vidual predilections in sensitive and emotional areas.[1310] Because, however, of the heavy burden placed on the district courts and the Supreme Court, Congress repealed the provisions for three-judge courts in 1976, save in cases "when otherwise required by an Act of Congress"[1311] or in cases involving state legislative or congressional districting.[1312]

Conflicts of Jurisdiction: Federal Court Interference with State Courts

One challenging the constitutionality, under the United States Constitution, of state actions, statutory or otherwise, could, of course, bring suit in state court; indeed, in the time before conferral of federal-question jurisdiction on lower federal courts plaintiffs had to bring actions in state courts, and on some occasions since, this has been done.[1313] But the usual course is to sue in federal court for either an injunction or a declaratory judgment or both. In an era in which landmark decisions of the Supreme Court and of inferior federal courts have been handed down voiding racial segregation requirements, legislative apportionment and congressional districting, abortion regulations, and many other state laws and policies, it is difficult to imagine a situation in which it might be impossible to obtain such rulings because no one required as a defendant could be sued. Yet, the adoption of the Eleventh Amendment in 1798 resulted in the immunity of the state,[1314] and the immunity of state officers if the action upon which they were being sued was state action,[1315] from suit without the state's consent. *Ex parte*

[1310] Swift & Co. v. Wickham, 382 U.S. 111, 119 (1965); *Ex parte* Collins, 277 U.S. 565, 567 (1928).

[1311] These now are primarily limited to suits under the Voting Rights Act, 42 U.S.C. §§ 1973b(a), 1973c, 1973h(c), and to certain suits by the Attorney General under public accommodations and equal employment provisions of the 1964 Civil Rights Act. 42 U.S.C. §§ 2000a–5(b), 2000e–6(b).

[1312] Pub. L. 94–381, 90 Stat. 1119, 28 U.S.C. § 2284. In actions still required to be heard by three-judge courts, direct appeals are still available to the Supreme Court. 28 U.S.C. § 1253.

[1313] For example, one of the cases decided in Brown v. Board of Education, 347 U.S. 483 (1954), came from the Supreme Court of Delaware. In Scott v. Germano, 381 U.S. 407 (1965), the Court set aside an order of the district court refusing to defer to the state court which was hearing an apportionment suit and said: "The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States has been specifically encouraged." *See also* Scranton v. Drew, 379 U.S. 40 (1964).

[1314] By its terms, the Eleventh Amendment bars only suits against a state by citizens of other states, but, in Hans v. Louisiana, 134 U.S. 1 (1890), the Court deemed it to embody principles of sovereign immunity that applied to unconsented suits by its own citizens.

[1315] *In re* Ayers, 123 U.S. 443 (1887).