Recent Development

Section 1983 and Statute-Based Non-Equal Rights Claims: Comity and Jurisdictional Requirements

I. INTRODUCTION

The federal judiciary, faced with monumental caseloads,[1] has in recent years been forced to engage in some creative jurisdictional decision-making in order to fill the cracks which occasionally appear in those ever-feared "floodgates of litigation." This Recent Development focuses on the jurisdictional treatment of one class of federal claims which, although not great in number, has been growing at an accelerating rate.[2] The claims treated herein are brought pursuant to section 1983 of Title 42.[3] The jurisdictional grant, which does not require a minimum amount in controversy, is based upon section 1343 of Title 28.[4] Specifically, these are claims which allege a deprivation under color of state law of rights created by federal statutes which do not provide for equal rights. The rights sought to be protected are generally created by statutory provisions which encourage states to participate in programs of "cooperative federalism."[5] Rights arising under the Social Security Act[6] constitute one example.

Three alternative barriers have been constructed in federal case

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[1]*See* notes 15-27 *infra*.

[2]*See* notes 17-18 *infra* and accompanying text.

[3]Section 1983 provides:

> 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.

42 U.S.C. § 1983 (1976).

[4]Section 1343(3) provides:

> The district courts shall have original juridiction of any civil action authorized by law to be commenced by any person:
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> . . . .
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> (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 or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

28 U.S.C. § 1343 (1976).

[5]Justice Powell provided an extensive list of such programs in the appendix to his dissenting opinion in Maine v. Thiboutot, 448 U.S. 1, 34-37 (1980).

[6]42 U.S.C. §§ 301-1305 (1976).

law to exclude from federal forums statute-based section 1983 claims not alleging equal rights violations. Two of these jurisdictional checks were developed in separate concurring opinions in *Chapman v. Houston Welfare Rights Organization*[7] in which the Supreme Court decided that section 1343 was not available to provide jurisdiction over purely statutory claims. Justice Powell wrote in his concurring opinion that section 1983 itself should not even provide a remedy for the deprivation under color of state law of these statutory rights.[8] Justice White, however, believed that section 1983 did indeed provide the remedy sought and that a federal forum should be available to plaintiffs with statute-based section 1983 claims as long as they could satisfy the amount in controversy requirement of section 1331 of Title 28.[9] Shortly afterward, in *Maine v. Thiboutot*,[10] the Court adopted Justice White's position. Just as federal case law developed which would have prevented plaintiffs from bringing their non-equal rights statute-based section 1983 claims in federal court pendent to constitutional claims, Congress stepped in and eliminated the jurisdictional amount requirement of section 1331.[11] The effect of this new statute was to throw down the barriers set up in *Chapman* and *Thiboutot*, opening the federal courts to all persons with claims arising under federal laws.

Although elimination of the amount in controversy requirement may indeed put the law of federal jurisdiction "on a more principled basis,"[12] it is apparent that the federal courts are ill-equipped to deal with any influx of litigants. In view of the disposition of the courts to reduce the federal caseload, a recent Fifth Circuit decision, *Patsy v. Florida International University*,[13] may reconcile the mood of the federal courts with the new jurisdictional scheme. In a comprehensive and well-reasoned opinion, the court rejected the view that exhaustion of state administrative remedies should never be required before a plaintiff may file his section 1983 claim in a federal court.[14] Although less effective than a flat denial of federal jurisdiction over non-equal rights, statute-based section 1983 claims, an exhaustion of adequate state administrative remedies requirement would at least limit the number of such cases heard in federal courts.

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[7]441 U.S. 600 (1979).

[8]*Id.* at 623-46.

[9]*Id.* at 658 (referring to 28 U.S.C. § 1331 (Supp. III 1979)).

[10]448 U.S. 1.

[11]28 U.S.C. § 1331 (Supp. III 1979), *as amended by* Federal Question Jurisdictional Amendments Act of 1980, Pub. L. No. 96-486, § 2(a), 94 Stat. 2369 (1980).

[12]S. REP. No. 96-827, 96th Cong., 2d Sess. 16 (1980) (letter from Professor Charles Allen Wright to Hon. Robert W. Kastenmeier, House Committee on the Judiciary).

[13]634 F.2d 900 (5th Cir. 1981).

[14]*Id.* at 912.

This Recent Development discusses the overworked federal court system's attempt to cope with the growing number of section 1983 actions filed each year. Following a brief examination of the expanding caseload of the federal judiciary is a discussion of the cases which reflect the federal courts' current view of statute-based section 1983 claims. The amendment of section 1331 eliminated the amount in controversy requirement for general federal question jurisdiction and the need for plaintiffs to fight for jurisdiction under section 1343. The purposes behind the amendment will be examined. Finally, the effect of requiring exhaustion of administrative remedies before filing a section 1983 claim will be analyzed.

II. THE BURGEONING FEDERAL CASELOAD

Over the past two decades, the number of civil cases filed each year in federal courts[15] has increased at an alarming rate.[16] As Judge Friendly has pointed out, this figure rose 23% between 1961 and 1968.[17] In 1976, the annual figure was 83% higher than in 1968.[18] Since 1976, however, the rate of increase has slackened somewhat, but the number of civil actions filed in 1980 was still 29% higher than the number four years earlier.[19] In an attempt to keep pace with this "mad rush to the federal courts,"[20] Congress increased the number of federal judgeships[21] from 245 in 1960[22] to 516 in

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[15]In 1961, approximately 58,000 civil cases were filed in federal courts, excluding bankruptcy proceedings. H. FRIENDLY, FEDERAL JURISDICTION: A GENERAL VIEW 15 (1973). This reflected a substantial decrease in the number of cases filed per year since the passage of Act of July 25, 1958, Pub. L. No. 85-554, 72 Stat. 415 (1958) (amending 28 U.S.C. §§ 1331, 1332 (1952)) which raised to $10,000 the jurisdictional amount of diversity and federal question claims. *Id.* at 15 & n.2.

[16]*See* FRIENDLY, *supra* note 15, at 15-31; Aldisert, *Judicial Expansion of Federal Jurisdiction: A Federal Judge's Thoughts on Section 1983, Comity and the Federal Caseload*, 1973 LAW AND THE SOCIAL ORDER 557, 558-59 (1973); Friendly, *Averting the Flood by Lessening the Flow*, 59 CORNELL L. REV. 634 (1974); Address by Chief Justice Warren E. Burger, ABA Annual Meeting (August 14, 1972), *reprinted in* 58 A.B.A.J. 1049, 1049 (1972); Address by Chief Justice Earl Warren, ALI Annual Meeting (May 20, 1959), *reprinted in* 36 ALI PROCEEDINGS 27, 29-33 (1959).

[17]In 1968, 71,449 civil cases were filed in federal courts. FRIENDLY, *supra* note 15, at 15-16.

[18]In 1976, 130,597 civil cases were filed in federal courts. *Annual Report of the Director of the Administrative Office of the United States Courts* 293-94 (1976) [hereinafter cited as *1976 Annual Report*].

[19]In 1980, 168,789 civil cases were filed in federal courts. *Annual Report of the Director of the Administrative Office of the United States Courts* 55 (1980) [hereinafter cited as *1980 Annual Report*].

[20]Aldisert, *supra* note 16, at 559.

[21]Article III, § I of the United States Constitution provides in part that "[t]he judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." U.S. CONST. art. III, § 1.

[22]FRIENDLY, *supra* note 15, at 16.

1980.[23] Unfortunately, this more than doubling of the federal judiciary has not checked the overcrowding of the federal dockets. In fact, the number of civil cases per district judgeship has increased from 242 in 1960[24] to 327 in 1980.[25]

Some suggestions aimed at reducing the federal caseload through congressional action have been made,[26] but have been without substantial impact. The courts themselves took the first steps toward shutting out of federal courts most section 1983 claims based on the deprivation, under color of state law, of rights created by federal statute.[27]

III. A Trend in the Case Law

A. *Limited Federal Jurisdiction Over Section 1983 Claims:* Chapman v. Houston Welfare Rights Organization[28]

Chapman was a consolidation of two actions brought in the federal courts.[29] In each action, the plaintiff claimed injury as a

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[23]*1980 Annual Report*, *supra* note 19, at 2.

[24]*Id.* at 3.

[25]*Id.*

[26]The following recommendations have been offered: (1) Abolishing diversity jurisdiction. *Federal Diversity of Citizenship Jurisdiction: Hearings Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 95th Cong., 2d Sess. (1978); COMMISSION ON REVISION OF THE FEDERAL COURT APPELLATE SYSTEM, STRUCTURE AND INTERNAL PROCEDURES: RECOMMENDATIONS FOR CHANGE, 67 F.R.D. 195, 397 (1975); *Warren Address*, *supra* note 16, at 33-34 (calling for a study focusing on the achievement of a proper jurisdictional balance between state and federal courts). *Contra*, Frank, *For Maintaining Diversity Jurisdiction*, 73 YALE L.J. 7 (1963); (2) Establishing a National Court of Appeals. 67 F.R.D. at 199, 208; (3) Increasing the number of district court judges. *Id.* at 274; and (4) Expanding federal magistrate jurisdiction. *Diversity of Citizenship Jurisdiction/Magistrates Reform—1979: Hearings Before the Subcomm. on Courts, Civil Liberties, and the Admin. of Justice of the House Comm. on the Judiciary*, 96th Cong., 1st Sess. (1979).

[27]While only 19 decisions based on § 1983 are noted in the 1964 U.S.C.A. for the first 65 years of the statute's history, over 700 cases are cited in the 1976 U.S.C.A. Note, *Remedies for Statutory Violations Under Sections 1983 and 1985(c)*, 37 WASH. & LEE L. REV. 309, 309 n.1 (1980). *See also Thiboutot* at 27 n.16 (Powell, J. dissenting).

As a percentage of total civil cases filed in federal courts in 1961, the private civil rights action amounted to only 0.5%. *Annual Report of the Director of the Administrative Office of the United States Courts* 238 (1961) [hereinafter cited as *1961 Annual Report*]. By 1968, private civil rights actions constituted 2% of all civil actions filed. *Annual Report of the Director of the Administrative Office of the United States Courts* 194-95 (1968). By 1980, the percentage had risen to 7%. *1980 Annual Report*, *supra* note 19, at 55. Even more striking are the raw numbers: 270 private civil actions were filed in 1961, *1961 Annual Report* 238, compared with 11,495 in 1980, *1980 Annual Report* at 55.

[28]441 U.S. 600.

[29]*See* Gonzalez v. Young, 560 F.2d 160 (3d Cir. 1977), *aff'd sub nom.* Chapman v. Houston Welfare Rights Org., 441 U.S. 600 (1979); Houston Welfare Rights Org. v.

result of state welfare regulations which allegedly conflicted with the Social Security Act.[30] The actions were brought pursuant to section 1983 and its jurisdictional counterpart, section 1343(3) of Title 28.[31] The only question facing the Court in *Chapman* was whether the district courts had jurisdiction to hear "a claim that a state welfare regulation was invalid because it conflicted with the Social Security Act."[32] The Court held that the district courts had no jurisdiction.[33] Justice Stevens, writing for the Court, reviewed the history of section 1343(3) and concluded that "the legislative history of the provisions at issue in the case ultimately provides . . . little guidance as to the proper resolution of the question presented . . . ."[34] The Court examined the Supremacy Clause,[35] section 1983,[36] and the Social Security Act[37] and in each case failed to find the rights required by section 1343.[38]

B. The Scope of Section 1983

1. Justices White and Powell: The Conflict in Chapman.—The Court held that *Chapman* could be disposed of without considering the scope of section 1983. The conclusions reached in the concurring opinions by Justices Powell and White followed lengthy accounts of the legislative histories of the two statutes[39] and were drawn in light of recent decisions.[40]

Justice Powell was of the opinion that only one conclusion could be reached: Sections 1983 and 1343(3) were coextensive.[41] The use by Congress of the words "and laws" in section 1983, the Justice reasoned, was a shorthand method of referring to equal rights legislation,[42] and therefore section 1983 was never intended to provide a

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Vowell, 555 F.2d 1219 (5th Cir. 1977), *rev'd sub nom.* Chapman v. Houston Welfare Rights Org., 441 U.S. 600 (1979).

[30]Social Security Act, 42 U.S.C. §§ 301-1305. In *Vowell*, the plaintiffs alleged the deprivation under color of state law of rights created by the Social Security Act, § 402, 42 U.S.C. § 602 (1976). 555 F.2d at 1221. The plaintiffs in *Young* asserted the Social Security Act § 406(e)(1), 42 U.S.C. § 606(e)(1) (1976), as the source of the federal rights of which they had been deprived by state action. 560 F.2d at 163.

[31]*See* notes 3 & 4 *supra.*

[32]441 U.S. at 603.

[33]*Id.* at 610.

[34]*Id.* at 612.

[35]*Id.* at 612-15.

[36]*Id.* at 618-20.

[37]*Id.* at 620-27.

[38]28 U.S.C. §1343(3) (1976).

[39]*See* 441 U.S. at 623, 646 (concurring opinions of Powell & White, JJ.).

[40]*Id.* at 624-46, 647-72 (concurring opinions of Powell & White, JJ.).

[41]*Id.* at 624 (Powell, J., concurring).

[42]*Id.*

remedy for the deprivation of federal statutory rights.[43] Justice White, in contrast, contended that the legislative history of section 1983 reflects congressional intent that the remedy encompass federal non-equal statutory rights.[44]

Justice Powell was influenced by the potential "dramatic expansion of federal court jurisdiction"[45] which would be caused by a broad interpretation of section 1983. Because Justice Powell concurred with the Court that section 1343(3) provided jurisdiction only for section 1983 claims based upon the Constitution or upon statutes providing for equal rights, it initially seems incongruous that he would foresee "a dramatic expansion of federal court jurisdiction."[46] Certainly, after *Chapman*, the only provisions left for direct federal jurisdiction over statutory section 1983 claims not involving equal rights were the diversity[47] and general federal question[48] enactments. Although he did not discuss it, Justice Powell apparently feared a rush of such claims brought pendent to constitutional claims pursuant to the rationale of *Hagans v. Lavine*.[49] Justice White did note the possibility that the plaintiffs could have their non-equal rights statute-based section 1983 claims heard in federal court on remand under the *Hagans* doctrine, implicitly recognizing that his construction could precipitate an increased number of such filings in federal court.[50]

2. Maine v. Thiboutot:[51] *A Broad Construction of Section 1983.*—The debate between Justices White and Powell in *Chapman* proved to be a prelude to *Thiboutot*, in which the issue of the scope of section 1983 was finally put squarely before the Court.[52] In *Thiboutot*, the Court approved the broader interpretation advocated by Justice White in *Chapman*. Justice Brennan, writing for the majority, concluded that section 1983 did provide a remedy for the deprivation, under color of state law, of rights created by federal statutes which do not provide for equal rights.[53]

Justice Powell wrote the dissent, joined by the Chief Justice and Justice Rehnquist. Recapitulating his version of the legislative history of section 1983, Justice Powell again asserted that the words

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[43]*Id.* at 627.
[44]*Id.* at 649 (White, J., concurring in the judgment).
[45]*Id.* at 645 (Powell, J., concurring).
[46]*Id.*
[47]28 U.S.C. § 1332 (1976).
[48]28 U.S.C. § 1331 (Supp. III 1979).
[49]415 U.S. 528 (1974).
[50]441 U.S. at 661 & n.33 (White, J., concurring in the judgment).
[51]448 U.S. 1.
[52]*Id.* at 3.
[53]*Id.* at 4-8.

"and laws" were "nothing more than a shorthand reference to equal rights legislation enacted by Congress."[54]

Although *Thiboutot* was originally brought in a state court, the primary concern of the dissenters again appears to have been the heavy federal caseload.[55] Justice Powell also expressed reservations that the majority's broad interpretation of section 1983 "creates a major new intrusion into state sovereignty under our federal system."[56] To be sure, Justice Powell's approach would help ease the pressure on federal courts, but would itself create a significant federalism problem. Doing away with the non-equal rights statute-based section 1983 action would eliminate a remedy which would otherwise be available to plaintiffs in state courts.[57] Further, because there would be no available federal remedy, even under diversity and general federal question jurisdiction, the dissenters seemed to be suggesting that Congress created certain federal rights with the knowledge that there was no available remedy. The position first articulated by Justice White in *Chapman*, and ultimately adopted by the Court in *Thiboutot*, however, did contemplate congressional intent to provide for redress of acts under color of state law inconsistent with these statutory rights. The result of *Chapman* and *Thiboutot* is that plaintiffs in non-equal rights statute-based section 1983 actions can bring their actions in federal court under federal question or diversity jurisdiction.[58] In addition, the section 1983 remedy is preserved for use by aggrieved parties in state courts. This outcome seems to strike a better balance between state and federal interests than does the position advanced by Justice Powell.

C. Hagans v. Lavine:[59] *Pendent Jurisdiction for Non-Equal Rights Statute-Based Section 1983 Claims*

Unfortunately for the overworked lower federal courts, the pendent jurisdiction doctrine of *Hagans v. Lavine* has prevented

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[54]*Id.* at 12 (Powell, J., dissenting).

[55]The Chief Justice, it will be remembered, has long called for an easing of the federal caseload. *See* COMMISSION ON REVISION, note 26 *supra* (letter from the Chief Justice).

[56]448 U.S. at 33 (Powell, J., dissenting).

[57]In Martinez v. California, 444 U.S. 277, 283 n.7 (1980), the Court held that Congress has not barred state courts from hearing section 1983 claims but reserved the question of whether state courts are obligated to hear section 1983 claims. *See* Testa v. Katt, 330 U.S. 386, 391 (1947) (compelling state enforcement of federal statutes). *See also* Terry v. Kolski, 78 Wis. 2d 475, 254 N.W.2d 704 (1977).

[58]28 U.S.C. § 1331 (Supp. III 1979), *as amended by* Federal Question Jurisdictional Amendments Act of 1980, Pub. L. No. 96-486, § 2(a), 94 Stat. 2360 (1980). *See* notes 79-86 *infra* and accompanying text for the effect of the amendment.

[59]415 U.S. 528.

Chapman and *Thiboutot* from reducing the federal caseload. In *Hagans*, the district court found pendent jurisdiction over a statutory claim brought purusant to section 1983.[60] The plaintiff alleged that New York regulations contravened certain provisions of the Social Security Act.[61] The district court found that jurisdiction existed pendent to a claim that the same state regulations violated the equal protection clause of the fourteenth amendment.[62] The Court of Appeals for the Second Circuit revised for failure to present a substantial constitutional claim.[63] The Supreme Court granted certiorari[64] and held that the statutory claim could be heard pendent to the constitutional claim because the latter was not wholly unsubstantial.[65]

In *Chapman*, both Justice White, in his concurring opinion,[66] and Justice Stewart, in his dissent,[67] noted that the Court's holding did not cast doubt upon the continued validity of the *Hagans* pendent jurisdiction rationale.[68] In fact, in the wake of *Chapman*, most plaintiffs have brought their statute-based section 1983 actions pendent to constitutional claims.[69] With few exceptions,[70] the lower courts have held that the constitutional claims satisfy the substantiality test of *Hagans*. These cases are generally disposed of on the merits of the statutory claims without addressing the substantive constitutional issues presented.[71] In sum, it makes little sense to close one

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[60]*Id.* at 532.

[61]*Id.* at 530-31.

[62]*Id.* at 531-33.

[63]*Id.* at 533.

[64]*Id.*

[65]*Id.* at 539. Substantial claims have been defined in earlier decisions as claims not rendered frivolous by prior decisions or "so attenuated and unsubstantial as to be absolutely devoid of merit." *Id.* at 536 (quoting Newburyport Water Co. v. Newburyport, 193 U.S. 561 (1904)).

[66]441 U.S. at 646 (White, J., concurring in the judgment).

[67]*Id.* at 672 (Stewart, J., dissenting).

[68]*Id.* at 661 n.3 (White, J., concurring in the judgment); *Id.* at 675 (Stewart, J., dissenting).

[69]*See, e.g.*, Miller v. Youakim, 440 U.S. 125 (1979) (claim that Illinois regulations used to administer the Aid to Families with Dependent Children-Foster Care program, Social Security Act, §§ 401, 408, 42 U.S.C. §§ 601, 608 (1976), violated the plaintiff's equal protection rights under the fourteenth amendment held substantial enough to support statutory 1983 claim). *See also* Oldham v. Ehrlich, 617 F.2d 163 (8th Cir. 1980); McManama v. Lukhard, 616 F.2d 727 (4th Cir. 1980).

[70]*See, e.g.*, Doe v. Klein, 599 F.2d 338 (9th Cir. 1979) (plaintiff's constitutional claims were "totally without merit" and "asserted in order to obtain jurisdiction over her statutory claim." Therefore, there was no basis for the exercise of pendent jurisdiction).

[71]The court noted in *Hagans* that "the Court has characteristically dealt with the 'statutory' claim first because if the appellee's position on this question is correct, there is no occasion to reach the constitutional issues." 415 U.S. at 549 (citations omitted).

jurisdictional door on a category of claims only to have such claims come in through another.

D. Aldinger v. Howard:[72] *Mitigating the Effect of* Hagans

Even before *Chapman* was decided, a line of cases began to develop which might prevent claimants under section 1983 from having their non-equal rights statutory claims heard pendent to constitutional claims brought pursuant to section 1343. In *Aldinger v. Howard*,[73] the Supreme Court concluded that pendent party claims cannot be heard where Congress has made it clear that the party sought to be brought into the action was never intended to be subject to such claims.[74]

The district court in *Kedra v. City of Philadelphia*[75] extended the *Aldinger* analysis to include pendent claims: "The statute conferring jurisdiction over the federal claim may expressly or impliedly restrict the scope of the cause of action that may be litigated under it, precluding litigation of a complete 'case' in the constitutional sense."[76]

Applying this analysis to sections 1983 and 1343(3), the implication, after *Chapman*, is that section 1343 was intended to confer jurisdiction over constitutional and equal rights statutory claims only,[77] and that pendent jurisdiction over non-equal rights statutory claims is therefore precluded. Refusal by federal courts to hear these pendent claims would close another federal jurisdictional door while preserving for the claimants their state court section 1983 remedies.[78]

IV. The Federal Question Jurisdictional Amendments Act of 1980:[79] Congress Opens Yet Another Door

Thus far, the discussion has focused on whether non-equal

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[72]427 U.S. 1 (1976). *See generally* Aldinger v. Howard *and Pendent Jurisdiction*, 77 Colum. L. Rev. 127 (1977); Schenkier, *Ensuring Access to Federal Courts: A Revised Rationale for Pendent Jurisdiction*, 75 Nw. L. Rev. 245 (1980); Aldinger v. Howard: *Pendent Party Jurisdiction in Federal Question Cases*, 13 New England L. Rev. 170 (1977).

[73]427 U.S. at 1.

[74]*Id.* at 17 & n.12. *See also* New England, *supra* note 72 at 173.

[75]454 F. Supp. 652 (E.D. Pa. 1978). *See also* Wesley v. Mullins & Sons, Inc., 444 F. Supp. 117 (E.D.N.Y. 1978); Morgan v. Sharon, Pa. Bd. of Educ., 445 F. Supp. 142, 146 (W.D. Pa. 1978). *See also* Ensuring Access, *supra* note 72, at 281-83; *Pendent Jurisdiction*, *supra* note 72, at 148-52. *Contra*, Gagliardi v. Flint, 564 F.2d 112, 114 (3d Cir. 1977), *cert. denied*, 438 U.S. 904 (1978).

[76]454 F. Supp. at 680.

[77]*See* notes 28-38 *supra* and accompanying text.

[78]*See* note 57 *supra* and accompanying text.

[79]Pub. L. No. 96-486, § 2(a), 94 Stat. 2369 (amending 28 U.S.C. § 1331 (Supp. III 1979)).

rights statute-based section 1983 actions can properly be brought under section 1343, a specialized jurisdictional provision which requires no minimum amount in controversy.[80] Of course, section 1331,[81] the general federal question jurisdictional grant, has always been available to provide jurisdiction over claims which arise under federal law[82]—so long as the amount in controversy is at least $10,000.[83] Few claimants, however, can legitimately allege $10,000 in controversy in a section 1983 suit challenging state action on the ground that it is inconsistent with a federal statute which does not provide for equal rights.[84] Recently, Congress enacted the Federal Question Jurisdictional Amendments Act of 1980,[85] eliminating the amount in controversy requirement of section 1331.[86] As a result, individuals with non-equal rights statute-based section 1983 claims no longer must fight for federal jurisdiction under section 1343.

A. The Need for Reform

The jurisdictional amount has existed in one form or another since the early days of the Republic.[87] It was originally intended to prevent congestion in federal courts,[88] but history had demonstrated the fallacy of that early reasoning.[89] Today, specialized statutory enactments confer jurisdiction over almost every kind of case arising under the Constitution and laws of Congress.[90] Interestingly, the proponents of the recent amendment predicted that the elimination of the amount in controversy would reduce the time spent on each case.[91]

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[80]28 U.S.C. § 1334 (1976).

[81]28 U.S.C. § 1331 (Supp. III 1979).

[82]*Id.*; C. WRIGHT, HANDBOOK OF THE LAW OF FEDERAL COURTS § 17 (3d ed. 1976).

[83]28 U.S.C. § 1331 (Supp. III 1979).

[84]The majority of these claims are based upon rights conferred by the Social Security Act. *See Chapman*, 441 U.S. at 606; SENATE REPORT, *supra* note 12, at 3; Note, *Jurisdiction Under 28 U.S.C. § 1343 Does Not Include Statutorily Based Claims of Welfare Rights Depriviation*—Houston Welfare Rights Organization, 29 DEPAUL L. REV. 883 (1980).

[85]The Act amends Section 1331 of Title 28, United States Code, to provide in part that "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Federal Question Jurisdictional Amendments Act of 1980, Pub. L. No. 96-486, § 2(a), 94 Stat. 2369 (1980).

[86]*Id.* at § 2(b).

[87]*See* WRIGHT, *supra* note 82, at 122.

[88]*Id.*

[89]*Id.* (quoting Chief Justice Earl Warren, Address to the ALI (May 18, 1960), 25 F.R.D. 213).

[90]H.R. REP. NO. 1461, 96th Cong., 2d Sess., 2 (1980). *See e.g.*, 28 U.S.C. § 1333 (1976) (admiralty, maritime and prize cases); 28 U.S.C. § 1334 (1976) (bankruptcy cases); 28 U.S.C. § 1337 (1976) (interstate commerce cases); 28 U.S.C. § 1338 (1976) (patent, copyright and trademark cases); and 28 U.S.C. § 1339 (1976) (postal matters).

[91]SENATE REPORT, *supra* note 12, at 7.

> Although there may be a minimal increase in the number of Federal question cases heard in Federal courts, the committee believe[d] that this [would] be more than offset by relieving the courts of the complicated and at times burdensome task of ascertaining whether the amount in controversy requirement [is] met in particular cases and of measuring that amount if so.[92]

It is doubtful that the elimination of the jurisdictional amount requirement would result in a reduction in the number of non-equal rights statutory section 1983 actions heard in federal courts. First, because of the limited scope of section 1343, these cases do not fall within the provisions of a specialized jurisdictional statute.[93] Further, the claimants rarely allege an amount in controversy approaching $10,000.[94] Contrary to the purpose stated by the Committee on the Judiciary,[95] the recent amendment seems to assure a federal forum for an entire class of actions which might otherwise be relegated to state courts.[96]

This result may be justified by policy considerations which run deeper than concern for the heavy yoke borne by the federal judiciary. As Professor Wright has stated: "We do nothing to encourage confidence in our judicial system or in the ability of persons with substantial grievances to obtain redress through lawful processes when we close the courthouse door to those who cannot produce $10,000 as a ticket of admission."[97] Many significant constitutional and statutory rights are incapable of monetary valuation. Aggrieved individuals, subject to a jurisdictional amount requirement, are effectively told that "their injury is too insignificant to warrant the attention of a Federal judge."[98] In turn, the state courts are apparently regarded "as inferior tribunals rather than a coordinate system."[99] The amendment to section 1331, therefore, generally promotes comity between the state and federal court systems by putting "the law of federal jurisdiction . . . on a more principled basis."[100]

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[92]*Id.*

[93]441 U.S. at 618.

[94]*See* note 84 *supra.*

[95]SENATE REPORT, *supra* note 12, at 3-5; HOUSE REPORT, *supra* note 90, at 1-3.

[96]*See* notes 28-78 *supra* and accompanying text.

[97]HOUSE REPORT, *supra* note 90, at 2 (quoting *Hearings before the Subcommittee on Administrative Practice and Procedure, Senate Committee on the Judiciary*, 91st Cong., 2d Sess. 254 (1970)).

[98]HOUSE REPORT, *supra* note 90, at 2.

[99]SENATE REPORT, *supra* note 12, at 13 (quoting ALI, *Study of the Division of Jurisdiction Between State and Federal Courts* § 1311(a) at 174).

[100]SENATE REPORT, *supra* note 12, at 16 (letter from Professor Charles Allen Wright to Hon. Robert W. Kastenmeier, House Committee on the Judiciary).

B. Comity and the Statute-Based Section 1983 Action

Professor Wright has maintained that "suits challenging state or local action as in violation of the federal Constitution and statutes are exactly the sort of cases that should be heard by federal courts."[101] In *Chapman* and *Thiboutot*, however, the Supreme Court implied that there was no place in the federal district courts for non-equal rights statutory section 1983 actions; that state courts were the proper forums for adjudication of these cases. These divergent views can be reconciled by noting that the Supreme Court must work within the statutory scheme established by Congress and that commentators often advocate revision of these schemes.

Now that Congress has heeded the admonitions of Professor Wright and others, the *Chapman* decision pales in significance. The concurring opinions of Justices White and Powell remain interesting as background for the Court's decision in *Maine v. Thiboutot*. The amendment of section 1331 renders *Thiboutot* even more significant because it seems likely that more claimants will take advantage of section 1983 in order to have heard in federal courts their claims alleging the deprivation, under color of state laws, of federal statutory rights. Because federal case law has consistently preserved for section 1983 claimants the right to be heard in state courts, it seems unlikely that federal courts will be disposed to hear every section 1983 cause of action brought pursuant to section 1331. The Supreme Court, in *Thiboutot*, could have approved Justice Powell's view that section 1983 did not provide a remedy for the deprivation by state action of rights created by a federal non-equal rights statute,[102] but such a holding would have eliminated the section 1983 state court rememdy as well as the federal cause of action.[103] Even the cases which might have prevented claimants from alleging pendent jurisdiction in order to by-pass the *Chapman* decision contemplated the existence of state remedies.[104] Perhaps it is in the spirit of "cooperative federalism" that federal courts have sought to limit to state forums original jurisdiction over these claims, preferring to allow the states an opportunity to harmonize their activities with the federal statutory scheme relied upon by the claimants. Unfortunately, the Federal Question Jurisdictional Amendments Act of 1980 has minimized these notions of federalism in this particular category of actions. The Fifth Circuit, however, has recently articulated a view that might put the case law trend back on track by requiring

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[101] *Id.* at 15.

[102] *See* notes 54-58 *supra* and accompanying text.

[103] *Id.*

[104] *See* notes 66-71 *supra* and accompanying text.

claimants to exhaust state administrative remedies before bringing in federal court their non-equal rights section 1983 actions.[105]

V. COMITY AND THE EXHAUSTION OF ADMINISTRATIVE REMEDIES

It has long been the general rule that aggrieved parties must exhaust their state administrative remedies before filing an action in federal court.[106] There is conflicting authority, however, as to whether this doctrine ever applied to section 1983 claims. Although the Supreme Court has never had this issue placed squarely before it, there are several section 1983 cases in which the Court held that, under the facts of each case, exhaustion of administrative remedies was not required.[107] Members of the Court, however, have hinted that this exception to the exhaustion doctrine may not be iron-clad.[108] The circuit courts are evenly divided.[109] Until this year, the Fifth Circuit counted itself among the appellate tribunals which

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[105]Patsy v. Florida Int'l Univ., 634 F.2d 900 (5th Cir. 1981).

[106]Gilchrist v. Interborough Rapid Transit Co., 279 U.S. 159, 209-10 (1929). *See generally* C. WRIGHT, LAW OF FEDERAL COURTS § 49, at 210 (3d ed. 1976); Note, *Exhaustion of State Administrative Remedies Under the Civil Rights Act*, 8 IND. L. REV. 565 (1975).

[107]*See, e.g.*, Barry v. Barchi, 443 U.S. 55 (1979) (question of adequacy of available administrative remedies went to the merits of the plaintiff's case); Gibson v. Berryhill, 411 U.S. 564 (1973) (question of adequacy was identical with merits); Carter v. Stanton, 405 U.S. 669 (1972) (per curiam) (administrative remedies held inadequate); McNeese v. Board of Educ., 373 U.S. 668 (1963) (administrative remedies held inadequate).

[108]*E.g.*, Runyon v. McCrary, 427 U.S. 160 (1976).

> In some instances the Court has drifted almost accidentally into rather extreme interpretations of the post-Civil War Acts. The most striking example is the proposition, now often accepted uncritically, that 42 U.S.C. § 1983 does not require exhaustion of administrative remedies under any circumstances. This far-reaching conclusion was arrived at largely without the benefit of briefing and argument.

Id. at 186 n.* (Powell, J., concurring).

[109]Holding that exhaustion of state administrative remedies is never a prerequisite to a section 1983 action heard in federal court: Simpson v. Weeks, 570 F.2d 240 (8th Cir. 1978), *cert. denied*, 443 U.S. 911 (1979); Ricketts v. Lightcap, 567 F.2d 1226 (3d. Cir. 1977); Gillette v. McNichols, 517 F.2d 888 (10th Cir. 1975); McCray v. Burrell, 516 F.2d 357 (4th Cir. 1975), *cert. dismissed*, 426 U.S. 471; Jones v. Metzger, 456 F.2d 854 (6th Cir. 1972).

Recognizing that the section 1983 exception to the exhaustion of administrative remedies doctrine is not invariably required: Raper v. Lucey, 488 F.2d 748, 751 n.3 (1st Cir. 1973); Eisen v. Eastman, 421 F.2d 560, 568 (2d Cir. 1969), *cert. denied*, 400 U.S. 841 (1970) (dictum); Patsy v. Florida Int'l Univ., 634 F.2d at 912; Secret v. Brierton, 584 F.2d 823 (7th Cir. 1978); Canton v. Spokane School Dist. #81, 498 F.2d 840 (9th Cir. 1974) (exhaustion of state administrative remedies required if the plaintiff seeks to prevent a future invasion of civil rights); Whitner v. Davis, 410 F.2d 24 (9th Cir. 1969) (exhaustion of administrative remedies not required if the plaintiff seeks redress for injuries already incurred).

did not require exhaustion of administrative remedies for federal jurisdiction over section 1983 actions.[110] In *Patsy v. Florida International University*,[111] the court held that the Supreme Court cases leave room for the development of "an analytical rule."[112]

A. The Analytical Rule: Exhaustion of Adequate State Administrative Remedies is Necessary in Section 1983 Actions

The Fifth Circuit did develop an analytical rule, holding that where administrative remedies are adequate and appropriate, exhaustion of those remedies is a prerequisite to bringing a section 1983 action in federal court.[113] Five minimum conditions must be met in determining whether the available administrative remedies are adequate:

> *First*, an orderly system of review or appeal must be provided by statute or written agency rule. *Second*, the agency must be able to grant relief more or less commensurate with the claim. *Third*, relief must be available within a reasonable period of time. *Fourth*, the procedures must be fair, and not unduly burdensome, and must not be used to harass or otherwise discourage those with legitimate claims. *Fifth*, interim relief must be available in appropriate cases . . . ."[114]

If the minimum criteria are met, the court suggested further subjective considerations for the district courts. A proper balance must be struck, the court asserted, between the interests of the plaintiff and the value of the particular administrative scheme.[115]

The court was apparently referring to the policy reasons for its analytical approach. In discussing these policy grounds, the court cautioned that "[t]he proper focus [of the inquiry] should be on relief from wrong, and the adequacy of the administrative . . . remedy, not on the federal origin of the right that was violated."[116] The court then listed several considerations: First, exhaustion results in a more economical allocation of scarce judicial resources.[117] Next, it ensures that the claim is "ripe for adjudication."[118] Further, exhaustion provides an incentive for the administrative agency to comply with federal law.[119]

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[110]Patsy v. Florida Int'l Univ., 634 F.2d at 908 (citing Hardwick v. Ault, 517 F.2d 295 (5th Cir. 1975)).

[111]634 F.2d 900.

[112]*Id.* at 904. The court noted that every Supreme Court case which has waived the exhaustion of administrative remedies requirement in section 1983 suits has done so only where the available administrative remedy was inadequate. *Id.* at 906.

[113]*Id.* at 912.

[114]*Id.* at 912-13.

[115]*Id.* at 913.

[116]*Id.* at 910.

[117]*Id.* at 911.

[118]*Id.*

[119]*Id.*

Administrative remedies are also "simpler, speedier and less expensive for the parties themselves."[120] Finally, the court suggested that exhaustion of adequate administrative remedies is "supported by fundamental notions of federalism and comity"[121] because "the citizens of a state have a constitutionally based interest in autonomously running the state business and government to the fullest extent possible, until it collides with the federal constitution."[122] Moreover, the court observed that "[g]ood faith efforts by the states to provide protection for . . . parties are discouraged when federal courts encourage ignoring state administrative remedies."[123]

Significantly, the plaintiff in *Patsy* brought her section 1983 action pursuant to section 1343.[124] The plaintiff alleged deprivation, under color of state law, of her federal constitutional rights.[125] Where, on the other hand, a plaintiff has a non-equal rights statute-based section 1983 claim which falls within the jurisdictional grant of section 1331, the policy considerations articulated by the court of appeals in *Patsy* are even more relevant.

B. Non-Equal Rights Statute-Based Section 1983 Claims and the Policy Behind the Exhaustion Requirement

Once a district court has satisfied itself that the five objective criteria for measuring the adequacy of state administrative remedies are met, very few non-equal rights statutory section 1983 claims should survive the second step of the *Patsy* analytical rule. In balancing the interests of the plaintiff and the usefulness of the exhaustion doctrine, certain of the policy considerations set forth by the court of appeals in *Patsy* virtually compel exhaustion of adequate administrative remedies when no constitutional injury is alleged. First, exhaustion would free the federal courts to devote more time to the protection of constitutional rights. Admittedly, it would take time for any noticeable easing of the federal caseload to manifest itself. Plaintiffs might initially couch their claims in terms of the alleged inadequacy of available administrative remedies. Once a particular state system has been found adequate by a federal court, however, the precedential effect of that decision should bar similar future claims. Even more importantly, an exhaustion of administrative remedies requirement would recognize the interests of the citizens of a state in running state government. The court of appeals, in *Patsy*, intimated that recourse should be had to federal

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[120] *Id.*
[121] *Id.* at 912.
[122] *Id.*
[123] *Id.*
[124] *Id.* at 902.
[125] *Id.*

court only when the administration of state government clashes with the federal Constitution.[126] By definition, the non-equal rights statutory section 1983 action does not allege state action which collides with constitutional provisions. Therefore, "notions of federalism and comity"[127] lend particularly strong support to exhaustion of adequate state administrative remedies in these statutory suits.

Widespread adoption of the exhaustion doctrine of *Patsy* would in short ease the workload of federal district courts while upholding comity between states and the federal judiciary, two goals long sought both by courts and Congress.

VI. CONCLUSION

The Supreme Court has held that section 1983 provides a remedy for claimants asserting deprivation by states of rights created by federal statutes which do not provide for equal rights. Section 1343, the usual jurisdictional counterpart to section 1983, was held, however, to not be available to such claimants. In so deciding, the Supreme Court clearly indicated that most such claims, at least those with an amount in controversy of less than $10,000, should not be litigated in the heavily burdened federal court system. Plaintiffs soon recognized, however, that their statute-based claims would still be cognizable in federal courts if pleaded pendent to "not wholly unsubstantial" constitutional claims. Following the Supreme Court's lead, the lower federal courts seemed ready to preclude such pendent actions when Congress amended section 1331, eliminating the jurisdictional amount requirement for general federal question jurisdiction and opening wide the federal courthouse door to an expanding class of cases. Given the reluctance of the federal judiciary to hear these non-equal rights statute-based section 1983 claims under the former statutory scheme, it is likely that the federal courts will again fashion some jurisdictional roadblock in order to keep their caseloads at manageable levels. That end may be accomplished by requiring plaintiffs to exhaust adequate administrative remedies before bringing their section 1983 statute-based complaints in federal court. The circuits are evenly divided on this requirement now and it is only a matter of time before the issue is put squarely before the Supreme Court. An exhaustion requirement pronounced by the Supreme Court would be the final step on a long and tortuous path to limited jurisdiction over non-equal rights statute-based section 1983 claims.

MICHAEL J. GRISHAM

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[126] *Id.* at 912.
[127] *Id.*