42 U.S.C. § 1983: From Civil Rights to Harvesting Corneas – Is This Act Misapplied?

I. Introduction

In 1924, a black man was prevented from voting by reason of a Texas statute.[1] He successfully sued election officials for damages, and the Supreme Court overturned the statute because it prevented citizens from voting based solely on the color of one's skin.[2] In 1978, a mentally ill woman sued the city of Canton, Ohio, because she was denied medical attention while in police custody.[3] In 1998, police arrested a Native American activist and charged him with aggravated arson for setting a "Chief Wahoo"[4] effigy on fire outside of a Cleveland Indians baseball game.[5] The activist sued the city for damages claiming the arrest violated his First Amendment rights.

What do a disenfranchised black man, an emotionally disturbed woman, and an American Indian activist all have in common? Their cases were brought under 42 U.S.C. § 1983 (hereinafter called either the Act or Section 1983). This section of the U.S. Code mandates that anyone acting "under color" of state authority who deprives others of rights guaranteed by either

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[1] Nixon v. Condon, 273 U.S. 526 (1927).

[2] *Id.*

[3] Canton v. Harris, 489 U.S. 378, 381 (1989).

[4] "Chief Wahoo" is the grinning cartoon caricature used as a team emblem by the Cleveland Indians baseball team. Many Native Americans find this emblem offensive, likening it to a modern-day version of "Little Black Sambo," the despicable impersonation of an African child widely distributed in America before the Civil Rights movement of the 1950's.

[5] Bellecourt v. Cleveland, 820 N.E.2d 309 (Ohio 2004).

the Constitution or federal law shall be liable for the injury.[6] The Act was originally passed in response to blatant civil rights violationsagainst ex -slaves in southern states following the Civil War.[7] It has since been used in an extraordinarily wide variety of actions, including many that its original framers could never have foreseen.[8] Today, litigation under Section 1983 runs the gamut from students claiming a right to grow long hair[9] to prisoners suing over prison violence[10] to bereaved families suing coroners for illegally "harvesting" body parts of loved ones.[11] Despite the breadth of litigation encompassed under the Act, this paper will show that Section 1983 is not misapplied today.

This article briefly describes the history of Section 1983 and the two landmark Supreme Court rulings that significantly broadened its scope. Next it presents a primer on the burden of proof plaintiffs must carry in order to succeed in Section 1983 cases. It then provides a short overview of the extraordinarily broad category of cases heard under the statute today. Finally, the author will suggest a few areas where litigation under the Act may occur in the future.

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[6] Civil Action for Deprivation of Rights, 42 U.S.C. § 1983 (2000).

[7] SECTION 1983 - SWORD AND SHIELD 27 (Robert H. Frielich & Richard G. Carlisle eds., American Bar Association 1983) [hereinafter SWORD AND SHIELD].

[8] *See, e.g.,* A.L.R. 5th and Federal Table of Laws, Rules, and Regulations, 42 U.S.C. § 1983 [hereinafter A.L.R. 5th]. This lists literally hundreds of separate types of actions filed under this statute.

[9] *See* Westley v. Rossi, 305 F.Supp. 706 (D. Minn. 1969).

[10] *See* Burton v. Livingston, 791 F.2d 97 (8th Cir. 1986).

[11] *See* Newman v. Sathyavaglswaran, 287 F.3d 786 (9th Cir. 2002).

II. History of § 1983

A. 1865- 1900

Following the Civil War, northern Radical Republicans made a concerted effort to overturn the effects of years of slavery on southern blacks.[12] Towards that purpose, northern legislators engineered the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution.[13] In response, southern legislatures passed Black Codes, designed to keep ex-slaves in involuntary servitude by greatly restricting their employment opportunities and rights to land ownership.[14] In addition, the Ku Klux Klan and other reactionary groups waged a terror campaign against blacks in an effort to prevent them from exercising the rights Congress granted them.[15]

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[12] *See, e.g.*, ERIC FONER, RECONSTRUCTION, AMERICA'S UNFINISHED REVOLUTION: 1863-1877 228-80 (1988). This book contains a thorough analysis of the people and forces driving Reconstruction politics.

[13] *See* U.S. CONST. amend. XIII (outlawing slavery in the United States; U.S. CONST. amend. XIV (making all persons born or naturalized in the United States citizens of the country and of the state in which they reside, regardless of the color of their skin); U.S. CONST. amend. XV (granting all citizens the right to vote, regardless of the color of their skin). Each Amendment also provided Congress with the power to enforce these acts with appropriate legislation.

[14] C. VANN WOODWARD, THE STRANGE CAREER OF JIM CROW 23 (Oxford University Press 2002) (1955). *See also* SWORD AND SHIELD, *supra* note 7, at 24.

[15] Details of Southern resistance to Reconstruction efforts were chillingly presented to Congress in a variety of reports. *See, e.g.*, SEN. REP. NO. 41, 42d Cong., 2nd Sess. (1871). This report - subtitled Report on the Condition of Affairs in the Late Insurrectionary States - presented graphic examples of atrocities committed against both blacks and whites accused by white reactionary groups such as the Ku Klux Klan of supporting a new social order in the south.

The Civil Rights Act of 1871 was passed in part to allow federal courts to hear cases brought against people who denied others their right to equal protection under the law.[16] It declared that anyone, "who, under color of any law, statute, ordinance, regulation, custom, or usage" deprived another of any rights secured under the Constitution, could be held liable for that deprivation.[17] The 1871 Act was designed to ensure that violators would not avoid punishment by allowing such cases to be heard in federal rather than state courts, where offenders were unlikely to be convicted for such crimes.[18]

The Act of 1871 met with limited success for two reasons. First, the political climate toward Reconstruction cooled rapidly following the Panic of 1873[19] and the subsequent collapse of the U.S. economy.[20] Then the disputed presidential election of Rutherford B. Hayes led to the Compromise of 1877 "in which Southern Democrats agreed to the election of Hayes in exchange

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[16] Developments in the Law, *Section 1983 And Federalism*, 90 HARV. L. REV. 1133, 1147-53 (1977) [hereinafter *Section 1983 and Federalism*] (no author is credited by name for this article).

[17] Civil Rights Act of 1871, ch. 22, 17 Stat. 13 (1871).

[18] FONER, *supra* note 12, at 454-59. *See also* Marshall S. Shapo, *Constitutional Tort:*Monroe v. Pape, *and the Frontiers Beyond*, 60 NW. U. L. REV. 277, 280-81 (1965).

[19] FONER, *supra* note 12, at 512. The Panic of 1873 began when financial markets collapsed following Jay Cook's unsuccessful attempt to market railroad bonds. This led to

> a financial panic [which] engulfed the credit system. Banks and brokerage houses failed, the stock market temporarily suspended operations, and factories began laying off workers. Throughout the western world, the Panic of 1873 ushered in what until the 1930's was known as the Great Depression, a downturn that lasted, with intermittent periods of recovery, nearly to the end of the century. … [T]he depression propelled the 'labor question' to the forefront of social thought, … and reshaped the nation's political agenda and the balance of power between the [political] parties.

As a result of the depression, politicians simply could not concern themselves with the plight of ex-slaves in the south. They faced more pressing problems in the form of radical labor movements in the cities and agrarian unrest in the farm-belt. *Id*.

[20] *See Id*. at 512-25.

for Republican guarantees that federal intervention in civil rights would cease."[21]

Second, beginning in 1873, the Supreme Court decided a series of cases that culminated in the "Jim Crow" system of legalized segregation in the south.[22] In *The Slaughterhouse Cases*,[23] the Court held that the "privileges and immunities of United States citizenship were not coextensive with privileges and immunities of state citizenship, and thus the Fourteenth Amendment did not bring within the scope of federal protection any large category of individual rights."[24] Next, the Court held that the Fourteenth Amendment reached state action only, not the acts of private individuals.[25] With this ruling, "as long as no state law authorized or permitted the action … individuals were free to discriminate."[26] This ruling set the stage for the legalization of separate educational facilities for blacks and whites under *Plessy v. Ferguson* in 1896.[27] With this "separate but equal" ruling, the Court severely crippled the Act for the next 50 years.[28] The

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[21] G. SIDNEY BUCHANAN, THE QUEST FOR FREEDOM: A LEGAL HISTORY OF THE THIRTEENTH AMENDMENT 70 (Houston Law Review, Inc. 1976). As in the election of 2000, the presidential election of 1876 ended in a virtual tie. The winner was not finally determined until 4:00 A.M., March 2, 1877 - just two days before the new president was to take office. Hayes was declared the winner by one electoral vote after leaders of the two major political parties agreed to let him take office in return for major political concessions, including the virtual end of Reconstruction efforts in the south. *See* ROY MORRIS, JR., FRAUD OF THE CENTURY (Simon & Schuster 2003).

[22] *Section 1983 and Federalism*, *supra* note 16, at 1157-61.

[23] Slaughter House Cases, 83 U.S, 36 (1873).

[24] Comments, *The Civil Rights Act: Emergence of an Adequate Federal Civil Remedy?*, 26 IND. L. J. 361, 362 (1951) [hereinafter *The Civil Rights Act*] (no author is credited by name for this article).

[25] Civil Rights Cases, 109 U.S. 3, 11 (1883).

[26] SWORD AND SHIELD, *supra* note 7, at 34.

[27] Plessy v. Ferguson, 163 U.S. 537 (1896), *overruled by* Brown v. Bd. of Educ. of Topeka, 347 U.S. 483 (1954).

[28] *Section 1983 and Federalism*, *supra* note 16, at 1161.

legal framework supporting the rigid Jim Crow system that prevailed in the south until the 1950's was now firmly in place.[29]

B. 1900 - 1960

After *Plessy*, judicial antipathy towards the Act was clear. Even in egregious circumstances, the Court struggled to invoke the Act to prevent violations of civil rights.[30] Despite this, Section 1983 was still employed successfully in some voting rights cases.[31] Thus while the Act was plainly eviscerated by Supreme Court decisions after *The Slaughterhouse Cases*, it was still alive, and in the late 1940's and early 1950's, legal scholars began to envision ways to use the Act to challenge the unyielding apartheid system prevailing in the south.[32] In particular, petitioners filed suits seeking redress based on deprivation of rights secured by federal law[33] and denial of Due Process or Equal Protection under the laws in state judicial proceedings.[34] Perhaps most importantly, victims of abusive official policies began attempting to

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[29] JERROLD M. PACKARD, AMERICAN NIGHTMARE: THE HISTORY OF JIM CROW 62-65 (2002).

[30] *The Civil Rights Act*, *supra* note 24, at 363 (citing Screws v. United States, 325 U.S. 91, 140 (1945) involving the killing of a young black man by a southern sheriff whom the state refused to prosecute. Although the Supreme Court remanded the case back to the district court, the Justices were sharply divided in their opinions. Several Justices dissented, preferring "to tolerate a failure of justice rather than resort to [the Act]" because it was rooted in 'the vengeful spirit' of the Reconstruction era).

[31] *See* Nixon v. Condon, 273 U.S. 536 (1927).

[32] For an excellent treatment of the history of the Act through the early 1950's, see *The Civil Rights Act*, *supra* note 24.

[33] Bomar v. Keyes, 162 F.2d 136 (2d Cir. 1947).

[34] *The Civil Rights Act*, *supra* note 24, at 372.

hold state and local authorities personally liable for civil rights violations under the Act.[35] These efforts met with limited success at first, as the Court continued to construe Section 1983 narrowly.[36] Indeed, the Court uniformly held that the Act only applied to violations of federally protected rights mandated by state law or to violations by state officials acting pursuant to that law.[37] As a result, "if an official acted beyond the scope of his authority, his act was held not to be state action or 'under color of law', and was therefore beyond the enforcement power of Section 1983."[38] Responding in part to civil rights statutes passed in the late 1950's,[39] the Court completely overturned this constrictive interpretation in 1961 in the landmark case of *Monroe v Pape*.

III. *Monroe v. Pape*

Early one morning, thirteen Chicago policemen broke into the apartment of an African-American couple and forced them to stand naked in their living room while the officers ransacked their home in search of evidence of a crime.[40] The officers then took Mr. Monroe to

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[35] *Id.*

[36] *Id*. *See also* SWORD AND SHIELD, *supra* note 7, at 313; Shapo, *supra* note 18, at 284-87.

[37] Monroe v. Pape, 365 U.S. 167, 213 (1961), *overruled in part on other grounds by* Monell v. Dep't of Soc. Serv., 436 U.s. 658 (1978).

[38] SWORD AND SHIELD, *supra* note 7, at 313.

[39] *Monroe*, 365 U.S. at 186-87.

[40] *Id*. at 169. The treatment afforded the Monroe's by the Chicago police has been equated to how the Ku Klux Klan dealt with their enemies in the period immediately preceding passage of the Civil Rights Act of 1871. The Monroe's complaint alleged that the police

> forced [the Monroe's] at gunpoint to leave their bed and stand naked in the center of the living room … roused the six Monroe children and herded them into the living room … Detective Pape struck Mr. Monroe several times with his flashlight,

jail for interrogation, holding him for ten hours without preferring charges or allowing him to contact an attorney.[41] The Monroes sued both the police officers and the City of Chicago, alleging that they had no search warrant or arrest warrant, "and that they acted 'under color of the statutes, ordinances, regulations, customs and usages' of Illinois and of the City of Chicago."[42]

Based on the principle of *stare decisis*, a federal circuit court dismissed these claims.[43] The court held that the actions of the police officers, while reprehensible, did not rise to the level of a violation of civil rights under the Act and therefore the couple would have to pursue any claims in state rather than federal court.[44]

On appeal, the Supreme Court overruled this application of the law, at least with regard to the police officers. The Court held that "although their acts were not authorized by state law … the acts were, independently violations of [the] plaintiff's constitutional rights, and … the legislative history demonstrated that Congress intended to make actionable such violations whenever officers act under color of official authority."[45] Furthermore, the Court said that the

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> calling him 'nigger' and 'black boy' … another officer pushed Mrs. Monroe … other officers hit and kicked several of the children and pushed them to the floor … the police ransacked every room … Mr. Monroe was then taken to the police station and detained on 'open' charges for ten hours … he was not advised of his procedural rights … he was not permitted to call his family or an attorney … and he was subsequently released without criminal charges having been filed against him.

Shapo, *supra* note 18, at 277-78 (citing Frankfurter J.'s dissent in *Monroe*, 365 U.S. at 203).

[41] *Monroe*, 365 U.S. at 169.

[42] *Id.*

[43] Monroe v. Pape, 272 F.2d 365, 366 (7th Cir. 1959), *overruled by* 365 U.S. 167.

[44] *Id.*

[45] *Monroe*, 365 U.S. at 187.

federal remedy was supplemental to any state remedy. Therefore, "the fact that Illinois by its constitution and laws outlaws unreasonable search and seizures is no barrier to the present suit in the federal court."[46]

Relying on their interpretation of the legislative history of Section 1983, however, the Court refused to apply this standard to the City of Chicago.[47] Thus after *Monroe*, municipal employees could be held liable for their actions in violation of another's civil rights if those actions occurred while the employees acted under color of their state authority. This held even if state law did not authorize those actions. Municipalities, however, were still immune from prosecution under Section 1983.

IV. *Monell v. Department of Social Services*

This state of affairs changed in 1978 after female employees of the Department of Social Services and the Board of Education of New York City sued their respective agencies. The women sought injunctive relief and back pay because their employers "had as a matter of official policy compelled pregnant employees to take unpaid leaves of absence before such leaves were required for medical reasons."[48] Lower courts had refused to allow the claims for back pay, because the money would ultimately come from the city of New York, circumventing the immunity status conferred upon municipalities by *Monroe*.[49]

The Supreme Court reviewed its reasoning in *Monroe* and concluded that decision

[46] *Id.* at 183.

[47] *Id*. at 188, 192.

[48] Monell v. Dep't of Soc. Serv., 436 U.S. 658, 661 (1978).

[49] *Id*. at 662.

misinterpreted the legislative history of the Act.[50] In *Monell*, the Court held that their "analysis of the legislative history of the Civil Rights Act of 1871 compels the conclusion that Congress *did* intend municipalities and other local government units to be included among those persons to whom [Section] 1983 applies"[51] (emphasis original). As a result, the Court overruled that part of *Monroe* holding municipalities immune from prosecution under the Act.[52] However, municipalities could not be held liable for damages solely because they employed tortfeasors or, in other words, on a *respondeat superior* basis.[53] Instead, municipalities had to institute and follow an official policy that caused a constitutional tort in order to be found liable for damages under the Act.[54] With this ruling, the Court set the stage for the modern era of Section 1983, the full import of which is still unknown today, as applications of the Act continue to evolve.

V. Post-*Monell* Requirements

With *Monell*, the Supreme Court significantly broadened the scope of liability that attaches to violations of Section 1983. Furthermore, despite its earlier constrictive view of the applicability of the Act, the Court now holds that Section 1983 must be given a "liberal construction."[55]

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[50] *Id*. at 664-89.

[51] *Id*. at 690.

[52] *Id.* at 663.

[53] *Id.* at 691.

[54] *Id.*

[55] Lake Country Estates v. Tahoe, 440 U.S. 391, 399-400 (1979).

Notwithstanding this, *Monell* and subsequent cases establish a stringent hurdle for plaintiffs to pass before Section 1983 can be successfully brought to bear.[56] It is important to realize that Section 1983 does not create any substantive rights by itself. Rather, it "merely provides a remedy for the violation of an underlying federally protected right."[57] The Act establishes a two-part test wherein plaintiffs must prove that defendants violated "substantive or rights-conferring provision[s] of federal law" while acting under color of state law.[58] Without the deprivation of a federally secured right, plaintiffs cannot successfully pursue a civil claim under the Act. The deprivation may be based either on constitutionally secured rights or, as the Court held in post-*Monell* decisions, on rights secured under federal laws.[59]

In either type of action, the defendant must act under color of state law. In a case involving criminal violations of rights, the Supreme Court defined "under color of law" as "[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law."[60] Stated differently, under "color" of law means under "pretense" of law.[61] In most instances, this is relatively simple to establish because "most [Section] 1983 cases are brought against government officials for acts taken as part of

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[56] *See, e.g.,* Canton v. Harris, 489 U.S. 378, 388-93 (1989).

[57] SWORD AND SHIELD REVISITED, A PRACTICAL APPROACH TO SECTION 1983 228-29 (Mary Massron Ross, ed., American Bar Association 1998) [hereinafter SWORD AND SHIELD REVISITED].

[58] *Id*. at 89.

[59] *See* Maine v. Thiboutot, 448 U.S. 1 (1980).

[60] United States v. Classic, 313 U.S. 299, 326 (1941), *overruled on other grounds by* Monell v. Pape, 436 U.S. 658 (1978).

[61] Shapo, *supra* note 18, at 286 (citing Douglas, J.'s majority opinion in Screws v. United States, 325 U.S. 91, 111 (1945)).

their official duties."[62] In certain circumstances, private individuals may be sued under the Act, but only if they act alongside government officials and pursuant to state authority.[63]

Much more problematic for plaintiffs, however, is the fact that they must also prove a direct causal link between an official policy or custom and any alleged constitutional deprivation of rights.[64] This is often very difficult to do. Mere egregious behavior by government officials is not enough to prove a Section 1983 violation, because the theory of *respondeat superior* is insufficient to prove such a claim.[65] Rather, as the *Harris* court ruled, liability can attach "only where [a municipality's] policies are the "moving force [behind] the constitutional violation.'"[66] In *Harris*, the plaintiff had to prove that she was denied medical attention because police were improperly trained to respond to medical emergencies due to Canton's "deliberate indifference to the rights of persons with whom the police come into contact."[67] Therefore, while it is clear that Section 1983 is much more widely applied than its framers ever expected it to be, it is not easy to prove violations under it. On the contrary, it is quite difficult for plaintiffs to meet their two-part burden of proof.

VI. Current Applications of Section 1983

[62] SWORD AND SHIELD REVISITED, *supra* note 57, at 91.

[63] *Id.*

[64] Canton v. Harris, 489 U.S. 378, 424 (1989).

[65] *Monell*, 436 U.S. at 691.

[66] *Harris*, 489 U.S. at 389 (citing County v. Dodson, 454 U.S. 312, 326 (1981)).

[67] *Harris*, 489 U.S. at 388.

Section 1983 suits are now brought in an extraordinarily broad range of categories.[68] State agencies, local government entities, courts, schools, correctional institutions, banks, attorneys, physicians, private hospitals, psychiatrists and voluntary associations have all been sued under the Act.[69] Municipalities alone are sued for violations of conditions in jails, employment, law enforcement, ambulance or rescue services, assault or rape by municipal officials, destruction of private property, land use and planning, licenses and permits, and social services.[70]

Inmates challenging prison conditions commonly sue under Section 1983.[71] It is easy to see how the Act applies in such situations. Wardens and prison guards are all clearly municipal, state, or federal employees acting under color of law. Inmates often encounter a variety of actions that may deprive them of rights guaranteed under the constitution or by federal laws. For example, a prison guard held a gun to a prisoner's head, used racial slurs, and threatened to kill the inmate because he testified in a proceeding involving complaints against the guards.[72] The court held that "in the usual case mere words, without more, do not invade a federally protected right. It is also true that in most instances of 'simple assault' … there is no federal action under [Section] 1983…."[73] Here, however, the guard's actions amounted to an attempt to prevent the

[68] A.L.R. 5th, *supra* note 8, at 11-70.

[69] *Id.*

[70] *Id.* at 17-18.

[71] *Id.* at 39.

[72] *See* Burton v. Livingston, 791 F.2d 97, 98-99 (8th Cir. 1986).

[73] *Id.* at 99.

inmate from exercising his First Amendment rights of free speech, and as such could be pursued under the Act.[74]

Students also commonly sue teachers, administrators, and school boards under Section 1983.[75] School districts and institutions of higher education have long been held to be state actors for purposes of Section 1983.[76] As such, their employees may act under color of law in the course of their daily affairs and actions have been brought for violations of a wide variety of causes.[77]

School desegregation was an early and fairly obvious application of the Act.[78] Much narrower and seemingly trivial actions have also been upheld. For example, one court held that a male student had a federally protected right to grow long hair, and suspending him in an attempt to make him get a haircut was a violation of Section 1983.[79] That court held that "the right of [the] plaintiff … to wear a hair style of his choosing is a constitutional right guaranteed by the equal protection or the due process clauses of the Fourteenth Amendment."[80]

Beyond these common uses, plaintiffs have successfully found causes of action in land use and zoning,[81] privacy rights,[82] environmental actions,[83] and even harvesting of body parts.[84]

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[74] *Id*. at 101.

[75] A.L.R. 5th, *supra* note 8, at 42-43.

[76] Westley v. Rossi, 305 F. Supp. 706, 709 (D. Minn. 1969).

[77] A.L.R. 5th, *supra* note 8, at 42-43.

[78] *See* Alexander v. Holmes County Bd. of Educ., 396 U.S. 19 (1969).

[79] *See Westley*, 305 F. Supp. 706.

[80] *Id*. at 713.

[81] A.L.R. 5th, *supra* note 8, at 49-50.

Without question then, it is apparent that the Act is now both widely used and applied in ways never foreseen by its framers in 1871.

VII. Potential Future Applications of Section 1983

There are several fields where Section 1983 actions are likely to be brought in the future. Two of the most likely areas are cases against coaches brought by players or the player's family members and cases brought by convicted felons seeking access to DNA evidence required to pursue appeals.

Coaches at the high school and state university levels are generally employees of state agencies. As such, they can clearly act under color of state law.[85] If they are responsible for the death or serious injury of their student-athletes, it is conceivable they could be successfully sued under the Act. For example, if a coach compelled an athlete to run to death, courts could hold that the athlete was deprived of his right to life without due process of law.[86]

It is also possible that convicted prisoners seeking DNA evidence in order to prove their innocence could successfully invoke Section 1983.[87] Employees of state agencies control access to such evidence, and prisoners who are wrongfully convicted without the use of that evidence in

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[82] *Id*. at 53.

[83] *Id*. at 15.

[84] Newman v. Sathyavaglswaran, 287 F.3d 786 (9th Cir. 2002).

[85] Thomas R. Hurst & James N. Knight, *Coaches Liability for Athletes' Injuries and Deaths*, 13 SETON HALL J. SPORT L. 27, 47-48 (2003).

[86] *Id*. (citing Roventini v. Pasadena Indep. Sch., 981 F.Supp. 1013 (S.D. Tex. 1997)).

[87] *See* Karen A. Saunders, Note, Harvey v. Horan, *285 F.3d 298 (4th Cir. 2002)*, 30 N. KY. L. REV. 625 (2003); Benjamin Vetter, Comment, *Habeas, Section 1983, and Post-conviction Access to DNA Evidence*, 71 U. CHI. L. REV. 587 (2004).

their defense could legitimately claim they were deprived of their constitutional rights to due process. Therefore it is likely plaintiffs will be able to carry their burden of proof in such actions.

VIII. Conclusion

Despite the broad range of cases the Act applies to today, to be successful a plaintiff must prove both the deprivation of a right secured under either the Constitution or a federal statute and that the defendant acted under color of state authority. Thus while Section 1983 may be perceived as being too broadly applied today, this is simply not the case. The plaintiff's burden of proof is quite stringent, and courts are extremely adept at applying these standards to cull out legitimate applications of the Act from spurious ones.[88]

[88] By randomly skimming cases in any of the A.L.R. 5th sections listed above, one will quickly see that the majority of suits brought under the Act are lost because the plaintiff cannot meet the burden of proof required under the two-step test.