

## Sec. 2—Judicial Power and Jurisdiction

## Cl. 1—Cases and Controversies

**Civil Rights Act Jurisdiction.**—Perhaps the most important of the special federal question jurisdictional statutes is that conferring jurisdiction on federal district courts to hear suits challenging the deprivation under color of state law or custom of any right, privilege, or immunity secured by the Constitution or by any act of Congress providing for equal rights.<sup>799</sup> Because it contains no jurisdic-

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that it will infer an action only in instances of fairly clear congressional intent. *Canon v. University of Chicago*, 441 U.S. 677 (1979); *California v. Sierra Club*, 451 U.S. 287 (1981); *Middlesex County Sewerage Auth. v. National Sea Clammers Ass'n*, 453 U.S. 1 (1981); *Merrill, Lynch v. Curran*, 456 U.S. 353 (1982); *Thompson v. Thompson*, 484 U.S. 174 (1988); *Karahalios v. National Fed'n of Fed. Employees*, 489 U.S. 527 (1989).

The Court appeared more ready to infer private causes of action for constitutional violations, *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971); *Davis v. Passman*, 442 U.S. 228 (1979); *Carlson v. Green*, 446 U.S. 14 (1980), but it has retreated here as well, refusing to apply *Bivens* when “any alternative, existing process for protecting the interest” that is threatened exists, or when “any special factors counseling hesitation” are present. *Wilkie v. Robbins*, 551 U.S. 537, 550 (2007). *Accord Minneci v. Pollard*, 565 U.S. \_\_\_, No. 10–1104, slip op. (2012) (state tort law provided alternative, if not wholly congruent, process for protecting constitutional interests of a prisoner allegedly abused by private prison guards). *See also Chappell v. Wallace*, 462 U.S. 296, 298 (1983); *Bush v. Lucas*, 462 U.S. 367 (1983); *Schweiker v. Chilicki*, 487 U.S. 412 (1988); *FDIC v. Meyer*, 510 U.S. 471 (1994); *Correctional Services Corp. v. Malesko*, 534 U.S. 61 (2001).

“Federal common law” may exist in a number of areas where federal interests are involved and federal courts may take cognizance of such suits under their “arising under” jurisdiction. *E.g.*, *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972); *International Paper Co. v. Ouellette*, 479 U.S. 481 (1987). *See also County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 236–240 (1985); *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985). The Court is, however, somewhat wary of finding “federal common law” in the absence of some congressional authorization to formulate substantive rules, *Texas Industries v. Radcliff Materials*, 451 U.S. 630 (1981), and Congress may always statutorily displace the judicially created law. *City of Milwaukee v. Illinois*, 451 U.S. 304 (1981). Finally, federal courts have federal question jurisdiction of claims created by state law if there exists an important necessity for an interpretation of an act of Congress. *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180 (1921).

<sup>799</sup> 28 U.S.C. § 1343(3). The cause of action to which this jurisdictional grant applies is 42 U.S.C. § 1983, making liable and subject to other redress any person who, acting under color of state law, deprives any person of any rights, privileges, or immunities secured by the Constitution and laws of the United States. For discussion of the history and development of these two statutes, *see Monroe v. Pape*, 365 U.S. 167 (1961); *Lynch v. Household Finance Corp.*, 405 U.S. 538 (1972); *Monell v. New York City Dep't of Social Services*, 436 U.S. 658 (1978); *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600 (1979); *Maine v. Thiboutot*, 448 U.S. 1 (1980). Although the two statutes originally had the same wording in respect to “the Constitution and laws of the United States,” when the substantive and jurisdictional aspects were separated and codified, § 1983 retained the all-inclusive “laws” provision, while § 1343(3) read “any Act of Congress providing for equal rights.” The Court has interpreted the language of the two statutes literally, so that while claims under laws of the United States need not relate to equal rights but may encompass welfare and regulatory laws, *Maine v. Thiboutot*; *but see Middlesex County Sewerage Auth. v. National Sea Clammers Assn.*, 453 U.S. 1 (1981), such suits if they do