

509 F. Supp. 815, \*, 1981 U.S. Dist. LEXIS 11119, \*\*;  
1981-2 Trade Cas. (CCH) P64,165

plaintiff in an unlawful manner. *Waters v. St. Francis Hospital*, 618 F.2d 1105 (5th Cir. 1980). There is no allegation to this effect in the Amended Complaint.

(b) § 1985 allegations

Plaintiff has no claim under 42 U.S.C. § 1985(3)<sup>10</sup> since the Amended Complaint fails to contain any allegations that would show both the private deprivation of the enjoyment of the laws and an invidious class-based discriminatory motivation (usually, but not always, involving racial bias). *McLellan v. Mississippi Power [\*\*23] & Light Co.*, 545 F.2d 919 (5th Cir. 1977).<sup>11</sup>

10. "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...." § 1985(1) and (2) are inapplicable.

11. This was an en banc decision in which the majority held that an employee discharged from private employment solely because he filed a petition in voluntary bankruptcy has no cause of action under 42 U.S.C. § 1985(3). The majority exhaustively analyzed the application of the statute by following the guidelines prescribed by the Supreme Court in *Griffin v. Breckenridge*, 403 U.S. 88, 91 S. Ct. 1790, 29 L. Ed. 2d 338 (1971). The Supreme Court in *Griffin* held that § 1985(3) reaches private conspiracies as well as those performed under color of state law and elucidated the necessary elements to successfully maintain a cause of action under this section. In its opinion, the Fifth Circuit expressly reserved decision on whether Congress intended only racial bias to activate the provisions of the statute but advised restraint when a court is confronted with class-based discrimination grounded in a non-racial animus. *McLellan*, supra at 929.

**[\*\*24]** Plaintiff has not alleged and the Court fails to discern any illegal conduct committed by the defendants in acting to deprive plaintiff of a position on the hospital medical staff.<sup>12</sup> Moreover, there has been no allegation of any racially motivated discrimination against plaintiff by the defendants. He alleges a class-based animus against him as a podiatrist. This discrimination is not actionable under the cases heretofore construing the reach of § 1985(3):

Federal Courts have recognized that those who are discriminated against because of political views or associations fall with (sic) the protective scope of Section 1985(2) and (3). Courts have found a class-based animus sufficient to support causes of action where the conspiracy is directed toward supporters of a particular political candidate, *Cameron v. Brock*, **[\*824]** 473 F.2d 608 (6th Cir. 1973) and *Means v. Wilson*, 522 F.2d 833 (8th Cir. 1975), cert. denied, 424 U.S. 958, 96 S. Ct. 1436, 47 L. Ed. 2d 364 (1976); voters who were deceived about the actual effect of their vote, *Smith v. Cherry*, 489 F.2d 1098 (7th Cir. 1973), cert. denied, 417 U.S. 910, 94 S. Ct. 2607, 41 L. Ed. 2d 214 (1974); individuals critical **[\*\*25]** of the President and his policies, *Glasson v. City of Louisville*, 518 F.2d 899 (6th Cir.), cert. denied, 423 U.S. 930, 96 S. Ct. 280, 46 L. Ed. 2d 258 (1975); members of a group advocating an unpopular position, *Puentes v. Sullivan*, 425 F. Supp. 249 (W.D.Tex.1977); laborers who are not members of a union, *Scott v. Moore*, 461 F. Supp. 224 (E.D.Tex.1978); members of the teaching profession who talk or associate with the CIA, *Selzer v. Berkowitz*, 459 F. Supp. 347 (E.D.N.Y.1978); and students who exercise their first amendment rights by joining certain organizations. *Brown v. Villanova University*, 378 F. Supp. 342 (E.D.Pa.1974).

*Kimble v. D. J. McDuffy, Inc.*, 623 F.2d 1060, 1067 (5th Cir. 1980) (rehearing en banc pending).

12. The Court excludes the Sherman Act count contained in the Amended Complaint which alleges an anti-competitive conspiracy on the part of the defendants. If plaintiff sustains these allegations with proof, a remedy is already provided for by that law. See 15 U.S.C. §§ 15 & 26.

**[\*\*26]** For these reasons, plaintiff's § 1985 claim cannot be sustained.

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