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Federal Restrictions of Wage Garnishment: Title III of the Consumer Protection Act

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FEDERAL RESTRICTIONS OF WAGE GARNISHMENTS:
TITLE III OF THE CONSUMER CREDIT PROTECTION ACT

INTRODUCTION

Congress has recently passed the Consumer Credit Protection Act (CCPA)\(^1\) which is designed to "safeguard the consumer in connection with the utilization of credit by requiring full disclosure of the terms and conditions of finance charges in credit transactions or in offers to extend credit [and] by restricting the garnishment of wages. . . ."\(^2\) The Act is the result of seven years of Congressional hearings on the need for consumer credit protection legislation.\(^3\) That the total amount of consumer credit, as of September 1967, was estimated to be 95.886 billion dollars, seventeen times as great as in 1945, and currently American consumers are paying approximately as much in interest and service charges as the annual interest on the national debt\(^4\) evinces this need.

Concurrently with the growth in consumer credit, the number of personal bankruptcies has also risen. During the fiscal year ending June 30, 1967, there were 208,000 personal bankruptcies compared with 18,000 such bankruptcies in 1950.\(^5\) Title III, a little publicized section of the CCPA which restricts wage garnishments,\(^6\) was designed to "relieve countless debtors driven by economic desperation from plunging into bankruptcy in order to preserve their employment and insure a continued means of support for themselves and their families."\(^7\) The

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4. Id. at 10.
5. Id. at 20.
6. Garnishment is a statutory collection device whereby a debtor's assets in the hands of a third party may be reached by a creditor. Garnishment may be used before judgment but normally only if the grounds for a valid attachment exist, while garnishment after a judgment adverse to the defendant may proceed without such grounds. It is normally used by creditors against those debtors whose principal assets are in the form of unpaid wages in the hands of the debtors' employers. Garnishment is distinguishable from the processes of attachment and execution. Attachment is a seizure of a litigant's property in his possession prior to any adjudication of the dispute, while execution is a legal remedy for the enforcement of a judgment of the court. In garnishment proceedings the property is left with the garnishee. Title III expressly restricts its coverage to garnishment of wages: "The term 'garnishment' means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt" Pub. L. No. 90-321, § 302(c). Garnishment will be used throughout this comment only in this limited sense.
7. H.R. REP. No. 1040 at 21. The effects of garnishment are not, however, limited to voluntary proceedings in bankruptcy for, in a majority of jurisdictions, garnishment
need for restriction of wage garnishment is underscored by President Johnson's message on urban and rural poverty delivered in 1967:

Hundreds of workers among the poor lose their jobs or most of their wages each year as a result of garnishment proceedings. In many cases, wages are garnished by unscrupulous merchants and lenders whose practices trap the unwitting workers.¹

There are a number of ways in which the effect of excessive garnishments and subsequent discharge upon a debtor-employee could be mitigated. Thus all wages could be made exempt from garnishment, or a debtor-employee discharged after garnishment could be given either compensatory damages or reinstatement, or both, in an action against his discharging employer. The express provisions of Title III provide only a statutory minimum exemption on wage garnishments² and a criminal


By increasing the amount of wages exempt from garnishment, Title III can be interpreted as an expression of a Congressional desire that a debtor-employee have available alternative relief to voluntary proceedings in bankruptcy.

8. Message from the President of the United States transmitting recommendations on urban and rural poverty, H.R. Doc. No. 88, 90th Cong., 1st Sess. 10 (1967). A rather poignant example of the harsh effects of garnishment appeared in a recent Associated Press dispatch from the site of a mine explosion which trapped seventy-eight miners. The wife of one of the trapped miners related the effect of garnishment on her family:

We owe . . . so much [my husband] has got only two paychecks in two years. The last check he got was for $7.32. All the rest from his work in the mine [approx. 135 dollars per week] was taken out ahead to pay our debts . . . . But it's getting better all the time. We'll be out of garnishing the first of the year. But now, he only gets about two hours of sleep a day [due to a second full-time job digging graves and setting headstones].


It must be admitted, however, that some of the harsh effects of garnishment result from a debtor's ignorance of the availability of voluntary bankruptcy proceedings, wage earner's plans or state insolvency proceedings.

9. (a) Except as provided in subsection (b) and in section 305, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed (1) 25 per centum of his disposable earnings for that week; or (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2). (b) The restrictions of subsection (a) do not apply in the case of (1) any order of any court for the support of any person, (2) any order of any court of
penalty for an employer who wrongfully discharges an employee by reason of a garnishment for one indebtedness. These provisions represent a balance between an employee's need for protection from the "harsh and burdensome effects" of the "predatory extension of credit" by creditors relying upon wage garnishment, and a creditor's need for a collection device of last resort.

Title III raises questions of the scope of Congressional power under the commerce and bankruptcy clauses, the effect which Title III will have on existing state laws, and the availability and effectiveness of the remedies provided in Title III. The need for exploration of these questions provided the impetus for this comment.

I. CONSTITUTIONALITY

As authority for Title III, Congress invoked its powers under both the commerce clause and the bankruptcy clause. Congressional power under either clause would be sufficient to sustain the validity of Title III if the method employed by Congress fell within the restrictions of the necessary and proper clause. Since many employees who would be covered are not employed within an industry engaged in interstate commerce, and since garnishment is used by creditors before an employee is covered by the Bankruptcy Act, questions arise as to the validity of the constitutional authority.

A. THE COMMERCE POWER

Within the scope of the commerce clause, Congress' power to
regulate commerce is plenary in nature.\textsuperscript{17} In determining the extent of the commerce power, the relevant focus of constitutional inquiry is upon effects, not causes.

The source of the restraint [on interstate commerce] may be intrastate, as making of a contract... usually is; the application of the restraint may be intrastate, as it often is; but neither matters if the necessary effect is to stifle or restrain commerce among the states. If it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze.\textsuperscript{18}

To cite one pertinent example, in a decision upholding Congressional power under the commerce clause over home-grown wheat used to feed the grower’s livestock, the Supreme Court held that even if the “activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce.”\textsuperscript{19}

\textsuperscript{17} Abel, The Commerce Clause in the Constitutional Convention and in Contemporary Comment, 25 Minn. L. Rev. 432 (1941) (commerce power intended to prevent state barriers to trade and provide for regulation of external commerce). Formerly it was held that the scope of the commerce power was coextensive with the concept of interstate commerce. However, it is an economic reality that interstate and intrastate aspects of commerce, as well as functions within a single commercial enterprise, are inseparably intertwined and therefore an artificial distinction between interstate and intrastate commerce is inappropriate to delimit the effective regulation of commerce. North American Co. v. SEC, 327 U.S. 686, 705 (1946). “When the conduct of an enterprise affects commerce among the states is a matter of practical judgment, not to be determined by abstract notions.” Polish Nat’l Alliance v. NLRB, 322 U.S. 643, 650 (1944). See Chief Justice Marshall’s rather broad interpretation of the necessary and proper clause in McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 421 (1819). In the last thirty years, the federal commerce power has been determined to be coextensive with the economic needs of the nation and Congress has the power to regulate commerce among the states by those reasonable means which Congress deems necessary to protect the national economic interests. For a survey of the leading cases establishing the present theory of the scope of the commerce clause, see Stern, The Commerce Clause and the National Economy, 1933-1946, 59 Harv. L. Rev. 645, 947 (1946). An explanation of the present theory appears in Stern, The Scope of the Phrase Interstate Commerce, 41 A.B.A.J. 823, 871 (1955).


Congress found wage garnishment to have a two-pronged effect on interstate commerce. The first effect may be analyzed in three steps: garnishments which are unrestricted, or inadequately restricted when measured by the standard established in Title III, encourage undesirable extension of credit, which diverts money from payment for goods and services into excessive credit payments, and this diversion hinders the production and flow of goods in interstate commerce. Whatever the merits of this theory, it is premised upon the fact that most wage garnishment actions are brought by local creditors and that many of these local extensions of credit involve excessive interest and service charges. Consequently, Congress concluded that local eddies are produced in the nationwide flow of goods, services, and payments and, in addition, that the composition of this flow is altered by the introduction of payment for excessive interest and service charges. To limit federal regulatory power over the nation's commerce to the flow of goods and services and to deny Congress power over the return flow of payments for these goods and services is to ignore their essential identity and to defeat in large measure the power to regulate commerce at all.

The second effect of wage garnishment upon interstate commerce results from wage garnishment's relation to employment discharge which

20. Congress found:
   (1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce. (2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce. Pub. L. No. 90-321, § 301(a) (1), (2).

21. For a comparison of present state limitations on garnishment with the proposed standard under Title III see note 120 infra.

22. The factual foundation for this conclusion is weak since the amount of credit extended in reliance upon garnishment as a collection device is subject to doubt. A recent study has shown that there appears to be little correlation between the extension of consumer credit and wage garnishment laws. Brunn, Wage Garnishment in California: A Study and Recommendations, 53 Calif. L. Rev. 1214, 1239-43 (1965). However, a possible reason for the lack of correlation is the wide variety of collection services and devices available to the creditor in addition to wage garnishment. Jablonski, Wage Garnishment as a Collection Device, 1967 Wis. L. Rev. 759, 763-64 (1967) ; Riesenfeld, Collection of Money Judgments in American Law, 42 Iowa L. Rev. 155, 181 (1957).

23. It should, however, be recognized that payments to local creditors subsequently provide the basis for additional credit purchases by other borrowers of goods and services in interstate commerce.

24. See Brunn, supra note 22, at 1239.

25. The commerce power extends to ensuring a smooth national flow of commerce and elimination of undue local obstructions to the flow. E.g., Katzenbach v. McClung, 379 U. S. 294 (1964) (interstate flow of payments for food unduly disturbed by racial discrimination in restaurant accommodations); Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964) (interstate flow of Negro travelers affected by discrimination in providing lodging).
affects both production and consumption of goods by the discharged debtor-employee. Wage garnishment frequently leads to discharge for two reasons: processing of garnishments entails unnecessary and unproductive expense from the employer's viewpoint and the employer is made aware of the employee's financial insecurity with its possible adverse effect upon the employee's productivity. Consequently, many employers have a fixed policy of discharge by reason of garnishment.

When Congress has deemed regulation of activities affecting interstate commerce to be necessary, as in Title III, the role of the courts is to determine whether Congress had a reasonable basis for its judgment, and not to initiate an inquiry as to proper weight to be given facts considered by Congress. It seems doubtful that a court would find that Congress has exceeded reasonable limits for the judgment which it has exercised, or that Title III is violative of any other Constitutional provision. Therefore, Title III would appear to be a valid exercise of power under the commerce clause.

B. The Bankruptcy Power

As an alternative justification for the enactment of Title III, Congress based its authority upon the bankruptcy clause, under which

27. Such rules providing for discharges after multiple garnishments have usually been held reasonable in labor arbitration proceedings. Id.
29. See text accompanying notes 3 to 5 supra.
30. Congress found that "[t]he great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country." Pub. L. No. 90-321, § 301(a) (3). The phraseology "uniform Laws on the subject of Bankruptcy" does not require that Congress must find a non-uniformity in existing laws as a prerequisite to action under the bankruptcy clause; rather, it only requires that laws enacted under the bankruptcy clause be uniform.

The uniformity required by the bankruptcy clause is geographical uniformity as the law is applied to the states and not a uniform combined effect of state and federal laws as applied to the individual debtor. Hanover Nat'l Bank v. Moyses, 186 U.S. 181 (1902); Central States Life Ins. Co. v. Chilton, 77 F.2d 993 (10th Cir. 1935); Bradford v. Fahey, 76 F.2d 628 (4th Cir. 1935), rev'd on other grounds, 77 F.2d 992 (4th Cir. 1935); Campbell v. Alleghany Corp., 75 F.2d 947 (4th Cir. 1935); Louisville Joint Stock Land
exercise of legislative power is limited to regulation of those subjects which are within the subject of bankruptcies. Although the principal Congressional enactment to date under the bankruptcy power is the Bankruptcy Act, the subject of bankruptcies is broader than the limits within which the Act is applicable.

The problem of defining the subject of bankruptcies is complicated by the changing nature of this somewhat vague concept as the nation's commercial, industrial, and social conditions change. Neither the extent of power formerly exercised by Congress, nor the methods heretofore utilized, can be relied upon to delimit the concept. An examination of

Bank v. Radford, 74 F.2d 576 (6th Cir. 1935), rev'd on other grounds, 295 U.S. 555 (1935); In re Sink, 27 F.2d 361 (W.D. Va. 1928); In re Davis, 13 F. Supp. 221 (E.D.N.Y. 1936); In re Pierce-Arrow Sales Corp., 10 F. Supp. 776 (W.D.N.Y. 1938); In re Cope, 8 F. Supp. 778 (D. Colo. 1934), rev'd on other grounds, 8 F. Supp. 961 (D. Colo. 1935). Therefore, the Congressional attempt under Title III to make uniform the combined action of state wage exemption laws and federal bankruptcy laws is not required by the bankruptcy clause and thus alone does not serve as a valid justification for Title III. The legislative and judicial view of the purpose of bankruptcy laws has undergone extensive change since the passage of the first bankruptcy law. Although the original overriding purpose was to protect creditors by an equal distribution of the debtor's property, the rehabilitation of the debtor has come to be recognized as an equally important purpose of bankruptcy laws. Simonson v. Grandquist, 369 U.S. 38 (1962); Young v. Higbee, 324 U.S. 204 (1945); Sampzell v. Imperial Paper & Color Corp., 313 U.S. 215 (1941); Kuehner v. Irving Trust Co., 299 U.S. 445 (1937); Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555 (1935); Stratton v. New, 283 U.S. 318 (1931); Meek v. Centre County Banking Co., 268 U.S. 426 (1925); United States Fidelity & Guar. Co. v. Bray, 225 U.S. 205 (1912); Bailey v. Glover, 88 U.S. (21 Wall.) 342 (1874); MacDonald v. Tefft-Weller Co., 128 F. 381 (5th Cir. 1904); United States v. Pusey, 27 F. Cas. 631 (No. 16,098) (C.C.E.D. Mich. 1872).

31. U.S. CONST. art. I, § 8, cl. 4. For the text of the bankruptcy clause see note 13 supra.


34. The Bankruptcy Act of 1898, 30 Stat. 546 (1898), did not provide for all matters within the "subject of bankruptcies"; e.g., there was no adequate provision for extension of time to insolvent debtors or for corporate reorganization. The Act was designed primarily for the relief of those whose debts had been incurred in mercantile and manufacturing pursuits and their creditors. Subsequent amendments to the Bankruptcy Act have enlarged the exercise of power to areas beyond the original Act. Kalb v. Feuerstein, 308 U.S. 433 (1940); Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555 (1935); Continental Illinois Nat'l Bank & Trust Co. v. Chicago, R.I. & Pac. Ry., 294 U.S. 648 (1935); Campbell v. Alleghany Corp., 75 F.2d 947 (4th Cir. 1935); In re Landquist, 70 F.2d 929 (7th Cir. 1934); Engstrom v. DeVos, 81 F. Supp. 854 (E.D. Wash. 1949). There is no reason to believe that the present extent of regulation under the Act represents an exercise of all the power granted Congress under the bankruptcy clause.

35. "Congress may prescribe any regulations concerning . . . bankruptcy that are not so grossly unreasonable as to be incompatible with fundamental law. . . ." Hanover Nat'l Bank v. Moyses, 186 U.S. 181, 192 (1902). See Sturges v. Crowninshield, 17 U.S. (4 Wheat.) 122 (1819); In re Landquist, 70 F.2d 929 (7th Cir. 1934).
the rather limited body of case law does, however, provide helpful insight into the definitional problem.

Bankruptcy in the statutory sense arises as one possible result of a debtor-creditor relationship, and it seems clear that the subject of bankruptcies does not extend beyond the bounds of this relationship. Within the debtor-creditor relationship, it extends to providing relief to insolvent, nonpaying, or fraudulent debtors or their creditors by distribution of the debtors' property among their creditors or by discharge of the debtors from their debts. Within these limits, "... all the intermediate legislation, affecting substance and form, ... [and] ... tending to further ... distribution and discharge ... are in the competency and discretion of Congress." Garnishment, used by a creditor as a collection device against a nonpaying debtor, is therefore within the relationship regulated by the subject of bankruptcies. However, to be a proper subject for regulation, it must affect the relief provided debtors and creditors; i.e., distribution of the debtors' property among creditors. Since a debtor can be discharged from his debts only under the provisions of the Bankruptcy Act, any other law which affects the necessity of resorting to the Act also affects the extent to which the discharge process is utilized. The Constitutional grant of power to Congress to provide for discharge under the bankruptcy clause, considered in conjunction with the necessary and proper clause, includes the power to regulate the availability and extent of use of discharge by insolvent, nonpaying, or fraudulent debtors.

Although a number of statistical studies have been made of the relation between state garnishment exemption laws and personal bankruptcies, the authors differ concerning the significance of wage garnishments as a

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36. "The subject of bankruptcies is nothing less than 'the subject of the relations between an insolvent or nonpaying or fraudulent debtor and his creditors, extending to his and their relief.'" Wright v. Union Cent. Life Ins. Co., 304 U.S. 502, 513-14 (1937) (quoting from In re Reiman, 20 F. Cas. 490 (No. 11,673) (S.D.N.Y. 1874)). Accord, Hanover Nat'l Bank v. Moyses, 186 U.S. 181 (1902); Sturges v. Crowninshield, 17 U.S. (4 Wheat.) 122 (1819); Campbell v. Alleghany Corp., 75 F.2d 947 (4th Cir. 1935); In re Central Funding Corp., 75 F.2d 256 (2d Cir. 1935); In re Utilities Power & Light Corp., 29 F. Supp. 763 (N.D. Ill. 1939); In re Merced Irr. Dist., 25 F. Supp. 981 (S.D. Cal. 1939); In re Jones, 10 F. Supp. 165 (W.D. Mo. 1935).


38. Cases cited note 36 supra.

39. In re Klein, reported in a note to Nelson v. Carland, 42 U.S. (1 How.) 265 (1843) (emphasis added), cited with approval in Hanover Nat'l Bank v. Moyses, 186 U.S. 181 (1902); In re Central Funding Corp., 75 F.2d 256 (2d Cir. 1935).

40. U.S. Const. art. I, § 8, cl. 18. For the text of the necessary and proper clause see note 14 supra.
cause of personal bankruptcy. The legislative history of Title III indicates that the Banking and Currency Committee, relying upon similar studies of their own, concluded that there was a clear "causal connection between harsh garnishment laws and high levels of personal bankruptcies." The Committee found that the garnishment of wages affected both commerce and bankruptcy by disrupting employment, production, and consumption as well as by forcing debtors to plunge into bankruptcy out of economic desperation. Finally, the necessity for

41. On the basis of a finding that the personal bankruptcy rate per capita in three states without automatic exemptions was approximately nineteen times as great in 1960 as the rate in three states with laws exempting all wages from garnishment, an experienced referee in bankruptcy concluded that "... the one and only primary cause [of consumer bankruptcy] is the garnishment or threat of garnishment of wages coupled with an inadequate wage exemption law." Snedecor, Consumer Credit and Bankruptcy, 35 REP. J. 37, 38 (1961); see Driver, Proposal—To Amend the Bankruptcy Act To Require That Consideration Be Given To The Use of Chapter XIII, 18 PERSONAL FIN. L.Q. 41 (1963); H.R. REP. No. 1040, supra note 3; D. Cowans, BANKRUPTCY LAW AND PRACTICE § 622 (1963). Contra, .

42. "In States such as Pennsylvania and Texas, which prohibit the garnishment of wages, the number of nonbusiness bankruptcies per 100,000 population are nine and five respectively, while in those States having relatively harsh garnishment laws, the incidents of personal bankruptcies range between 200 to 300 per 100,000 population." H.R. REP. No. 1040, supra note 3, at 20.

43. Id.

44. Id. Wage garnishment is normally employed only when the debtor has no other attachable assets. It has been estimated that the average wage earner needs approximately eighty-five per cent of his salary just to meet his ordinary living expenses. BUREAU OF LABOR STATISTICS REP. No. 237-93, CONSUMER EXPENDITURES AND INCOME 1 (1965). See Jablonski, supra note 22, at 771; Brunn, supra note 22, at 1235-38. Thus, when a debtor is deprived of more than a certain percentage of his
enactment of Title III will probably not be questioned by the courts since conclusions made by Congress on the basis of factual investigations are presumed to be correct.\textsuperscript{45}

Consequently, Title III would appear to be a valid exercise of power under the bankruptcy clause since wage garnishment exemption laws lie within the relationship between an insolvent, nonpaying, or fraudulent debtor and his creditors, affect distribution of the debtor's property among his creditors both within and without the Bankruptcy Act, and affect the use of the discharge process provided by the Act.

II. ENFORCEMENT OF TITLE III

The absence of procedural provisions in Title III indicates that Congress did not intend to alter existing state garnishment procedures other than the exemption statutes. Procedurally, state garnishment statutes differ greatly,\textsuperscript{46} but normally the garnishee-employer has a duty to assert the debtor-employee's right to a statutory exemption, including, presumably, the exemption contained in Title III.\textsuperscript{47} If the garnishee-employer fails to do so, he is not discharged from his liability to the debtor-employee.\textsuperscript{48} In the absence of a statutory provision dealing with

\textsuperscript{45} See cases and discussion at note 28 supra.

\textsuperscript{46} As an example of the wide variance as seen from the viewpoint of the garnishee, see CCH HANDBOOK ON ASSIGNMENT AND GARNISHMENT OF WAGES (1966).

\textsuperscript{47} The fact that the exemption invoked as a defense in a state garnishment action is contained in a federal statute rather than a state statute should have little effect on procedural rules. In actions in the past under the Fair Labor Standards Act (FLSA), state procedural rules generally govern at both the trial and appellate levels. E.g., Rockwood v. Crown Laundry Co., 352 Mo. 561, 178 S.W.2d 440 (1944); Archer v. Musick, 147 Neb. 1018, 25 N.W.2d 908 (1947); Ille v. Travis Oil Corp., 196 Okla. 332, 164 P.2d 998 (1946); Hunt v. National Linen Serv. Corp., 178 Tenn. 262, 157 S.W.2d 608 (1941). There is no indication that Congress intended to alter this practice in actions involving Title III.

The garnishee's duty to assert available exemptions is sometimes limited to those exemptions known to the garnishee. However, the lack of knowledge referred to is not lack of knowledge of the existence of a statutory exemption, but rather of a factual situation relevant to the particular action; e.g., In re Beals, 116 F. 530 (D. Ind. 1902) (debtor-employee had filed for bankruptcy); Badler v. Gillarde Sons Co., 387 Pa. 266, 127 A.2d 680 (1956) (principal-debtor not true owner of property); Steward v. Northern Assur. Co., 45 W. Va. 734, 32 S.E. 218 (1898) (contract by married woman void). To allow a garnishee-employer to avoid liability in an action brought by a debtor-employee on the grounds of lack of knowledge of the statute would render the duty to assert any statutory exemptions nugatory. In addition, to allow a garnishee-employer to successfully assert his lack of knowledge of section 303(a) would serve to elide the protection afforded the debtor-employee, at least for the first such action against any single garnishee-employer.

waiver, most states hold that the debtor-employee waives an exemption if he fails to assert it before payment by the garnishee.\textsuperscript{49} Title III must be analyzed within this procedural context.

A. The Garnishee-Employer and Title III

In addition to an employer's liability to an employee under state law if he pays the garnishing creditor an amount in excess of the limitation contained in Title III\textsuperscript{50} the employer is also subject to both criminal and civil liability for infraction of Title III's prohibition against wrongful discharge. The employer's civil liability to the employee will be considered in connection with the impact of Title III on the employee.\textsuperscript{51} This section will be devoted to a consideration of the employer's possible criminal liability under Title III.

Section 304(a) of Title III provides that "[n]o employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness." Although the subjective motive of an employer in discharging an employee whose wages have been garnisheed presents a difficult factual issue, much the same problem has been handled extensively in other contexts. For example, the Labor Management Relations Act (LMRA)\textsuperscript{52} provides that an employer may not discharge an employee by reason of the employee's union membership or activities.\textsuperscript{53} Similarly, the Fair Labor Standards Act (FLSA)\textsuperscript{54} prohibits discharge of an employee because of his actions in connection with the Act.\textsuperscript{55} In addition, several states have enacted statutes prohibiting discharge by reason of garnishment proceed-

\textsuperscript{49} E.g., Union Pac. Ry. v. Smersh, 22 Neb. 751, 36 N.W. 139 (1888); Hanson v. Hodge, 92 Wash. 425, 159 P. 388 (1916). There seems to be no valid reason why estoppel of a debtor's assertion of an exemption after payment by the garnishee should be dependent upon whether the exemption is contained in a federal or a state statute.

\textsuperscript{50} Pub. L. No. 90-321, § 303(a). The garnishment limitation chosen by Congress is the lesser of (1) twenty-five per cent of the wage remaining after all deductions required by law or (2) the excess over thirty times the Federal minimum hourly wage (forty-eight dollars at the time of this writing (30 x $1.60)). 29 U.S.C. § 206(a) (1) (Supp. II 1966). Note that a weekly disposable income less than sixty-four dollars is necessary for the latter limitation to apply.

\textsuperscript{51} See text accompanying notes 62 to 81 infra.

\textsuperscript{52} 29 U.S.C. §§ 141-87 (1964).

\textsuperscript{53} 29 U.S.C. § 158(a) (1964).


ings against an employee. 56

The factual determination of an employer's motive for discharge must of necessity rest on inference. However, the courts have been quick to supply rules of inference which mitigate the difficulty of proof. 57 An improper motive on the part of the employer may be established by inferences arising from circumstances surrounding the discharge, such as timing of the discharge, other discharges by the employer for garnishment, and absence of past discharges for the justifications asserted by the employer. 58 Once a prima facie case of violation has been established, the employer bears the risk of non-persuasion if he fails to introduce affirmative evidence as to his legal motive for the discharge. 59

Title III's provision against wrongful discharge should not present any evidentiary problems not already encountered under the FLSA or the LMRA. 60 However, enforcement problems may arise because of the difference between discharges for matters affecting the entire group of employees, such as union activities and wage or hour requirements, and discharges affecting a single debtor-employee garnisheed for a single indebtedness. For example, the lack of employee familiarity with the provisions of Title III, 61 coupled with the investigative work load currently carried by the Wage and Hour Division, may result in numerous undiscovered violations.

B. THE DEBTOR-EMPLOYEE AND TITLE III

Although Title III does not expressly provide a debtor-employee

56. NEW YORK CIVIL PRAC. § 5252 (McKinney Supp. 1968); MICH. COMP. LAWS § 712A.18b (1968).
57. For example, under section 158 of the LMRA, it is generally recognized that the burden of proof of the employer's improper motive rests upon the NLRB. E.g., Portable Elec. Tools, Inc. v. NLRB, 309 F.2d 423 (7th Cir. 1962); NLRB v. Tepper, 297 F.2d 289 (10th Cir. 1961); NLRB v. Rickel Bros., Inc., 290 F.2d 611 (3d Cir. 1961); Ore-Ida Potato Prod., Inc. v. NLRB, 284 F.2d 542 (9th Cir. 1960); Miller Elec. Mfg. Co. v. NLRB, 265 F.2d 225 (7th Cir. 1959). However, specific evidence of the employer's subjective intent is not an indispensable element of proof of violation of the Act. NLRB v. Erie Resistor Corp., 373 U.S. 221 (1963).
58. Teamsters Local 357 v. NLRB, 365 U.S. 667 (1961). The fact that the discharge was subsequent to a garnishment should not alone suffice to raise a presumption of improper motive. See generally Bituminous Material & Supply Co. v. NLRB, 281 F.2d 365 (8th Cir. 1960); NLRB v. National Paper Co., 216 F.2d 859 (5th Cir. 1954).
60. The NLRB has shown an ability to determine when garnishment was in fact the cause of a discharge claimed to be in violation of section 158 (see text accompanying note 53 supra). E.g., Luisi Truck Lines, 160 NLRB 530 (1966); Capital Distr. Co., 147 NLRB 1138 (1964). Nor has the NLRB failed to identify instances when the garnishment was used only as a pretext. E.g., Mook Weiss Meat Packing Co., 160 NLRB 546 (1966).
61. Labor unions may aid in promoting the effectiveness of Title III by informing members of the provisions against discharge and the steps necessary to secure the relief provided by Title III.
with a private civil remedy for damages resulting from wrongful discharge, it does establish a statutory duty on the part of the garnishee-employer not to discharge the debtor-employee by reason of garnishment for any one indebtedness. A breach of a federal statutory duty has long been held to give rise to an implied right of action on behalf of the injured persons for whose benefit the statute was enacted. Since Title III was designed to protect consumers by restricting the garnishment of wages and by providing a criminal sanction for wrongful discharge, it would be appropriate for state or federal courts to imply a private civil remedy to protect the consumer's interest in his continued employment.

The recognition of such an implied remedy has been held proper to further Congressional purpose embodied in other federal statutes and

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63. "... where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." Bell v. Hood, 327 U.S. 678, 684 (1946). See Texas & Pac. Ry. v. Rigsby, 241 U.S. 33 (1916); Lowndes, Civil Liability Created by Criminal Legislation, 16 MINN. L. REV. 361 (1932); Morris, The Relation of Criminal Statutes to Tort Liability, 46 HARV. L. REV. 361 (1932). However, this remedy is limited to redress of the interests which the statute was intended to protect; e.g., Greater Iowa Corp. v. McLendon, 378 F.2d 783 (8th Cir. 1967); Taussig v. Wellington Fund, Inc., 313 F.2d 472 (3d Cir. 1963), cert. denied, 374 U.S. 806 (1963). See also W. PROSSER, THE LAW OF TORTS § 35 (2d ed. 1964); RESTATEMENT (SECOND) OF TORTS § 286 (1965).
64. Pub. L. No. 90-321, § 303. For the text of this statute see note 9 supra.
65. Id., § 304. For the text of this statute see note 10 supra.
66. It is clear that the existence of a private civil remedy implied on the basis of a statutory duty contained in a federal statute is a federal question. Sola Elec. Co. v. Jefferson Elec. Co., 317 U.S. 173 (1942). It is not clear, however, that such an implied remedy would fall within the provisions of 28 U.S.C. § 1337 (1964) under which district courts are given original jurisdiction over acts of Congress regulating commerce, independent of any minimum jurisdictional amount such as the 10,000 dollar requirement of federal question jurisdiction under 28 U.S.C. § 1331(a) (1964) and diversity jurisdiction under 28 U.S.C. § 1332(a) (1964). This question is crucial to the availability of federal court jurisdiction over an employee's implied right of action since only infrequently would the amount involved exceed the 10,000 dollar jurisdictional amount required by section 1331(a) or section 1332(a).
Since one of the stated purposes of Title III is to regulate commerce, supra note 20, and since the FLSA, through which Title III is to be enforced, is a regulation of commerce within the meaning of section 1337 [e.g., Williams v. Jacksonville Terminal, 315 U.S. 386 (1942) (used as alternate ground for jurisdiction); Opp Cotton Mills, Inc. v. Administrator, 312 U.S. 126, 657 (1941) (jurisdiction exercised and not challenged); Imm v. Union R.R., 289 F.2d 858 (3d Cir. 1961); Manosky v. Bethlehem-Hingham Shipyard, Inc., 177 F.2d 529 (1st Cir. 1949); Fisch v. General Motors Corp., 169 F.2d 266 (6th Cir. 1948); Johnson v. Butler Bros., 162 F.2d 87 (8th Cir. 1947); Robertson v. Argus Hosiery Mills, Inc., 121 F.2d 285 (6th Cir. 1941)], civil actions under Title III are presumably within the language of section 1337. Since an employee's implied civil remedy has no existence apart from the statute which created it, it too is a civil action under Title III and therefore arguably falls under section 1337. However, in the event that a contrary interpretation of section 1337 is indulged in, the debtor-employee is still free to pursue his action in the state courts.
lack of similar flexibility in administering Title III would leave the discharged debtor-employee’s relief dependent upon enforcement by the Secretary of Labor.\textsuperscript{68}

Neither the existence of alternative remedies under the same federal statute\textsuperscript{69} or state law,\textsuperscript{70} nor the fact that enforcement of the federal statute is expressly vested in an administrative agency\textsuperscript{71} will overcome the implication. There is, however, some authority holding that an employee does not have an independent remedy under the provisions of the FLSA.\textsuperscript{72} This is the result of a provision which provides that “the Secretary of Labor shall bring \textit{all} actions . . . to restrain violations of this Act.”\textsuperscript{73} Since Title III is to be enforced by the Secretary through the provisions of the FLSA,\textsuperscript{74} it could be argued that this declaration would also prohibit an independent action by an employee under Title III. This argument, however, does not recognize that although Title III grants the Secretary the powers contained in the FLSA it is an independent statute.

Airways, Inc., 229 F.2d 499 (2d Cir. 1956) (violation of the Civil Aeronautics Act of 1938, 52 Stat. 993 (1938)). One of the most extensive recent uses of an implied private civil remedy for violation of a federal statutory duty has been in the area of manipulative and deceptive devices in the sale of securities. E.g., Greater Iowa Corp. v. McLendon, 378 F.2d 783 (8th Cir. 1967); Vine v. Beneficial Fin. Co., Inc., 374 F.2d 627 (2d Cir. 1967); Opper v. Hancock Sec. Corp., 367 F.2d 157 (2d Cir. 1966); Colonial Realty Corp. v. Bache & Co., 358 F.2d 178 (2d Cir. 1966), \textit{cert. denied}, 385 U.S. 817 (1966); Janigan v. Taylor, 344 F.2d 781 (1st Cir. 1965), \textit{cert. denied}, 382 U.S. 879 (1965); Crist v. United Underwriters, Ltd., 343 F.2d 902 (10th Cir. 1965); Huckabee v. Rota America Corp., 339 F.2d 24 (2d Cir. 1964); Ellis v. Carter, 291 F.2d 270 (9th Cir. 1961); Matheson v. Armbrust, 284 F.2d 670 (9th Cir. 1960), \textit{cert. denied}, 365 U.S. 870 (1961); Hooper v. Mountain States Sec. Corp., 282 F.2d 195 (5th Cir. 1960), \textit{cert. denied}, 365 U.S. 814 (1961); Smith v. Bear, 237 F.2d 79 (2d Cir. 1956); Fratt v. Robinson, 203 F.2d 627 (9th Cir. 1953); Fischman v. Raytheon Mfg. Co., 188 F.2d 783 (2d Cir. 1951).

It is clear from the provisions of 29 U.S.C. § 211(a) (1964) (see text accompanying note 73 \textit{infra}) that action by the Secretary on petitions by discharged employees under the FLSA is discretionary in nature; e.g., Powell v. Washington Post Co., 267 F.2d 651 (D.C. Cir. 1959). This lack of assurance of relief provides further impetus to allowing the employee a private civil remedy.

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73. 29 U.S.C. § 211(a) (1964) (emphasis added).

74. Pub. L. No. 90-321, section 306, provides that “[t]he Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, shall enforce the provisions of this title.” This provision undoubtedly allows the Secretary of Labor use of the administrative facilities of the Wage and Hour Division, and, if enforcement is not to be nugatory, the Secretary must also have the powers granted him by the FLSA, which regulates the activities of the Wage and Hour Division.
In addition, this position would defeat the legislative purpose of Title III for it is not reasonable to assume that the Secretary can discover and prosecute all violations.\textsuperscript{76}

When the Secretary of Labor institutes injunctive proceedings to restrain violations of the FLSA,\textsuperscript{76} he may incidentally request reimbursement or reinstatement for an employee wrongfully discharged in violation of the FLSA.\textsuperscript{77} The district court has jurisdiction to order the employer to reimburse and reinstate the employee\textsuperscript{78} notwithstanding the failure of Congress to expressly provide for such a remedy in the FLSA. The district court's jurisdiction is supported by an implication that since Congress entrusted the enforcement of prohibitions contained in a regulatory act to a court of equity, Congress is assumed to have acted with knowledge of the traditional power of the equity court to provide complete relief in accordance with the statute's purpose.\textsuperscript{79}

Such a jurisdiction is an equitable one. Unless otherwise provided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction. ... Moreover, the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a

\textsuperscript{75} Numerous factors would contribute to the likelihood of incomplete enforcement by the Secretary of Labor. By far the most significant, however, is the fact that the violation will involve a single employee. To require the Secretary to bring all suits on behalf of individual employees would unduly burden an already overburdened agency for in addition to bringing the suit the Wage and Hour Division would have to determine the merits of the claim.

\textsuperscript{76} Under the FLSA, the Secretary may bring either an action in federal court for injunctive relief to restrain violations (29 U.S.C. § 217 (1964)) or an action in any court of competent jurisdiction, state or federal, to recover unpaid wages upon a written request filed by an employee (29 U.S.C. § 216(c) (1964)). For a discussion of the Secretary of Labor's power to enjoin violations of Title III see note 74 supra.

\textsuperscript{77} 29 U.S.C. § 215(a) (1964) provides:

\ldots it shall be unlawful for any person—\ldots

(3) to discharge \ldots any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter.\ldots


statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied.80

Similarly, Title III's provisions prohibiting discharge by reason of garnishment coupled with the delegation of enforcement to the Secretary of Labor under the FLSA, give rise to an inference that a district court may grant compensatory relief to an employee incidental to an injunctive action by the Secretary of Labor pursuant to Title III. A contrary interpretation is unreasonable, for to interpret the provisions for injunctive relief and for fines so as to deny an action brought on the employee's behalf for compensatory damages for wrongful discharge would be inconsistent with the purposes of Title III81 as well as the traditional powers of an equity court.

C. FEDERAL-STATE RELATIONS AND TITLE III

Undoubtedly the most puzzling provision of Title III is that of section 303 (c) which provides: "[n]o court of the United States or any State may make, execute, or enforce any order or process in violation of this section [the restriction on garnishments]."82 The method by which this section can be enforced is somewhat obscure although Congress could have intended this provision to be only admonitory. Considering, arguendo, a refusal by a state court to recognize the garnishment limitation contained in Title III, it is conceivable, absent the availability of injunctive relief by a federal court, that a garnishee-employer might have no recourse except appellate review.83 Federal courts have traditionally avoided exerting jurisdiction over state court proceedings wherever possible in an effort to minimize friction between the state and the federal judicial systems. A well-developed doctrine of equitable

81. See Walling v. O'Grady, 146 F.2d 422 (2d Cir. 1944).
83. The garnishee-employer as a stakeholder is subject to possible conflicting claims by the creditor and the employee as to the difference between the state and federal exemption. Statutory interpleader would be available to the garnishee-employer only if this difference exceeded the minimum jurisdictional amount of 500 dollars as required by 28 U.S.C. § 1335(a) (1964).

As a practical matter, this jurisdictional amount is seldom involved in garnishment proceedings. A fortiori, the 10,000 dollar jurisdictional amount required for rule interpleader renders this procedure generally unavailable in a garnishment proceeding. Fed. R. Civ. P. 22(1).
abstention based upon the comity principle has been applied extensively to further this independence between the two systems.

In addition to the doctrine of equitable abstention, federal injunctive power over state court proceedings has been severely limited by a series of anti-injunction statutes dating back to 1793. The current restrictions on federal injunctive power are set forth in section 2283 of the Judicial Code which provides:

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.

The Congressional intent in enacting the first anti-injunction statute is unclear and this uncertainty has given rise to two divergent theories as to the nature of section 2283. It has been viewed as either a definition of strict jurisdictional boundaries of the federal court system, or an expression of judicial guidelines for the application of federal equity powers in conformance with the comity principle. The importance of


The comity principle extends even to the exceptions of the anti-injunction statute discussed infra in the text accompanying notes 86 et seq. For example, after a discharge in bankruptcy, the bankruptcy court has the power to enjoin state court proceedings by a creditor seeking to collect a discharged debt to protect and effectuate its judgments only in "unusual circumstances." Local Loan Co. v. Hunt, 292 U.S. 234 (1934). Subsequent decisions have, however, interpreted the "unusual circumstances" requirement very liberally. See Poolman v. Poolman, 289 F.2d 332 (8th Cir. 1961).


88. "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." Amalgamated Clothing Workers v. Richman Bros. Co., 348 U.S. 511, 515-16 (1955).

89. E.g., Leiter Minerals, Inc. v. United States, 352 U.S. 220 (1957). The Supreme Court held that an implied exception to the express language of section 2283 would be found to exist in circumstances where the application of the comity principle was inappropriate. For a discussion of Leiter see text accompanying notes 100 to 106 infra. See also Dombrowski v. Pfister, 380 U.S. 479 (1965); Brewer, Dombrowski v. Pfister: Federal Injunctions Against State Prosecutions in Civil Rights Cases—A New Trend in Federal-State Judicial Relations, 34 Fordham L. Rev. 71 (1965).
the distinction between the two theories lies in the latitude which the latter theory allows for the creation of judicial exceptions to the express language of section 2283. However, regardless of the theory followed, unless a state court proceeding falls within one of the exceptions to section 2283 (an express exception under the former theory, an express or judicial exception under the latter theory), injunctive relief by a federal court would be unavailable to stay the state court proceeding.

**Authorized by Congress Exception**

A general grant of injunctive power to federal courts does not fall under the act-of-Congress exception of section 2283, absent an indication that Congress clearly contemplated availability of injunctive relief against state court proceedings. Moreover, although Title III does provide that the Secretary of Labor shall enforce its provisions, no specific grant of injunctive power against state court proceedings is included in Title III, nor does the Secretary have such power under the FLSA, through which he is to enforce Title III. Consequently, federal injunctive relief against state court proceedings must fall within another exception to section 2283 if such relief is to be available under Title III.

**In Aid of Jurisdiction Exception**

Section 2283 reserved the traditional power of the federal courts to protect their prior jurisdiction over a cause of action against a subsequent state court proceeding which would prevent the effective disposition of the cause before the federal court. In the past, federal courts have restrained garnishment proceedings in state courts which would interfere with the

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In addition, the fact that effectuation of the Congressional purpose may be hampered by lack of enforcement in state courts is insufficient to imply injunctive power to enjoin state court proceedings. *See* Baines v. City of Danville, 337 F.2d 579 (4th Cir. 1964).

91. Pub. L. No. 90-321, § 306. For the text of this section see note 74 *supra*.

92. *Supra* note 76 and accompanying text. The Secretary's power to obtain injunctive relief is limited to situations involving violations of section 215 of the FLSA, the prohibitions of which are directed against "any person." For the purposes of the FLSA, "person" is defined as "an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons." (29 U.S.C. § 203(a) (1964)). The prohibited actions of section 215 (e.g., the shipment of goods in commerce, violation of minimum wage and maximum hours, discrimination against employees) are not judicial in nature and it seems clear that Congress did not intend the injunctive power granted under the FLSA to include injunctions against state court proceedings.

payment by an employer of back wages under an order by the NLRB. These injunctions are, however, clearly in aid of the court's jurisdiction. In contrast, when the only cause of action before the federal court would be a request for an injunction against state court garnishment proceedings in violation of Title III, it is clear that issuance of the injunction would not be in aid of the federal court's prior jurisdiction.

It has been suggested that the aid-of-jurisdiction exception could be interpreted to include the exclusive jurisdiction vested in a federal agency. However, Title III does not vest any jurisdiction over wage garnishment actions in the Secretary of Labor; rather, Title III merely charges him with enforcement. In rare instances a federal court might, however, acquire jurisdiction by removal of a garnishment proceeding from the state court. The federal court could then protect its prior jurisdiction in conformance with the provisions of section 2283.

Protection or Effectuation of Judgment Exception

The last express exception to section 2283 permits a federal court to enjoin state court proceedings if necessary "to protect or effectuate its judgments." Obviously, if there is no antecedent judgment in the federal court, this exception would not apply. A possible method for obtaining prior judgment in the federal court is suggested by a recent Supreme Court decision where the question of the appropriateness of granting declaratory relief was held to be independent of the propriety

94. E.g., NLRB v. Schertzer, 360 F.2d 152 (2d Cir. 1966); NLRB v. Ozanne Inc., 307 F.2d 81 (1st Cir. 1962); NLRB v. Sunshine Mining Co., 125 F.2d 757 (9th Cir. 1942); cf. NLRB v. Stackpole Carbon Co., 128 F.2d 188 (3d Cir. 1942).

95. The Board shall have power to petition any court of appeals of the United States . . . for the enforcement of such order [preventing unfair labor practices] and for appropriate temporary relief or restraining order. . . . Upon the filing of such petition, the court . . . shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper. . . .


97. Pub. L. No. 90-321, § 306. For the text of this statute see note 74 supra.

98. "Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. . . ." 28 U.S.C. § 1441(a) (1964). Garnishment proceedings have been held to be "civil actions" within the meaning of section 1441(a); e.g., Adriaenssens v. Allstate Ins. Co., 255 F.2d 888 (10th Cir. 1958); Stoll v. Hawkeye Cas. Co., 185 F.2d 96 (8th Cir. 1950). However, since the original jurisdiction of the district courts is limited by a 10,000 dollar minimum jurisdictional amount in both federal question jurisdiction under 28 U.S.C. § 1331(a) (1964) and diversity jurisdiction under 28 U.S.C. § 1332(a) (1964), the vast majority of state garnishment proceedings would not be removable by the garnishee-employer to a federal court.
of injunctive relief as determined by the doctrine of equitable abstention. Thus a federal court which had issued a declaratory judgment establishing the applicability of the federal garnishment limitation contained in Title III could subsequently protect this judgment by enjoining state court proceedings.

**Judicial Exception to Section 2283**

In 1957, the Supreme Court, in *Leiter Minerals, Inc. v. United States*, indicated that the restrictions of section 2283 were not applicable to injunctions sought by the United States. However, the character of the federal interest in *Leiter* fell within a traditional exception to the anti-injunction statutes; i.e., cases in which the United States is defending a property right it possesses. Under these circumstances, the suit in the state court could not have been dispositive of the issue since the United States was not a party. The Court also stressed the fact that the position of the United States was a defensive one and "superior federal interests" were threatened with irreparable harm.

This language in *Leiter* has subsequently been broadly interpreted by lower federal courts to include the federal interest in Indian lands and the private constitutional rights of oppressed minorities within the concept "superior federal interests." The extent to which these ad hoc judicial exemptions based upon a broad reading of *Leiter* will be extended in the future is impossible to predict. In perhaps the broadest reading to date, a Fifth Circuit decision held that no distinction should be made on either the type of state court proceeding or the nature of the federal interests so long as the United States asserted the interest. This reading of *Leiter* might permit the Secretary of Labor to obtain injunctive relief.

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101. *e.g.*, United States v. McIntosh, 57 F.2d 573 (E.D. Va. 1932); United States v. Babcock, 6 F.2d 160 (D. Ind. 1925), modified, 9 F.2d 905 (7th Cir. 1925); United States v. Inaba, 291 F. 416 (E.D. Wash. 1923); contra, United States v. Parkhurst-Davis Mercantile Co., 176 U.S. 317 (1900); United States v. Land Title Bank & Trust Co., 90 F.2d 970 (3d Cir. 1937).
102. 352 U.S. at 226.
103. *e.g.*, Alonzo v. United States, 249 F.2d 189 (1957); *see* Minnesota v. United States, 305 U.S. 382 (1939).
104. *e.g.*, United States v. McLeod, 385 F.2d 734 (5th Cir. 1967); Dillworth v. Riner, 343 F.2d 226 (5th Cir. 1965); United States v. Wood, 295 F.2d 772 (5th Cir. 1961). *See* Dombrowski v. Pfister, 380 U.S. 479 (1965).

The requirement that the United States assert the interest precludes an employee from seeking injunctive relief. Even if this barrier could be overcome the employee would then be confronted with the jurisdictional problems discussed supra note 66.
to enforce Title III since suits by the Secretary under the FLSA are, in effect, suits by the United States and the interest to be protected is a federal one.

However, considering the factual distinctions between the action in *Leiter* and an action under Title III, extension of the *Leiter* doctrine seems inappropriate. There is no vested property interest in the United States under Title III in the sense of the traditionally exempt cases, nor could the action of the United States be considered defensive as it was in *Leiter*. Although Title III may be a recognition by Congress of a "superior federal interest" in limited garnishments, the issuance of a federal injunction to stay state garnishment proceedings, traditionally considered local in nature, hardly seems to harmonize with the overriding doctrine of equitable abstention.

The fact remains, however, that the *Leiter* exception was clearly not based on the express provisions of section 2283, but was based on rules of statutory construction applied in the absence of legislative history speaking to the point. As such, it represents a certain willingness on the part of the Court to treat section 2283, not as defining strict jurisdictional boundaries of the federal courts, but as representing a statutory expression of the comity principle. Thus, if the federal interest in limited garnishments is thought to outweigh the benefits to be gained from equitable abstention based on comity, section 2283 would not bar injunctive relief requested by the Secretary of Labor in enforcing Title III.

### III. Effect of Title III on State Exemption Statutes

Title III allows the Secretary of Labor to exempt from the operation of the garnishment exemption provision of Title III any garnishments issued under state laws which provide for "substantially similar" exemptions. 106 Title III provides no express limitations on the application of

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107. "The Secretary of Labor may by regulation exempt from the provisions of section 303(a) garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section 303(a)." Pub. L. No. 90-321, § 305. Section 307 provides that Title III "... does not annul, alter, or affect, or exempt any person from complying with, the laws of any State (1) prohibiting garnishment or for providing for more limited garnishments than are allowed under this title..." In order to give each of these sections effect, section 307 must be read as qualifying the "substantially similar" criterion of section 305. To do otherwise would result either in the two sections contradicting one another or in defeating the purpose of Title III. When read in the light of section 307, section 305 would provide the Secretary of Labor with discretion to exempt any state with an equal or greater garnishment exemption which is otherwise "substantially similar."

The authority delegated to the Secretary under section 305 would seem to be within the limitations defined by the Supreme Court in the past. So long as the delegated
the "substantially similar" test by the Secretary, but the purpose of creating uniformity in state garnishment laws implies several limitations on the authority delegated to the Secretary. The exemption provided in Title III\textsuperscript{108} does not distinguish between the debtor-employees to whom the exemption applies on the basis of personal characteristics or status. Its application is applied uniformly to all "individuals" and there is no group of debtor-employees left without its coverage. Nor is there any distinction based on the source of the debt or on the nature of the creditor seeking the garnishment. The only exceptions provided are for judicial orders for support, contributions to wage earner plans, and state and federal tax liabilities.\textsuperscript{109}

Thus, for a state statute's provisions to be "substantially similar" to the exemption provided in Title III, it must be applied uniformly to all debtor-employees, and provide an exemption of the magnitude of Title III or greater. Any state exemption statute which would allow any debtor-employee a smaller exemption, or which differentiates between debtor-employees on the basis of some personal characteristics, such as resident of state, head of household, family provider, or which varies the amount of the exemption on the basis of the nature of the loan or the debtor, such as necessaries or collection agencies, must of necessity fail to be "substantially similar."

Applying this analysis to the existent state statutes, their differences, and therefore their deficiencies, become readily apparent.\textsuperscript{110} Eleven states exclude a substantial percentage of their citizens from any exemption at authority is limited to applying and executing a law established by Congress, the delegation is constitutional. Bowles v. Willingham, 321 U.S. 503 (1944); Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935). The limitation on delegation serves (1) to insure that policy decisions are made by a body directly responsible to the electorate and (2) to provide the judiciary with adequate standards by which to judge any delegated action subsequently taken. Arizona v. California, 373 U.S. 546 (1963). The Secretary is not delegated any policy-making power under Title III, but is only permitted to use his own discretion in comparing state exemption statutes with section 305. The very limited exercise of discretion allowed the Secretary would seem to permit the Supreme Court to ascertain whether the Secretary carries out Congress' intent by his subsequent actions, and therefore the delegation would be constitutionally valid. See Yakus v. United States, 321 U.S. 414 (1944).

\textsuperscript{108} Pub. L. No. 90-321, § 303(a). For the text of this statute see note 9 supra.
\textsuperscript{109} Id., § 303(b). For the text of this statute see note 9 supra.
\textsuperscript{110} An argument could be made based on section 301(a), see notes 20 and 30 supra (purpose of Title III) and section 307(1), see note 128 infra (effect on state laws), that only the non-conforming portion of a state statute should be superceded. However, section 305, see note 107 supra, provides that garnishments shall be exempted from the operation of Title III if the garnishment exemption laws of the state provide substantially similar restrictions. This statement would seem to indicate a determination broader in scope than a provision by provision assessment of state wage garnishment exemption laws: if the state laws provide substantially similar restrictions, then garnishments issued under them are exempted from the provision of section 303; if they do not, then any garnishment issued would be subject to the Title III limitations.
all, and twelve other states limit their exemptions to residents or those debtor-employees whose families reside within the state. Of the remaining states, eight discriminate on the basis of such factors as dependency, marital status, head of household or family head, four on the basis of various other characteristics of the debtor-employee, and four on the basis of the nature of the debt. Thus the exemption statutes of only the eleven remaining states and the District of Columbia comply with the uniformity required by Title III.

Applying the second test, according to which every debtor-employee whose wages are capable of being garnisheed within a state must be given an exemption at least equal to that contained in Title II, the eleven states which exclude a large portion of their citizens from any exemption as well as the twelve other states which qualify their exemp-

111. ARIZ. REV. STAT. ANN. §§12-1594, 33-1126 (1956); FLA. STAT. § 222.11 (1963); IOWA CODE § 627.10 (Supp. 1968); MO. REV. STAT. § 525.030 (1949); MONT. REV. CODES ANN. § 93-5816 (1964); NEB. REV. STAT. § 25-1558 (1964); N.M. STAT. ANN. §§ 26-2-27, 24-6-7 (Supp. 1967); N.C. GEN. STAT. § 1-362 (1953); S.C. CODE ANN. § 10-1731 (1962); S.D. CODE § 33.2404 (Supp. 1960); UTAH CODE ANN. §§ 78-23-1(7) (1953), UTAH REV. CIV. PROC. R. 64c(a).


114. CAL. CIV. PROC. CODE § 690.10 (West 1955) (seamen, seagoing fishermen, and sealers); DEL. CODE ANN. tit. 10, §§ 4913(b), (c) (1953) (variation between counties); MD. ANN. CODE art. 9, §§ 31, 31A, 31B (Supp. 1965) (variation between counties); R.I. GEN. LAWS ANN. § 9-26-4.12(c) (Supp. 1967) (seamen, wife and minor child, and those on relief or recently on relief).


116. CONN. GEN. STAT. REV. § 52-361 (Supp. 1968); D.C. CODE ANN. §16-572 (Supp. IV 1965); GA. CODE ANN. § 46-208 (Supp. 1965); HAWAIi REV. LAWS § 237-1 (Supp. 1963); LA. REV. STAT. tit. 13, § 3881 (1964); ME. REV. STAT. ANN. tit. 14, c. 501, § 2602(6) (Supp. 1967); MASS. GEN. LAWS ch. 246, § 28 (Supp. 1967); N.J. REV. STAT. §§ 2A:17-56 (1951); N.Y. CIV. PRAC. §§ 5205(e), 5231(e) (McKinney Supp. 1968); TEX. CONST. art. 16, § 28, and TEX. REV. CIV. STAT. ANN. art. 3832, 4099 (1966); VT. STAT. ANN. tit. 12, § 3020 (Supp. 1968); W. VA. CODE ANN. §§ 38-5A-3, 38-8-1 (1966). For the purposes of this analysis, minor exceptions affecting only very limited groups were ignored.

117. See the discussion in note 50 supra.

118. Arizona, Florida, Iowa, Missouri, Montana, Nebraska, New Mexico, North Carolina, South Carolina, South Dakota, and Utah. See note 111 supra for full citations to the relevant statutes.
tions with a residency requirement\(^{119}\) are, of necessity, disqualified. Statutes in twenty-one of the remaining twenty-eight jurisdictions must also fail since debtor-employees in some pay ranges receive a smaller exemption under state laws than under Title III.\(^{120}\) As to the remaining

119. Alabama, Arkansas, Idaho, Indiana, Kansas, Mississippi, Nevada, North Dakota, Ohio, Oklahoma, Tennessee, and Wyoming. See note 112 supra for full citations to the relevant statutes.

120. In the chart below, example wage levels are given at which the states shown permit garnishments in excess of the limitation in Title III. Frequently, other wage levels would meet the federal criterion. For purposes of this survey, statutory exceptions applying to only very limited groups and differences in state laws concerning deductions withheld prior to garnishment are ignored. Also, since some state statutes are stated in terms of daily or monthly earnings, it is necessary to anticipate the Secretary's adjustments. For this purpose, the rather crude conversion formulae \(4.286 \text{ weeks to 1 month} = \frac{30}{7} \times 4.286\) and \(1 \text{ week} = 5 \text{ working days have been used.}\)

<table>
<thead>
<tr>
<th>State</th>
<th>Disposable Earnings</th>
<th>Pay Period</th>
<th>Federal Amount</th>
<th>Amount Subject to Garnishment</th>
<th>Status of Debtor or Debt</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>$400.00 $600.00</td>
<td>30 days</td>
<td>$100.00 $150.00</td>
<td>$200.00 Single</td>
<td></td>
</tr>
<tr>
<td>California</td>
<td>400.00 30 days</td>
<td></td>
<td>100.00 120.00</td>
<td>200.00 Single</td>
<td></td>
</tr>
<tr>
<td>Colorado</td>
<td>400.00 30 days</td>
<td></td>
<td>100.00 120.00</td>
<td>200.00 Single</td>
<td></td>
</tr>
<tr>
<td>Connecticut</td>
<td>100.00 Weekly</td>
<td></td>
<td>25.00 35.00</td>
<td>Resident of Kent or Sussex County &amp; debt not for necessities</td>
<td></td>
</tr>
<tr>
<td>Delaware</td>
<td>100.00 Weekly</td>
<td></td>
<td>25.00 40.00</td>
<td>Resident of New Castle County &amp; debt not for necessities</td>
<td></td>
</tr>
<tr>
<td>District of Columbia</td>
<td>800.00 Calendar Month</td>
<td></td>
<td>200.00 230.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Georgia</td>
<td>20.00 Daily</td>
<td></td>
<td>5.00 8.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illinois</td>
<td>400.00 Weekly</td>
<td></td>
<td>48.00 60.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kentucky</td>
<td>100.00 Weekly</td>
<td></td>
<td>25.00 50.00</td>
<td>Debt not for necessities</td>
<td></td>
</tr>
<tr>
<td>Maine</td>
<td>100.00 Weekly</td>
<td></td>
<td>25.00 60.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maryland</td>
<td>160.00 Weekly</td>
<td></td>
<td>40.00 60.00</td>
<td>Not a resident of Cecil, Caroline, Kent, Queen Anne's, or Worcester County</td>
<td></td>
</tr>
<tr>
<td>Massachusetts</td>
<td>100.00 Weekly</td>
<td></td>
<td>25.00 50.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Michigan</td>
<td>100.00 Weekly</td>
<td></td>
<td>25.00 40.00</td>
<td>First garnishment and head of household with family</td>
<td></td>
</tr>
<tr>
<td>Minnesota</td>
<td>100.00 Weekly</td>
<td></td>
<td>25.00 50.00</td>
<td>Not necessary for family support</td>
<td></td>
</tr>
<tr>
<td>New Hampshire</td>
<td>100.00 Weekly</td>
<td></td>
<td>25.00 50.00</td>
<td>Debt based upon small loan contract</td>
<td></td>
</tr>
<tr>
<td>Oregon</td>
<td>400.00 30 days</td>
<td></td>
<td>100.00 200.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rhode Island</td>
<td>100.00 Weekly</td>
<td></td>
<td>25.00 50.00</td>
<td>Not a member of exempted classes listed in statute</td>
<td></td>
</tr>
<tr>
<td>Vermont</td>
<td>100.00 Weekly</td>
<td></td>
<td>25.00 50.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Virginia</td>
<td>400.00 Monthly</td>
<td></td>
<td>100.00 250.00</td>
<td>House-holder</td>
<td></td>
</tr>
<tr>
<td>Washington</td>
<td>100.00 Weekly</td>
<td></td>
<td>25.00 55.00</td>
<td>Debtor with two dependents</td>
<td></td>
</tr>
<tr>
<td>Wisconsin</td>
<td>400.00 30 days</td>
<td></td>
<td>100.00 375.00</td>
<td>Debtor without dependents before judgment</td>
<td></td>
</tr>
</tbody>
</table>

It should be noted that frequently state exemption statutes are drafted in terms of fixed amounts rather than percentage figures and consequently garnishments at high wage levels may be inconsistent with those under Title III. However, the differences shown above all occurred at a weekly wage level of 100 dollars, or its equivalent in daily or monthly pay periods, with the exception of the District of Columbia, Illinois, and Maryland. The wage level necessary to produce a divergence from Title III was particularly unrealistic in the example used for Illinois.
seven jurisdictions, Pennsylvania, in addition to providing exceptions similar to those in Title III, suspends the total exemption in the case of a judgment for board or lodging\textsuperscript{121} which would seem to fault the statute. In both New York\textsuperscript{122} and New Jersey\textsuperscript{123} the exemption percentage is greater than that of Title III but the court is granted discretion to reduce the exemption. Assuming these state courts do not permit garnishments exceeding the minimum exemption of Title III, these statutes would not be superseded. The remaining statutes, those of Hawaii,\textsuperscript{124} Louisiana,\textsuperscript{125} Texas,\textsuperscript{126} and West Virginia,\textsuperscript{127} all provide larger exemptions than that contained in Title III and therefore would not be superseded.\textsuperscript{128}

**CONCLUSION**

The restriction on wage garnishment provided by Title III is a significant expansion of federal regulation into an area traditionally considered local in nature. As such, it exemplifies an increasing realization that, in a society whose economy is heavily based upon consumer credit, federal regulation is necessary to effectively control abuses and to insure the economic well-being of the nation's commerce. However, Title III's limitation on the availability to creditors of the only reachable asset which many wage earners possess may well have unanticipated and undesirable adverse effects upon credit extension especially in such retail areas as the automobile industry where credit is a commercial necessity.

The penal sanction of Title III prohibiting discharges by reason of garnishment for a single indebtedness will likely have only a limited direct deterrent effect upon employers, since in many instances labor union contracts or bargaining agreements coupled with arbitration proceedings already regulate such discharges. However, to the extent that this statutory duty serves as a basis for an implied private civil remedy, Title III provides a discharged debtor-employee with effective protection against further aggravation of a personal economic crisis.

\textsuperscript{121} PA. STAT. tit. 42, § 886 (1966).
\textsuperscript{122} N.Y. CIV. PRAC. §§ 5205(e), 5231(e) (McKinney Supp. 1968).
\textsuperscript{123} N.J. REV. STAT. §§ 2A:17-56 (1951).
\textsuperscript{124} HAWAII REV. LAWS § 237-1 (Supp. 1963).
\textsuperscript{125} LA. REV. STAT. tit. 13, § 3881 (1964).
\textsuperscript{126} TEX. CONST. art. 16, § 28, and TEX. REV. CIV. STAT. ANN. art. 3832, 4099 (1966).
\textsuperscript{128} This title does not annul, alter, or affect, or exempt any person from complying with, the laws of any State (1) prohibiting garnishments or providing for more limited garnishments than are allowed under this title, or (2) prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness.

Undoubtedly the most far-reaching effect of Title III will be the establishment of a nationally uniform garnishment exemption limitation which applies to all debtor-employees alike. By eliminating exceptions to exemption coverage, and by establishing a federal minimum standard for state exemptions, many of the present economic evils of wage garnishment will be abolished. However, Title III does not regulate assignments of future wages, and the extent to which creditors are permitted by state law to require execution of such wage assignments as a prerequisite to extending credit will probably determine the ultimate effectiveness of the protection offered to consumers by Title III.129

David L. Cocanower

129. It should also be noted that the harsh effects of excessive garnishments will not be eliminated in those cases which are excepted from Title III's restriction on garnishments; i.e., court orders for support, orders of a court of bankruptcy under a wage earner plan, or debts due for state and federal taxes. For example, the protection offered by Title III must seem hollow indeed to the wife and son of an auto worker who recently

. . . discovered his entire week's take-home pay of $112.39 had been turned over to the state of Indiana for delinquent state income taxes. Beset by debts, he asked officials at Ford Motor Co.'s plant in suburban Chicago Heights, Ill., for his accrued vacation pay to tide him over.

Next payday, he learned Indiana—the state where he used to live—had received $208.84 out of his $363.93 in wages and vacation pay. The 24-year-old father of a young boy, not knowing how much he owed Indiana tax collectors, (the two deductions actually satisfied the claim) became despondent over the pay loss. Two days later, [he] placed a .22 calibre rifle under his chin and shot a bullet into his brain.