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Land Use - Fourteenth Amendment

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LAND USE—FOURTEENTH AMENDMENT—42 U.S.C. § 1983—The United States Court of Appeals for the Eighth Circuit has held that a complaint which alleged that a building permit was arbitrarily and capriciously withheld stated a substantive due process claim under 42 U.S.C. § 1983.

Littlefield v. City of Afton, 785 F.2d 596 (8th Cir. 1986)

In August of 1983, James W. Littlefield and Bonnie J. Littlefield purchased a 19.3 acre tract of land located in Afton, Minnesota. It was the Littlefields' intention to construct a single-family residence on this tract of land. The Littlefields were notified on September 9, 1983, by Helen Baker, the zoning administrator for the City of Afton, that they could not receive a building permit for the construction of their proposed residence because their purchase represented a subdivision of their seller's land which was not approved by the City.

After public meetings by the Afton Zoning Administration Committee (AZAC) and the City Council during September and October of 1983, the City Council adopted a recommendation by AZAC that the subdivision of the Littlefields' grantor's property be approved subject to compliance with certain conditions. The major condition placed upon this approval, and the key factual situation surrounding this litigation, was that the Littlefields convey a right of way to the owners of a neighboring parcel of property. The purpose of the conveyance was to provide access for the neighboring parcel, which the City determined would be land-locked and inaccessible to a County road because of the Littlefields' proposed construction.

The neighboring parcel of land for which the City desired to pro-

1. Littlefield v. City of Afton, 785 F.2d 596, 598 (8th Cir. 1986).
2. Id.
3. Id.
4. Id.
5. Id. at 599.
vide access was owned by Helen Baker, Afton's Zoning Administrator, her husband and Robert Fritz and his wife. By a letter dated July 10, 1984, the City advised the Littlefields that "the City now stands willing and ready to grant you a building permit once you have conveyed to Mr. and Mrs. Baker and Mr. and Mrs. Fritz the additional public right of way."7

The Littlefields instituted an action in the District Court for the District of Minnesota in November of 1983, pursuant to 42 U.S.C. § 1983 ("§ 1983"),8 seeking injunctive relief and damages.9 In their complaint, the Littlefields alleged that the City of Afton had violated their procedural and substantive due process rights, thereby effectuating a taking of property without just compensation.10 The Littlefields' "taking" argument revolved around the theory that the City of Afton's action was not within the scope of its eminent domain powers since the City intended to use the land in question for private purposes and not for any legitimate public purpose.11

The District Court for the District of Minnesota granted summary judgment in favor of the City of Afton and the other named defendants in the case.12 The district court stated that the Littlefields did not have a constitutionally protected property interest in the issuance of a building permit.13 The matter was seen strictly as a local issue which was covered by state law, and therefore reviewable only by a state court. Accordingly, the taking claim asserted by the appellants was reviewable at the state-court level because of the existence of state remedies, such as inverse condemnation or a writ of mandamus.14

Before the Court of Appeals for the Eighth Circuit, the Littlefields argued that an appeal should be granted because the dis-

6. Id. at 598. The Fritz/Baker property never had access to the county road. Id.
7. Id. at 598-99.
8. 42 U.S.C. § 1983 reads in pertinent part:
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.
9. 785 F.2d at 599.
10. Id.
11. Id.
12. Littlefield v. City of Afton, No. 4-83-1003 (D. Minn. Nov. 13, 1983). The other parties named as defendants by the Littlefields' complaint were the members of Afton's City Council and Helen Baker (the City's Zoning Administrator).
13. Id., slip op. at 4.
trict court erred (1) in holding that they had no property interest in the building permit, and (2) in holding that they could not institute a § 1983 claim in a federal court if state remedies existed.\textsuperscript{15} The Littlefields' major argument was that the City violated the Littlefields' substantive due process rights by arbitrarily withholding the building permit.\textsuperscript{16}

The City, on appeal, renewed its argument which was successful before the district court, relying upon the United States Supreme Court's decision in \textit{Parratt v. Taylor}.\textsuperscript{17} The City argued that \textit{Parratt} prohibited the maintaining of a due process claim where a state remedy existed.\textsuperscript{18}

In reaching a decision in this case, the Eighth Circuit first held that the Littlefields' procedural due process rights were not violated, in that the appellants had opportunities to attend public hearings on their grantor's subdivision application. The court concluded that the Littlefields did in fact attend these hearings, which was sufficient to satisfy any predeprivation hearing requirement.\textsuperscript{19}

However, the Eighth Circuit, in this case of first impression, held that the Littlefields' action did state a substantive due process claim.\textsuperscript{20} The court opined that the district court should not have granted a summary judgment.\textsuperscript{21} In light of the Eighth Circuit's reasoning, the case was remanded for a jury determination as to whether the City's actions, in conditioning the issuance of a building permit upon the Littlefields' making a conveyance to a third party, were arbitrary and capricious.\textsuperscript{22}

In concluding that the Littlefields' procedural due process rights were not violated, the Eight Circuit announced a three tier analysis which courts should follow to determine whether such a violation

\begin{itemize}
\item \textsuperscript{15} 785 F.2d at 598.
\item \textsuperscript{16} Id. In addition to their contentions of a substantive due process violation, the Littlefields advanced two specific arguments regarding their claimed property interest in the building permit. First, they asserted that the issuance of a building permit is not discretionary under Minnesota law and that the permit must be granted if an applicant meets the requirements for the permit. Next, the Littlefields contend that they met all pertinent requirements of Afton ordinances which control land use and building permits. Id.
\item \textsuperscript{17} 451 U.S. 527 (1981).
\item \textsuperscript{18} 785 F.2d at 599.
\item \textsuperscript{19} Id. at 603. In reaching the conclusion that no procedural due process violation occurred, the Eighth Circuit decided that the Littlefields did have a protected property interest. As will be discussed, this protected interest was derived from the Littlefields' compliance with certain provisions of the Afton City Code.
\item \textsuperscript{20} 785 F.2d at 607.
\item \textsuperscript{21} Id. at 599.
\item \textsuperscript{22} Id. at 610.
\end{itemize}
occurred. Initially, a court must ascertain whether a plaintiff has a constitutionally protected property right in the land use permit being sought or in the claim being asserted. Next, if such a property right does exist, a court determines whether a plaintiff has a right to a predeprivation hearing for the violation of the protected property right. At this second tier, it is also necessary to consider what type of predeprivation hearing is needed to protect the plaintiff's right. Finally, where a court determines that a predeprivation hearing is not required, it must determine what type of postdeprivation hearing is sufficient to protect the plaintiff's property right.

The Eighth Circuit held that the Littlefields did have a constitutionally protected property interest in the building permit which the City was denying them. The court concluded that a property interest may be created by legislative or procedural requirements which are intended to limit the discretion a municipal official has over the manner by which permits or licenses are issued. Where a statute allows a municipality to issue a permit or license "at will," no protected property interest exists. Where, however, a municipality's discretion is limited because an applicant meets all statutory requirements, such an applicant may claim a property right.

Minnesota is one such state where an official's discretion is limited when an applicant meets all necessary conditions which are stipulated in the enabling legislation. When all such conditions are met, a permit can be withheld only when there is a showing by the official that the public health, safety or welfare is threatened.

23. Id. at 600.
24. Id.
25. Id.
26. Id.
27. Id.
28. Id. at 599.
29. Id. at 600.
30. Id. at 600-01. In its discussion of this topic the court cited Medina v. Rudman, 545 F.2d 244 (1st Cir. 1976), cert. denied, 434 U.S. 891 (1977); Parks v. Watson, 716 F.2d 646 (9th Cir. 1983); and Scott v. Greenville County, 716 F.2d 1409 (4th Cir. 1983). Therein, the respective circuit courts, in deciding claims instituted under 42 U.S.C. § 1983, recognized the notion that an application for a permit which complies with minimum statutory requirements diminishes the municipality's discretion to deny the permit. The property interest created by such a statutory provision is one which receives due process protection. 785 F.2d at 600-01.
31. Id.
32. Id. To support this finding the Eighth Circuit cited several Minnesota cases, the most prominent of which are: Arcadia Dev. Corp. v. City of Bloomington, 267 Minn. 221, 125 N.W.2d 846 (1964) (refusal by city to issue permit for construction of sign held to be
As applied to this case, the Eighth Circuit determined that the Littlefields met all requirements of the then-applicable Afton City Code.\textsuperscript{33} Having done so, the Littlefields right to the building permit reached the level of a protected property right with all inherent due process deference accompanying it.

Once the Eighth Circuit decided that a protected property right existed, it turned its attention to the question of whether the City needed to hold a hearing before it denied the Littlefields the building permit.\textsuperscript{34} The court followed the rationale of \textit{Fuentes v. Shevin}\textsuperscript{35} in stating the proposition that some type of hearing is required when a party's rights are infringed.\textsuperscript{36} A predeprivation hearing is required when the action of a municipal official was not random or unauthorized, and when no pressing government interest existed to justify the postponement of a hearing until after the deprivation occurred.\textsuperscript{37} Based on this rationale, the Eighth Circuit held that the appellants were entitled to a predeprivation hearing.\textsuperscript{38}

The Littlefields were afforded opportunities to be heard on the matter prior to the City's decision to withhold the permit.\textsuperscript{39} As was noted earlier,\textsuperscript{40} the Eighth Circuit reasoned that the Littlefields

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\item \textsuperscript{33} The statutory requirements pertinent to the appellants' case are somewhat vague. Nowhere in the facts does it appear that the appellants actually applied for a building permit to construct their residence. It appears that the denial of the permit was initiated solely by the City. Ultimately the court determined that the appellants complied with § 909.03 of the Afton City Code which requires that a copy of a survey must accompany a recorded deed for the conveyance of a parcel of land between 5 and 20 acres in size. 785 F.2d at 603. § 909.03 does not require platting (the filing of an approved subdivision plan with the City).
\item \textsuperscript{34} Id. at 603.
\item \textsuperscript{35} Id. at 603. See supra note 35 and accompanying text.
\item \textsuperscript{37} Id.
\item \textsuperscript{38} Id.
\item \textsuperscript{39} Id.
\item \textsuperscript{40} See supra note 19.
\end{itemize}
were aware of and did attend the public hearings conducted by the Afton City Council on the issue of their grantor's subdivision.\textsuperscript{41} Hence, such opportunities were adequate to protect the appellants' procedural due process rights.\textsuperscript{42}

It was in the realm of substantive due process that the Eighth Circuit held that the Littlefields stated a valid claim so as to make the district court's granting of a summary judgment in favor of the City an error.\textsuperscript{43} In so deciding, the Eighth Circuit joined a majority of circuit courts which have held that a claim may rightfully be initiated pursuant to 42 U.S.C. § 1983 where a building permit or land use permit is withheld arbitrarily.\textsuperscript{44} The court did not decide here whether the City's action was in fact arbitrary,\textsuperscript{45} as that question was left open for determination on remand.\textsuperscript{46}

Although the court decided that the subject matter of the present dispute may rightfully be heard by federal courts in the Eighth Circuit, the court's opinion addressed the concern that federal courts should not be seen as "super" zoning boards of appeals.\textsuperscript{47} The opinion revealed that more often than not these types of disputes are primarily local concerns and should be confined to state courts.\textsuperscript{48} However, there may be circumstances which justify federal jurisdiction over the matter.\textsuperscript{49}

The standard of review advanced in the \textit{Littlefield} decision is that a § 1983 claim for denial of a land use permit should be considered only when a municipal action significantly invades the con-

\begin{enumerate}
\item[41.] 785 F.2d at 603.
\item[42.] \textit{Id}.
\item[43.] \textit{Id.} at 607-08.
\item[44.] \textit{See} Rogen v. Bensalem Township, 616 F.2d 680 (3d Cir. 1980); Scott v. Greenville County, 716 F.2d 1409 (4th Cir. 1983); South Gwinnett Venture v. Pruitt, 491 F.2d 5 (5th Cir. 1974), \textit{cert. denied}, 416 U.S. 901 (1974); Wilkerson v. Johnson, 699 F.2d 99 (7th Cir. 1983); Parks v. Watson, 716 F.2d 646 (9th Cir. 1983); Southern Coop. Dev. Fund v. Driggers, 696 F.2d 1347 (11th Cir. 1983), \textit{cert. denied}, 463 U.S. 1208 (1983). The basic tenet of these cases is that a valid federal action is stated when a complaint avers that a permit has been withheld arbitrarily or capriciously by a local official. \textit{But see infra} note 116.
\item[45.] 785 F.2d at 607.
\item[46.] \textit{Id}.
\item[47.] \textit{Id}.
\item[48.] \textit{Id}.
\item[49.] \textit{Id.} The Eighth Circuit did not explicitly state those circumstances which justify a substantive due process claim pursuant to § 1983. However, from the court's discussion and from the other circuits cited, it may be inferred that such circumstances arise when a municipal official's actions in denying the permit are unrelated to the public health, safety and welfare of the community. \textit{See supra} note 44 and accompanying text. \textit{Cf.} note 32 and accompanying text.
institutional right of an applicant/property owner. The proposition behind this standard of review is that a municipal official acts arbitrarily and capriciously when the acts have no substantial relationship to the general welfare of the municipality.

The Eighth Circuit dismissed the Littlefields' taking claim as not being ripe for consideration by a federal court because of the existence of state remedies. Following the recent Supreme Court case of Williamson County Regional Planning Commission v. Hamilton Bank, the Eighth Circuit held that the Littlefields' taking claim was premature because they had not pursued a state remedy for damages via an inverse condemnation claim. The court concluded that the Minnesota decision of McShane v. City of Faribault did not bar the bringing of an inverse condemnation action. Rather, according to the Eighth Circuit, McShane stands for the proposition that inverse condemnation actions may be brought where injunctive relief will not restore a party to its original status. In addition, the Littlefield court held the appellants' taking claim was premature in that a constitutional aberration does not occur until a municipality refuses to fairly compensate a property owner via statutory procedures.

The origins of 42 U.S.C. § 1983 can be traced back to the Civil Rights Act of 1871. The initial purpose of § 1 of the Civil Rights


51. 785 F.2d at 607 (citing South Gwinnett Venture, 491 F.2d at 7). The court also uses a quotation from Supreme Court Justice Stevens, initially stated in a separate opinion in Hudson v. Palmer, 468 U.S. 517, 547 n.4, 104 S. Ct. 3194, 3208 n.4 (1984), wherein Justice Stevens wrote that actions by municipal officials violate substantive due process rights when the actions are of a nature which such officials "may not take no matter what procedural protections accompany them." Id. 785 F.2d at 607.

52. 785 F.2d at 609.

53. ___ U.S. ___, 105 S. Ct. 3108 (1985). In Williamson County Regional Planning Commission the Court held that a party may not assert a taking claim unless the party has received a final administrative decision from the governing body or unless the party has sought and been denied compensation through available state procedures. Id.

54. 785 F.2d at 609. See supra note 53 and accompanying text.

55. 292 N.W. 2d 253 (Minn. 1980).

56. 785 F.2d at 609.

57. Id.

58. Id.

Act (now the amended 42 U.S.C. § 1983) was to create a civil remedy in federal court for breach of fourteenth amendment rights where a state law was either inadequate or was practically unavailable due to improper enforcement by state officials. Historically, 42 U.S.C. § 1983 has been viewed by the United States Supreme Court as a remedial act which should be construed broadly in order to protect the liberty and rights of all citizens from undue deprivation of constitutional rights at the hands of government officials' action under color of the state law.

As one might expect, a remedy which is construed broadly is likely to bring within its purview many plaintiffs attempting to protect diverse rights. But there are those, including the Eighth Circuit, who express the concern that not every land use and building permit dispute belongs in the federal court system. Notwithstanding that concern, the evolution of the § 1983 remedy to its present state, whereby the majority of the circuit courts have held that a claim alleging the undue denial of a land use permit may state a valid cause of action, can be traced back to two landmark Supreme Court decisions, Monroe v. Pape and Monell v. New York City Department of Social Services.

The first of these decisions, Monroe v. Pape, involved a § 1983 claim brought by a family against the City of Chicago and a group of its police officers. The petitioners' claim averred that the actions of the City's police officers, in entering and ransacking the petitioners' home in the middle of the night, was a violation of the

60. The pertinent part of the fourteenth amendment which 42 U.S.C. § 1983 seeks to enforce is as follows:

  . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any persons within its jurisdiction the equal protection of the laws.

61. See Monroe v. Pape, 365 U.S. 167, 173-82 (1961), wherein the court quotes much of the congressional debate which took place when the Act of 1871 was being considered. The Monroe Court also states that an additional purpose of the Act was to supersede certain state laws. Id. at 173.

62. Monell v. Department of Social Servs. of New York, 436 U.S. 658, 683-86 (1978). Section 1 of the Civil Rights Act has been used very widely to protect and preserve the rights of such sundry groups as freed slaves, prisoners and voters. See generally 42 U.S.C.A. § 1983.

63. 785 F.2d at 607. For cases in accord with the Littlefield case on this concern, see South Gwinnett Venture v. Pruitt, 491 F.2d 5, 7 (5th Cir. 1974), cert. denied, 416 U.S. 901 (1974); Creative Env'ts. Inc. v. Estabrook, 680 F.2d 822, 833 (1st Cir. 1982), cert. denied, 459 U.S. 989 (1982).

64. 365 U.S. 167 (1961).


fourth amendment right against unlawful search and seizure assured to them under the fourteenth amendment. 67

Although Monroe is factually distinguishable from the principal case in that it does not involve the deprivation of a building permit, it is significant to this discussion because Monroe was the first case in which the Supreme Court held that a federal claim may be brought pursuant to § 1983 even though a state statute might offer a plaintiff relief. 68 In arriving at this holding, the Monroe Court paid considerable attention to the legislative history and congressional discussion behind the enactment of the Civil Rights Act. 69 From these discussions, the Court reasoned that it was irrelevant that a state law existed which could rightfully address a plaintiff's cause of action. 70 The federal claim arising from § 1983 was viewed as supplementing any existing state remedy. 71 Furthermore, the Monroe Court held that it was not necessary for the plaintiff to first seek the state remedy before petitioning the federal courts for redress. 72

The rationale used by the Monroe Court was clearly derived from the national political climate which existed in 1871 when the original Civil Rights Act was enacted. Following the Civil War and the adoption of the fourteenth amendment to the United States Constitution, there were reports of widespread lawlessness in the South caused primarily by the Ku Klux Klan, and of the inability of the states to deal with such lawlessness. 73 The Court found that there was no doubt that state laws did exist to provide a remedy to wronged citizens. 74 However, the problem that existed was that state officials were either unable or unwilling to enforce a state law on the books at that time. 75 The Monroe Court reasoned that § 1 of the Civil Rights Act was enacted by Congress to provide a federal remedy because state laws might not be enforced, thereby denying state citizens the rights and liberties provided them under the fourteenth amendment. 76

The link between this history and the facts of Monroe is that the

67. Id. at 167.
68. Id. at 169-70.
69. Id. at 183. See supra note 61 and accompanying text.
70. Id. at 172-91.
71. Id. at 183.
72. Id.
73. Id. at 174.
74. Id. at 174-75.
75. Id. at 174-76.
76. Id. at 180.
petitioners' right against unlawful search and seizure was a federal constitutional right which could not adequately be protected by state laws or state courts, which have the natural effect of addressing a state's interests and concerns. Therefore, the protection of federal rights could only be fully guaranteed in federal courts. The primary holding of the Monroe Court was that insofar as the complaint alleged that a protected federal right was hindered or harmed by actions of an official acting under the color of state law, the complaint stated a valid cause of action under § 1983.

Similarities exist between the history discussed in Monroe and the principal case, as state courts cannot be expected to address and protect the federal due process claims raised in cases such as Littlefield. State courts, by their very nature, concern themselves with local issues and disputes. If a complaint properly alleges a violation of a federally protected right, it belongs in federal court pursuant to § 1983, according to cases such as Monroe and Littlefield.

While the Monroe Court held that the petitioners in that case stated a valid cause of action, inasmuch as their constitutional right against unlawful search and seizure was violated, the Court stopped short of imposing liability upon the City of Chicago. Instead, the Court held that the petitioners complaint was valid as to the individual police officers who were acting in their individual capacities. In so holding, the Monroe Court decided that it was not Congress' intent to bring cities or municipal corporations within the purview of "persons" as contained in § 1983. Based on its interpretation of the legislative debate surrounding the enact-

77. Id.
78. Id. In arriving at this holding, the Supreme Court reviewed its decisions in which it defined the construction of the term "under color of law." See United States v. Classic, 313 U.S. 299 (1941) (acts of an election official who altered and falsely counted ballots were acts under color of state law); Screws v. United States, 325 U.S. 91 (1945) (police officer who beat to death a suspect during course of arrest acted under color of law); United States v. Williams, 341 U.S. 70 (1951) (private investigator who beat suspect to obtain confessions did not act under color of law). The Monroe Court stated that an action under the color of state law is the "[m]isuse of power . . . made possible only because the wrongdoer is clothed with the authority of state law. . . ." 365 U.S. at 184 (quoting United States v. Classic, supra, at 326.) An action under the color of law was not confined merely to actions taken by an official pursuant to a specific state law. 365 U.S. at 184.
79. Id. at 187.
80. 785 F.2d at 607.
82. Id. at 191-92.
83. Id. at 191.
84. Id. at 190 (citing Cong. Globe, 42d Cong. 1st Sess. 820-21).
ment of the original Civil Rights Act of 1871, the *Monroe* Court reasoned that Congress doubted its constitutional abilities to impose civil liability upon municipalities.\[85\]

This distinction between immunity of municipalities and liability of municipal officials acting in individual capacities became especially troublesome to circuit courts when, in an effort to circumvent the municipal immunity imposed by *Monroe*, § 1983 claims were instituted against municipal officials as individuals in a veiled attempt to secure damages or equitable relief not obtainable from municipalities.\[86\]

The second aforementioned landmark United States Supreme Court case would have the effect of doing away with municipal immunity afforded by *Monroe*, and also of extending the expansive sweep given to § 1983 claims by *Monroe*. In 1978, the Supreme Court decided the case of *Monell v. New York City Department of Social Services*,\[87\] in which it overruled that portion of *Monroe* which granted local governments absolute immunity from § 1983 claims.\[88\] The holding of *Monell* would ultimately expand the use of § 1983 to the extent that actions comparable to those of the Littlefields would become more prevalent.

*Monell* involved a claim brought by female employees of the respondent Department and the New York City Board of Education seeking injunctive relief and back pay.\[89\] The petitioners' complaint alleged that it was the official policy of the Department and the Board to compel pregnant employees to take unpaid leaves of absence prior to any medical need for such leaves.\[90\] While the District Court for the Southern District of New York had concluded

\[85\] Id. at 187.

\[86\] See S. Nahmod, *Civil Rights & Civil Liberties Litigation, A Guide To § 1983*, § 6.04 (1979 ed.). This type of situation was easily distinguishable where the claim against the municipal official would lead to a payment of damages from municipal coffers. Courts were quick to dismiss such claims using *Monroe* type immunity rationale. However, claims against municipal officials which sought equitable relief were more troublesome. Most often circuit courts granted equitable relief despite the economic impact felt by a municipality. See generally Burt v. Board of Trustees of Edgefield County School Dist., 521 F.2d 1201 (4th Cir. 1975) (grant of equitable relief which included back pay and contributions to retirement fund); Incarcerated Men of Allen County Jail v. Fair, 507 F.2d 281 (6th Cir. 1974) (circuit court awarded equitable relief despite its economic effect on local government funds).


\[88\] Id. at 701.

\[89\] Id. at 660. The petitioners' action also named the City of New York, its mayor, and certain individual defendants who were sued in their official capacities. Id. at 661.

\[90\] Id. at 660-61.
that the respondents' actions were unconstitutional, it granted summary judgment for respondents on the theory that the Board, Department and City enjoyed immunity under Monroe. The district court further held that any award of damages on the basis of the individual officials' liability would ultimately be paid by the City, thereby circumventing the immunity enjoyed by the City pursuant to Monroe. On appeal, the Court of Appeals for the Second Circuit affirmed the district court's holding.

The Supreme Court reversed these decisions and in the process overruled Monroe's conferral of immunity upon local governments. In overturning a portion of its own decision in Monroe, the Monell majority stated that the Monroe Court misread the Congressional intent behind the enactment of the Civil Right Act of 1871. Monell held that Congress clearly intended for § 1 of the Act—to now § 1983—to apply to municipalities and that Congress could constitutionally subject municipalities to liability.

Monell recognized that the rationale behind municipal immunity was rooted in the notion that local governments are creations of state law, and that it would be beyond the power of the federal government to impose a liability or obligation upon a state's creation. However, based upon statements made during Congressional debate over the enactment of the Civil Rights Act, the Mo-

92. 394 F. Supp. at 855.
93. Id.
94. 532 F.2d 259 (1976).
95. 436 U.S. at 663.
96. Id. at 700-01.
97. Id. The Monell Court arrived at its decision by using an additional layer of legislative interpretations not used by the Monroe Court. Both Courts' interpretations revolved around congressional debate of the Sherman Amendment, which would have imposed liability on municipalities for damage caused to private property by riots which municipalities did not attempt to control. Ultimately this Amendment was adopted by Congress in a version which made no mention of municipal liability. The Monroe Court used statements against municipal liability pursuant to this Amendment as its basis for granting immunity for municipalities. Id. at 668. On the other hand, the Monell Court found that § 1 of the Civil Rights Act was already voted upon affirmatively when Congress took up debate on the Sherman Amendment. Therefore, Monell held that Congressional statements relating to doubts over the constitutionality of the imposition of municipal liability pertained only to the Sherman Amendment and not to § 1 of the Act. The Monell Court reasoned that Congress was aware of these concerns when it voted on § 1 and their silence on those concerns at that stage implied that Congress knew what it was doing. The inference drawn by Monell was that the liability debated and voted against in the Sherman Amendment was different than the liability contemplated in § 1 of the Act. Id. at 665-82.
98. Id. at 664.
nell Court concluded that Congress was aware of two major points which created jurisdiction over the states in federal courts. 99

First, it was acknowledged that Congress had power to grant federal jurisdiction over local governments that either used or refused to use their authorized powers in violation of the Constitution. 100 Second, the Monell Court stated that the doctrine of Dual Sovereignty did not limit the powers of federal courts to enforce the Constitution against municipalities that violated it. 101

The first of these two points clarifies why a claim such as that of the Littlefields, for the denial of a building permit, has found a place in federal courts. As previously discussed, the Littlefields' federally protected property right arises from the existence of state law which limits the discretion of a municipal official to withhold a permit. This law creates a ministerial duty in the official to issue the permit. When the holder of a ministerial duty refuses to act as duly authorized by state law in a way which infringes upon a constitutional right, it follows that the jurisdiction of federal courts maybe employed to protect that right. 102

The Monell Court further concluded that the legislative intent called for § 1 of the Civil Rights Act to be a broad remedy designed to secure and preserve human liberty and human rights embodied by the fourteenth amendment. 103 The Court then reasoned that since the intent was for § 1 to be construed broadly, little reason existed to doubt that municipalities should be excluded from its broad sweep. 104 One limitation which Monell placed on its holding was that the action of the local official must arise from some official policy or custom of the municipality. 105 A municipality could not be held liable solely on the doctrine of respondeat superior. 106

From the sweeping language of the initial holding of Monroe and of the entire Monell holding, it follows that an increased number of claims would be brought in federal courts against local governments and local officials pursuant to § 1983. 107 The first cases re-

99. Id. at 679-81.
100. Id. at 679-80.
101. Id. at 680-81.
102. See supra note 30 and accompanying text.
103. 436 U.S. at 683-86.
104. Id. at 686.
105. Id. at 694.
106. Id.
107. In addition, a subsequent Supreme Court decision, Owen v. City of Independence, 445 U.S. 622 (1980), restricted local government immunity even further. Owen stands
lated to deprivation of land use or building permits initiated via § 1983 claims began to appear in the circuit courts in the early 1980's. One such early case, *Rogin v. Bensalem Township*,\(^\text{108}\) was decided by the Court of Appeals for the Third Circuit in 1980.

In *Rogin*, a dispute arose in which a real estate developer challenged a zoning amendment which restricted his ability to obtain building permits for the continuation of a development previously approved by the Township.\(^\text{109}\) The claim alleged substantive due process violations and an unconstitutional taking.\(^\text{110}\) During the course of its discussion, the Third Circuit recognized that § 1983 was designed to afford the plaintiff a cause of action for constitutional violations on the part of local government bodies.\(^\text{111}\)

While the *Rogin* Court recognized that a valid cause of action had been stated, it nonetheless affirmed the district court's holding for the Township. In so deciding, the Third Circuit announced that for a plaintiff to be successful in a substantive due process claim, it must establish that the actions of the local government were arbitrary and lacked a rational relation to the general welfare of the community.\(^\text{112}\) In this particular case, the Court was satisfied that the Township "had a legitimate interest in controlling population growth and density and that zoning amendments are a rational and reasonable means to accomplish that purpose."\(^\text{113}\)

Subsequently, in 1983, four different circuit courts handed down decisions in which they recognized that a cause of action could be initiated under § 1983 for denial of land use or building permits.\(^\text{114}\) The common thread running through these decisions was that in order for the due process claim to be valid, a party needed to demonstrate that the actions of a municipality were arbitrary, ca-

\(^{108}\) 616 F.2d 680 (3d Cir. 1980).

\(^{109}\) *Id.* at 682.

\(^{110}\) *Id.* at 683.

\(^{111}\) *Id.* at 686 (citing *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978)).

\(^{112}\) *Id.* at 689.

\(^{113}\) *Id.* The *Rogin* court rejected the developer's taking claim on the grounds that it was insufficient for the developer to aver that his property value had been diminished by the zoning amendment. The court stated that a rational zoning ordinance could diminish property values and still be upheld as long as the ordinance applied to a broad class of property owners and the ordinance did not destroy or severely diminish the value of the property. *Id.* at 690 (citing *Penn Central Transp. Co. v. New York*, 438 U.S. 104, 125 (1978)).

\(^{114}\) *See supra* note 27.
precious and devoid of a rational relation to the general welfare of the municipality. A primary step toward establishing a § 1983 claim is to show the existence of an entitlement to the permit in order to raise it to the level of a federally protected property right.\textsuperscript{115}

In relation to the aforementioned historical discussion, the decision by the Eight Circuit in \textit{Littlefield v. City of Afton} serves as an extension of a newly developing area of the law.\textsuperscript{116} However, the question underlying most, if not all, of these decisions by the circuit courts is whether disputes of this nature belong in federal courts. By their very character they are disputes of a local nature.

On the other hand, however, the real estate development process is very often a high-stakes venture in which large profits may be realized. It is not unusual for there to be competing interests and proposals for the same development parcel, leaving open possibilities for personality differences between a developer and a local official. This in turn creates situations where an official may withhold a permit arbitrarily.

In this regard, the availability of a federal remedy offers a source of protection in a neutral forum to a landowner who has a legitimate property right. The underlying message in these circuit court decisions is that § 1983 provides a remedy which should be recognized as necessary to protect a property right egregiously denied by the actions of a local official. It is also viewed as a remedy which should be granted sparingly because of the delicate balance between the local character of these disputes and the need to protect constitutional rights.\textsuperscript{117}

The Supreme Court has yet to decide whether § 1983 claims of this type state a valid cause of action. On three separate occasions, the Supreme Court has had an opportunity to decide this question, most recently in \textit{Williamson County Regional Planning Commis-}
The Court left open and unanswered the issue of whether a municipality's actions were so violative of the due process clause of the fourteenth amendment as to amount to a taking for which the landowner was entitled to damages. In each of the cases the Supreme Court took a more traditional eminent domain approach and decided pertinent issues on state procedural grounds. While the highest court has not answered this new § 1983 issue directly, perhaps it is indirectly telling disgruntled landowners that they should look to state courts and state remedies before jumping into the federal forum.

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