AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 7: The Republican Era – Federalism



## **Ex parte Young, 209 U.S. 123** (1908)

*The principal mechanism by which federal courts maintained supervision of state economic regulation was the Fourteenth Amendment, especially the imposition of due process limitations on state police powers. For such a case to come before the justices, the state generally had to initiate some action against an individual, and then have that outcome appealed to the Supreme Court. However, the Court's decision in* Hans v. Louisiana *(1890) suggested that citizens should also be allowed to sue their state governments directly in federal court as a way of protecting their contract and property rights. Hans, a citizen of Louisiana, worried that recent changes to the state constitution would undermine the value of his state-issued bonds, and he filed suit in a U.S. district court, claiming that the state was violating the U.S. Constitution by impairing the obligations of a contract.*

*Almost a century earlier – during another period when conservatives were hoping that federal courts would protect property rights against inappropriate state behavior – the Court, in* Chisholm v. Georgia *(1792), ruled that states could be sued in federal court by citizens of other states; in response, the states quickly organized passage of the Eleventh Amendment. However, that amendment was silent on the question of whether a citizen could sue his or her own state in a federal court in a case where the lawsuit turned on a claim arising under the U.S. Constitution or federal law.*

*In an opinion by Justice Bradley, the Court quoted language from* The Federalist No. 81 *(written by Alexander Hamilton) acknowledging that states enjoyed a measure of sovereignty in our constitutional system and that "it is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent." The justice warned that "although the obligations of a state rest for their performance upon its honor and good faith, and cannot be made the subjects of judicial cognizance unless the state consents to be sued or comes itself into court, yet, where property or rights are enjoyed under a grant or contract made by a state, they cannot wantonly be invaded." He reminded the states that any effort to undermine justice and natural law would "incur the odium of the world" and "bring lasting injury upon the state itself." Still, he and his colleagues concluded that "to deprive the legislature of the power of judging what the honor and safety of the state may require, even at the expense of a temporary failure to discharge the public debts, would be attended with greater evils than such failure can cause."*

*This judicial restraint lasted for less than twenty years. When the state of Minnesota imposed new limits on railroad rates and more severe penalties for violators, some shareholders filed a lawsuit claiming that the law violated the dormant commerce clause and the due process clause of the Fourteenth Amendment. A lower federal court issued an injunction prohibiting the state's attorney general, Edward T. Young, from enforcing the law. When Young asserted state sovereign immunity, he was held in contempt and threatened with incarceration. Note the effect of the Court's decision on how quickly federal judges would now be able to halt offensive legislation – compared to the more typical practice of awaiting the outcome of state judicial proceedings against individuals or companies charged with violating the legislation.*

JUSTICE PECKHAM, delivered the opinion of the court:

We recognize and appreciate to the fullest extent the very great importance of this case, not only to the parties now before the court, but also to the great mass of the citizens of this country, all of whom are interested in the practical working of the courts of justice throughout the land, both Federal and state, and in the proper exercise of the jurisdiction of the Federal courts, as limited and controlled by the Federal Constitution and the laws of Congress.

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We conclude that the circuit court had jurisdiction in the case before it, because it involved the decision of Federal questions arising under the Constitution of the United States.

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We have . . . upon this record, the case of an unconstitutional act of the state legislature and an intention by the attorney general of the state to endeavor to enforce its provisions, to the injury of the company, in compelling it, at great expense, to defend legal proceedings of a complicated and unusual character, and involving questions of vast importance to all employees and officers of the company, as well as to the company itself. The question that arises is whether there is a remedy that the parties interested may resort to, by going into a Federal court of equity, in a case involving a violation of the Federal Constitution, and obtaining a judicial investigation of the problem, and, pending its solution, obtain freedom from suits, civil or criminal, by a temporary injunction, and, if the question be finally decided favorably to the contention of the company, a permanent injunction restraining all such actions or proceedings.

This inquiry necessitates an examination of the most material and important objection made to the jurisdiction of the circuit court,-the objection being that the suit is, in effect, one against the state of Minnesota, and that the injunction issued against the attorney general illegally prohibits state action, either criminal or civil, to enforce obedience to the statutes of the state. This objection is to be considered with reference to the 11th and 14th Amendments to the Federal Constitution. The 11th Amendment prohibits the commencement or prosecution of any suit against one of the United States by citizens of another state or citizens or subjects of any foreign state. The 14th Amendment provides that no state shall deprive any person of life, liberty, or property without due process of law, nor shall it deny to any person within its jurisdiction the equal protection of the laws. The case before the circuit court proceeded upon the theory that the orders and acts heretofore mentioned would, if enforced, violate rights of the complainants protected by the latter amendment. We think that whatever the rights of complainants may be, they are largely founded upon that Amendment, but a decision of this case does not require an examination or decision of the question whether its adoption in any way altered or limited the effect of the earlier Amendment. We may assume that each exists in full force, and that we must give to the 11th Amendment all the effect it naturally would have, without cutting it down or rendering its meaning any more narrow than the language, fairly interpreted, would warrant. . . .

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The various authorities we have referred to furnish ample justification for the assertion that individuals who, as officers of the state, are clothed with some duty in regard to the enforcement of the laws of the state, and who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action.

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It is . . . objected that there is a plain and adequate remedy at law open to the complainants, and that a court of equity, therefore, has no jurisdiction in such case. It has been suggested that the proper way to test the constitutionality of the act is to disobey it, at least once, after which the company might obey the act pending subsequent proceedings to test its validity. But in the event of a single violation the prosecutor might not avail himself of the opportunity to make the test, as obedience to the law was thereafter continued, and he might think it unnecessary to start an inquiry. If, however, he should do so while the company was thereafter obeying the law, several years might elapse before there was a final determination of the question, and, if it should be determined that the law was invalid, the property of the company would have been taken during that time without due process of law, and there would be no possibility of its recovery.

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It is somewhat difficult to appreciate the distinction which, while admitting that the taking of such a person from the custody of the state by virtue of service of the writ on the state officer in whose custody he is found is not a suit against the state, and yet service of a writ on the attorney general, to prevent his enforcing an unconstitutional enactment of a state legislature, is a suit against the state.

There is nothing in the case before us that ought properly to breed hostility to the customary operation of Federal courts of justice in cases of this character.

The rule to show cause is discharged and the petition for writs of habeas corpus and certiorari is *dismissed*.

So ordered.



JUSTICE HARLAN, dissenting:

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The fact that the Federal circuit court had, prior to the institution of the mandamus suit in the state court, preliminarily (but not finally) held the statutes of Minnesota and the orders of its railroad and warehouse commission in question to be in violation of the Constitution of the United States, was no reason why that court should have laid violent hands upon the attorney general of Minnesota, and by its orders have deprived the state of the services of its constitutional law officer in its own courts. Yet that is what was done by the Federal circuit court; for the intangible thing called a state, however extensive its powers, can never appear or be represented or known in any court in a litigated case, except by and through its officers. When, therefore, the Federal court forbade the defendant Young, as attorney general of Minnesota, from taking any action, suit, step, or proceeding whatever looking to the enforcement of the statutes in question, it said in effect to the state of Minnesota: 'It is true that the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to its people, and it is true that, under the Constitution, the judicial power of the United States does not extend to any suit brought against a state by a citizen of another state or by a citizen or subject of a foreign state, yet the Federal court adjudges that you, the state, although a sovereign for many important governmental purposes, shall not appear in your own courts, by your law officer, with the view of enforcing, or even for determining the validity of, the state enactments which the Federal court has, upon a preliminary hearing, declared to be in violation of the Constitution of the United States.'

This principle, if firmly established, would work a radical change in our governmental system. It would inaugurate a new era in the American judicial system and in the relations of the national and state governments. It would enable the subordinate Federal courts to supervise and control the official action of the states as if they were 'dependencies' or provinces. It would place the states of the Union in a condition of inferiority never dreamed of when the Constitution was adopted or when the 11th Amendment was made a part of the supreme law of the land. I cannot suppose that the great men who framed the Constitution ever thought the time would come when a subordinate Federal court, having no power to compel a state, in its corporate capacity, to appear before it as a litigant, would yet assume to deprive a state of the right to be represented in its own courts by its regular law officer. That is what the court below did, as to Minnesota, when it adjudged that the appearance of the defendant Young in the state court, as the attorney general of Minnesota, representing his state as its chief law officer, was a contempt of the authority of the Federal court, punishable by fine and imprisonment. Too little consequence has been attached to the fact that the courts of the states are under an obligation equally strong with that resting upon the courts of the Union to respect and enforce the provisions of the Federal Constitution as the supreme law of the land, and to guard rights secured or guaranteed by that instrument. We must assume-a decent respect for the states requires us to assume-that the state courts will enforce every right secured by the Constitution. If they fail to do so, the party complaining has a clear remedy for the protection of his rights; for he can come by writ of error, in an orderly, judicial way, from the highest court of the state to this tribunal for redress in respect of every right granted or secured by that instrument and denied by the state court. . . .

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. . . If a suit be commenced in a state court, and involves a right secured by the Federal Constitution, the way is open under our incomparable judicial system to protect that right, first, by the judgment of the state court, and ultimately by the judgment of this court, upon writ of error. But such right cannot be protected by means of a suit which, at the outset, is, directly or in legal effect, one against the state whose action is alleged to be illegal. That mode of redress is absolutely forbidden by the 11th Amendment, and cannot be made legal by mere construction, or by any consideration of the consequences that may follow from the operation of the statute. Parties cannot, in any case, obtain redress

by a suit against the state. Such has been the uniform ruling in this court, and it is most unfortunate that it is now declared to be competent for a Federal circuit court, by exerting its authority over the chief law officer of the state, without the consent of the state, to exclude the state, in its sovereign capacity, from its own courts when seeking to have the ruling of those courts as to its powers under its own statutes. Surely, the right of a state to invoke the jurisdiction of its own courts is not less than the right of individuals to invoke the jurisdiction of a Federal court. The preservation of the dignity and sovereignty of the states, within the limits of their constitutional powers, is of the last importance, and vital to the preservation of our system of government. The courts should not permit themselves to be driven by the hardships, real or supposed, of particular cases, to accomplish results, even if they be just results, in a mode forbidden by the fundamental law. The country should never be allowed to think that the Constitution can, in any case, be evaded or amended by mere judicial interpretation, or that its behests may be nullified by an ingenious construction of its provisions.

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. . . I am justified, by what this court has heretofore declared, in now saying that the men who framed the Constitution, and who caused the adoption of the 11th Amendment, would have been amazed by the suggestion that a state of the Union can be prevented, by an order of a subordinate Federal court, from being represented by its attorney general in a suit brought by it in one of its own courts; and that such an order would be inconsistent with the dignity of the states as involved in their constitutional immunity from the judicial process of the Federal courts (except in the limited cases in which they may constitutionally be made parties in this court), and would be attended by most pernicious results.

I dissent from the opinion and judgment.