

## **42 USC Section 1983- Civil Action for Deprivation of Rights**

The Civil Action for Deprivation of Rights Act is commonly known as Section 1983. The purpose of the Act is to provide a private remedy for violations of Federal Law. Section 1983 states:

**"Every person who under color of any statute, ordinance, 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 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. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."**

The most common use for Section 1983 has been to get relief for those deprived of their rights by police officers and other law enforcement officials. But in 1961, The Supreme Court of the United States articulated three purposes that bolster the statute in *Monroe v. Pape*,<sup>1</sup> where Mr. Monroe was allowed to sue Chicago police officers who allegedly committed gross violations of his constitutional rights. Due to this decision, Section 1983 can be used:

- "1. To override certain kinds of state laws.**
- 2. To provide a remedy where state law was inadequate and**

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<sup>1</sup> *Monroe v. Pape*, 365 U.S. 167(1961)

3. To provide a Federal remedy where the state remedy, though adequate in theory, was not available in practice."
4. To permit private litigants a Federal court remedy as a first resort rather than having to first bring suit in state court."

**Simply put, a litigant does not have to begin in state court.**

**However, if the plaintiff chooses to sue under Section 1983 in state court, the defendant also has the right to remove the case to Federal Court.**

The Supreme Court has further interpreted Section 1983 to allow liability to be found where government officials act outside the scope of the authority granted to them by state law. Section 1983 clearly provides:

1. Only **persons** under the statute are subject to liability, **not the state.**

State Officers can be sued in their official capacity for injunctive relief.

Note: **A suit against a government official acting in his or her official capacity represents nothing more than a suit against the Federal, state or local government entity itself. Individual employees of any Federal, state or local government may be sued for damages.**<sup>2</sup>

2. The Defendant (local, state or Federal government official) must have exercised power given to her or him by virtue of state law and made possible only because the defendant is "clothed with the authority of state law" even if the defendant abuses his or her position. This is the definition of "acting under the color of state law."

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<sup>2</sup> Forsythe, Ian D. "A Guide To Civil Rights Liability Under 42 U.S.C. 1983: An Overview of Supreme Court and Eleventh Circuit Precedent," p.8, as found on [www.constituion.org/brief/forsythe\\_42-1983.htm](http://www.constituion.org/brief/forsythe_42-1983.htm)

3. There must be "causal connection" between the defendants's actions and the harm that results. There is no "state of mind" or "intent" requirement. The only requirement is that the action taken by the government causes harm and is a result of an executed policy statement, ordinance, regulation or decision officially adopted and authorized by that body's officers or the result of that entity's customs.

Section 1983 is not, in and of itself, a source of substantive rights. It provides a method for the vindication of rights already conferred in the United States Constitution and Federal Laws. A person bringing an action under Section 1983 may prevail only if he or she can demonstrate (show) that he or she was "deprived" of rights secured by the United States Constitution or federal statutes.

The origins of Section 1983 can be traced back to the post Civil War South, when African Americans suffered abuses at the hands of state and local officials who chose not to follow United States Constitutional law, but instead followed local customs to keep systems of discrimination and segregation in place.

### **Types of Section 1983 Claims**

**(Note: The claims shown below are a few examples of the claims possible under Section 1983. Section 1983 claims are not limited to just those shown below.)**

Many persons believe that the only cases that can proceed under Section 1983 are cases involving law enforcement officials in the case of the use of excessive force. Typically these are the most common claims. Other law enforcement claims include false arrest and claims of unreasonable searches of an individual's home, vehicle or physical person.

Other Section 1983 cases and claims can include:

## 1. Death Cases:

Issues of Wrongful death- These include fatal police shootings. These cases usually give rise to state law wrongful death actions as well as Section 1983 excessive force claims. The advantages to filing under Section 1983 is the ability to seek both punitive damages as well as "abstract" damages for the value of the life lost. Punitive damages and abstract damages are usually not available under the Wrongful Death Act.<sup>3</sup> In the case of *Jones v. Hildebrant* (Colorado 1976) the mother of a fifteen year-old black youth who was shot and killed by an on duty Denver, Colorado police officer, brought suit under the wrongful death statute of the State of Colorado and for the intentional deprivation of her son's civil rights without due process of law, under U.S.C. Section 1983, both in Colorado state court.<sup>4</sup> Mrs. Jones sought \$1,500,000.00 in compensatory damages and \$250,000.00 in punitive damages. The trial court ruled that the state wrongful death statute did not permit punitive damages. The trial court further ruled that her Section 1983 claim "merged" with the claims under the Colorado wrongful death statute and dismissed the Section 1983 claim as a separate cause of action. This limited Mrs. Jones' recovery to a "net pecuniary loss" maximum of \$45,000.00 under Colorado state law. The wrongful death claim went to a jury trial in state court where she was awarded \$1500.00. Mrs. Jones appealed and the Colorado Supreme Court ruled that if the action had been brought in federal court, the Colorado wrongful death statute would have been "incorporated"(or made available in) into the Section 1983 action, making punitive damages for wrongful death a possibility under Federal law, where the Federal Tort remedy may have applied.

## 2. First Amendment Claims:

Section 1983 can be employed in matters where there is a First Amendment right to free speech concerning government employees. Protection against retaliation by government entities against whistleblowers is the goal in these claims. The speech protected in these cases must concern a matter or matters of public concern or relevance in the community where the matter occurs, and not "purely personal grievances".<sup>5</sup> In "*Pickering v. Board of Education*", Pickering was a

<sup>3</sup> Loevy, Jon " Section 1983 Litigation In A Nutshell: Make A Case Out of It!", The Journal of the DuPage County Bar Association, Volume 17(2004-05),p.2

<sup>4</sup> Houlihan, Michael "Civil Rights-Section 1983-Wrongful Death Action-Availability of Damages in Excess of Those Permitted Under State Law- *Jones v. Hildebrant*,(Colo.1976), Western New England Law Review, Volume 1,Issue1(1978-1979) pg.149-152

<sup>5</sup> op. cit., Loevy, p.2

schoolteacher who wrote a letter to the local newspaper criticizing the Board of Education (his employer) for its handling of school finances. As a result, Pickering lost his job.<sup>6</sup> Under **Pickering**, the court rejected the notion that teachers may be constitutionally compelled to give up the First Amendment rights enjoyed by all citizens to comment on matters of public interest concerning the public schools where they work.

### 3. Equal Protection Claims:

Equal Protection claims can be brought where one class of people is treated differently than another by a Federal, state or local government or its officials. This is the case when minorities bring discrimination claims against governmental entities.

The Courts have also recognized "class of one" claims. If an individual can show that he or she has been "singled out" for irrational or differential treatment by a Federal, state or local government entity or official, Section 1983 can be used in filing a "class of one claim." This occurred in "**Olech v. Village of Willowbrook**"<sup>7</sup>. The Olechs sued the Village of Willowbrook in Federal Court (Section 1983) for delaying their access to the village water line in 1995. The Olechs maintained that the Village denied them access due to an earlier lawsuit they had filed against the village over an easement, which they successfully won. They believed that the officials for the Village of Willowbrook intentionally withheld the water line, causing them to have to use an over ground rubber hose to connect to a neighbor's well for water. They also believed that the Village officials intentionally waited until winter to attempt to solve their water problems, knowing that the rubber hose would freeze and leave them without water for the entire winter. The Olechs were in their seventies and showed that these actions caused them suffering and "singled them out" as no other citizens of the Village had been treated in such a manner.

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<sup>6</sup> Wells, Michael, "Section 1983, the First Amendment, and Public Employee Speech: Shaping the Right to Fit the Remedy (and Vice Versa), University of Georgia Law, Faculty Scholarship, Digital Commons@Georgia Law, April 1, 2001, pg 939-946.

<sup>7</sup> Richter, Nicole, "A Standard for "Class of One" Claims Under the Equal Protection Clause of the Fourteenth Amendment: Protecting Victims of Non-Class based Discrimination From Vindictive State Action", Valparaiso University Law Review, Volume35, Number 1, Fall 2000, pg.197-200.

#### 4. Denial of Medical Attention:

A claim under Section 1983 can be made when a detainee in custody is denied medical treatment due to "deliberate indifference" to a serious medical need or condition. A detainee can be a prisoner or a resident in a state or local penal or non-penal institution. "Deliberate indifference" was a key factor in "**Wyatt v. Stickney**," a case filed in the federal United States District Court of the Middle District of Alabama on October 23, 1970.<sup>8</sup> The suit was filed on behalf of the patients at Bryce Hospital in Tuscaloosa, Alabama with 16-year-old Ricky Wyatt as the main plaintiff. The suit was initially brought due to employee layoffs at Bryce Hospital. The employees alleged that layoffs would keep "involuntarily" committed mentally ill patients from receiving adequate care, a violation of their rights under the Fourteenth Amendment of the United States Constitution. The defendants in the case were the Alabama Department of Mental Health and its commissioner, Stonewall Stickney. The success of this lawsuit led to two sets of "constitutionally mandated" minimum standards for the adequate treatment of patients suffering from mental illnesses and intellectual delays.

#### 5. State- Created Danger:

**(Note: The word "State" refers to federal, state or local governments and those entities (any other actors) given the authority to act on behalf of those governments.)**

Section 1983 claims and cases can be brought when the government creates or created the danger to an individual or a group of individuals.

One of the most notable examples of "state- created" danger was the Tuskegee Syphilis Study that began in October 1932 in Macon County, Alabama and continued until 1973. The study involved deliberately withholding treatment from African-American men and women diagnosed with syphilis to study the effects of the disease on human beings. These men and women were told that they were being given treatment for the condition by Federal, state and local authorities when they were not. Government on all levels deliberately withheld needed treatment from citizens that caused disabilities and deaths of Macon County, Alabama citizens and created a danger for further infection to spread among all citizens in Macon County, Alabama.

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<sup>8</sup> Belcher, Deborah J., "Wyatt v. Stickney" [Encyclopedia of Alabama](http://www.encyclopediaofalabama.org), www.encyclopediaofalabama.org, published August 6, 2009, pg.1-3

A lawsuit was filed against the United States Department of Health, Education and Welfare, the Public Health Service, The Centers for Disease Control, The State of Alabama, State Board of Health of Alabama, the Milbank Fund(private entity) and individual physicians(private individuals) connected with the Study.<sup>9</sup>

## 6. Wrongful Convictions:

**(Note: This can include but is not limited to Wrongful imprisonment, Wrongful or Malicious prosecution, False Arrest, Retaliatory prosecution, Fabrication of evidence, Suppression of exculpatory evidence, Suggestive Eyewitness Identification procedures, Coerced confessions and Ineffective Assistance of Counsel.)**

Section 1983 claims and cases can be made when individuals have been wrongfully convicted through misconduct on the part of the police and prosecutors, such as false confessions or the mishandling of forensic evidence. This can also include the fabrication of inculpatory evidence (evidence to convict an individual) or the withholding of exculpatory evidence (evidence to vindicate an individual) by law enforcement. In "**Brady v. Maryland (1963)**", The Supreme Court holds that:"the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."<sup>10</sup>

## 7. Monell Claims:

Because of **Monell v. The Department of Social Services of the City of New York**<sup>11</sup> in 1976 and the Civil Rights Attorney's Fees Award Act passed by Congress, Section 1983 can be used to sue "deep pocket" defendants such as municipal entities and departments. If the action filed is successful, attorney's fees would also be paid. Municipal liability under Section 1983 requires proof of fault and causation on the part of the entity. If a policy or custom of the municipal entity is

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<sup>9</sup> "Examining Tuskegee: Timeline of the Study and Related Events", [www.examiningtuskegee.com](http://www.examiningtuskegee.com) pg.1-7

<sup>10</sup> Schwartz, Martin A. and Pratt ,Robert W. Honorable(2011) "Wrongful Conviction Claims Under Section 1983", Touro Law Review: Volume 27, Number2, Article 1, pg 221-224.

<sup>11</sup> Loevy, Ob.cit. p.3

the reason behind an employee's constitutional misdeed, the entity will be liable under Section 1983 for the particular action or inaction.

### **8. Actions Against Private Entities-Section 1983:**

In some cases, wrongdoers are not Federal, state or even local government entities. They can be privately owned and operated concerns acting pursuant to a "custom or usage", which had the force of law in the state. In "**Adickes v. S.H. Kress & Company, 398 U.S. 144 90 S. Ct. 1598, 26 L.Ed.2d 142 (1970)**"<sup>12</sup> The plaintiff was able to prove that she was refused service in a restaurant and determined to be a vagrant due to her race based on a state-enforced custom of racial segregation, even though no state statute promoted racial segregation in restaurants.

#### **Statute of Limitations and Section 1983**

There is no specific statute of limitations under Section 1983. Statute of Limitations refers to the time limit in which a claim or action must be brought after any alleged violation occurs.<sup>13</sup> However, 42 U.S.C.A. Section 1988 (1976) states that where the Federal law does not provide a statute of limitations, state law shall apply.

Under Section 1983, the statute of limitations does not begin to run until the "cause of action accrues." The cause of action accrues when the injured party (the Plaintiff) knows or has reason to know of the injury, which is the basis of the action.<sup>14</sup> ("**Cox v. Stanton, 529 F.2d 47[4thCir.1975]**") In employment law cases, the cause of action accrues when the discriminatory act occurs. Simply put, if an employee is notified that he or she is to be released from employment, the statute of limitations begins when the employee is notified, not when the termination begins.<sup>15</sup> ("**Chardon v. Fernandez, 454 U.S. 6, 102 S. Ct. 28, 70 L. Ed. 2d 6 [1981]**").

Claim preclusion (Res Judicata) and issue preclusion (Collateral Estoppel) apply in Section 1983 cases. This means that Federal courts must allow state courts the same "preclusive effect" that the law of the state where the judgment was rendered would allow. As such, those who bring Section 1983 claims in state

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<sup>12</sup> "Section 1983-Legal definition of Section 1983",[TheFreeDictionary.com](http://TheFreeDictionary.com), pg.1-5

<sup>13</sup> [ibid TheFreeDictionary.com](http://TheFreeDictionary.com), p.4

<sup>14</sup> ob.cit. p.4

<sup>15</sup> ob.cit p4



courts need to ensure that **all potential Federal claims are presented** in state courts as these claims **will not be allowed later in Federal court**, after the state court has rendered a decision on the issues before it.<sup>16</sup>

### **Absolute and Qualified Immunity**

Section 1983 does not specifically provide for absolute immunity for any parties. However, The Supreme Court has deemed that some officials have absolute immunity. The Supreme Court applied the common-law principles of tort immunity in existence at the time that Section 1983 was enacted, using the premise that Congress had the intent that common-law immunity applies without having to provide such in the statute. Absolute immunity exists for State and Regional legislators so long as they are engaged in traditional legislative functions. City council members and County commissioners (local legislators) have been guaranteed absolute immunity since 1998. **Judges enjoy absolute immunity as long as they are performing their "adjudicative functions", they have jurisdiction over the matters upon which they acted and their actions are "judicial" in nature.** This immunity has also been extended to employees of judges who act under the judges' direction or orders.

Absolute Immunity extends to state prosecutors who act within the scope of their duties presenting cases for their states. Witnesses who testify in court also have absolute immunity from Section 1983 damage claims, even if the claims made arise from perjured testimony. The Supreme Court in "**Briscoe v. LaHue, 460 U.S. 325(1983)**" stated:

"controversies sufficiently intense to erupt in litigation are not easily capped by a judicial decree. The loser in one forum will frequently seek another... Absolute immunity is thus necessary to assure that judges, advocates, and witnesses can perform their respective functions without harassment or intimidation."<sup>17</sup>

**(Note: The word "forum" denotes all other legal means and measures available to citizens under the United States Constitution and all other federal, state and local laws.)**

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<sup>16</sup> ibid [TheFreeDictionary.com](http://TheFreeDictionary.com), p.5

<sup>17</sup> "Briscoe v. LaHue 460 U.S. 325 (1983)" Syllabus/Case, [Justia,U.S. Law,U.S. Case Law,U.S. Supreme Court, Volume 460 pg.1-68](http://Justia,U.S. Law,U.S. Case Law,U.S. Supreme Court, Volume 460 pg.1-68)

The Supreme Court also recognizes "Qualified Immunity" defense in Section 1983 cases in certain circumstances.

There is a two-part test for Qualified Immunity: (1) "Was the law governing the official's conduct clearly established? And (2) Under the law, could a reasonable officer have believed the conduct was lawful?"<sup>18</sup>

Specifically, "Qualified immunity protects government officials from lawsuits alleging that they violated plaintiffs' rights, **only allowing suits** where officials violated "**a clearly established**" statutory or Constitutional right."<sup>19</sup> Most state and local officials who do not have absolute immunity are entitled to qualified immunity. These officials can include school board members, law enforcement officers, prison officials and state and local executives.<sup>20</sup>

Qualified immunity balances the constant need to hold public officials accountable when they use their powers in an irresponsible manner and the need to protect officials from harassment and liability when they perform their duties in a reasonable manner.<sup>21</sup>

## Conclusion

When there are allegations that one or more of the rights, privileges or immunities guaranteed to all citizens by the United States Constitution, or other federal laws, have been violated, citizens have the right to file a complaint or complaints in federal court. Lawyers, Law Firms, and other advocacy groups, which specialize in U.S.C. 42 Section 1983 complaints, can be vital in these cases. These entities have the ability to evaluate the allegations as well as file or assist in the filing of the complaints in the proper Federal court jurisdiction. The proper Federal court jurisdiction depends on the where the defendant or defendants reside or where the action on which the complaint or lawsuit is based, occurred.

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<sup>18</sup> "Qualified Immunity Law and Legal Definition" [US Legal, Inc. www.uslegal.com](http://www.uslegal.com), copyright 2001-2015, definitions pg.1-4

<sup>19</sup> "Qualified Immunity: An Overview" [Legal Information Institute, Cornell University Law School, Wex Legal Dictionary- www.law.Cornell.edu/wex](http://www.law.Cornell.edu/wex), pg 1-3.

<sup>20</sup> "Section 1983-Legal definition of Section 1983",[TheFreeDictionary.com](http://TheFreeDictionary.com), p.3

<sup>21</sup> ob.cit. "Qualified Immunity: An Overview" p.1

If, however, a citizen wishes to file a civil rights complaint or lawsuit, without an attorney, that citizen can do so. She or he should contact the United States District Court, which presides over the district where the violation of rights occurred. The United States District will provide any citizen with an information packet and a "PRO SE"<sup>22</sup> litigant guide explaining all the steps in how to file a civil rights lawsuit. U.S. C. 42 Section 1983 is only one of the sections of the Federal law, which protects and maintains the civil rights of all citizens.

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<sup>22</sup> Hill, Gerald and Kathleen, -"**The Peoples Law Dictionary**" publisher, Fine Communications www.law.com  
"Pro Se"- Latin- "for himself"- One who represents himself or herself in a court action without an attorney