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Jurisdiction under 28 U.S.C. 1343 Does Not Include Statutorily Based Claims of Welfare Rights Deprivation - Chapman v. Houston Welfare Rights Organization

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JURISDICTION UNDER 28 U.S.C. § 1343 DOES NOT INCLUDE STATUTORILY BASED CLAIMS OF WELFARE RIGHTS DEPRIVATION—*CHAPMAN V. HOUSTON WELFARE RIGHTS ORGANIZATION*

Individuals deprived of welfare benefits by state agencies frequently seek redress of their grievances in federal courts. States enjoy wide flexibility in the implementation of federal welfare programs,[1] and state regulations are often less generous than the governing federal statute.[2] Accordingly, welfare recipients alleging improper benefit reduction or termination often seek federal jurisdiction to avoid any inherent state court bias in favor of state law.[3] Individuals claiming benefit deprivation due to parsimonious state programs that conflict with more generous federal welfare law, however, have found federal original jurisdiction elusive.[4] In *Chapman* v. *Houston Welfare Rights Organization*,[5] the United States Supreme Court further limited federal jurisdiction over such claims by holding that welfare rights granted by federal statute are outside the scope of 28 U.S.C. § 1343.[6]

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1. Welfare programs are "basically voluntary and States have traditionally been at liberty to pay as little or as much as they choose." Rosado v. Wyman, 397 U.S. 397, 408 (1970). Further, the states have the "undisputed power to set the level of benefits and the standard of need." King v. Smith, 392 U.S. 309, 334 (1968).

2. The state's implementing regulations may not contravene Social Security Act provisions or valid HEW regulations. Harding v. Kurco, Inc., 603 F.2d 813 (10th Cir. 1979). *Accord*, King v. Smith, 392 U.S. 309 (1968). Nevertheless, welfare programs are a "scheme of cooperative federalism," *id.* at 316, and federal law gives each state great latitude in dispensing available funds. Dandridge v. Williams, 397 U.S. 471, 478 (1970). Further, a state is free to participate in one, several, or all of the federal categorical assistance programs, as it chooses. Jefferson v. Hackney, 406 U.S. 535, 546 (1972). Thus, in Quern v. Mandley, 436 U.S. 725 (1978), the Supreme Court upheld an Illinois Emergency Assistance program of much narrower scope than that provided in the federal program, 42 U.S.C. § 606(e)(1) (1976).

3. State bias is discussed in note 9 *infra*.

4. *See generally* Cole, *Federal Jurisdiction Under Section 1343*, 3 CLEARINGHOUSE REV. 220 (1970); Cover, *Establishing Federal Jurisdiction in Actions Brought to Vindicate Statutory (Federal) Rights When no Violation of Constitutional Rights are Alleged*, 2 CLEARINGHOUSE REV. 5 (1969); Herzer, *Federal Jurisdiction Over Statutorily-Based Welfare Claims*, 6 HARV. C.R.-C.L. L. REV. 1 (1970) [hereinafter cited as *Federal Jurisdiction*]; Note, *Federal Jurisdiction Over Challenges to State Welfare Programs*, 72 COLUM. L. REV. 1404 (1972) [hereinafter cited as *Challenges*]; Note, *1976 Developments in Welfare Law-Aid to Families with Dependent Children*, 62 CORNELL L. REV. 1050 (1977) [hereinafter cited as *1976 Developments*]; Note, *1974 Developments in Welfare Law-Aid to Families with Dependent Children*, 60 CORNELL L. REV. 857 (1975); Note, *The Outlook for Welfare Litigation in the Federal Courts:* Hagans v. Lavine & Edelman v. Jordan, 60 CORNELL L. REV. 897 (1975).

5. 441 U.S. 600 (1979).

6. 28 U.S.C. § 1343(3) (1976) provides:

> The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
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> . . .
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance,

This Note analyzes the Supreme Court's rationale for rejecting section 1343-based federal court jurisdiction. The conflicting provisions of section 1343 and the federal statute creating the commonly used cause of action, 42 U.S.C. § 1983, are discussed, and the Supreme Court's refusal to resolve that conflict is criticized. The Note concludes with a survey of remaining sources of federal jurisdiction available to welfare claimants who allege that state law has deprived them of Social Security welfare benefits.

CLAIMANTS' THEORY OF JURISDICTION

Welfare claimants seeking redress of their grievances in federal courts must surmount two hurdles before attaining judicial consideration of their claims. They must allege a federally cognizable claim for relief,[7] and they must satisfy the requirements for federal jurisdiction.[8] The cognizable claim for relief is usually found in 42 U.S.C. § 1983,[9] which creates a civil cause of action for deprivations of various federal rights under color of state law.[10]

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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;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

7. Federal courts do not require plaintiffs to allege a "cause of action" in those terms. Tiedeman v. Local 705, Int'l Bhd. of Teamsters, 180 F.2d 684, 686 (7th Cir. 1950); instead, they require a statement of a "claim for relief." FED. R. CIV. P. 8(a). The term "cause of action", however, continues to be used and is often employed to refer to that which a claim for relief must allege. *See* Gold Seal Co. v. Weeks, 209 F.2d 802, 807 (D.C. Cir. 1954) (claim for relief must indicate the existence of a cause of action).

8. Upon proper motion, the court may dismiss for lack of jurisdiction. FED. R. CIV. P. 7(b)(1), 12(b). Averments of fact within the complaint are sufficient to entertain arguments, but if the facts at trial fail to establish a federally cognizable cause of action, the court will dismiss the action. Wheeldin v. Wheeler, 373 U.S. 647 (1963). *See also* Bell v. Hood, 327 U.S. 678 (1946).

9. 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). Section 1983 was created by Congress because "by reason of prejudice, passion, neglect, intolerance or otherwise . . . the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies." Monroe v. Pape, 365 U.S. 167, 180 (1960). Further, "[t]he very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights." Mitchum v. Foster, 407 U.S. 225, 242 (1972). Section 1983 "therefore offered a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation." *Id.* at 239.

10. Conduct occurs under color of state law if the defendants "were clothed with the authority of the State and were purporting to act thereunder, whether or not the conduct complained

Deprived claimants thus characterize welfare benefits as "rights" and assert a section 1983 claim for relief. Jurisdiction, however, is not as readily available. Federal question jurisdiction under 28 U.S.C. § 1331[11] is infrequently available, because welfare claimants rarely introduce claims meeting its $10,000 minimum amount-in-controversy requirement. To overcome this obstacle, claimants seek jurisdiction with no amount-in-controversy requirement. Such jurisdiction may be provided under several federal statutes,[12] of which 28 U.S.C. § 1343(3) and (4) are the most significant to welfare recipients.

Claims relying on section 1343(3) for jurisdiction must be authorized by law and commenced to redress deprivations of rights "secured by the Constitution . . . or by an Act of Congress providing for equal rights."[13] Claims using section 1343(4) also must be authorized by law, but differ from section 1343(3) claims in that they must be brought to attain relief "under any Act of Congress providing for the protection of civil rights."[14] Welfare claimants unable to assert the deprivation of a constitutional right must base their claims upon a contention that welfare rights provided by the governing federal statute are rights within the meaning of section 1343(3) or (4), that is, rights under an Act of Congress providing for equal or civil rights. The action is then "authorized" by section 1983, and federal jurisdiction is conferred by section 1343.

Use of this jurisdictional approach has produced conflicting decisions[15] and consequent uncertain jurisdictional status. In *Chapman*, the Supreme

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of was authorized or, indeed, even if it was proscribed by state law." Marshall v. Sawyer, 301 F.2d 639, 646 (9th Cir. 1962). *Accord*, Vazquez v. Ferre, 404 F. Supp. 815, 823 (D.N.J. 1975) (persistent practice by state officials constitutes action under color of state law), *citing* Adickes v. Kress & Co., 398 U.S. 144, 162-69 (1970). *See also* Monroe v. Pape, 365 U.S. at 187; Screws v. United States, 325 U.S. 91, 111 (1945); United States v. Classic, 313 U.S. 299, 326 (1941).

11. 28 U.S.C § 1331 (1976) provides in part:

> The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interests and costs, and arises under the Constitution, laws, or treaties of the United States except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

12. *See* text accompanying notes 135-154 *infra*.

13. 28 U.S.C. § 1343 (1976). The section is set out in note 6 *supra*.

14. *Id.*

15. The leading case supporting § 1343(3) jurisdiction over statutorily granted welfare rights is Blue v. Craig, 505 F.2d 830 (4th Cir. 1974). *See 1976 Developments*, *supra* note 4, at 1056-60. The opposite conclusion was reached in Andrews v. Maher, 525 F.2d 113 (2d Cir. 1975), and Randall v. Goldmark, 495 F.2d 356 (1st Cir. 1974), and in one of the two decisions leading to the grant of certiorari in the present case, Gonzalez v. Young, 560 F.2d 160 (3rd Cir. 1977). The other case leading to the *Chapman* decision upheld jurisdiction. Houston Welfare Rights Org. Inc. v. Vowell, 555 F.2d 1219 (5th Cir. 1977). *Vowell* and *Gonzalez* are discussed in the text accompanying notes 18-43 *infra*. Thus, prior to *Chapman*, the First, Second, and Fifth Circuits opposed jurisdiction over statutorily based claims, and the Third and Fourth Circuits supported such jurisdiction.

Court, with three justices dissenting, held that joint use of sections 1983 and 1343 does not provide jurisdiction over claims based solely on welfare benefit deprivations resulting from state law conflicts with the Social Security Act.[16] The *Chapman* decision also touched upon the conflicting terminology of sections 1983 and 1343. The majority of the Court refused to rule on the meaning of these conflicting provisions.[17]

FACTS AND PROCEDURAL HISTORY

The *Chapman* court granted certiorari to review the Third Circuit's and Fifth Circuit's divergent applications of sections 1343 and 1983 in *Gonzalez v. Young*[18] and *Houston Welfare Rights Organization, Inc. v. Vowell.*[19] In *Gonzalez*, petitioner Julia Gonzalez requested emergency assistance funds from the Hudson County, New Jersey Welfare Board in accordance with the 1967 Social Security Amendments.[20] When the state refused, she brought suit in district court for damages and injunctive relief.[21] Petitioner based her claim on the conflict between section 406(e)(1) of the Social Security Act[22] and the more stringent New Jersey welfare regulation.[23] She alleged that the narrower New Jersey regulation deprived her of rights secured by the supremacy clause[24] of the Constitution and rights secured by federal

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16. Act of Aug. 14, 1935, Pub. L. No. 74-271, ch. 531, 49 Stat. 620 (1935) (codified as amended at 42 U.S.C. §§ 301-1397 (1974 & Supp. 1979)). The Act is the primary source of federal welfare benefits.

17. 441 U.S. at 612. For a discussion of that conflict, see text accompanying notes 82-91 *infra*.

18. 560 F.2d 160 (3d Cir. 1977).

19. 555 F.2d 1219 (5th Cir. 1977). The party Chapman was substituted for Vowell as a result of a change in the office of Texas Commissioner of Human Resources.

20. Social Security Amendments of 1967, Pub L. No. 90-248, § 206(e)(1), 81 Stat. 893, (1968) (amending 42 U.S.C. § 606 (1968)). The Emergency Assistance program is fully described in Quern v. Mandley, 436 U.S. 725 (1978).

21. 441 U.S. at 604-05. Petitioner sought $163 damages and an injunction commanding the New Jersey Welfare Director to conform the state program to federal standards. *Id.*

22. Section 406(e)(1) has been codified as 42 U.S.C § 606(e)(1) (1976), and defines the term "emergency assistance to needy families." Rosado v. Wyman, 397 U.S. 397, 408 (1970); Dandridge v. Williams, 397 U.S. 471, 478 (1970).

23. 10 N.J. Admin. Code ch. 82, § 5.10 (1969). The Code defines "emergency assistance" so as to make it available when the eligible unit [a needy child] is in a "state of homelessness," a stricter requirement than that contained in 42 U.S.C. § 606(e)(1) (1976), allowing assistance "when such child is without available resources." The New Jersey regulation was approved by the HEW Secretary. Gonzalez v. Young, 418 F. Supp. 566, 571 (D.N.J. 1976). The conflicting terms are set out in *Gonzalez, id.* at 571-72. To obtain relief, any asserted conflict between state programs and federal law must show a violation of a specific provision of the Social Security Act, Jefferson v. Hackney, 406 U.S. 535, 541 (1972), since the States have the "undisputed power to set the level of benefits and the standard of need" for their AFDC programs. King v. Smith, 392 U.S. 309, 334 (1968). *Accord*, Quern v. Mandley, 436 U.S. 725, 738 (1978); Jefferson v. Hackney, 406 U.S. 535 at 541; Dandridge v. Williams, 397 U.S. at 478; Rosado v. Wyman, 397 U.S. at 408.

24. "This Constitution . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Con-

laws.[25] Petitioner argued that her claim therefore was authorized by section 1983, and that federal jurisdiction should be conferred pursuant to section 1343(3) or (4). The district court granted jurisdiction without addressing petitioner's supremacy clause claims and without explaining whether the deprived "equal or civil rights" required by section 1343 arose under Section 1983,[26] or under the Social Security Act.[27] Nevertheless, finding no conflict between the state regulation and the federal statute, the district court dismissed the petitioner's complaint.[28]

The Court of Appeals for the Third Circuit reversed, concluding that the district court should not have considered the merits, but should have dismissed the complaint for lack of jurisdiction.[29] In support of its decision, the Third Circuit reasoned that jurisdiction could not be asserted under section 1331 because the requisite $10,000 amount-in-controversy was not present, nor upon section 1983 because that section only fashions a remedy and is therefore not a jurisdictional statute.[30] The court further rejected any theory that jurisdiction over petitioner's claims could be found pendent to jurisdiction provided by a constitutional claim, holding that the doctrine of pendent jurisdiction[31] requires a constitutional issue more substantial than a claim that the deprived rights are secured by the supremacy clause.[32] The circuit court concluded by stating that section 1343 is limited to jurisdiction over deprivations of equal or civil rights, despite the plain language of section 1983 creating a broad cause of action for deprivation of any federal statutorily-granted rights.[33] Because deprivations of equal or civil rights

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trary notwithstanding." U.S. CONST. art. VI. Petitioner alleged that the conflict between the federal and state laws violated rights secured by the supremacy clause. Gonzalez v. Young, 418 F. Supp. at 569. *See* notes 49-57 and accompanying text *infra*.

25. 418 F. Supp. at 571.

26. The petitioner contended that Section 1983 is itself an act providing for equal or civil rights. *Id.* at 570. This theory is discussed in the text accompanying notes 58-64 *infra*.

27. 418 F. Supp. at 570. The district court simply stated that the matter had been resolved by Vazquez v. Ferre, 404 F. Supp. 815 (D.N.J. 1975), *motion denied*, 410 F. Supp. 1385 (D.N.J. 1975). The *Vazquez* court held that § 1983 is itself an "Act of Congress providing for the protection of civil rights." *Id.* at 824.

28. 418 F. Supp. at 572.

29. Gonzalez v. Young, 560 F. 2d at 169.

30. *Id.* at 164.

31. *See* notes 143-154 and accompanying text *infra*.

32. 560 F.2d at 169.

33. *Id.* at 168. Several acts have been held to provide equal or civil rights within the meaning of § 1343, including: Fair Housing Act of 1968 (42 U.S.C. §§ 3601-3631), Zuch v. Hussey, 394 F. Supp. 1028 (E.D. Mich. 1975) (housing discrimination); Wagner-Peyser Act (29 U.S.C. §§ 49-49l), Vazquez v. Ferre, 404 F. Supp. 815 (D.C.N.J. 1975), *motion denied*, 410 F. Supp. 1385 (D.N.J 1975) (civil rights); Civil Rights Act of 1870 (42 U.S.C. § 1981), Henry v. Schlesinger, 407 F. Supp. 1179 (E.D. Pa. 1970) (racial discrimination); Civil Rights Act of 1964 (42 U.S.C. § 2000a-2000h-6), Marin City Council v. Marin County Redevelopment Agency, 416 F. Supp. 700 (N.D. Cal. 1975) (racial housing discrimination); Voting Rights Act of 1965 (42 U.S.C. § 1973, 14(b)), Allen v. State Bd. of Elections, 393 U.S. 544 (1969) (voting rights are within § 1343 (4)); Civil Rights Act of 1968, § 201 *et seq.* (25 U.S.C. § 1301 *et seq.*), Crowe v. Eastern Band of Cherokee Indians, Inc., 506 F.2d 1231 (4th Cir. 1974) (due process rights

were not present in *Gonzales*,[34] the court ordered dismissal for want of jurisdiction.[35]

In *Houston Welfare Rights*, the respondent represented a class of recipients of Aid to Families with Dependent Children (AFDC) who share living quarters with non-dependent relatives.[36] Texas regulations require a reduction of benefits when a non-dependent person is present in a household.[37] After suffering such a reduction, respondent brought suit in district court alleging a conflict with section 402(a)(7)[38] of the Social Security Act and federal regulations promulgated thereunder.[39] The district court found jurisdiction and upheld the Texas regulations.[40] The Fifth Circuit upheld jurisdiction, but reversed on other grounds,[41] reasoning that section 1983 may be invoked to protect welfare rights, that section 1983 is an act of Congress providing for the protection of civil rights within the meaning of section 1343(4),[42] and that jurisdiction is therefore conferred under 28 U.S.C. § 1343(4), which provides jurisdiction for actions seeking relief "under any act of Congress providing for the protection of civil rights."[43]

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guaranteed by the act). Other acts have been held not to provide equal or civil rights within the meaning of § 1343, including: Title I of the Elementary and Secondary Education Act (20 U.S.C. §§ 241 *et seq.*), Lopez v. Laginbill, 483 F.2d 486 (10th Cir. 1973), *cert. denied*, 415 U.S. 927 (1974); Uniform Relocation Act (42 U.S.C. § 4636 (1976)), Young v. Harder, 361 F. Supp. 64, 72 (D. Kan. 1973) (does not provide equal rights); National Environmental Policy Act (42 U.S.C. §§ 4331 *et seq.*), Firnhaber v. Lake Pewaukee Sanitary Dist., 409 F. Supp. 23 (D. Wis. 1976) (does not provide civil rights); 42 U.S.C. § 1988, Moor v. County of Alameda, 411 U.S. 693 (1973), *reh. denied*, 412 U.S. 963 (1973) (jurisdictional portion of Civil Rights Act of 1866 does not provide civil rights).

34. 560 F. 2d at 167. Nor did the circuit court consider the Social Security Act as providing equal or civil rights. *Id.*

35. *Id.* at 169.

36. 391 F. Supp. at 225. The petitioners were commissioners of the Texas Department of Human Resources. *Id.*

37. *Id.* The regulation provides for a prorata reduction of the recipient's benefits. Houston Welfare Rights Org., Inc. v. Vowell, 555 F.2d at 1222.

38. 441 U.S. at 607. Section 402(a)(7) has been codified as 42 U.S.C. § 602(a)(7) (1976). The code section has been interpreted in specific federal regulations discussed in note 39 *infra*.

39. *See* 45 C.F.R. §§ 233.20(a)(3)(ii)(c), 233.90(a) (1976) (current version at 45 C.F.R. §§ 233.20(a)(3)(ii)(c), 233.90(a) (1979)). These rules provide that only income actually available on a regular basis and currently available resources will be considered in establishing financial eligibility.

40. 391 F. Supp. at 226, 234.

41. 555 F.2d at 1227.

42. *Id.* at 1221. The Third Circuit in *Gonzalez* referred to § 1983 as a statute that fashions a "remedy." 560 F.2d at 164. Section 1983, set out in note 6 *supra*, specifically provides a claim under which federal relief may be granted and states that the person depriving rights "shall be liable to the party injured."

43. 555 F.2d at 1221.

ANALYSIS OF *CHAPMAN*

In addressing the conflicting holdings in *Gonzalez* and *Houston Welfare Rights*, the Supreme Court considered three alternative theories of jurisdiction.[44] Each theory required that the cause of action be provided by section 1983, and each proposed a different source of the rights required by sections 1343(3) or (4). The Court considered first whether rights resulting from federal statutes are "secured by" the supremacy clause of the Constitution within the meaning of section 1343;[45] second, whether section 1983 itself secures statutorily-granted rights;[46] and third, whether "rights" provided by the Social Security Act are "civil" or "equal" rights within the meaning of sections 1343(3) or (4).[47] The Court's conclusion regarding these theories disposed of all jurisdictional issues set forth by the welfare claimants. The majority in *Chapman* therefore exercised judicial restraint and held that it need not resolve the terminological differences that exist between sections 1343 and 1983.[48]

The Supremacy Clause

In the appeal of *Gonzalez*, petitioners argued that section 1343(3)'s "secured by the Constitution" requirement is satisfied by the supremacy clause.[49] The Supreme Court stated that although the clause is not an independent source of federal rights, it does secure federal rights by affording them priority whenever they conflict with state laws.[50] The Court then rejected the argument that the supremacy clause secures federal rights within the meaning of section 1343(3).

In reaching this conclusion, the Court relied heavily upon *Swift & Co. v. Wickham*,[51] and its narrow interpretation of the statute defining three-judge district court jurisdiction, 28 U.S.C. § 2281.[52] Section 2281 required a decision by a three-judge district court in suits attempting to enjoin enforcement of allegedly unconstitutional state statutes.[53] Because every federal

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44. 441 U.S. at 612.
45. *Id.* at 612-15.
46. *Id.* at 615-20.
47. *Id.* at 620-23.
48. *Id.* at 611-12. The differences are discussed in notes 80-92 and accompanying text *infra*.
49. Brief for Petitioner at 21, Gonzalez v. Young, 441 U.S. 600 (1979).
50. 441 U.S. at 613.
51. 382 U.S. 111 (1965). The appellants in *Swift*, two meat packing companies, brought suit in a New York district court to enjoin enforcement of New York regulations that were stricter than the comparable federal requirements. *Id.* at 113-14. The appellants contended that the supremacy clause rendered the state regulation unconstitutional within the meaning of 28 U.S.C. § 2281 (1976), thereby resulting in three-judge district court jurisdiction. *Id.* at 115.
52. Section 2281 was repealed by Act of August 12, 1976, Pub. L. No. 94-381, 90 Stat. 1119 (1976). Three-judge district jurisdiction is now governed solely by 28 U.S.C. § 2284 (1976).
53. 441 U.S. at 613 n.31.

court attempt to enjoin a state law depends ultimately on the supremacy clause, the Court, in *Swift*, held that language requiring constitutional grounds is superfluous if the statute applied to all supremacy clause claims.[54] Noting that section 2281 must be read to exclude some type of suit, the *Swift* Court concluded that the phrase "upon the ground of the unconstitutionality" must signify a congressional intent to confine section 2281 to suits "depending upon a substantive provision of the Constitution."[55]

The Court reasoned similarly in *Chapman*. If the supremacy clause is held to secure constitutional rights within the meaning of section 1343(3), federal jurisdiction will be created over claims arising from every conflict between state and federal law. The phrase "secured by . . . any Act of Congress providing for equal rights" is therefore superfluous unless Congress intended some limitation on federal jurisdiction.[56] The Court thus held that Congress did indeed intend some limitation on jurisdiction, and concluded that the supremacy clause does not secure rights within the meaning of section 1343(3).[57]

Section 1983

The Court next disposed of the argument that section 1983 should be read as an Act of Congress "providing for equal rights" within the meaning of section 1343(3) or "providing for the protection of civil rights" within the meaning of section 1343(4).[58] The Court's rejection of the welfare claimant's section 1343(3) argument confirmed a line of lower court rulings restricting the scope of section 1983.[59] The Court held that section 1983 does not provide any substantive rights, equal or otherwise.[60] No matter how broad or narrow a section 1983 cause of action may be, such breadth does not alter section 1983's procedural character. The Court noted further that "one cannot go into court and claim a violation of § 1983—for § 1983 by itself does not protect anyone against anything,"[61] thereby definitively eliminating the

54. 382 U.S. at 126.

55. *Id.* at 127.

56. 441 U.S. at 615.

57. *Id.*

58. *Id.* at 615-20. Before proceeding to the substance of that argument, the Court refused to rule on conflicting provisions of §§ 1983 and 1343. *Id.* at 615-16. *See* text accompanying notes 80-119 *supra*.

59. *E.g.*, Andrews v. Maher, 525 F.2d 113 (2d Cir. 1975) (§ 1983 does not provide equal or civil rights within the meaning of § 1343(3) or (4)); McCall v. Shapiro, 416 F.2d 246 (2d Cir. 1969) (§ 1983 does not extend to solely monetary claims not related to violation of civil rights); Wynn v. Indiana State Welfare Dept., 316 F. Supp. 324 (N.D. Ind. 1970) (deprivation of rights provided by the Social Security Act does not fall within the scope of § 1983).

60. 441 U.S. at 617.

61. *Id.*

theory of jurisdiction asserting that section 1983 "provides" rights within the meaning of section 1343(3).[62]

Nearly as definitive was the Court's rejection of section 1983 as a statute providing for the protection of civil rights within the meaning of section 1343(4). The Court reiterated that "[s]tanding alone, . . . § 1983 does not provide any substantive rights at all"[63] and noted further that there was no indication of congressional intent to expand existing federal jurisdiction through section 1343(4).[64] Section 1983 therefore provides a claim for relief, but does not provide equal or civil rights.

The Social Security Act

The final jurisdictional theory rejected by the Court contended that the Social Security Act[65] may be characterized as an act securing "equal rights" within section 1343(3) or "civil rights" within section 1343(4).[66] Citing an analogous Supreme Court decision and several other consistent decisions,[67] the Court held that Congress intended those phrases in section 1343 to be construed narrowly to include only those laws specifically providing equal or civil rights.[68]

The Court primarily followed *Georgia v. Rachel*,[69] which construed the phrases "any law providing for the equal civil rights of citizens" and "any law providing for equal rights" in 28 U.S.C. § 1443.[70] Section 1443 governs the

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62. *Id.* at 618. *See, e.g., 1976 Developments, supra* note 4, at 1058-60. Section 1983 was held to provide the § 1343 right used in Blue v. Craig, 505 F.2d 830, 842 (4th Cir. 1974).

63. 441 U.S. at 618. The Court did not hold that § 1983 does not provide any protection for civil rights. Creating a civil cause of action for redress of a rights deprivation does provide some sort of protection. Such protection exists, however, only when another act of Congress grants a substantive civil right. In such cases, saying that § 1983 provides protection is redundant, because the act granting the substantive right clearly protects the right within the meaning of § 1343(4). Section 1983 need be invoked only when the underlying statute granting the right is not a civil rights act. *Id.*

64. *Id.* at 618. *See* Note, *The Proper Scope of the Civil Rights Acts*, 66 HARV. L. REV. 1285, 1291-93 (1953).

65. 42 U.S.C. §§ 301-1397 (1976).

66. 441 U.S. at 620.

67. *Id.* at 621. The Court cited Georgia v. Rachel, 384 U.S. 780 (1966) (analogous to the *Chapman* argument, *see* text accompanying notes 69-78, *infra*), and listed the following as consistent: Kentucky v. Powers, 201 U.S. 1, 39-40 (1906) (phrase "any law providing for equal rights of citizens" in § 641 Revised Statutes, does not include non-recognition by state court of a governor's pardon); Gibson v. Mississippi, 162 U.S. 565, 585 (1896) (denial by court of opportunity to subpoena witnesses for purpose of showing the inability to obtain a fair and impartial trial is not within "any law providing for equal rights of citizens" phrase of § 641 Revised Statutes); New York v. Galamison, 342 F.2d 255, 269, 271 (2d Cir. 1965) (phrase "any law providing for equal rights" in 28 U.S.C. § 1443 refers to those laws couched in terms of equality).

68. 441 U.S. at 622-23.

69. 384 U.S. 780 (1966).

70. Section 1443 provides:

> Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

removal to federal district court of civil rights cases originally brought in state courts. That section originated in the Civil Rights Act of 1866,[71] and the phrase "any law providing for . . . equal civil rights" first appeared in the Revised Statutes of 1874.[72] In *Rachel*, the Court concluded that the terminology was broad in that the statute applied both to existing and future statutes providing for equal civil rights.[73] The Court found no indication, however, that the language of the Revised Statute was intended to expand the kinds of law to which the removal section referred. Instead, the Court held that Congress intended the phrase only to include laws comparable in nature to the Civil Rights Act of 1866.[74]

The circumstances of *Chapman* posed a problem similar to that resolved in *Rachel*. Section 1343 refers to "[Acts] of Congress providing for equal rights" and "any Act of Congress providing for the protection of Civil Rights." The former evolved from the Civil Rights Act of 1871[75] and the latter from the Civil Rights Act of 1957.[76] Using reasoning analogous to that of *Rachel*, the *Chapman* Court inferred that Congress did not intend that the rights mentioned in section 1343 be expanded beyond civil or equal rights. Because the Social Security Act does not deal with the concept of "equality" or with the guarantee of "civil rights" as those terms are commonly understood,[77] the Court concluded that arguments contending that the Social Security Act provides rights within the meaning of section 1343 were without merit.[78]

Having held that the deprived rights were not secured by the Constitution, that section 1983 does not secure any rights, and that the Social Security Act does not secure equal or civil rights, the Court found no basis for jurisdiction under 28 U.S.C. § 1343(3) or (4), and entered judgment against the welfare claimants.[79]

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(1) Against any person who is denied or cannot enforce in the courts of such State a right under *any law providing for the equal civil rights of citizens* of the United States, or of all persons within the jurisdiction thereof;
(2) For any act under color of authority derived from *any law providing for equal rights*, or for refusing to do any act on the ground that it would be inconsistent with such law.

28 U.S.C. § 1443 (1976) (emphasis added).

71. Act of April 19, 1866, ch. 31, § 3, 14 Stat. 27 (1868).

72. Georgia v. Rachel, 384 U.S. at 789. The original act allowed removal only in cases alleging deprivation of racial equality guaranteed in the act itself. *Id.* at 788.

73. *Id.* at 789.

74. *Id.* at 790.

75. *See* note 93 *infra*.

76. Act of Sept. 9, 1957, Pub. L. No. 85-315, pt. III, § 121, 71 Stat. 637 (1957).

77. 441 U.S. at 621,

78. *Id.* at 623. This holding reversed one of the essential holdings of the Fifth Circuit in Houston Welfare Rights Org., Inc. v. Vowell, 555 F. 2d 1219 (5th Cir. 1977).

79. 441 U.S. at 623.

AN UNDECIDED ISSUE

Significantly, the majority opinion did not discuss the conflicting breadths of sections 1343 and 1983.[80] The plain language of 42 U.S.C. § 1983 is broader than that of 28 U.S.C. § 1343, creating an apparent conflict. Section 1343 grants original federal jurisdiction to parties deprived of either equal rights under color of state law or of civil rights, and requires that the action be "authorized by law."[81] Section 1983 provides that a cause of action shall exist with personal liability for deprivation of rights secured by the "constitution and laws," and sections 1983 and 1343 both encompass rights secured or provided[82] by the Constitution. For deprivation of constitutional rights, section 1983 makes the action "authorized by law,"[83] and either section 1343(3) or (4) confers federal jurisdiction. The conflict arises when those sections are applied to statutorily-granted rights, for section 1343(3) provides that the deprived right may be one secured by "the constitution *or by an Act of Congress providing for equal rights*,"[84] and section 1983 contains the broader statement that the right may be one "secured by the Constitution *and laws*."[85] Because both sections originated in the same part of the Civil Rights Act of 1871,[86] and the predecessor to section 1983 was the jurisdictional counterpart of the predecessor to section 1343(3),[87] common sense would seem to dictate that the statutes have a similar, if not identical scope.

Courts and scholars have been unable to determine which rights are described by sections 1343(3) and 1983, or whether they are the same rights. Three different interpretations of the statutes have been advanced: first, section 1343(3) and section 1983 are both limited to suits founded on deprivations of rights secured only by the Constitution and laws providing for equal rights;[88] second, both sections encompass suits founded on deprivations of rights secured by all federal laws;[89] and third, section 1983 encompasses rights secured by all federal laws, and section 1343(3) is limited to rights

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80. Substantial discussion of this issue is contained in the concurring opinions of Justice White, 441 U.S. at 646 (White, J. concurring) and Justice Powell, *id.* at 441 (Powell, J. concurring).

81. Section 1343 is set out in note 6 *supra*.

82. The Court rejected any argument that the phrase "secured by the Constitution" refers to rights "created" by the Constitution, rather than "protected" by it. 441 U.S. at 613 n.29.

83. 28 U.S.C. § 1343 (1976) requires such authorization. *See* note 6 *supra*.

84. 28 U.S.C. § 1343(3) (1976) (emphasis added). *See* note 6 *supra*.

85. 42 U.S.C. § 1983 (1976) (emphasis added). *See* note 9 *supra*.

86. *See* note 93 *infra*.

87. The history of §§ 1983 and 1343 is discussed in the text accompanying notes 93-104 *infra*.

88. This view was adopted by Chief Justice Burger and Justices Powell and Rehnquist in their concurring opinion. 441 U.S. at 623 (Powell, J., concurring).

89. This view was supported by the dissent of Justices Stewart, Brennan, and Marshall. 441 U.S. at 672 (Stewart, J., dissenting).

secured by laws providing for equal rights.[90] The majority in *Chapman* succeeded in defeating all of the welfare claimant's theories of federal jurisdiction without addressing the conflict between sections 1343(3) and 1983,[91] thereby leaving the meaning of these sections subject to variable interpretation.[92]

Historical Basis for Controversy

The Court's exercise of judicial restraint in refusing to resolve the uncertain relative breadths of sections 1983 and 1343(3) added new uncertainty to the convoluted history of those statutes. Both sections originated in section 1 of the Civil Rights Act of 1871.[93] That section created liability for color-of-state-law deprivations of rights "secured by the constitution,"[94] and provided that such suits should be prosecuted in either the district or circuit courts.[95] In the 1874 congressional codification[96] substantive sections were separated from procedural sections. The Act of 1871 was therefore split into three parts: section 1979 contained language identical to the present 42 U.S.C. § 1983 and authorized suits to redress deprivations of rights secured

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90. This interpretation was advocated in the concurring opinion of Justice White. 441 U.S. at 646, 649 (White, J., concurring). *See* text accompanying notes 131-32 *infra*.

91. 441 U.S. at 612.

92. The dispute does not extend to § 1343(4), because that section's separate origin from both § 1983 and § 1343(3) allows little, if any, support, for contention that § 1343(4)'s grant of jurisdiction to secure relief "under any Act of Congress providing for the protection of civil rights" is coextensive with § 1983's "and laws" terminology. Nor has § 1343(4) progressed through the tangled history of revisions that led to the creation of § 1343(3), thus leaving little room for arguments contrary to the plain language of the statute. *See* text accompanying notes 93-104 *infra*. Applicants for jurisdiction will therefore be unable to successfully argue that laws falling within even the most expansive reading of § 1983 also fall within § 1343(4).

93. Act of April 20, 1871, ch. 22, § 1, 17 Stat. 13 (1871). The act was entitled "An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for Other Purposes," and provided as follows:

> That any person who, under color of any law, statute, ordinance, regulation, custom or usage of any State shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the state to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; such proceeding to be prosecuted in the several district or circuit courts of the United States.

94. *Id.*

95. *Id.* District and circuit courts jointly possessed original jurisdiction until circuit courts were abolished by the Judicial Code of 1911. *See* note 101 *infra*.

96. Codification was undertaken pursuant to authorization granted by Congress in Act of June 27, 1866, ch. 140, 14 Stat. 74 (1866). The codification was passed into law by the Revision of Statutes Act of 1874, ch. 333, 18 Stat. pt. 3, 113 (1874). Codification was not undertaken for the purpose of altering substantive provisions of the federal law. *See* note 104 *infra*.

by the "constitution *and laws*;"[97] section 563 provided jurisdiction for district courts over deprivations of rights "secured by the Constitution" and over "any right secured by any law of the United States;"[98] and section 629 provided original jurisdiction for circuit courts over deprivation of rights "secured by the Constitution" and over "rights secured by any law *providing for equal rights*."[99] The revisors gave no explanation for the different terminologies.[100]

The Judicial Code of 1911[101] abolished the original jurisdiction of the circuit courts and transferred it to the district courts. The terminology that previously described the circuit court jurisdiction was adopted to describe the district court jurisdiction—that is, the "providing for equal rights" language was adopted.[102] With the exception of renumbering, neither the substantive nor procedural language has changed since. The revision of 1911 is now reflected in the current section 1343(3). Uncertainty also results from the fact that the 1874 codified versions are positive laws that repeal and supersede all previous statutes at large,[103] and further uncertainty results from the clear congressional intent to leave the laws substantively unchanged

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97. Revised Statutes, § 1979, 18 Stat. pt. 1, 347 (1878) (emphasis added).

98. Revised Statutes, § 563(12), 18 Stat. pt. 1, 97 (1878). The section authorized district court jurisdiction:

> Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, ordinance, regulation, custom, or usage of any State of any right, privilege or immunity secured by the Constitution of the United States, or of any right secured by any law of the United States to persons within the Jurisdiction thereof.

99. Revised Statutes, § 629 (16), 18 Stat. pt. 1, 112 (1878) (emphasis added). The section authorized circuit court jurisdiction:

> Of all suits authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any rights secured by any law providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States.

100. The revisors did explain why they phrased § 629 so as to provide jurisdiction over deprivations of more than just constitutional rights. 1 *Revision of the United States Statutes as Drafted by the Commissioners Appointed for that Purpose* 359 (1872). Their explanation, however, in no way clarifies the terminological conflict. Justice Powell contended that the revisors intended their reference to "laws providing for equal rights" in § 629(16) to insure that jurisdiction would be provided over the rights granted by the substantive portions of § 1 of the Civil Rights Act of 1871, not over rights guaranteed only by the Constitution. 441 U.S. at 632-33. The question is clouded, however, by the revisors intent to include within § 629(16) jurisdiction over both § 1 of the Civil Rights Act of 1866, 14 Stat. 27 (1866), and § 16 of the Civil Rights Act of 1870, 16 Stat. 140 (1870). 441 U.S. at 633. The question is further clouded by the complete lack of explanation for the broader terminology of § 563(12). 441 U.S. at 633.

101. Act of Mar. 3, 1911, ch. 13, § 289, 36 Stat. 1086, 1167 (1911).

102. *Id.* § 24(14), 36 Stat. at 1092.

103. Revision of Statutes Act of 1874, ch. 333, § 2, 18 Stat. pt. 3, 113 (1874). The revised statutes were intended to be legal evidence of federal laws and treaties in all courts in the United States. *Id.*

during the codification.[104] The codification and revision process therefore produced broader terminology in section 1983 than in section 1343(3).

Continuing Uncertainty

Failure to untangle the conflict between sections 1983 and 1343(3) portends indecision beyond the realm of welfare litigation, for section 1983 is a broad source of federal causes of action.[105] Further, courts have invested extensive quantities of time in the resolution of tortuously unsettled jurisdictional issues.[106] The questions presented in *Chapman* offered a suitable, though admittedly strained, forum for resolution of the uncertain breadth of sections 1983 and 1343(3).[107] Yet the majority restricted its consideration to the narrowest dispositive issues available, leaving unresolved the uncertainty over the statutes that has lasted for nearly a century.[108]

Rather than clarifying the statutes' breadth, the Court's decision arguably complicates it further. Although the Court claimed inability to determine the ultimate correctness of the arguments on all sides of the issue,[109] *Chapman* clearly suggests some conclusions regarding the scopes of the statutes, opening the door to unforeseen interpretations by lower courts of the breadth of sections 1983 and 1343(3).[110] The Court explicitly accepted the plain lan-

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104. In the debates considering passage of the Revised Statutes, the following conversation occurred:

> Mr. Wood: Will there be anything in this revision of the laws that we have not already in the Statutes at large?
>
> Mr. Poland: [Chairman of the Committee on Revision] Nothing at least we do not intend there shall be.

2 CONG. REC. 129 (1873). Justices Powell and Rehnquist, and Chief Justice Burger, agreed that no change in the law was intended by Congress. 441 U.S. at 639 (Powell, J., concurring).

105. Section 1983 has been held applicable to: civil rights, Dombrowski v. Pfister, 380 U.S. 479 (1965); educational rights, Wood v. Strickland, 420 U.S. 308 (1975); voting rights, Ray v. Blain, 343 U.S. 214 (1952); rights of mental patients, O'Connor v. Donaldson, 422 U.S. 563 (1975); and rights of prisoners, Wolff v. McDonnell, 418 U.S. 539 (1974). *See* Annot., *Supreme Court's Construction of Civil Rights Act of 1871 (42 USCS § 1983) Providing Private Right of Action for Violation of Federal Rights*, 43 L. Ed. 2d 833 (1976).

106. In Andrews v. Maher, 525 F.2d 113 (2d Cir. 1975), the court noted "the irony . . . of having to spend so much time and effort on questions of jurisdiction when the underlying issues on the merits are comparatively simple." *Id.* at 120. *Chapman* itself is an example of excessive judicial time spent on jurisdictional questions. In five opinions covering 104 pages, less then 18 pages dealt with the underlying substantive issue.

107. *See* text accompanying notes 122-28 *infra*.

108. The controversy dates back to the changes occurring in the Revised Statutes of 1874. *See* text accompanying notes 96-99 *supra*.

109. 441 U.S. at 611-12.

110. An example of prior unforeseen applications resulting from the Court's indecision may be found in Hague v. C.I.O., 307 U.S. 496 (1939). In *Hague*, the Court found district court jurisdiction under the predecessors to §§ 1343(3) and 1989, *see* notes 93-104 *supra*, over a suit to enjoin municipal officers from enforcing ordinances forbidding the distribution of printed matter. The decision contained no majority opinion. With only seven justices deciding, the decision resulted from three concurring and one dissenting opinion. Left without definitive guidance,

guage of section 1343(3) requiring that the rights be "secured" by the Constitution or by an Act of Congress providing for equal rights.[111] That position is contrary to an interpretation that both sections 1983 and 1343(3) encompass suits founded on deprivations of rights secured by all federal laws, thereby partially resolving the issue[112] that the Court felt unable to resolve.

The issue is still clouded, however, by the presence of two concurring opinions. Justice White declared that the scope of the rights encompassed by either provision could not be determined with confidence unless the evolutions of the statutes were examined, and concluded that the issues in *Chapman* could not be resolved without determining whether the statutes in question were coextensive.[113] He then settled upon the third interpretation,[114] prescribing a different breadth for each section.[115] Justices Powell and Rehnquist, and Chief Justice Burger, motivated by opposition to Justice White's conclusion regarding the statutes' breadths, overcame their reluctance to decide the issue[116] and advocated the first interpretation that both sections are limited to rights secured by laws "providing for equal rights."[117] The dissenting opinion advocated the only interpretation rejected by the majority—that both statutes cover rights secured by all federal laws.[118] Because seven of the justices rendered opinions pointing in at least three different directions, the eventual outcome of the question of conflicting provisions is far from certain.[119]

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lower federal courts focused on the decision of Justice Stone, which created a distinction between personal and property rights cases, and granted jurisdiction only to the former. 307 U.S. at 531 (Stone, J., concurring). *See, e.g.*, Eisen v. Eastman, 421 F.2d 560 (2d Cir. 1969), where the court noted that although Justice Stone's construction had been severely criticized, there was something "essentially right about it." *Id.* at 565. *But see* Johnson v. Harder, 438 F.2d 7, 12 (2d Cir. 1971) (treating monetary rights in welfare cases as personal rights to exist in society). The Supreme Court did not specifically address the personal versus property rights distinction until Lynch v. Household Fin. Co., 405 U.S. 538 (1972), where the Court explicitly rejected the distinction, and thus ended thirty years of controversy that could have been avoided with a definitive ruling in *Hague*. *See* Note, *The Personal vs. Property Rights Distinction for Federal Jurisdiction under 28 U.S.C. § 1343: Three Decades of Controversy Made Moot*, 22 DEPAUL L. REV. 413 (1972); Note, Lynch v. Household Finance Corp: *Jurisdictional Ramifications*, 24 STAN. L. REV. 1134 (1972).

111. 441 U.S. at 618.

112. The Court supported its position by declaring that a coextensive construction of § 1343(3) and § 1983 would ignore the intent of Congress to limit § 1343(3)'s scope. 441 U.S. at 616-17. This implies that all coextensive constructions would be expansive, ignoring the possibility that a coextensive construction may restrict both sections.

113. *Id.* at 647-48 (White, J., concurring).

114. *See* text accompanying note 90 *supra*.

115. *Id.* at 671-72. Justice White held that § 1983 provides a cause of action for violation of all federally protected rights, whereas § 1343(3) provides jurisdiction only for rights provided by the Constitution and laws providing for equal rights. *Id.* at 674-75.

116. *Id.* at 623-24.

117. *Id.* at 623-46.

118. *Id.* at 674 (Stewart, J., dissenting).

119. That both §§ 1343(3) and 1983 are limited to rights secured by laws providing for equal rights is the opinion requiring the least expansive interpretation of congressional intent and is

The Court's failure to determine the breadth of section 1983 also undermined the potential for alternative sources of jurisdiction because no federal action can be successful without first stating a claim upon which relief can be granted. If section 1983 does not encompass welfare claims alleging other than equal or civil rights statutory conflicts (the first interpretation), then even if federal jurisdiction is conferred by a provision other than section 1343, the action may be dismissed for failing to state a claim. Claimants will not be regarded as having a federal cause of action unless one is found to be so granted by the statute creating the welfare entitlement.[120] Determining the federal jurisdictional status of welfare claimants therefore entails resolution of section 1983's uncertain scope, that is, a finding of the extent to which section 1983 creates a cause of action beyond deprivations of equal or civil rights.[121]

The majority's refusal to resolve the statutes' uncertain breadth results from its clear exercise of judicial restraint. The history of the statutes[122] suggests that no correct decision will be found with satisfactory certainty[123] and implies the need for a "Solomon's decision" firmly delineating the scope of sections 1983 and 1343(3). Any suggestion that the Court should have resolved the statutory uncertainty must, however, grapple with the force of the judicial restraint doctrine, which, though subject to occasional criti-

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therefore the interpretation most likely to be favored by strict constructionists in lower courts. Arguments favoring inclusion of rights granted by all federal laws require the least precise vision of history, and should therefore be less acceptable. The eventual result is therefore likely to be either the first or third interpretation. *But see* B. v. Colvatti, No. 78-2468 (3d Cir. 1979) (the Third Circuit held that suits under § 1983 are proper to secure compliance with the Social Security Act, thus implying a broad interpretation of § 1983's "and laws" terminology); Tongol v. Usery, 601 F.2d 1901 (9th Cir. 1979) (court acknowledged the extensive but inconclusive discussion of the issue in *Chapman*, and proceeded to follow the language on the face of the statute, that is, that § 1983 extends to all federal laws).

120. 441 U.S. at 648 n.6 (White, J., concurring).

121. In early cases, the Supreme Court held that the statute presently embodied in § 1983 refers to civil rights only, Holt v. Indiana Mfg. Co., 176 U.S. 68 (1900), and is inapplicable where it is merely alleged that state legislation impairs the obligation of a contract, Carter v. Greenhow, 114 U.S. 317 (1885). An early Supreme Court case also held that § 1983 is not applicable where the right allegedly deprived was secured by a principle of general law requiring a common carrier to carry, whenever asked, within the general scope of business and for a reasonable reward. Bowman v. Chicago & N.R.R., 115 U.S. 64 (1895). Later cases have greatly expanded § 1983's coverage. *See, e.g.*, Edelman v. Jordan, 415 U.S. 651, 675 (1974), following Rosado v. Wyman, 397 U.S. 397 (1970) (suits in federal court are proper to secure compliance by states with the provisions of the Social Security Act) (pendent jurisdiction); Lynch v. Household Fin. Co., 405 U.S. 538 (1972) (property rights, as well as personal rights, are protected); Greenwood v. Peacock, 384 U.S. 808 (1966) (under § 1983, police officers are liable for damages from violations of federal statutory rights). *But see* Hagens v. Lavine, 415 U.S. 528, 534 (1974) (expressly reserving decision on whether suits alleging that the Social Security Act provides rights within the meaning of § 1343(3) may be brought under § 1983).

122. The statute's history is considered in the text accompanying notes 93-104 *supra*.

123. Justice Powell noted that anyone who ventures into the "thicket" of § 1983's legislative history will find no clearly marked path to correct statutory interpretation. 441 U.S. at 623-24.

cism,[124] the Court has followed[125] with few exceptions. The best delineation of those exceptions may be found in *Swift & Co. v. Wickham*,[126] where the Court resolved a non-dispositive statutory conflict. The *Swift* Court stated that non-dispositive statutory interpretations are required where previous decisions have not satisfactorily resolved the meaning of the statutes and where a potential exists for mischievous consequences to both courts and litigants.[127] With regard to sections 1343(3) and 1983, there can be little doubt that previous decisions have not resolved the uncertainty,[128] and given the likelihood of continued attempts by future claimants to attain 1343(3) jurisdiction when expressing section 1983 claims, the potential for mischief in the form of unnecessary procedural maneuvering is readily apparent.

IMPACT AND REMAINING SOURCES OF JURISDICTION

The *Chapman* opinion reaffirms the Supreme Court's previous restrictive view of the scope of the supremacy clause expressed in *Swift* and illuminates the Court's likely inclination in future welfare rights cases. Strong policy arguments exist advocating original federal jurisdiction in welfare cases involving state-federal statutory conflicts,[129] and the Court recognized "that

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124. One commentator has eloquently criticized judicial restraint:

> Whenever the possibility arises that the Supreme Court might act with decisiveness to implement any of the guarantees written into the Constitution, this slogan is wheeled again into the breach and made to serve yet once more. And it has had a marvelous (and in my view a baleful) efficacy in inhibiting even a prudently restrained use of the judicial power to give effect to the deeper policies of our basic law. It has become the universal hypnotic and tranquilizer, the one sluggish lodestone of wisdom, the all-sufficient clew-thread for judicial activity, or, rather, inactivity. It has catalyzed scholars and judges to phrenetic search for theory after theory, technicality after fine-drawn technicality, on the basis of which the Court could in the pending case escape clear-cut action, and refer the duty of decision to another department or to the Void.

A. BLACK, THE PEOPLE AND THE COURT 88 (1960).

125. In Ashwander v. Tennessee Valley Auth., 297 U.S. 288 (1936), Justice Brandeis listed seven rules of judicial restraint, of which the following is most pertinent:

> When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.

Id. at 348. *See also* Crowell v. Benson, 285 U.S. 22, 62 (1932).

126. 382 U.S. 111 (1965).

127. *Id.* at 115-16.

128. The uncertainty is described in the text accompanying notes 80-92 *supra*.

129. In Rosado v. Wyman, 397 U.S. 397 (1970), the Court stated: "It is . . . peculiarly part of the duty [of the federal courts], no less in the welfare field than in other areas of law, to resolve disputes as to whether federal funds allocated to the states are being expended in consonance with conditions that Congress has attached to their use." *Id.* at 423. Congress has recognized a state court bias against protection of federal rights, *see* note 6 *supra*, and much judicial time is wasted on jurisdictional questions, when aside from the amount-in-controversy, welfare cases

there is force to claimant's [supremacy clause] argument."[130] That the Court proceeded to reject federal jurisdiction implies a disapproval of those policy arguments and a desire to continue federalistic policies of limited original jurisdiction, at least with respect to welfare litigation.

The ultimate impact of *Chapman* on the success of welfare litigants' ability to establish jurisdiction is uncertain. Justice Stewart suggested that the decision may have little effect on the availability of federal jurisdiction.[131] Justice White, however, suggested the decision may affect all federal jurisdiction by limiting the underlying section 1983 cause of action.[132] Regardless, welfare claims based solely on deprivations of statutory rights have been severely restricted.[133] Determination of whether non-section 1343 jurisdiction will be restricted awaits lower federal court interpretation of *Chapman*. Presumably, *Chapman* is unlikely to cause welfare claimants to attempt suits in state courts of general jurisdiction, where jurisdiction may be easily attainable, but the reception hostile.[134] Claimants will more likely "stretch" those theories of jurisdiction remaining unrestricted by the decision. For that purpose, two major theories of jurisdiction remain—constitutional rights deprivation theories using section 1983 and 1343, and federal question theories using section 1331.

Constitutional Claims

Chapman concerned claims based solely on statutory deprivations of welfare benefits. Litigants asserting a section 1983 constitutional rights action are thus unaffected by *Chapman's* restriction of section 1343 jurisdiction. Successful admission to the federal forum therefore may depend upon the ability of deprived welfare recipients to state a claim for relief involving a deprivation of constitutional rights. Such recipients may assert claims with causes of action founded only in assertions of constitutional rights deprivation, or they may attach their claims to a peripheral constitutional issue under the doctrine of pendent jurisdiction.[135] Both types of claims will be

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present a clear federal issue, *see* note 106 *supra*. *See generally* Herzer, *Federal Jurisdiction Over Statutorily-Based Welfare Claims*, 6 HARV. C.R.—C.L. L. REV. 1, 9-12 (1970); Comment, *Federal Jurisdiction Over Challenges to State Welfare Programs*, 72 COLUM. L. REV. 1404 (1972).

130. 441 U.S. at 615.

131. *Id.* at 675 (Stewart, J., dissenting).

132. *Id.* at 648 n.6. For a discussion of potential impact see text accompanying notes 109-121 *supra*.

133. Section 1983 claims based on deprivations of constitutional, civil, or equal rights may still successfully assert § 1343 jurisdiction because *Chapman* dealt with statutorily granted rights. 441 U.S. at 602-03.

134. State hostility is discussed in note 9 *supra*. The cause of action provided by § 1983 is arguably not limited to federal courts, allowing prosecution of theories identical to that used in *Chapman* in the state courts of general jurisdiction.

135. The doctrine is also referred to as that of ancillary jurisdiction. *See* note 143 *infra*.

discussed below. Because both sections 1343(3) and 1983 refer explicitly to constitutional rights, the discrepancy between the sections is not significant in either case.

Claims stating a constitutional cause of action normally assert deprivations of due process or equal protection.[136] A plaintiff therefore may allege reduction or termination of benefits without adequate hearing,[137] or may contend that state regulations prescribe inequitable benefits.[138] Such claims have been made considerably easier by the Supreme Court's decision in *Lynch* v. *Household Finance Corp.*,[139] which eliminated the personal versus property rights distinction[140] and thereby allowed welfare recipients to claim constitutional protection for monetary welfare rights.[141] Properly stating a statutory conflict in terms alleging a constitutional rights deprivation is therefore all that is required for welfare claimants to obtain federal jurisdiction. Claimants, however, usually do not attempt to state the statutory conflicts directly as constitutional issues because the statutory conflicts that are of primary interest to welfare claimants are not themselves constitutional issues. Instead, claimants generally attempt to attach the statutory claim to a constitutional issue using a federal court's pendent jurisdiction.[142]

Included within the broad subject of constitutional claims are the related doctrines of pendent and ancillary[143] jurisdiction. These doctrines allow fed-

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136. *See, e.g.*, Hagens v. Lavine, 415 U.S. 528 (1974) (assertion that recoupment of prior unscheduled payments under subsequent AFDC program violated equal protection); Goldberg v. Kelly, 397 U.S. 254 (1970) (termination of AFDC payments without a hearing violates due process); Greklek v. Toia, 565 F.2d 1259 (2d Cir. 1977) (assertion that state's denial of income deductions to medically needy persons that state allows to AFDC applicants denies equal protection); Mandley v. Trainor, 523 F.2d 415 (7th Cir. 1975), *rev'd sub nom. on other grounds*, 436 U.S. 725 (1978) (assertion that state emergency assistance programs violated equal protection clause); Jordan v. Weaver, 472 F.2d 985 (7th Cir. 1973), *rev'd on other grounds*, 415 U.S. 651 (1974) (asserting Illinois Aid to the Aged, Blind, or Disabled program violated equal protection).

137. *See* Goldberg v. Kelly, 397 U.S. 254 (1970).

138. *See* note 148 *supra*.

139. 405 U.S. 538 (1972). In *Lynch*, Household Finance Corp. sued Lynch for non-payment of a promissory note and garnished her savings account prior to serving process. The Court held that there is no distinction between personal and property rights and that Lynch stated a claim within § 1343(3). *Id.* at 566.

140. After *Hague* and until *Lynch*, jurisdiction under § 1343(3) depended upon an assertion of the deprivation of a personal, non-economic right. *Hague* is further discussed in note 110 *supra*.

141. 405 U.S. at 522.

142. Examples of this type of claim are given in note 147 *infra*.

143. The concept of ancillary jurisdiction developed originally to enable federal courts to decide claims ordinarily confined to state court when *either* party to a federal controversy asserts claims that do not otherwise qualify for federal adjudication. Pendent jurisdiction developed originally to allow a plaintiff who has both a federally cognizable claim and a state claim arising out of the same set of facts to assert both claims in federal court against a *single* defendant. The doctrines have now merged into virtual indistinguishability. *See* Comment, *Pendent and Ancillary Jurisdiction: Towards a Synthesis of Two Doctrines*, 22 U.C.L.A. L. REV. 1263 (1975).

eral court evaluation of issues otherwise outside the court's jurisdiction when those issues are "attached" to a federally cognizable issue.[144] Welfare claimants must allege both a federally cognizable claim and a pendent issue sharing a "common nucleus of operative fact"[146] with the cognizable claim. Normally, the most clearly cognizable issues are those concerning deprivation of constitutional rights. Typically, therefore, welfare claimants assert a due process or an equal protection deprivation theory as the federally cognizable issue and add a pendent allegation that the state law involved conflicts with federal law.[147] The decision in *Hagens* v. *Lavine*,[148] broadly applying pendent jurisdiction in the context of a welfare complaint, established precedent for comprehensive availability of pendent jurisdiction to welfare claimants. The constitutional claim need only meet a simple substantiality test: as long as the challenged state law is not "so patently rational as to require no meaningful [re]consideration,"[149] the federal court may[150] decide the attached pendent issue regardless of the eventual disposition on its merits of the jurisdiction conferring issue.[151] Pendent jurisdiction is especially attractive to claimants who have a strong statutory conflict argument

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144. The federally cognizable issue is usually a constitutional issue. *See, e.g.*, UMW v. Gibbs, 383 U.S. 715, 725 (1966).

145. Hagens v. Lavine, 415 U.S. at 536.

146. UMW v. Gibbs, 383 U.S. at 725. *See* C. WRIGHT, HANDBOOK OF THE LAW OF FEDERAL COURTS § 19 (3d ed. 1976).

147. *See, e.g.*, Burns v. Alcala, 420 U.S. 575 (1975) (contending state's refusal to grant AFDC benefits to pregnant women violates due process); Edelman v. Jordan, 415 U.S. 651 (1974) (contending state failure to comply with federal time limits denied equal protection); Rosado v. Wyman, 397 U.S. 397 (1970) (contending that state failure to adjust AFDC benefits to reflect cost of living changes as required by the Social Security Act denied equal protection); Greklek v. Toia, 565 F.2d 1259 (1977), *cert. denied*, 436 U.S. 962 (1978) (contending state denial of same benefits to medically needy persons as granted to AFDC recipients denied equal protection); Almenares v. Wyman, 453 F.2d 1075 (1971), *cert. denied*, 405 U.S. 944 (1972) (contending that failure to provide a state hearing prior to benefit reduction or termination denied due process).

148. 415 U.S. 528 (1974). The plaintiff AFDC recipients in *Hagens* challenged a New York regulation allowing recoupment of prior unscheduled payments from subsequent AFDC grants. Plaintiff's pendent claim asserted that the New York regulation conflicted with HEW implementing regulations. The constitutional claim asserted was that the same state regulation deprived recipients of equal protection. *Id.*

149. 415 U.S. at 541. *Hagens* was followed by Edelman v. Jordan, 415 U.S. at 653 n.1. Federal courts are without power to entertain claims otherwise within their jurisdiction if they are "so attenuated and unsubstantial as to be absolutely devoid of merit. . . ." Newburyport Water Co. v. Newburyport, 193 U.S. 561, 579 (1904), or "obviously frivolous," Hannis Distilling Co. v. Baltimore, 216 U.S. 285, 288 (1910). Pendent jurisdiction has been questioned as "more ancient than analytically sound," Rosado v. Wyman, 397 U.S. at 404, but "remains the federal rule," Hagens v. Lavine, 415 U.S. at 538.

150. Acceptance of pendent jurisdiction is a matter of discretion with the court after consideration of judicial economy, convenience, and fairness to litigants. UMW v. Gibbs, 383 U.S. at 726.

151. Hagens v. Lavine, 415 U.S. at 542-43.

and a less substantial constitutional argument[152] because of the time-honored practice of avoiding a constitutional question where a non-constitutional ground exists for resolving the case.[153] Claimants therefore need only introduce a constitutional issue meeting the substantiality test to attain their desired adjudication of the statutory conflict.

Chapman is likely to encourage the use of pendent jurisdiction because it eliminated the only other available jurisdictional theory that did not require a rephrasing of the welfare recipients' claim for relief.[154] Claimants using pendent jurisdiction thus will be able to assert unchanged their intended claim that the state regulation fails to provide a congressionally intended statutory benefit.

Federal Question Jurisdiction

Use of section 1331 jurisdiction allows avoidance of the entire problem surrounding the equal or civil rights requirement of section 1343 because the welfare claims at issue clearly arise under the laws of the United States.[155] Welfare claimants asserting a section 1983[156] cause of action find suits under section 1331 attractive because the supremacy clause probably affords a favorable resolution of federal-state statutory conflicts.[157] Over-

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152. The constitutional claim must be substantial enough to withstand disposition by way of summary judgment. The yardstick for measuring such substantiality is discussed in note 8 *supra*.

153. Blair v. United States, 250 U.S. 273 (1919). "Considerations of propriety, as well as long established practice, demand that we refrain from passing upon the constitutionality of an act of Congress unless obliged to do so in the proper performance of our judicial function, when the question is raised by a party whose interests entitle him to raise it." *Id.* at 279. *Accord*, Mandley v. Trainor, 523 F.2d at 419.

154. Claimants seeking jurisdiction under 28 U.S.C. § 1331 (1976) need not rephrase their claim; however, jurisdiction under § 1331 is not readily available. Section 1331 jurisdiction is discussed in the text accompanying notes 155-161 *infra*. Recent cases support pendent jurisdiction as the potentially most successful source of welfare jurisdiction. In Shands v. Tull, 602 F.2d 1156 (3d Cir. 1979), the circuit court found jurisdiction under § 1343(3) over a conflict between New Jersey procedure and HEW regulations pendent to a due process claim. The court in *Shands* specifically refused to consider claimant's § 1331 arguments. *Id.* at 1158. In Kimble v. Solomon, 599 F.2d 599 (4th Cir. 1979), the same circuit that found § 1343 jurisdiction over statutorily granted welfare rights in Blue v. Craig, 505 F.2d 830 (4th Cir. 1974); *see* note 12 *supra*, refused to overturn a district court's finding of jurisdiction based on *Blue*, despite *Chapman's* reversal of that case. Instead, the circuit court found pendent jurisdiction available. 599 F.2d at 602 n.2.

155. Claims using § 1331 as a basis for jurisdiction must arise under the Constitution or laws of the United States. Section 1331 is set out in note 11 *supra*.

156. This assumes the scope of § 1983 was not reduced by *Chapman*. *See* text accompanying notes 130-131 *supra*.

157. The statutory conflict must be direct, for example failure to meet the requirements of the governing federal statute, Rosado v. Wyman, 397 U.S. 397 (1970), or flatly denying assistance to otherwise eligible recipients, King v. Smith, 392 U.S. 309 (1968). The states, however, have the undisputed power to set the level of benefits and the standard of need. *Id.* at 334. See further discussion of the state's power to set the level of benefits in note 2 *supra*.

coming the $10,000 amount-in-controversy requirement, however, looms as a potentially insurmountable obstacle. Rarely do individual welfare claims approach $10,000,[158] and class action claimants may not aggregate their individual claims to attain the $10,000 minimum.[159] Some possibility exists for welfare claimants to contend that the eventual impact of benefit deprivation will exceed $10,000,[160] but the strongest impetus for increased section 1331 jurisdiction over small claims is likely to come, if at all, from congressional action.[161] Unless the $10,000 minimum is lifted, section 1331 jurisdiction is unlikely.

Other Theories of Jurisdiction

In 1976, Congress amended section 1331 to remove the amount-in-controversy requirement for any action involving a federal question and brought against the United States or its officials.[162] That section, used with

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158. *See* Comment, *Federal Jurisdiction over Federal Claims*, 60 CORNELL L. REV. 800, 810 (1975).

159. Each plaintiff with a separate and distinct claim in a class action suit must individually satisfy the minimum jurisdictional amount. Zahn v. International Paper Co., 414 U.S. 291 (1973). *See also* Snyder v. Harris, 394 U.S. 332 (1969). *But see* New Jersey Welfare Rights Organization v. Cahill, 483 F.2d 723 (3d Cir. 1973) (allowing aggregation of AFDC claims); Bass v. Rockefeller, 331 F. Supp. 945 (S.D.N.Y. 1971), *appeal dismissed as moot*, 464 F.2d 1300 (2d Cir. 1971) (state reduction of medical assistance to poor persons created an integrated claim of a common and undivided class, citing Snyder v. Harris). *See also* United States v. Southern Pac. Transp. Co., 543 F.2d 676 (9th Cir. 1976); Ingerson v. Sharp, 423 F. Supp. 139, 142 (D. Mass. 1976).

160. The threatened loss of future welfare payments may be considered for § 1331 purposes. Randall v. Goldmark, 495 F.2d 356, 360 (1st Cir. 1974). *See also* Aetna Cas. & Sur. Co. v. Flowers, 330 U.S. 464 (1947); Brotherhood of Locomotive Firemen & Engineermen v. Pinkston, 293 U.S. 96 (1934); Thompson v. Thompson, 226 U.S. 551 (1913). Indirect damages and damages that are too speculative do not support jurisdiction. Rosado v. Wyman, 414 F.2d at 176-77. Possible loss of property rights in a home, or possible loss of its possession, is therefore too speculative and is incapable of measurement. Randall v. Goldmark, 495 F.2d at 360. Nor can psychological damage, Davis v. Shultz, 453 F.2d 497, 502 (3d Cir. 1971) (damages to a youth's future development), or loss of educational opportunity be measured. Johnson v. New York State Educ. Dept., 319 F. Supp. 271, 275 (E.D.N.Y. 1970), *aff'd*, 449 F.2d 371 (2d Cir. 1971), *vacated for determination as to mootness*, 409 U.S. 75 (1972). *But see* Marquez v. Hardin, 339 F. Supp. 1364 (N.D. Cal. 1969) (possible damage resulting from deprivation of school lunches was not too speculative). *See* C. WRIGHT, LAW OF FEDERAL COURTS § 34 (1970).

161. The American Law Institute has proposed that the jurisdictional amount requirement be abolished and that jurisdiction extend to all civil actions "in which the initial pleading sets forth a substantial claim arising under the Constitution, laws or treaties of the United States." ALI STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS 24 (1969). Some action has been taken in this direction by Congress. In 1978, the House of Representatives passed a resolution providing the suggested jurisdiction. H.R. 9622, 95th Cong., 1st Sess. (1977). *See* 124 CONG. REC. 1553 (1978).

162. Act of Oct. 21, 1976, Pub. L. No. 94-574, § 2, 90 Stat. 2721 (1976).

or independent of the mandamus provisions of section 1361,[163] provides a possible, yet speculative, alternative approach to welfare jurisdiction. Using a mandamus theory, welfare claimants may challenge federal regulations as inconsistent with the Social Security Act by asserting that federal welfare officials have failed to provide benefits granted by federal law.[164] Arguably, claimants may sue the Secretary of the Department of Health, Education and Welfare for failure to invoke provisions of the Social Security Act that allow enforcement of federal standards against the states.[165] If federal officials implement an overly restrictive interpretation of the welfare statutes, claimants could obtain jurisdiction over a section 1983 cause of action under the federal official as defendant provision of section 1331.

Neither approach to jurisdiction is likely to see extensive use by welfare claimants. Although suits asserting non-compliance of federal regulations with the Social Security Act will encounter no jurisdictional difficulties, they are of limited utility to welfare claimants, because few benefit deprivations arise from restrictive federal regulations[166] and suits based on state-federal conflicts usually attempt to establish federal regulations as preferred.[167]

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163. 28 U.S.C § 1361 (1976) provides: "The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

164. Three elements are required for mandamus jurisdiction: (1) a clear right in the plaintiff to the relief sought; (2) a clear duty on the part of the defendant to do the act in question; and (3) no other adequate remedy. Carter v. Seamans, 411 F.2d 767, 773 (5th Cir. 1969), *cert. denied*, 397 U.S. 941 (1970). Most courts allow mandamus jurisdiction only after strict adherence to these common law requirements. *See, e.g.*, Peoples v. United States Dep't of Agr., 427 F.2d 561, 565 (1970); Carter v. Seamans, 411 F.2d at 773. At common law, the clear duty must be ministerial in character, Burnett v. Tolson, 474 F.2d 877, 880 (4th Cir. 1974); however, the statutory phase "in the nature of mandamus," note 163 *supra*, has created speculation that the clear duty need not meet the common law requirement of being a purely ministerial function. Burnett v. Tolson, 474 F.2d at 880 n.5; City of Highland Park v. Train, 519 F.2d 681, 691 n.8 (7th Cir. 1975). *But see* Jamieson v. Weinberger, 379 F. Supp. 28, 34 (E.D. Pa. 1974) (duty must be a clear, plain ministerial command). Thus, in Jackson v. Weinberger, 407 F. Supp. 792 (W.D.N.Y. 1976), a district court granted mandamus jurisdiction to hear claims that the HEW secretary failed to comply with 42 U.S.C. § 1302, requiring that the secretary "make and publish . . . rules and regulations, *not inconsistent*. . . ." with the Social Security Act. *Id.* at 796 (emphasis added). *Jackson* was followed in Caswell v. Califano, 435 F. Supp. 127, 132 (N.D. Maine 1977) (HEW Secretary has clear duty to perform within a reasonable time and not permit unreasonable delay of administrative action). *See also* National Welfare Rights Organization v. Weinberger, 377 F. Supp. 861 (D.D.C. 1974); Annot., *Construction and Application of 28 U.S.C. § 1361 Conferring on Federal District Courts Original Jurisdiction of Actions in Nature of Mandamus to Compel Federal Officer, Employee, or Agency to Perform Duty Owed Plaintiff*, 13 A.L.R. FED. 145 (1972).

165. 42 U.S.C. § 604 (1976) requires the HEW Secretary to stop payment to states if he or she finds the state welfare plan fails substantially to comply with required federal provisions. That there are no cases utilizing this theory of jurisdiction possibly illustrates welfare claimant's interest in receiving benefits, not halting federal financial support of state plans. Use of § 604 is briefly discussed in Justice Stewart's dissent. 441 U.S. at 673 n.2 (Stewart, J., dissenting.)

166. Cases asserting non-compliance with federal law are discussed at note 164 *supra*.

167. The state tendency towards greater restrictions than the federal laws require is discussed in note 9 *supra*.

Suits requesting enforcement of federal standards against state programs face considerable difficulty in surmounting a clear congressional intent to provide flexible state implementation of the Social Security Act[168] and must additionally surmount contentions that the claim is a mere sham to attain federal jurisdiction.[169]

CONCLUSION

After *Chapman*, federal original jurisdiction is still available over claims alleging state deprivation of welfare rights. Claimants desiring to bring suits founded solely on conflicts between state and more generous federals laws will, however, find their ingenuity taxed in any attempt to express a federally cognizable cause of action. Few claims will fit within the specialized requirements of either mandamus jurisdiction or federal question jurisdiction over suits against federal officials, and only the most bizarre welfare case will exceed $10,000 in individual damages. Further, any claimant seeking to found a suit upon a section 1983 cause of action will face the continuing uncertainty in that section's scope, especially if jurisdiction is sought under section 1343(3). Pendent jurisdiction is thus the best remaining source of federal jurisdiction over claimed deprivations of statutorily granted welfare rights. Claimants therefore will be forced to follow circuitous, and mildly deceptive,[170] routes to attain adjudication of their clear federal issues in the federal courts.

J. Allen Riedinger

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168. Flexible state implementation is discussed in notes 2 & 157 *supra*.

169. Averments of fact within the complaint are sufficient for the court to entertain arguments, but if the facts at trial fail to establish a federally cognizable cause of action, the court will dismiss the action. Wheeldin v. Wheeler, 373 U.S. 647 (1963). *See also* Bell v. Hood, 327 U.S. 678 (1946).

170. The deception results from the federal court's acceptance of a constitutional claim as the sole basis for jurisdiction, followed by the court's refusal to rule on the constitutional claim because the case may be disposed of through consideration of a pendent claim otherwise outside federal court cognizance. *See* Burns v. Alcala, 420 U.S. 575 (1975).