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Federal Jurisdiction--Abstention Doctrine--Return to District Court Precluded When Federal Claim Unreservedly Submitted to State Court (England v. Louisiana State Bd. Of Medical Examiners, 375 U.S. 411 (1964))

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apparent conflict between the *Smith* case and prior decisions of the Supreme Court on this question of excluded evidence may result in the need for further clarification by the Supreme Court of the "fruit of the poisonous tree" doctrine. The reasoning behind the *Smith* case presents a novel approach to the evidentiary value of information procured during an illegal detention and may provide a new basis for determining whether or not particular forms of evidence fall within the exclusionary rule.

FEDERAL JURISDICTION — ABSTENTION DOCTRINE — RETURN TO DISTRICT COURT PRECLUDED WHEN FEDERAL CLAIM UNRESERVEDLY SUBMITTED TO STATE COURT. — Appellants, graduates of chiropractic schools, sought to practice without complying with the requirements of the Louisiana Medical Practice Act.[1] They brought an action in the federal district court[2] for an injunction and declaration that the act as applied to them was unconstitutional. The court, sua sponte, invoked the doctrine of abstention and referred the parties to the state courts since the question presented involved a principle of Louisiana law not yet decided by that state. The claims were unreservedly submitted to the state court and after final judgment was entered against the appellants they attempted to return to the district court. Respondent's motion to dismiss was granted by the district court on the ground of res judicata.[3] On direct appeal, the United States Supreme Court reversed and *held* that a litigant foregoes his right under the abstention doctrine to return to the district court by unreservedly submitting his federal claims to the state courts. However, this rule was not applied against the appellants because they had reasonably relied on the mistaken view that they were required to litigate their federal claims in the state courts. *England v. Louisiana State Bd. of Medical Examiners,* 375 U.S. 411 (1964).

The doctrine of abstention, a court-made rule, is a comparatively new concept in federal jurisdiction.[4] The doctrine as applied

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[1] LA. REV. STAT. ANN. §§ 37:1261-1290 (1950).

[2] England v. Louisiana State Bd. of Medical Examiners, 180 F. Supp. 121 (E.D. La. 1960).

[3] England v. Louisiana State Bd. of Medical Examiners, 194 F. Supp. 521 (E.D. La. 1961), *rev'd,* 375 U.S. 411 (1964).

[4] For treatments of the abstention doctrine, see 1 BARRON & HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE § 64 (1960); 1A MOORE, FEDERAL PRACTICE § 0.203 (2d ed. 1961); Wright, *The Abstention Doctrine Reconsidered,* 37 TEXAS L. REV. 815 (1959); Note, *Consequences of Abstention by a Federal Court,* 73 HARV. L. REV. 1358 (1960); Note, *Judicial Abstention From The Exercise of Federal Jurisdiction,* 59 COLUM. L. REV. 749 (1959); Note, *Abstention: An Exercise in Federalism,* 108 U. PA. L. REV. 226 (1959).

to a federal question contemplates that a federal court shall stay, but not relinquish, jurisdiction in cases involving unsettled questions of state law. The parties are involuntarily directed to a state forum for a preliminary determination of the state law, and then return to the federal court for a decision on the constitutional issue.

Prior to 1941 it had been assumed that when the jurisdiction of a federal court was properly invoked, it was the duty of that court to decide all matters before it on the theory that the right of a party to litigate issues properly before the court was not to be denied.[5] However, the case of *Erie R.R. v. Tompkins*,[6] which provided that federal courts should apply substantive state law, raised the question of what a federal court should do when the applicable state law was not clear. In light of that question the United States Supreme Court in 1941 decided the case of *Railroad Comm'n v. Pullman Co.*,[7] in which it first enunciated the doctrine of federal abstention.

In that case the Pullman Company sought injunctive relief claiming that its federal rights had been violated by an order of the Railroad Commission of Texas. The district court granted the injunction, but was reversed by the Supreme Court which held the lower court had abused its discretion. It remanded the case and ordered the district court to stay judgment until an interpretation of the Railroad Commission's order could be made by the Texas courts. The rationale of the decision was that a state court determination in which the plaintiff prevailed could conceivably eliminate the necessity of deciding the federal question.

> Reading the Texas statutes and Texas decisions as outsiders without special competence in Texas Law, we would have little confidence in our independent judgment regarding the application of that law to the present situation. . . . [N]o matter how seasoned the judgment of the district court may be, it cannot escape being a forecast rather than a determination.[8]

In subsequent attempts to avoid conflict between state and federal courts, the Supreme Court has invoked the doctrine of abstention on numerous occasions.[9]

The first major extension of the doctrine occurred in *CIO v. Windsor*.[10] This case involved the interpretation of a state statute

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[5] Willcox v. Consolidated Gas Co., 212 U.S. 19 (1909).
[6] 304 U.S. 64 (1938).
[7] 312 U.S. 496 (1941).
[8] *Id.* at 499.
[9] See, *e.g.*, Louisiana Power & Light Co. v. Thibodaux, 360 U.S. 25 (1959) (abstention made mandatory on the district courts); Lassiter v. Northhampton, 360 U.S. 45 (1959); Martin v. Creasy, 360 U.S. 219 (1959); Meridian v. Southern Bell, 358 U.S. 639 (1959); Leiter v. United States, 352 U.S. 220 (1957); Albertson v. Millard, 345 U.S. 242 (1953).
[10] 353 U.S. 364 (1957).

which attempted to prevent civic employees from joining labor unions. In an action brought to restrain enforcement of the statute, the district court invoked the abstention doctrine.[11] This holding was affirmed by the Supreme Court.[12] Plaintiffs then instituted a declaratory judgment proceeding in the state court, but did not litigate their federal claims. After the Alabama Supreme Court found that the statute applied to the union,[13] the plaintiffs returned to the district court which held that the statute as applied was constitutional.[14] On appeal the United States Supreme Court stated that the abstention doctrine should have been applied a second time since the state court was not aware of the federal claim, and therefore, the district court had erred in deciding on the merits.[15] The Alabama courts, however, refused to reconsider the claim. As a result of this decision, litigants faced a twofold problem. They could not restrict their state court adjudication to purely local issues, and yet, if they litigated their entire claim, they would be denied the right to return to the federal court on the ground of res judicata.

In 1963 the Supreme Court decided *NAACP v. Button*,[16] wherein the plaintiffs sought a complete adjudication of all issues in the state court after the federal district court had invoked the abstention doctrine. Rather than returning to the district court, the plaintiffs chose to appeal directly to the Supreme Court. They were then confronted with the defense that the Supreme Court did not have jurisdiction to hear the appeal because the district court, by invoking the doctrine of abstention, had never relinquished its jurisdiction. The Court declared, however, that although the federal district court had formally retained jurisdiction, since the parties sought a complete and final determination in the state courts, they nevertheless had the right to appeal directly to the Supreme Court. Litigants could thus, at their option, waive their rights to a final adjudication by the lower federal courts.

In the instant case the Court has demonstrated that there are fundamental objections to compelling a litigant to accept a state court determination once he has originally chosen a federal forum. The Court reasoned that a federal court, when properly appealed to, is obligated to hear the case.[17] The Court stated that although

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[11] CIO v. Windsor, 116 F. Supp. 354 (N.D. Ala. 1953), *aff'd*, 347 U.S. 901 (1954).
[12] CIO v. Windsor, 347 U.S. 901 (1954).
[13] CIO v. Windsor, 262 Ala. 285, 78 So. 2d 646 (1955).
[14] CIO v. Windsor, 146 F. Supp. 214 (N.D. Ala. 1956), *rev'd.* 353 U.S. 364 (1957).
[15] CIO v. Windsor, 353 U.S. 364 (1957).
[16] 371 U.S. 415 (1963).
[17] Siler v. Louisville & Nashville R.R., 213 U.S. 175 (1909).

a hearing in a federal court is available through direct appeal from the state courts to the Supreme Court,[18] an appeal "is an inadequate substitute for the initial District Court determination . . . to which the litigant is entitled." [19]

The Court attempted to clarify its holding in the *Windsor* case by indicating that although a party may elect to forego his right to return to the district court, he is not required to litigate his federal claims in the state courts. Under *Windsor,* therefore, a plaintiff would only need to inform the state court of his federal claim so as to enable that court to construe the statute in light of it. The majority also pointed out, however, that state courts are often reluctant to decide only a segment of the litigation,[20] and when this contingency arises a litigant must reserve his right to return to the federal court by an express statement in the record, or it will be deemed waived. Although plaintiffs in the instant case made no such reservation, they were permitted to return to the district court since they relied on what had been the accepted interpretation of *Windsor.*[21] As has been indicated, however, the Court will not afford this courtesy to future litigants.

It would appear that the decision reached by the majority will deprive many litigants of a federal forum through a procedural technicality. First, it should be reiterated that the application of the doctrine of abstention results in an involuntary referral to a state court. In light of this, it would appear unreasonable to deprive a plaintiff of his right to a factual determination in a federal court because he failed to make an express reservation in the record. Mr. Justice Douglas, in his concurring opinion, noted that this deprivation may have great significance in the area of civil rights. He points out that civil rights actions are normally brought in the federal courts because of their history of protecting the rights of minority groups. Basically the parties are in the federal court to avoid the local prejudice which is sometimes implicit in the findings of a state court.[22] Deprivation of a federal forum through a procedural technicality could, therefore, work a great hardship on many civil rights litigants.

Another problem will arise if the state court reaches a decision on the merits after the plaintiff has reserved the right

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[18] The Court was merely reiterating its holding in NAACP v. Button, 371 U.S. 415 (1963).

[19] England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411, 416 (1964).

[20] *But see* FLA. STAT. ANN. § 25.031 (1961). This statute provides that the Florida courts may render advisory opinions on questions certified by the federal courts.

[21] England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411, 422 (1964).

[22] *Id.* at 434-35 (concurring opinion).

to return to the district court. Since the plaintiff must be permitted to return,[23] there could conceivably be a re-litigation of the facts. Such a situation could clearly lead to more federal-state friction than the abstention doctrine was intended to eliminate. In holding that a party is entitled to a federal determination, the Court apparently opens the door to this duplicity of litigation. Finally, a contrary finding of fact in the federal court may lead to a different interpertation of the statute in question.

In effect, abstention is primarily a defendant's doctrine,[24] since a major concern to any prospective complainant is the cost of litigation. The burden of financing a single litigation is impressive, that of a double litigation may be prohibitive. Time may also be a significant factor. In *Windsor,* for example, after five years of litigation, including two appeals to the Supreme Court and two to the highest court in Alabama, the parties still had no decision on the merits.[25] Many plaintiffs will have neither the patience nor the finances to endure such lengthy litigations.

The purpose of the doctrine of abstention has been the avoidance of federal-state conflict. But it has been suggested that abstention works against rather than toward national unity.[26] In order to avoid conflict it was proposed as early as 1948 that Congress eliminate the jurisdiction of the federal courts "in all cases that present a claim of federal invalidity in state legislative or administrative action where . . . a plain, speedy and efficient remedy is available in the state courts." [27] Perhaps a more appropriate solution would be the elimination of the abstention doctrine entirely. An alternative would be for the federal court to decide all issues in the first instance, adding as a postscript that if at any time in the future the state courts interpret the problem differently, the parties may apply to the federal courts for such relief as may be appropriate.[28] In the words of Mr. Justice Douglas, abstention dilutes the stature of the federal district courts, making them secondary tribunals in the administration of justice.[29]

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[23] *Id.* at 421.

[24] Clark, *The Limits of Judicial Objectivity,* 12 AM U.L. REV. 5 (1963).

[25] See also NAACP v. Button, *supra* note 18; Harriman v. NAACP, 360 U.S. 167 (1959).

[26] Clark, *Federal Procedural Reform and States' Rights,* 40 TEXAS L. REV. 211 (1961).

[27] Weschler, *Federal Jurisdiction and the Revision of the Judicial Code,* 13 LAW & CONTEMP. PROB. 216, 229 (1948).

[28] See Lee v. Bickell, 292 U.S. 415 (1934).

[29] Harriman v. NAACP, *supra* note 25, at 180 (dissenting opinion).