and punishment by disguises, secrecy or perjury. Most alarming, however, was the conclusion of the committee "that of all the offenders in this order, which has established a reign of terrorism and bloodshed throughout the state, not one has yet been convicted." Examples of crimes committed for which neither conviction nor punishment was ever attained include murders, scourgings, whippings and shootings. \textit{Id.} at 437-38.

It would appear that the act was intended to cover the actions of judges, prosecutors and other official state conduct. Representative Arthur stated that under the provisions of the act "every judge in the state court and every other official thereof, great or small, will enter upon and pursue the call of official duty with the sword of Damocles suspended over him by a silken thread . . . ." \textit{Id.} at 366. Although Mr. Arthur opposed the act for these reasons, the intent to interfere with state court machinery and the balance of power seems manifestly evident.

In this respect, a recent discussion concluded:

\textquote{In view of the considerations that motivated the Radicals—the revolution in the concepts of federalism, the concern for protecting all constitutional rights from any infringement at the hands of the states, and the distrust of the state agencies, including the courts, as protectors of these rights—it seems entirely proper to conclude that [the Forty-Second Congress] would have permitted federal courts to enjoin state court proceedings which threatened depriva-


Finally, the debates are replete with ample evidence that numerous judges were members of, threatened by, or sympathetic with the Klan. \textit{Cong. GLOBE, supra} note 73, at app. 165, 252 and 297. For documented incidents of recent discriminatory law enforcement in the states and of the need for federal attention see \textit{U.S. COMM'N ON CIVIL RIGHTS, LAW ENFORCEMENT—A REPORT ON EQUAL PROTECTION IN THE SOUTH} (1965).

\textquote{See also Note, The Dombrowski Remedy—Federal Injunctions Against State Court Proceedings Violative of Constitutional Rights, 21 \textit{Rutgers L. Rev.} 92, 125-26 (1966).}\textsuperscript{84} \textit{Cong. GLOBE, supra} note 73, at 252.

\textsuperscript{81} \textit{Id.}
\textsuperscript{82} \textit{Id.}
\textsuperscript{83} \textit{Id.} at app. 252.
witnesses and commit perjury in their defense or to procure themselves to be thrust upon juries and there to acquit, no matter what the evidence may be; when the intimidation of officers is a part of their policy, upon sheriffs, and upon every officer connected with the administration of justice.84

Senator Morton concluded that such an organization struck at the very existence of society, and that it was the duty of all men to exterminate the "foes of mankind."85 Federal interference thus became a practical necessity to enforce the provisions of the Fourteenth Amendment.

That the Klan and other extremist organizations exist today is without doubt. It appears that under circumstances such as these, judicial abstention was deemed inappropriate in Dombrowski. To say that section 2283, the statutory counterpart of judicial abstention, bars the federal court from enjoining state proceedings violative of the Civil Rights Act would seem incompatible with the natural expansion of Dombrowski. In addition, the debates clearly indicate that the intention of Congress was to alter the balance of power under the authority of section 1983 because the states had failed to vindicate the inherent rights of man.

Although much of the debates on section 1983 was directed at the Klan, the Act itself refers to the denial of rights by "every person."86 Senator Morton often referred to the extremely large class of individuals who opposed the constitutional amendments, abolition of slavery and the enfranchisement of the Negroes.87 Furthermore, the members of Congress recognized the possibility that other individuals or groups, such as the Democratic Party,88 could deny fundamental rights to citizens of the United States. Thus, the liability under section 1983 applied not only to Klan members and the Democratic Party, but also to every person who denies another of his constitutional rights.89

Moreover, since Congress has only the power to legislate against "state action"90 the interpretation of "every person" should include the conduct of all state officials. Yet, if section 2283 is deemed to bar federal injunctive relief, then it must be concluded that by the enactment of

85. Id.
88. Id.
89. 42 U.S.C. § 1983 (1964). Congressman Shellabarger, reporting on the Act, stated:
    This section of this bill . . . not only provides a civil remedy for persons whose former condition may have been that of slaves, but also to all people where, under color of state law, they or any of them may be deprived of rights . . . .
Cong. Globe, supra note 73, at app. 68.
90. U.S. Const. amend. XIV, § 1.
section 1983, Congress intended to protect citizens of the United States against malicious and unfounded acts in violation of fundamental constitutional rights, provided those acts are committed by state officials other than prosecutors, judges and juries. Such a result would seem contrary to the language of section 1983, the legislative debates on the statute and the rationale of Dombrowski, which indicates:

[Section] 1983 is designed to protect individuals and groups from being officially harassed—whether by prosecution, or any other injurious action—for improper reasons unrelated to any valid state purpose or without probable cause in violation of basic personal constitutional rights. 91

The foregoing situations, especially those instances of discriminatory action by state officials, 92 indicate the problems that section 1983 was intended to remedy by its provision for an action “at law” or “suit in equity.” Courts have subsequently held, however, that judges are not liable in damages for suits against them under section 1983. 93 Thus, the only possible imposition of liability against official conduct violative of section 1983 is the issuance of an injunction under the provision for “suits in equity.” It must have been intended that where actions at law were unavailable or improper, the aggrieved party would be entitled to maintain a suit in equity; otherwise the litigant would be without a remedy, a situation which was definitely not intended by the Forty-Second Congress. Accordingly, for that provision to be meaningful in the context of both the debates and the language of the Act, it would seem that it must provide for injunctions to stay proceedings in the state courts when official conduct is violative of section 1983.

The use of legislative history for the purpose of determining the scope of a statute has been supported by Monroe v. Pape 94 and Landry v.

91. Brewer, supra note 3, at 100. A recent discussion over this controversy concluded:
   [If section 1983], a product of Reconstruction, was intended to give remedy against all deprivations of rights by state action, it must have been intended to operate as an exception to the limitation of [section 2283], a product of the early days of the republic when the concern for state sovereignty was held in an entirely different regard.


93. See Smith v. Dougherty, 286 F.2d 777 (7th Cir. 1961); Stift v. Lynch, 267 F.2d 237 (7th Cir. 1959).

Daley. In this context, the congressional debates on section 1983 indicate numerous purposes underlying the statute. First, the statute was intended to override certain types of state laws endangering the rights or privileges of citizens of the United States. Secondly, it provided a remedy where state law was inadequate. Thirdly, it created a federal remedy where the state remedy, though adequate in theory, was not available in practice. Finally, it reflected a constitutional revolution in the nature of American federalism by altering the balance of power between state and federal authorities.

These considerations must be viewed in light of the Dombrowski decision. In that case, no proceedings were pending within the meaning of section 2283. It would seem, however, that the rationale of Dombrowski should apply with equal force to situations in which proceedings are pending in the state courts where the only bar to federal relief is section 2283. Where such proceedings are pending, the constitutional rights might eventually be vindicated through ultimate review in the state and federal courts respectively. But, Dombrowski specifically avoids making the vindication of fundamental rights await the outcome of protracted litigation.

It is not enough to know that one has a right to service in a particular restaurant if, to vindicate that right, one must subject oneself to years of criminal litigation and its inherently vexatious incidents. Thus, the two situations, threatened versus pending proceedings, are not really distinguishable. Therefore, it would appear that the only posi-

97. Id.
98. Id.
100. 380 U.S. 479, 487 (1965). Such protracted delays are exemplified by Harrison v. NAACP, 360 U.S. 167 (1959) (judgment reached seven years after original suit filed) and Douglas v. City of Jeannette, 319 U.S. 157 (1943) (judgment reached after fourteen years).
tion compatible with the debates, the wording of section 1983 and Dombrowski is that section 1983 is an "expressly authorized" exception to section 2283. Such a conclusion would seem to be a necessary concomitant of the need to effectively vindicate federally created rights.

Judicial Analysis

In Smith v. Village of Lansing,103 the plaintiff brought an action under the Civil Rights Act to enjoin the enforcement of a state court judgment rendered against him in a condemnation proceeding by the Village of Lansing. The plaintiff argued fully on the merits at the trial level and appealed to the highest courts of Illinois without success. He did not seek a Supreme Court review, but rather petitioned to the Seventh Circuit Court of Appeals. The Court held:

[Section] 2283 prohibits United States courts from issuing injunctions 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 [and that] there is nothing in the Civil Rights Act . . . that suspends or modifies this statute.104

The decision of the court has been criticized105 as reaching further than necessary, since the complaint could have been dismissed upon either one of two related grounds: 1) that Smith had waived his right to federal court review of the state action when he failed to seek Supreme Court review; or 2) that the Civil Rights Act was not designed to provide relief against the enforcement of state court judgments fully appealed in the state courts, since direct appeal to the Supreme Court provides adequate relief for persons so situated.106 Furthermore, it is questionable whether state proceedings were pending within the meaning of section 2283, since the case has been fully adjudicated on the merits in the state courts. It would appear that there was no need to decide the question of the applicability of section 2283.

In Sexton v. Berry,107 the plaintiff brought an action in a United States district court under the Civil Rights Act to enjoin proceedings in an Ohio state court. The district court dismissed the case. Subsequently,

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103. 241 F.2d 856 (7th Cir. 1957).
104. Id. at 859.
105. Brewer, supra note 3, at 102-03.
106. Id. at 103.
107. 233 F.2d 220 (6th Cir. 1956).
the Supreme Court of Ohio rendered a decision on the merits adverse to the plaintiff. The plaintiff then appealed the district court ruling. The Sixth Circuit Court of Appeals held without elaboration that the Civil Rights Act "does not create an exception to the general principle that a decision of the state court may not be reviewed by bill in equity in a federal court."108

As in the Smith case, it appears that the court did not need to reach the question of the applicability of section 2283. First, the Sixth Circuit could have dismissed the plaintiff's appeal on the ground that at the time of the hearing by that court, certiorari to the Supreme Court of the United States had been denied.109 The plaintiff had fully exhausted his remedies. Secondly, it is difficult to see where any state proceedings were pending within the meaning of section 2283, for the case had been fully adjudicated in the state courts prior to the circuit court hearing.

In Baines v. City of Danville,110 Negro demonstrators sought to enjoin state prosecutions charging them with violating a state court injunction and local anti-picketing and parade ordinances. The district court dismissed the case and the Fourth Circuit Court of Appeals affirmed on the grounds that section 1983 was not an "expressly authorized" exception to section 2283.111

To reach this conclusion, the majority opinion distinguished between the nature of the recognized exceptions to section 2283 and the general grant of equity jurisdiction provided by section 1983.112 The court reasoned that the recognized exceptions to section 2283 rest primarily on statutory provisions which are "thoroughly incompatible with a literal application of the anti-injunction statute."113 The court developed the "incompatibility standard" by reasoning that each of these exceptions contemplated the removal or foreclosure of proceedings in state tribunals once the action was instituted in the federal court. The court concluded that the general grant of equity jurisdiction created by section 1983 "is in no sense antipathetic to statutory or judicially recognized limitations upon its exercise."114

The Fourth Circuit's reasoning is questionable in several respects. First, the authorizing statute need not specifically refer to section 2283

108. Id. at 226.
110. 337 F.2d 579 (4th Cir. 1964).
111. Id. at 590-91.
112. Id. at 587-90.
113. Id. at 589.
114. Id.
for it to be considered an exception to the anti-injunction statute.\textsuperscript{115} Implied legislative amendments are one means by which judicial authority has found "expressly authorized" exceptions to section 2283.\textsuperscript{116} Secondly, the "incompatibility" standard mentioned by the majority opinion is not the only basis upon which exceptions to section 2283 may be explained. The recognized exceptions are meaningful only in the context of the situations that gave rise to them. In this regard, the court in \textit{Landry v. Daley}\textsuperscript{117} held that section 1983 was an "expressly authorized" exception to section 2283, and stated:

Each case has involved a specific and clearly delineated federal remedy available to private citizens in the federal courts. Under certain circumstances this remedy would be meaningless unless the federal court were to enjoin certain proceedings in state courts because the state proceedings, if not stayed, could undercut or destroy the federal remedy. An injunction to stay the state courts may be necessary if an effective remedy is to be preserved. In such a situation, an express exception to the anti-injunction statute has been found to exist because it is a "necessary concomitant of the need to vindicate federally created rights."\textsuperscript{118}

Thirdly, although the opinion probed deeply into the legislative history of section 2283, its analysis of the Civil Rights Act seems incomplete. When both statutes are viewed in their historical setting, section 1983 would seem to have been intended as an exception to the general limitation of section 2283.\textsuperscript{119} Finally, to the extent that the \textit{Baines} court heavily relied upon decisions prior to \textit{Dombrowski}, its reasoning with respect to judicial and statutory abstention is questionable. The heart of \textit{Dombrowski} and its natural expansion would avoid making the vindication of constitutional rights await the outcome of protracted litigation inherent with abstention.\textsuperscript{120}

\textsuperscript{117} 288 F. Supp. 200 (N.D. Ill. 1968).
\textsuperscript{120} 380 U.S. 479, 487 (1965). \textit{See also} the opinion in \textit{Baines} delivered by Chief Judge Sobeloff and Circuit Judge Bell (concurring in part and dissenting in part) where it was stated:
Cooper v. Hutchinson\textsuperscript{121} was the first federal decision to hold that the Civil Rights Act is an "expressly authorized" exception to the anti-injunction statute.\textsuperscript{122} In this case, three outside lawyers retained by the plaintiff in his second trial for murder were forbidden by an order of the state court judge to participate in the trial. No apparent reason was given for this order.\textsuperscript{123} An action was commenced in the federal district court for an injunction under what is now section 1983. The complaint alleged not only a violation of the plaintiff's constitutional rights, but also a violation of the Civil Rights Act. In addition, the complaint claimed that the state court order was "summary, arbitrary, capricious, and unreasonable" and therefore in violation of constitutional rights under the Fifth, Sixth and Fourteenth Amendments.\textsuperscript{124} The district court dismissed the complaint.\textsuperscript{125}

The Third Circuit Court of Appeals held that the "right to assert a claim under § 1 of the Civil Rights Act of 1871 is not dependent upon the prior pursuit of relief under state law,"\textsuperscript{126} and that "the provision in the Judicial Code of forbidding the use of the injunction against state court action has a stated exception when a federal statute allows it, as it does here."\textsuperscript{127} Thus, a majority of the court seems to have held that the provision for "suits in equity" in the Civil Rights Act was intended to include judicial officials who threatened to violate rights under color of state law.\textsuperscript{128} The court, however, did not immediately issue the injunction. It reasoned that a federal court's discretion requires the withholding of an injunction until it becomes apparent that state procedure cannot avert irreparable harm. The purposes of judicial abstention and the Civil Rights Act would best be served by instructing the district court to retain jurisdiction of the case and refrain from issuing the injunction until the state courts had made a final ruling on the plaintiff's right to counsel. The injunction would issue if the trial were ordered without the

The precious First Amendment rights of our citizens are beyond pecuniary evaluation. Since it is obvious that in the context of this case no other civil remedy could possibly accomplish the Congressional purpose to afford the Negro citizen equal rights, there is every reason to hold that the equitable remedy expressly authorized in 42 U.S.C.A. § 1983 is within the exception set forth in 28 U.S.C.A. § 2283.

\textsuperscript{121} 184 F.2d 119 (3d Cir. 1950).
\textsuperscript{122} Brewer, \textit{supra} note 3, at 100-01.
\textsuperscript{123} 184 F.2d 119, 121 (3d Cir. 1950).
\textsuperscript{124} 88 F. Supp. 774 (N.J. 1950).
\textsuperscript{125} \textit{Id.} at 777.
\textsuperscript{126} Cooper v. Hutchinson, 184 F.2d 119, 124 (3d Cir. 1950).
\textsuperscript{127} \textit{Id.}
presence of outside counsel.\textsuperscript{129}

The \textit{Cooper} case has been criticized because after holding that section 1983's provision for "suits in equity" created express authority to enjoin state proceedings, "oddly enough . . . it went on to deny injunctive relief . . . ."\textsuperscript{130} Such a holding, however, is in no way "odd," even though section 1983 may be an "expressly authorized" exception to section 2283. Usually the plaintiff, under section 1983, seeks both a declaration that the state statute is too vague or broad, or that the prosecution is proceeding in bad faith, and an injunction against further prosecution. The injunction could be withheld upon the assumption that the state court would acquiesce in the federal declaration.\textsuperscript{131} The injunction would issue, however, if the state continued its proceedings in violation of the federal declaration. Such a conclusion would thereby allow the aggrieved party an opportunity to immediately vindicate his rights in the federal court. This appears to have been the rationale of \textit{Cooper}. Furthermore, although not applicable to the \textit{Cooper} case, the injunction should be denied where the plaintiff fails to prove his allegations of irreparable injury. In this instance there would be no violation of section 1983 and the federal forum would therefore be justified in allowing the state prosecution to continue.

In \textit{Morrison v. Davis},\textsuperscript{132} Negro citizens brought an action against city officials under section 1983. The plaintiffs sought a declaratory judgment and prayed for injunctive relief from state prosecutions on the theory that local statutes requiring the segregation of races on public transportation were unconstitutional. The Fifth Circuit Court of Appeals found \textit{Browder v. Gayle}\textsuperscript{133} controlling and held that a federal court, under section 1983, may enjoin "the application or enforcement of a state

\textsuperscript{129} 184 F.2d 119, 124-25 (3d Cir. 1950). \textit{See also} Brewer, \textit{supra} note 3, at 102.

\textsuperscript{130} Baines v. City of Danville, 337 F.2d 579, 590 (4th Cir. 1964).

\textsuperscript{131} It seems clear that the federal court \textit{must} decide the declaratory request irrespective of its conclusion regarding the issuance of injunctive relief. In \textit{Zwickler v. Koota}, 389 U.S. 241 (1967), the Supreme Court indicated that:

[A] request for a declaratory judgment that a state statute is overbroad on its face must be considered independently of any request for injunctive relief against the enforcement of that statute. \textit{We hold} that a federal district court has the duty to decide the appropriateness and the merits of the declaratory relief irrespective of its conclusion as to the propriety of the issuance of the injunction.

\textit{Id.} at 254 (emphasis added). Thus, although the district court may withhold the injunctive relief, it must decide the declaratory request.

\textsuperscript{132} 252 F.2d 102 (5th Cir.), \textit{cert. denied}, 356 U.S. 968 (1958).

statute, the violation of which carries criminal sanctions.”

The court stated:

This is not such a case as requires the withholding of federal court action for reason of comity, since for the protection of civil rights of the kind asserted Congress has created a separate and distinct federal cause of action, 42 U.S.C. § 1983. Whatever may be the rule as to other threatened prosecutions, the Supreme Court in a case presenting an identical factual issue affirmed the judgment of the trial court in the Browder case in which the same contention was advanced. To the extent that this is inconsistent with Douglas v. City of Jeannette we must consider the earlier case modified.

The Fifth Circuit’s opinion in Morrison has also been criticized. First, in Morrison and Browder there were no pending proceedings within the meaning of section 2283. Secondly, as far as Morrison holds that section 2283 does not bar a federal court from enjoining the enforcement of state statutes violative of the Constitution, the opinion seems to have again prematurely considered the question. The probable result of defiance of the statute and ordinance was not arrest and prosecution in state courts, but rather deprivation of bus service.

In Ware v. Nichols, voter registration officials charged with the offense of criminal syndicalism sought a declaration that the Mississippi Criminal Syndicalism Act was unconstitutional. The complaint also sought injunctive relief under section 1983 against enforcement of the Act. A three-judge district court declared the Act unconstitutional, but stated that it was unnecessary to decide whether section 1983 was an exception to section 2283. The court assumed that the state officials would withhold any action to enforce the Act until a final judgment was rendered.

Circuit Judge Wisdom, however, in a special concurrence, stated that “section 1983 . . . is an express exception to 28 U.S.C. 2283.” He

134. 252 F.2d 102, 103 (5th Cir.), cert. denied, 356 U.S. 968 (1958) (emphasis added). See also Dilworth v. Riner, 343 F.2d 226 (5th Cir. 1965).
135. 252 F.2d 102, 103 (5th Cir.), cert. denied, 356 U.S. 968 (1958).
137. 252 F.2d 102, 103 (5th Cir.), cert. denied, 356 U.S. 968 (1958).
139. Miss. Code Ann. §§ 2066.5-01 to 5-06 (1964 Supp.).
140. 266 F. Supp. 564, 569 (N.D. Miss. 1967). See also Baker v. Binder, 274 F. Supp. 658 (W.D. Ky. 1967). Here, as in Ware, the court declared the laws unconstitutional, but refused to issue an injunction. However, unlike Ware, the court expressly stated that the statutes relied upon by the plaintiffs, including section 1983, were exceptions to section 2283. Id. at 664.
141. 266 F. Supp. 564, 569 (N.D. Miss. 1967).
then quoted from his opinion in *Cox v. Louisiana*.\(^{142}\)

Here, the state, through the Parish District Attorney, under the guise of protecting the administration of justice is challenging the nation on a national policy expressed in the Constitution, carved out by Congress, and validated by the Supreme Court.\(^{143}\)

Judge Wisdom further stated that the general principle basic to federalism is that federal courts should usually refrain from interfering with local law enforcement in the state courts. He concluded, however, that “the sharp edge of the Supremacy Clause cuts across all such generalizations.”\(^{144}\) Judge Wisdom reasoned that when local laws are used to harass and punish citizens for the exercise of their constitutional and federally protected statutory rights, the general principle of non-interference must yield, for “the federal system is imperiled.”\(^{145}\) Thus, Judge Wisdom’s opinion in *Ware* is in accord with the Fifth Circuit decision in *Morrison* that section 2283 does not bar a federal court from enjoining the *enforcement* of state statutes violative of the Constitution.\(^{146}\)

In *Landry v. Daley*,\(^{147}\) the plaintiff was active in fostering civil rights for Negroes through various protest activities. Plaintiff brought an action in the federal district court charging that certain local statutes and ordinances were unconstitutionally broad and vague regulations of speech and assembly and that the statutes and ordinances were being unconstitutionally applied for the purpose of discouraging the plaintiff’s civil rights activities.\(^{148}\) Plaintiff invoked the Civil Rights Act seeking both declaratory and injunctive relief.

The district court found for the plaintiff and held that section 1983 was an express exception to section 2283.\(^{149}\) After a detailed examination of the history of both the Civil Rights Act and the Anti-Injunction statute, the court concluded:

[When] the Anti-Injunction statute and the Civil Rights Act are viewed in their historical posture, their relationship becomes

\(^{142}\) 348 F.2d 750 (5th Cir. 1965).
\(^{143}\) 266 F. Supp. 564, 569 (N.D. Miss. 1967). citing *Cox v. Louisiana*, 348 F.2d 750, 752 (5th Cir. 1965).
\(^{144}\) 266 F. Supp. 564, 570 (N.D. Miss. 1967). citing *Cox v. Louisiana*, 348 F.2d 750, 752 (5th Cir. 1965).
\(^{145}\) Id.
\(^{148}\) Id. at 203.
\(^{149}\) Id. at 222.
clearer. Section 1983, a product of a later Congress and an expression of an overwhelming Congressional concern for the protection of federal rights from deprivation by state action would seem to have been intended to be an exception to the general limitation of Section 2283.150

After refuting the logic of the Baines decision,151 the court reasoned that the considerations which required federal equitable relief in Dombrowski,152 "support the conclusion that section 2283 is also inapplicable under such circumstances."153 Finally, the court recognized that if section 2283 bars injunctive relief against all pending prosecutions, the vindication of fundamental constitutional rights would turn upon a hectic race.154 One commentator replied:

In the normal course of events the prosecutor does not trumpet his plans in advance and the aggrieved persons will find themselves as defendants in a state prosecution before federal injunctive relief can be sought. There thus appears a prospect of a race between the prosecutor and his intended victims to the state and federal courts respectively, with the victor getting all the spoils. Could the court, in creating the remedy in Dombrowski, have intended to remedy a federal protection of federal rights to turn on the outcome of such a race?155

Such a restriction would make the scope of the section 1983 remedy a virtual fortuity.

Where such a result can be avoided by respectable analysis, the common sense solution is clear. A strict interpretation of section 2283 appears to be incompatible with the expansion of Dombrowski....156

In considering this point, the Landry court stated:

150. Id. at 223.
151. Id. at 222-23. See also notes 114-18 supra and accompanying text for criticism of the Baines holding.
152. See generally notes 10-19 supra and accompanying text.
154. Id.
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The only reasonable and rational conclusion, therefore, is that section 2283 is inapplicable where it is proven that a state statute is unconstitutional as too vague or broad or is being enforced in bad faith for the purpose of discouraging protected activities.\textsuperscript{157}

To the extent that \textit{Landry} was contrary to prior decisions of the Seventh Circuit, the value of the opinion as "precedent" may be questionable.\textsuperscript{158} Nevertheless, the reasoning of the opinion seems sound insofar as the court logically proceeds from a historical analysis of the statutes to a convincing rebuttule of opposing case law rendered prior to the Supreme Court's opinion in \textit{Dombrowski}. In this context, \textit{Landry} arrives at the only position compatible with \textit{Dombrowski}-that section 1983 is an "expressly authorized" exception to section 2283.

CONCLUSION

Although the Supreme Court has avoided the issue of whether the Civil Rights Act is an "expressly authorized" exception to the Anti-Injunction statute, it appears evident from the recent upsurge in civil rights activities that the Court must shortly assume a position on this important question. In so doing, the Court must consider the Anti-Injunction statute and Civil Rights Act in their historical settings and the intrusion of \textit{Dombrowski} upon judicial abstention.

If the power to stay pending prosecutions is found under section 1983, it need not be a disruptive mechanism. Its availability could be sharply limited to those cases in which there is proof of irreparable injury or the probability of further unconstitutional state prosecution. Unless these contingencies exist, there would seem to be no need for federal interference.\textsuperscript{159}

\begin{itemize}
\item \textsuperscript{157} Landry v. Daley, 288 F. Supp. 200, 224 (N.D. Ill. 1968). \textit{See also} Cambist Films, Inc. v. Illinois, 292 F. Supp. 185 (N.D. Ill. 1968). In this case an action was brought under section 1983 in which the plaintiff sought injunctive relief from the seizure of a motion picture \emph{and} for a criminal prosecution based on the alleged offense of obscenity. In granting the injunctive relief, District Judge Will stated: The federal courts will normally refrain from granting equitable relief from state criminal prosecution on the basis of the doctrines of abstention or on the basis of the comity necessary for the successful functioning of our federal system of government. However, the outstanding exception to this is the area of First Amendment freedoms. The courts have recognized that the exercise of these freedoms is subject to \emph{irreparable injury} when unlawful criminal prosecution is \emph{threatened or maintained}. \textit{Id.} at 188 (emphasis added).
\item \textsuperscript{158} 288 F. Supp. 200, 225 (N.D. Ill. 1968).
\item \textsuperscript{159} This conclusion provides the same results and is consistent with the recent proposal of the American Law Institute for amending section 2283. The relevant part of this proposal states that an injunction will issue: [T]o restrain a criminal prosecution that should not be permitted to continue either because the statute or other law that is the basis of the prosecution plainly
\end{itemize}
cannot constitutionally be applied to the party seeking the injunction or because the prosecution is so plainly discriminatory as to amount to a denial of the equal protection of the laws.

ALI Stay of State Court Proceedings Stat. § 1372 (April 1968 Tent. Draft). However, should the view propounded in this note be adopted, there would seem to be no need to adopt the above subsection of the ALI proposal.