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Civil Rights — School Officials Not Persons for Purposes of Section 1983 Regardless of Relief Sought

In 1966, the Sweeny Independent School District integrated its system in response to a guideline from the United States Department of Health, Education and Welfare. The consolidation caused the district to reduce the teaching positions available by seventeen. All seventeen teachers terminated were Negroes who had formerly taught at the all-black high school. Twelve of these teachers brought suit under section 1983, a part of the Civil Rights Act of 1871,¹ alleging racial discrimination in the district's employment practices. The named defendants were the school district, the school superintendent and the school board members. The superintendent and the school board members were named individually and in their official capacities. The plaintiffs sought to enjoin all defendants from failing to offer teaching contracts to the plaintiffs and to recover money damages for back-pay and other costs.

During the *voir dire*, however, the plaintiff discovered that members of the jury panel were unwilling to assess damages against the defendants as individuals.² Accordingly, plaintiffs sought and the court granted the dismissal of the complaint against the defendants as individuals, but retained the individual defendants in their official capacities. Defendants then asserted that there was no claim upon which relief could be granted. *Held*: Section 1983 authorizes suits against private persons only, not school districts or school officials in their official capacities. *Harkless v. Sweeny Independent School District*, 300 F. Supp. 794 (S.D. Tex. 1969).

I. SECTION 1983

Section 1983 was enacted in 1871 as part of the effort to give substance to the newly-declared rights of Negroes. The Act, in part, states that an injured party shall have an action for damages, or other relief, against any "person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects . . . any citizen of the United States . . . to the deprivation of any rights . . . secured by the Constitution . . ."³ Companion statutes make it a criminal offense to interfere with the civil rights of another.⁴ Civil damages are considered the most important form of relief granted by section 1983, although other types of relief have been sought and granted.⁵

In the construction of this statute, *Monroe v. Pape*⁶ is the most important recent case. *Monroe* is most often cited as a liberal interpretation of the statute because the United States Supreme Court allowed a section 1983

¹ 42 U.S.C. § 1983 (1970).

² Appellants' Motion for Summary Reversal at 3, *Harkless v. Sweeny Ind. School Dist.*, appeal docketed, No. 28188, 5th Cir., July 1969.

³ 42 U.S.C. § 1983 (1970).

⁴ 18 U.S.C. §§ 241, 242 (1969).

⁵ Comment, *Civil Actions for Damages Under the Federal Civil Rights Statutes*, 45 TEXAS L. REV. 1015 (1967).

⁶ 365 U.S. 167 (1961).

suit for acts contrary to state law, even though state remedies had not been exhausted.⁷ However, the Court also announced a restriction on those subject to the Act. In *Monroe* the plaintiff sought damages against the city of Chicago and thirteen Chicago policemen who had awakened him late at night, searched his house in an unnecessarily destructive, abusive and humiliating manner, taken him to police headquarters, and questioned him about crimes with which he had no connection and for which he was never to be charged.⁸ The Court upheld the claim against the policemen, but dismissed the complaint against the city of Chicago. The Court interpreted Section 1983 as authorizing actions for damages against "persons" only. Thus, the city of Chicago was not subject to the Act, and the damages assessed were to be paid by the policemen.

In announcing the restriction as to who might be sued under the Act, the Court in *Monroe* relied upon congressional intent not to make municipalities liable under the Act. The Court looked to the legislative history, noting that at the time of enactment, an amendment was proposed to impose liability on the people of a city or county where violent acts occurred.⁹ Congressional repudiation of the proposal was firm and explicit. In the Court's view: "The response of the Congress to the proposal to make municipalities liable for certain actions being brought within federal purview by the Act of April 20, 1871, was so antagonistic that we cannot believe that the word 'person' was used in this particular Act to include them."¹⁰ In the face of this clear command from the Congress, the Court

⁷ See Comment, *The Civil Rights Act and Mr. Monroe*, 49 CALIF. L. REV. 145 (1961); Comment, *Civil Actions for Damages Under the Federal Civil Rights Statutes*, 45 TEXAS L. REV. 1015 (1967).

⁸ The complaint alleges that 13 Chicago police officers broke into petitioners' home in the early morning, routed them from bed, made them stand naked in the living room, and ransacked every room, emptying drawers and ripping mattress covers . . . Mr. Monroe was then taken to the police station and detained on 'open' charges for 10 hours, while he was interrogated about a two-day-old murder, that he was not taken before a magistrate, though one was accessible, that he was not permitted to call his family or attorney, that he was subsequently released without criminal charges being preferred against him.

Monroe v. Pape, 365 U.S. 167, 169 (1961).

⁹ The proposed amendment read:

That if any house, tenement, cabin, shop, building, barn or granary shall be unlawfully or feloniously demolished, pulled down, burned, or destroyed wholly or in part by any persons riotously and tumultuously assembled together; or if any person shall unlawfully and with force and violence be whipped, scourged, wounded, or killed by any persons riotously and tumultuously assembled together; and if such offense was committed to deprive any person of any right conferred upon him by the Constitution and laws of the United States, or to deter him or punish him for exercising such right, or by reason of his race, color, or previous condition of servitude, in every such case the inhabitants of the county, city, or parish in which any of the said offenses shall be committed shall be liable to pay full compensation to the person or persons damaged by such offense if living, or to his widow or legal representative if dead; and such compensation may be recovered by such person or his representative by a suit in any court of the United States of competent jurisdiction in the district in which the offense was committed, to be in the name of the person injured, or his legal representative, and against such county, city, or parish. And execution may be issued on a judgment rendered in such suit and may be levied upon any property, real or personal, of any person in said county, city, or parish, and the said county, city, or parish may recover the full amount of such judgment, costs and interest, from any person or persons engaged as principal or accessory in such riot in any court of competent jurisdiction.

CONG. GLOBE, 42d Cong., 1st Sess. 663 (1871).

¹⁰ *Monroe v. Pape*, 365 U.S. 167, 191 (1961).

held that policy considerations calling for the opposite result were beyond the reach of the judiciary.¹¹

The opinion in *Monroe* speaks only of municipalities and does not specifically declare whether other political units are in the same category, but the reasoning would indicate as much. Federal courts have shown no hesitation in construing *Monroe* to include all governmental units, not only cities,¹² but also counties,¹³ state governments,¹⁴ departments of correction,¹⁵ and even a state bar association.¹⁶ Against all these governmental defendants the courts have dismissed 1983 actions, holding that these entities are not "persons" within the meaning of the Act. Significantly, all of these cases were civil suits seeking monetary damages. *Monroe v. Pape*, then, stands for the principle that a suit for damages under section 1983 will not lie against a defendant city, county, or similar governmental unit.

II. MONETARY VERSUS NON-MONETARY FORMS OF RELIEF

Monroe has not barred all suits against public officials or governmental units under section 1983. For example, in *Houghton v. Shafer*¹⁷ an inmate of a Pennsylvania prison had some legal materials confiscated, allegedly for violations of prison rules. He sued the Governor of Pennsylvania and officials of the department of corrections under section 1983, seeking a court order requiring return of his materials.¹⁸ The *Monroe* principle was not discussed by the Court but the action was allowed.¹⁹ In the better-known case of *Tinker v. Des Moines Independent Community School District*²⁰ high school students brought suit under the Act, praying for an injunction that would restrain their school board from disciplining them for protesting the Vietnam war. The defendant was a governmental unit—a school district—but the suit was not dismissed. The historic case of *Baker v. Carr*²¹ also involved a suit under section 1983. The defendants were all

¹¹ It is said that doubts should be resolved in favor of municipal liability because private remedies against officers for illegal searches and seizures are conspicuously ineffective, and because municipal liability will not only afford plaintiffs responsible defendants but cause those defendants to eradicate abuses that exist at the police level. We do not reach those policy considerations.

Id.

¹² *Bright v. Bishop*, 398 F.2d 804 (9th Cir. 1968); *Brown v. Town of Caliente*, 392 F.2d 546 (9th Cir. 1968); *Mayhue v. City of Plantation*, 375 F.2d 447 (5th Cir. 1967); *Wallach v. City of Pagedale*, 359 F.2d 57 (8th Cir. 1966); *Johnson v. Hackett*, 284 F. Supp. 933 (E.D. Pa. 1968); *Salazar v. Dowd*, 256 F. Supp. 220 (D.D.C. 1966); *Spiesel v. City of New York*, 239 F. Supp. 106 (S.D.N.Y. 1964); *Scolnick v. Winston*, 219 F. Supp. 836 (S.D.N.Y. 1963).

¹³ *Dodd v. Spokane County*, 393 F.2d 330 (9th Cir. 1968); *Sires v. Cole*, 320 F.2d 877 (9th Cir. 1963); *Baxter v. Parker*, 281 F. Supp. 115 (N.D. Fla. 1968); *Haigh v. Snidow*, 231 F. Supp. 324 (S.D. Cal. 1964).

¹⁴ *Bennet v. California*, 406 F.2d 36 (9th Cir. 1969); *Clark v. Washington*, 366 F.2d 678 (9th Cir. 1966); *Williford v. California*, 352 F.2d 474 (9th Cir. 1965); *United States ex rel. Lee v. Illinois*, 343 F.2d 120 (7th Cir. 1965).

¹⁵ *Bennet v. California*, 406 F.2d 36 (9th Cir. 1969); *Williford v. California*, 352 F.2d 474 (9th Cir. 1965); *United States ex rel. Lee v. Illinois*, 343 F.2d 120 (7th Cir. 1965).

¹⁶ *Clark v. Washington*, 366 F.2d 678 (9th Cir. 1966). The court held that the bar association in this case was an agency of the state. *Id.* at 681.

¹⁷ 392 U.S. 639 (1968).

¹⁸ See *United States ex rel. Houghton v. Scranton*, 272 F. Supp. 960, 961 (E.D. Pa. 1966); *Houghton v. Shafer*, 392 U.S. 639 (1968).

¹⁹ *Houghton v. Shafer*, 392 U.S. 639 (1968).

²⁰ 393 U.S. 503 (1969).

²¹ 369 U.S. 186 (1962).

officials of the state of Tennessee: the secretary of state, attorney general, coordinator of elections, and members of the state board of elections.²² The suit prayed for declaratory relief and an injunction requiring an election based on a realistic apportionment plan, which was, of course, granted.

In none of these decisions is there any discussion of *Monroe v. Pape*, though it would seem that these actions should not be allowed against the governmental units if *Monroe* is interpreted literally. The important difference between these cases and the cases in which the suit against governmental entities or officials was dismissed is that the latter all sought monetary relief while the former sought equitable or declaratory relief. While not often stated, there is a line of reasoning that would justify this dichotomy. Injunctive or declaratory relief does not directly impose fiscal liability on the taxpayers of governmental units. It does not require them to compensate for the grievances of a party injured by the actions of its officials, but only requires that government officers cease infringing on the plaintiff's constitutional rights. A few cases discuss the possibility of a different treatment for non-monetary relief, but reach differing results. In *Adams v. City of Park Ridge*²³ an injunction was granted against a municipality to halt enforcement of a city ordinance. In allowing the suit, the court stated:

We are aware that it was said in *Monroe v. Pape* . . . that a city is not within the ambit of § 1983. However, in that case only damages were sought and were held recoverable from the individual defendants who were police officers of a city [T]he case at bar is not an action for damages for torts committed. It looks to the future and asks for a declaratory judgment and an injunction against invasion of plaintiffs' . . . rights None of the reasons which support a city's immunity from an action for damages . . . applies to this case.²⁴

*Maybue v. City of Plantation*²⁵ also provides some authority for this point. There, a liquor store owner claimed that a city ordinance was discriminatory as applied to him. He sued for an injunction forbidding the city to enforce its ordinance and also for damages resulting from past enforcement. After remanding the case for resolution of the issue of injunctive relief, the court then stated that the claim for damages would have to be dismissed, citing *Monroe v. Pape*.²⁶ Contrary to these two cases is *Deane Hill Country Club v. City of Knoxville*,²⁷ where a country club was not allowed to pursue its suit for damages and injunctive relief against the city for allegedly unconstitutional seizure of plaintiff's property. There, the court specifically held that the Supreme Court had forbidden suits for equitable remedies as well as damage suits under section 1983 by its holding in *Monroe*.²⁸ Thus, while there are cases where claims for damages against a

²² *Baker v. Carr*, 179 F. Supp. 824, 826 (M.D. Tenn. 1959).

²³ 293 F.2d 585 (7th Cir. 1961).

²⁴ *Id.* at 587 (citations and footnotes omitted).

²⁵ 375 F.2d 447 (5th Cir. 1967).

²⁶ *Id.* at 451-52.

²⁷ 379 F.2d 321 (6th Cir. 1967).

²⁸ *Id.* at 323-24. See also *Glancy v. Parole Bd.*, 287 F. Supp. 34 (W.D. Mich. 1968); *Fowler v. United States*, 258 F. Supp. 638 (C.D. Cal. 1966).

city under section 1983 have been dismissed on the ground that the defendant is not a "person" within the meaning of the Act,²⁹ an equally impressive group of cases have granted equitable or declaratory relief in suits against governmental units or officials under section 1983.³⁰

III. HARKLESS V. SWEENEY INDEPENDENT SCHOOL DISTRICT

*Harkless v. Sweeney Independent School District*³¹ was a suit for damages and injunctive relief against a school district and its officers in their official capacities. The court held that a section 1983 action would not lie because the defendants were not "persons." Accordingly, both the legal and equitable claims were dismissed. By this holding, the court added two extra elements to the case law interpreting the statute. The first is that suits against governmental units include suits against persons in their official capacities. If one is forbidden by *Monroe v. Pape*, then so is the other. The second is that there is no important distinction to be made between monetary and non-monetary forms of relief.

The first holding is difficult to evaluate because plaintiffs generally do not expressly describe what is intended by a suit against a defendant in his official capacity. A reasonable surmise would be that the only important consequence would be to transfer liability from the individual to the government he serves. That is, if an official is sued as an individual, then he will pay for any damages assessed against him. If he is sued in his official capacity any damages will be paid from the public treasury. At least, this seems to have been the understanding of the parties in *Harkless*.³² If so, then *Monroe v. Pape* surely requires that an action for damages against a person in his official capacity be dismissed. If damages are paid from the public treasury of a city, liability has been imposed on the people of that city; it hardly matters who has been named officially as defendant, if the taxes of the people of the city are used to pay the claim in either event.

The second holding is more of an innovation. The court not only held that the plaintiffs could not recover damages, but also stated, "that plaintiffs are not entitled to and may not be granted relief of any kind against the district under the authority of § 1983."³³ While previous cases had refused to grant equitable relief as well as damages, citing *Monroe*, they were cases in which there was more than one ground for refusal of plaintiff's claim.³⁴ In *Harkless* the *Monroe* rule was applied to extinguish the entire action unaided by alternate grounds. The court did not feel that there was an important issue on the question of monetary or non-monetary

²⁹ See notes 17-21 *supra*.

³⁰ *Tinker v. Des Moines Ind. Community School Dist.*, 393 U.S. 503 (1969); *Houghton v. Shafer*, 392 U.S. 639 (1968); *King v. Smith*, 392 U.S. 309 (1968); *Rinaldi v. Yeager*, 384 U.S. 305 (1966); *Davis v. Mann*, 377 U.S. 678 (1964); *WMCA v. Lomenzo*, 377 U.S. 633 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Baker v. Carr*, 369 U.S. 186 (1962).

³¹ 300 F. Supp. 794 (S.D. Tex. 1969).

³² *Id.* at 799. The defendants moved to dismiss on the grounds that the district had no funds to pay damages.

³³ *Id.* at 806-07 (emphasis added).

³⁴ *Deane Hill Country Club v. City of Knoxville*, 379 F.2d 321 (6th Cir. 1967); *Clark v. Washington*, 366 F.2d 678 (9th Cir. 1966).

relief, feeling that *Tinker* and other cases where equitable relief had been granted were unimportant because the "person" issue had not been raised or discussed.³⁵ The court cited *Maybue v. City of Plantation*, but did not express an awareness that *Maybue* had distinguished between damages and injunctive relief where section 1983 is concerned.

IV. CONCLUSION

In the past year, the distinction between damage suits and other forms of relief under section 1983 has come into sharper focus.³⁶ If the present case is authority for the proposition that the distinction is unimportant, it has been balanced by cases holding that the distinction is a valid one.³⁷ This question is most important. Its resolution in favor of the latter cases would be beneficial. A virtue of section 1983 is that it provides a remedy for persons deprived of their rights under the Constitution or laws of the United States without requiring ingenious or roundabout pleading. A glance at some of the Supreme Court's most important cases of the past decade shows that it has been a useful device.³⁸ If the present decision is followed in its every part, the usefulness of the statute will be diminished, because suits against governmental units for any form of relief will become impossible. When a person is deprived of his civil rights under color of law, it is more than likely that a governmental unit will be a partner in the offending action and that effective relief will require that action be taken by some official or official body or that a current practice be discontinued. Where discrimination by school boards in the assignment of children or the hiring of teachers is the issue, suits against board members as individuals for damages will be effective only to express anger on the part of plaintiffs and to entangle both parties in inconclusive litigation. There are two reasons for this: (a) the individual members of the school board will have no power as individuals to correct whatever practices are found to be discriminatory; and (b) juries will be reluctant to impose damages on school board members for allegedly discriminatory practices which the community has tolerated as right and natural for years. If suits for equitable or declaratory relief are allowed, however, the parties will be able to bring these disputes into a court of law and pursue them to a conclusive and authoritative resolution. It is difficult to see why this should be prohibited by *Monroe v. Pape*.

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³⁵ *Harkless v. Sweeny Ind. School Dist.*, 300 F. Supp. 794, 805 (S.D. Tex. 1969).

³⁶ *See, e.g., Schnell v. Chicago*, 407 F.2d 1084 (7th Cir. 1969).

³⁷ *Id.*

³⁸ *Tinker v. Des Moines Ind. Community School Dist.*, 393 U.S. 503 (1969); *King v. Smith*, 392 U.S. 309 (1968); *Rinaldi v. Yeager*, 384 U.S. 305 (1966); *Davis v. Mann*, 377 U.S. 678 (1964); *WMCA v. Lomenzo*, 377 U.S. 633 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Baker v. Carr*, 369 U.S. 186 (1962).