

## SECTION 1983 CAUSES OF ACTION UNDER THE CONTRACTS CLAUSE OF THE CONSTITUTION

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### INTRODUCTION

Southern California Gas Company was looking for market certainty when it entered into a franchise agreement with the City of Santa Ana.<sup>1</sup> The franchise agreement required Southern California Gas to pay substantial fees in exchange for the right to install and maintain a gas distribution system in Santa Ana. Specifically, the franchise agreement allowed Southern California Gas to use pipes for distributing gas under the public streets in Santa Ana. In exchange, Southern California Gas paid Santa Ana a portion of annual revenue.

Due to the nature of the excavation that would take place under the contract, the contract required that Southern California Gas repair any damage that it caused. Southern California Gas carried out the agreement without any unresolved complaints about its repairs of excavation damages. Yet, Santa Ana passed an ordinance imposing an excavation fee on any work performed on the city streets. The ordinance made no exception for preexisting franchise agreements despite objections from Southern California Gas.

Southern California Gas believed that the ordinance infringed upon the parties' preexisting franchise agreement and violated the Contracts Clause of the Constitution in two ways. First, the ordinance required Southern California Gas to pay for the right to excavate, a right it already possessed under the franchise agreement. This amounted to Southern California Gas being double-charged for the right to excavate in the city. Second, the ordinance altered the method of handling repairs by imposing a fee prior to excavation with no requirement of actual damage and no consideration of the quality of repair work completed. The parties had bartered specifically for a different method to manage repair work in their franchise agreement. The City of Santa Ana argued that the ordinance did not "substantially impair" the contractual rights of the utility company in any manner.

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<sup>1</sup> The following fact pattern is based on the facts set out in *Southern California Gas Co. v. City of Santa Ana*, 336 F.3d 885 (9th Cir. 2003) (per curiam).

Localities frequently enter into contracts with private parties. In some instances, they later attempt to modify or cancel these contractual obligations.<sup>2</sup> The affected contracts can range from franchise agreements between a city and a utility to a pension plan guarantee for a government worker.<sup>3</sup> When localities pass ordinances that infringe upon private parties' preexisting contractual rights, the infringement might give rise to constitutional challenges.

When a government passes an ordinance that retroactively infringes on a private party's contractual rights, the private party often seeks redress under the Contracts Clause of the U.S. Constitution.<sup>4</sup> Many times, these plaintiffs attempt to bring a claim pursuant to 42 U.S.C. § 1983.<sup>5</sup> Section 1983 authorizes redress for the deprivation of "any rights, privileges, or immunities secured by the Constitution."<sup>6</sup> Section 1983 provides plaintiffs with powerful benefits not available when vindicating contractual rights through other methods.<sup>7</sup> For example, plaintiffs who seek relief pursuant to

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<sup>2</sup> See, e.g., *Larsen v. Senate of Pa.*, 154 F.3d 82, 84-85 (3d Cir. 1998) (involving termination of a former justice of the Supreme Court of Pennsylvania's medical insurance subsequent to the enactment of a "benefits plan which provided lifetime medical insurance benefits for retired judges"); *Christensen v. Minneapolis Mun. Emps. Ret. Bd.*, 331 N.W.2d 740, 742-43 (Minn. 1983) (en banc) ("This appeal raises the question of whether a retired public employee's pension may be discontinued by an act of legislature changing the eligibility requirements."); *TM Park Ave. Assocs. v. Pataki*, 44 F. Supp. 2d 158, 160 (N.D.N.Y. 1999) (involving legislative action that would modify a contract between a New York state institution and a private real estate company), *vacated as moot*, 214 F.3d 344 (2d Cir. 2000).

<sup>3</sup> See, e.g., *Crosby v. City of Gastonia*, 635 F.3d 634, 636-37 (4th Cir. 2011) (involving failure of a pension plan guarantee for retired policemen); *S. Cal. Gas Co.*, 336 F.3d at 887-88 (involving a franchise agreement between a city and a utility company); *Nat'l Educ. Ass'n-R.I. v. Ret. Bd. of the R.I. Emps.' Ret. Sys.*, 890 F. Supp. 1143, 1147-48 (D.R.I. 1995) (involving the repeal of a statute providing former state employees with certain retirement benefits), *vacated and remanded* by 172 F.3d 22 (1st Cir. 1999); *Christensen*, 331 N.W.2d at 742-44 (involving discontinuation of a pension plan for retired public employees).

<sup>4</sup> See, e.g., *Crosby*, 635 F.3d at 637-38 (alleging "that the City was liable pursuant to 42 U.S.C. § 1983 for, among other things, '[i]nterfering with [the plaintiffs'] contractual rights as guaranteed by the Contract Clause of the United States Constitution'" (alteration in original)); *S. Cal. Gas Co.*, 336 F.3d at 886 (upholding the district court's finding that the city's modification of a preexisting franchise agreement violated the Contracts Clause of the U.S. Constitution). The Contracts Clause states that "[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S. CONST. art. I, § 10, cl. 1.

<sup>5</sup> *Crosby*, 635 F.3d at 637; *S. Cal. Gas Co.*, 336 F.3d at 886; *Parella v. Ret. Bd. of the R.I. Emps. Ret. Sys.*, 173 F.3d 46, 50 (1st Cir. 1999).

<sup>6</sup> 42 U.S.C. § 1983 (2006).

<sup>7</sup> 42 U.S.C. § 1988(b) (2006) (granting possible attorney's fees for § 1983 plaintiffs); see generally Jack M. Beermann, *Why Do Plaintiffs Sue Private Parties Under Section 1983?*, 26 CARDOZO L. REV. 9 (2004) (providing an in-depth analysis as to why plaintiffs choose to sue private parties under 42 U.S.C. § 1983 as opposed to other possible remedies).

§ 1983 have the chance to obtain attorney's fees,<sup>8</sup> are not required to exhaust alternative remedies,<sup>9</sup> and gain access to the federal court system.<sup>10</sup>

However, it is unclear whether § 1983 can afford relief to parties when a state retroactively infringes on their contractual rights.<sup>11</sup> The U.S. Supreme Court created this uncertainty in *Carter v. Greenhow*,<sup>12</sup> an 1885 case that prohibited plaintiffs from using the predecessor statute to § 1983 in order to vindicate a Contracts Clause claim.<sup>13</sup> The *Carter* decision has been heavily scrutinized,<sup>14</sup> partly because § 1983 has developed more broadly than was expected at the time of *Carter*.<sup>15</sup> Further, the plaintiff in *Carter* did not himself invoke the Contracts Clause. Instead, the Court decided that the Contracts Clause secured the rights that the plaintiff invoked.<sup>16</sup> This procedural posture has led subsequent courts to limit *Carter*'s holding to a pleading deficiency for the particular plaintiff in the case.<sup>17</sup>

This Comment analyzes the development of § 1983 and its relation to the Contracts Clause. It argues that § 1983 should be available to parties who wish to vindicate their constitutional rights under the Contracts Clause. Part I discusses the role of the Contracts Clause in modern litigation and then considers the advantages to a § 1983 claim. In doing so, Part I examines *Carter v. Greenhow*, a case integral to § 1983's applicability to the

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<sup>8</sup> 42 U.S.C. § 1988(b).

<sup>9</sup> *Patsy v. Bd. of Regents*, 457 U.S. 496, 516 (1982).

<sup>10</sup> 42 U.S.C. § 1983 (creating a federal right of action for deprivations of constitutional rights).

<sup>11</sup> Compare *Crosby v. City of Gastonia*, 635 F.3d 634, 640-41 (4th Cir. 2011) (holding that Contracts Clause claims cannot be brought pursuant to § 1983), with *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 887 (9th Cir. 2003) (per curiam) (holding that a Contracts Clause claim can be brought pursuant to § 1983).

<sup>12</sup> 114 U.S. 317 (1885).

<sup>13</sup> *Id.* at 322-23.

<sup>14</sup> See, e.g., Gregory A. Kalscheur, Note, *Dormant Commerce Clause Claims Under 42 U.S.C. § 1983: Protecting the Right to Be Free of Protectionist State Action*, 86 MICH. L. REV. 157, 178-79 (1987) (arguing that the reasoning used by the *Carter* Court in reaching the conclusion "that the contracts clause does not directly secure any individual rights under the Constitution" is unpersuasive).

<sup>15</sup> See, e.g., *Dennis v. Higgins*, 498 U.S. 439, 443-51 (1991) (holding that Commerce Clause claims can be brought pursuant to § 1983); *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980) (stating that § 1983 "broadly encompasses violations of federal statutory as well as constitutional law"); *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978) (interpreting § 1983 broadly to encompass municipal liability).

<sup>16</sup> *Carter*, 114 U.S. at 321-22.

<sup>17</sup> See, e.g., *Dennis*, 498 U.S. at 451 n.9 (noting that the Court has given *Carter* a narrow reading related to the particular plaintiff's pleading deficiency in that case); *Chapman v. Hous. Welfare Rights Org.*, 441 U.S. 600, 613 n.29 (1979) (noting that the *Carter* Court "held as a matter of pleading that the particular cause of action set up in the plaintiff's pleading was in contract and was not to redress deprivation of the 'right secured to him by that clause of the Constitution' [the contract clause]" (alteration in original) (quoting *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 526-27 (1939) (opinion of Stone, J.)); *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 887 (9th Cir. 2003) (per curiam); *TM Park Ave. Assocs. v. Pataki*, 44 F. Supp. 2d 158, 161-62 (N.D.N.Y. 1999) ("[B]ecause *Carter* failed to plead that he was deprived of a right guaranteed to him by the Contract Clause, he did not state a claim under § 1983."), *vacated as moot*, 214 F.3d 344 (2d Cir. 2000).

Contracts Clause. Further, Part I surveys § 1983 cases to understand the Supreme Court's jurisprudence on the statute, and it examines how lower courts have handled Contracts Clause claims brought pursuant to § 1983. Next, Part II analyzes the material discussed in Part I. Part II then applies the Supreme Court jurisprudence to a circuit split that has developed as to whether a Contracts Clause claim can be brought pursuant to § 1983. Part II concludes by arguing that the Supreme Court should adopt a broad application of § 1983 from precedent and allow plaintiffs to bring Contract Clause claims pursuant to § 1983.

## I. BACKGROUND—CONTRACTS CLAUSE AND 42 U.S.C. § 1983

This Part provides background to the topics discussed in the Comment. First, it discusses the history, relevance, and importance of the Contracts Clause in modern litigation. Next, it provides a background on § 1983 and discusses the advantages of bringing a constitutional claim pursuant to it. Then, it examines *Carter v. Greenhow*, a case that has been integral to § 1983's applicability to the Contracts Clause. It also describes the development of § 1983 in other areas of the law. Finally, it examines how modern courts have handled Contracts Clause claims brought pursuant to § 1983 and the development of a circuit split on the topic.

### A. *Contracts Clause and Its Modern Importance*

A brief history of the Contracts Clause is necessary to understand the issues surrounding whether parties can bring Contracts Clause claims pursuant to § 1983. The language of the Contracts Clause portends a role for itself in the protection of economic liberties.<sup>18</sup> Prior to the Constitution, colonists viewed stable contractual relationships as integral to a strong economy.<sup>19</sup> Perhaps due to this belief, there was relatively little debate over the Contracts Clause at the Constitutional Convention.<sup>20</sup>

The lack of informative debate makes it difficult to ascertain the intent of the Constitutional Convention toward the Contracts Clause's scope or meaning. However, James Madison briefly discussed the importance of the Contracts Clause in the *Federalist Papers* when he stated that "laws impairing the obligation of contracts are contrary to the first principles of the so-

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<sup>18</sup> Richard A. Epstein, *Toward a Revitalization of the Contract Clause*, 51 U. CHI. L. REV. 703, 703-05 (1984).

<sup>19</sup> James W. Ely Jr., *Whatever Happened to the Contracts Clause?*, 4 CHARLESTON L. REV. 371, 372 (2009).

<sup>20</sup> *Id.* at 372-73.

cial compact and to every principle of sound legislation.”<sup>21</sup> The initial broad scope that courts gave to the Contracts Clause demonstrates its importance.

The Supreme Court recognized the importance of the Contracts Clause as a restraint on state control and quickly made the Contracts Clause a potent instrument to combat state overreaching.<sup>22</sup> A demonstration of the early power the Supreme Court gave to the Contracts Clause is evident in *Fletcher v. Peck*.<sup>23</sup> The plaintiffs in the case purchased land that had been obtained fraudulently in a prior transaction involving the legislature of Georgia.<sup>24</sup> The State of Georgia annulled the contract due to the prior fraud and destroyed the plaintiffs’ rights to the purchased land.<sup>25</sup> In finding that Georgia’s actions violated the Contracts Clause, the Court extolled the importance of the Contracts Clause.<sup>26</sup>

The Court held that these types of agreements between a state and a purchaser of land were within the purview of the Contracts Clause.<sup>27</sup> This holding ensured that a state could not infringe on a contract it made with private parties, as opposed to a construction of the Contracts Clause which would only prevent states from infringing upon contracts between private parties.<sup>28</sup> The Court also discussed the purpose of the Contracts Clause, which it stated was to protect people and property from the legislative power of the states.<sup>29</sup>

Courts provided the Contracts Clause power but never furnished it with an interpretation as broad as the plain language of the clause implies.<sup>30</sup> Nonetheless, in the nineteenth century courts heard Contracts Clause claims more often than claims involving any other constitutional provision.<sup>31</sup> The

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<sup>21</sup> THE FEDERALIST NO. 44 (James Madison) (Clinton Rossiter ed.).

<sup>22</sup> Ely, *supra* note 19, at 374.

<sup>23</sup> 10 U.S. (6 Cranch) 87 (1810).

<sup>24</sup> *Id.* at 127-128.

<sup>25</sup> *Id.* at 131-32.

<sup>26</sup> *Id.* at 138-143.

<sup>27</sup> *Id.* at 136-37.

<sup>28</sup> *Id.* at 137-38.

<sup>29</sup> *Fletcher*, 10 U.S. at 137-38.

<sup>30</sup> The Contracts Clause states, “No State shall . . . pass any . . . Law impairing the Obligation of Contracts.” U.S. CONST. art. I, § 10, cl. 1. The language of the Clause seems open to broad interpretation, but several courts have construed it narrowly. *See, e.g.,* *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213, 262-64 (1827) (holding that the Contracts Clause only prevents states from passing laws that affect preexisting contracts); *see also* Ely, *supra* note 19, at 376 (“The Contract Clause, however, even during its heyday, was never read with literal exactness.”).

<sup>31</sup> *See, e.g.,* *Murray v. City of Charleston*, 96 U.S. 432, 444 (1877) (“Indeed, attempted State taxation is the mode most frequently adopted to affect contracts contrary to the constitutional inhibition. It most frequently calls for the exercise of our supervisory power.”); *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 588-89 (1819) (“The object of [the Contracts Clause] in the national constitution has often been discussed both here and elsewhere.”); Ely, *supra* note 19, at 371-72 (“[D]uring the nineteenth century the Contract Clause was the most litigated provision in the Constitution.”).

Contracts Clause came to be viewed as a principal constraint on state power.<sup>32</sup> Despite its initial strength, the Contracts Clause's level of influence fell with a judicial trend toward more passive protection of economic liberties.<sup>33</sup> Three cases in particular highlight the decline of the Contracts Clause.

The first of these cases is *Home Building & Loan Ass'n v. Blaisdell*,<sup>34</sup> in which a mortgage lender challenged a Minnesota statute under the Contracts Clause.<sup>35</sup> The state legislature passed the statute during the Great Depression, and the statute allowed relief periods for foreclosures.<sup>36</sup> The Court examined whether the statute exceeded the state's power to infringe on contractual rights under the Contracts Clause.<sup>37</sup> The Court held that a state has the power to protect the interests of its citizens.<sup>38</sup> It did not matter that the statute affected contractual obligations because an emergency existed and the statute provided a fixed time limit and limited scope.<sup>39</sup> Although the holding in *Blaisdell* was somewhat limited, it marked the beginning of a new approach to the Contracts Clause.<sup>40</sup>

The second case is *City of El Paso v. Simmons*,<sup>41</sup> in which a Texas statute allowed a defaulting purchaser of land to reinstate his claim to the land through a written request.<sup>42</sup> The legislature later amended the statute to disallow this practice.<sup>43</sup> The city denied an individual's reinstatement claim because of this amendment.<sup>44</sup> The Fifth Circuit held that the amended statute violated the Contracts Clause because it infringed upon the contractual obligations of defaulting purchasers.<sup>45</sup> The Supreme Court ruled differently, holding that a state's economic interests and its need to protect the general welfare may permit the state's interference with its contractual obligations.<sup>46</sup> The Court further stated that it must grant state legislatures broad discretion and deference in these circumstances.<sup>47</sup>

*Blaisdell* and *Simmons* laid the foundation for a more limited approach to the Contracts Clause. *United States Trust Co. of New York v. New Jer-*

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<sup>32</sup> Ely, *supra* note 19, at 371.

<sup>33</sup> Epstein, *supra* note 18, at 704-05.

<sup>34</sup> 290 U.S. 398 (1934).

<sup>35</sup> *Id.* at 415-16.

<sup>36</sup> *Id.* at 416.

<sup>37</sup> *Id.* at 425.

<sup>38</sup> *Id.* at 436-37.

<sup>39</sup> *Id.* at 444-45.

<sup>40</sup> Ely, *supra* note 19, at 388-89.

<sup>41</sup> 379 U.S. 497 (1965).

<sup>42</sup> *Id.* at 498-99 & n.1.

<sup>43</sup> *Id.* at 499.

<sup>44</sup> *Id.* at 500-01.

<sup>45</sup> *Id.* at 504-06.

<sup>46</sup> *Id.* at 508-09.

<sup>47</sup> *Simmons*, 379 U.S. at 508-09.

sey<sup>48</sup> confirmed this approach. In *U.S. Trust*, the Court adopted a three-part test to determine whether state action unconstitutionally impaired a contractual right.<sup>49</sup> The first question is whether a valid contractual obligation is present and whether the state action impairs that contractual obligation.<sup>50</sup> Second, a court asks whether the impairment is substantial.<sup>51</sup> Third, a court determines whether this impairment is legitimate as an exercise of the state's police power, which also can be framed as asking whether the impairment was reasonable and necessary to serve a legitimate and important public purpose.<sup>52</sup>

As demonstrated by the deference inherent in the *U.S. Trust* test, the Contracts Clause may not be the leading constraint on state authority that is once was.<sup>53</sup> However, the ability of the Contracts Clause to protect economic liberty and contractual rights gives it a role in modern jurisprudence. Given the financial crises that many states and localities currently face, the Contracts Clause is still an important tool for parties who have had their contractual rights or obligations altered by the state in the name of fiscal necessity.<sup>54</sup>

In order to raise revenue, a locality may choose a course of action similar to the city of Santa Ana and pass an ordinance that effectively double-charges some utility companies for the purpose of saving money.<sup>55</sup> A locality could decide to implement a salary reduction plan on teachers and police to account for budget shortfalls.<sup>56</sup> A locality could even retroactively reduce pension benefits for individuals already retired and participating in a pension plan.<sup>57</sup>

Regardless of the action taken, if a locality retroactively infringes on a party's contractual rights or obligations, the party can potentially seek relief

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<sup>48</sup> 431 U.S. 1 (1977).

<sup>49</sup> *Id.* at 21-29.

<sup>50</sup> *Id.* at 21; *Balt. Teachers Union v. Mayor of Balt.*, 6 F.3d 1012, 1015 (4th Cir. 1993) (setting forth the three-part test from *U.S. Trust*).

<sup>51</sup> *U.S. Trust*, 431 U.S. at 27; *Balt. Teachers Union*, 6 F.3d at 1015.

<sup>52</sup> *U.S. Trust*, 431 U.S. at 29; *Balt. Teachers Union*, 6 F.3d at 1015.

<sup>53</sup> *See Ely*, *supra* note 19, at 371-72 (discussing the Contracts Clause's decline in the twentieth century).

<sup>54</sup> Paul M. Secunda, *Constitutional Contracts Clause Challenges in Public Pension Litigation*, 28 HOFSTRA LAB. & EMP. L.J. 263, 263 (2011) (noting that "the global recession and the resulting loss in the value of public pension funds" has led to "increased scrutiny on the effect states' obligations to public pension funds" have on their ability to balance their budgets).

<sup>55</sup> *See, e.g.*, Appellee's Brief at 9, *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885 (9th Cir. 2003) (Nos. 02-55885 & 02-56298) (stating that the purpose of the ordinance was to place the burden on companies responsible for excavating the streets, rather than the city taxpayers).

<sup>56</sup> *See, e.g.*, *Balt. Teachers Union*, 6 F.3d at 1014 (explaining the economic situation that led to a budget plan cutting salaries for most full-time city employees).

<sup>57</sup> *See, e.g.*, *Andrews v. Anne Arundel Cnty.*, 931 F. Supp. 1255, 1257-59 (D. Md. 1996) (describing a bill that retroactively reduced pension benefits previously available to county officials or their survivors).

under the Contracts Clause. Invocation of the Contracts Clause occurs often in litigation regarding public pensions or contracts that localities enter into with private parties.<sup>58</sup> As states continue to face budget crises and attention increases on localities' obligations to pension plans, contracts with private and public parties, government employees, and other financial responsibilities, localities will seek additional ways to limit their obligations and parties will seek to vindicate their contractual rights through the Contracts Clause.<sup>59</sup> The ability to bring claims pursuant to § 1983 provides significant benefits to plaintiffs who litigate under the Contracts Clause.

### B. *Section 1983 and Its Advantages*

The intent behind § 1983 is to provide plaintiffs with a federal remedy for state violations of constitutional and federal rights.<sup>60</sup> Congress created the predecessor to § 1983 shortly after ratifying the Fourteenth Amendment.<sup>61</sup> The Supreme Court first gave § 1983 a narrow construction by declining to extend it beyond suits that involved civil rights.<sup>62</sup> However, § 1983 has now become the main tool for plaintiffs seeking to challenge unconstitutional state actions.<sup>63</sup>

Plaintiffs alleging violations of their rights under the Contracts Clause can seek relief without using § 1983.<sup>64</sup> The Supreme Court has held that “[Section] 1983 merely provides a mechanism for enforcing individual rights ‘secured’ elsewhere, *i.e.*, rights independently ‘secured by the Constitution and laws’ of the United States.”<sup>65</sup> However, § 1983 provides a powerful remedy for plaintiffs because it possesses several distinct advantages.

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<sup>58</sup> See, e.g., *Crosby v. City of Gastonia*, 635 F.3d 634, 636-38 (4th Cir. 2011) (describing a pension fund enacted by the North Carolina General Assembly); *S. Cal. Gas Co.*, 336 F.3d at 887-89 (describing a contract between the City of Santa Ana and Southern California Gas Co. giving the company “the right to construct and maintain ‘pipes and appurtenances’ under city streets”).

<sup>59</sup> See *Secunda*, *supra* note 54, at 263-64 (discussing the increased scrutiny on public pension plans).

<sup>60</sup> *Mitchum v. Foster*, 407 U.S. 225, 239 (1972) (“Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation.”).

<sup>61</sup> Michael G. Collins, “*Economic Rights*,” *Implied Constitutional Actions, and the Scope of Section 1983*, 77 GEO. L.J. 1493, 1493 (1989).

<sup>62</sup> *Id.* at 1498 (“Most accounts of § 1983’s limited use during the nineteenth and early twentieth century have focused on the narrow substantive scope given to the Civil War amendments with which § 1983 was connected.”).

<sup>63</sup> *Id.* at 1494.

<sup>64</sup> *Waste Mgmt. Holdings, Inc. v. Gilmore*, 64 F. Supp. 2d 537, 547 (E.D. Va. 1999) (“[E]ven if § 1983 did not provide a remedy, dismissal would be inappropriate.”).

<sup>65</sup> *Gonzaga Univ. v. Doe*, 536 U.S. 273, 285 (2002).



First, plaintiffs seeking relief under § 1983 are entitled to reasonable attorney's fees if they are the prevailing party.<sup>66</sup> The Supreme Court has interpreted the attorney's fee provision broadly and has turned it into a near mandate.<sup>67</sup> The Supreme Court has gone so far as to allow attorney's fees in instances where plaintiffs only prevail on some of their claims.<sup>68</sup> The prospect of attorney's fees "helps raise settlement values substantially for the [plaintiffs] because the defendants must always remain cognizant of the statutory obligation to pay their opponents' fees if they lose."<sup>69</sup>

The possibility of attorney's fees allows plaintiffs to seek vindication of their constitutional rights in situations where it otherwise might not be economically feasible to do so.<sup>70</sup> Plaintiffs who challenge alleged state or locality infringement of their contractual rights pursuant to the Contracts Clause may be wary to take on the costs of litigation given that the Contracts Clause is not the most potent limitation on state power.<sup>71</sup> This potential for attorney's fees may incentivize plaintiffs to bring their claims. Congress intended that this incentive exist under § 1983, because it enables plaintiffs with smaller constitutional claims, and perhaps fewer financial resources, to vindicate their rights.<sup>72</sup>

A second advantage to § 1983 claims is that they generally do not force a plaintiff to exhaust all alternative remedies.<sup>73</sup> Instead, a plaintiff using § 1983 can usually seek immediate relief for constitutional violations in a court, as opposed to expending resources seeking out all state administrative remedies.<sup>74</sup> This advantage enables a § 1983 plaintiff to immediately engage in discovery and other procedures that apply in court, even though this advantage may not apply to alternative dispute remedies such as agency or claim tribunals.<sup>75</sup>

Not only does § 1983 give plaintiffs the opportunity to litigate faster and conserve resources, it also opens the doors to federal court.<sup>76</sup> Federal

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<sup>66</sup> 42 U.S.C. § 1988(b) (2006) ("In any action or proceeding to enforce a provision of section[] . . . 1983 . . . of this title, . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.").

<sup>67</sup> Beermann, *supra* note 7, at 14.

<sup>68</sup> *Tex. State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 793 (1989) (holding that plaintiffs "prevailed on a significant issue in the litigation and have obtained some of the relief they sought and are thus 'prevailing parties' within the meaning of § 1988").

<sup>69</sup> Jon Loevy, *Section 1983 Litigation in a Nutshell: Make a Case Out of It!*, DCBA BRIEF (Oct. 2004), <http://www.dcbabrief.org/vol171004art2.html>.

<sup>70</sup> *Id.*

<sup>71</sup> *See supra* Part I.A.

<sup>72</sup> Loevy, *supra* note 69.

<sup>73</sup> *Patsy v. Bd. of Regents*, 457 U.S. 496, 516 (1982) (holding that, based on legislative history, "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983").

<sup>74</sup> *Id.*

<sup>75</sup> Beermann, *supra* note 7, at 17.

<sup>76</sup> Loevy, *supra* note 69.

jurisdiction provides two important advantages to plaintiffs. First, federal judges generally have more experience with § 1983 claims than state court judges and are more familiar with the federal law.<sup>77</sup> Second, federal courts are more likely to be receptive to federal claims than state courts.<sup>78</sup>

Also important to plaintiffs is the idea that state judges are employees and part of the same community whose actions are being challenged as unconstitutional.<sup>79</sup> This could be especially important for Contracts Clause plaintiffs who claim that the state or local government has infringed upon a contract. On the other hand, federal judges are detached from this system and are viewed by practitioners as more likely than state judges to recognize a federal claim against a state or local government.<sup>80</sup> Federal courts provide justice for plaintiffs that practitioners perceive as more rapid and less political than a state court.<sup>81</sup>

Aside from the procedural advantages of § 1983, there could also be substantive advantages to § 1983.<sup>82</sup> “State law . . . frequently grants immunities to defendants that are inapplicable in federal section 1983 cases,” and § 1983 may provide better potential remedies to plaintiffs.<sup>83</sup> For instance, a state may choose to immunize a government official’s conduct in certain instances that would prohibit a state suit relating to the official’s conduct.<sup>84</sup> Other substantive advantages could include the possibility of higher damage awards, including punitive damages and a lack of a cap on damages.<sup>85</sup> The procedural and substantive advantages available through § 1983 demonstrate that it serves as an extremely useful tool for plaintiffs seeking to vindicate their constitutional rights.<sup>86</sup>

### C. *Carter v. Greenhow*

The Supreme Court first addressed the interplay between the Contracts Clause and § 1983 in *Carter v. Greenhow*.<sup>87</sup> In *Carter*, the plaintiff attempted to pay his property taxes with coupons cut from bonds issued by Virginia.<sup>88</sup> In 1879, the Virginia General Assembly passed a law stating that

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<sup>77</sup> *Id.*

<sup>78</sup> Beermann, *supra* note 7, at 17-18.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Loevy, *supra* note 69.

<sup>82</sup> Beermann, *supra* note 7, at 14.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 18-19.

<sup>85</sup> *Id.* at 19.

<sup>86</sup> *Id.* at 13-14.

<sup>87</sup> 114 U.S. 317, 321-22 (1885) (addressing § 1983’s predecessor statute).

<sup>88</sup> *Id.* at 318-319.

coupons were receivable in payment of taxes due to Virginia.<sup>89</sup> Subsequently, in 1882, the Virginia General Assembly passed a law prohibiting treasurers from accepting anything outside of a set list of acceptable currency for the collection of taxes.<sup>90</sup> The city of Richmond's treasurer refused to accept the plaintiff's coupons as a method of payment, and the plaintiff challenged this refusal.<sup>91</sup>

Despite the fact that the plaintiff did not allege a Contracts Clause violation, the Court found the Contracts Clause was the only constitutional provision that secured the rights the plaintiff had invoked.<sup>92</sup> The Court then sought to determine if a cause of action under § 1983's predecessor could be brought for an alleged Contracts Clause violation.<sup>93</sup> This procedural posture has caused debate over the scope of *Carter's* holding; because of this debate, the Supreme Court later announced that the holding in *Carter* is limited to a pleading matter.<sup>94</sup>

The Court began by noting the Contracts Clause confers individual rights only "indirectly and incidentally."<sup>95</sup> The Court focused on the Contracts Clause's role in voiding state laws that violate it.<sup>96</sup> The Court stated that if a state passes a law that violates the Contracts Clause, the only right the Contracts Clause affords is the right to have a judicial hearing and opportunity to invalidate the state action.<sup>97</sup> Under the Contracts Clause, the plaintiff in *Carter* was not afforded the right to pay his property taxes with coupons.<sup>98</sup> If this right was protected at all by the Contracts Clause, it was only protected indirectly under the contract right created by Virginia law.<sup>99</sup> As a result of this holding, "recourse to § 1983 . . . [wa]s limited to the discrete instances where a state ha[d] denied a citizen the opportunity to seek adjudication through courts as to whether a constitutional impairment . . . ha[d] occurred."<sup>100</sup>

The Court in *Carter* explained that it would be difficult to name every right to which recourse from § 1983 would be acceptable, and the Court

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<sup>89</sup> *Id.* at 318.

<sup>90</sup> *Id.* at 319.

<sup>91</sup> *Id.* at 318-19.

<sup>92</sup> *Id.* at 322 ("How and in what sense are these rights secured to [the plaintiff] by the Constitution of the United States? The answer is, by that provision, Art. I., Sec. 10, which forbids any State to pass laws impairing the obligations of contracts.").

<sup>93</sup> *Carter*, 114 U.S. at 321-23.

<sup>94</sup> *Chapman v. Hous. Welfare Rights Org.*, 441 U.S. 600, 613 n.29 (1979) (quoting *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 526-27 (1939) (opinion of Stone, J.)).

<sup>95</sup> *Carter*, 114 U.S. at 322.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Crosby v. City of Gastonia*, 635 F.3d 634, 640 (4th Cir. 2011) (explaining the relevance of the holding in *Carter*).

noted that it was fortunate that issue was not before it.<sup>101</sup> However, since the decision in *Carter*, courts have examined the scope of § 1983 in relation to other constitutional provisions.

#### D. *The Development of Section 1983*

Section 1983 provides a cause of action for many constitutionally and federally protected rights. The scope courts have given § 1983 in light of its text, legislative history, and purpose provides a framework for analyzing Contracts Clause claims brought pursuant to it. This Section analyzes § 1983 cases, including *Dennis v. Higgins*,<sup>102</sup> an integral case that addressed whether Commerce Clause claims could be brought pursuant to § 1983, reexamined the holding in *Carter*, and shed light on *Carter*'s modern relevance.

Section 1983 provides redress for "deprivation of any rights, privileges, or immunities secured by the Constitution."<sup>103</sup> The scope of possible § 1983 claims is expansive due to the number of rights protected by the Constitution. With the debate over the *Carter* holding and the lack of clarity regarding whether Contracts Clause claims can be brought pursuant to § 1983, examining how courts interpret § 1983 in other contexts provides insight into how § 1983 should apply to Contracts Clause claims.

In *Monell v. Department of Social Services*,<sup>104</sup> the Supreme Court revisited § 1983 by examining local government liability under that statute.<sup>105</sup> Female employees of the Department of Social Services and Board of Education of New York City complained that the department forced pregnant employees to take unpaid leave before the employees were required.<sup>106</sup> The issue before the Court was whether local government officials were "persons" able to be sued under § 1983.<sup>107</sup> In order to answer this question, the Court analyzed § 1983's language and legislative history.<sup>108</sup>

The Court examined debates, conference reports, and comments from congressional representatives to determine § 1983's scope.<sup>109</sup> The Court concluded that § 1983 should be "broadly construed" for all rights that are federally protected.<sup>110</sup> Although this holding did not explain whether in-

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<sup>101</sup> *Carter*, 114 U.S. at 323.

<sup>102</sup> 498 U.S. 439 (1991).

<sup>103</sup> 42 U.S.C. § 1983 (2006).

<sup>104</sup> 436 U.S. 658 (1978).

<sup>105</sup> *Id.* at 690-91.

<sup>106</sup> *Id.* at 660-61.

<sup>107</sup> *Id.* at 662.

<sup>108</sup> *Id.* at 665-94.

<sup>109</sup> *Id.*

<sup>110</sup> *Monell*, 436 U.S. at 685-86, 690-701 ("[Section 1983] was intended to provide a remedy, to be broadly construed, against all forms of official violation of federally protected rights. Therefore, absent

fringements of constitutional rights could be brought under § 1983, *Monell's* significance lies in its broad interpretation of § 1983 and its analysis of the legislative history.

The Court continued its progression toward a broad interpretation of § 1983 in *Maine v. Thiboutot*.<sup>111</sup> In *Thiboutot*, a set of parents alleged that Maine and its commissioner of human services violated the Social Security Act by depriving them of welfare benefits.<sup>112</sup> The parents sought relief under § 1983, and the question before the Court was whether § 1983 encompassed claims for violations of federal law.<sup>113</sup>

The Court first noted that the plain meaning of § 1983 and the lack of any modifiers in the statute indicated that Congress intended to cover violations of federal laws.<sup>114</sup> The Court explained that even if the language of § 1983 was ambiguous, legal precedent demonstrated that § 1983 “broadly encompasses violations of federal statutory as well as constitutional law.”<sup>115</sup>

The Court specifically noted that in the text of § 1983 Congress attached no limitation on the phrase “immunities secured by the Constitution and laws.”<sup>116</sup> However, Maine and its commissioner of human services argued that § 1983 should be limited to violations of “civil rights or equal protection laws.”<sup>117</sup> The Court rejected this argument.<sup>118</sup> After conducting a brief analysis of the legislative history of § 1983, the Court concluded that there was no indication that Congress intended to limit the broad plain meaning of the statute.<sup>119</sup> The legislative history indicated that congressional representatives gave speeches expressly identifying and discussing the broad language of § 1983.<sup>120</sup> Further, the Court noted that Congress remained silent as the Court continued to give § 1983 an expansive scope.<sup>121</sup>

More than one hundred years after *Carter*, in *Dennis v. Higgins*, the Supreme Court analyzed whether a plaintiff could bring a Commerce Clause violation pursuant to § 1983.<sup>122</sup> The motor carrier in the case owned tractors and trailers registered in Ohio but operated in Nebraska.<sup>123</sup> Nebraska instituted retaliatory taxes on motor carriers who operated vehicles regis-

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a clear statement in the legislative history . . . —which simply is not present—there is no justification for excluding municipalities from the ‘persons’ covered by [§ 1983].”).

<sup>111</sup> 448 U.S. 1 (1980).

<sup>112</sup> *Id.* at 2-3.

<sup>113</sup> *Id.* at 3-4.

<sup>114</sup> *Id.* at 4-7.

<sup>115</sup> *Id.* at 4.

<sup>116</sup> *Id.* (quoting 42 U.S.C. § 1983).

<sup>117</sup> *Thiboutot*, 448 U.S. at 6.

<sup>118</sup> *Id.* at 6-8.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 7-8.

<sup>121</sup> *Id.* at 8.

<sup>122</sup> 498 U.S. 439, 440 (1991).

<sup>123</sup> *Id.* at 441.

tered outside of Nebraska in the state.<sup>124</sup> The motor carrier claimed the taxes placed an unlawful burden on interstate commerce and sought to hold the Nebraska Department of Motor Vehicles liable under § 1983.<sup>125</sup>

The Supreme Court of Nebraska, believing it was following existing precedent, held that there was no § 1983 cause of action for alleged Commerce Clause violations because the Commerce Clause operates as an allocation of power and does not confer individual rights.<sup>126</sup> When the U.S. Supreme Court decided to hear *Dennis*, there was a split among the circuits as to whether the Commerce Clause violations could be brought under § 1983.<sup>127</sup>

The U. S. Supreme Court overruled the Nebraska Supreme Court decision by focusing on the language of § 1983 and the broad interpretation given to the section in *Monell*.<sup>128</sup> The Court stated that a broad interpretation of § 1983 was necessary given the language and the legislative history of the statute.<sup>129</sup> The Court rejected arguments that the Commerce Clause simply allocated power between the federal governments and states but did not grant individual rights.<sup>130</sup> In its analysis of whether the Commerce Clause conferred individual rights, the Court found persuasive the fact that individuals who were injured by Commerce Clause violations could obtain injunctive and declaratory relief.<sup>131</sup>

The dissent in *Dennis* interpreted *Carter* as holding that a plaintiff could not bring a Contracts Clause claim pursuant to § 1983 because the Contracts Clause did not secure individual rights.<sup>132</sup> The dissent stated the same argument was true of the Commerce Clause, and that the Commerce Clause offered even less of a basis for the protection of individual rights through the Constitution than the Contracts Clause.<sup>133</sup>

The majority responded to the dissent's invocation of *Carter* by noting that the Court had already given *Carter* a narrow reading<sup>134</sup> in *Chapman v. Houston Welfare Rights Organization*.<sup>135</sup> At issue in *Chapman* was federal jurisdiction over state welfare regulations, and the Court discussed *Carter*

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Dennis v. State*, 451 N.W.2d 676, 678 (Neb. 1990) (quoting *Consol. Freightways Corp. of Del. v. Kassel*, 730 F.2d 1139, 1144 (8th Cir. 1984)), *rev'd sub nom. Dennis*, 498 U.S. 439.

<sup>127</sup> *Dennis*, 498 U.S. at 442.

<sup>128</sup> *Id.* at 443.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 447.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 457 (Kennedy, J., dissenting).

<sup>133</sup> *Dennis*, 498 U.S. at 458.

<sup>134</sup> *Id.* at 451 n.9 (majority opinion).

<sup>135</sup> 441 U.S. 600 (1979).

in relation to federal jurisdiction of claims under § 1983.<sup>136</sup> The Court in *Chapman* characterized *Carter* as holding that

as a matter of pleading . . . the particular cause of action set up in the plaintiff's pleading was in contract and was not to redress deprivation of the "right secured to him by [the Contracts Clause] of the Constitution" . . . , to which he had "chosen not to resort."<sup>137</sup>

The *Dennis* court explained that *Carter*'s holding was limited because the Court in *Carter* invoked the Contracts Clause for the plaintiff, instead of the plaintiff bringing a Contracts Clause claim pursuant to § 1983 of his own accord.<sup>138</sup> Thus, the Court in *Dennis* took the view that the plaintiff in *Carter* did not assert a Contracts Clause claim, but instead a common law contracts claim.<sup>139</sup> The Court implied that had the plaintiff in *Carter* sought to assert his rights under the Contracts Clause, the case might have turned out differently.<sup>140</sup>

About ten years after *Chapman*, the Supreme Court heard *Golden State Transit Corp. v. City of Los Angeles*<sup>141</sup> and developed a test to clarify whether a violation of a constitutional or federal right allowed a § 1983 cause of action.<sup>142</sup> The City of Los Angeles violated the National Labor Relations Act when it conditioned a renewal of a taxicab franchise agreement on the outcome of a labor dispute between the taxicab company and its workers.<sup>143</sup> The issue before the Court was whether the underlying claim could be brought pursuant to § 1983.<sup>144</sup> The Court fashioned a two-factor test that ensures first that the plaintiff is averring a violation of a federal right and second that Congress has not explicitly excluded a § 1983 remedy for the violation.<sup>145</sup> Although the test targeted statutes created by Congress, the Court in *Golden State* explicitly stated that the test applied to constitutional rights.<sup>146</sup> Subsequently, the Court in *Dennis* applied the test to the Commerce Clause.<sup>147</sup>

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<sup>136</sup> 441 U.S. at 603, 612-13 & n. 29.

<sup>137</sup> *Id.* at 613 n.29 (quoting *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 526-27 (1939) (opinion of Stone, J.)).

<sup>138</sup> *Dennis*, 498 U.S. at 451 n.9.

<sup>139</sup> MARTIN A. SCHWARTZ, SECTION 1983 LITIGATION CLAIMS & DEFENSES § 3.03(B)(4) (2013).

<sup>140</sup> *Id.*

<sup>141</sup> 493 U.S. 103 (1989).

<sup>142</sup> *Id.* at 106-07.

<sup>143</sup> *Id.* at 104.

<sup>144</sup> *Id.* at 104-05.

<sup>145</sup> *Id.* at 106-07.

<sup>146</sup> *Id.* at 106.

<sup>147</sup> *Dennis v. Higgins*, 498 U.S. 439, 448-451 (1991); *Golden State*, 493 U.S. at 106 ("A determination that § 1983 is available to remedy a statutory or constitutional violation involves a two-step inquiry.").

Describing the federal right portion of the test, the Court stated that it would be relevant to ask whether the asserted right binds the government or is merely a “congressional preference for certain kinds of treatment.”<sup>148</sup> Further, the Court found relevant whether the asserted right was intended as a benefit to the potential plaintiff.<sup>149</sup> In regard to the explicit exclusion aspect of the test, the Court stated that the mere availability of alternate resolution methods for the plaintiff does not demonstrate that Congress explicitly excluded § 1983 as a remedy.<sup>150</sup> Instead, a § 1983 claim must be contradictory to the congressional framework.<sup>151</sup>

E. *Lower Courts Weigh in on Contracts Clause Claims Brought Under Section 1983*

Because the Supreme Court has applied § 1983 broadly, lower courts face a dilemma when a case is brought pursuant to § 1983 and they are asked to decide whether individual rights have been infringed under the Contracts Clause. Lower courts must handle the confusion surrounding the *Carter* precedent—they must decide whether *Carter* holds that Contracts Clause claims cannot be brought pursuant to § 1983, or whether *Carter* is limited to a pleading issue. Additionally, lower courts observe the progression toward a broad interpretation of § 1983 in the Supreme Court jurisprudence. These two considerations cause a dilemma for lower courts when a plaintiff seeks to bring a Contracts Clause claim pursuant to § 1983. This Section analyzes how lower courts have responded to this dilemma.

In *TM Park Avenue Associates v. Pataki*,<sup>152</sup> the plaintiffs brought a § 1983 claim for an alleged violation of their rights under the Contracts Clause.<sup>153</sup> The claim concerned a New York statute that affected rental payments under a lease that had not yet expired.<sup>154</sup> The court began by examining whether the Contracts Clause claim could be brought pursuant to § 1983.<sup>155</sup>

The court gave a detailed account of *Carter* and the *Carter* Court’s reasoning.<sup>156</sup> The court acknowledged that, on its face, *Carter* held that a plaintiff cannot bring a Contracts Clause claim under § 1983.<sup>157</sup> However,

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<sup>148</sup> *Golden State*, 493 U.S. at 106.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 107.

<sup>152</sup> 44 F. Supp. 2d 158 (N.D.N.Y. 1999), *vacated as moot*, 214 F.3d 344 (2d Cir. 2000).

<sup>153</sup> *Id.* at 160.

<sup>154</sup> *Id.* at 159-60.

<sup>155</sup> *Id.* at 160-64.

<sup>156</sup> *Id.* at 161-62.

<sup>157</sup> *Id.* (“[U]pon initial impression, *Carter* seemingly holds that a claim for the violation of the Contract Clause may not be maintained under § 1983.”).



after an analysis of precedent, the court came to the same conclusion as the Supreme Court in *Dennis: Carter* did not hold that Contracts Clause claims could not be brought pursuant to § 1983.<sup>158</sup> Instead, the court agreed that the holding in *Carter* should be limited to its facts because the plaintiff failed to plead a deprivation of his rights under the Contracts Clause.<sup>159</sup>

The court also analyzed the Contracts Clause under the factors found in *Golden State*. The court found that the *Golden Gate* factors led to the conclusion that Contracts Clause claims can be brought pursuant to § 1983.<sup>160</sup> First, the court stated that the Contracts Clause obligates the government and thus creates a federal right.<sup>161</sup> Second, the court found that the Contracts Clause's intent is to benefit plaintiffs like those in *Pataki*.<sup>162</sup> Additionally, the court found it was compelling that Commerce Clause claims, which the court stated provide a less convincing basis for § 1983 applicability, could be brought pursuant to § 1983.<sup>163</sup> The court felt that if Commerce Clause claims could be brought pursuant to § 1983 claims, then Contracts Clause claims should be as well.<sup>164</sup>

Thus, the district court found that the *Dennis* analysis also applied to Contracts Clause claims.<sup>165</sup> Even though the Second Circuit vacated the district court's holding in *TM Park* due to pending action from the New York Court of Claims, which could possibly have rendered the Contracts Clause claim moot, the case is still important for its analysis of *Carter* and § 1983 jurisprudence applied to the Contracts Clause.<sup>166</sup>

In 2003, the Ninth Circuit heard a case regarding a 1938 franchise agreement between the Southern California Gas Company and the City of Santa Ana.<sup>167</sup> The city granted the utility the right to build and maintain pipes under the city streets, and the city received a portion of the utility's profits.<sup>168</sup> Under the agreement, the utility was required to use best efforts to use a "tunnel or bore" to avoid disrupting the foundation of the streets.<sup>169</sup> However, the utility had agreed that if the conditions forced it to perform trench or excavation work that would damage the foundation, the utility

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<sup>158</sup> *TM Park*, 44 F. Supp. 2d at 161-62.

<sup>159</sup> *Id.* at 162 ("[T]he *Carter* Court did not hold that § 1983 was not a proper avenue to redress a violation of the Contract Clause, but only that the facts in *Carter*'s complaint failed to show a cause of action within § 1983's terms.").

<sup>160</sup> *Id.* at 163.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* at 164.

<sup>164</sup> *TM Park*, 44 F. Supp. 2d at 164.

<sup>165</sup> *Id.* at 163-64.

<sup>166</sup> See *TM Park Ave. Assocs. v. Pataki*, 214 F.3d 344, 348-50 (2d Cir. 2000).

<sup>167</sup> *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 887 (9th Cir. 2003) (per curiam).

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* at 887-88.

would immediately make any necessary repairs.<sup>170</sup> The utility was forced to perform excavation, which damaged the foundation and imposed repair costs.<sup>171</sup> The utility paid for these repairs, and the repairs were made to the satisfaction of the city engineer.<sup>172</sup>

In 2001, the city adopted an ordinance requiring advanced payments in order to perform trench or excavation work.<sup>173</sup> The utility contended that this “ordinance substantially impair[ed]” its contractual rights under the franchise agreement in violation of the Contracts Clause of the Constitution.<sup>174</sup> The utility argued that, under the ordinance, it was “double-charge[d]” for the right to do trench or excavation work because it already possessed this right under the franchise agreement.<sup>175</sup> The utility further argued that the ordinance conflicted with the method for repairs outlined in the franchise agreement.<sup>176</sup> To seek vindication for the alleged Contracts Clause violation, the utility brought its claim pursuant to § 1983.<sup>177</sup>

The Ninth Circuit stated that the city’s argument that plaintiffs could not bring Contracts Clause claims pursuant to § 1983 was “without merit.”<sup>178</sup> The court cited *Dennis* to demonstrate the broad interpretation given to § 1983.<sup>179</sup> Additionally, the court addressed *Carter* by stating its decision was compatible with that case.<sup>180</sup> The court did this in a similar manner as in *Dennis* by stating that the Supreme Court had given *Carter* a narrow interpretation.<sup>181</sup>

However, other courts have come to different conclusions regarding Contracts Clause claims brought pursuant to § 1983. In *Andrews v. Anne Arundel County*<sup>182</sup> former elected and appointed officials brought a Contracts Clause claim pursuant to § 1983.<sup>183</sup> The officials brought the claim after the County Council approved a retroactive reduction in their pension benefits.<sup>184</sup> The officials sought injunctive relief from the Council bill.<sup>185</sup> The court first established that the Council bill should be analyzed as an

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<sup>170</sup> *Id.* at 888.

<sup>171</sup> See Appellee’s Brief at 8, *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885 (9th Cir. 2003) (Nos. 02-55885 & 02-56298).

<sup>172</sup> *Id.*

<sup>173</sup> *S. Cal. Gas Co.*, 335 F.3d at 888.

<sup>174</sup> *Id.* at 890.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.* at 886.

<sup>178</sup> *Id.* at 887.

<sup>179</sup> *S. Cal. Gas Co.*, 336 F.3d at 887.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> 931 F. Supp. 1255 (D. Md. 1996).

<sup>183</sup> *Id.* at 1257-58.

<sup>184</sup> *Id.* at 1257.

<sup>185</sup> *Id.*

enforceable contract for Contracts Clause purposes.<sup>186</sup> The court then held that the impairment of the plaintiff's contractual rights was substantial and that the county's impairment of the contract was not reasonable or necessary.<sup>187</sup> Accordingly, the court held that the county's bill violated the Contracts Clause.<sup>188</sup>

After determining that the county infringed upon the plaintiff's constitutional rights, the court analyzed whether the plaintiffs asserted a valid § 1983 claim.<sup>189</sup> The court pointed out that the plaintiffs invoked § 1983 to seek attorney's fees and costs.<sup>190</sup> The court then—in only one sentence—acknowledged *Carter*, refused to overturn precedent or predict that the Supreme Court would overrule *Carter*, and granted summary judgment for the County on the issue.<sup>191</sup> The court did so without lending any analysis to the broad interpretation the Supreme Court gave to other § 1983 claims, or the narrow interpretation the *Dennis* court gave to *Carter*.<sup>192</sup> The plaintiffs raised both of those arguments in their brief.<sup>193</sup>

In 2011, the Fourth Circuit reached a similar conclusion. In *Crosby v. City of Gastonia*,<sup>194</sup> a group of retired police officers sought relief for a failed supplemental pension plan.<sup>195</sup> The North Carolina General Assembly enacted the plan and entrusted it to a board of trustees.<sup>196</sup> The assembly amended the act several times, and various agencies posted information regarding the supplemental pension plan in an "Employee Information Guide."<sup>197</sup> The agencies distributed this information through pamphlets handed out to potential employees and on department websites.<sup>198</sup>

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<sup>186</sup> *Id.* at 1265.

<sup>187</sup> *Id.* at 1265-67.

<sup>188</sup> *Andrews*, 931 F. Supp. at 1267.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.* ("[P]laintiffs have sought to assert a claim under 42 U.S.C. § 1983, admittedly, in commendable candor, solely to provide a basis for seeking their attorneys' fees and costs under 42 U.S.C. § 1988.").

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> Brief of Appellees/Cross-Appellants at 40-45, *Andrews v. Anne Arundel Cnty.*, 931 F. Supp. 1255 (D. Md. 1996) (Nos. 96-2463(L) & 96-2465 (Cross-Appeal)). The plaintiffs argued that "the Supreme Court has sufficiently narrowed its holding in *Carter* such that violations of the Contract Clause are now redressable under 42 U.S.C. § 1983." *Id.* at 45. The plaintiffs noted that the Supreme Court "took special pains to make clear that the scope of § 1983 extended beyond the First and Fourteenth Amendments to other provisions of the Federal Constitution, which obviously includes . . . the Contract Clause." *Id.* at 43 (internal quotation marks omitted).

<sup>194</sup> 635 F.3d 634 (4th Cir. 2011).

<sup>195</sup> *Id.* at 636.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.* at 636-37.

When the supplemental pension plan began to have funding problems, the board of trustees instituted several alterations attempting to save it.<sup>199</sup> Despite these attempts, the plan's funding was eventually depleted.<sup>200</sup> Retirees sought relief for a Contracts Clause violation through § 1983, alleging that the city interfered with their contractual rights.<sup>201</sup> Before analyzing the Contracts Clause claim in depth, the court held that § 1983 claims under the Contracts Clause are limited to instances where a state does not allow a citizen any opportunity to seek a judicial determination of whether a constitutional impairment has taken place.<sup>202</sup> In reaching this conclusion, the court relied exclusively on *Carter*.<sup>203</sup> The court acknowledged that its decision would result in a circuit split and criticized *City of Santa Ana* as relying solely on the *Dennis* dissent, which gave *Carter* a narrow interpretation.<sup>204</sup>

The court stated that the Contracts Clause was not at issue in *Dennis*, and consequently, the precedential effect of *Carter* remained intact.<sup>205</sup> The court further addressed *Dennis*'s narrow reading of *Carter* as a framework for analyzing other constitutional claims under § 1983.<sup>206</sup> The court agreed that *Carter* should not be used to determine whether § 1983 is applicable to other alleged constitutional violations, but the court was firm in its position that *Carter* prohibited plaintiffs from bringing Contracts Clause claims under § 1983.<sup>207</sup>

## II. *CARTER*'S PROPER LIMITED INTERPRETATION

This Part discusses how courts have responded to Contracts Clause claims brought pursuant to § 1983. It discusses the dispute regarding the scope of the holding in *Carter*, and it argues that the holding in *Carter* is limited and narrow. Further, this Part argues that the Supreme Court cases governing § 1983-related claims demonstrate that § 1983 should be broadly construed and that the notions behind *Carter* no longer control § 1983 jurisprudence. Since *Carter*, § 1983's scope has expanded and the narrow view of § 1983 expressed in *Carter* is no longer representative of the Supreme Court's § 1983 jurisprudence. While the contemporary § 1983 jurisprudence relates to other constitutional provisions and federal statutes, this Part argues that it should apply to the Contracts Clause as well.

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<sup>199</sup> *Id.* at 637.

<sup>200</sup> *Crosby*, 635 F.3d at 637.

<sup>201</sup> *Id.* at 637-38.

<sup>202</sup> *Id.* at 640.

<sup>203</sup> *Id.* at 639-41.

<sup>204</sup> *Id.* at 640-41.

<sup>205</sup> *Id.* at 640.

<sup>206</sup> *Crosby*, 635 F.3d at 640-41.

<sup>207</sup> *Id.* at 641.

A. *Carter Reexamined and Section 1983 Jurisprudence as Applied to the Contracts Clause*

In instances when courts hold that Contracts Clause claims cannot be brought pursuant to § 1983, they rely primarily on *Carter*.<sup>208</sup> However, a dispute has arisen regarding what proposition *Carter* actually stands for. This dispute may undermine the rationale some lower courts have used while holding that Contracts Clause claims cannot be brought pursuant to § 1983. Some courts believe that *Carter* plainly states that a Contracts Clause claim cannot be brought pursuant to § 1983.<sup>209</sup> Other courts believe that *Carter* merely held that, as a matter of pleading, the particular plaintiff in that case could not gain relief under § 1983 because he had not invoked the Contracts Clause.<sup>210</sup>

This dispute stems from the fact that the plaintiff in *Carter* did not raise the Contracts Clause claim.<sup>211</sup> Instead, the *Carter* Court determined, *sua sponte*, that the Contracts Clause protected the rights the plaintiff invoked.<sup>212</sup> The Court found that the plaintiff did not properly resort to the Clause.<sup>213</sup> Although the *Carter* Court engaged in a brief discussion regarding the Contracts Clause and its lack of according individual rights,<sup>214</sup> courts after *Carter* have interpreted it as holding that as a matter of pleading

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<sup>208</sup> See, e.g., *id.* at 640 (“As a result of the Supreme Court’s holding in *Carter*, then, recourse to § 1983 for the deprivation of rights secured by the Contracts Clause is limited . . . .”); *Andrews v. Anne Arundel Cnty.*, 931 F. Supp. 1255, 1267 (D. Md. 1996) (citing *Carter* as the reason for deciding in the county’s favor).

<sup>209</sup> See, e.g., *Crosby*, 635 F.3d at 640-41 (“Justice White’s reference to the ‘narrow ruling’ accorded *Carter* was intended to address . . . claims invoking parts of the Constitution other than the Contracts Clause . . . .”); *Andrews*, 931 F. Supp. at 1267 (explaining that *Carter* held that “no § 1983 claim lies for a Contract Clause violation”).

<sup>210</sup> See, e.g., *Dennis v. Higgins*, 498 U.S. 439, 451 n.9 (1991) (stating that the decision in *Carter* has been given a narrow reading that applies only to the plaintiff’s particular pleading); *Chapman v. Hous. Welfare Rights Org.*, 441 U.S. 600, 613 n.29 (1979) (“[I]t was held as a matter of pleading that the particular cause of action set up in the plaintiff’s pleading was in contract and was not to redress deprivation of the ‘right secured to him by that clause of the Constitution’ [the contract clause], to which he had ‘chosen not to resort.’” (second alteration in original) (quoting *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 526-27 (1939) (opinion of Stone, J.))); *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 887 (9th Cir. 2003) (per curiam) (“The Supreme Court has explicitly given *Carter* a narrow reading . . . .”); *TM Park Ave. Assocs. v. Pataki*, 44 F. Supp. 2d 158, 161-62 (N.D.N.Y. 1999) (“The Supreme Court affirmed the dismissal of *Carter*’s action upon the limited ground that *Carter* failed to state a claim under § 1983 because it only pleaded a breach of contract claim.”), *vacated as moot*, 214 F.3d 344 (2d Cir. 2000).

<sup>211</sup> *Carter v. Greenhow*, 114 U.S. 317, 318, 322 (1885).

<sup>212</sup> *Id.* at 322.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

the plaintiff's cause of action was deficient because he chose not to resort to a Contracts Clause claim.<sup>215</sup>

Of particular import is the fact that the Supreme Court itself acknowledged a narrow reading of *Carter* in *Dennis* and *Chapman*.<sup>216</sup> Neither case dealt with Contract Clause claims, but both cases limited *Carter* to merely holding as a matter of pleading that the plaintiff did not invoke the Contracts Clause himself, and thus the plaintiff did not seek redress under the Constitution.<sup>217</sup> However, as the dissent in *Dennis* pointed out, in both *Dennis* and *Chapman*, *Carter* was solely addressed in short footnotes, and a deep analysis of the Court's holding was not present in either case.<sup>218</sup> Although both the *Dennis* and *Chapman* decisions lack extensive analysis of *Carter*, these deficiencies could be due to the ease with which those courts were able to determine *Carter* dealt with a pleading issue or the well-settled nature of that proposition.

The Supreme Court's narrow reading of *Carter* undermines the precedential value of *Carter* in relation to Contracts Clause claims and § 1983. This dispute also undercuts the reliability of courts' holdings that plaintiffs cannot bring Contracts Clause claims pursuant to § 1983.<sup>219</sup> Those courts rely on a purported view of *Carter*, believing that *Carter* stands for the straightforward assertion that Contracts Clause claims cannot be brought pursuant to § 1983.<sup>220</sup> If the Court in *Carter* did not hold that Contracts Clause claims cannot be brought pursuant to § 1983, then there is no longer a reason why Contracts Clause claims should not be governed by the § 1983 line of cases that give the section a broad scope.

However, even if *Carter* held that plaintiffs cannot bring Contracts Clause claims pursuant to § 1983, the notions underlying *Carter* have been rejected by contemporary Supreme Court jurisprudence regarding § 1983 claims for other constitutional and statutory provisions. Although these cases do not involve the Contracts Clause, the rationale should apply to it as

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<sup>215</sup> See, e.g., *Dennis*, 498 U.S. at 451 n.9 (stating that the plaintiff's pleading in *Carter* prevented him from securing a right under § 1983); *Chapman*, 441 U.S. at 613 n.29 (stating that the plaintiff's pleading was in contract, rather than to "redress deprivation of the 'right secured to him by . . . [the contract clause]'" (second alteration in original)); *S. Cal. Gas Co.*, 336 F.3d at 887 (reiterating that *Carter* "can only be read to have 'held as a matter of pleading'" that the plaintiff had no cause of action under § 1983 (quoting *Dennis*, 498 U.S. at 451 n.9)).

<sup>216</sup> *Dennis*, 498 U.S. at 451 n.9; *Chapman*, 441 U.S. at 613 n.29. (quoting *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 526-27 (1939) (opinion of Stone, J.)).

<sup>217</sup> *Supra* note 216.

<sup>218</sup> See *Dennis*, 498 U.S. at 459 (Kennedy, J., dissenting) ("The majority rejects the weight of historical evidence in favor of scattered statements in our cases that refer to a 'right' to engage in interstate commerce.").

<sup>219</sup> See *Crosby v. City of Gastonia*, 635 F.3d 634, 640 (4th Cir. 2011) (relying on the *Carter* holding to find that individuals have limited recourse under § 1983); *Andrews v. Anne Arundel Cnty.*, 931 F. Supp. 1255, 1258 (D. Md. 1996) (relying on the *Carter* decision to find that the plaintiff could not bring suit under § 1983).

<sup>220</sup> See *Crosby*, 635 F.3d at 639-41; *Andrews*, 931 F. Supp. at 1258.

well because the courts have expressly indicated a wide scope to their holdings. A look at the development of the broad interpretation to § 1983 demonstrates that it applies to the Contracts Clause.

The Supreme Court decided *Carter* in 1885, shortly after Congress created the predecessor to § 1983 in 1871.<sup>221</sup> The early interpretation the Supreme Court gave to the statute was narrow and tied to traditional civil rights.<sup>222</sup> However, the Supreme Court no longer follows this early interpretation.<sup>223</sup> Courts have tended to rely more on the comprehensive language in § 1983, which refers to “[e]very person who, under color . . . of any State [law] . . . subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.”<sup>224</sup>

This progression is due in large part to the express language of § 1983. Importantly, § 1983’s broad language applies equally regardless of whether the Contracts Clause is at issue, or whether the constitutional clauses and federal laws examined in the § 1983 cases discussed earlier in this Comment are at issue. The language does not hint at any limitation to the reach of the statute in relation to constitutional provisions. In fact, the word “any” intimates a broad reach for § 1983, one which would not be limited or dependent on traditional civil rights claims. The recent jurisprudence on § 1983 places substantial reliance on this language.<sup>225</sup>

For instance, in *Thiboutot* the Court relied heavily on § 1983’s plain language.<sup>226</sup> The Court found pertinent that there were no modifiers in § 1983 to limit its broad language.<sup>227</sup> Additionally, *Thiboutot* analyzed the legislative history of § 1983.<sup>228</sup> The Court found no contrary intent to a

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<sup>221</sup> Jack M. Beermann, *A Critical Approach to Section 1983 with Special Attention to Sources of Law*, 42 STAN. L. REV. 51, 51 (1989).

<sup>222</sup> Brian Thomas Atkinson, Note, *Dennis v. Higgins: Commerce Clause “Rights” Actionable Under Section 1983*, 70 N.C. L. REV. 916, 930-31 (1992).

<sup>223</sup> Kalscheur, *supra* note at 14, at 182.

<sup>224</sup> 42 U.S.C. § 1983 (2006).

<sup>225</sup> *See, e.g.*, *Dennis v. Higgins*, 498 U.S. 439, 451 n.9 (1991) (stating that the dissent was incorrect to rely on *Carter* for the proposition “that the Commerce Clause does not secure any rights, privileges, or immunities,” based on the specificity of the pleading standards seen in *Carter*); *Chapman v. Hous. Welfare Rights Org.*, 441 U.S. 600, 613 n.29 (1979) (quoting *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 526-27 (1939) (opinion of Stone, J.)) (describing the broad protections secured by the Constitution); *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 887 (9th Cir. 2003) (“Section 1983 provides for liability against any person acting under color of law who deprives another ‘of any rights, privileges, or immunities secured by the Constitution and laws’ of the United States.”); *TM Park Ave. Assocs. v. Pataki*, 44 F. Supp. 2d 158, 161-62 (N.D.N.Y. 1999) (describing the limited holding in *Carter*), *vacated as moot*, 214 F.3d 344 (2d Cir. 2000).

<sup>226</sup> *Maine v. Thiboutot*, 448 U.S. 1, 4-6 (1980).

<sup>227</sup> *Id.* at 4.

<sup>228</sup> *Id.* at 6-7.

broad scope of § 1983 in the legislative history and concluded that the legislators intended this broad scope.<sup>229</sup>

In *Dennis*, the Court applied this broad interpretation to the Commerce Clause, a clause that is similar in many respects to the Contracts Clause. As the dissent in *Dennis* noted, both of the Clauses are limitations on governmental power and the Commerce Clause may be an even “less obvious source of rights for purposes of § 1983.”<sup>230</sup>

The Court in *Dennis* did not distinguish the Commerce Clause from the Contracts Clause.<sup>231</sup> The majority did not attempt to contrast the securities protected in the Commerce Clause from those protected in the Contracts Clause, or find any other ground for differentiation.<sup>232</sup> This seems to demonstrate that *Dennis* intended a broad scope for § 1983, and not a holding limited to the Commerce Clause. It seemingly would have been easy for the Court in *Dennis* to limit its holding to Commerce Clause violations and in this way distinguish *Carter*. However, the Court instead insisted upon a broad scope to § 1983.<sup>233</sup>

Further insight into the broad scope of § 1983 can be found in *Golden State*. In *Golden State*, the Court created a two-part test for whether a constitutional violation could be brought pursuant to § 1983.<sup>234</sup> Although *Golden State*'s test was applied to a federal statute, the Court explicitly stated that the test applied to constitutional violations.<sup>235</sup> Indeed, since the *Golden State* decision, the test has been applied to constitutional violations.<sup>236</sup> This test asks whether a plaintiff is asserting a violation of a federal right and if Congress has specifically excluded a § 1983 remedy for the alleged violation.<sup>237</sup>

The Court in *Dennis* acknowledged the *Golden State* test and applied it to the Commerce Clause.<sup>238</sup> The Court focused on the respondent's argument that the Commerce Clause did not confer federal rights within the meaning of § 1983.<sup>239</sup> The Court rejected this argument because a right of action is provided for individuals whose rights under the Commerce Clause have been violated.<sup>240</sup>

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<sup>229</sup> *Id.* at 8.

<sup>230</sup> *Dennis*, 498 U.S. at 458 (Kennedy, J., dissenting).

<sup>231</sup> *Id.* at 446-51 (majority opinion).

<sup>232</sup> *Id.*

<sup>233</sup> *Id.* at 443-46.

<sup>234</sup> *Golden State Transit Corp. v. City of L.A.*, 493 U.S. 103, 106-07 (1989).

<sup>235</sup> *Id.* at 106 (“A determination that § 1983 is available to remedy a statutory or constitutional violation involves a two-step inquiry.”).

<sup>236</sup> *Dennis*, 498 U.S. at 448-51.

<sup>237</sup> *Golden State*, 493 U.S. at 106-07.

<sup>238</sup> *Dennis*, 498 U.S. at 448-49.

<sup>239</sup> *Id.* at 449-50.

<sup>240</sup> *Id.* at 450.



An application of the *Golden Gate* test to the Contracts Clause demonstrates that § 1983 would be available to remedy a Contracts Clause violation. The first question asked by the *Golden State* test is whether the provision grants a federal right.<sup>241</sup> In relation to the Commerce Clause, the Court in *Dennis* stated that “the Commerce Clause of its own force imposes limitations on state regulation of commerce and is the source of a right of action in those injured by regulations that exceed such limitations.”<sup>242</sup> This is precisely the effect that the Contracts Clause has in relation to retroactive infringements on contractual rights.<sup>243</sup> Additionally, the dissent in *Dennis* pointed out that the Contracts Clause is a more apparent source of rights than the Commerce Clause.<sup>244</sup>

The second question asked by the *Golden State* test is whether Congress has explicitly excluded a § 1983 remedy for the constitutional provision. In the case of the Contracts Clause, there is no evidence that Congress has explicitly excluded a remedy.<sup>245</sup> The counterargument would point to the narrow interpretation that was given to § 1983 at the time of its inception.<sup>246</sup> However, as this Comment has demonstrated, this narrow interpretation initially given to § 1983 has given way to a broad interpretation that has been embraced by the Supreme Court in several cases.

*Monell*, *Thibotout*, *Dennis*, and *Golden State* demonstrate the Supreme Court’s broad interpretation of § 1983. This interpretation does not depend upon the actual constitutional protections or federal statutes at issue in those cases. Instead, the broad interpretation should apply to any § 1983 claim. The interplay between this broad interpretation and the dispute concerning *Carter*’s limited holding demonstrates why courts disagree on Contracts Clause claims and § 1983.

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<sup>241</sup> *Golden State*, 493 U.S. at 106.

<sup>242</sup> *Dennis*, 498 U.S. at 450.

<sup>243</sup> *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 242 (1978) (stating that the Contracts Clause “must be understood to impose *some* limits upon the power of a State to abridge existing contractual relationships, even in the exercise of its otherwise legitimate police power”).

<sup>244</sup> *Dennis*, 498 U.S. at 458 (Kennedy, J. dissenting) (“The Commerce Clause is, if anything, a less obvious source of rights [than the Contracts Clause] for purposes of § 1983, as its text only implies a limitation upon state power.”).

<sup>245</sup> The court in *TM Park* applied the *Golden State* test to a Contracts Clause claim and found that the application of the test favored allowing Contracts Clause claims pursuant to § 1983. 44 F. Supp. 2d 158, 163-64 (N.D.N.Y. 1999), *vacated as moot*, 214 F.3d 344 (2d Cir. 2000). While the Court did not expressly indicate that Congress has not excluded a remedy, it did so impliedly by applying the test and finding that Contracts Clause claims could be brought pursuant to § 1983. *Id.*

<sup>246</sup> *Atkinson*, *supra* note 222, at 930.

## B. *Application to Circuit Split*

Much like § 1983's application to the Commerce Clause prior to *Dennis*, a circuit split has emerged regarding § 1983 and Contracts Clause claims. This Section will analyze the circuit court decisions in light of the dispute over the *Carter* holding and the broad scope given to § 1983.

The Ninth Circuit in *Southern California Gas Co.* relied on recent Supreme Court precedent giving § 1983 a broad interpretation to find that plaintiffs can bring a Contracts Clause claim pursuant to § 1983.<sup>247</sup> The court invoked *Monell* and *Dennis* to demonstrate that courts are to liberally construe § 1983.<sup>248</sup> In doing so, the court addressed the recent Supreme Court jurisprudence and determined that the rationale underlying this jurisprudence applied in equal force to the Contracts Clause.

Additionally, the court in *Southern California Gas Co.* addressed *Carter*.<sup>249</sup> The court relied on the fact that the Supreme Court itself gave *Carter* a narrow reading in *Dennis*.<sup>250</sup> By relying on the most recent Supreme Court decisions for the proper holding of *Carter* and the broad scope of § 1983, the court in *Southern California Gas Co.* addressed the realities of § 1983 jurisprudence and the Contracts Clause.

On the other hand, the Fourth Circuit in *Crosby* came to the opposite conclusion concerning Contracts Clause claims and § 1983. The court relied on *Carter* in holding that Contracts Clause claims cannot be brought pursuant to § 1983.<sup>251</sup> The court in *Crosby* acknowledged the narrow reading that *Dennis* and *Chapman* gave to *Carter*, but then dismissed this reading because it was not in the context of the Contracts Clause.<sup>252</sup>

This dismissal of the narrow reading given to *Carter* fails to sufficiently address the dispute surrounding *Carter*. The counterargument is that the court in *Crosby* simply showed deference to the *Carter* precedent because *Carter* has not been overturned or overruled. Further, neither *Dennis* nor *Chapman*, which gave *Carter* a narrow interpretation, discussed *Carter* in depth. However, any deference that *Crosby* extended to the *Carter* holding was excessive and ignores the subsequent interpretation of *Carter*.

Although *Dennis* was a Commerce Clause case, that Court faced the Contracts Clause precedent of *Carter* and noted that the holding of *Carter*

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<sup>247</sup> *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 886-87 (9th Cir. 2003) (per curiam).

<sup>248</sup> *Id.* at 887.

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Crosby v. City of Gastonia*, 635 F.3d 634, 640 (4th Cir. 2011) ("As a result of the Supreme Court's holding in *Carter*, then, recourse to § 1983 for the deprivation of rights secured by the Contracts Clause is limited to the discrete instances where a state has denied a citizen the opportunity to seek adjudication through the courts as to whether a constitutional impairment of a contract has occurred, or has foreclosed the imposition of an adequate remedy for an established impairment.").

<sup>252</sup> *Id.*

was narrowed by prior Supreme Court precedent.<sup>253</sup> The Court in *Dennis* did not merely fail to extend *Carter* to the Commerce Clause or distinguish the Commerce Clause from the Contracts Clause. Instead, the Court found that *Carter* had been narrowed to a pleading issue.<sup>254</sup>

Further, *Dennis* itself did not determine *Carter*'s holding. Rather, *Dennis* was relying on prior Supreme Court precedent that narrowed *Carter*'s holding.<sup>255</sup> Specifically, *Dennis* invoked *Chapman*, which limited *Carter* to a pleading issue.<sup>256</sup> Thus, the *Crosby* court's response that the narrow holding of *Carter* is limited to Commerce Clause violations ignores the Supreme Court precedent addressing *Carter*.

The court in *Crosby* also failed to pay adequate attention to the Supreme Court's change in jurisprudence in relation to § 1983 claims and ignored the broad interpretation that has pervaded recent § 1983 decisions. The court failed to adequately confront the expansive scope that § 1983 has been given in regard to constitutional and statutory violations. By simply stating that *Dennis* did not deal with a Contracts Clause claim, the court failed to confront the underlying rationale behind *Dennis* and other cases, such as *Monell* and *Thibotout*, which focuses on the broad text of § 1983.

In failing to address the recent § 1983 jurisprudence, the court also failed to apply the *Golden State* test. The application of this test leans in favor of plaintiffs being able to bring Contracts Clause claims pursuant to § 1983. This is because the Contracts Clause grants a federal right protected by § 1983, and Congress has not explicitly excluded Contracts Clause claims from a § 1983 remedy.<sup>257</sup>

Although cases such as *Monell*, *Thibotout*, and *Dennis* do not concern Contracts Clause claims, the rationale behind those cases should apply to Contracts Clause claims because those courts spoke in general terms about § 1983's scope.<sup>258</sup> *Dennis* and *Chapman* did not distinguish *Carter* based on the fact that it dealt with Contracts Clause claims. Instead, those cases decided that *Carter*'s holding was limited to matters of pleading and that the case was decided in the manner it was because the plaintiff failed to resort

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<sup>253</sup> *Dennis v. Higgins*, 498 U.S. 439, 451 n.9 (1991).

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> *Chapman v. Hous. Welfare Rights Org.*, 441 U.S. 600, 613 n.29 (1979) (quoting *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 526-27 (1939) (opinion of Stone, J.)).

<sup>257</sup> See *TM Park Ave. Assocs. v. Pataki*, 44 F. Supp. 2d 158, 163-64 (N.D.N.Y. 1999) (applying the *Golden State* test to a Contracts Clause claim and finding a § 1983 cause of action), *vacated as moot*, 214 F.3d 344 (2d Cir. 2000).

<sup>258</sup> See *Dennis*, 498 U.S. at 443-44 ("A broad construction of § 1983 is compelled by the statutory language." (footnote omitted)); *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980) (stating that the plain language of § 1983 does not portend a limited scope); *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 685-86, 690-701 (1978) (holding that § 1983 should be broadly construed for all federally protected rights).

to the Contracts Clause.<sup>259</sup> This demonstrates that those courts were applying their rationales to § 1983 generally, and consequently, to Contracts Clause claims as well.

Just as the Supreme Court resolved a circuit split in *Dennis* regarding Commerce Clause claims, the Court should resolve this Contracts Clause circuit split in a similar fashion and with an analogous rationale to allow plaintiffs to bring Contracts Clause claims pursuant to § 1983.

Casting aside the precedential factors favoring the use of § 1983 for alleged violations of the Contracts Clause and the dubious interpretation of the *Carter* holding, there is a strong normative rationale for the application as well. With myriad constitutional infringements and federally protected rights being allotted a § 1983 cause of action,<sup>260</sup> there is little reasoning for excluding alleged Contracts Clause infringements from this group. An argument for prohibiting constitutional infringements not given protection in the Reconstruction Amendments would have provided a plausible normative theory;<sup>261</sup> however, this theory has been whittled away by providing causes of action for infringements of a multitude of constitutional rights.<sup>262</sup>

This initial narrow scope of § 1983 centered on the Reconstruction Amendments and focused on traditional conceptions of civil rights.<sup>263</sup> However, as evidenced by the Supreme Court in *Monell*, *Dennis*, *Thiboutot*, *Chapman*, and *Golden State*, this narrow interpretation no longer controls § 1983 jurisprudence. Accordingly, the civil rights-based narrow interpretation of § 1983 no longer provides a rational foundation for prohibiting Contracts Clause claims from the section's applicability.

The other reasoning behind a narrow scope of § 1983 lies in the rationale found in *Carter*. This rationale focuses on whether a constitutional provision grants individual rights.<sup>264</sup> The Court in *Dennis* discussed this rationale when it analyzed whether the Commerce Clause grants individual rights sufficient to allow a § 1983 remedy.<sup>265</sup> The Court found that although the Commerce Clause allocates power within the government, it also provides rights to individuals.<sup>266</sup> Important in its analysis was the ability for parties to bring suit and gain declaratory and injunctive remedies.<sup>267</sup>

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<sup>259</sup> *Dennis*, 498 U.S. at 451 n.9; *Chapman*, 441 U.S. at 613 n.29 (quoting *Hague*, 307 U.S. at 526-27 (opinion of Stone, J.)).

<sup>260</sup> See *supra* Part I.D.

<sup>261</sup> Collins, *supra* note 61, at 1507.

<sup>262</sup> George Rutherglen, Essay, *Custom and Usage as Action Under Color of State Law: An Essay on the Forgotten Terms of Section 1983*, 89 VA. L. REV. 925, 952 (2003).

<sup>263</sup> *Id.* at 953 ("If the Reconstruction amendments supported only a narrow range of civil rights, then only a few rights could be successfully asserted under [§ 1983].").

<sup>264</sup> *Carter v. Greenhow*, 114 U.S. 317, 322-23 (1885).

<sup>265</sup> *Dennis v. Higgins*, 498 U.S. 439, 446-47 (1991).

<sup>266</sup> *Id.* at 447.

<sup>267</sup> *Id.*

The decision in *Dennis* severely undermines the argument that the Contracts Clause does not grant individual rights under § 1983. As with the Commerce Clause, parties whose rights have been violated under the Contracts Clause may seek declaratory and injunctive relief.<sup>268</sup> Thus, the same factors invoked in applying § 1983 causes of action under the Commerce Clause apply to the Contracts Clause as well.

## CONCLUSION

The Contracts Clause of the Constitution plays an important role in ensuring that states do not infringe upon a private party's contractual rights and obligations. Section 1983 provides a remedy for plaintiffs who have had their constitutional rights infringed upon. Section 1983 provides significant advantages to plaintiffs, including attorney's fees for prevailing plaintiffs, more immediate relief without an exhaustion of alternative remedies, and the ability to be heard in federal court.

Although the Court in *Carter v. Greenhow* did not allow the plaintiff to bring a § 1983 claim for a Contracts Clause violation, there is discord on how far the holding went and whether the Supreme Court has given *Carter* a narrow reading.<sup>269</sup> Although initially the Supreme Court gave § 1983 a narrow interpretation, a broad interpretation of the statute has since taken hold and is evident in cases like *Monell*, *Thiboutot*, *Dennis*, and *Golden State*. These cases all indicate that § 1983 should be comprehensive in scope and encompass most, if not all, rights that are federally protected.

This interpretation should apply to Contracts Clause cases because the holdings of the cases have not been limited to the specific issues before those courts. Instead, the courts have often specifically or implicitly applied their holdings to all constitutional and federal statutory rights.<sup>270</sup> Furthermore, the rationale underlying these holdings applies in equal force to the Contracts Clause.

The court in *Crosby* failed to properly take these factors into consideration when it reached the decision that Contracts Clause claims cannot be brought pursuant to § 1983. The court relied on the dubious holding in *Carter* and did not properly address the broad interpretation given to § 1983. On the other hand, the court in *Southern California Gas Co.* criti-

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<sup>268</sup> *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 3 (1977) (seeking declaratory relief under the Contracts Clause); *Council 31 of the Am. Fed'n of State, Cnty. & Mun. Emps., AFL-CIO v. Quinn*, 680 F.3d 875, 878 (7th Cir. 2012) (seeking a preliminary injunction under the Contracts Clause); *Condell v. Bress*, 983 F.2d 415, 417 (2d Cir. 1993) (seeking declaratory and injunctive relief under the Contracts Clause).

<sup>269</sup> *Dennis*, 498 U.S. at 451 n.9; *Chapman v. Hous. Welfare Rights Org.*, 441 U.S. 600, 613 n.29 (1979) (quoting *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 526-27 (1939) (opinion of Stone, J.)).

<sup>270</sup> *See Dennis*, 498 U.S. at 443-44; *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980); *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 685-86, 690-701 (1978).

cally examined *Carter* and properly analyzed the Supreme Court cases giving § 1983 a broad interpretation in holding that Contracts Clause claims can be brought pursuant to § 1983.

Moreover, there is no strong argument for prohibiting § 1983 claims under the Contracts Clause. The Supreme Court has whittled away at the civil rights-based interpretation of § 1983 by allowing myriad other non-civil rights-based constitutional infringements to be brought pursuant to § 1983. Plaintiffs seeking to vindicate their rights under the Contracts Clause should be permitted to have a cause of action under § 1983 and receive the benefits that this statute provides.