

Background Information on Section 1983

Section 1983 provides that

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for 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.

42.U.S.C. §1983 (1994 & Supp. 1996).

Section 1983 became law in 1871 as part of the Ku Klux Klan Act, and the language was substantially unchanged from the time of its passage until 1996. It came out of the post-Civil War and Reconstruction era. Congress passed the Ku Klux Klan Act pursuant to its powers vested by §5 of the Fourteenth Amendment to enforce the provisions of that Amendment. For many years the provision was used primarily to challenge statutes and ordinances that prohibited or restricted voting by African Americans. Otherwise, the provision was little used because of the Supreme Court's narrow reading of the state action doctrine and the privileges and immunities clause.¹ In the late 1930's and in the 1940's several cases significantly expanded the potential reach of §1983.

In *Hague v. CIO*, the Supreme Court affirmed an injunction against Jersey City officials from interfering with the rights of plaintiffs to discuss the National Labor Relations Act. 307 U.S. 496 (1939). The action of the officials was taken pursuant to local ordinances that prohibited public meetings unless a permit was issued by the director of public safety. The court saw the right to discuss federal legislation as a national privilege or immunity secured by the Fourteenth Amendment. This case opened up the potential for applying §1983 to matters other than race discrimination. In addition, in *Screws v. United States* the Court expanded the notion of "under color of law" to include actions under *pretense* of law, not just those actions taken *pursuant to* a state statute. 325 U.S. 91 (1945). *Screws* was a criminal case interpreting a federal criminal statute similar to §1983. The defendant sheriff had fatally beaten a suspect after arresting him and taking him to the court house. The plurality opinion addressed whether the beating was "under color of law." Justice Douglas said

¹ *A Section 1983 Civil Rights Anthology* 3 (Sheldon Nahmod ed., Anderson Publishing Co. 1993).

Here the state officers were authorized to make an arrest and to take such steps as were necessary to make the arrest effective. They acted without authority only in the sense that they used excessive force in making the arrest effective. *It is clear that under "color" of law means under "pretense" of law.* Thus acts of officers in the ambit of their personal pursuits are plainly excluded.

Id. at 111 (emphasis added). This decision laid the foundation for *Monroe v. Pape*, 365 U.S. 167 (1961).²

In *Monroe v. Pape* the Supreme Court expanded the scope of official conduct actionable under §1983 by holding that state officials acted “under color of law” even when they violated state or federal law. The plaintiff in *Monroe* alleged that 13 Chicago police officers had broken into his home at night without a warrant. They roused the plaintiffs from their beds, made them stand naked in the living room and searched/ransacked the house. Monroe was then taken to the police station, detained for 10 hours, and questioned about a murder. He was eventually released and no criminal charges were filed. Monroe’s §1983 action alleged that the officers had acted under color of law even though they had no arrest or search warrant and that his constitutional rights had been violated.

The Supreme Court cited *Screws* and another federal criminal case, to hold that the “misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken ‘under color’ of state law.” The *Monroe* Court refused, however, to permit §1983 claims to be asserted against municipal corporations. In 1978, the Supreme Court overruled part of *Monroe* and held that §1983 applies to municipalities. *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

Things to know about §1983:

1. §1983 does not create any substantive rights. It creates a cause of action for which relief may be granted.

2. §1983 is not a jurisdictional statute. It has a jurisdictional counterpart in §28 U.S.C 1343(a)(3) (1994) which gives district courts “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, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the constitution of the United States. . . .”

3. §1983 is a supplemental remedy; there is no requirement to exhaust state remedies before pursuing a §1983 claim.

² *Id.* at 7.

4. §1983 is not confined to constitutional violations. Violations of federal statutes can be the subject of §1983 claims. But since §1983 creates no substantive rights, a plaintiff must assert a federal right grounded either in the Constitution or federal statutory law.

5. Plaintiffs may prefer §1983 to state law causes of action because of the possibilities of (a) attorneys' fees pursuant to 42 U.S.C. §1988(b) (1994 & Supp. 1996), and punitive damages.