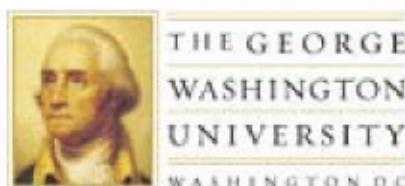


# The Burger Court Opinion Writing Database

*Great American Federal Savings & Loan Association v. Novotny*  
442 U.S. 366 (1979)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

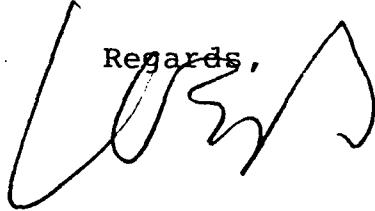
June 5, 1979

Re: 78-753 - Great American Federal Savings & Loan  
Association v. Novotny

Dear Potter:

I join.

Regards,



Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 30, 1979

RE: No. 78-753 Great American Federal S & L v. Novotny

Dear Byron:

Will you please join me in your dissent in the  
above.

Sincerely,



Mr. Justice White  
cc: The Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: 17 MAY 1979

1st DRAFT

Recirculated: \_\_\_\_\_

## SUPREME COURT OF THE UNITED STATES

No. 78-753

Great American Federal Savings & Loan Association et al.,  
Petitioners,  
*v.*  
John R. Novotny. } On Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit.

[May —, 1979]

Mr. JUSTICE STEWART delivered the opinion of the Court.

More than a century after their passage, the Civil Rights Acts of the Reconstruction era continue to present difficult problems of statutory construction. Cf. *Chapman v. Houston Welfare Rights Org.*, — U. S. —. In the case now before us, we consider the scope of 42 U. S. C. § 1985 (c), the surviving version of § 2 of the Civil Rights Act of 1871.<sup>1</sup>

<sup>1</sup> 42 U. S. C. § 1985 (c), Rev. Stat. § 1980, provides:

"If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws; or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the

3, b, *activities*  
*remembered*

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: \_\_\_\_\_

2nd DRAFT

Recirculated: 22 MAY 1979

## SUPREME COURT OF THE UNITED STATES

No. 78-753

Great American Federal Savings  
 & Loan Association et al.,  
 Petitioners, } On Writ of Certiorari to the  
 v.  
 John R. Novotny. } United States Court of  
 Appeals for the Third  
 Circuit.

[May —, 1979]

MR. JUSTICE STEWART delivered the opinion of the Court.

More than a century after their passage, the Civil Rights Acts of the Reconstruction era continue to present difficult problems of statutory construction. Cf. *Chapman v. Houston Welfare Rights Org.*, — U. S. —. In the case now before us, we consider the scope of 42 U. S. C. § 1985 (c), the surviving version of § 2 of the Civil Rights Act of 1871.<sup>1</sup>

<sup>1</sup> 42 U. S. C. § 1985 (c), Rev. Stat. § 1980, provides:

"If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws; or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the

3

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: 28 MAY 1979

3rd DRAFT

Recirculated:

## SUPREME COURT OF THE UNITED STATES

No. 78-753

Great American Federal Savings & Loan Association et al.,  
 Petitioners,  
 v.  
 John R. Novotny. } On Writ of Certiorari to the  
 } United States Court of  
 } Appeals for the Third  
 } Circuit.

[May —, 1979]

MR. JUSTICE STEWART delivered the opinion of the Court.

More than a century after their passage, the Civil Rights Acts of the Reconstruction era continue to present difficult problems of statutory construction. Cf. *Chapman v. Houston Welfare Rights Org.*, — U. S. —. In the case now before us, we consider the scope of 42 U. S. C. § 1985 (c), the surviving version of § 2 of the Civil Rights Act of 1871.<sup>1</sup>

<sup>1</sup> 42 U. S. C. § 1985 (c), Rev. Stat. § 1980, provides:

"If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws; or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the

3

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated:

4th DRAFT

Recirculated: 31 MAY 1979

## SUPREME COURT OF THE UNITED STATES

No. 78-753

Great American Federal Savings & Loan Association et al.,  
Petitioners,  
*v.*  
John R. Novotny. } On Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit.

[May —, 1979]

MR. JUSTICE STEWART delivered the opinion of the Court.

More than a century after their passage, the Civil Rights Acts of the Reconstruction era continue to present difficult problems of statutory construction. Cf. *Chapman v. Houston Welfare Rights Org.*, — U. S. —. In the case now before us, we consider the scope of 42 U. S. C. § 1985 (c), the surviving version of § 2 of the Civil Rights Act of 1871.<sup>1</sup>

<sup>1</sup> 42 U. S. C. § 1985 (c), Rev. Stat. § 1980, provides:

"If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws; or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 22, 1979

No. 78-753 - Great American Federal S&L  
Association v. Novotny

Dear Potter,

I am considering writing a brief  
dissent in this case.

Sincerely yours,



Mr. Justice Stewart  
Copies to the Conference  
cmc

No. 78-753 — Great American Federal Savings & Loan  
Association v. Novotny

*BBW*  
*PPW*  
*PPW*

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 5-29-79

Recirculated: \_\_\_\_\_

MR. JUSTICE WHITE, dissenting.

The Court today releases employers acting with invidious discriminatory animus in concert with others from liability under § 1985(c) for the injuries they inflict. Because for both respondent in this case and as a general matter § 1985(c) is an entirely consistent supplement to Title VII, I dissent.

I

Respondent sought compensatory damages under 1/ 42 U.S.C. § 1985(c) on the ground that he had been injured by acts done in furtherance of a conspiracy for the purpose of depriving others of "equal privileges and immunities" guaranteed in § 703(a) of Title VII, 2/ which prohibits discrimination on the basis of, inter alia, sex. Additionally, and separately,

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 1, 4-5, 7, 9 & 11

Mr. Justice Brennan  
Mr. Justice Stewart  
✓Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: \_\_\_\_\_

1st PRINTED DRAFT

Recirculated: June 1, 1979

## SUPREME COURT OF THE UNITED STATES

No. 78-753

Great American Federal Savings & Loan Association et al.,  
Petitioners,  
v.  
John R. Novotny. } On Writ of Certiorari to the  
United States Court of Appeals for the Third  
Circuit.

[June —, 1979]

MR. JUSTICE WHITE, dissenting.

The Court today releases employers acting with invidious discriminatory animus in concert with others from liability under § 1985 (c) for the injuries they inflict. Because for both respondent in this case and as a general matter § 1985 (c) is an entirely consistent supplement to Title II, I dissent.

### I

Respondent sought compensatory damages under 42 U. S. C. § 1985 (c)<sup>1</sup> on the ground that he had been injured by acts done in furtherance of a conspiracy for the purpose of depriving others of "equal privileges and immunities" guaranteed in § 703 (a) of Title VII,<sup>2</sup> which prohibits discrimination on

<sup>1</sup> 42 U. S. C. § 1985 (c) provides in relevant part that when persons who "conspire . . . for the purpose of depriving . . . any person or class of persons of the equal protection of the laws; or of equal privileges and immunities under the laws, . . . do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury . . . , against any one or more of the conspirators."

<sup>2</sup> 42 U. S. C. § 2000e-2 (a). This statute provides:

"It shall be an unlawful employment practice for an employer—

"(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation,

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 30, 1979

Re: No. 78-753 - Great American Federal S & L v.  
Novotny

Dear Byron:

Please join me in your dissent.

Sincerely,

*T.M.*  
T.M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 22, 1979

Re: No. 78-753 - Great American Federal S & L  
v. Novotny

Dear Potter:

It is my understanding that you are willing to add at least a footnote citation to United States v. Johnson, 390 U.S. 563, which will preserve my concern about the integrity of the holding in that case. Upon that understanding, I am happy to join your opinion.

Sincerely,

*Harry*

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 4, 1979

Re: No. 78-753 - Great American Federal Savings  
& Loan Association v. Novotny

Dear Potter:

As these cases go through, more and more of us are tipping their hands as to their attitudes concerning the "and laws" issue. This, of course, is no disaster, although I have not yet joined that trend.

You may regard this as a formal joinder of your opinion.

Sincerely,



Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 19, 1979

78-753 Great American v. Novotny

Dear Potter:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Stewart

lfp/ss

cc: The Conference

No. 78-753

Great American Fed. S. & L. v. Novotny

Mr. Justice Powell, concurring.

I agree with the opinion of the Court as far as it goes, and I join it. It seems to me, however, that the decision affords unnecessarily limited guidance to courts in the federal system. The Court's specific holding is that §1985(c) may not be invoked to redress violations of Title VII. The broader issue argued to us in this case was whether this Civil War era remedial statute, providing no substantive rights itself, was intended to provide a remedy generally for the violation of subsequently created statutory rights. I would hold that § 1985(c) should not be so construed, and that its reach is limited to conspiracies to violate those fundamental rights derived from the Constitution.

The Court's unanimous decision in Griffin v. Breckenridge, 403 U.S. 88 (1971), is to this effect. The alleged conspiracy there was an attempt by white citizens, resorting to force and violence, to deprive Negro citizens of the right to use interstate highways. In sustaining a cause of action under §1985(3), the Court found that the alleged conspiracy - if implemented - would violate the constitutional "right of interstate travel" as well as the right of Negro citizens to be free from "invidiously discriminatory" action. The Court declared:

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Powell

29 MAY 1979  
Circulated: \_\_\_\_\_

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Recirculated: \_\_\_\_\_

No. 78-753

Great American Federal Savings & Loan Association et al.,  
Petitioners,  
v.  
John R. Novotny. } On Writ of Certiorari to the  
United States Court of Appeals for the Third  
Circuit.

[June —, 1979]

MR. JUSTICE POWELL, concurring.

I agree with the opinion of the Court as far as it goes, and I join it. It seems to me, however, that the decision affords unnecessarily limited guidance to courts in the federal system. The Court's specific holding is that § 1985 (c) may not be invoked to redress violations of Title VII. The broader issue argued to us in this case was whether this Civil War era remedial statute, providing no substantive rights itself, was intended to provide a remedy generally for the violation of subsequently created statutory rights. I would hold that § 1985 (c) should not be so construed, and that its reach is limited to conspiracies to violate those fundamental rights derived from the Constitution.

The Court's unanimous decision in *Griffin v. Breckenridge*, 403 U. S. 88 (1971), is to this effect. The alleged conspiracy there was an attempt by white citizens, resorting to force and violence, to deprive Negro citizens of the right to use interstate highways. In sustaining a cause of action under § 1985 (3), the Court found that the alleged conspiracy—if implemented—would violate the constitutional “right of interstate travel” as well as the right of Negro citizens to be free from “invidiously discriminatory” action. The Court declared:

“That the statute was meant to reach private action does not, however, mean that it was intended to apply

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: \_\_\_\_\_

Received: 1 JUN 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-753

<p>Great American Federal Savings      &amp; Loan Association et al.,      Petitioners,      v.      John R. Novotny.</p>	<p>On Writ of Certiorari to the      United States Court of      Appeals for the Third      Circuit.</p>
---	--

[June —, 1979]

MR. JUSTICE POWELL, concurring.

I agree with the opinion of the Court as far as it goes, and I join it. I also agree with the views expressed by MR. JUSTICE STEVENS' concurring opinion. I write separately because it seems to me that the Court's decision affords unnecessarily limited guidance to courts in the federal system.

The Court's specific holding is that § 1985 (c) may not be invoked to redress violations of Title VII. The broader issue argued to us in this case was whether this Civil War era remedial statute, providing no substantive rights itself, was intended to provide a remedy generally for the violation of subsequently created statutory rights. For essentially the reasons suggested by MR. JUSTICE STEVENS, I would hold that § 1985 (c) should not be so construed, and that its reach is limited to conspiracies to violate those fundamental rights derived from the Constitution.

The Court's unanimous decision in *Griffin v. Breckenridge*, 403 U. S. 88 (1971), is to this effect. The alleged conspiracy there was an attempt by white citizens, resorting to force and violence, to deprive Negro citizens of the right to use interstate highways. In sustaining a cause of action under § 1985 (3), the Court found that the alleged conspiracy—if implemented—would violate the constitutional "right of interstate

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 17, 1979

Re: No. 78-753 Great American Federal Savings & Loan  
Association, et al. v. Novotny

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

✓

May 23, 1979

Re: No. 78-753 - Great American Federal Savings & Loan  
Association v. Novotny

Dear Potter:

I am sorry to say that I cannot agree with the new language you have added in footnote 6, apparently in accord with Harry's suggestion of May 22nd. It seems to me that the language is not neutral in the way in which it reserves the question stated, and I certainly see no reason to reaffirm as weakly reasoned a case as United States v. Johnson, 390 U.S. 563, from which you, Hugo Black, and John Harlan dissented.

Sincerely,

W

Mr. Justice Stewart

Copy to Mr. Justice Powell

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 23, 1979

Re: 78-753 - Great American Federal Savings  
and Loan v. Novotny

Dear Potter:

Although I am preparing a short concurrence  
which I shall circulate in a day or two, I would  
like to join your opinion for the Court.

Respectfully,



Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

✓

May 24, 1979

Re: 78-753 - Great American Federal  
Savings & Loan Assn. v. Novotny

Dear Potter:

Your revised footnote 6 is acceptable to  
me. I think it is particularly wise to include  
the last sentence.

Respectfully,

*JPS*

Mr. Justice Stewart

cc: Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Mr. Justice Stevens

78-753 - Great American Federal Savings

Circulated: May 30 79

& Loan Assn. v. Novotny Recirculated: \_\_\_\_\_

MR. JUSTICE STEVENS, concurring.

While I join the Court's opinion, including its reliance on Brown v. General Services Administration, 425 U.S. 820, and while I agree with much of MR. JUSTICE POWELL's concurrence, I add a few words of my own to explain why I would reach the same conclusion even if the Court had agreed with my dissenting views in Brown.

Sections 1983 and 1985(c) of Title 42 of the United States Code are the surviving direct descendants of §§ 1 and 2 of the Civil Rights Act of 1871. 17 Stat. 13. Neither of these sections created any substantive rights. Earlier this term we squarely held that § 1983 merely provides a remedy for certain violations of certain federal rights,<sup>1/</sup> and today the Court unequivocally holds that § 1985(c) "provides no substantive

<sup>1/</sup> "Standing alone, § 1983 clearly provides no protection for civil rights since, as we have just concluded, § 1983 does not provide any substantive rights at all." Chapman v. Houston Welfare Rights Org., \_\_\_\_ U.S. \_\_\_\_.

In that opinion we quoted Senator Edmunds' comment in the 1871 Debate:

"All civil suits, as every lawyer understands, which this act authorizes, are not based upon it; they are based upon the right of the citizen. The act only gives a remedy." Cong. Globe, 42d Cong., 1st Sess., 569 (1871).

PP 4-5

Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: 6/19

Recirculated: 6/19

1st PRINTED DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-753

Great American Federal Savings  
& Loan Association et al.,  
Petitioners,  
*v.*  
John R. Novotny. } On Writ of Certiorari to the  
United States Court of  
Appeals for the Third  
Circuit.

[June —, 1979]

MR. JUSTICE STEVENS, concurring.

While I join the Court's opinion, including its reliance on *Brown v. General Services Administration*, 425 U. S. 820, and while I agree with much of MR. JUSTICE POWELL's concurrence, I add a few words of my own to explain why I would reach the same conclusion even if the Court had agreed with my dissenting views in *Brown*.

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<sup>1</sup> "Standing alone, § 1983 clearly provides no protection for civil rights since, as we have just concluded, § 1983 does not provide any substantive rights at all." *Chapman v. Houston Welfare Rights Org.*, — U. S. —, —.

In that opinion we quoted Senator Edmunds' comment in the 1871 Debate: "All civil suits, as every lawyer understands, which this act authorizes, are not based upon it; they are based upon the right of the citizen. The act only gives a remedy." Cong. Globe, 42d Cong., 1st Sess., 569 (1871).

<sup>2</sup> And at p. 10, the Court states:

"Section 1985 (c), by contrast, creates no rights. It is a purely remedial