

## Section 1983: Litigating Constitutional Rights

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### Overview of the Law of Section 1983

- I. This is the entire text of Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. §1983:  
“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.”
- II. Case that gave this statute new life was *Monroe v. Pape*, 365 U.S. 167 (1961). In *Monroe*, the Supreme Court held that a valid Section 1983 complaint was pleaded in an action against Chicago police officers who allegedly subjected citizens to unreasonable searches and seizures in violation of the 4th Amendment as applied to the states by the 14th Amendment Due Process Clause.
- III. Elements of Section 1983 cause of action:
  - A. Person: A natural person as well as municipalities and other local governmental units are “persons.” *Monell v. City of New York Department of Social Services*, 436 U.S. 658 (1978).
  - B. Color of statute, ordinance, regulation, custom, or usage (a/k/a “color of state law”): Government agent acting under the authority of a statute, ordinance,

regulation, custom, or usage of a state, or subdivision of the state, such as counties, municipalities, and any state, county, or municipal agency.

C. Deprivation of any rights, privileges, or immunities secured by the Constitution and laws: Denial of existing constitutional or statutory rights.

D. Scien<sup>ter</sup>: Level of intent varies with the constitutional right at issue.

1. Equal protection violations require purposeful discrimination. *Washington v. Davis*, 426 U.S. 229 (1976).
2. Due process violations require an abuse of governmental power. *Daniels v. Williams*, 474 U.S. 327 (1986).
3. Eighth Amendment violations need deliberate indifference. *Farmer v. Brennan*, 511 U.S. 825 (1994).
4. Some Supreme Court cases suggest different standards in high-speed chase or prison security cases. *E.g.*, *County of Sacramento v. Lewis*, 523 U.S. 833 (1998); *Whitley v. Albers*, 475 U.S. 312 (1986).

E. Causation: Proximate cause of the injury.

1. Cause-in fact: But for causation; defendant's actions played a substantial part in bringing about the injury.
2. Legal cause: reasonable foreseeability.

III. Section 1983 can be used to seek damages plus declaratory and equitable relief.

A. Damages are recoverable. *Memphis County School District v. Stachura*, 477 U.S. 299 (1986).

1. Compensatory damages may be imposed on two types of defendants: (a) natural persons sued in their individual capacities and (b) local governments and their agencies. Natural persons sued in their official capacity are not subject to damages.
2. Nominal damages are available for the denial of a constitutional right even absent actual injury. *Carey v. Piphus*, 435 U.S. 247 (1978).
3. Punitive damages are recoverable against individual defendants under § 1983 if the plaintiff makes a showing of "evil motive or intent, or ... reckless or callous indifference to the federally protected rights of others."

*Smith v. Wade*, 461 U.S. 30, 35, 56 (1983). A municipality is immune from punitive damages.

B. Equitable relief available. For instance, plaintiffs may seek injunctive relief against state officials to stop them from carrying out unconstitutional state policies. *Ex parte Young*, 209 U.S. 123 (1908).

V. Jurisdiction

A. There is concurrent jurisdiction so a plaintiff may bring a § 1983 suit in either state or federal court. *Howlett v. Rose*, 496 U.S. 356 (1990). The defendant in state court may remove to federal court. 28 U.S.C. § 1441.

B. In a few cases, the Supreme Court has ruled that federal statutes, creating a remedial scheme which Congress intended to be the exclusive avenue through which a plaintiff may assert a claim, preclude a plaintiff from seeking relief through Section 1983. See, e.g., *Middlesex County Sewerage Authority v. National Sea Clammers Assn.*, 453 U.S. 1 (1981); *Smith v. Robinson*, 468 U.S. 992 (1984); *Rancho Palos Verdes v. Abrams*, 544 U.S. 113 (2005).

IV. Respondeat superior/employer liability

A. A governmental body cannot be held vicariously liable under §1983 simply because it employs a tortfeasor. *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

B. An inadequate training policy may serve as the basis for §1983 liability when the failure to train amounts to deliberate indifference to the rights of persons with whom the officer comes in contact. *City of Canton v. Harris*, 489 U.S. 378 (1989).

C. Supervisory liability is entered against an individual based on his personal responsibility for the constitutional violation rather than an official policy or custom. *City of Oklahoma City v. Tuttle*, 471 U.S. 808 (1985). This occurs when a supervisor knowingly directs a subordinate to engage in conduct that violates the plaintiff's constitutional rights, but the subordinate lacks the requisite mental state and therefore does not commit a constitutional violation.

V. Action against federal officers and employees for constitutional rights violations.

- A. *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) ruled that an implied cause of action existed for an individual whose Fourth Amendment freedom from unreasonable search and seizures had been violated by the Federal Bureau of Narcotics. The victim of such a deprivation could sue for the violation of the Fourth Amendment itself despite the lack of any federal statute authorizing such a suit. The existence of a remedy for the violation was implied by the importance of the right violated. Individuals have an implied cause of action against federal government officials who have violated their constitutional rights.
- B. If the plaintiff has another remedy, the courts typically do not permit the plaintiff to assert a *Bivens* action. *Bush v. Lucas*, 103 S. Ct. 2404 (1983).

#### VI. Defenses to §1983

- A. Statute of limitations: The personal injury statute of limitations of the forum state governs. *Wilson v. Garcia*, 471 U.S. 261 (1985). In Illinois, the statute of limitations is two years.
- B. Article III defenses
  - 1. Lack of standing: Three requirements for standing:
    - a. Injury in fact, which means an invasion of a legally protected interest that is (i) concrete and particularized, and (ii) actual or imminent, not conjectural or hypothetical;
    - b. A causal relationship between the injury and the challenged conduct; and
    - c. A likelihood that the injury will be redressed by a favorable decision, which means that the prospect of obtaining relief from the injury as a result of a favorable ruling is not too speculative. *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).
  - 2. Mootness: The federal courts are without power to decide questions that cannot affect the rights of the litigants before them. *DeFunis v. Odegard*, 94 S. Ct. 1704 (1974).
- C. Absolute immunity
  - 1. Prosecutors: “[A]cts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur

in the course of his role as an advocate for the State, are entitled to the protections of absolute immunity.” *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993).

2. Judges possess absolute immunity from damages liability for “acts committed within their judicial jurisdiction.” *Pierson v. Ray*, 386 U.S. 547, 554 (1967).
3. Legislators enjoy absolute immunity from suits seeking damages or injunctive 10 remedies with respect to legislative acts. *Tenney v. Brandhove*, 341 U.S. 367, 379 (1951).

D. Qualified immunity: State and local officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 13 U.S. 800, 818 (1982).

1. If the challenged conduct violated clearly settled law as of the time of the conduct, the official does not have qualified immunity. *Anderson v. Creighton*, 483 U.S. 635 (1987).
2. The analysis of qualified immunity involves two questions: (a) Whether the officer's conduct violated a constitutional right and (b) Whether any such constitutional right was clearly established. *Saucier v. Katz*, 533 U.S. 194 (2001).
3. Municipalities do not have qualified immunity. States and are entitled to 11<sup>th</sup> Amendment immunity from damages liability in federal court. *Edelman v. Jordan*, 415 U.S. 651 (1974).
4. Typically, the qualified immunity defense is presented through a defense motion for summary judgment.
  - a. Qualified immunity requires resolution of a threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? *Saucier v. Katz*, 533 U. S. 194 (2001).

b. If the federal court denies the motion, the defendant in may immediately appeal the ruling. *Mitchell v. Forsyth*, 472 U.S. 511 (1985).

c. The denial of a summary judgment motion is not appealable if based solely upon the existence of disputed factual issues. *Johnson v. Jones*, 515 U.S. 304 (1995).

E. Exhaustion of administrative remedies in prisoner's cases: Section (a) of the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), provides that a §1983 action concerning prison conditions may not be brought by an incarcerated prisoner until administrative remedies are exhausted.

## VII. Attorney's fees in § 1983 actions

A. The Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988, provides that prevailing plaintiff is entitled to recover attorneys' fees.

B. Paralegal's fees are recoverable. *Missouri v. Jenkins*, 491 U. S. 274 (1989).

C. Plaintiff recovering only nominal damages is not a prevailing party and cannot recover attorney's fees. *Farrar v. Hobby*, 506 U.S. 103 (1992).

D. Prevailing defendants may be awarded attorneys' fees only "upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith." *Christiansburg Garment Co. v. E.E.O.C.*, 434 U.S. 412 (1978).

E. Rule 68 Offer of Judgment

1. At least 14 days before the date for trial, the defendant may serve on the plaintiff an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the plaintiff accepts the offer, the clerk will enter judgment. FRCP 68(a).

2. If the judgment that the plaintiff finally obtains is less favorable than the unaccepted offer, the plaintiff must pay the costs incurred after the offer was made. FRCP 68(d).

3. A defendant is not liable for the attorney's fees incurred by the plaintiff after the plaintiff's rejection of an offer of judgment of an amount greater than the actual judgment. *Marek v. Chesney*, 473 U.S. 1 (1985).

Review of the Roberts Court's Treatment of Section 1983 Cases<sup>1</sup>

(October 1, 2005-present)<sup>2</sup>

I. Causes of action

A. First Amendment

- **LOZMAN v. CITY OF RIVIERA BEACH**, 138 S. Ct. 1945 (2018): Owner of floating home located in city's marina brought § 1983 action alleging that city, through actions of its city council members, retaliated against him for criticizing municipal development project and opposing what he perceived as improper conduct of various council members, in violation of his First, Fourth, and Fourteenth Amendment rights. The Supreme Court, Justice Kennedy, held that under the circumstances of this case, the existence of probable cause did not bar owner's First Amendment retaliatory arrest claim.
- **HEFFERNAN v. CITY OF PATERSON**, 136 S. Ct. 1412 (2016): City police officer filed § 1983 action against city, mayor, police chief, and police administrator, alleging that he was demoted in retaliation for exercising his First Amendment rights. The Supreme Court, Justice Breyer, held that fact that officer's supervisors were mistaken about officer's involvement in mayoral campaign did not bar his suit.
- **BOROUGH OF DURYEA v. GUARNIERI**, 131 S. Ct. 2488 (2011): Police chief brought § 1983 action against municipality, alleging that directives instructing him on how to perform his duties, issued by the borough council after he won reinstatement, in a union grievance proceeding, after being fired, constituted retaliation, in violation of his First Amendment right to petition for redress of grievances, and that the denial of his request

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<sup>1</sup> The information appearing in this compilation was retrieved from WestLaw case synopses. Thomson Reuters has graciously granted permission for the use of the material in this document.

<sup>2</sup> The Roberts Court decided additional cases filed pursuant to §1983 that are not included in this compilation. This review of Roberts Court opinions only includes Supreme Court majority decisions that expressly mention §1983.

for overtime pay constituted a Petition Clause violation. The Supreme Court, Justice Kennedy, held that municipality's allegedly retaliatory actions did not give rise to liability under the Petition Clause.

- CHRISTIAN LEGAL SOCIETY CHAPTER v. MARTINEZ, 130 S. Ct. 2971 (2010): Student religious organization brought § 1983 action alleging that law school's policy of requiring officially recognized student groups to comply with school's nondiscrimination policy violated the organization's First and Fourteenth Amendment rights to free speech, expressive association, and free exercise of religion. The Supreme Court, Justice Ginsburg, held that (1) student organization was bound by its stipulation of facts, (2) law school's policy was reasonable, and (3) policy was viewpoint neutral.
- YSURSA v. POCATELLO EDUCATION ASSOCIATION, 129 S. Ct. 1093 (2009): Unions representing state and local government employees brought free speech challenge against Idaho Voluntary Contributions Act's (VCA) ban on public-employee payroll deductions for political activities. The United States Supreme Court, Chief Justice Roberts, held that (1) VCA's ban on payroll deductions was not subject to strict scrutiny, (2) statute was supported by rational basis and comported with First Amendment, and (3) rational-basis review applied regardless of whether challenge was limited to statute's application at local government level.
- MORSE v. FREDERICK, 127 S. Ct. 2618 (2007): High school student brought § 1983 action against principal and school board, alleging that his First Amendment rights had been violated by ten day suspension for waving banner at off-campus, school-approved, activity. The Supreme Court, Chief Justice Roberts, held that principal did not violate student's right to free speech by confiscating banner she reasonably viewed as promoting illegal drug use.
- TENNESSEE SECONDARY SCHOOL ATHLETIC ASSOCIATION v. BRENTWOOD ACADEMY, 127 S. Ct. 2489 (2007): Private high school brought § 1983 action against state interscholastic athletic association,

asserting free speech and due process challenges against rule prohibiting undue influence in recruitment of middle school students for athletic programs. The Supreme Court, Justice Stevens, held that (1) association's enforcement of its anti-recruiting rule did not violate school's First Amendment rights, and (2) any procedural due process violation in connection with association proceedings was harmless beyond a reasonable doubt.

- **BEARD v. BANKS**, 126 S. Ct. 2572 (2006): Inmate, on behalf of himself and similarly situated inmates, brought First Amendment challenge to policy of Pennsylvania Department of Corrections restricting access to newspapers, magazines, and photographs by inmates placed in most restrictive level of prison's long-term segregation unit. The Supreme Court, Justice Breyer, held that prison officials set forth adequate legal support for prison's policy.
- **GARCETTI v. CEBALLOS**, 126 S. Ct. 1951 (2006): Deputy district attorney filed § 1983 complaint against county and supervisors at district attorneys' office, alleging that he was subject to adverse employment actions in retaliation for engaging in protected speech, that is, for writing a disposition memorandum in which he recommended dismissal of a case on the basis of purported governmental misconduct. The United States Supreme Court, Justice Kennedy, held that (1) when public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline, and (2) here, district attorney did not speak as a citizen when he wrote his memo and, thus, his speech was not protected by the First Amendment.

#### B. Second Amendment

- **McDONALD v. CITY OF CHICAGO**, 130 S. Ct. 3020 (2010): Petitioners filed federal suit against city, which was consolidated with two related actions, seeking a declaration that two Illinois cities' handgun ban and several related city ordinances violated the Second and Fourteenth

Amendments. The Supreme Court, Justice Alito, held that Second Amendment right to keep and bear arms is fully applicable to the States by virtue of Fourteenth Amendment.

C. Fourth Amendment

- **MANUEL v. CITY OF JOLIET**, 137 S. Ct. 911 (2017): Following dismissal of the criminal case against him, detainee, who had been arrested and detained for nearly seven weeks after a traffic stop at which police officers found a bottle containing pills, brought § 1983 action against city and several officers, alleging that his arrest for unlawful possession of a controlled substance and subsequent detention were based on fabricated evidence and so violated the Fourth Amendment. The Supreme Court, Justice Kagan, held that the Fourth Amendment governs a claim for unlawful pretrial detention even beyond the start of legal process.
- **COUNTY OF LOS ANGELES v. MENDEZ**, 137 S. Ct. 1539 (2017): Occupants of wooden shack who were shot by county sheriff's deputies during warrantless search of property on which shack was located brought § 1983 action against county and deputies, alleging that deputies violated Fourth Amendment prohibition on warrantless searches, knock-and-announce requirement, and prohibition on excessive force. The Supreme Court, Justice Alito, held that (1) the Ninth Circuit's provocation rule, pursuant to which a law enforcement officer may be held responsible for an otherwise reasonable use of force where the officer intentionally or recklessly provoked a violent confrontation through a warrantless entry that was itself an independent Fourth Amendment violation, is incompatible with the Court's excessive force jurisprudence, and (2) the Court of Appeals' proximate cause analysis improperly conflated distinct Fourth Amendment claims.
- **KINGSLEY v. HENDRICKSON**, 135 S. Ct. 2466 (2015): Pretrial detainee brought § 1983 action against county jail officers, alleging, inter alia, that they used excessive force against him in violation of his Fourteenth Amendment rights. The Supreme Court, Justice Breyer, held that (1)

detainee was required to show only that force used was objectively unreasonable and (2) jury instructions improperly added a subjective standard for determining excessiveness.

- **FLORENCE v. BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF BURLINGTON**, 132 S. Ct. 1510 (2012): Detainee, who had been arrested on outstanding bench warrant after traffic stop, brought § 1983 class action against counties, alleging that invasive searches conducted before he entered jails' general population violated his Fourth and Fourteenth Amendment rights. The Supreme Court, Justice Kennedy, held that searches did not violate Fourth or Fourteenth Amendment.
- **CITY OF ONTARIO v. QUON**, 130 S. Ct. 2619 (2010): City police officer brought § 1983 action against city, police department, police chief, alleging that police department's review of officer's text messages violated Fourth Amendment, and asserted claim against wireless communications provider under Stored Communications Act (SCA). The Supreme Court, Justice Kennedy, held that city's review of officer's text messages was reasonable, and thus did not violate Fourth Amendment.

C. Sixth Amendment

- **ROTHGERY v. GILLESPIE COUNTY**, 128 S. Ct. 2578 (2008): Former criminal defendant sued county under § 1983, alleging that county violated his Sixth and Fourteenth Amendment right to counsel by following policy of denying appointed counsel to arrestees released from jail on bond and by failing to adequately train and monitor those involved in appointment-of-counsel process. The Supreme Court, Justice Souter, held that (1) criminal defendant's initial appearance before magistrate, where he learns charge against him and his liberty is subject to restriction, marks initiation of adversary proceedings that trigger attachment of Sixth Amendment right to counsel and (2) attachment of right to counsel does not also require that public prosecutor, as distinct from police officer, be aware of that initial proceeding or involved in its conduct.

D. Eighth Amendment

- **GLOSSIP v. GROSS**, 135 S. Ct. 2726 (2015): State death-row inmates brought § 1983 action alleging that Oklahoma's three-drug lethal injection protocol created an unacceptable risk of severe pain in violation of Eighth Amendment. The Supreme Court, Justice Alito, held that (1) inmates failed to establish that any risk of harm was substantial when compared to a known and available method of execution and (2) district court did not commit clear error in finding that midazolam was likely to render an inmate unable to feel pain.
- **HILL v. McDONOUGH**, 126 S. Ct. 2096 (2006): Death row inmate, who had already brought unsuccessful federal habeas corpus petition, brought § 1983 action against state corrections officials, challenging, as cruel and unusual, particular method of lethal injection planned for his execution. The United States Supreme Court, Justice Kennedy, held that (1) inmate's claim was cognizable via § 1983, and thus action was not subject to dismissal as second or successive habeas petition and (2) inmate still had to satisfy all requirements for a stay, including showing of significant possibility of success on the merits.

E. Procedural Due Process

- **SKINNER v. SWITZER**, 131 S. Ct. 1289 (2011): State prisoner, who had been convicted of capital murder and sentenced to death, filed § 1983 action, alleging that district attorney's refusal to allow him access to biological evidence for purposes of forensic DNA testing violated his right to due process. The Supreme Court, Justice Ginsburg, held that convicted state prisoner may seek DNA testing of crime-scene evidence in § 1983 action.

F. Substantive Due Process

- **AYOTTE v. PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND**, 126 S. Ct. 961 (2006): Abortion providers brought § 1983 action, seeking to have New Hampshire's Parental Notification Prior to Abortion Act declared unconstitutional. The Supreme Court, Justice O'Connor, held that constitutional challenge to New Hampshire's parental notification

law, as not containing exception to allow minor to obtain abortion without notice to her parent when necessary to preserve minor's health, would be remanded to the Court of Appeals for determination as to whether, upon finding that law could be applied in manner that violated minor's constitutional rights, court could not, in manner consistent with legislative intent, devise narrower remedy than permanent injunction against enforcement of law in its entirety.

G. Equal Protection

- **ARMOUR v. CITY OF INDIANAPOLIS**, 132 S. Ct. 2073 (2012): Homeowners brought action against city challenging city's refusal to issue them refunds for assessments paid before city's adoption of new system for funding sewer improvement projects and resolution to forgive assessment debt for residents who, unlike homeowners, had not yet paid their assessments in full. The Supreme Court, Justice Breyer, held that city had a rational basis for its distinction between residents who had already paid their share of project costs and those who had not and, thus, did not violate the Equal Protection Clause.
- **ENGQUIST v. OREGON DEPARTMENT OF AGRICULTURE**, 128 S. Ct. 2146 (2008): Former state employee, who had been effectively laid off during reorganization of employing agency, sued agency and individual employees, asserting various federal civil rights claims including "class of one" equal protection claim, which alleged that she had been fired for arbitrary, vindictive and malicious reasons. The United States Supreme Court, Chief Justice Roberts, held that class-of-one equal protection claim is not cognizable in context of public employment.

H. Commerce Clause

- **McBURNEY v. YOUNG**, 133 S. Ct. 1709 (2013): Citizens of states other than Virginia brought § 1983 action challenging Virginia's citizens-only Freedom of Information Act (FOIA) provision as unconstitutional under either the Privileges and Immunities Clause or the dormant Commerce Clause. The Supreme Court, Justice Alito, held that (1) Virginia's citizens-

only FOIA provision did not violate the Privileges and Immunities Clause and (2) Virginia's citizens-only FOIA provision did not violate the dormant Commerce Clause.

- **UNITED HAULERS ASSOCIATION, INC. v. ONEIDA–HERKIMER SOLID WASTE MANAGEMENT AUTHORITY**, 127 S. Ct. 1786 (2007): Solid waste management companies and association representing their interests brought § 1983 action against counties and their solid waste management authority, alleging that counties' flow ordinances regulating the collection, processing, transfer, and disposal of all solid waste within counties violated the Commerce Clause. The United States Supreme Court, Chief Justice Roberts, held that (1) county flow control ordinances that favored state-created public benefit corporation, by requiring businesses hauling waste in counties to bring waste to facilities owned and operated by this public benefit corporation, but that treated every private business, whether in-state or out-of-state, in exactly the same way, did not discriminate against interstate commerce in violation of “dormant” aspect of Commerce Clause and (2) any incidental burden on interstate commerce that resulted from application of county flow control ordinances was not clearly excessive in relation to public benefits provided, in form of increased recycling.

## II. Defenses

### A. Statute of limitations

- **ARTIS v. DISTRICT OF COLUMBIA**, 138 S. Ct. 594 (2018): Employee brought state-law claims against employer in the District of Columbia Superior Court, after the United States District Court had dismissed her federal employment discrimination claim and had declined to exercise supplemental jurisdiction for her state-law claims. The Superior Court dismissed employee's complaint as untimely. Certiorari was granted. The Supreme Court, Justice Ginsburg, held that the federal supplemental

jurisdiction statute pauses the clock on a statute of limitations until 30 days after a state-law claim is dismissed by the federal court.

- WALLACE v. KATO, 127 S. Ct. 1091 (2007): Arrestee brought § 1983 action against city police detectives, alleging unlawful arrest. The United States Supreme Court, Justice Scalia, held that (1) tort of false imprisonment provided proper analogy for determining accrual date for limitations purposes, (2) limitations period began to run when arrestee appeared before examining magistrate and was bound over for trial, not later upon his release from custody after state dropped charges against him, (3) lack of conviction did not preclude commencement of limitations period, and (4) limitations period was not tolled by conviction.

B. Absolute immunity

- REHBERG v. PAULK, 132 S. Ct. 1497 (2012): Target of grand jury investigation brought § 1983 action alleging that chief investigator for district attorney's office violated his constitutional rights by fabricating evidence against him. The Supreme Court, Justice Alito, held that a grand jury witness is entitled to the same immunity as a trial witness in actions under § 1983.
- VAN de KAMP v. GOLDSTEIN, 129 S. Ct. 855 (2009): Following state murder conviction, imprisonment, and successful federal habeas corpus petition, former prisoner brought § 1983 due process action against, inter alia, former district attorney and former chief deputy district attorney, alleging failure to institute system of information-sharing among deputy district attorneys regarding jailhouse informants, and failure to adequately train or supervise sharing of information concerning informants, resulting in *Giglio* violation at his trial. The Supreme Court, Justice Breyer, held that district attorney and chief deputy district attorney were entitled to absolute prosecutorial immunity.

C. Qualified immunity

1. First Amendment

- *LANE v. FRANKS*, 134 S. Ct. 2369 (2014): Former director of community college's program for underprivileged youth brought § 1983 action against president of community college for alleged retaliation in violation of First Amendment. The Supreme Court, Justice Sotomayor, held that (1) director's sworn testimony at former program employee's corruption trials was citizen speech eligible for First Amendment protection, not unprotected employee speech; (2) director's testimony was speech on matter of public concern; (3) government lacked any interest justifying allegedly retaliatory termination of director, and thus director's testimony was protected by First Amendment; but (4) president in his personal capacity was entitled to qualified immunity.

2. Fourth Amendment

- *CITY OF ESCONDIDO, CALIFORNIA v. EMMONS*, 2019 WL 113027 (2019) Arrestee brought § 1983 action against city police officer and sergeant, asserting claim for excessive force in violation of the Fourth Amendment. The Supreme Court, Per Curiam decision, held that (1) Court of Appeals' unexplained reinstatement of arrestee's excessive force claim against sergeant was erroneous, and (2) Court of Appeals failed to properly analyze whether clearly established law barred officer from stopping and taking down arrestee in the manner that the officer did at scene of reported domestic violence incident, and thus, remand was required to allow Court of Appeals to conduct proper analysis with respect to whether officer was entitled to qualified immunity.
- *DISTRICT OF COLUMBIA v. WESBY*, 138 S. Ct. 577 (2017): Arrestees brought action under § 1983 and District of Columbia law against police officers and the District of Columbia, asserting claims for false arrest and negligent supervision. The United States District Court for the District of Columbia granted partial summary judgment to arrestees, and defendants appealed. The Supreme

Court, Justice Thomas, held that (1) officers had probable cause to make arrests for unlawful entry and (2) even if officers lacked probable cause, they had qualified immunity from arrestees' § 1983 false arrest claims.

- CITY AND COUNTY OF SAN FRANCISCO v. SHEEHAN, 135 S. Ct. 1765 (2015): Group home resident who suffered from mental illness brought action against city and police officers in their individual capacities, alleging violations of her rights under Americans with Disabilities Act (ADA) and Fourth Amendment. The Supreme Court, Justice Alito, held that (1) writ on question of what ADA required would be dismissed as improvidently granted;(2) officers' initial warrantless entry was lawful; (3) officers were justified in using potentially deadly force; and (4) officers were entitled to qualified immunity on resident's claim arising from their reentry into her room.
- PLUMHOFF v. RICKARD, 134 S. Ct. 2012 (2014): Estate of suspect who was killed by police in a high-speed car chase brought § 1983 action against officers, alleging they used excessive force in firing 15 shots into his vehicle in violation of Fourth and Fourteenth Amendments. The Supreme Court, Justice Alito, held that (1) Court of Appeals had jurisdiction to review district court's order; (2) officers acted reasonably in using deadly force; and (3) officers' conduct in firing 15 shots into suspect's vehicle did not amount to excessive force.
- FILARSKY v. DELIA, 132 S. Ct. 1657 (2012): Firefighter brought § 1983 action against city, fire department and officials, and a private attorney, alleging that internal affairs investigation violated his constitutional rights. The Supreme Court, Chief Justice Roberts, held that attorney who was retained by city to assist in investigation into firefighter's potential wrongdoing was entitled to seek the protection of qualified immunity.

- *MESSERSCHMIDT v. MILLENDER*, 132 S. Ct. 1235 (2012): Occupants of residence who were subjected to nighttime search and seizure brought § 1983 action against deputy sheriffs and county sheriff's department. The Supreme Court, Chief Justice Roberts, held that (1) it was not entirely unreasonable for officers, in executing a warranted search, to believe they had probable cause, as authorized by warrant, to search for any and all firearms and firearm-related materials, and (2) it was not entirely unreasonable for officers to believe that they had probable cause to search for gang paraphernalia.
- *PEARSON v. CALLAHAN*, 129 S. Ct. 808 (2009): Arrestee brought § 1983 action alleging that police officers violated his Fourth Amendment rights by entering his home without a warrant. The United States District granted officers summary judgment based on qualified immunity. The Supreme Court, Justice Alito, held that (1) in resolving government officials' qualified immunity claims, courts need not first determine whether facts alleged or shown by plaintiff make out violation of constitutional right, receding from *Saucier v. Katz*, 121 S. Ct. 2151 and (2) officers were entitled to qualified immunity.
- *LOS ANGELES COUNTY v. RETTELE*, 127 S. Ct. 1989 (2007): Residents brought suit against city, sheriff's department, and department officers, alleging that officers conducted unlawful and unreasonable search and detention. The United States District Court granted qualified immunity to officers on motion for summary judgment. The Supreme Court Per Curiam decision held that officers acted reasonably while executing search warrant.
- *SCOTT v. HARRIS*, 127 S. Ct. 1769 (2007): Motorist brought § 1983 action against county deputy and others, alleging, inter alia, use of excessive force in violation of his Fourth Amendment rights during high-speed chase. The Supreme Court, Justice Scalia, held that (1)

in considering deputy's motion for summary judgment, courts had to view the facts in the light depicted by videotape which captured events underlying excessive force claim and (2) deputy acted reasonably when he terminated car chase, and thus did not violate motorist's Fourth Amendment right against unreasonable seizure.

3. Failure to train

- *CONNICK v. THOMPSON*, 131 S. Ct. 1350 (2011): Former state prisoner brought action against county prosecutors and prosecutor's office, asserting claims under § 1983 and various state law claims. The Supreme Court, Justice Thomas, held that (1) prior, unrelated Brady violations by attorneys in his office was insufficient to put district attorney on notice of need for further training, and (2) need for training was not so obvious that district attorney's office was liable on failure-to-train theory when nondisclosure of blood-test evidence had resulted in defendant's wrongful conviction and in his spending 18 years in prison.

4. Summary judgment

- *ORTIZ v. JORDAN*, 131 S. Ct. 884 (2011): Synopsis Background: Former inmate brought § 1983 action against prison officials, alleging that she was sexually assaulted by a prison guard while incarcerated and that officials failed to protect her and retaliated against her for reporting the incident. The Supreme Court, Justice Ginsburg, held that (1) defendant may not appeal order denying summary judgment on qualified immunity grounds after full trial on merits, and (2) defendants' failure to renew their motion, on qualified immunity grounds, for judgment as matter of law under Federal Rule of Civil Procedure left appellate forum with no warrant to reject appraisal of evidence by trial judge.

D. Article III defenses—Mootness

- *CAMRETA v. GREENE.*, 131 S. Ct. 2020 (2011): Mother, personally and as next friend for her minor daughters, brought § 1983 action

against state child protective services caseworker and county deputy sheriff, alleging violations of Fourth Amendment and familial rights under Fourteenth Amendment's Due Process Clause. The Supreme Court, Justice Kagan, held that (1) Supreme Court has authority to review an immunized official's challenge to a constitutional ruling; (2) the case was moot; and (3) the appropriate disposition was to vacate the part of the court of appeals' opinion that addressed the Fourth Amendment issue.

E. Exhaustion of administrative remedies in prisoner's cases

- ROSS v. BLAKE, 136 S. Ct. 1850 (2016): Maryland inmate brought § 1983 action against correctional officers, alleging use of excessive force. One officer moved for summary judgment on the ground that inmate failed to exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA). The Supreme Court, Justice Kagan, held that a court may not excuse an inmate's failure to exhaust administrative remedies prior to bringing suit under the PLRA, even to take “special” circumstances into account.
- JONES v. OVERTON, 127 S. Ct. 910 (2007): State prison inmates brought separate § 1983 actions against corrections officials. United States District Courts dismissed actions for failure to satisfy procedural rules, adopted by the United States Court of Appeals for the Sixth Circuit, implementing administrative exhaustion requirement of Prison Litigation Reform Act (PLRA). The United States Supreme Court, Chief Justice Roberts, held that (1) inmate's failure to exhaust under PLRA is affirmative defense, i.e. inmate is not required to specially plead or demonstrate exhaustion in his complaint, (2) inmates' § 1983 actions were not automatically rendered noncompliant with PLRA exhaustion requirement by fact that not all defendants named in complaints had been named in previous administrative grievances, and (3) inmate's compliance with PLRA exhaustion requirement as to some, but not all, claims does not warrant dismissal of entire action.

- WOODFORD v. NGO, 126 S. Ct. 2378 (2006): State prisoner brought § 1983 action against prison officials, challenging restrictions on his participation in special programs. The United States District Court dismissed for failure to exhaust administrative remedies. The Supreme Court, Justice Alito, held that PLRA exhaustion requirement requires proper exhaustion.

### III. Attorney's Fees

#### A. Prisoner litigation

- MURPHY v. SMITH, 138 S. Ct. 784 (2017): Prisoner brought action against correctional officers under § 1983 and state law, alleging that officers hit him, fracturing part of his eye socket, and left him in cell without medical attention. Following jury verdict, the United States District Court for the Southern District of Illinois entered judgment for prisoner and awarded attorney's fees. Holding: The Supreme Court, Justice Gorsuch, held that Prison Litigation Reform Act requires that compensation for prisoner's attorney fees come first from prisoner's damages award, and that only if 25% of that award is inadequate to compensate counsel fully can defendants be responsible for balance.

#### B. Attorney's fees to plaintiff as prevailing party

- LEFEMINE v. WIDEMAN, 133 S. Ct. 9 (2012): Abortion protester, on behalf of himself and his anti-abortion organization, sued sheriff and deputies under § 1983, alleging violations of his First Amendment rights during a demonstration. The Supreme Court, Per Curiam decision, held that protester was "prevailing party" entitled to award of attorney fees under the Civil Rights Attorney's Fees Awards Act.
- FOX v. VICE, 131 S. Ct. 2205 (2011): Candidate for police chief filed state-court action against incumbent chief and town, asserting federal and state-law causes of action. After removal, federal claims were dismissed and remaining claims were remanded to state court. The Supreme Court, Justice Kagan, held that when a plaintiff's civil rights lawsuit involves both

frivolous and non-frivolous claims, a court may grant reasonable fees to the defendant under § 1988, but only for costs that the defendant would not have incurred but for the frivolous claims.

- *PERDUE v. KENNY A.*, 130 S. Ct. 1662 (2010): Claimants brought suit under § 1983 against state and local agencies and individuals, alleging that foster child services in two Georgia counties were inadequate. Following entry of consent decree resolving substantive issues, claimants sought to recover attorney fees and costs. The Supreme Court, Justice Alito, held that (1) there are a few circumstances in which superior attorney performance is not adequately taken into account in the lodestar calculation for an award under § 1988 of reasonable attorney fees in a civil rights case, but those circumstances are rare and exceptional, and require specific evidence that the lodestar fee would not have been adequate to attract competent counsel and (2) district court's enhancement, by 75 percent, of lodestar for award of reasonable attorney fees under § 1988 was essentially arbitrary.
- *SOLE v. WYNER*, 127 S. Ct. 2188 (2007): Organizer of event in which participants were to form peace symbol with their nude bodies at state beach brought § 1983 First Amendment action against state officials, seeking preliminary and permanent injunctions prohibiting state park officials from interfering with event or with future such events. The United States District Court granted preliminary injunction. Following event, the District Court denied motion for permanent injunction. The United States Supreme Court, Justice Ginsburg, held that (1) § 1988 “prevailing party” status does not attend achievement of preliminary injunction that is reversed, dissolved, or otherwise undone by final decision in same case and (2) organizer did not attain prevailing-party status by obtaining preliminary injunction, given District Court's subsequent decision on the merits denying permanent injunction.

C. Attorney's fees to defendant

- *JAMES v. CITY OF BOISE*, 136 S. Ct. 685 (2016): Plaintiff filed a § 1983 complaint against police officers and city after she was bitten by a police dog while officers were responding to a burglary in process call. The District Court dismissed all of plaintiff's claims with prejudice. The Supreme Court held that its holding in *Hughes v. Rowe*, 101 S. Ct. 173, that a prevailing defendant may recover fees under the civil rights attorney fee statute only if the plaintiff's action was frivolous, unreasonable, or without foundation was an interpretation of federal law binding on state courts.

#### IV. Jurisdiction

- *FITZGERALD v. BARNSTABLE SCHOOL COMMITTEE*, 129 S. Ct. 788 (2009): Elementary school student and her parents filed § 1983 action against school superintendent and school committee, claiming student-to-student sexual harassment in violation of Title IX and the Equal Protection Clause. The United States Supreme Court, Justice Alito, held that Title IX was not meant to be an exclusive mechanism for addressing gender discrimination in schools, or a substitute for § 1983 suits as a means of enforcing constitutional rights.
- *HAYWOOD v. DROWN*, 129 S. Ct. 2108 (2008): State prisoner brought civil rights actions in the New York Supreme Court, Wyoming County, Mark H. Dadd, J., against several correction employees for allegedly violating his civil rights in connection with prisoner disciplinary proceedings, and cause of action was dismissed as barred by state "jurisdictional" statute requiring that such causes of action for damages arising out of conduct of state corrections officers within scope of their employment be filed against state in the New York Court of Claims. The United States Supreme Court, Justice Stevens, held that, having made decision to create courts of general jurisdiction which regularly sat to entertain analogous civil rights actions against state officials other than corrections officers, New York was not at liberty to shut doors of these courts to civil rights actions to recover damages from its corrections officers for acts within scope of

their employment, and to instead require that such damages claims be pursued against state in another court of only limited jurisdiction.

V. *Bivens* Actions

- *MINNECI v. POLLARD*, 132 S. Ct. 617 (2012): Prisoner at a federal facility operated by a private company filed a pro se complaint against several employees of the facility, alleging the employees deprived him of adequate medical care, in violation of the Eighth Amendment's prohibition against cruel and unusual punishment, and caused him injury. The Supreme Court, Justice Breyer, held that prisoner could not assert an Eighth Amendment *Bivens* claim for damages against private prison employees.
- *WILKIE v. ROBBINS*, 127 S. Ct. 2588 (2007): Owner of commercial guest ranch brought Racketeer Influenced and Corrupt Organizations Act (RICO) and *Bivens* claims against Bureau of Land Management (BLM) employees who allegedly used extortion in attempt to force owner to grant easement to BLM. The Supreme Court, Justice Souter, held that (1) landowner did not have a private action against employees for the Bureau of Land Development for damages of the sort recognized under *Bivens*, (2) alleged violations of the Hobbs Act by employees of the BLM in their efforts to obtain an easement over landowner's property for the exclusive benefit of the Government did not qualify as a predicate offense for a RICO action; and (3) alleged violations of Wyoming's blackmail statute did not qualify as a predicate offense for a RICO action.
- *HARTMAN v. MOORE*, 126 S. Ct. 1695 (2006): Acquittee in federal fraud prosecution brought *Bivens* action against federal prosecutor and Postal Service inspectors and Federal Tort Claims Act (FTCA) claim against United States, alleging malicious prosecution and retaliatory prosecution. The Supreme Court, Justice Souter, held that plaintiff was required to plead and prove the absence of probable cause supporting the prosecution to support his *Bivens* claim