**ANNOTATIONS AND COMMENTS**

42 U.S.C. § 1983 imposes liability on persons who cause deprivations of federal rights “under color of state law[.]” *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 924 (1982) (citing 42 U.S.C. § 1983). The statute’s “under color of law” requirement means “the same thing as the ‘state action’ required under the Fourteenth Amendment.” *Id.* at 928. Thus, the liability created by § 1983 “do[es] not apply to private parties unless those parties are engaged in activity deemed to be ‘state action.’” *Nat’l Broad. Co. v. Commc’ns Workers of Am.*, 860 F.2d 1022, 1024 (11th Cir. 1988).

The Eleventh Circuit has identified three tests to determine whether a private party’s conduct amounts to state action: “(1) the public function test; (2) the state compulsion test; and (3) the nexus/joint action test.” *Willis v. Univ. Health Servs.*, 993 F.2d 837, 840 (11th Cir. 1993) (citing *Nat’l Broad. Co.*, 860 F.2d at 1026). This instruction addresses the state compulsion test.

 “The state compulsion test . . . limits state action to instances in which the government has coerced or at least significantly encouraged the action alleged to violate the Constitution.” *Nat’l Broad. Co.*, 860 F.2d at 1026. As the Supreme Court has explained, “a State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.” *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982).

Showing that the state compelled a defendant’s action is a heavy burden. Plaintiffs who seek to establish that the state compelled a private defendant to act must generally show that the state “entered into the decision-making process which resulted in the” unconstitutional decision. *Nat’l Broad. Co.*, 860 F.2d at 1026. Even a showing of the state’s “approval of or acquiescence in” the private conduct is not enough. *Blum*, 457 U.S. at 1004–05; *see also* *Harvey v. Harvey*, 949 F.2d 1127, 1130–31 (11th Cir. 1992). Only a showing of coercion or *significant* encouragement will suffice. *See Langston v. ACT*, 890 F.2d 380, 385 (11th Cir. 1989).

Although the state compulsion test presents a high bar for § 1983 litigants, controlling decisions have held that the state coerced private action in certain circumstances. *See, e.g.*, *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 179 (1972) (holding that state board regulation requiring compliance with racially discriminatory bylaws of private company amounted to state action); *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 171 (1970) (holding that state-enforced custom of racial segregation in restaurants amounted to state action).

 The Eleventh Circuit has held that state action issues present mixed questions of fact and law. *See Duke v. Smith*, 13 F.3d 388, 392 (11th Cir. 1994); *see also* *Almand v. DeKalb Cnty.*, 103 F.3d 1510, 1513–14 (11th Cir. 1997) (collecting cases).

The state compulsion test might present either a pure legal question or a partly factual question, depending on the nature of the plaintiff’s allegations. For example, if the plaintiff argues that state statutes or regulations compelled a private defendant to act unconstitutionally, determining whether state law in fact required the allegedly unlawful action would require only legal analysis. *See, e.g.*, *Blum*, 457 U.S. at 1007–09. But triable jury issues might arise if the plaintiff claims that a state-enforced custom caused her injury. *See, e.g.*, *Adickes*, 398 U.S. at 171–74.