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CONFLICT OF JURISDICTION: 28 U.S.C. § 2283 AND EXCLUSIVE FEDERAL JURISDICTION

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A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. 28 U. S. C. § 2283 (1949).

The judicial power of the courts of the various states derives, principally, from the laws and constitutions of the respective states. This jurisdiction is general, and the federal Constitutional provisions relating to the judiciary do not remove from the state courts their traditional general jurisdiction. The inferior Constitutional federal courts must first be created by Congress, and the extent of their jurisdiction is determined by Congress itself, limited by the terms of Article III of the Constitution. Thus, except for the Supreme Court, every federal court acquires its jurisdiction directly from Congress, and only indirectly from the Constitution. It seems accepted that Congress, in creating inferior courts, need not exhaust its Constitutional power; therefore, that body may contract or expand the jurisdiction of the lower federal courts within the boundaries of the Constitutional grant. Within that grant, it follows, Congress may expand the jurisdiction of the inferior courts to the limit of the Constitutional grant, and, in addition, to the whole or partial exclusion of all state courts. Thus the decision as to whether particular matters should be litigated exclusively in federal courts, or concurrently with state courts, is one within the recognized power of Congress.

Congress has, in some cases, made use of its power to confer jurisdiction exclusively upon federal courts. It has, on the other

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1. Plaquemines Tropical Fruit Co. v. Henderson, 170 U.S. 511 (1898). On the other hand, state courts may not decline jurisdiction to enforce a federal right in a manner which would discriminate against that right. Testa v. Katt, 330 U.S. 386 (1947). See also, Cohens v. Virginia, 6 Wheat. 264, 399-400 (U.S. 1821); Claflin v. Houseman, 93 U.S. 130 (1876).


4. See supra notes 2, 3.


(Footnote continued on following page.)
hand, conferred upon state courts jurisdiction concurrent with that of the inferior federal courts. In other instances, Congress has merely codified (except for the $3,000 requirement) the Constitutional implication, viz., that state courts and federal courts have concurrent jurisdiction. This concurrency is manifested in two broad areas: general federal question cases and diversity and alienage cases.

Clearly, there is a broad category of rights and duties over whose determination the jurisdictions of federal and state courts are concurrent, and wherein those jurisdictions may compete. This conflict in jurisdiction will usually involve one of two general types of problems: problems involved when the proceedings in both the state and federal courts are in rem, and those problems involved when both proceedings are in personam or one is in rem and the other in personam. In determining whether the federal court or the state court can interfere with the action proceeding concurrently in the other court, principles of comity as embodied in statutes or rules of court are invoked to resolve the

(Footnote continued from preceding page.)


8. 28 U. S. C. § 1343(3). Congress' belated creation of federal question jurisdiction in the Act of March 3, 1875, 18 Stat. 470, did not withdraw from the states their jurisdictions over these cases. See Robb v. Connolly, supra note 2. The "Midnight Judges" Act of February 13, 1801, 2 Stat. 89, had created federal question jurisdiction, but it was repealed on March 8, 1802, 2 Stat. 132.

9. 28 U. S. C. § 1332. Concurrent jurisdiction in diversity cases was expressly provided for in the Act of Sept. 24, 1879, § 11, 1 Stat. 73, 78:

... [T]he circuit courts shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of five hundred dollars, and ... an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another State.

10. Penn General Casualty Co. v. Pennsylvania, 294 U. S. 189 (1935) (the court first acquiring jurisdiction of the res may maintain and exercise that jurisdiction to the exclusion of the other).

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conflict and to maintain a rapport between the two distinct systems of courts.12

With respect to the federal courts, legislation has been enacted from time to time providing for the resolution of conflicts between the jurisdictions of the federal and state courts. In general, the tendency has been for Congress to contract the power of federal courts to interfere with proceedings in state courts or with any state action, particularly the power to issue injunctions against state proceedings.13 The trend toward limiting federal court power vis-a-vis state actions can also be found in decisions of the Supreme Court.14 The most comprehensive of all limitations, however, is Section 2283 of the Judicial Code (28 U. S. C.) of 1948, to be discussed hereafter.

Federal judicial decisions involving an attempt to resolve state-federal conflicts in the area of jurisdiction of courts make it reasonably clear that, where the jurisdiction of the respective courts or systems is concurrent, statutory and judicial rules of comity dictate that, with few exceptions, federal courts should not interfere by injunction with state action or proceedings.15 Cases affording concurrent jurisdiction would ordinarily be those based on a general federal question or diversity and alienage where the

13. 28 U.S.C. § 2283 (general prohibition); 28 U.S.C. § 2282 (three-judge court to enjoin enforcement of state statute or order); 28 U.S.C. § 1341 (Johnson Act, substantially withdrawing federal jurisdiction to enjoin state rate orders); Act of Aug. 21, 1937, curtailing federal jurisdiction to enjoin imposition of state taxes).
15. Prior to the enactment of 28 U.S.C. § 2283, in 1948, the Supreme Court had held that a state proceeding could not be stayed by a federal court even though the matter had already been litigated in a federal court. Toucey v. N. Y. Life Ins. Co., 314 U.S. 118 (1941) (overruled by § 2283). Other areas in which federal courts have limited interference with state proceedings: Deal v. Missouri Pacific R. Co., 312 U.S. 43 (1941) (state criminal proceedings); Douglas v. City of Jeannette, 319 U. S. 157 (1943); Pennsylvania v. Williams, 294 U. S. 176 (1935) (liquidation of financial institutions); Thompson v. Magnolia Petroleum Corp., 309 U. S. 478 (1940) (permitting state court to decide Constitutional questions, thus making it unnecessary for federal court to do so); cf. Meredith v. City of Winter Haven, 320 U. S. 228 (1943) (holding that mere difficulty of state-law questions should not impel federal court to surrender jurisdiction).
amount in controversy is in excess of $3,000. On the other hand, federal decisions have failed to grapple adequately with the proper role of a federal court when there is state-court "usurpa-
tion" of cases or controversies which Congress has provided shall be within the exclusive jurisdiction of the federal system. Is a federal court obliged to assume the same "hands-off" attitude where exclusive federal jurisdiction is ignored by a state court as it would assume where federal and state jurisdictions are con-
current?

The Supreme Court and the Second Circuit recently have handed down decisions involving state-federal conflicts of juris-
diction. The problem posed by those decisions will be dealt with here.

**THE STATUTE—28 U.S. C. § 2283**

As part of the Act of March 2, 1793, Congress enacted the original and most comprehensive statutory restraint on the gen-
eral power of federal courts to interfere with proceedings in state courts. This Act, designed to amend the previous statute creating and establishing federal courts, granted to federal courts certain powers to issue injunctions, but contained the following brief provision:19

\[
\ldots \text{nor shall a writ of injunction be granted to stay pro-
ceedings in any court of a state} \ldots
\]

No separate reports of the debates which lead to this enactment are available, and considerable uncertainty exists as to the specific reasons for the inclusion of this restrictive provision at the time of its enactment.20 Nevertheless, the language continued as origi-

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\ldots \text{except in cases where such an injunction may be author-
ized by any law relating to proceedings in bankruptcy.}
\]

This was the only exception incorporated into the Act itself, through the revision of 1911,23 until the enactment of the 1948

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17. 1 STAT. 334, 335.
22. 14 STAT. 526.
23. 36 STAT. 1162.
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What was originally Section 265 of the Judicial Code became, after 1948, Section 2283 of the Judicial Code. The present language of the section is as follows:

Stay of State Court Proceedings—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.

In brief, Section 2283 now provides that no injunction shall be issued by a federal court staying state court proceedings unless it can be shown that such an injunction either (1) has been expressly authorized by Act of Congress, or (2) is necessary in aid of its jurisdiction, or (3) is necessary to protect or effectuate its judgment already rendered.

TWO RECENT APPLICATIONS OF § 2283

The Supreme Court and the Second Circuit have recently restricted federal-court power as that power may be exercised to interfere with state court proceedings. The cases will be discussed together.

In Amalgamated Clothing Workers v. Richman Bros.25 ("Richman") and in International Union (I.U.E.W.) v. Underwood Corporation26 ("Underwood"), an employer brought suit in a state court to obtain injunctive relief against the activities of a labor union. In each case the union brought suit in a federal district court to enjoin the employer from proceeding with its suit in the state court in so far as such state suit alleged activities of the union encompassed within the provisions of the Labor-Management Relations Act (Taft-Hartley).27 In each case, Held, Section 2283 is applicable, and, since the case fell within none of the exceptions thereto, a federal court is without power to restrain the proceeding in the state court. Each opinion took pains to assume that the activities of the union involved were within the exclusive jurisdiction of the National Labor Relations Board28 under the rule of the Garner and Weber decisions,29 and therefore beyond the jurisdiction of the state court. Judge Frank, in the Underwood

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25. 23 U. S. L. Week 4165 (No. 173, April 4, 1955) (5-3 decision).
26. 219 F. 2d 100 (2d Cir. 1955).
28. 23 U. S. L. Week at 4166; 219 F. 2d at 101.
decision, clearly expressed the dilemma posed by such decisions with respect to labor controversies:

We recognize that the result may be regarded as undesirable, if, as we have assumed, arguendo, Underwood's state-court complaint seeks an injunction against nothing but unfair labor practices which are exclusively covered by the Labor Management Relations Act. For, if the state-court does grant such an injunction, and if its order is fatally defective as exceeding the proper area of state jurisdiction but is affirmed by the highest state court, then, long before that order can be reversed by the United States Supreme Court, its practical effect may well be to break the strike by invalid means. Thus, on that assumption, by refusing to complain to the Board, the company may achieve its aim and thereby frustrate the Congressional policy embodied in the Labor Management Relations Act.

Concededly, an ultimate appeal to the Supreme Court from an affirmation of a permanent injunction by the highest court of the state will result in a holding that the state court had no jurisdiction in the first place, and that jurisdiction was exclusively within the federal system.

Without confining oneself to the problems of remedies and jurisdiction peculiar to the field of labor relations, the principal

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30. 219 F. 2d at 103. See also, Justice Frankfurter's similar language in Richman, 23 U. S. L. Week at 4167. Judge Frank may be inviting Congressional action. Justice Frankfurter, on the other hand, considers this nothing more than any "federal question" case, where Supreme Court review after state-court litigation is deemed sufficient. See notes 45-48, infra, and accompanying text.


32. See supra note 29.


Clearly, the employer will never file a complaint with the N.L.R.B. so long as he has his state-court injunction. If he did so file, the Board would be enabled to enjoin the state proceeding. Capital Service, Inc. v. N. L. R. B., 347 U. S. 501 (1954). Judge Frank, in Underwood, assumed, arguendo, that the Board could intervene in a union's federal suit, even without a complaint having been filed. 219 F. 2d at 102. Justice Frankfurter, in Richman, seems to have invited the union to confer jurisdiction upon the Board, in cases where the employer seeks state relief, under the rule of W. T. Carter & Brother, 90 N. L. R. B. 2020 (1950) (holding that it is an unfair labor practice for an employer to procure a state-court injunction against activity protected in L. M. R. A.). 23 U. S. L. Week at 4168, n. 6.

Removal: May a union, in such circumstances as these, remove the state suit to a federal court under 28 U. S. C. § 1441(a)? This was attempted by the union in Richman, but the district court remanded. Richman Bros. v. Amalgamated Clothing Workers, 114 F. Supp. 185, rehearing denied 116 F. Supp. 800 (N. D. Ohio 1953) (on the ground the district court had no jurisdiction of subject matter under L. M. R. A.). See also, Direct Transit Lines v. Starr, 219 F. 2d 699 (6th Cir. 1955). Contra: Direct Transit Lines v. Mackey, 34 LRRM 2572 (W. D. Mich. 1954); Overton v. Int'l Brotherhood, etc., 115 F. Supp. 764 (W. D. Mich. 1953) (both cases holding that 28 U. S. C. § 1337 confers jurisdiction upon the district courts over any (Footnote continued on following page.)
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difficulty with the two decisions mentioned above is the broad, practically discussionless, assumption that Section 2283 affects district-court power even where there is a complete absence of concurrent jurisdiction. Where the jurisdiction, as here, is concededly exclusive of the state courts and confined to the federal system, it may be that it was never intended that Section 2283 obliged federal courts to extend such deference to state proceedings in attempting to insure or create a pristine integrity for state judiciaries.

That Section 2283 may not be applicable at all where there is no concurrent jurisdiction was not discussed at all by Judge Frank in Underwood, and apparently was not raised. But the point was urged before the Supreme Court in the Richman case, both by the Labor Board, as amicus curiae, and by the petitioner-union. Mr. Justice Frankfurter confined his discussion of this argument as follows:

In the face of this carefully considered enactment, we cannot accept the argument of petitioner and the Board, as amicus curiae, that § 2283 does not apply whenever the moving party in the District Court alleges that the state court is "wholly without jurisdiction of the subject matter, having invaded a field preempted by Congress." No such exception had been established by judicial decision under former § 265. In any event, Congress has left no justification for its recognition now. This is not a statute conveying a broad general policy for appropriate ad hoc application. Legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions.

(Footnote continued from preceding page.)


34. 23 U. S. L. WEEK at 4166.
36. 23 U. S. L. WEEK at 4166. Justices Frankfurter, Burton, Reed, Clark, and Minton constituted the majority. Justice Harlan did not participate.
38. [Court's footnote] The statement in Bowles v. Willingham, 321 U. S. 503, 511, that "Congress thus preempted jurisdiction in favor of the Emergency Court to the exclusion of state courts. The rule express in §265 which is designed to avoid collisions between state and federal authorities . . . . thus does not come into play", must be read in the context of the scheme of the Emergency Price Control Act of 1942 (56 Stat. 23) and particularly the authority in that Act for resort by the Administrator of the Office of Price Administration to injunctive relief under the circumstances there presented. §205 (a), 56 Stat. 33. It is also to be noted that this observation was made prior to the revision of 1948.
Chief Justice Warren, on the other hand, disagreed with the majority, both on recent judicial precedent and on prior historical grounds. In dissent, he stated:\footnote{39}

In the \textit{Willingham} case,\footnote{40} a landlord had obtained a state court injunction restraining the Price Administrator from issuing certain rent orders under the Emergency Price Control Act. The Price Administrator brought an action in a federal district court to enjoin enforcement of the state court injunction. Exclusive jurisdiction to determine the validity of rent orders, the Administrator argued, was vested by Congress in the Emergency Court of Appeals. This Court upheld the Administrator's position. As one ground for its decision that § 265 of the Judicial Code—the predecessor of § 2283—was no bar to the injunction sought by the Administrator, the Court stated (321 U. S. at 511):

"Congress thus preempted jurisdiction in favor of the Emergency Court to the exclusion of state courts. The rule expressed in § 265 which is designed to avoid collisions between state and federal authorities... thus does not come into play."

Thus stood the law in 1948 when Section 265 was succeeded by the present Section 2283.

The quotation from the \textit{Willingham} case, utilized by Chief Justice Warren, above, stands for the proposition that Section 2283 (former Section 265) does not apply at all in the area of exclusive federal jurisdiction; therefore Justice Frankfurter's remarks anent the \textit{Willingham} language seem somewhat inappropriate:\footnote{41}

It is also to be noted that this observation was made prior to the revision of 1948.

The import of Justice Frankfurter's position is as follows: Because of Section 2283 and its prohibition, a federal court is powerless to prevent state-court usurpation of exclusive federal-court jurisdiction. Therefore, state courts may disrupt a reasonably finely-wrought federal court system by assuming to hear and decide cases within the exclusive jurisdiction of the Supreme Court itself, such as controversies between two or more states, and actions or proceedings against ambassadors.\footnote{42} And \textit{a fortiori}, state courts may invade the exclusive jurisdiction of \textit{inferior} federal courts, for example, in cases involving crimes and offenses against the United States; seizures on land and water; suits for fines and

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\item \footnote{39} 23 U. S. L. \textsc{Week} at 4168. The Chief Justice dissented on behalf of himself and Justices Black and Douglas. Justice Douglas wrote a separate dissenting opinion in which Justice Black and the Chief Justice concurred. 23 U. S. L. \textsc{Week} at 4169.
\item \footnote{40} \textit{Bowles v. Willingham}, 321 U. S. 503 (1944), discussed \textit{infra}.
\item \footnote{41} 23 U. S. L. \textsc{Week} at 4166, n. 2.
\item \footnote{42} 28 U. S. C. § 1351 (a) 1, 2.
\end{itemize}
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penalties incurred under federal laws; civil cases of admiralty and maritime jurisdiction; as well as many others.

The unabashed suggestion here that there are highly anomalous possibilities to be realized from the Richman decision is not based, contrary to certain language in that decision, on a fear that rights under a general federal law will be substantially frustrated by protracted litigation. Indeed, it is conceded that "federal question" jurisdiction was not conferred upon federal courts until 1875, and that theretofore state courts undertook to decide all such cases. And, admittedly, as of this day, a "federal question" case being litigated in a state court is normally free from injunctive interference from a federal court under Section 2283. But that is because jurisdiction is concurrent, and if the entire hierarchy of state courts should "go wrong" in applying substantive law to the ease, the Supreme Court, on reviewing the decision, will merely send it back to the state court for further proceedings, or will reverse and decide outright. This is precisely the normal course of judicial review in any single system, with an additional Supreme Court thrown in for good measure.

On the other hand, matters over which federal courts have exclusive jurisdiction, although also involving a "federal question", are hardly apposite to "general federal question" jurisdiction. For, where there is indeed exclusive federal jurisdiction, not only is a litigant compelled to undergo possibly needless litigation throughout two entirely separate judicial systems, in addition, an entire fabric of Congressional jurisdictional and administrative planning may have been frustrated. To hold that Section 2283 permits this to occur would seem to convert the section from a statutory rule of comity into something quite the opposite. Indeed, Justice Frankfurter himself once seemed to envision Section 2283 as being beyond the pale of exclusive federal jurisdiction.

Therefore, § 265 [present § 2283] has no relevance here. That provision is an historical mechanism for achieving harmony in one phase of our complicated federalism by avoiding needless friction between two systems of courts having potential

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43. Act of Sept. 24, 1789, 1 Stat. 76, 78.
44. See note 6, supra.
45. 23 U. S. L. Week at 4167.
46. See supra note 8.
49. Re-trying the case under such circumstances would be simplified in so far as the "law of the case" may have been established. Where the Supreme Court's holding would be that the state court had no jurisdiction, that is all, ordinarily, which would be decided.
jurisdiction over the same subject-matter. Wells Fargo & Co. v. Taylor, 254 U. S. 175, 183. The present record presents no occasion for bringing this safeguard into play.\(^5\)

**FURTHER CONSIDERATIONS**

It has been authoritatively held that Section 2283 is not a jurisdictional statute. Rather, "it is an affirmation of the rules of comity . . ."\(^6\) or, as the Supreme Court has stated,

It is not a jurisdictional statute. It neither confers jurisdiction upon the district courts nor takes away the jurisdiction otherwise specifically conferred upon them by federal statutes . . . Where the plaintiff has the undoubted right to invoke its federal jurisdiction the court is bound to take the case and proceed to judgment . . . And when the court takes jurisdiction and determines that in the light of § 265 [present § 2283] of the Code it is either authorized or prevented from granting the injunction prayed, its decision . . . is plainly not a decision upon a jurisdictional issue but upon the question whether there is or is not equity in the particular bill; that is, a decision going to the merits of the controversy.\(^7\)

Indeed, without this interpretation of the section, the recognized judicial and statutory exceptions to the predecessor of Section 2283 could never have been created in view of the unqualified language of the provision.\(^8\) Jurisdiction of district courts to hear and decide a suit to stay a state court proceeding where jurisdiction is exclusive to the federal courts would ordinarily be based upon 28 U. S. C. § 1337 (62 Stat. 931):

>The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

The application of Section 1337 to suits against state-court usurpation of exclusive federal jurisdiction has been upheld with respect to rights under the Taft-Hartley Act,\(^9\) Emergency Price Control Act,\(^10\) etc.

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53. See notes, 72, 73, infra, and accompanying text.
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Act, and was not renounced in the Richman case. Nor does Section 1337 discriminate as to plaintiffs, and therefore either a public or a private plaintiff may invoke its provisions.

Once jurisdiction attaches under Section 1337, it would not seem necessary that the provisions of the All-Writs statute be invoked. That statute, which often should be construed with Section 2283, provides:

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Where the matters involved in a state proceeding are not within a district court's actual or potential jurisdiction, a prerogative writ could not be said to be necessary "in aid of [its] jurisdiction". The district court's jurisdiction would be based on Section 1337 and that court's general equity power to enjoin would seem to be sufficient. If Section 2283 is applicable, one of its exceptions also is couched in terms of "in aid of its jurisdiction". This probably does not mean jurisdiction under Section 1337, rather pre-existing jurisdiction, else Section 2283 would mean nothing.

56. Capital Service, Inc. v. N. L. R. B., op. cit. supra, note 54 (N. L. R. B.);
Bowles v. Willingham, supra note 55 (Price Administrator);
A. F. L. v. Watson, supra,
note 54 (labor union). See also, dissenting opinion of Chief Justice Warren, in Richman, 23 U. S. L. WEEK at 4168. Only when section 2283 is declared applicable do the courts discuss whether a plaintiff has a "legally protected interest". International Union v. Underwood Corp., 219 F. 2d 100, 103 (2d Cir. 1955). Similar language is found in Richman, 23 U. S. L. WEEK at 4167. 28 U. S. C. § 1337 has, in addition, been availed of by a private shipper, Peyton v. Railway Express Agency, 316 U. S. 350 (1942), and individual employees, Tunstall v. Brotherhood, etc., 323 U. S. 210 (1944).
58. In Bowles v. Willingham, 321 U. S. 503 (1944), the district court had no jurisdiction over writs to invalidate rent orders. This was vested exclusively in the Emergency Court of Appeals. § 204 (d), 56 STAT. 33. In Bowles, the district court was not asked to utilize a prerogative writ. In Richman, Justice Frankfurter pointed out that a prerogative writ under section 1651 was inappropriate in the district because jurisdiction of Taft-Hartley matters was vested in the Labor Board and the Court of Appeals. 23 U. S. L. WEEK at 4167, n. 5. But note that district courts may have potential jurisdiction on appeal if the Court of Appeals is in vacation. § 10 (e), 61 STAT. 136; 29 U. S. C. § 161 (e). In any case, jurisdiction of an unfiled complaint with the Board is not very "potential" inasmuch as the Board has discretion to accept or decline jurisdiction. Int'l Union v. Underwood, 219 F. 2d 100, 103 (2d Cir. 1955); Richman, 23 U. S. L. WEEK at 4167, n. 5.
59. This was not accidental. See Reviser's Notes to § 2283, H. Rep. No. 308, 80th Cong. 1st Sess., A181-A182: "The phrase 'in aid of its jurisdiction' was added to conform to section 1651 of this title . . .".
60. The Reviser's Notes, ibid., specifically mention that removal cases fall within the "in aid of its jurisdiction" exception. See note 86, infra, and accompanying text. Conceivably the in rem cases fall within the same exception. In rem cases were recognized judicial exceptions under the predecessor of section 2283. Oklahoma v. (Footnote continued on following page.)
The decision of the Supreme Court in *Bowles v. Willingham*\(^1\) seemed to have answered two questions: (1) Is Section 2283 applicable where federal jurisdiction is exclusive? (2) Is it necessary that the exclusive federal jurisdiction be in the district court granting the injunction against state proceedings? In answering (1) in the negative, the Court was indulging in an alternative holding, since it also appeared that the Emergency Price Control Act permitted access to the district court for such relief. *Bowles* has been referred to as holding that Section 2283 is inapplicable,\(^2\) but Justice Frankfurter, in *Richman*, chose to ignore this holding in favor of the other, without overruling any portion of *Bowles*.\(^3\) With respect to (2), above, it would seem that the holding is firm, *viz.*, that so long as the exclusive jurisdiction is within the federal system a district court has jurisdiction under Section 1337.\(^4\)

When the Court, in *Bowles v. Willingham*, stated that

Congress thus preempted jurisdiction in favor of the Emergency Court to the exclusion of state courts. The rule expressed in §265 which is designed to avoid collisions between state and federal authorities . . . thus does not come into play.\(^5\)

it was recognizing that federal-court forbearance, as a rule of comity codified in Section 2383 (former Section 265), applies only where jurisdiction is concurrent between federal and state courts.

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\(^{61}\) See *notes 39, 40*, *supra*, and accompanying text.

\(^{62}\) See *notes 39, 40*, *supra*, and accompanying text.

\(^{63}\) See *notes 39, 40*, *supra*, and accompanying text.

\(^{64}\) See *notes 39, 40*, *supra*, and accompanying text.

\(^{65}\) See *notes 39, 40*, *supra*, and accompanying text.
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And, where jurisdiction is exclusive to one court or system, other principles of comity and forbearance come into play. The confinement of Section 2283 to the area of concurrent jurisdiction was recognized by the courts long before Bowles v. Willingham and Richman faced it squarely. Furthermore, at the time of the original enactment of the predecessor of Section 2283, whatever jurisdiction Congress had seen fit to confer upon federal courts then established was practically all concurrent with the state courts. The prior Act of Sept. 24, 1789, then in force, conferred exclusive jurisdiction upon federal courts in only five narrow areas: federal crimes and offenses; seizures on land and water; federal penalties and forfeitures; suits against consuls; cases under civil admiralty and maritime jurisdiction. The deep distrust of a federal judicial system which goaded the Founding Fathers into drafting a clearly-defined Article III must surely have inspired the legislative draftsman of the Act of 1789. Reluctant wresting of such jurisdiction from all state courts does not seem a logical forerunner, four years later, of a provision (present Section 2283) intended, as Richman would have us believe, to protect state-court jurisdiction over matters so recently withdrawn from them entirely—and with wide-open eyes. Rather, it would appear far more palatable that the predecessor of Section 2283 was directed at the far broader area of cases wherein state and federal jurisdictions were concurrent. Indeed, the earliest reported cases involving federal-court interference under Section 2283 all involved areas of concurrent jurisdiction.

Justice Frankfurter, in the Richman decision, defends his holding that Section 2283 blankets the field on the ground that the language of the section brooks no qualifications:

Legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions.

67. Act of March 2, 1793. See notes 17-20, supra, and accompanying text.
68. 1 Stat. 76, 78.
70. Digs & Keith v. Wolcott, 4 Cranch 179 (U.S. 1807); Peck v. Jenness, 7 How. 612 (U.S. 1849); Orton v. Smith, 18 How. 263, 266 (U.S. 1855).
The prohibition of the section has always been "clear-cut" since 1793; and, until 1948, there was only one "specifically defined exception", the exception relating to proceedings in bankruptcy. Notwithstanding, there was unanimity on the Court, prior to 1948, that federal statutes conferring exclusive jurisdiction upon federal courts were implied exceptions to the predecessor of Section 2283, whether or not that statute expressly authorized an injunction against state court proceedings. Furthermore, despite an absence of appropriate "specifically defined exceptions" under the former statute, there was unanimity on the Court that a federal court first acquiring jurisdiction over a res could enjoin a subsequent interfering state-court proceeding quite apart from the provisions of the forerunner of Section 2283. It is indeed singular that a Court, in 1941, finds a prohibitive statute inapplicable without the necessity of "specifically defined exceptions", but refuses, fourteen years later, and under the same auspices, to find inapplicability unless there is a "specifically defined exception". By such means are decisions made easy, obviating the necessity of discussing cases, legislative history, or the consequences.

Richman’s holding that Section 2283 (with its exceptions) is applicable (despite the prior decisions) to cases involving exclusive jurisdiction leaves the present section in considerable doubt. As stated previously, Section 2283 today contains three exceptions to its general prohibition, whereas none of these exceptions were expressed prior to 1948. As it now stands, federal courts must forebear from interfering with state-court proceedings except

(1) as expressly authorized by Act of Congress or
(2) where necessary in aid of its jurisdiction or
(3) to protect or effectuate its judgments.

The Reviser’s Notes explain the first exception as follows:

An exception as to Acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions.

In the total absence of any indication that the 1948 revision intended to broaden the scope of the prohibition against federal courts

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72. In the Toucey decision, ibid., the 1941 Court recognized such implied statutory exceptions to the anti-injunction statute as the Removal Acts, the Interpleader Act of 1926, and the Frazier-Lemke Act. Only the Interpleader Act, of all these statutes creating exclusive federal jurisdiction, contained a provision "expressly authorizing" a federal injunction against state-court proceedings. See notes 74-85, infra, and accompanying text.


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(quite the contrary), it could be fairly concluded that the first exception made no change in the prior law. The majority in Richman, however, in disapproving the controversial alternative holding in Bowles v. Willingham stated:

It is also to be noted that this observation was made prior to the revision of 1948.

The “observation” proclaimed that, in the area of exclusive federal jurisdiction, Section 2283’s predecessor was inapplicable. Both the holding and the above quote in Richman seem reasonably clear to mean that prior recognized “statutory” exceptions are no longer exceptions unless “expressly authorized by Act of Congress.” The only prior recognized exception in this area where federal-court injunction were expressly authorized was the Interpleader Act of 1926. Even the Bankruptcy Act, standing alone, contains no provision “expressly authorizing” injunctions against state proceedings. Bankruptcy proceedings under present Section 2283 may still be exceptions, not because of the language of the section, but because of the mention thereof in the Reviser’s Notes. The Richman decision gives no answer either as to the future of bankruptcy proceedings or others, unless the answer is that the 1948 revision has now placed them within the general prohibition. That would mean that the Interpleader Act would be the only Toucey-recognized “statutory” exception encompassed within Section 2283. Assuming, arguendo, that this is so, it may not be inappropriate since, but for the express authority to enjoin state proceedings, those state proceedings conflicting with interpleader would be unenjoinable under Section 2283. Federal interpleader would be an in personam proceedings; the conflicting

75. “This first exception made by § 2283 represents no change in the prior law.” Moore, Commentary on the Judicial Code 410 (1949).
76. See note 65, supra, and accompanying text.
77. 23 U. S. L. Week at 4166, n. 2.
78. I. e., recognized in the Toucey case, op. cit. supra, note 71. Bowles v. Willingham recognized one other—the Emergency Price Control Act—which contained express authority to enjoin state proceedings. § 205(d). This was an alternative holding.
80. In the Bankruptcy Act, neither §§2a(15), 11a, nor 75 “expressly authorize” injunctions against state proceedings.
81. The Reviser’s Notes explain that proceedings in bankruptcy are still exceptions and that the new language of section 2283 covers all exceptions. Because of the proximity of the Toucey decision, “all exceptions” could be interpreted to mean the “statutory” exceptions recognized in Toucey itself. This would be of some comfort, except for the Richman language, supra note 77, and accompanying text.
state proceedings would be in personam; jurisdiction is concurrent, and, under Kline v. Burke Construction Co., such state proceedings are definitely within the compass of the prohibition of Section 2283. All other "statutory" exceptions discussed confer exclusive jurisdiction on federal courts, but with no express authorization to enjoin state proceedings. Will exclusive jurisdiction, standing alone, constitute "expressly authorized" within the first exception?

Conceivably, the statutory exceptions herein discussed may now be deemed to fall within the second exception of Section 2283: "where necessary in aid of its jurisdiction". The Reviser's Notes indicate that at least the removal exception does:

The phrase "in aid of its jurisdiction" was added to conform to section 1651 of this title and to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts.

If the second exception encompasses, in addition to removal cases, all other cases involving exclusive federal jurisdiction, then the problem may be settled. If so, Section 2283 applies to any and all problems involving a conflict of state-federal jurisdiction, whether the jurisdiction is concurrent or exclusive. However, complications remain because of the Richman decision. That decision held that an exclusive-jurisdiction case does not fall within the second exception unless the exclusive federal jurisdiction involved is in the district court itself. Since only the Labor Board has jurisdiction in any Taft-Hartley dispute, a district court could not be said to be enjoining a state proceeding in aid of "its" jurisdiction. Again, and with no discussion at all, the Richman decision defies Bowles v. Willingham, where the district court was permitted to enjoin a state proceeding albeit exclusive jurisdiction of the matter involved was in the Emergency Court of Appeals. After Richman, then, a federal-court plaintiff who is harassed by void state proceedings may invoke the second exception of Section 2283 only

83. Federal jurisdiction is based on modified diversity of citizenship. 28 U. S. C. 1335.
84. 260 U. S. 226 (1922).
85. The insertion of the words "expressly authorized" may have been the result of unwise drafting. But see language of Justice Frankfurter in Richman: "In the face of this carefully considered enactment . . ." 23 U. S. L. WEEK at 4166.
86. 28 U. S. C. § 1651 is the All Writs statute. See notes 57-60, supra.
87. 23 U. S. L. WEEK at 4167. "Under no circumstances has the District Court jurisdiction to enforce rights and duties which call for recognition by the Board. Such nonexistent jurisdiction therefore cannot be aided." See supra note 58.
88. See supra note 64, and accompanying text.
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before a federal tribunal capable of exercising the exclusive federal jurisdiction. 89

It would seem that there may be a fatal flaw in attempting to invoke the second exception of Section 2283. Assuming the federal plaintiff sues in a federal court which would have power to exercise the exclusive federal jurisdiction, the All Writs statute, 90 with which the second exception of Section 2283 is deemed to conform, 91 and with which Section 2283 must be read, 92 also contains the requirement that a prerogative writ cannot issue out of federal courts except "in aid of their respective jurisdictions". In light of the juxtaposition of the All Writs statute and Section 2283's second exception, it is not unreasonable to assume that an injunction or stay under the exception must rest on the same ground as a writ of mandamus or prohibition under the All Writs statute—the writ issues only "in aid of" the court's jurisdiction. 93 Clearly, if the district court already has acquired jurisdiction over a res, 94 or a removal petition and bond have been filed, 95 then a stay of an interfering state proceeding could be said to be "in aid of" its actual jurisdiction, or, ancillary thereto. 96 Without more, prior in personam jurisdiction in a federal court did not ground an ancillary stay of a concurrent state proceeding under the All Writs statute before 1948, 97 and the incorporation of the "in aid" language in Section 2283 would seem to evidence a continuance of that rule. But if the prayer for a federal injunction of a state action is not ancillary, but is original, as it was in Richman and in the other cases of state-usurpation of exclusive federal jurisdiction, then of what federal-court jurisdiction could an injunction be deemed to be "in aid'? As was stated by the majority in the Richman case, 98

In any event, it has never been authoritatively suggested that this example of injunctive aid to a potential jurisdiction, which finds roots in traditional concepts of the relationship between inferior and superior courts of the same judicial system, has

89. See N. L. R. B. v. Sunshine Mining Co., 125 F. 2d 757 (9th Cir. 1942) (court of appeals protecting its exclusive jurisdiction over review of N. L. R. B. orders). Where a court of appeals is asked, under section 2283's second exception, to enjoin state proceedings "in aid of" its potential appellate jurisdiction, other problems may arise. See notes 58, supra, 90, et seq., infra, and accompanying texts.
90. 28 U.S.C. § 1651. See notes 57-60, supra, and accompanying text.
91. See note 86, supra, and accompanying text.
93. Ex parte Peru, 318 U.S. 578 (1943).
94. See note 73, supra.
96. For the proposition that "ancillary" jurisdiction of a federal court was an exception to the predecessor of § 2283, see Barrett, op. cit., supra, n. 12, 549-550.
98. 23 U. S. L. WEEK 4167 n. 5.
any relevance where the offending action sought to be enjoined is insulated by two intervening and essentially unrelated systems, one of any administrative rather than judicial nature [the Labor Board, herein], the other the manifestation of a distinct sovereign authority.

Although a prerogative writ is available in aid of a court’s prospective jurisdiction, this has only related to appellate jurisdiction of courts of appeals and the Supreme Court. The district courts have original jurisdiction only, for the most part. A district court has never been known to issue a prerogative writ unless that original jurisdiction was actual—never where it was merely prospective. The Supreme Court’s use of prerogative writs has been confined to aiding its prospective appellate jurisdiction over cases already in lower federal courts, although the Court also has original jurisdiction. Thus, in the area of exclusive federal jurisdiction, where no separate complaint has been filed in the district court, it has no actual jurisdiction over the matter being invalidly litigated in the state court. Since the district court will not review the state proceeding, it has no prospective jurisdiction. Thus, within the second exception to Section 2283 and within the All Writs statute there is no jurisdiction to “aid”.

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99. Ex parte Peru, supra note 93.
100. Ibid. And see 6 Moore, Federal Practice 74-85 (1948).
103. Ex parte Peru, supra note 93; Ex parte United States, 287 U.S. 241, 246 (1932); McClellan v. Carland, 217 U.S. 268 (1910).
104. Jurisdiction of the district court under 28 U.S.C. § 1337 or § 1332 (law regulating commerce or diversity) would be the jurisdiction to hear the prayer for a stay of state proceedings, requiring no prerogative writ in its “aid”. A writ, if issuable, would be directed to proceedings in a state court. Note that, originally, the power of federal courts to issue writs of mandamus was restricted to “courts appointed . . . under the authority of the United States” § 13, Judiciary Act of 1789. The present All Writs statute does not contain this limitation. But see Biggs v. Ward, 212 F. 2d 209 (1954), where a district court was held without sufficient prior jurisdiction to issue a writ against a state court judge. The power of the Supreme Court itself to mandamus a state Supreme Court, even “in aid” of its appellate jurisdiction is not without doubt. See Lavender v. Clark, 329 U.S. 674 (1946); Ex parte Texas, 315 U.S. 8 (1942). Cf. U.S. ex rel. Butz v. Muscaline, 8 Wall. 575 (U.S. 1869); Gordon v. Longest, 16 Pet. 97 (U.S. 1842), indicating that such power exists.

Obviously, section 2283 is vague, and Toucy itself casts doubt, but void or fraudulently-obtained judgments or decrees in state courts could be enjoined as to enforcement prior to Toucy, Chase National Bank v. City of Norwalk, Ohio, 291 U.S. 431 (1934); P.S.C. Co. v. Corboy, 250 U.S. 153 (1919); Wells Fargo & Co. v. Taylor, 254 U.S. 175 (1920); Marshall v. Holmes, 141 U.S. 589 (1891). Since the state-court injunction in Richman will be void because the state court had no jurisdiction (Weber v. Anheuser-Busch, supra, note 29), it should be enjoinable today.

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The third exception to Section 2283 would seem to be inapplicable in this area of exclusive federal jurisdiction where no prior federal-court judgment has been rendered on the matters in the state proceeding. 105

CONCLUSION

To hold that Section 2283, with its "specific exceptions," is applicable to the situation where a state court is invalidly litigating matter within exclusive federal jurisdiction would, in light of the above discussion and the Richman decision, condemn the section as an enactment which raises more questions than it solves. The virtue of an amendatory statute should be that it does just the opposite. 106 The thesis of this paper is that situations of conflict between state and federal courts involving exclusive federal jurisdiction is not within the compass of Section 2283 at all, was not intended to be, and never was subject to the provisions of the predecessors of Section 2283. In the complete absence of any evidence that the 1948 enactment of Section 2283 was intended to broaden the prohibition of the anti-injunction statute, the power of federal courts to protect against state-usurpation of exclusive federal jurisdiction should remain unhampered by Section 2283. Certainly, it would seem, authority for such a rule is to be found in cases permitting the United States to enjoin state proceedings against it. 107

Problems of when a matter is or is not within the jurisdiction of federal courts is commonly vexing, even in cases other than labor relations. District courts consistently face this problem of determining jurisdiction of courts in our federal system in hand-

105. It would seem relatively clear that the third exception, "to effectuate its judgments," relates to the cases being litigated in state courts after having already been litigated in a federal court. Thus the exception is deemed to overrule Toucey insofar as it held relitigation cases not within the exceptions to section 2283's predecessor. See Reviser's Notes, H. R. Rep. 80th Cong., 1st Sess., A181-A182.

106. "... any amendment should properly solve more questions than it raises. The proposed revision does not appear to have this virtue." Barrett, op. cit. supra, note 12, at 563 (referring to § 2283 when its adoption was being considered).

107. See United States v. McIntosh, 57 F. 2d 573 (E. D. Va. 1932); Brown v. Wright, 137 F. 2d 484, 488 (4th Cir. 1943) (Price Administrator permitted to enjoin for United States); United States v. Inaba, 291 Fed. 416 (E. D. Wash. 1923). Cases have held that, since section 2283 does not mention the United States, it does not bar it from enjoining state action. United States v. Cain, 72 F. Supp. 897 (W. D. Mich. 1947); United States v. Taylor's Oak Ridge Corp., 89 F. Supp. 28 (E. D. Tenn. 1950). The position that section 2283 did not apply to the United States was urged on the Supreme Court in Phillips v. United States, 312 U. S. 246 (1941), but the appeal was decided on other grounds. In Phillips, the district court had stated: "[The section] does not . . . bar this court from enjoining further proceedings in the state court." 33 F. Supp. 261, 270 (N. D. Okla. 1940). Contra: U. S. v. Land Title Bank & Trust Co., 90 F. 2d 970 (3rd Cir. 1937).
ling applications for removal of actions from state courts.¹⁰⁸ And, like the removal cases, where federal jurisdiction is being urged, federal courts, not state courts, are deemed far better equipped to decide the matter in the first instance. If an injunction against a state proceeding is either granted or denied, the jurisdictional question is readily reviewed by higher federal authority.¹⁰⁹ In this area of state-court litigation of matter exclusively federal the removal statutes are of little or no aid to the harrassed state-court defendant, since an order of a district court remanding a case is not reviewable.¹¹⁰

Federal-court jurisdiction having attached, either under 28 U. S. C. Sections 1337, 1332, or any other appropriate statute, general equity power of a district should properly be invoked to enjoin invalid state proceedings—all quite apart from the provisions of Section 2283. The very federal supremacy which denies to a state court the power to interfere with a federal court's determination on federal jurisdiction, as in the removal cases,¹¹¹ also provides the ground for a federal court to protect federal jurisdiction against state-court usurpation thereof. The Richman holding that Section 2283 is applicable to exclusive jurisdiction cases only tends to frustrate an entire federal scheme. In addition, as the Chief Justice stated,

To read § 2283 literally—as the majority opinion does—ignores not only this legislative history, but also a century of judicial history.¹¹²

¹⁰⁹. 28 U. S. C. § 1292 (a). Jurisdiction to hear the prayer for an injunction would be grounded, e.g., on 28 U. S. C. § 1337 or § 1332 (law regulating commerce or diversity).
¹¹⁰. 28 U. S. C. § 1447(d).
¹¹². 23 U. S. L. Week at 4169 (dissenting opinion).