No. 21-536

In the Supreme Court of the United States

CHRISTOPHER CHESTNUT,

Petitioner,

v.

JUSTICE CHARLES CANADY, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the district court may abstain from exercising its jurisdiction to enjoin an ongoing state bar disciplinary proceeding, pursuant to the *Younger* Abstention Doctrine, where the plaintiff, a member of a protected class, invoked the original jurisdiction of the district court pursuant to 28 U.S.C. § 1343.

2. Whether the plaintiff, a member of a protected class, invoking the original jurisdiction of the district court pursuant to 28 U.S.C. § 1343, must also allege an exception under the *Younger* Abstention Doctrine to prevent the district court from abstaining from the exercise of its jurisdiction to intervene in an ongoing state bar disciplinary proceeding.

3. Whether Congress's power to enact 28 U.S.C. § 1343 establishing the district court's original jurisdiction to enjoin ongoing state bar disciplinary proceedings on due process and equal protection grounds, as an exception to 28 U.S.C. § 2283 the Federal Anti-Injunction Statute, is preempted by the judicially created *Younger* Abstention Doctrine.

PARTIES TO THE PROCEEDINGS

Petitioner

- Petitioner Christopher Chestnut was the plaintiff in the district court proceedings and appellant in the court of appeals proceedings.

Respondents

- Justice Charles Canady
- Justice Ricky Polston
- Justice Joe Labarga
- Justice C. Alan Lawson
- Justice Carlos Muniz
- Hon. Robert Luck
- Hon. Barbara Lagoa, and
- John A. Tomasino (Clerk of the Supreme Court of Florida)

In late 2019 the Hon. Barbara Lagoa and the Hon. Robert Luck were respectively elevated from justices on the Florida Supreme Court and commissioned as judges to the United States Court of Appeals for the Eleventh Circuit; notwithstanding, both judges were state actors and signors to the state court orders causing the unconstitutional taking and due process violations complained of by Plaintiff in the district court complaint.

LIST OF PROCEEDINGS

Christopher Chestnut v. Charles Canady et. al., No. 20-12000, U. S. Court of Appeals for the Eleventh Circuit. Final Opinon date April 28, 2021. Judgment entered May 27, 2021.

Christopher Chestnut v. Charles Canady et. al., No.: 4:19-cv-271-RH-MJF, United States District Court for the Northern District of Florida, Tallahassee, Division. Judgement entered April 14, 2020.

The Florida Bar v. Christopher Chestnut, No.: SC16-797, SC16-1480, SC17-307, The Supreme Court of Florida. Judgement/Order to Disbar entered May 3, 2019.

The Florida Bar v. Christopher Chestnut, No.: SC18-1614, The Supreme Court of Florida. Judgment/Order to Permanently Disbar entered August 22, 2019.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Christopher Chestnut, respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Eleventh Circuit in case number: 20-12000.

OPINIONS BELOW

The decision by the court of appeals is not published but is attached hereto. (App.1a) The decision of the district court of appeals is not published but is attached hereto. (App.10a)

JURISDICTION

The opinion of the court of appeals was entered on April 28, 2021. (App.1a). This petition is timely filed within 150 days of this opinion, with the allowance for filing on the next business day if the deadline falls on a weekend. This Court's jurisdiction rests on 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. United States Constitutional Provisions

U.S. Const. Art. I, § 13

All courts shall be open, and every person for an injury done him, in his lands, goods, persons, or reputation, shall have remedy by due course of law.

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws.

B. State Constitutional Provisions

Florida Constitution, Article 5, Section 15

The Supreme Court of Florida shall have exclusive jurisdiction to regulate the admission of person to the practice of law and the discipline of persons admitted.

C. Statutory Provisions

28 U.S.C. § 1343(a)3 & 4

The district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person: (3) To redress the deprivation, under color of any State law, statue, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons with the jurisdiction of the United States; (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

28 U.S.C. § 2283

A court of the United State may not grant an injunction or 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.

42 U.S.C. § 1983,
Section 1 of the Civil Rights Act of 1871

Every person, who under color of any statute, ordinance, regulation, custom, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person with the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party inured in an action at law, suit in equity, or other proceeding for redress, except that in any action brought against a judicial officer form an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

STATEMENT OF THE CASE

The Court should grant this writ to resolve that 28 U.S.C. § 1343 falls within the "expressly authorized" exception to the Anti Injunction Statute, 28 U.S.C. § 2283, therefore when it is invoked by a protected class member in a 42 U.S.C. § 1983 claim for injunctive relief, district court jurisdiction is absolute, cannot be abdicated to another court, and is exempt from abstention doctrines such as *Younger*. In *Mitchum v. Foster*, the Court held that § 1983 claims for injunctive relief fall within the "expressly authorized" exception to § 2283 (Anti Injunction Statute) precluding district court dismissal under the *Younger* Abstention Doctrine.

However, the Court was silent as to whether § 1343 as a companion to § 1983[1] was also an "expressly authorized" exception and immune to *Younger* abstention in injunctive relief claims.

Equally, in *Younger v. Harris*, where the court announced the *Younger* abstention doctrine it was silent as to whether the doctrine applied to § 1343 jurisdiction, as the jurisdiction invoked in *Younger* was 28 U.S.C. § 1331[2]. Consequently, the need for clarity on this unsettled issue is substantial as evidenced by the error of the Eleventh Circuit, *sub judice*, in affirming district court abstention under *Younger*, when the undisputed record reflects Petitioner Chestnut invoked § 1343 original jurisdiction in his § 1983 claim for injunctive relief. This error is a canary in the coal mine signaling significant frustrations amongst lower courts and prejudice to the public if not corrected by this Court hereto.

This unsettled issue of § 1343 jurisdiction versus abstention in § 1983 injunctive relief claims causes the following frustrations for the Court: (1) invites lower court error, as evidenced *sub judice*, where the lower courts will either misapprehend or exploit the Court's silence on § 1343 in § 1983 injunctive relief claims to errantly abstain from jurisdiction even

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[1] The common origin of §§ 1983 and 1343 in § 1 of the 1871 Act suggests that the two provisions were meant to be, and are, complementary. *Lynch v. Household Finance Corp.*, 405 U.S. 538, 543 n. 7 (1972) .

[2] § 1331 is unlike § 1343. In that § 1343 applies only to alleged infringements upon rights under the color . . . of state law", whereas § 1331 confers jurisdiction where there is federal question. *See Lynch v. Household Finance Corp.*, 405 U.S. 538, 547 (1972).

when § 1983 is invoked; (2) creates a hierarchal intergovernmental dispute as to whether congressionally conferred jurisdiction under § 1343 is subordinated to judicially created abstention doctrine under *Younger*; (3) actively restricts access to courts for plaintiffs, like Petitioner Chestnut here, who are subject to state action in the state court tribunal and rely solely on § 1343 for access to a fair and impartial tribunal in the federal district court; (4) invites inconsistency amongst the circuits as the circuits composed of southern states who have historically been predisposed to "states rights" especially on civil rights, will trend toward abstention, whereas other circuits who historically abide by federal law will follow the statute in upholding jurisdiction; and, (5) invites recurrence of the havoc under *Rooker-Feldman*, where application of judicially created doctrine is far more obtuse than its acute intent.

This case is ripe with unsettled issues important to the federal courts and the public seeking escape from state action via § 1343. Moreover, this is an ideal opportunity for the Court to expound upon the *Mitchum* holding in declaring that § 1343 as the companion to § 1983 in injunctive relief claims is likewise precluded from abstention under *Younger*.

A. Legal Background

Under § 1343(a)(3) Congress has created federal jurisdiction of any civil action authorized by law to redress the deprivation under color of state law "of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons

within the jurisdiction of the United States.[3] Under § 1343(a)(4) Congress expressly conferred district court jurisdiction to "recover or secure equitable relief under any Act of Congress provide for the protect of civil rights". The Reconstruction Congress enacted the Ku Klux Klan Act/Civil Right Act of 1871[4] as codified by § 1983 to enforce and protect rights guaranteed under the Fourteenth Amendment.[5]

> That statute contained not only the substantive provision protecting against "the deprivation of any rights, privileges, or immunities secured by the Constitution" by any person acting under color of state law, but, as well, the jurisdictional provision authorizing a proceeding for the enforcement of those rights "to be prosecuted in the several district or circuit courts of United States." Jurisdiction was not independently defined; it was given simply to enforce the substantive rights created by the statute. § 1983 and § 1343, were deemed to coincide.

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[3] *Chapman v. Hous. Welfare Rights Org.*, 441 U.S. 600, 612-12 (1979).

[4] The act of 1871 was an expansion of national authority over matters that before the Civil War, had been left to the States. *Lynch v. Household Finance Corp.*, 405 U.S. 538, 548 (1972) *citing*, F. Frankfurter & J. Landis, THE BUSINESS OF THE SUPREME COURT 65 (1928).

[5] "The very purpose of § 1983 was to interpose the federal courts between the states and the people, as guardians of the people's rights-to protect the people from unconstitutional action under the color of stat law, 'whether that action be executive, legislative, or judicial'." *Mitchum v. Foster*, 407 225, 242 (1972), *citing Ex parte Virginia*, 100 U.S. 339, 346 (1880).

Examining Bd. of Eng'rs, Architects & Surveyors v. Flores De Otero, 426 U.S. 572, 581-82 (1976).

Under § 1343(a)(3) Congress has created federal jurisdiction of any civil action authorized by law to redress the deprivation under color of state law "of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all person within the jurisdiction of the United States.[6] Under § 1343(a)(4) Congress expressly conferred district court jurisdiction to "recover or secure equitable relief under any Act of Congress provided for the protection of civil rights". The Reconstruction Congress enacted the Civil Right Act of 1871 as codified by § 1983 to enforce and protect rights guaranteed under the Fourteenth Amendment.[7] The Reconstruction Congress codified § 1343 jurisdiction in response to state court tribunals in southern former slave states, including Florida, proving to be incompetent and unwilling to enforce and protect the civil rights of Blacks as a protected class of people.[8]

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[6] *Chapman v. Hous. Welfare Rights Org.*, 441 U.S. 600, 612-12 (1979).

[7] "The very purpose of § 1983 was to interpose the federal courts between the states and the people, as guardians of the people's rights-to protect the people from unconstitutional action under the color of stat law, 'whether that action be executive, legislative, or judicial'." *Mitchum v. Foster*, 407 U.S. 225, 242 (1972), *citing*, *Ex parte Virginia*, 100 U.S. 339, 346 (1880).

[8] Sen. Thurman says in debate of § 1 of the 1871 Civil Rights Act, "I believe the true remedy lies chiefly in the United States district and circuit courts. If state courts had proven themselves competent . . . we should not have been called upon to legislate

Thus, to employ the *Younger* abstention doctrine to dismiss a civil rights case sending it back to the very state court tribunal the plaintiff is complaining is violating his Fourteenth Amendment rights is not only contrary to the plain language of the statute, it serves to nullify § 1343.[9] However, this Court remains unwavering in it is undisputed constitutional principle that congress, not the judiciary, defines the scope of the federal jurisdiction within the constitutionally permissible bounds.[10] Congress since codifying § 1343 in 1871 has never repealed the statute or mitigated the jurisdiction conferred, thus, the lower courts have no authority to expand a judicially created abstention doctrine like *Younger*, to effectively truncate by nullification § 1343 a federal statute conferring federal court jurisdiction.

Contrarily, this Court has long supported "the proposition that federal courts lack the authority to abstain from the exercise of jurisdiction that has been conferred."[11] The courts of the Unite States are bound to proceed to judgement and to afford redress to suitors before them in every case which their

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upon this subject [Black Codes, and Civil Rights of Blacks in the South] at all. But they have not done so." *See Jett v. Dallas Indep. School Dist.*, 491 U.S. 701, 726 (1989) .

[9] *See Botany Mills v. Unties States*, 278 U.S. 282, 289 (1929) (When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode).

[10] *See New Orleans Pb. Serv. Inc. v. Council of New Orleans*, 491 U.S. 350, 359 (1989).

[11] *See New Orleans Pb. Serv. Inc. v. Council of New Orleans*, 491 U.S. 350, 358 (1989).

jurisdiction extends.[12] The district court's jurisdiction is absolute where the elements of § 1343 are met and it is invoked.

B. Factual Background

It is undisputed that Chestnut invoked § 1343 (a)3-4 in his complaint for declaratory and injunctive relief to the U.S. District Court for the Northern District of Florida. (*See* App.15a). Chestnut named the Justices of the Supreme Court individually in their professional capacity and the Clerk of the Supreme Court of Florida in his individual capacity, avoiding Eleventh Amendment immunity by seeking equitable relief and no money damages. The federal complaint detailed disqualification of multiple presiding judges for colluding with the prosecuting attorney, deprivation of meaningful discovery, preclusion from presenting a defense at trial, illegal exclusion of evidence, order of guilt entered without jurisdiction, disparate treatment in right to contract, disparate treatment in method and severity of discipline and bias by the court based in part or whole on ethnicity.

The attorney disciplinary proceedings before the Supreme Court of Florida do not procedurally provide for interlocutory appeal on constitutional issues. Chestnut raised the due process and constitutional issues in a post trial appeal but the Supreme Court of Florida refused to hear or rule on the appeal. Based on the totality of circumstances, Chestnut alleged in the federal complaint an inability in state court to receive a fair trial before an impartial tribunal based upon repeated and systemic due process and equal

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[12] *Chicot Cty. v. Sherwood*, 148 U.S. 529, 534 (1893) (Internal citations omitted).

protection violations by the Supreme Court of Florida and the Clerk as state actors. As an example, Chestnut alleged due process and equal protection violations by the Supreme Court of Florida after Judge Ohlman, the Referee/District Court Judge appointed to preside over of one of the attorney disciplinary cases and recommend guilt, was technically disqualified 30 days after, on day 2 of a 4-day trial, in which he was on the record coaching the prosecuting attorney on evidentiary matters. The trial never resumed after day 2 and Chestnut was not afforded an opportunity to put on a case in chief defense. Notwithstanding, after losing jurisdiction Judge Ohlman entered a report and recommendation of guilt as though there had been a trial, and the Supreme Court of Florida used the void order as a basis to disbar Chestnut. *See* App.32a.

The Supreme Court of Florida has a history of hostility and Fourteenth Amendment violations involving protected class members and the practice of law; in fact, it went so far as to defy a mandate issued by this Court to integrate the University of Florida College of Law in admitting, Virgil Hawkins to the University of Florida Law School.[13] The Supreme Court of Florida's historical conduct in violating the constitution, acting as state actors to subjugate protected class members in the practice of law, and the absence of procedural laws allowing for interlocutory appeals to raise constitutional challenges is precisely why the Reconstruction Congress enacted § 1983 and § 1343 as companions to offer plaintiffs like Chestnut access to a fair tribunal via the federal

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[13] *See State ex. Rel. v. Bd. Of Control*, 83 So.2d 20 (Fla. 1955); *see also Sweat v. Painter*, 338 U.S. 865 (1949).

district court, and precisely why no subsequent congress has repealed the provisions or mitigated the § 1343 jurisdictional provision as the lower courts erroneously did, *sub judice.*

C. Procedural History

1. 11th Circuit Proceedings

On May 27, 2021 a final judgment was entered by the 11th Circuit. The 11th Circuit issued an unpublished opinion on April 28, 2021 affirming that the district court was proper to abstain and dismiss Petitioner's § 1983 complaint. The circuit court held that although Petitioner had invoked original district court jurisdiction under 28 U.S.C. § 1343, "*Younger* and its progeny are only implicated after the district court has concluded it has jurisdiction." The court reasoned, "It is the nature of the state proceedings, not the district court's jurisdiction, that a court analyzes when determining if it should abstain under *Younger* . . . As such, the statute that granted the district court jurisdiction of this case does not alter our *Younger* analysis." The circuit court also held that the bad faith exception to *Middlesex* did not apply because, "Chestnut has provided no evidence that the disciplinary proceedings against him were brought without a reasonable expectation of obtaining a finding of guilt. Lastly, the circuit court concluded that all three requirements for *Younger* were met[14].

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[14] The three requirements for *Younger* abstention are: (1) there was an ongoing state proceeding that (2) implicated an important state interest and (3) those proceedings provided adequate opportunity for Chestnut to be heard. *See.* App.6a *See also, Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 423 (1982).

2. U.S. District Court for the Northern District of Florida Proceedings

On April 14, 2020, Judge Robert Hinkle, U.S. District Judge for the Northern District of Florida entered an order granting the State of Florida's Motion to Dismiss, filed by the Attorney General of Florida on behalf of the Justices and Clerk for the Supreme Court of Florida. The district court reasoned: "Whether viewed as a challenge to a state-court proceeding that was ongoing when this federal action was filed—a challenge barred by *Younger*—or as a challenge to a state-court proceeding that had ended when this federal action was filed barred by *Rooker-Feldman*—the result is the same. This action must be dismissed." *See*, App.13a.

Chestnut's case is highly distinguishable from *Middlesex*. The lower courts relied upon *Middlesex* for justifying abstention *sub judice*, however *Middlesex* is highly distinguishable from the case *sub judice*. First, *Middlesex* sought federal court intervention pursuant to 28 U.S.C. § 1331 federal question jurisdiction as opposed to 28 U.S.C. § 1343 original district court jurisdiction; federal question jurisdiction is subject to the *Younger* abstention doctrine, original district court jurisdiction is not. Second, although the plaintiff in *Middlesex* was black as is Chestnut, the Plaintiff in *Middlesex* alleged First Amended violations or privilege and immunity, whereas Chestnut alleged race based Fourteenth Amendment violations of fundamental rights. Third, the Plaintiff in *Middlesex* was afforded adequate opportunity to raise the constitutional challenge at the state court level having been provided a two day hearing explicitly for proffering evidence in support of his First Amendment violation allegations,

whereas the Supreme Court of Florida never afforded Chestnut an evidentiary hearing on his Fourteenth Amendment violations.

The plain language and legislative intent of 28 U.S.C. § 1343 is exclusive federal court intervention into state court proceedings where the state court tribunal is violating the Fourteenth Amendment, it is undisputed that Chestnut invoked § 1343 jurisdiction, and the lower court's reliance on *Younger* and its progeny to justify abstention, is legally wrong, divergent from precedence, usurping congressionally conferred jurisdiction, and oppressive to accessibility of the federal court for the intended class.

REASONS FOR GRANTING THE WRIT

This Court should grant this writ of certiorari to protect the congressional spirit and intent of § 1343 district court original jurisdiction for § 1983 claims brought to redress fundamental right violations by state court actors in state court tribunals, and to prevent an unconstitutional precedent of further expanding application of the *Younger* doctrine to include judicially created federal court abstention in § 1983 claims brought under § 1343, where congress expressly codified original district court jurisdiction.

I. THE COURT SHOULD SETTLE WHETHER A DISTRICT COURT MAY ABSTAIN UNDER *YOUNGER* WHERE A PROTECTED CLASS MEMBER FILES A § 1983 CLAIM INVOKING § 1343 ORIGINAL JURISDICTION.

The Court should grant this writ to preserve and further qualify the precedent in *Mitchum*. In *Mitchum*, this Court held that § 1983 injunctive relief claims fall within the "expressly authorized" exception to § 2283, Anti Injunction Statute. The expressly authorized exception to § 2283 specifically states that a federal court may not intervene in an ongoing state proceeding unless expressly authorized by an Act of Congress.[15] As established and reiterated *supra*, § 1 of the 1871 Ku Klux Klan Act/Civil Rights Act is an Act of Congress enacted expressly to provide a federal remedy under § 1983 and confer federal jurisdiction under § 1343 to "interpose" the federal court between a plaintiff particularly of a protected class and a state court tribunal where a plaintiff alleges state court action violating a plaintiffs' Fourteenth Amendment rights, like due process and equal protection as was alleged by Petitioner Chestnut *sub judice*.

The Court is unwavering in it position that § 1983 and § 1343 both emanate from a common Act of Congress, § 1 of the Act of 1871, with common purpose to provide remedy for the same class of persons.

> We have stated, for example, that a major purpose of the Civil Rights Acts was to "involve the federal judiciary" in the effort to exert federal control over state officials

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[15] *See* 28 U.S.C. § 2283.

> who refused to enforce the law. *District of Columbia v. Carter*, 409 U.S., at 427. Congress did so in part because it thought the state courts at the time would not provide an impartial forum. *See id.*, at 426-429. *See generally Monroe v. Pape*, 365 U.S. 167, 174-183 (1961); Developments in the Law–Section 1983 and Federalism, 90 Harv. L. Rev. 1133, 1150-115 (1977). Thus, Congress elected to afford a "uniquely federal remedy," *Mitchum v. Foster*, 407 U.S. 225, 239 (1972), that is, a "'federal right in federal courts,'" *District of Columbia v. Carter, supra*, at 428, quoting *Monroe v. Pape, supra*, at 180 (emphasis added). Four Terms ago, we considered the origins of § 1343 (3) and § 1983 and concluded that "the two provisions were meant to be, and are, complementary." *Examining Board v. Flores de Otero*, 426 U.S., at 583; *see Lynch v. Household Finance Corp.*, 405 U.S., at 543, n. 7. *Maine v. Thiboutot*, 448 U.S. 1, 20-21, 100 S. Ct. 2502, 2513 (1980).

Even though the Court stopped short of applying the holding in *Mitchum* to § 1343 in deciding that abstention is precluded in § 1983 injunctive relief claims, considering that § 1343 is the jurisdictional counterpart to § 1983, it is axiomatic that this Court would hold and a reasonable mind would infer that abstention is precluded in § 1343 claims as well when a protected class member invokes § 1343 in a § 1983 injunctive relief action from state court violations of due process and equal protection. After all, where is the logic in precluding abstention for a § 1983 injunctive relief claim alleging state action, but

permitting abstention for the companion jurisdictional provision § 1343; said abstention not only nullifies both provisions but also completely undermines the precedent of this Court as established in *Mitchum*. In addition granting this writ to protect this Court's precedent on abstention preclusion in § 1983 injunctive relief from state action claims, they Court must also move in haste to protect the constitutional provisions empowering Congress.

Furthermore, there is no authority citing otherwise, as *Younger* and its progeny invoke jurisdiction under § 1331 not § 1343. Thus, where the plain language, supported by consistent judicial interpretation, is as strong as it is here, ordinarily "it is not necessary to look beyond the words of the statute."[16]

II. THE MISAPPLICATION OF *YOUNGER* TO SUPERSEDE A FEDERAL STATUTE WILL RESULT IN EXCESSIVE LEGAL ERROR ON § 1983 FEDERAL COURT JURISDICTIONAL RULINGS AND INCITE A SPLIT AMONGST THE CIRCUITS.

This Court is unwavering that Congress not the judiciary determines district court jurisdiction. This Court is also well rooted in the notion that where federal a federal statute like § 1343 and a judicially created doctrine like the *Younger* abstention doctrine conflict, the statute prevails. However, the ruling *sub judice* by the Eleventh Circuit and the lower court directly contravene these constitutional and higher court principals. Granting this writ is the immediate and decisive response to curtail the imminent confusion from the lower court obstinance on the well settle

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16 *TVA v. Hill*, 437 U.S. 153, 184, n. 29 (1978).

law precluding abstention where § 1343 is invoked. This Court should act here to thwart an onslaught of lower court dismissals under the *Younger* abstention where § 1343 jurisdiction has been invoked. The hyper polarized politicization of state courts that prioritize concentration of power by state action over following the black letter law where equal protection and due process are concerned, promises that the trafficking in § 1343 is soon to reflect the demands of the reconstruction era when it was originally codified. The Eleventh Circuit and the Northern District of Florida have boastfully signaled an intent to disregard § 1343 along with the rights and remedies for the plaintiffs invoking that jurisdiction, and without this Court intervening via this writ to tame the trend before it starts, this Court is likely to be saddled with the same havoc in the misapplication of the *Younger* abstention doctrine that it experienced in lower courts errant expansion of *Rooker-Feldman* doctrine that was just recently tamed after decades of abuse and misapplication.

More importantly, granting this writ will allow the Court to preempt an imminent and inevitable split amongst the circuits regarding § 1343 jurisdiction. Although the Eleventh Circuit opinion *sub judice* is unpublished, it is certain to circulate in the circuits comprised of southern former slave states who are likely to emulate the Eleventh Circuit's erroneous ruling *sub judice* and abstain from § 1343 actions under the guide of federalism and comity. Unlike the Eleventh Circuit, many circuits will follow the plain language of § 1343, § 1983, and § 2283 and preclude *Younger* abstention from applying to due process and equal protection claims for injunctive relief from state

action as alleged by a protected class member. The result is a conflict amongst the circuits about a statute that has no ambiguity in application, just select courts manufacturing expansion of a judicially created doctrine to unlawfully nullify a statute congress has consciously decided not to repeal since its inception in the 1870s.

This Court should grant this writ of certiorari to preemptively safeguard against an imminent cascade of judicially created expansion and misapplication of *Younger* and its progeny by lower courts to abstain from section 1983 claims brought under 1343 to redress state action by state court tribunals violating individual fundamental rights in contravention to the equal protection, and the Fourteenth amendment.

The misapplication of *Middlesex* by the lower courts *sub judice* to dismiss a race based § 1983 claim brought under § 1343 is a judicial expansion of *Younger* creating an unconstitutional usurping of a federally enacted statute codified expressly to bestow original federal court jurisdiction in equity claims where a Plaintiff seeks equitable redress from state action by a state court tribunal, original district court jurisdiction as congressionally codified in 1343 precedent for district court abstention in direct contravention to the express intent spirit and intent.

> Principal among the considerations of this Court in deciding to grant a Writ of Certiorari is importance to the public of the federal issue to be resolved. *See Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387, 393 (1923). Congress not the judiciary defines the scope of federal jurisdiction; thus, it is incumbent upon this Court to grant this writ

> to cure the unconstitutional expansion of This lower court has no authority to judicially modify or expand federal court jurisdiction in § 1983 injunctive claims, particularly where congress has conferred abstention Judicially Created Doctrine should not supersede congressional law.

Furthermore, this Court is the appropriate authority to review the inherent unconstitutionality of the attorney disciplinary proceedings in the Supreme Court of Florida where the Supreme Court of Florida has an appalling history of disregard for civil rights and even disregard of this Court's mandates on civil rights of lawyers, the Florida rules deprive an attorney defendant adequate opportunity to raise federal claims at the state court level, and the Florida rules neither contemplate or provide access to a fair and impartial tribunal when a defendant alleges state action by the Supreme Court of Florida as the state actor when the Supreme Court of Florida oversees attorney admission to the bar, initiates and prosecutes attorney disciplinary actions, and is the sole arbiter of guilt and sanction for an accused attorney in disciplinary actions.

III. THIS CASE IS THE PERFECT VEHICLE FOR THE COURT TO RESUME WHERE IT LEFT OFF IN *MITCHUM*, BY DECLARING THE PROPER APPLICATION OF § 1343 AND THE EFFECT OF EXCEPTION TO THE ANTI INJUNCTION ACT TO ABSTENTION BY *YOUNGER*.

A federal district court errs when it holds that, because of 28 U.S.C. § 2283, it is without power in action under 42 U.S.C. § 1983 to enjoin proceeding pending in state court under any circumstances whatsoever. *Mitchum v. Foster*, 407 U.S. 225, 92 S. Ct. 2151,

32 L. Ed. 2d 705 (1972). 42 U.S.C. § 1983, authorizing suit in equity to redress deprivation, under color of state law, of federal constitutional rights, constitutes "expressly authorized" exception to 28 U.S.C. § 2283 prohibiting federal courts from granting injunctions staying state court proceedings "except as expressly authorized by Act of Congress." *Id.* Civil rights action brought under 42 U.S.C. § 1983, authorizing suit in equity to redress deprivation, under color of state law, of federal constitutional rights, is express statutory exception to 28 U.S.C. § 2283. *Trainor v. Hernandez,* 431 U.S. 434, 97 S. Ct. 1911, 52 L. Ed. 2d 486 (1977). There is no doubt that action under Civil Rights Act of 1871 falls within exception to 28 U.S.C. § 2283, thus *Younger* is precluded.

It is also important for this Court to underscore what the lower courts *sub judice* misapprehended in distinguishing § 1331 from § 1343. The lower courts cited extensively to prior rulings where this court has abstained from intervention in attorney disciplinary proceedings before a state court tribunal. However, all of those cases invoked jurisdiction under § 1331 federal question jurisdiction to bring a § 1983 claim. Reiterating the boundaries of *Younger* is likely timely based upon the rulings of the lower court *sub judice.*

This writ should be granted because it is a case of first impression in that the fact pattern expands upon the § 1983 claim in *Mitchum*, as this case involves a black attorney—a member of a protected class, raising due process and equal protection complaints against the highest state court of Florida as a state actor and seeking district court injunctive relief for a fair tribunal. The facts of this case are squarely in line with the legislative intent for remedy for state action

pursuant to § 1983, the legislative intent for conferring district court jurisdiction pursuant to § 1343 and the precedent of this Court in *Mitchum* logically applied to § 1343.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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