tracts are maritime. Rather than apply a rule excluding all or certain agency contracts from the realm of admiralty, lower courts should look to the subject matter of the agency contract and determine whether the services performed under the contract are maritime in nature. See generally *Kossick, supra,* 365 U.S. at 735–738, 81 S.Ct., at 890–892 (analogizing the substance of the contract at issue to established types of "maritime" obligations and finding the contract within admiralty jurisdiction).

III

[5, 6] There remains the question whether admiralty jurisdiction extends to Exxon's claim regarding the delivery of fuel in Jeddah. We conclude that it does. Like the District Court, we believe it is clear that when Exxon directly supplies marine fuels to Waterman's ships, the arrangement is maritime in nature. See 707 F.Supp., at 161. Cf. *The Golden Gate,* 52 F.2d 397 (CA9 1931) (entertaining an action in admiralty for the value of fuel oil furnished to a vessel), cert. denied *sub nom. Knutsen v. Associated Oil Co.,* 284 U.S. 682, 52 S.Ct. 199, 76 L.Ed. 576 (1932). In this case, the only difference between the New York delivery over which the District Court asserted jurisdiction, see n. 2, *supra,* and the Jeddah delivery was that, in Jeddah, |613Exxon bought the fuels from a third party and had the third party deliver them to the *Hooper.* The subject matter of the Jeddah claim, like the New York claim, is the value of the fuel received by the ship. Because the nature and subject-matter of the two transactions are the same as they relate to maritime commerce, if admiralty jurisdiction extends to one, it must extend to the other. Cf. *North Pacific, supra,* 249 U.S., at 128, 39 S.Ct., at 224 ("[T]here is no difference in character as to repairs made upon ... a vessel ... whether they are made while she is afloat, while in dry dock, or while hauled up [on] land. The nature of the service is identical in the several cases, and the admiralty jurisdiction extends to all").[7] We express no view on whether Exxon is entitled to a maritime lien under the Federal Maritime Lien Act. That issue is not before us, and we leave it to be decided on remand.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

7. As noted, the District Court regarded the services performed by Exxon in the Jeddah transaction as "preliminary" and characterized the rule excluding agency contracts from admiralty as "a subset" of the preliminary contract doctrine. See *supra,* at 2074, and n. 3. This Court has never ruled on the validity of the preliminary contract doctrine, nor do we reach that question here. However, we emphasize that *Minturn* has been overruled and that courts should focus on the nature of the services performed by the agent in determining whether an agency contract is a maritime contract.

500 U.S. 614, 114 L.Ed.2d 660

|614**Thaddeus Donald EDMONSON, Petitioner**

v.

LEESVILLE CONCRETE COMPANY, INC.

No. 89–7743.

Argued Jan. 15, 1991.

Decided June 3, 1991.

Black construction worker who was injured in a job-site accident at a federal enclave sued concrete company for negligence. During voir dire, defendant used two of its three peremptory challenges to remove black persons from the prospective jury. Plaintiff requested that defendant be required to articulate a race-neutral explanation for strik-

ing the jurors. After denying request, the United States District Court for the Western District of Louisiana, Earl E. Veron, J., entered judgment on jury verdict which found plaintiff 80% contributorily negligent, and plaintiff appealed. The Court of Appeals for the Fifth Circuit, 860 F.2d 1308, reversed and remanded. On rehearing en banc, the Court of Appeals, 895 F.2d 218, affirmed. Plaintiff sought certiorari. The Supreme Court, Justice Kennedy, held that: (1) private litigant in a civil case may not use peremptory challenges to exclude jurors on account of their race, since race-based exclusion violates equal protection rights of the challenged jurors; (2) exercise of peremptory challenges by defendant in the district court was pursuant to a course of state action; and (3) case would be remanded for determination of whether plaintiff established a prima facie case of racial discrimination, such that defendant would be required to offer race-neutral explanations for its peremptory challenges.

Reversed and remanded.

Justice O'Connor filed a dissenting opinion in which Chief Justice Rehnquist and Justice Scalia joined.

Justice Scalia filed a dissenting opinion.

Opinion on remand, 943 F.2d 551.

1. Constitutional Law ⇐221(4)
Jury ⇐38

Private litigant in a civil case may not use peremptory challenges to exclude jurors on account of their race; race-based exclusion of potential jurors violates their equal protection rights. U.S.C.A. Const.Amends. 5, 14.

2. Constitutional Law ⇐213(4)

Test to determine whether constitutional deprivation caused by private party involves "state action" is whether claimed deprivation resulted from exercise of a right or privilege having its source in state authority, and whether private party charged with the deprivation can be described in all fairness as a state actor.

3. Constitutional Law ⇐213(2)

In determining whether particular action or course of action constitutes "state action," it is relevant to examine: extent to which actor relies on governmental assistance and benefits; whether actor is performing a traditional governmental function; and whether injury caused is aggravated in a unique way by the incidents of governmental authority.

4. Constitutional Law ⇐213(2)

Although private use of state-sanctioned private remedies or procedures does not arise, by itself, to the level of "state action," such action may be found when private parties make extensive use of state procedures with the overt, significant assistance of state officials.

See publication Words and Phrases for other judicial constructions and definitions.

5. Constitutional Law ⇐213(4)
Jury ⇐33(5.15), 38

Private litigant's use of peremptory challenges in civil case to exclude jurors on account of race constituted "state action," considering that claimed constitutional deprivation resulted from exercise of right or privilege having its source in state authority, and that litigant in all fairness had to be deemed government actor in its use of peremptory challenges, inasmuch as litigant made extensive use of government procedures with overt, significant assistance of the government; moreover, action in question involved performance of a traditional governmental function, and injury allegedly caused by use of peremptory challenges was aggravated in a unique way by the incidents of governmental authority. U.S.C.A. Const.Amends. 5, 14.

6. Constitutional Law ⇐42(2)

Litigant may raise a constitutional claim on behalf of third party if litigant can demonstrate that he or she has suffered a concrete, redressable injury, that he or she has a close relationship with third party, and that there

petit jury by discharging him or her. Moreover, the action in question involves the performance of a traditional governmental function, see, *e.g., Terry v. Adams,* 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152, since the peremptory challenge is used in selecting the jury, an entity that is a quintessential governmental body having no attributes of a private actor. Furthermore, the injury allegedly caused by Leesville's use of peremptory challenges is aggravated in a unique way by the incidents of governmental authority, see *Shelley v. Kraemer,* 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161, since the courtroom is a real expression of the government's constitutional authority, and racial exclusion within its confines compounds the racial insult inherent in judging a citizen by the color of his or her skin. Pp. 2081–2087.

(b) A private civil litigant may raise the equal protection claim of a person whom the opposing party has excluded from jury service on account of race. Just as in the criminal context, see *Powers, supra,* all three of the requirements for third-party standing are satisfied in the civil context. First, there is no reason to believe that the daunting barriers to suit by an excluded criminal juror, see *id.,* at 414, 111 S.Ct., at 1372, would be any less imposing simply because the person was excluded from civil jury service. Second, the relation between the excluded venireperson and the litigant challenging the exclusion is just as close in the civil as it is in the criminal context. See *id.,* at 413, 111 S.Ct., at 1372. Third, a civil litigant can demonstrate that he or she has suffered a concrete, redressable injury from the exclusion of jurors on account of race, in that racial discrimination in jury selection casts doubt on the integrity of the judicial process and places the fairness of the proceeding in doubt. See *id.,* at 411, 111 S.Ct., at 1371. Pp. 2087–2088.

(c) The case is remanded for a determination whether Edmonson has established a prima facie case of racial discrimination under the approach set forth in *Batson, supra,* 476 U.S., at 96–97, 106 S.Ct. at 1722–23, such that Leesville would be required to offer race-neutral explanations for its peremptory challenges. Pp. 2088–2089.

895 F.2d 218 (CA1990), reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which WHITE, MARSHALL, BLACKMUN, STEVENS, and SOUTER, JJ., joined. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C.J., and SCALIA, J., joined, *post,* p. 2089. SCALIA, J., filed a dissenting opinion, *post,* p. 2095.

James B. Doyle, Lake Charles, La., for petitioner.

616John S. Baker, Jr., Baton Rouge, La., for respondent.

Justice KENNEDY delivered the opinion of the Court.

[1] We must decide in the case before us whether a private litigant in a civil case may use peremptory challenges to exclude jurors on account of their race. Recognizing the impropriety of racial bias in the courtroom, we hold the race-based exclusion violates the equal protection rights of the challenged jurors. This civil case originated in a United States District Court, and we apply the equal protection component of the Fifth Amendment's Due Process Clause. See *Bolling v. Sharpe,* 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954).

I

Thaddeus Donald Edmonson, a construction worker, was injured in a jobsite accident at Fort Polk, Louisiana, a federal enclave. Edmonson sued Leesville Concrete Company for negligence in the United States District Court for the Western District of Louisiana, claiming that a Leesville employee permitted one of the company's trucks to roll backward and pin him against some construction equip-

ment. Edmonson invoked his Seventh Amendment right to a trial by jury.

During *voir dire*, Leesville used two of its three peremptory challenges authorized by statute to remove black persons from the prospective jury. Citing our decision in *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), Edmonson, who is [617]himself black, requested that the District Court require Leesville to articulate a race-neutral explanation for striking the two jurors. The District Court denied the request on the ground that *Batson* does not apply in civil proceedings. As empaneled, the jury included 11 white persons and 1 black person. The jury rendered a verdict for Edmonson, assessing his total damages at $90,000. It also attributed 80% of the fault to Edmonson's contributory negligence, however, and awarded him the sum of $18,000.

Edmonson appealed, and a divided panel of the Court of Appeals for the Fifth Circuit reversed, holding that our opinion in *Batson* applies to a private attorney representing a private litigant and that peremptory challenges may not be used in a civil trial for the purpose of excluding jurors on the basis of race. 860 F.2d 1308 (1989). The Court of Appeals panel held that private parties become state actors when they exercise peremptory challenges and that to limit *Batson* to criminal cases "would betray *Batson*'s fundamental principle [that] the state's use, toleration, and approval of peremptory challenges based on race violates the equal protection clause." *Id.*, at 1314. The panel remanded to the trial court to consider whether Edmonson had established a prima facie case of racial discrimination under *Batson*.

The full court then ordered rehearing en banc. A divided en banc panel affirmed the judgment of the District Court, holding that a private litigant in a civil case can exercise peremptory challenges without accountability for alleged racial classifications. 895 F.2d 218 (1990). The court concluded that the use of peremptories by private litigants does not constitute state action and, as a result, does not implicate constitutional guarantees. The dissent reiterated the arguments of the vacated panel opinion. The Courts of Appeals have divided on the issue. See *Dunham v. Frank's Nursery & Crafts, Inc.*, 919 F.2d 1281 (CA7 1990) (private litigant may not use peremptory challenges to exclude venirepersons on account of race); *Fludd v. Dykes*, 863 F.2d [618]822 (CA11 1989) (same). Cf. *Dias v. Sky Chefs, Inc.*, 919 F.2d 1370 (CA9 1990) (corporation may not raise a *Batson*-type objection in a civil trial); *United States v. De Gross*, 913 F.2d 1417 (CA9 1990) (government may raise a *Batson*-type objection in a criminal case), rehearing en banc granted, 930 F.2d 695 (1991); *Reynolds v. Little Rock*, 893 F.2d 1004 (CA8 1990) (when government is involved in civil litigation, it may not use its peremptory challenges in a racially discriminatory manner). We granted certiorari, 498 U.S. 809, 111 S.Ct. 41, 112 L.Ed.2d 18 (1990), and now reverse the Court of Appeals.

II

A

In *Powers v. Ohio*, 499 U.S. 400, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991), we held that a criminal defendant, regardless of his or her race, may object to a prosecutor's race-based exclusion of persons from the petit jury. Our conclusion rested on a two-part analysis. First, following our opinions in *Batson* and in *Carter v. Jury Commission of Greene County*, 396 U.S. 320, 90 S.Ct. 518, 24 L.Ed.2d 549 (1970), we made clear that a prosecutor's race-based peremptory challenge violates the equal protection rights of those excluded from jury service. 499 U.S., at 407–409, 111 S.Ct., at 1369–1370. Second, we relied on well-established rules of third-party standing to hold that a defendant may raise the excluded jurors' equal protection rights. *Id.*, at 410–415, 111 S.Ct., at 1370–1373.

Powers relied upon over a century of jurisprudence dedicated to the elimination of race prejudice within the jury selection process.