

## West's Law Encyclopedia of American Law: 42 USC § 1983

Section 1983 of title 42 of the U.S. Code is part of the Civil Rights Act of 1871. This provision was formerly enacted as part of the [Ku Klux Klan Act](#) of 1871 and was originally designed to combat post-Civil War racial violence in the Southern states. Reenacted as part of the Civil Rights Act, section 1983 is today the primary means of enforcing all constitutional rights.

Section 1983 provides:

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.

On March 23, 1871, President Ulysses S. Grant sent an urgent message to Congress calling for national legislation that could combat the alarming increase in racial unrest and violence in the South. Congress reacted swiftly to this request, proposing a [bill](#) just five days later. The primary objective of the bill was to provide a means for individuals and states to enforce, in the federal or state courts, the provisions of the [Fourteenth Amendment](#). The proposed bill created heated debate lasting several weeks but was eventually passed on April 20, 1871.

During the first ninety years of the act, few causes of action were brought due to the narrow and restrictive way that the U.S. Supreme Court interpreted the act. For example, the phrase "person ... [acting] under color of any statute" was not interpreted to include those wrongdoers who happened to be state or municipal officials acting within the scope of their employment but not in accordance with the state or municipal laws. Those officials were successfully able to argue that they were not acting under color of statute and therefore their actions did not fall under the mandates of section 1983. In addition, courts narrowly construed the definition of "rights, privileges, or immunities."

But the Supreme Court decisions in *Monroe v. Pape*, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961), and *Monell v. Department of Social Services*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978), finally recognized the full scope of Congress's original intent in enacting section 1983. The Supreme Court began accepting an expansive definition of rights, privileges, or immunities and held that the act does cover the actions of state and municipal officials, even if they had no authority under state statute to act as they did in violating someone's federal rights.

### Jurisdiction

Federal courts are authorized to hear cases brought under section 1983 pursuant to two statutory provisions: 28 U.S.C.A. § 1343(3) (1948) and 28 U.S.C.A. § 1331 (1948). The former statute permits federal district courts to hear cases involving the deprivation of [civil rights](#), and the latter statute permits federal courts to hear all cases involving a [federal question](#) or issue. Cases

brought under section 1983 may therefore be heard in [federal courts](#) by application of both jurisdictional statutes.

State courts may also properly hear section 1983 cases pursuant to the [Supremacy Clause](#) of Article VI of the U.S. Constitution. The Supremacy Clause mandates that states must provide hospitable forums for federal claims and the vindication of federal rights. This point was solidified in the Supreme Court decision of *Felder v. Casey*, 487 U.S. 131, 108 S. Ct. 2302, 101 L. Ed. 2d 123 (1988). The *Felder* case involved an individual who was arrested in Wisconsin and later brought suit in state court against the police officers and city for violations of his federal rights. The state court dismissed the claim because the plaintiff failed to properly comply with a state procedural law. But the Supreme Court overturned the state decision, holding that the Wisconsin statute could not bar the individual's federal claim.

To bring an [action](#) under section 1983, the plaintiff does not have to begin in state court. However, if the plaintiff chooses to bring suit in state court, the defendant has the right to remove the case to federal court.

#### Elements of a Section 1983 Claim

To prevail in a claim under section 1983, the plaintiff must prove two critical issues: a person subjected the plaintiff to conduct that occurred under color of state law, and this conduct deprived the plaintiff of rights, privileges, or immunities guaranteed under federal law or the U.S. Constitution.

A state is not a "person" under section 1983, but a city is a person under the law (*Will v. Michigan Department of State Police*, 491 U.S. 58, 109 S. Ct. 2304, 105 L. Ed. 2d 45 [1989]). Similarly, state officials sued in their official capacities are not deemed persons under section 1983, but if sued in their personal capacities, they are considered to be persons. Thus if a plaintiff wants to bring a section 1983 claim against a state official, she or he must name the defendants in their personal capacity and not in their professional capacity. Like a state, a [territory](#), such as the territory of Guam, is not considered to be a person for the purposes of section 1983.

The Supreme Court has broadly construed the provision "under color of any statute" to include virtually any state action including the exercise of power of one "possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law" (*United States v. Classic*, 313 U.S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368 [1941]). Thus, the wrongdoer's employment by the government may indicate state action, although it does not conclusively prove it. Even if the wrongdoer did not act pursuant to a state statute, the plaintiff may still show that the defendant acted pursuant to a "custom or usage" that had the force of law in the state. In *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970), the plaintiff was able to prove that she was refused service in a restaurant due to her race because of a state-enforced custom of racial segregation, even though no state statute promoted racial segregation in restaurants.

A successful section 1983 claim also requires a showing of the deprivation of a constitutional or federal statutory "right." This showing is required because section 1983 creates a [remedy](#) when

rights are violated but does not create any rights itself. It is not enough to show a violation of a federal law because all federal laws do not necessarily create federal rights. A violation of the [Fourth Amendment](#)'s guarantee against unreasonable searches and seizures or a violation of the [Commerce Clause](#) are examples of federal constitutional rights that may be deprived.

Deprivation of federal statutory rights is also actionable when it can be shown that the statute creates a federal right. To show that a federal statute creates a federal right, the plaintiff must demonstrate that the federal law was designed and clearly intended to benefit the plaintiff, resulting in the creation of a federal right. For example, the Supreme Court held that a person's [entitlement](#) to [welfare](#) benefits under the federal Social Security Act is a federal right stemming from a federal statute that can be protected by section 1983 (*Maine v. Thiboutot*, 448 U.S. 1, 100 S. Ct. 2502, 65 L. Ed. 2d 555 [1980]).

If the plaintiff can demonstrate that a federal law granted her a federal right that was then violated, the defendant can defeat the plaintiff's claim by demonstrating that Congress specifically foreclosed a remedy under section 1983 for the type of injury that the plaintiff is pleading. The Supreme Court has held that the defendant must prove that a section 1983 action would be inconsistent with the cautious and precise scheme of remedies provided by Congress. For example, if a federal law specifically provides for a means to privately enforce that law, or if the statute does not create "rights" within the meaning of section 1983, the defendant may prevail in showing that Congress did not intend a section 1983 remedy to apply in that circumstance. It is the defendant's burden to demonstrate congressional intent to prevent a remedy under section 1983.

### Absolute and Qualified Immunities

Although section 1983 does not specifically provide for absolute [immunity](#) for any parties, the Supreme Court has deemed that some officials are immune. The Supreme Court reached this conclusion by applying the common-law principles of tort immunity that existed in the United States at the time section 1983 was enacted, assuming that Congress had intended those common-law immunities to apply without having to specifically so provide in the statute. State and regional legislators are absolutely immune, as long as they are engaged in traditional legislative functions. Although the Supreme Court has not had the opportunity to extend this rule to municipal legislators, lower courts have done so (*Reed v. Village of Shorewood*, 704 F.2d 943 [7th Cir. 1983]).

Judges have also been held to be absolutely immune from section 1983 actions, as long as they are performing adjudicative functions (*Pierson v. Ray*, 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 [1967]; *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 [1978]). Judges are considered to be performing their adjudicative functions as long as they had [jurisdiction](#) over the subject matter at the time they acted and the action was a judicial act. A minority of lower courts have extended this absolute [judicial immunity](#) to [quasi-judicial](#) agencies, such as parole boards, when they have performed functions similar to those of judges (*Johnson v. Wells*, 566 F.2d 1016 [5th Cir. 1978]). Absolute judicial immunity has also been extended in some cases to those judicial employees who act under the direction of the judge, such as a law clerk, court administrator, paralegal, or court [reporter](#) (*Lockhart v. Hoenstine*, 411 F.2d 455 [3d Cir. 1969]).

State prosecuting attorneys who are acting within the scope of their duty in presenting the state's case are also absolutely immune from suits for [damages](#) under section 1983 claims but are not absolutely immune from suits seeking prospective relief (*Imbler v. Pachtman*, 424 U.S. 409, 96 S. Ct. 984, 47 L. Ed. 2d 128 [1976]). Other state officials who act in a prosecutorial role are similarly immune. The Supreme Court differentiated public defenders, however, in *Polk County v. Dodson*, 454 U.S. 312, 102 S. Ct. 445, 70 L. Ed. 2d 509 (1981), holding that they do not act under color of state law when performing their duties and therefore are not in need of immunity because their conduct is not covered by section 1983.

[Witnesses](#) who testify in court are absolutely immune from section 1983 actions for damages, even if the claim arises out of the witness's perjured [testimony](#) (*Briscoe v. LaHue*, 460 U.S. 325, 103 S. Ct. 1108, 75 L. Ed. 2d 96 [1983]).

The Supreme Court has also recognized a qualified immunity defense to section 1983 actions in certain circumstances. Most state and local officials and employees, who do not enjoy absolute immunity, are entitled to qualified immunity. Thus, a prosecuting attorney who enjoys absolute immunity in performing her prosecutorial functions may also enjoy a qualified immunity in hiring and firing subordinates. The Supreme Court has held that school board members, state mental institution administrators, law enforcement officers, prison officials, and state and local executives have qualified immunity (*Wood v. Strickland*, 420 U.S. 308, 95 S. Ct. 992, 43 L. Ed. 2d 214 [1975]; *O'Connor v. Donaldson*, 422 U.S. 563, 95 S. Ct. 2486, 45 L. Ed. 2d 396 [1975]; *Pierson v. Ray*, 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 [1967]; *Procunier v. Navarette*, 434 U.S. 555, 98 S. Ct. 855, 55 L. Ed. 2d 24 [1978]; *Scheuer v. Rhodes*, 416 U.S. 232, 94 S. Ct. 1683, 40 L. Ed. 2d 90 [1974]). Most federal circuit courts have deemed that parole board members and prison disciplinary committee members have qualified immunity (*Fowler v. Cross*, 635 F.2d 476 [5th Cir. 1981]; *Thompson v. Burke*, 556 F.2d 231 [3d Cir. 1977]). Lower courts have extended the defense of qualified immunity to a number of other officials, such as city managers, county health administrators, and state Department of Veterans' Affairs trust officers.

If the defendant can raise the defense of absolute or qualified immunity, then it is his duty to plead it (*Gomez v. Toledo*, 446 U.S. 635, 100 S. Ct. 1920, 64 L. Ed. 2d 572 [1980]).

## Remedies

The Supreme Court has held that section 1983 creates "a species of tort liability" (*Imbler v. Pachtman*, 424 U.S. 409, 96 S. Ct. 984, 47 L. Ed. 2d 128 [1976]). Thus, the Supreme Court has held that, as in [tort law](#), a section 1983 plaintiff is entitled to receive only [nominal damages](#), not to exceed one dollar, unless she or he can prove actual damages (*Carey v. Piphus*, 435 U.S. 247, 98 S. Ct. 1042, 55 L. Ed. 2d 252 [1978]). The jury is not entitled to place a monetary value on the constitutional rights of which the plaintiff was deprived (*Memphis Community School District v. Stachura*, 477 U.S. 299, 106 S. Ct. 2537, 91 L. Ed. 2d 249 [1986]). Plaintiffs bear the burden, therefore, of presenting [evidence](#) of all expenses incurred, such as medical or psychiatric expenses, lost wages, and any damages due to pain and suffering, emotional distress, or damage to reputation. The plaintiff is also under a burden to mitigate his damages, and the award of damages may be reduced to the extent that the plaintiff failed to do so.

A section 1983 plaintiff is also required to prove that a federal right was violated and, similar to tort law, that the alleged violation was a proximate or legal cause of the damages that the plaintiff suffered (*Arnold v. IBM Corp.*, 637 F.2d 1350 [9th Cir. 1981]).

The Supreme Court has also held that, similar to tort law, [punitive damages](#) are available under section 1983 (*Smith v. Wade*, 461 U.S. 30, 103 S. Ct. 1625, 75 L. Ed. 2d 632 [1983]). A plaintiff is entitled to punitive damages if the jury finds that the defendant's conduct was reckless or callously indifferent to the federally protected rights of others, or if the defendant was motivated by an evil intent. The jury has the duty to assess the amount of punitive damages. Because the purpose of punitive damages is to punish the wrongdoer, such damages may be awarded even if the plaintiff cannot show actual damages (*Basista v. Weir*, 340 F.2d 74 [3d Cir. 1965]). As in tort law, the judge has the right to overturn a jury [verdict](#) if the jury awards what the judge considers to be excessive punitive damages.

Courts also have broad power to grant equitable relief to plaintiffs in section 1983 actions. Equitable remedies that courts have provided in the past include [school desegregation](#), restructuring of state mental health facilities, and restructuring of prisons (*United States v. City of Yonkers*, 96 F. 3d 600 [2nd Cir. 1996]; *Wyatt v. Stickney*, 344 F. Supp. 373 [M.D. Ala. 1972]; *Hutto v. Finney*, 437 U.S. 678, 98 S. Ct. 2565, 57 L. Ed. 2d 522 [1978]). When the court does provide equitable relief, it usually also provides ongoing evaluation and supervision of the enforcement of its orders.

The Civil Rights Attorney's Fee Awards Act of 1976 (42 U.S.C.A. § 1988[b]) allows for the award of reasonable attorneys' fees to the prevailing party in cases brought under various federal civil rights laws, including section 1983. This provision applies whether or not [compensatory damages](#) were awarded. This provision also applies whether the plaintiff or the defendant prevails. However, if the defendant is the prevailing party, attorneys' fees have been held to be appropriate only where the lawsuit was "vexatious, frivolous, or brought to harass or embarrass the defendant" (*Hensley v. Eckerhart*, 461 U.S. 424, 103 S. Ct. 1933, 76 L. Ed. 2d 40 [1983]). In addition, section 1988 does not require that the attorneys' fees awarded be in proportion to the amount of damages recovered (*City of Riverside v. Rivera*, 477 U.S. 561, 106 S. Ct. 2686, 91 L. Ed. 2d 466 [1986]).

Rule 68 of the Federal Rules of Civil Procedure can lead to the adjustment of the amount of damages awarded by a jury in a section 1983 case. Enacted to encourage parties to settle their matters out of court, rule 68 provides that if the plaintiff rejected a [settlement](#) offer made by the defendant before trial that is better than the award the plaintiff ultimately received in the trial, the defendant is not liable for plaintiff's attorneys' fees incurred after the time the defendant made the settlement offer (*Marek v. Chesny*, 473 U.S. 1, 105 S. Ct. 3012, 87 L. Ed. 2d 1 [1985]). Under rule 68, section 1983 plaintiffs need to carefully consider any settlement offers made by the defendants.

## Bars to Relief

Section 1983 does not provide a specific [statute of limitations](#), which is a time limit in which a claim must be brought after the alleged violation occurred. But 42 U.S.C.A. § 1988 (1976) states

that where the federal law does not provide a statute of limitations, state law shall apply. In determining which state statute of limitations to apply in a section 1983 case, the Supreme Court has held that in the interests of national uniformity and predictability, all section 1983 claims shall be treated as tort claims for the recovery of personal injuries (*Wilson v. Garcia*, 471 U.S. 261, 105 S. Ct. 1938, 85 L. Ed. 2d 254 [1985]). If the state has various statutes of limitations for different intentional torts, the Supreme Court mandates that the state's general or residual personal injury statute of limitations should apply (*Owens v. Okure*, 488 U.S. 235, 109 S. Ct. 573, 102 L. Ed. 2d 594 [1989]).

The Supreme Court has also held that state tolling statutes, which provide a plaintiff with an additional period of time in which to bring a lawsuit equal to the period of time in which the plaintiff was legally disabled, apply to section 1983 cases (*Board of Regents v. Tomanio*, 446 U.S. 478, 100 S. Ct. 1790, 64 L. Ed. 2d 440 [1980]).

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 plaintiff knows or has reason to know of the injury which is the basis of the action" (*Cox v. Stanton*, 529 F.2d 47 [4th Cir. 1975]). However, in [employment law](#) cases, the Supreme Court has held that the cause of action accrues when the discriminatory act occurs (*Delaware State College v. Ricks*, 449 U.S. 250, 101 S. Ct. 498, 66 L. Ed. 2d 431 [1980]). Thus, if an employee is being terminated for reasons that violate section 1983, the statute of limitations begins on the day that the employee learns of the termination, not when the termination actually begins (*Chardon v. Fernandez*, 454 U.S. 6, 102 S. Ct. 28, 70 L. Ed. 2d 6 [1981]).

The legal rules of [res judicata](#) (claim preclusion) and [collateral estoppel](#) (issue preclusion) apply to section 1983 claims. This means that federal courts must give state court judgments the same preclusive effect that the law of the state in which the judgment was rendered would give. Plaintiffs need to be careful to raise all potential federal claims in cases brought in state court because they will not be allowed to bring those claims later in federal court after the state court has rendered a decision on the issues before it.

A plaintiff may waive his or her right to sue under section 1983, but such a waiver may be deemed unenforceable if "the interest in its enforcement is outweighed in the circumstances by a public policy harmed by enforcement of the agreement" (*Town of Newton v. Rumery*, 480 U.S. 386, 107 S. Ct. 1187, 94 L. Ed. 2d 405 [1987]).

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