11-1-1975

# The Supreme Court 1974 Term: Note on Eastland v. United States Servicemen's Fund

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delineating the circumstances in which privacy will take precedence over expression. It is clear that the Court's inability to render an authoritative construction of a state statute [63] did not compel a holding of facial invalidity rather than a declaration of a per se rule followed by remand of Erznoznik's case.[64] Neither method would remove or alter the text of an ordinance on the books.[65] Both assume that primary actors will determine their first amendment rights in light of the Court's latest opinions. Thus neither method can claim to be a superior means of dissipating the chilling effect of an overbroad law. Announcing a per se rule should generally be preferred, however, because facial invalidation deprives the state of the benefits of a law's permissible applications, as well as preventing its impermissible ones.[66] Overbreadth review should therefore be employed only when the Court is unable to formulate a satisfactory general rule of privilege. The *Erznoznik* Court's choice of overbreadth review, then, signals a reluctance to forfeit doctrinal flexibility by announcing a comprehensive rule governing the conflict between privacy and expression. Its hesitation in defining obscenity as to minors suggests a belief that reentry into an area recently committed to states and localities would be inopportune and could indicate concern that the Court's own obscenity decisions have failed to provide workable standards.

### *G. Speech or Debate Clause*

*Reviewability of Congressional Committee Subpoenas.* — The speech or debate clause of the Constitution prohibits the questioning of congressmen "in any other Place" "for any Speech or Debate in either House." [1] The Supreme Court has decided only nine cases involving this clause, with seven of those decisions occurring in the past decade.[2] In its most recent decision,

[63] Gooding v. Wilson, 405 U.S. 518, 520 (1972).

[64] *See, e.g.*, Time, Inc. v. Hill, 385 U.S. 374, 397 (1967) (remanding for state courts to apply definition of libel announced in earlier case).

[65] 1 J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 2.07, at 24 (C. Sands ed. 1972); O. FIELD, THE EFFECT OF AN UNCONSTITUTIONAL STATUTE 10 (1935).

[66] *See* 95 S. Ct. at 2276 ("invalidation [which] may result in unnecessary interference with a state regulatory program").

[1] U.S. CONST. art. I, § 6.

[2] Eastland v. United States Servicemen's Fund, 95 S. Ct. 1813 (1975); Doe v. McMillan, 412 U.S. 306 (1973); Gravel v. United States, 408 U.S. 606 (1972); United States v. Brewster, 408 U.S. 501 (1972); Powell v. McCormack, 395 U.S. 486 (1969); Dombrowski v. Eastland, 387 U.S. 82 (1967); United States v.

*Eastland v. United States Servicemen's Fund*,[3] the Court held that the members and chief counsel of a congressional subcommittee were immune from a suit to enjoin enforcement of a subpoena issued by the subcommittee and alleged to infringe first amendment rights. Although this result is directly supported by prior authority, the opinion of the Court suggests that a new interpretation of the speech or debate clause may be emerging.

United States Servicemen's Fund (USSF), a nonprofit association, established coffeehouses near military bases and aided in the publication of newspapers for military personnel. Through these operations, USSF claimed to provide dissenting servicemen with a forum for expressing opposition to the war in Vietnam.[4] As part of a wide-ranging inquiry into domestic subversive activities,[5] the Senate Subcommittee on Internal Security, chaired by Senator Eastland, issued a subpoena duces tecum to a bank with which USSF maintained an account, directing it to produce all records pertaining to that account.

Before the bank complied, USSF brought an action against the subcommittee's members and chief counsel, seeking a declaratory judgment that the subpoena was invalid and an injunction against its enforcement.[6] USSF's principal contention was that the subpoenaed records would disclose the identity of its members and the donors of its funds, chilling their first amendment rights to associate and to advocate controversial positions.[7] The Court of Appeals for the District of Columbia Circuit accepted USSF's constitutional claim and rejected the subcommittee's defense that the suit was barred by the speech or debate clause.[8]

The Supreme Court reversed. Chief Justice Burger's majority

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Johnson, 383 U.S. 169 (1966); Tenney v. Brandhove, 341 U.S. 367 (1951) (dictum); Kilbourn v. Thompson, 103 U.S. 168 (1881).

[3] 95 S. Ct. 1813 (1975).

[4] *See id.* at 1816–17.

[5] The inquiry was authorized by S. Res. 341, 91st Cong., 2d Sess. (1970), which directed the subcommittee to study the operation of the Internal Security Act of 1950, 50 U.S.C. §§ 781–98 (1970).

[6] 95 S. Ct. at 1817–18.

[7] *See id.* In support of its contention, USSF relied on such cases as Gibson v. Florida Legislative Investigation Comm., 372 U.S. 539 (1963); Louisiana *ex rel.* Gremillion v. NAACP, 366 U.S. 293 (1961); Bates v. City of Little Rock, 361 U.S. 516 (1960); NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449 (1958); Pollard v. Roberts, 283 F. Supp. 248 (E.D. Ark.), *aff'd per curiam*, 393 U.S. 14 (1968). *See* Joint Brief of Respondents at 10–17, Eastland v. United States Servicemen's Fund, 95 S. Ct. 1813 (1975). These cases recognized that, in certain circumstances, associations have a protected first amendment interest in preventing disclosure of their membership.

[8] 488 F.2d 1252 (D.C. Cir. 1973).

opinion [9] first stated the established doctrine that activities of congressmen that fall within the "legitimate legislative sphere" are protected from judicial interference by the speech or debate clause.[10] The Court ruled that the actions of the defendants — authorizing and issuing the subpoena — fell within this sphere, since those actions were taken in the exercise of the congressional power of investigation. Because of the absolute nature of the clause, the Court declined to consider USSF's claims that issuance of the subpoena was motivated by an improper purpose and that enforcement of the subpoena would infringe its first amendment rights.[11]

As Justice Marshall indicated in a concurring opinion,[12] the Court's decision follows directly from the first speech or debate clause case, *Kilbourn v. Thompson*,[13] and the recent case of *Gravel v. United States*.[14] *Kilbourn* involved the arrest, at the direction of the House of Representatives, of a person who had failed to comply with a congressional subpoena. In Kilbourn's suit for false arrest, the Supreme Court held the congressmen who had ordered the arrest immune from suit on the ground that the speech or debate clause protects not just debate, but "things generally done in a session of the House by one of its members in relation to the business before it." [15] The *Kilbourn* Court did not dismiss the suit entirely, however; the suit was allowed to proceed against the Sergeant at Arms of the House, a minor functionary who had carried out the arrest.[16] Thus, although *Kilbourn* established that the validity of a congressional act cannot be questioned in a suit against congressmen acting in their legislative capacities, it does allow judicial review of that issue in a suit against a functionary. The vitality of *Kilbourn*'s distinction has been reaffirmed by the Court in recent speech or debate clause cases.[17]

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[9] The Chief Justice was joined by Justices White, Blackmun, Powell, and Rehnquist. Justice Marshall, joined by Justices Brennan and Stewart, filed an opinion concurring in the judgment. Justice Douglas dissented.

[10] *See* 95 S. Ct. at 1820–21, *citing* cases cited at note 2 *supra*.

[11] *See* 95 S. Ct. at 1821–25.

[12] *Id.* at 1826–29.

[13] 103 U.S. 168 (1881).

[14] 408 U.S. 606 (1972).

[15] 103 U.S. at 204. *See also* Gravel v. United States, 408 U.S. 606, 625 (1972) (clause applies to activities that are "an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House").

[16] 103 U.S. at 205.

[17] *See, e.g.*, Doe v. McMillan, 412 U.S. 306, 314–16 (1973) (congressmen and

In *Servicemen's Fund*, the defendant chief counsel of the subcommittee might have been considered a functionary against whom suit could proceed under *Kilbourn*. In the *Gravel* case, however, the Court had found that some congressional aides are so closely associated with congressmen that they should be treated as the legislators' "alter egos" for purposes of the speech or debate clause.[18] The *Servicemen's Fund* Court placed the subcommittee counsel in this category, noting that the plaintiffs' complaint had not distinguished between the counsel's actions and those of the subcommittee members.[19] Because there were no defendants other than the members and counsel, the Court could apply the absolute terms of the speech or debate clause and avoid the difficult issue presented by the conflict between the congressional need for information and the plaintiffs' first amendment interests.

Although the result in *Servicemen's Fund* is readily explained by precedent, the Chief Justice's opinion suggests that the Court is willing to reconsider the continued permissibility of suits against functionaries challenging congressional actions. The Court's new test is apparently that, when actions directed by Congress or its committees are "essential to legislating,"[20] their validity cannot be inquired into by the judiciary. Adoption of this proposition does not seem warranted by the functions the speech or debate clause was intended to serve.

The historical purpose of the speech or debate clause[21] was to allow individual congressmen to perform their duties, free from fear that their decisions would become the subject of a civil or criminal action.[22] Without extensive congressional freedom of

aides immune for preparation and publication of committee report alleged to violate privacy rights; suit allowed against Public Printer and Superintendent of Documents); Powell v. McCormack, 395 U.S. 486, 501–06 (1969) (congressmen immune for voting to exclude elected representative; suit allowed against House Clerk, Sergeant at Arms, and Doorkeeper).

[18] 408 U.S. at 616–17.

[19] *See* 95 S. Ct. at 1823. A distinction between the actions of members of a subcommittee and their counsel formed the basis for holding the counsel unprotected by the speech or debate clause in Dombrowski v. Eastland, 387 U.S. 82 (1967). *See* Gravel v. United States, 408 U.S. 606, 619–20 (1972).

[20] *See* 95 S. Ct. at 1825–26. Although the phrase "essential to legislating" appears in Gravel v. United States, 408 U.S. 606, 621 (1972), *Servicemen's Fund* seems to give the words a new significance.

[21] For accounts of the history of the privilege in England and the United States, see Reinstein & Silverglate, *Legislative Privilege and the Separation of Powers*, 86 HARV. L. REV. 1113, 1120–44 (1973); Cella, *The Doctrine of Legislative Privilege of Freedom of Speech and Debate*, 2 SUFFOLK U. L. REV. 1, 3–30 (1968).

[22] *See* Gravel v. United States, 408 U.S. 606, 618 (1972) ("fundamental purpose" of clause is "freeing the legislator from executive and judicial oversight

speech, it was thought that the deliberations of Congress might be impaired.[23] Without protection from criminal prosecutions by the executive branch, the ability of congressmen to function independently could be destroyed.[24]

The extensive personal immunity granted by the clause, however, has never been thought to shield exercises of congressional power from judicial review.[25] The Constitution allocates only certain powers to Congress, and a judicial determination of whether those powers have been exceeded is normally considered vital in preserving a check on the legislature and a balance between the powers of the three branches of government.[26] Such

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that realistically threatens to control his conduct as a legislator"); *cf.* Coffin v. Coffin, 4 Mass. 1, 27 (1808) (state constitution) ("These privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal.").

[23] James Wilson, a member of the committee that drafted the speech or debate clause, *see* Reinstein & Silverglate, *supra* note 21, at 1139 n.138, stated:

> In order to enable and encourage a representative of the publick to discharge his publick trust with firmness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offence.

1 THE WORKS OF JAMES WILSON 421 (R. McCloskey ed. 1967), *quoted in* United States v. Brewster, 408 U.S. 501, 548 n.9 (1972) (Brennan, J., dissenting).

[24] *See* United States v. Johnson, 383 U.S. 169, 179 (1966) ("The legislative privilege, protecting against possible prosecution by an unfriendly executive and conviction by a hostile judiciary, . . . ensur[es] the independence of the legislature."); Reinstein & Silverglate, *supra* note 21, at 1121, 1144. The limited purpose of the immunity granted by the speech or debate clause is underscored by U.S. CONST. art. I, § 5, which allows Congress to discipline its own members.

[25] *See* Eastland v. United States Servicemen's Fund, 95 S. Ct. 1813, 1827 (1975) (Marshall, J., concurring); Doe v. McMillan, 412 U.S. 306, 313–17 (1973); *id.* at 326–27 (Douglas, J., concurring); Gravel v. United States, 408 U.S. 606, 618–21 (1972); United States v. Brewster, 408 U.S. 501, 508, 524–25 (1972); Powell v. McCormack, 395 U.S. 486, 503, 505 (1969); Tenney v. Brandhove, 341 U.S. 367, 379–80 (1951) (Black, J., concurring); Kilbourn v. Thompson, 103 U.S. 168 (1881).

[26] *See, e.g.*, United States v. Nixon, 418 U.S. 683, 704 (1974) (power of courts to interpret the Constitution is essential "to the basic concept of separation of powers and the checks and balances that flow from the scheme of a tripartite government"); Baker v. Carr, 369 U.S. 186, 211 (1962) ("Deciding . . . whether the action of [another] branch exceeds whatever authority has been committed [to it by the Constitution] . . . is a responsibility of this Court as ultimate interpreter of the Constitution."); Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176–77 (1803) ("The powers of the legislature are defined and limited . . . . It is emphatically the province and duty of the judicial department to say what the law is."). The Court has clearly indicated that the speech or debate clause was not meant to alter the basic constitutional balance of powers. *See* United States v. Brewster, 408 U.S. 501, 508 (1972) ("Our speech or debate privilege was designed to preserve legislative independence, not supremacy. Our task . . .

a determination is entirely distinct from holding a congressman accountable for a speech or inquiring into his motivations for a vote, the types of situations that the speech or debate clause was designed to prevent.[27] The Supreme Court has clearly recognized this distinction in the past, stating that, when constitutional rights can be protected [28]

> without proof of a legislative act or the motives or purposes underlying such an act [and] [n]o threat to legislative independence [is] posed, . . . Speech or Debate Clause protection [does] not attach.

The majority opinion in *Servicemen's Fund* took a different and somewhat novel view of the purpose of the speech or debate clause. Rather than directing attention to whether judicial review of the subcommittee subpoena would necessitate inquiry into motive or infringe on legislators' independence, the Court concerned itself with the disruption and delay of the legislative process that judicial review of the subpoena might cause. In one of several references to this problem,[29] the Chief Justice wrote:[30]

> This case illustrates vividly the harm that judicial interference may cause. A legislative inquiry has been frustrated for nearly five years during which the Members and their aide have been obliged to devote time to consultation with their counsel concerning the litigation, and have been distracted from the purpose of their inquiry. The Clause was written to prevent the need to be confronted by such "questioning" . . . .

The Chief Justice's reluctance to tolerate the inescapable delay and disruption caused by judicial review suggests that the import of *Servicemen's Fund* is not simply that particular defendants were immune from suit, but rather that pre-enforcement review of a congressional subpoena may not be available at all.[31]

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is to apply the Clause in such a way as to insure the independence of the legislature without altering the historic balance of the three co-equal branches of Government."). *See also* Reinstein & Silverglate, *supra* note 21, at 1175.

[27] *See* United States v. Brewster, 408 U.S. 501, 525 (1972) ("[T]he Speech or Debate Clause protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts . . . . [B]ut [the privilege is] narrow enough to guard against . . . excesses . . . ."); United States v. Johnson, 383 U.S. 169, 180, 185 (1966) (speech or debate clause forecloses inquiry into congressman's motivations).

[28] Gravel v. United States, 408 U.S. 606, 621 (1972). *See also* Eastland v. United States Servicemen's Fund, 95 S. Ct. 1813, 1827 (1975) (Marshall, J., concurring); Powell v. McCormack, 395 U.S. 486, 505 (1969).

[29] *See* 95 S. Ct. at 1821, 1824–25 n.16, 1825 & n.17.

[30] *Id.* at 1825.

[31] Three members of the *Servicemen's Fund* majority had previously written

The Chief Justice's brief discussion of *Kilbourn* is consistent with this suggestion. He contended that review of the arrest in *Kilbourn* was available only because the arrest was not "essential to legislating." [32] By contrast, he apparently considered a "routine subpoena" to be essential and thus immune from judicial review, regardless of the identity of the defendants.[33]

Justice Marshall, concurring in the judgment of the Court, disagreed with the majority's characterization of *Kilbourn*.[34] As previous cases had noted, the resolution authorizing the arrest in *Kilbourn* "was clearly legislative in nature." [35] Hence the decision to allow suit against the Sergeant at Arms had rested, not on the position that the arrest was inessential to the legislative process, but rather on a concern that the speech or debate clause not be used to deny entirely judicial review of the arrest. Justice Marshall emphasized that review of the constitutionality of the subpoena at issue in *Servicemen's Fund* should be available in a suit against other persons acting at the direction of the subcommittee or its counsel.[36]

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opinions suggesting a rejection of the *Kilbourn* doctrine. In Doe v. McMillan, 412 U.S. 306 (1973), Chief Justice Burger and Justices Blackmun and Rehnquist dissented from the Court's decision that the speech or debate clause did not protect the Public Printer and the Superintendent of Documents, who printed and distributed a committee report at the direction of Congress, *see id.* at 315–17. The Chief Justice's separate opinion emphasized that the Printer "is simply the extended arm of the Congress itself, charged by law with executing congressional commands," *id.* at 331, a description that would have applied as well to the Sergeant at Arms in *Kilbourn*. Justice Blackmun's opinion, in which the Chief Justice joined, stressed that the committee report represented "legitimate legislative activity," which should be protected at each step in the sequence from authorization to printing and distribution. *Id.* at 332. Justice Rehnquist, joined by the Chief Justice and Justices Stewart and Blackmun, argued that, if members of Congress would have been immune for publishing and distributing the report, then functionaries carrying out these congressional directives should also be immune. *See id.* at 342. It is interesting to note that Justice Stewart later joined Justice Marshall's concurrence in *Servicemen's Fund*, which emphasized the importance of the *Kilbourn* functionary doctrine.

[32] 95 S. Ct. at 1824, *quoting* Gravel v. United States, 408 U.S. 606, 621 (1972).

[33] *See* 95 S. Ct. at 1824.

[34] *See id.* at 1827–28 (Marshall, J., concurring).

[35] Gravel v. United States, 408 U.S. 606, 618 (1972), *quoted in* Doe v. McMillan, 412 U.S. 306, 315 n.9 (1973).

[36] *See* 95 S. Ct. at 1826–29 (Marshall, J., concurring). The fact that Justice Marshall felt compelled to write a concurrence discussing an issue not presented in the case — the permissibility of suit against potential defendants not then before the Court — indicates a concern that the *Servicemen's Fund* majority opinion might be taken as a rejection of the *Kilbourn* functionary doctrine.

In a brief dissenting opinion in *Servicemen's Fund*, Justice Douglas argued that a balancing test should always be employed when constitutional rights are implicated, regardless of whether the defendants are congressmen or functionaries. *See* 95 S. Ct. at 1829. This position has the advantage of not allowing the avail-

Although it is true that pre-enforcement judicial review of a congressional subpoena in a suit against a functionary will delay the legislative process, it seems unlikely that the duration of this delay would exceed that entailed if similar issues were raised in a criminal trial for contempt of Congress. When a subpoena is directed to a person wishing to challenge it, he may refuse to comply and litigate his objections if prosecuted for contempt.[37] As a result, Congress is denied the information sought until the objections are adjudicated.

To be sure, a rule that a contempt prosecution should provide the exclusive forum for litigating the validity of a subpoena [38] may provide a useful filter against frivolous challenges that would not be available if pre-enforcement review were allowed.[39] If a committee fears the possibility of frivolous objections to its subpoena, however, in many cases it will be able to force challenges to be litigated in a contempt proceeding merely by directing the subpoena to the person wanting to challenge it, rather than to a third party.[40] Where such redirection is not possible, it may be questioned whether the desire to reduce frivolous challenges justifies foreclosing all judicial review.

Despite the legitimacy of the Chief Justice's concern with disruption of the legislative process, his incorporation of this concern into the speech or debate clause seems unfortunate. In determining whether to grant pre-enforcement review of congressional subpoenas, a court should consider not only the congres-

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ability of review to depend on the fortuity of locating a proper functionary, but it might make it more difficult in practice to maintain the distinction between holding congressmen accountable for their speeches or votes and determining whether congressional powers have been exceeded, *see* pp. 135–36 *supra*.

[37] *See, e.g.*, Barenblatt v. United States, 360 U.S. 109 (1959); Watkins v. United States, 354 U.S. 178 (1957).

[38] *See* 95 S. Ct. at 1824–25 n.16. It is the availability of contempt proceedings as a forum for litigation of challenges to the validity of subpoenas that has warranted the courts' refusal to provide pre-enforcement review. *See* United States v. Ryan, 402 U.S. 530, 532–33 (1971) (grand jury subpoena); Cobbledick v. United States, 309 U.S. 323, 324–26 (1940) (same); Sanders v. McClellan, 463 F.2d 894, 899–900 (D.C. Cir. 1972) (congressional committee subpoena); Ansara v. Eastland, 442 F.2d 751, 753–54 (D.C. Cir. 1971) (same). When the contempt mechanism has not been available, the Supreme Court has recognized that some pre-enforcement review should be provided. *See* Eastland v. United States Servicemen's Fund, 95 S. Ct. 1813, 1820 n.14 (1975); United States v. Nixon, 418 U.S. 683, 691–92 (1974); Perlman v. United States, 247 U.S. 7, 12–13 (1918).

[39] *See* United States v. Nixon, 418 U.S. 683, 690–91 (1974) (dictum); United States v. Ryan, 402 U.S. 530, 533 (1971).

[40] Thus in *Servicemen's Fund* the subpoena could have been directed to USSF. USSF asserted that it had in its possession the information that the subcommittee sought from the bank. *See* Joint Brief of Respondents at 4, Eastland v. United States Servicemen's Fund, 95 S. Ct. 1813 (1975).

sional interest, but also the countervailing interest in ensuring that first amendment rights are not violated and the alternative courses open to Congress to avoid frivolous challenges to its subpoenas. Discussion of these issues under the rubric of the speech or debate clause needlessly obfuscates the policies at stake and leads to a disregard of first amendment interests. This absolutist position is not warranted by either past cases or the purposes of the speech or debate clause.

### *H. State Action*

*Utility Terminations.* — Because the prohibitions of the fourteenth amendment apply only to the states,[1] courts often have to determine when arguably private action should be treated as state action for purposes of the amendment.[2] In *Jackson v. Metropolitan Edison Co.*,[3] the Supreme Court held that where a heavily regulated utility, enjoying a territorial monopoly in the provision of electricity, terminates a customer's service for alleged nonpayment, such a termination does not constitute state action.

When her electrical service was cut off by Metropolitan Edison, Catherine Jackson sued the company under 42 U.S.C. § 1983,[4] alleging that termination without prior notice and an opportunity to be heard had deprived her of property without due process of law.[5] The district court granted the utility's mo-

[1] *See* Shelley v. Kraemer, 334 U.S. 1, 13 (1948). The fourteenth amendment provides in part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[2] *See, e.g.*, Columbia Broadcasting Sys., Inc. v. Democratic Nat'l Comm., 412 U.S. 94, 114–21 (1973); Lloyd Corp. v. Tanner, 407 U.S. 551 (1972); Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972). *See generally* Black, *The Supreme Court, 1966 Term — Foreword: "State Action," Equal Protection, and California's Proposition 14*, 81 HARV. L. REV. 69 (1967); Henkin, Shelley v. Kraemer: *Notes for a Revised Opinion*, 110 U. PA. L. REV. 473 (1962); Karst & Horowitz, *Reitman v. Mulkey: A Telophase of Substantive Equal Protection*, 1967 SUP. CT. REV. 39; Williams, *The Twilight of State Action*, 41 TEXAS L. REV. 347 (1963).

[3] 419 U.S. 345 (1974).

[4] 42 U.S.C. § 1983 (1970) grants a private right of action against anyone who, "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory," deprives any person "of rights, privileges, or immunities secured by the Constitution and laws." The *Jackson* Court treated the requirement that the action be taken under color of state law as identical to the state action requirement of the fourteenth amendment. For a discussion of this problem, *see* Palmer v. Columbia Gas, Inc., 479 F.2d 153, 161 (6th Cir. 1973).

[5] Jackson claimed that she was granted an entitlement of service, within the