

# Current Issues in Constitutional Litigation

*Carolina Academic Press Context and Practice Series*

Michael Hunter Schwartz  
*Series Editor*

---

**Administrative Law, Second Edition**

Richard Henry Seamon

**Advanced Torts, Second Edition**

Alex B. Long and Meredith J. Duncan

**Animal Law—New Perspectives on Teaching Traditional Law**  
Kathy Hessler, Joyce Tischler, Pamela Hart, and Sonia S. Waisman

**Antitrust Law**

Steven Semeraro

**Civil Procedure, Second Edition**

Gerald F. Hess, Theresa M. Beiner, and Scott R. Bauries

**Civil Procedure for All States**

Benjamin V. Madison, III

**Complex Litigation**

James M. Underwood

**Constitutional Law, Second Edition**

David Schwartz and Lori Ringhand

**A Context and Practice Global Case File:  
An Intersex Athlete's Constitutional Challenge,  
*Hastings v. USATE, IAAF, and IOC***

Olivia M. Farrar

**A Context and Practice Global Case File:**

***Rossi v. Bryce*, An International Embryo and Surrogacy Dispute**

Olivia M. Farrar

**A Context and Practice Global Case File:**

***Thorpe v. Lightfoot*, A Mother's International Hague Petition  
for the Return of Her Child**

Olivia M. Farrar

**Contracts, Third Edition**

Michael Hunter Schwartz and Adrian J. Walters

**Criminal Law, Second Edition**

Steven I. Friedland, Catherine L. Carpenter,  
Kami N. Chavis, and Catherine Arcabascio

**Current Issues in Constitutional Litigation, Third Edition**

Sarah E. Ricks and Evelyn M. Tenenbaum

**Employment Discrimination, Third Edition**

Sandra F. Sperino and Jarod S. Gonzalez

**Energy Law**

Joshua P. Fershee

**Evidence, Second Edition**

Pavel Wonsowicz

**International Business Transactions**

Amy Deen Westbrook

**International Women's Rights, Equality, and Justice**

Christine M. Venter

**The Lawyer's Practice**

Kris Franklin

**Professional Responsibility**

Barbara Glesner Fines

**Property**

Alicia Kelly and Nancy Knauer

**Sales, Second Edition**

Edith R. Warkentine

**Secured Transactions**

Edith R. Warkentine and Jerome A. Grossman

**Torts**

Paula J. Manning

**Workers' Compensation Law, Second Edition**

Michael C. Duff

**Your Brain and Law School**

Marybeth Herald



# Current Issues in Constitutional Litigation

---

*A Context and Practice  
Casebook*

---

THIRD EDITION

**Sarah E. Ricks**

DISTINGUISHED CLINICAL PROFESSOR OF LAW  
RUTGERS LAW SCHOOL

**Evelyn M. Tenenbaum**

PROFESSOR OF LAW  
ALBANY LAW SCHOOL



CAROLINA ACADEMIC PRESS  
Durham, North Carolina

Copyright © 2020  
Carolina Academic Press, LLC  
All Rights Reserved

ISBN 978-1-5310-1918-1  
e-ISBN 978-1-5310-1919-8  
LCCN 2020932499

Carolina Academic Press  
700 Kent Street  
Durham, NC 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

To Tom, Kate, and Charlie, with love  
*and in memory of* Jack Lee Young (1981–2013)  
—Sarah Ricks, Philadelphia, Pennsylvania

To Howard, Joanna, and Karen, with love  
—Evelyn Tenenbaum, Albany, New York





# Contents

---

Table of Cases	xvii
What’s Past Is Prologue: Foreword to Third Edition by Aderson Bellegarde François	xxxvii
Foreword to Second Edition by Rebecca E. Zietlow	xliii
Foreword to Second Edition by Michael P. O’Connor	xlvi
Foreword to First Edition by David Rudovsky	xlvii
Foreword to First Edition by Karen Blum	xlix
Series Editor’s Preface	li
Acknowledgments for First, Second, and Third Editions	liii
<b>Chapter One • Historical Context and Introduction to Modern 42 U.S.C. § 1983</b>	<b>3</b>
A. Introduction	3
B. Translating the Results of the Civil War into Law	4
C. Resistance in Former Confederate States	6
D. Section 1983 as a Congressional Response to Klan Resistance	7
E. Testimony of Survivors	11
Report of the Joint Select Committee to Inquire into the Condition of Affairs in the Late Insurrectionary States	12
F. Brief Introduction to Modern 42 U.S.C. § 1983	25
<i>Monroe v. Pape</i>	28
<i>Monell v. Dept. of Social Services of the City of New York</i>	38
<b>Chapter Two • Eighth Amendment Prisoner Litigation</b>	<b>47</b>
A. Chapter Overview	47
B. Factual Context	48
C. Prison Health Care	52
<i>Estelle v. Gamble</i>	57
D. Violence in Prison	63
Statement by Ronald Kaschak to the Commission on Safety and Abuse in America’s Prisons	64
<i>Whitley v. Albers</i>	67
Third Circuit Model Jury Instruction for an Eighth Amendment Excessive Force Claim, with comments	81
Fifth Circuit’s Model Jury Instruction for Eighth Amendment Excessive Force Claims	84

E. Prison Rape	86
Oral Argument before U.S. Supreme Court in <i>Farmer v. Brennan</i>	86
<i>Farmer v. Brennan</i>	97
Interview with Elizabeth Alexander	109
F. Legislative Reaction to the Problem of Prison Rape	110
The Prison Rape Elimination Commission Report	112
G. Development of Doctrine in the Circuits: Applying the <i>Farmer</i> Standard to a Factual Record	119
<i>Giroux v. Somerset County</i>	119
<i>Miller v. McBride</i>	125
<i>Rodriguez v. Secretary for Dept. of Corrections</i>	128
<b>Chapter Three • Fourteenth Amendment Substantive Due Process: Part One</b>	<b>145</b>
A. Chapter Overview	145
<i>Daniels v. Williams</i>	147
Amici Curiae Brief of Local and State Government Organizations in <i>Lewis</i>	151
Amicus Brief of Solutions to the Tragedies of Police Pursuits in <i>Lewis County of Sacramento v. Lewis</i>	156
<i>County of Sacramento v. Lewis</i>	159
B. Development of Doctrine in the Circuits: Applying <i>Lewis</i> to Liberty Interests	166
<i>Ziccardi v. City of Philadelphia</i>	166
C. Development of Doctrine in the Circuits: Applying <i>Lewis</i> to Property Interests	171
Petition for Certiorari in <i>Eichenlaub v. Township of Indiana</i>	171
Brief in Opposition to Certiorari in <i>Eichenlaub v. Township of Indiana</i>	176
<b>Chapter Four • Substantive Due Process (Part Two)—Two Exceptions to the General Rule of <i>DeShaney</i>: State-Created Danger and Special Relationship</b>	<b>183</b>
A. Chapter Overview	183
B. Factual Context	184
C. The General Rule of <i>DeShaney</i>	189
Supreme Court oral argument in <i>DeShaney</i>	190
<i>DeShaney v. Winnebago County Dept. of Social Services</i>	197
D. Development of Doctrine in the Circuits: State-Created Danger Exception to <i>DeShaney</i>	206
<i>Kneipp v. Tedder</i>	206
<i>McClendon v. City of Columbia</i>	215
<i>Butera v. District of Columbia</i>	222
The Perils of Unpublished Non-Precedential Federal Appellate Opinions: A Case Study of the Substantive Due Process State-Created Danger Doctrine in One Circuit	228
Model Civil Jury Instructions for Third Circuit	234

Interview with Karen K. Koehler, Plaintiffs' Counsel in <i>Kime</i>	242
E. Development of Doctrine in the Circuits: Special Relationship	
Exception to <i>DeShaney</i>	247
<i>Patel v. Kent School District</i>	247
<i>Walton v. Alexander</i>	252
<i>Nicini v. Morra</i>	262
<i>In re County Investigating Grand Jury XXII</i>	274
<b>Chapter Five • 42 U.S.C. § 1983 Action under Color of Law</b>	<b>281</b>
A. Chapter Overview	281
<i>West v. Atkins</i>	282
B. Development of Doctrine in the Circuits	286
<i>Barna v. City of Perth Amboy</i>	287
<i>Martinez v. Colon</i>	294
<i>Anderson v. Warner</i>	302
<b>Chapter Six • Fourth Amendment Standards and Police Misconduct</b>	<b>319</b>
A. Chapter Overview	319
B. Factual Context	320
C. Supreme Court Application of the Fourth Amendment: Excessive Force	326
<i>Tennessee v. Garner</i>	326
<i>Graham v. Connor</i>	332
D. Development of Doctrine in the Lower Courts:	
Applying <i>Garner</i> & <i>Graham</i>	336
Excerpt from Eighth Circuit's Pattern Jury Instructions	338
Eleventh Circuit Jury Verdict Form	339
<i>Bryan v. MacPherson</i>	342
E. Application of Doctrine in the Trial Court: Evolution of a 4th Amendment Excessive Force Claim from Complaint to Verdict	352
F. Supreme Court Application of the Fourth Amendment: Excessive Force in the Context of Police Chases	357
<i>County of Sacramento v. Lewis</i>	358
Amicus Curiae Brief in <i>Scott v. Harris</i>	359
Supreme Court Oral Argument in <i>Scott</i>	362
<i>Scott v. Harris</i>	368
G. Development of Doctrine in the Circuits: Applying <i>Scott</i>	380
<i>Lytle v. Bexar County, Tex.</i>	380
<b>Chapter Seven • Distinguishing 4th, 14th, and 8th Amendment Claims:</b>	
<b>Development of Doctrine in the Circuits</b>	<b>389</b>
A. Chapter Overview	389
B. Excessive Force Claims Post-Arrest	390
<i>Lopez v. City of Chicago</i>	390
<i>Wilson v. Spain</i>	397

Eleventh Circuit Jury Instructions	400
Seventh Circuit Pattern Jury Instructions	402
<i>Kingsley v. Hendrickson</i>	406
C. Jail Suicide by Pretrial Detainees	412
<i>Short v. Smoot</i>	414
<b>Chapter Eight • Procedural Due Process: Protection of Property Interests</b>	<b>425</b>
A. Procedural Due Process versus Substantive Due Process	425
B. Chapter Overview	426
C. Protection of Real Property Interests	427
<i>Freeman v. City of Dallas</i>	427
D. Protection of Non-Traditional Property Interests	432
1. Public Employment	432
<i>Bd. of Regents of State Colls. v. Roth</i>	433
<i>Cleveland Bd. of Educ. v. Loudermill</i>	436
<i>Olivieri v. Rodriguez</i>	443
<i>Nicholas v. Pa. State Univ.</i>	450
2. Enforcement of Restraining Orders	454
<i>Castle Rock v. Gonzales</i>	455
Brief of Denver Police Protective Ass’n, et al. as Amici Curiae in <i>Castle Rock v. Gonzales</i>	457
Brief of National Black Police Ass’n, et al. as Amici Curiae in <i>Castle Rock v. Gonzales</i>	461
<i>Town of Castle Rock v. Gonzales</i>	467
3. Development of Doctrine in the Circuits: Applying <i>Castle Rock</i>	484
<i>Burella v. City of Philadelphia</i>	484
<i>Hudson v. Hudson</i>	489
<b>Chapter Nine • Absolute Immunity</b>	<b>497</b>
A. Chapter Overview	497
B. Judicial Function	498
<i>Pierson v. Ray</i>	498
<i>Forrester v. White</i>	505
C. Prosecutorial Function	512
<i>Kalina v. Fletcher</i>	512
D. Development of Doctrine in the Circuits: Absolute Immunity for Social Workers	519
<i>Ernst v. Child and Youth Services of Chester County</i>	520
<i>Holloway v. Brush</i>	528
<b>Chapter Ten • Other Statutes: Attorney’s Fees, the Prison Litigation   Reform Act, and Selected Recurring Procedural Issues in   42 U.S.C. § 1983 Actions</b>	<b>543</b>
A. Chapter Overview	543

42 U.S.C. § 1988 Civil Rights Attorney’s Fees	544
The Civil Rights Attorney’s Fees Awards Act of 1976	545
<i>Sole v. Wyner</i>	549
B. Development of Doctrine in the Circuits	551
<i>Roberson v. Giuliani</i>	552
<i>Walker v. Calumet City</i>	557
<i>Dearmore v. City of Garland</i>	560
C. Prison Litigation Reform Act of 1995	565
<i>Jones v. Bock</i>	565
Attorney’s Fees Provision of Prison Litigation Reform Act	573
No Equal Justice: The Prison Litigation Reform Act in the United States	574
D. Selected Recurring Procedural Issues in § 1983 Litigation	578
1. Statute of Limitations	578
2. <i>Heck v. Humphrey</i> Bar on 42 U.S.C. § 1983 Actions	579
3. Accrual of a False Arrest Claim and the <i>Heck v. Humphrey</i> Bar	580
4. 42 U.S.C. § 1983 Pleading Requirements	580
5. Federal Rule of Civil Procedure 68 Offers of Judgment	583
6. Summary Judgment	583
7. Removal of 42 U.S.C. § 1983 Cases from State to Federal Court	586
a. Cory Brente—Assistant City Attorney for Los Angeles	587
b. Robert Davis—Attorney Defending City of Plano, Texas in § 1983 Suits	588
c. Jacob Schwarzberg—Senior Trial Attorney for Detroit Law Department	588
d. Liza Franklin—Chief Assistant Attorney for Chicago	589
8. New York’s Alternative Dispute Resolution for § 1983 Police Misconduct Cases	590
<b>Chapter Eleven • Qualified Immunity</b>	<b>591</b>
A. Introduction	591
B. Chapter Overview	592
<i>Harlow v. Fitzgerald</i>	594
<i>County of Sacramento v. Lewis</i>	605
<i>Hope v. Pelzer</i>	606
<i>Brosseau v. Haugen</i>	613
Brief Amicus Curiae of the ACLU in <i>Pearson</i>	619
<i>Pearson v. Callahan</i>	622
<i>Plumhoff v. Rickard</i>	632
<i>Mullenix v. Luna</i>	638
C. Development of Doctrine in the Circuits	642
<i>Butera v. District of Columbia</i>	647
<i>Carr v. Tatangelo</i>	655
<i>Espinosa v. City and County of San Francisco</i>	663



Amici Curiae Brief in <i>McCurdy v. Dodd</i>	751
U.S. Courts Grapple with Constitutional Claims for Loss of Adult Children	759
E. Doctrinal Shift: Post- <i>Butera/McCurdy</i> Evolution of the Parental Liberty Interest in Adult Children	762
<i>Russ v. Watts</i>	764
<i>Smith v. Pierce Cty.</i>	769
Towards the Recognition of a Parental Right of Companionship in Adult Children under the 14th Amendment Substantive Due Process Clause	772
<b>Chapter Fourteen • Protecting Freedom of Religion in Prison: The Free Exercise Clause and RLUIPA</b>	<b>779</b>
A. Balancing Religious Freedoms against Institutional Safety, Financial, and Administrative Concerns	780
B. Development of the Law Relating to Inmates' Religious Rights	788
1. The Supreme Court Sets the Standard for Deciding First Amendment Free Exercise Cases in Prisons	788
<i>O'Lone, Administrator, Leesburg Prison Complex v. Estate of Shabazz</i>	790
2. Congress Passes the Religious Freedom Restoration Act (RFRA) in Response to <i>Smith</i> and <i>O'Lone</i>	799
3. Congress Responds to <i>City of Boerne</i> by Passing the Religious Land Use and Institutionalized Persons Act (RLUIPA)	801
<i>Cutter v. Wilkinson, Director, Ohio Department of Rehabilitation and Correction</i>	804
4. The Law Regarding Inmates' Religious Rights since RLUIPA	811
<i>Washington v. Klem</i>	817
5. Meetings and Inmate Religious Leaders	825
<i>Spratt v. Rhode Island Department of Corrections</i>	827
<i>Baranowski v. Hart</i>	835
<i>Gregory Houston Holt, AKA Abdul Maalik Muhammad, Petitioner v. Ray Hobbs, Director, Arkansas Department of Correction, et al.</i>	866
<b>Chapter Fifteen • The Eleventh Amendment</b>	<b>877</b>
A. Introduction and Chapter Overview	877
B. Historical Background	877
1. The Constitutional Debates	877
2. <i>Chisholm v. Georgia</i> , the First Supreme Court Case to Address Federal Court Jurisdiction under Article III	881
<i>Chisholm v. Georgia</i>	882
3. Congress Enacts the Eleventh Amendment in Response to <i>Chisholm</i>	886
4. Developments through 1908	887
<i>Hans v. Louisiana</i>	887
C. What Constitutes "The State" for Purposes of the Eleventh Amendment?	891

1. Should Municipal Entities That Perform a Governmental Function on Behalf of the State Be Entitled to Assert the State’s Eleventh Amendment Immunity from Suit?	891
2. Should the Eleventh Amendment Apply to Lawsuits against State Agencies and Instrumentalities? <i>Sturdevant v. Paulsen</i>	892 893
3. Should the Eleventh Amendment Apply to Lawsuits against State Officials?	899
a. Suing State Officials in their Official Capacity <i>Ex parte Young</i>	900 901
b. Understanding the Difference between an Official Capacity and a Personal Capacity Lawsuit	913
D. The Eleventh Amendment vs. the Fourteenth Amendment—Balancing State Sovereign Interests with Enforcement of Civil Rights Guaranteed by the Fourteenth Amendment <i>Kimel v. Florida Bd. of Regents</i>	915 921
E. Can Congress Enact Laws under Its Article I Authority That Abrogate the States’ Eleventh Amendment Immunity?	925
1. Commerce Clause	926
2. Spending Clause	926
F. Other Circumstances Resulting in a State Waiver of Sovereign Immunity <i>Patricia G. Stroud, Plaintiff-Appellant v. Phillip McIntosh, the Alabama Board of Pardons and Paroles, Defendants-Appellees</i>	928 931
Index	937



# Table of Cases

---

- Abdul Wali v. Coughlin, 754 F.2d 1015 (2d Cir. 1985), 791, 794, 795
- Abdullahi v. City of Madison, 423 F.3d 763 (7th Cir. 2005), 345
- Abney v. Coe, 493 F.3d 412 (4th Cir. 2007), 384
- Abraham v. Raso, 183 F.3d 279 (3d Cir. 1999), 310
- Achterhof v. Selvaggio, 886 F.2d 826 (6th Cir.1989), 526
- Acosta v. Hill, 504 F.3d 1323 (9th Cir. 2007), 380
- Adams v. Speers, 473 F.3d 989 (9th Cir.2007), 384
- Adickes v. S. H. Kress & Co., 398 U.S. 144 (1970), 43, 316
- Adler v. Pataki, 185 F.3d 35 (2d Cir. 1999), 602
- Agresta v. Sambor, 687 F. Supp. 162 (E.D. Pa. 1988), 756
- Aiello v. West, 207 F. Supp. 3d 886 (W.D. Wisc. 2018), 826, 840
- Albright v. Oliver, 510 U.S. 266 (1994), 151, 161, 358
- Alden v. Maine, 527 U.S. 706 (1999), 878
- Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240 (1975), 545, 546
- Am. Disability Ass'n, Inc. v. Chmielarz, 289 F.3d 1315 (11th Cir. 2002), 554
- Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40 (1999), 286
- Amnesty America v. Town of West Hartford 361 F.3d 113 (2d Cir. 2004), 690
- Anderson v. Angelone, 123 F.3d 1197 (9th Cir. 1997), 834
- Anderson v. Creighton, 483 U.S. 635 (1987), 599, 608, 618, 622, 637, 648, 659
- Anderson v. Warner, 451 F.3d 1063 (9th Cir. 2006), 302
- Andrews v. Fowler, 98 F.3d 1069 (8th Cir. 1996), 694
- Antoine v. Byers & Anderson, 508 U.S. 429 (1993), 511
- Archie v. Lanier, 95 F.3d 438 (6th Cir. 1996), 502, 504
- Aref v. Lynch, 833 F.3d 242, 266 (D.C. Cir. 2016), 578
- Armijo v. Wagon Mound Public Schools, 159 F.3d 1253 (10th Cir. 1998), 225, 650
- Arnett v. Kennedy, 416 U.S. 134 (1974), 437
- Arnett v. Webster, 658 F.3d 500 (7th Cir. 2012), 738
- Ashcroft v. Iqbal, 556 U.S. 662 (2009), 116, 581, 736
- Ashcroft v. Al-Kidd, U.S. , 131 S.Ct. 2074 (2011), 634
- Auremma v. Rice, 957 F.2d 397 (7th Cir. 1992), 703
- Austin v. Borel, 830 F.2d 1356 (5th Cir.1987), 526
- Austin v. Hopper, 15 F.Supp.2d 1210 (M.D. Ala. 1998), 607,

- Backes v. Village of Peoria Heights, 662 F.3d 886 (7th Cir. 2011), 738
- Baker v. McCollan, 443 U.S. 137 (1979), 149
- Banks v. City of Whitehall, 344 F.3d 550 (6th Cir. 2003), 178
- Baranowski v. Hart, 486 F.3d 112 (5th Cir. 2007), 836, 841
- Barna v. Bd. of Sch. Dirs. Of the Panther Valley Sch. Dist., 877 F.3d 136 (3d Cir. 2017), 628
- Barna v. City of Perth Amboy, 42 F.3d 809 (3d Cir. 1994), 287, 297, 309–311
- Barney v. Pulsipher, 143 F.3d 1299 (10th Cir. 1998), 693
- Barrie v. Grand County, 119 F.3d 862 (10th Cir. 1997), 398
- Barrios v. Cal. Interscholastic Fed’n, 277 F.3d 1128 (9th Cir. 2002), 554
- Barry v. Barchi, 443 U.S. 55 (1979), 473
- Basista v. Weir, 340 F.2d 74 (3d Cir. 1965), 310
- Batista v. Rodriguez, 702 F.2d 393 (2d Cir. 1983), 581
- Beck v. City of Pittsburgh, 89 F.3d 966 (3d Cir. 1996), 692
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), 581
- Bell v. Burson, 402 U.S. 535 (1971), 478
- Bell v. City of Milwaukee, 746 F.2d 1205 (7th Cir. 1984), 744, 748, 749, 756, 757, 763, 765, 771, 778
- Bell v. Wolfish, 441 U.S. 520 (1979), 69, 334, 335, 395, 407, 792
- Benavidez v. Stansberry, 2008 WL 4279559 (N.D. Ohio Sept. 12, 2008), 575
- Benning v. Georgia, 391 F.3d 1299 (11th Cir. 2004), 804, 929
- Berry v. City of Detroit, 25 F.3d 1342 (6th Cir. 1994), 690
- Bielevicz v. Dubinon, 915 F.2d 845 (3d Cir. 1990), 679, 716
- Bishop v. Wood, 426 U.S. 341 (1976), 454
- Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), 735
- Black v. Stephens, 662 F.2d 181 (3d Cir.1981), 292, 310
- Block v. Rutherford, 468 U.S. 576 (1984), 795
- Blum v. Yaretsky, 457 U.S. 991 (1982), 316
- Board of Ed. of Kiryas Joel Village School Dist. v. Grumet, 512 U.S. 687 (1994), 807
- Board of Regents v. Roth, 408 U.S. 564 (1972), 431, 436, 439, 443, 458, 461, 467, 485
- Bonenberger v. Plymouth Tp., 132 F.3d 20 (3d Cir. 1997), 310
- Bonsignore v. City of New York, 683 F.2d 635 (2d Cir. 1982), 291, 293
- Booth v. Chorney, 532 U.S. 731 (2001), 575
- Bordanaro v. Mcleod, 871 F.2d 1151 (1st Cir. 1989), 706
- Boring v. Kozakiewicz, 833 F.2d 468 (3d Cir.1987), 270
- Borzych v. Frank, 439 F.3d 388 (7th Cir. 2006), 784, 823
- Boyanowski v. Capital Area Intermediate Unit, 215 F.3d 396 (3d Cir. 2000), 451
- Boyd v. City and County of San Francisco, 576 F.3d 938 (9th Cir. 2009), 668
- Bradley v. Fisher, 13 Wall. 335 (1872), 500, 506
- Brammer-Hoelter v. Twin Peaks Charter Academy, 602 F.3d 1175 (10th Cir. 2010), 690

- Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288 (2001), 314
- Bright v. Westmoreland County, 443 F.3d 276 (3d Cir. 2006), 235
- Briscoe v. LaHue, 460 U.S. 325 (1983), 507, 511, 523, 537
- Brody v. City of Mason, 250 F.3d 432 (6th Cir. 2001), 174, 178
- Brooks v. Delta Correctional Facility, 2007 WL 2219303 (N.D. Miss. July 30, 2007), 577
- Brooks v. Kyler, 204 F.3d 102 (3d Cir. 2000), 83
- Brosseau v. Haugen, 543 U.S. 194 (2004), 599, 600, 613, 623, 635, 636
- Brower v. County of Inyo, 489 U.S. 593 (1989), 319, 358, 371, 659
- Brown v. Chapman, 814 F.3d 447 (6th Cir. 2016), 628
- Brown v. City of Golden Valley, 574 F.3d 491 (8th Cir. 2009), 644, 645
- Brown v. Commonwealth of Pa. Dep't of Health Emergency Med. Servs. Training Inst., 318 F.3d 473 (3d Cir. 2003), 733
- Brown v. Grabowski, 922 F.2d 1097 (3d Cir.1990), 210
- Brown v. Harris, 240 F.3d 383 (4th Cir. 2001), 416
- Bryan v. MacPherson, 2010 WL 2431482 (9th Cir. June 18, 2010), 342, 645,
- Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res., 532 U.S. 598 (2001), 543, 547
- Buckley v. Fitzsimmons, 509 U.S. 259 (1993), 512, 519, 524, 530, 534
- Buckley v. Rackard, 292 Fed. Appx. 791 (11th Cir. 2008), 346
- Bunting v. Mellen, 541 U.S. 1019 (2004), 617, 625
- Burella v. City of Philadelphia, 501 F.3d 134 (3d Cir. 2007), 484
- Burgess v. Lowery, 201 F.3d 942 (7th Cir. 2000), 629
- Burns v. Reed, 500 U.S. 478 (1991), 514, 522, 524, 530
- Burton v. Wilmington Parking Auth., 365 U.S. 715 (1961), 316
- Butera v. District of Columbia, 235 F.3d 637 (D.C. Cir. 2001), 217, 219, 222, 246, 647, 670, 749, 752, 754, 767, 778
- Butz v. Economou, 438 U.S. 478 (1978), 510, 522, 595
- California v. Hodari D., 499 U.S. 621 (1991), 358, 359, 659
- Campbell v. Anderson County, 2010 WL 503141 (E.D. Tenn. Feb. 8, 2010), 702
- Camreta v. Greene, U.S. , 131 S.Ct. 2020 (2011), 631
- Camuglia v. City of Albuquerque, 448 F.3d 1214 (10th Cir. 2006), 174
- Carlton v. Cleburne County, 93 F.3d 505 (8th Cir. 1996), 653
- Carr v. Castle, 337 F.3d 1221 (10th Cir. 2003), 720
- Carr v. Tatangelo, 338 F.3d 1259 (11th Cir. 2003), 612, 655, 672
- Carroll v. Carman, 574 U.S. , 135 S.Ct. 348 (2014), 627
- Carollo v. Boria, 833 F.3d 1322 (11th Cir. 2016), 628
- Case v. Ahitow, 301 F.3d 605 (7th Cir. 2002), 127
- Casey v. City of Federal Heights, 509 F.3d 1278 (10th Cir. 2007), 644
- Casey v. City of Newport, 308 F.3d 106 (1st Cir. 2002), 833
- Casey v. Lewis, 4 F.3d 1516 (9th Cir. 1993), 832

- Cassady v. Tackett, 938 F.2d 693 (6th Cir. 1991), 298
- Castle Rock, Colorado v. Gonzales, 545 U.S. 748 (2005), 346, 426, 454, 455–457, 457–460, 466, 467–479, 479–483, 484, 486, 487, 488, 489, 490, 491, 492, 668
- Chandler v. Baird, 926 F.2d 1057 (11th Cir. 1991), 574,
- Charles v. Verhagen, 348 F.3d 601 (7th Cir. 2003), 803
- Chatman v. Johnson, 2007 WL 2023544 (E.D. Cal. July 11, 2007), 574
- Chisholm v. Georgia, 2 Dall 419 (1793), 883
- Christensen v. County of Boone, 483 F.3d 454 (7th Cir. 2007), 179
- Christina A. v. Bloomberg, 315 F.3d 990 (8th Cir. 2003), 555
- City of Boerne v. Flores, 521 U.S. 507 (1997), 920, 923
- City of Canton v. Harris, 489 U.S. 658 (1978), 676, 677, 678, 684–694
- City of Escondido v. Emmons, \_\_\_ U.S. \_\_\_, 139 S. Ct. 500 (2019), 600
- City of Newport v. Fact Concerts, 453 U.S. 247 (1981), 681
- City of St. Louis v. Praprotnik, 485 U.S. 112 (1988), 677, 679, 715
- Clark v. Barnard, 108 U.S. 436 (1883), 889, 928
- Cleavinger v. Saxner, 474 U.S. 193 (1985), 510
- Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985), 436, 439, 462
- Clinton v. Jones, 520 U.S. 681 (1997), 497, 530
- Clubside, Inc. v. Valentin, 468 F.3d 144 (2d Cir. 2006), 432
- Coffman v. Wilson Police Dep’t, 739 F. Supp. 257 (E.D. Pa. 1990), 463
- Cole v. Bone, 993 F.2d 1328 (8th Cir. 1993), 384
- Coleman v. Court of Appeals of Maryland, 566 U.S. 30 (2012), 925
- Collins v. City of Harker Heights, 503 U.S. 115 (1992), 152, 226, 254, 266, 452, 651, 675, 758
- Commonwealth of Virginia v. Reinhard, 568 F.3d 110 (4th Cir. 2009), rev’d, 563 U.S. 247 (2011), 911, 918
- Conley v. Gibson, 355 U.S. 41 (1957), 582
- Connick v. Thompson, 563 U.S. , 131 S.Ct. 1350 (2011), 694–701
- Conroe Creosoting Co. v. Montgomery County Texas, 249 F.3d 337 (5th Cir. 2001), 178
- Conway v. Garvey, 117 Fed.Appx. 792 (2d Cir. 2004), 509
- Cooper v. Breen, 352 F.3d 756 (2d Cir. 2003), 616
- Cooper v. Dupnik, 924 F.2d 1520 (9th Cir. 1991), 442
- Cooper v. Leamer, 705 F. Supp. 1081 (M.D. Pa. 1989), 756
- Cornelius v. Town of Highland Lake, 880 F.2d 348 (11th Cir.1989), 210, 217
- Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327 (1987), 805
- Cottrell v. Caldwell, 85 F.3d 1480 (11th Cir. 1996), 398, 401
- County of Los Angeles v. Mendez, U.S. , 137 S. Ct. 1539 (2017), 337
- County of Sacramento v. Lewis, 523 U.S. 833 (1998), 145, 159, 168, 171, 172, 177, 218, 235, 238,

- 269, 319, 358, 399, 406, 451,  
605, 620, 623, 636, 648
- Crawford-El v. Britton, 523 U.S.  
574 (1998), 25, 26
- Crosby v. Reynolds, 763 F.Supp. 666  
(D. Me. 1991), 107
- Crowley v. Courville, 76 F.3d 47  
(2nd Cir. 1996), 177
- Cruz v. Beto, 405 U.S. 319 (1972),  
792, 799
- Curnow v. Ridgecrest Police, et al.,  
952 F.2d 321 (9th Cir. 1991), 769
- Cutter v. Wilkinson, Director, Ohio  
Department Of Rehabilitation  
And Correction, 544 U.S. 709  
(2005), 805
- Cypress Ins. Co. v. Clark, 144 F.3d  
1435 (11th Cir. 1998), 441
- D.R. by L.R. v. Middle Bucks Area  
Vo. Tech. School, 972 F.2d 1364  
(3d Cir.1992), 211
- D.T. v. Independent School Dist.  
No. 16, 894 F.2d 1176 (10th Cir.),  
290
- Dang Vang v. Vang Xiong X. Toyed,  
944 F.2d 476 (9th Cir. 1991), 297
- Daniels v. Williams, 474 U.S. 327  
(1986), 26, 145, 147, 151, 160,  
226, 254, 266, 269, 283, 295,  
406, 425, 651, 691, 758, 768
- Davidson v. Cannon, 474 U.S. 344  
(1986), 198
- Davis v. Dist. of Columbia, 158 F.3d  
1342 (D.C. Cir. 1998), 578
- Davis v. Tarrant County Tex., 565  
F.3d 214 (5th Cir. 2009), 502
- Dearmore v. City of Garland, 519  
F.3d 517 (5th Cir. 2008), 560–563
- Deborah O By and Through  
Thomas O v. Lake Cent. School  
Corp., 61 F.3d 905 (7th Cir.  
1995), 693
- Deering v. Reich, 183 F.3d 645 (7th  
Cir. 1999), 402
- Delacambre v. Delacambre, 635 F.2d  
407 (5th Cir. 1981), 286, 317
- Delta Air Lines, Inc. v. August, 450  
U.S. 346 (1981), 583,
- Dempsey v. City of Baldwin 143 Fed.  
Appx. 976 (10th Cir. 2005), 683
- DeShaney v. Winnebago County  
Dep’t of Soc. Servs., 489 U.S. 189  
(1989), 216, 224, 525, 538, 649
- Development Co. v. Goldberg, 375  
F.3d 936 (9th Cir. 2004), 179
- Deville v. Marcantel, 567 F.3d 156  
(5th Cir. 2009), 344
- Diggs v. Emfinger, 2008 WL 544293  
(W.D. La. Jan. 10, 2008), 577
- Dill v. City of Edmond 155 F.3d  
1193 (10th Cir. 1998), 683
- District of Columbia v. Wesby, \_\_\_\_  
U.S. \_\_, 138 S. Ct. 577 (2018),  
397, 600, 601, 626
- Dixon v. Burke County, 303 F.3d  
1271 (11th Cir. 2002), 137
- Doe v. Dep’t of Justice, 753 F.2d  
1092 (D.C. Cir. 1985), 442
- Doe v. New York City Dep’t of Soc.  
Servs., 649 F.2d 134 (2d  
Cir.1981), 269
- Doe v. Purdue Univ., 928 F.3d 652  
(7th Cir. 2019), 447
- Doe v. Taylor Indep. Sch. Dist., 15  
F.3d 443 (5th Cir. 1994), 736
- Dossett v. First State Bank, 399 F.3d  
940 (8th Cir. 2005), 316
- Douglas v. Owens, 50 F.3d 1226 (3d  
Cir. 1995), 84
- Draper v. Reynolds, 369 F.3d 1270  
(11th Cir. 2004), 343, 612
- Dubuc v. Green Oak Twp., 312 F.3d  
736 (6th Cir. 2002), 560
- Duke v. Grady Mun. Schs., 127 F.3d  
972 (10th Cir. 1997), 896
- Dunn v. City of Chicago, 2004 WL  
2815185 (N.D. Ill. Oct. 21,  
2004), 717

- Dupuy v. Samuels, 423 F.3d 714 (7th Cir. 2005), 560
- Dwares v. City of New York, 985 F.2d 94 (2d Cir. 1993), 217, 226
- Eaton v. City of Solon, 598 F.Supp. 1505 (D.C. Ohio 1984), 27
- Edelman v. Jordan, 415 U.S. 651 (1974), 893, 911, 918
- Elliott v. Monroe Correctional Complex, 2007 WL 208422 (W.D. Wash. Jan. 23, 2007), 575
- Elliott v. Perez, 751 F.2d 1472 (5th Cir. 1985), 581
- Ellis v. Wynalda, 999 F.2d 243 (7th Cir.1993), 383
- Employment Division, Dep't of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990), 799
- Ernst v. Child and Youth Services of Chester County, 108 F.3d 486 (3d Cir. 1997), 205, 520
- Espinosa v. City and County of San Francisco, 598 F.3d 528 (9th Cir. 2010), cert. denied, U.S. , 132 S.Ct. 1089 (2012), 663–669
- Estate of Bailey v. County of York, 768 F.2d 503 (3d Cir. 1985), 749, 751, 753, 756
- Estate of Davis ex rel. McCully v. City of North Richland Hills, 406 F.3d 375 (5th Cir. 2005), 693
- Estate of Gilliam v. City of Prattville, 667 F.Supp. 2d 1276 (M.D. Ala. 2009), rev'd. in part, 639 F.3d 1041 (11th Cir.), cert. denied, U.S. , 132 S.Ct. 817 (2011), 701
- Estate of Smith v. Marasco, 318 F.3d 497 (3d Cir. 2003), 235, 236, 237
- Estate of Starks v. Enyart, 5 F.3d 230 (7th Cir. 1993), 617
- Estate of Stevens v. City of Green Bay, 105 F.3d 1169 (7th Cir. 1997), 225, 650, 653
- Estate of Thornton v. Caldor, Inc., 472 U.S. 703 (1985), 807
- Estelle v. Gamble, 429 U.S. 97 (1976), 57, 69, 74, 97, 105, 106, 147, 149, 155, 162, 200, 203, 224, 254, 258, 266, 284, 336, 649
- Evans v. Avery, 100 F.3d 1033 (1st Cir. 1996), 160, 359
- Ewolski v. City of Brunswick, 287 F.3d 492 (6th Cir. 2002), 219
- Ex Parte Virginia, 100 U.S. 339 (1880), 29, 508
- Ex Parte Young, 209 U.S. 123 (1908), 902
- Fagan v. City of Vineland, 22 F.3d 1296 (3d Cir. 1994), 211
- Fairley v. Luman 281 F.3d 913 (9th Cir. 2002), 683
- Farmer v. Brennan, 511 U.S. 825 (1994), 86, 97, 121, 126, 128, 137, 168, 219, 269, 401, 416, 607, 612, 691
- Farrar v. Hobby, 506 U.S. 103 (1992), 563
- Fenje v. Feld, 398 F.3d 620 (7th Cir. 2005), 446
- Filarsky v. Delia, U.S. , 132 S.Ct. 1657 (2012), 603
- Fitzpatrick v. Bitzer, 427 U.S. 445 (1976), 917, 923
- Flagg Bros. v. Brooks, 436 U.S. 149 (1978), 289
- Flaim v. Medical College of Ohio, 418 F.3d 629 (6th Cir. 2005), 446
- Flanagan v. Munger 890 F.2d 1557 (10th Cir. 1989), 683
- Focus on the Family v. Pinellas Sun-coast Transit Authority, 344 F.3d 1263 (11th Cir. 2003), 286
- Forrester v. White, 484 U.S. 219 (1988), 505, 515, 522, 530, 534
- Fountain v. Talley, 104 F.Supp.2d 1345 (M.D. Ala. 2000), 612

- Forrest v. Parry, 930 F.3d 93 (3d Cir. 2019), 692
- Fox v. Vice, U.S. , 131 S.Ct. 2205 (2011), 548
- Frances-Colon v. Ramirez, 107 F.3d 62 (1st Cir. 1997), 255, 650
- Franchise Tax Bd. of Cal. v. Hyatt, 139 S. Ct. 1485 (2019), 890, 891
- Franz v. United States, 712 F.2d 1428 (D.C. Cir. 1983), 750
- Fraternal Order of Police Dep't of Corrs. Labor Comm. v. Williams, 375 F.3d 1141 (D.C. Cir. 2004), 174
- Freedman v. City of Allentown, 853 F.2d 1111 (3d Cir. 1988), 753
- Freeman v. City of Dallas, 186 F.3d 601 (5th Cir. 1999), 427
- Freeman v. Ferguson, 911 F.2d 52 (8th Cir. 1990), 210, 217, 653
- Frye v. Akron, 759 F.Supp. 1320 (N.D. Ind. 1991), 359
- Fuentes v. Shevin, 407 U.S. 67 (1972), 145, 161
- Gant v. Wallingford Bd. of Educ., 195 F.3d 134 (2d Cir. 1999), 270
- Gates v. Collier, 501 F.2d 1291 (5th Cir. 1974), 611
- Gaudreault v. Municipality of Salem, 923 F.2d 203 (1st Cir. 1990), 296
- Gautreaux v. Chicago Hous. Auth., 491 F.3d 649 (7th Cir. 2007), 558
- Gen. Camera Corp. v. Urban Dev. Corp., 734 F.2d 468 (2d Cir. 1984), 548
- George v. Sullivan, 896 F. Supp. 895 (W.D. Wis. 1995), 809
- Gerhardt v. Lazaroff, 221 F. Supp. 2d 827 (S.D. Ohio 2002), 804
- Gerstein v. Pugh, 420 U.S. 103, 394
- Gibson v. City of Chicago, 910 F.2d 1510 (7th Cir. 1990), 297
- Gillette v. United States, 401 U.S. 437 (1971), 811
- Gillis v. Litscher, 468 F.3d 488 (7th Cir. 2006), 138
- Ginsberg v. New York, 390 U.S. 629 (1968), 750
- Giroux v. Somerset County, 178 F.3d 28 (1st Cir. 1999), 119
- Glenn v. City of Columbus, 2010 WL 1558721 (11th Cir. Apr. 20, 2010), 612, 613,
- Goldberg v. Kelly, 397 U.S. 254 (1970), 432, 473
- Goldman v. Weinberger, 475 U.S. 503 (1986), 809
- Gomez v. Toledo, 446 U.S. 635 (1980), 581
- Gorman v. Rensselaer Cty., 910 F.3d 40 (2d Cir. 2018), 773
- Gorman v. Univ. of R.I., 837 F.2d 7 (1st Cir. 1988), 446
- Goss v. Lopez, 419 U.S. 565 (1975), 464, 473
- Graham v. Connor, 490 U.S. 386 (1989), 151, 319, 332, 339, 342, 358, 371, 376, 381, 389, 398, 402, 407, 585, 605, 615, 633, 659, 665
- Gravel v. United States, 408 U.S. 606 (1972), 595
- Greene v. McElroy, 360 U.S. 474, 430
- Greenwood v. New York, 163 F.3d 119 (2d Cir. 1998), 441
- Gregory v. City of Rogers, Arkansas, 974 F.2d 1006 (8th Cir. 1992), 213
- Griffin v. Maryland, 378 U.S. 130 (1964), 285, 290, 310
- Groh v. Ramirez, 540 U.S. 551 (2004), 622
- Grutter v. Bollinger, 539 U.S. 306 (2003), 809
- Gunther v. Atlantic Coast Line R. Co., 200 U.S. 273 (1906), 930
- Haberle v. Troxell, 885 F.3d 170 (3d Cir. 2018), 236, 238

- Hadi v. Horn, 830 F.2d 779 (7th Cir. 1987), 834
- Halperin v. Kissinger, 606 F.2d 1192 (1979), 597
- Ham v. Brice, 203 Fed. Appx. 631 (5th Cir. 2006), 331
- Hamilton v. Schriro, 74 F.3d 1545 (8th Cir. 1996), 833
- Hanrahan v. Hampton, 446 U.S. 754 (1980), 548
- Hans v. Louisiana, 134 U.S. 1 (1890), 878, 888
- Hare v. City of Corinth, Miss., 74 F.3d 633 (5th Cir.1996), 270
- Harlow v. Fitzgerald, 457 U.S. 800 (1982), 261, 506, 594, 602, 608, 622, 626, 648, 658
- Harris v. McRae, 448 U.S. 297 (1980), 199
- Harrison v. Ash, 539 F.3d 510 (6th Cir. 2008), 602
- Hartman v. Moore, 547 U.S. 250 (2006), 46
- Hawkins v. Freeman, 195 F.3d 732 (4th Cir. 1999), 177
- Heck v. Humphrey, 512 U.S. 477 (1994), 579
- Heien v. North Carolina, 574 U.S. \_\_\_, 135 S.Ct. 530 (2014), 386
- Heller v. Bushey, 759 F.2d 1371 (9th Cir. 1985), 725
- Helling v. McKinney, 509 U.S. 25 (1993), 62, 106, 121, 132
- Hennessy v. City of Melrose, 194 F.3d 237 (1st Cir. 1999), 446
- Hensley v. Eckerhart, 461 U.S. 424 (1983), 553
- Hernandez v. Denton, 861 F.2d 1421 (9th Cir. 1988), 26
- Herzog v. Village of Winnetka, Ill., 309 F.3d 1041 (7th Cir. 2002), 403
- Hewitt v. Helms, 482 U.S. 755 (1987), 646
- Hill v. Borough of Kutztown, 455 F.3d 225 (3d Cir. 2006), 441
- Hinton v. City of Elwood, 997 F.2d 774 (10th Cir. 1993), 716
- Hobbie v. Unemployment Appeals Comm'n of Fla., 480 U.S. 136 (1987), 805
- Hoevenaar v. Lazaroff, 422 F.3d 366 (6th Cir. 2005), 821
- Hoffman v. Harris, 511 U.S. 1060 (1994), 525
- Hollingsworth v. City of St. Ann, 800 F.3d 985 (8th Cir. 2015), 681
- Holloway v. Brush, 220 F.3d 767 (6th Cir. 2000), 518, 528, 539, 540
- Holt v. Hobbs, 574 U.S. 352 (2015), 812, 815, 856, 857, 865–866, 866–875
- Homar v. Gilbert, 520 U.S. 924 (1997), 440
- Home Tel. & Tel. Co. v. City of Los Angeles, 227 U.S. 278 (1913), 29
- Hope v. Pelzer, 536 U.S. 730 (2002), 606, 616, 621, 626, 644, 645, 658, 661
- Hudson v. Hudson, 475 F.3d 741 (6th Cir. 2007), 489
- Hudson v. McMillian, 503 U.S. 1 (1992), 78, 82, 106, 122, 124, 401, 408, 409, 607
- Hudson v. Palmer, 468 U.S. 517 (1984), 70, 121, 148
- Huffman v. County of Los Angeles, 147 F.3d 1054 (9th Cir. 1998), 219
- Hughes v. Lott, 350 F.3d 1157 (11th Cir. 2003), 577
- Hunafa v. Murphy, 907 F.2d 46 (7th Cir. 1990), 807
- Hunter v. Bryant, 502 U.S. 224 (1991), 622
- Hunter v. Town of Mocksville, 897 F.3d 538 (4th Cir. 2018), 683,



- Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261 (1997), 912
- Imbler v. Pachtman, 424 U.S. 409 (1976), 497, 507, 513, 515, 518, 522, 523, 530, 537
- In re Kemmler, 136 U.S. 436 (1890), 58
- Indep. Enters. Inc. v. Pittsburgh Water & Sewer Auth., 103 F.3d 1165 (3d Cir. 1997), 451
- Ingraham v. Wright, 430 U.S. 651 (1977), 69, 74, 147, 148, 333, 336
- Iowa Coal Min. Co. v. Monroe County, 257 F.3d 846 (8th Cir. 2001), 174
- Irving v. Dormire, 519 F.3d 441 (8th Cir. 2008), 628
- Iverson v. City of Boston, 452 F.3d 94 (1st Cir. 2006), 830
- Jackson v. Metro. Edison Co., 419 U.S. 345 (1974), 315
- James v. City of Boise, Idaho, 577 U.S. , 136 S. Ct. 685 (2016), 548
- Jarriett v. Wilson, 162 Fed. Appx. 394 (6th Cir. 2005), 576
- Jauch v. Choctaw Cty., 874 F.3d 425, 429 (5th Cir. 2017), 411
- Jenkins v. Bartlett, 487 F.3d 482 (7th Cir. 2007), 693
- Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701 (1989), 675, 679, 683
- John T. v. Del. County Intermediate Unit, 318 F.3d 545 (3d Cir. 2003), 560
- Johnson v. Dallas Indep. Sch. Distr., 38 F.3d 198 (5th Cir. 1994), 650
- Johnson v. Glick, 481 F.2d 1028 (2nd Cir. 1973), 70, 162, 333, 335, 336
- Johnson v. Snyder, 444 F.3d 579 (7th Cir. 2006), 394
- Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123 (1951), 443
- Jones v. Bock, 549 U.S. 199 (2007), 565
- Jones v. Byrnes, 585 F.3d 971 (6th Cir. 2009), 165, 630
- Jones v. City of Philadelphia, 185 F.Supp.2d 413 (E.D. Pa. 2001), 242
- Jones v. Gutschenritter, 909 F.2d 1208 (8th Cir. 1990), 299
- Jones v. Lockhart, 484 F.2d 1192 (8th Cir. 1973), 59
- Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119 (1977), 70, 792
- K.H. v. Morgan, 914 F.2d 846 (7th Cir.1990), 267
- Kalina v. Fletcher, 522 U.S. 118 (1997), 512, 530
- Kallstrom v. City of Columbus, 136 F.3d 1055 (6th Cir. 1998), 217, 225, 650
- Katcoff v. Marsh, 755 F.2d 223 (2d Cir. 1985), 808
- Katzenbach v. Morgan, 384 U. S. 641 (1966), 919, 924
- Kaucher v. County of Bucks, 455 F.3d 418 (3d Cir. 2006), 62
- Kaufman v. McCaughtry, 419 F. 3d 678 (7th Cir. 2005), 788
- Keller v. County of Bucks, No. 03-4017, 2005 WL 675831 (E.D. Pa. Mar. 22, 2005), 62
- Kelson v. City of Springfield, 767 F.2d 651 (9th Cir. 1985), 746, 749, 767, 770
- Keys v. Craig, 160 Fed. Appx. 125 (3d Cir. 2005), 575
- Kingsley v. Hendrickson, 576 U.S. , 135 S. Ct. 2466 (2015), 406
- Kisela v. Hughes, U.S. , 138 S. Ct. 1148 (2018), 638
- Klemarsh v. Monroe Tp., 2010 WL 455263 (D.N.J. Feb. 4, 2010), 339

- Kneipp v. Tedder, 95 F.3d 1199 (3d Cir. 1996), 206, 217, 220, 243, 649
- Kokkonen v. Guardian Life Insurance of America, 511 U.S. 375 (1994), 555
- Kopet v. Esquire Realty Co., 523 F.2d 1005 (2d Cir. 1975), 547
- Koscielsld v. City of Minneapolis, 435 F.3d 898 (8th Cir. 2006), 174
- Lane v. Franks, 573 U.S. 228 (2014), 627
- Lapides v. Bd. of Regents of Univ. System of Ga., 535 U.S. 613 (2002), 929, 930, 933, 934
- L.W. v. Grubbs, 974 F.2d 119 (9th Cir. 1992), 226, 651
- Lanigan v. Village of East Hazel Crest, Illinois, 110 F.3d 467 (7th Cir. 1997), 403
- Lansing v. City of Memphis, 202 F.3d 821 (6th Cir. 2000), 314
- Lassiter v. Department of Social Services, 452 U.S. 18 (1981), 748
- Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163 (1993), 569
- Lefamine v. Wideman, U.S. , 133 S.Ct. 9 (2012), 583
- Leffall v. Dallas Independent School Dist., 28 F.3d 521 (5th Cir.1994), 259
- Lehman v. Lycoming County Children’s Servs. Agency, 458 U.S. 502 (1982), 538
- Leiser v. Kloth, 933 F3d 696 (7th Cir. 2019), cert. denied, U.S. , 2020 WL 1978968 (Apr. 27, 2020), 628
- Lewis v. City of West Palm Beach, Fla., 561 F.3d 1288 (11th Cir. 2009), 690
- Lewis v. Richards, 107 F.3d 549 (7th Cir. 1997), 127
- Lindsey v. Normet, 405 U.S. 56 (1972), 199
- Lintz v. Skipski, 25 F.3d 304 (6th Cir. 1994), 267
- Little v. Streater, 452 U.S. 1 (1981), 747
- Locke v. Davey, 540 U.S. 712 (2004), 805
- Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982), 478
- Lopez v. City of Chicago, 464 F.3d 711 (7th Cir. 2006), 390
- Los Angeles v. Heller, 475 U.S. 796 (1986), 685, 725, 731
- Los Angeles County v. Humphries, U.S. , 131 S.Ct. 447 (2010), 682
- Louisiana ex rel. Francis v. Resweber, 329 U.S. 459 (1947), 59
- Loving v. Virginia, 388 U.S. 1 (1967), 748
- Lozman v. City of Riviera Beach, \_\_\_ U.S. \_\_\_, 138 S. Ct. 1945 (2018), 680
- Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982), 283, 285, 308, 315
- Lusby v. T.G. & Y. Stores, Inc., 749 F.2d 1423 (10th Cir. 1984), 290
- Lytle v. Bexar County, Tex., 560 F.3d 404 (5th Cir. 2009), 380
- Lytle v. Carl, 382 F.3d 978 (9th Cir. 2004), 702
- Lytle v. Doyle 326 F.3d 463 (4th Cir. 2003), 683
- M.L.B. v. S.L.J., 519 U.S. 102 (1996), 742
- Madison v. Riter, 355 F.3d 310 (4th Cir. 2003), 805, 808
- Madison v. Virginia, 474 F.3d 118 (4th Cir. 2006), 803
- Maldonado v. Fontanes, 568 F.3d 263 (1st Cir. 2009), 740
- Malley v. Briggs, 475 U.S. 335 (1986), 515, 522, 526, 592, 658

- Mancuso v. New York State  
Thruway Auth., 86 F.3d 289  
(1996), 892
- Mandel v. The Boston Phoenix,  
Inc., 456 F.3d 198 (1st Cir. 2006),  
835
- Manhattan Cmty. Access Corp. v.  
Halleck, U.S., 139 S. Ct. 1921  
(2019), 313
- Manuel v. City of Joliet, Ill., U.S.,  
137 S. Ct. 911 (2017), 396, 411,  
579
- Marek v. Chesny, 473 U.S. 1 (1985),  
583
- Mark v. Borough of Hatboro, 51  
F.3d 1137 (3d Cir. 1995), 218,  
653, 654
- Martinez v. Beggs, 563 F.3d 1082  
(10th Cir. 2009), 681
- Martinez v. California, 444 U.S. 277  
(1980), 200
- Martinez v. Colon, 54 F.3d 980 (1st  
Cir. 1995), 305, 316
- Martinez v. Mancusi, 443 F.2d 921  
(2nd Cir. 1970), 59
- Mathews v. Eldridge, 424 U.S. 319  
(1976), 429, 438, 439, 465
- Mattis v. Schnarr, 502 F.2d 588 (8th  
Cir. 1976), 748
- May v. Anderson, 345 U.S. 528  
(1953), 745
- Mayard v. Hopwood, 105 F.3d 1226  
(8th Cir.1997), 398
- Mayweathers v. Newland, 314 F.3d  
1062 (9th Cir. 2002), 804
- McCaslin v. Wilkins, 183 F.3d 775  
(8th Cir. 1999), 616
- McClendon v. City of Columbia,  
305 F.3d 314 (5th Cir. 2002), 215
- McCormick v. City of Fort Laud-  
erdale, 333 F.3d 1234 (11th Cir.  
2003), 345
- McCulloch v. Maryland, 17 U.S.  
316 (1819), 148–149
- McCurdy v. Dodd, 352 F. 3d 820  
(3d Cir. 2003), 760, 763, 767,  
770
- McDade v. West, 223 F.3d 1135 (9th  
Cir. 2000), 304
- McDaniel v. Paty, 435 U.S. 618  
(1978), 829
- McDonough v. Smith, U.S., 139 S.  
Ct. 2149 (2019), 579
- McDowell v. Rogers, 863 F.2d 1302  
(6th Cir. 1988), 398
- McKenna v. City of Philadelphia,  
582 F.3d 447 (3d Cir. 2009), 563
- McKenney v. Mangino, 873 F.3d 75  
(1st Cir. 2017), 628
- McKinney v. Pate, 20 F.3d 1550  
(11th Cir. 1994), 450
- McLenagan v. Karnes, 27 F.3d 1002  
(4th Cir. 1994), 660
- McLendon v. City of Albuquerque,  
2005 WL 6003617 (D.N.M. June  
30, 2005), 721
- McNair v. Coffey, 279 F.3d 463 (7th  
Cir. 2002), 403
- Mellen v. Bunting, 327 F.3d 355  
(4th Cir. 2003), 625
- Memphis Cmty. Sch. Dist. v.  
Stachura, 477 U.S. 299 (1986),  
577
- Memphis Light, Gas & Water Div. v.  
Craft, 436 U.S. 1 (1978), 473
- Meyer v. Nebraska, 262 U.S. 390  
(1923), 745, 766
- Meyers v. Contra Costa County  
Dep’t of Soc. Servs., 812 F.2d  
1154 (9th Cir.1987), 525
- Miller v. City of Philadelphia, 174  
F.3d 368 (3d Cir.1999), 167, 205,  
235, 269, 756
- Miller v. McBride, 64 Fed. Appx.  
558 (7th Cir. 2003), 125
- Millsbaugh v. County Dep’t of Pub.  
Welfare of Wabash County, 937  
F.2d 1172 (7th Cir. 1991), 526

- Minneeci v. Pollard, \_\_\_ U.S. \_\_\_, 132 S.Ct. 617 (2012), 285
- Miranda v. Cty. of Lake, 900 F.3d 335 (7th Cir. 2018), 412
- Mireles v. Waco, 502 U.S. 9 (1991), 509
- Mitchell v. Forsyth, 472 U.S. 511 (1985), 261, 506, 593, 622
- Mitchum v. Foster, 407 U.S. 225 (1972), 8
- Monell v. Dep't of Social Serv., 436 U.S. 658 (1978), 518
- Mongeau v. City of Marlborough, 492 F.3d 14 (1st Cir. 2007), 176
- Monroe v. Ark. State Univ., 495 F.3d 591 (8th Cir. 2007), 446
- Monroe v. Pape, 365 U.S. 167 (1961), 28, 45, 281, 283, 289, 297, 307
- Montano v. Hedgepeth, 120 F.3d 844 (8th Cir.1997), 315
- Montgomery v. Stefaniak, 410 F.3d 933 (7th Cir. 2005), 179
- Moore v. East Cleveland, 431 U.S. 494 (1977), 748
- Moore v. Novak, 146 F.3d 531 (8th Cir.1998), 398
- Moreno v. Mcallen Indep. Sch. Dist., 2016 WL 1258410 (S.D. Tex. Mar. 31, 2016), 772
- Morgan v. District of Columbia, 824 F.2d 1049 (D.C. Cir. 1987), 27
- Morris v. Dearborne, 181 F.3d 657 (5th Cir. 1999), 178
- Morrison v. Jones, 607 F.2d 1269 (9th Cir. 1979), 747
- Morrow v. Balaski, 719 F.3d 368 (3d Cir. 1999), 235
- Mosrie v. Barry, 718 F.2d 1151 (D.C. Cir. 1983), 441
- Mt. Healthy City Board of Educ. v. Doyle, 429 U.S. 274 (1977), 892
- Mullenix v. Luna, U.S., 136 S. Ct. 305 (2015), 600, 638
- Murphy v. Mo. Dep't of Corr., 372 F.3d 979 (8th Cir. 2004), 831
- Murphy v. Smith, U.S. \_\_\_, 138 S. Ct. 784 (2018), 578
- Murray v. Wal-Mart, Inc., 874 F.2d 555 (8th Cir.1989), 316
- N. Cheyenne Tribe v. Jackson, 433 F.3d 1083 (8th Cir. 2006), 560
- Natale v. Town of Ridgefield, 170 F.3d 258 (2nd Cir. 1999), 177
- Nearing v. Weaver, 295 Or. 702 (1983), 475, 477,
- Nevada Dep't of Human Resources v. Hibbs, 538 U.S. 721 (2003), 925
- Newman v. Massachusetts, 884 F.2d 19 (1st Cir. 1989), 453
- Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400 (1968), 546
- Nicholas v. Pa. State Univ., 227 F.3d 133 (3d Cir. 2000), 450
- Nicini v. Morra, 212 F.3d 798 (3d Cir. 2000), 219, 262
- Niehus v. Liberio, 973 F.2d 526 (7th Cir. 1992), 757
- Nix v. Franklin County Sch. Dist., 311 F.3d 1373 (11th Cir. 2002), 174
- Nixon v. Fitzgerald, 457 U.S. 731 (1982), 506
- Norfleet v. Arkansas Dep't of Human Servs., 989 F.2d 289 (8th Cir. 1993), 267
- Northern Ins. Co. of New York v. Chatham County, 547 U.S. 189 (2006), 892
- O'Bannon v. Town Court Nursing Center, 447 U.S. 773 (1980), 471
- O'Connor v. Pierson, 426 F.3d 187 (2nd Cir. 2005), 177
- O'Donnell v. Barry, 148 F.3d 1126 (D.C. Cir. 1998), 442
- O'Lone v. Shabazz, 482 U.S. 342 (1987), 789–799, 799–800

- O'Mara v. Town of Wappinger, 485 F.3d 693 (2d Cir. 2007), 174
- Oil, Chem. & Atomic Workers Int'l Union v. Dep't of Energy, 288 F.3d 452 (D.C. Cir. 2002), 555
- Okin v. Village of Cornwall-On-Hudson Police Dept., 577 F.3d 415 (2d Cir. 2009), 692
- Oklahoma City v. Tuttle, 471 U.S. 808 (1985), 685, 695, 708, 715
- Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla., 498 U.S. 505 (1991), 930
- Olim v. Wakinekoba, 461 U.S. 238 (1983), 462
- Olivas v. Corrections Corp. of America, 408 F. Supp. 2d 251 (N.D. Tex. 2006), 577
- Oliver v. Fiorino, 586 F.3d 898 (11th Cir. 2009), 645
- Olivieri v. Rodriguez, 122 F.3d 406 (7th Cir. 1997), 443
- O'Neill v. Krzeminski, 839 F.2d 9 (2d Cir. 1988), 296
- Ort v. White, 813 F.2d 318 (11th Cir. 1987), 609, 611
- Ortiz v. Burgos, 807 F.2d 6 (1st Cir. 1986), 756, 766, 771, 777
- Osborn v. Bank of United States 9 Wheat. 738 (1824), 906
- Owen v. City of Independence, 445 U.S. 622 (1980), 518, 620, 677, 681
- Owens v. Okure, 488 U.S. 235 (1989), 578
- Pace v. Capobianco, 283 F.3d 1275 (11th Cir. 2002), 616
- Palmetto Props., Inc. v. County of DuPage, 375 F.3d 542 (7th Cir.2004), 558
- Park v. Miller, 2004 WL 2415062 (D. Md. Oct. 28, 2004), 353, 355
- Parker v. Adjetey, 89 Fed. Appx. 886 (5th Cir. 2004), 575
- Parker v. Duffey, 251 Fed. Appx. 879 (5th Cir. 2007), 446
- Parratt v. Taylor, 451 U.S. 527 (1981), 147, 152, 199, 283, 472
- Patel v. Kent School District, 648 F.3d 965 (9th Cir. 2011), 247
- Patsy v. Board of Regents of the State of Florida, 457 U.S. 496 (1982), 25
- Paul v. Davis, 424 U.S. 693 (1976), 149, 162, 226, 310, 441, 443
- Pearson v. Callahan, 129 S.Ct. 808 (2009), 601, 619, 622–632
- Peate v. McCann, 294 F.3d 879 (7th Cir. 2002), 126
- Pembaur v. City of Cincinnati, 475 U.S. 469 (1986), 677, 682
- Pennhurst State Sch. and Hosp. v. Halderman, 465 U.S. 89 (1984), 887
- Pennsylvania v. Delaware Valley Citizens' Council For Clean Air, 483 U.S. 711 (1987), 543
- People v. Boss, 701 N.Y.S.2d 342 (N.Y.A.D. 1 Dept. 1999), 591
- Perdue v. Kenny A., 130 S.Ct. 1662 (2010), 563, 564
- Perry v. Sindermann, 408 U.S. 593 (1972), 432, 473
- Petersen v. Gibson, 372 F.3d 862 (7th Cir. 004), 558
- Peterson v. City of Fort Worth, Tex., 588 F.3d 838 (5th Cir. 2009), 693
- Pickrel v. City of Springfield, 45 F.3d 1115 (7th Cir. 1995), 297
- Pierce v. Blaine, 467 F.3d 362 (3d Cir. 2006), 441
- Pierce v. Multnomah County, 76 F.3d 1032 (9th Cir. 1996), 398
- Pierce v. Society of Sisters, 268 U.S. 510 (1925), 748
- Pierson v. Ray, 386 U.S. 547 (1967), 497, 498, 506, 522, 523, 530, 598

- Pineda v. City of Houston, 291 F.3d 325 (5th Cir. 2002), 720
- Pitchell v. Callan, 13 F.3d 545 (2d Cir. 1994), 297
- Planned Parenthood v. Casey, 505 U.S. 833 (1992), 146
- Pleasant v. Zamieski, 895 F.2d 272 (6th Cir. 1990), 359
- Plumhoff v. Rickard, U.S. , 134 S.Ct. 2012 (2014), 632–638
- Pollard v. District of Columbia, 698 F. App'x 616 (D.C. Cir. 2017), 701
- Porter v. Nussle, 534 U.S. 516 (2002), 575
- Powell v. Gardner, 891 F.2d 1039 (2d Cir. 1989), 398
- Price v. Johnston, 334 U.S. 266 (1948), 792
- Price v. Sery, 513 F.3d 962 (9th Cir. 2008), 702
- Priester v. Riviera Beach, 208 F.3d 919 (11th Cir. 2000), 601
- Prince v. Massachusetts, 321 U.S. 158 (1944), 742, 745, 748, 750, 766
- Procurier v. Martinez, 416 U.S. 396 (1974), 792, 874
- Pugel v. Bd. of Trustees of the Univ. of Ill., 378 F.3d 659 (7th Cir. 2004), 446
- Pulliam v. Allen, 466 U.S. 522 (1984), 509
- Qian v. Kautz, 168 F.3d 949 (7th Cir. 1999), 270
- Quern v. Jordan, 440 U.S. 332 (1979), 918
- Quinones v. Houser Buick, 436 F.3d 284 (1st Cir. 2006), 832
- Rahn v. Hawkins, 464 F.3d 813 (8th Cir. 2006), 339
- Rambo v. Daley, 851 F. Supp. 1222 (N.D. Ill. 1994), 291
- Ramos v. Smith, 187 Fed. Appx. 152 (3d Cir. 2006), 575
- Reed v. Gardner, 986 F.2d 1122 (7th Cir. 1993), 210, 217, 225, 650
- Rehberg v. Paulk, U.S. , 132 S.Ct. 1497 (2012), 511
- Reichle v. Howards, U.S. , 132 S.Ct. 2088 (2012), 599, 627
- Reimann v. Murphy, 897 F. Supp. 398 (E.D. Wis. 1995), 609
- Rendell-Baker v. Kohn, 457 U.S. 830 (1982), 285
- Revere v. Massachusetts General Hospital, 463 U.S. 239 (1983), 69, 201, 686
- Reynolds v. Giuliani, 506 F.3d 183 (2d Cir. 2007), 690
- Rhodes v. Chapman, 452 U.S. 337 (1981), 69, 99, 140, 607
- Richardson v. McNight, 521 U.S. 399 (1997), 602
- Richardson v. Spurlock, 260 F.3d 495 (5th Cir. 2001), 574
- Ricks v. Shover, 891 F.3d 468 (3d Cir. 2018), 80
- Riley v. Dorton, 115 F.3d 1159 (4th Cir. 1997), 398
- Rivas v. City of Passaic, 365 F.3d 181 (3d Cir. 2004), 237
- Rivera v. La Porte, 896 F.2d 691 (2d Cir. 1990), 290, 293
- Roberson v. Giuliani, 346 F.3d 75 (2d Cir. 2003), 552
- Robertson v. Hecksel, 420 F.3d 1254 (11th Cir. 2005), 764, 772
- Rochin v. California, 342 U.S. 165 (1952), 148, 152, 200
- Rodriguez v. City of Paterson, 1995 WL 363710 (D.N.J. June 13, 1995), 310
- Rodriguez v. Secretary for Dept. of Corrections, 508 F.3d 611 (11th Cir. 2007), 128
- Rodriguez v. Weprin, 116 F.3d 62 (2d Cir. 1997), 511

- Rogers v. Tenn. Bd. of Regents, 273 Fed. Appx. 458 (6th Cir. 2008), 448
- Ross v. Blake, 578 U.S. , 136 S. Ct. 1850 (2016), 574
- Royal v. Kautzky, 375 F.3d 720 (8th Cir. 2004), 577
- RRI Realty Corp. v. Incorporated Village of Southampton, 870 F.2d 911 (2d Cir.1989), 431
- Ruiz v. Estelle, 503 F. Supp. 1265 (S.D. Tex. 1980), 831
- Russ v. Watts, 414 F.3d 783 (7th Cir. 2005), 744, 763–765, 771
- S & D Maint. Co. v. Goldin, 844 F.2d 962 (2d Cir. 1988), 432
- S.H.A.R.K. v. Metro Parks Serving Summit County, 499 F.3d 553 (6th Cir. 2007), 315
- S.S. v. McMullen, 225 F.3d 960 (8th Cir. 2000), 226, 651
- Sacramento v. Lewis, 523 U.S. 833 (1998), 145, 159, 168, 171, 172, 177, 218, 235, 238, 269, 319, 358, 399, 406, 451, 602, 605, 620, 623, 636, 648
- Safford Unified School Dist. No. 1 v. Redding, 129 S.Ct. 2633 (2009), 628
- San Jacinto Sav. & Loan v. Kacal, 928 F.2d 697 (5th Cir. 1991), 441
- San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose, 402 F.3d 962 (9th Cir. 2005), 645
- Sanchez v. Gomez, 283 F. Supp. 3d 524 (W.D. Tex. 2017), Appeal dismissed sub nom. Sanchez v. City of El Paso, 2018 WL 1989633 (5th Cir. 2018), 692
- Sandin v. Conner, 515 U.S. 472 (1995), 470
- Sanford v. Stiles, 456 F.3d 298 (3d Cir. 2006), 236
- Santos v. Gates, 287 F.3d 846 (9th Cir.2002), 664, 665
- Santosky v. Kramer, 455 U.S. 745 (1982), 748
- Saucier v. Katz, 533 U.S. 194 (2001), 585, 601, 607, 613, 617, 619, 622, 629, 633, 658, 663
- Schieber v. City of Philadelphia, 320 F.3d 409 (3d Cir. 2003), 235, 762
- Schroder v. City of Fort Thomas, 412 F.3d 724 (6th Cir. 2005), 179
- Sciolino v. City of Newport News, 480 F.3d 642 (4th Cir. 2007), 445
- Scott v. Clay County, 205 F.3d 867 (6th Cir. 2000), 616
- Scott v. Harris, 550 U.S. 372 (2007), 320, 368, 385, 585, 625, 665
- Scott v. Miss. Dep’t of Corr., 961 F.2d 77 (5th Cir. 1992), 838
- Screws v. United States, 325 U.S. 91 (1945), 29, 289, 297, 307
- Searles v. Van Bebber, 251 F.3d 869 (10th Cir. 2001), 577
- Select Milk Producers, Inc. v. Johanns, 400 F.3d 939 (D.C. Cir. 2005), 561
- Seminole Tribe of Fla. v. Florida, 517 U.S. 44 (1996), 913, 927
- Senu-Oke v. Jackson State Univ., 283 Fed. Appx. 236 (5th Cir. 2008), 448
- Shabazz v. O’Lone, 595 F.Supp. 928 (NJ 1984), 796
- Shadrick v. Hopkins County, 805 F.3d 724 (6th Cir. 2015), 701
- Shaw v. Stroud, 13 F.3d 791 (4th Cir. 1994), 767
- Sherbert v. Verner, 374 U.S. 398 (1963), 807
- Short v. Smoot, 436 F.3d 422 (4th Cir. 2006), 414
- Siegert v. Gilley, 500 U.S. 226 (1991), 441, 605

- Siggers-El v. Barlow, 433 F.Supp.2d 811 (E.D. Mich. 2006), 576, 577
- Simi Inv. Co., Inc. v. Harris County, 236 F.3d 240 (5th Cir. 2000), 174
- Singleton v. Cecil, 176 F.3d 419 (8th Cir. 1999), 179
- Sivard v. Pulaski County, 17 F.3d 185 (7th Cir. 1994), 716
- Skinner v. Oklahoma, 316 U.S. 535 (1942), 745, 748, 766
- Skinner v. Switzer, U.S. , 131 S.Ct. 1289 (2011), 579
- Smith v. City of Hemet, 394 F.3d 689 (9th Cir. 2005), 331, 343
- Smith v. Cupp, 430 F.3d 766 (6th Cir. 2005), 384
- Smith v. Fontana, 818 F.2d 1411 (9th Cir. 1987), 759, 763
- Smith v. Freland, 954 F.2d 343 (6th Cir. 1992), 616, 618,
- Smith v. Mensinger, 293 F.3d 641 (3d Cir. 2002), 83
- Smith v. Pierce Cty., 218 F. Supp. 3d 1220 (W.D. Wash. 2016), 770
- Smith v. Wade, 461 U.S. 30 (1983), 577
- Smyth v. Rivero, 282 F.3d 268 (4th Cir. 2002), 555, 561
- Snell v. Tunnell, 920 F.2d 673 (10th Cir.1990), 526
- Sole v. Wyner, 551 U.S. 74 (2007), 543, 549, 560
- Solum v. Yerusalim, No. 99-1607 (3d Cir. March 8, 2000), 754, 756
- Sorlucco v. New York City Police Dep't, 971 F.2d 864 (2d Cir. 1992), 679
- Sossamon v. Texas, 560 F.3d 316 (5th Cir. 2009), aff'd, 563 U.S. 277 (2011), 811, 932
- South Dakota v. Dole, 483 U.S. 203 (1987), 803, 928
- Spady v. Bethlehem Area Sch. Dist., 800 F.3d 633 (3d Cir. 2015), 236
- Spencer v. Knapheide Truck Equip. Co., 183 F.3d 902 (8th Cir.1999), 270
- Spencer v. Lee, 864 F.2d 1376 (7th Cir. 1989), 27
- Spratt v. Rhode Island Department Of Corrections, 482 F.3d 33 (1st Cir. 2007), 828
- Stanley v. Illinois, 405 U.S. 645 (1972), 649, 746, 748, 750, 755, 766
- State v. Spratt, 742 A.2d 1194 (R.I. 1999), 828
- Stein v. Disciplinary Board of Sup. Ct. of New Mexico, 520 F.3d 1183 (10th Cir. 2008), 511
- Stengel v. Belcher, 522 F.2d 438 (6th Cir. 1975), 290, 293
- Stevens v. Umsted, 131 F.3d 697 (7th Cir. 1997), 226, 651
- Story v. Foote, 782 F.3d 968 (8th Cir. 2015), 628
- Strandberg v. City of Helena, 791 F.2d 744 (9th Cir. 1986), 757, 763, 770
- Strauss v. City of Chicago, 760 F.2d 765 (7th Cir. 1985), 581
- Stroud v. McIntosh, 722 F.3d 1294 (11th Cir. 2013), cert. denied, 571 U.S. 1131 (2014), 931
- Stump v. Sparkman, 435 U.S. 349 (1978), 502, 507
- Sturdevant v. Paulsen, 218 F.3d 1160 (10th Cir. 2000), 893, 894
- Swierkiewicz v. Sorema, 534 U.S. 506 (2002), 581
- Swift v. California, 384 F.3d 1184 (9th Cir. 2004), 510
- Taylor v. Barkes, 575 U.S. \_\_\_, 135 S. Ct. 2042 (2015), 627
- T.D. v. La Grange Sch. Dist. No. 102, 349 F.3d 469 (7th Cir. 2003), 558
- Taylor v. City of Fort Lauderdale, 810 F.2d 1551 (11th Cir. 1987), 560



- Taylor v. Ledbetter, 818 F.2d 791 (11th Cir.1987), 267
- T.E. v. Grindle, 599 F.3d 583 (7th Cir. 2010), 738
- Tennessee v. Garner, 471 U.S. 1 (1985), 154, 319, 326, 339, 360, 375, 381, 385, 402, 615, 633, 659, 665, 687
- Tenney v. Brandhove, 341 U.S. 367 (1951), 497, 500
- Terry v. Ohio, 392 U.S. 1 (1968), 334
- Thomas v. Cook County Sheriff's Dept., 604 F.3d 293 (7th Cir. 2010), 734
- Thomas v. Pate, 493 F.2d 151 (7th Cir. 1974), 59
- Thompson v. Carter, 284 F.3d 411 (2d Cir. 2002)577
- Thomson v. Salt Lake County, 584 F.3d 1304 (10th Cir. 2009), 331
- Tigrett v. Univ. of Va., 290 F.3d 620 (4th Cir. 2002), 445, 446
- Tinker v. Beasley, 429 F.3d 1324 (11th Cir. 2005), 174
- Tolan v. Cotton, U.S. , 134 S.Ct. 1861 (2014), 584
- Torres v. Cruz, 1995 WL 373006 (D.N.J. Aug. 24, 1992), 310
- Tri County Paving, Inc. v. Ashe County, 281 F.3d 430 (4th Cir. 2002), 174
- Trigalet v. City of Tulsa, 239 F.3d 1150 (10th Cir. 2001), 729
- Trotter v. Univ. of N.M., 219 F.3d 1179 (10th Cir. 2000), 448
- Troxel v. Granville, 530 U.S. 57 (2000), 742, 755, 763, 768, 770
- Truesdell v. Philadelphia Hous. Auth., 290 F.3d 159 (3d Cir. 2002), 555
- Trujillo v. Bd. of County Comm'rs, 768 F.2d 1186 (10th Cir. 1985), 766
- Turner v. Safley, 482 U.S. 78 (1987), 793, 809, 869
- Uhlrig v. Harder, 64 F.3d 567 (10th Cir. 1995), 209, 217, 653, 654
- United States Steel Corp. v. United States, 385 F.Supp. 346 (W.D. Pa. 1974), 547
- United States v. Al-Hamdi, 356 F.3d 564 (4th Cir. 2004), 177
- United States v. Classic, 313 U.S. 299 (1941), 29, 34, 283, 289, 297, 305, 307
- United States v. Fore, 507 F.3d 412 (6th Cir.2007), 342
- United States v. Hill, 48 F.3d 228 (7th Cir. 1995), 768
- United States v. Lanier, 520 U.S. 259 (1997), 358, 608, 618
- United States v. Seeger, 380 U.S. 163 (1965), 811
- United States v. Tarpley, 945 F.2d 806 (5th Cir. 1991), 291, 297
- Univ. of Mich. v. Ewing, 474 U.S. 214 (1985), 445
- Univ. of Mo. v. Horowitz, 435 U.S. 78 (1978), 445, 448
- Van de Kamp v. Goldstein, 129 S.Ct. 855 (2009), 498, 517
- Van Ort v. Estate of Stanewich, 92 F.3d 831 (9th Cir. 1996), 305
- Vance v. Rumsfeld, 701 F.3d 193 (7th Cir. 2012), cert. denied, U.S. , 133 S.Ct. 2796 (2013), 739
- Villanova v. Abrams, 972 F.2d 792 (7th Cir. 1992), 394
- Virginia Office for Protection and Advocacy v. Stewart, 563 U.S. 247 (2011), 912
- Vitek v. Jones, 445 U.S. 480 (1980), 437, 440, 461
- Walker v. Calumet City, Ill., 565 F.3d 1031 (7th Cir. 2009), 557-559
- Wallace v. Kato, 549 U.S. 384 (2007), 580

- Waller v. City of Danville, 212 Fed. Appx. 162 (4th Cir. 2006), 331
- Walton v. Alexander, 44 F.3d 1297 (5th Cir.1995), 218, 252
- Walter v. Pike County, 544 F.3d 182 (3d Cir. 2008), 236
- Walz v. Tax Comm'n of City of New York, 397 U.S. 664 (1970), 805
- Warsoldier v. Woodford, 418 F.3d 989 (9th Cir. 2005), 833
- Washington v. Glucksberg, 521 U.S. 702 (1997), 145, 160, 768
- Washington v. Gonyea, 731 F.3d 143 (2d Cir. 2013), 812
- Washington v. Klem, 497 F.3d 272 (3d Cir. 2007), 813, 818
- Washington v. LaPorte County Sheriff's Dep't, 306 F.3d 515 (7th Cir. 2002), 126
- Waterman v. Batton, 393 F.3d 471 (4th Cir.2005), 383
- Watson v. County of Riverside, 300 F.3d 1092 (9th Cir. 2002), 560
- Watson v. University of Utah Med. Ctr., 75 F.3d 569 (10th Cir. 1996), 896
- Weaver v. Jago, 675 F.2d 116 (6th Cir. 1982), 835
- West v. Atkins, 487 U.S. 42 (1988), 282, 289, 295, 300, 304
- White v. Chambliss, 112 F.3d 731 (4th Cir.1997), 269
- White v. Pauly, 580 U.S. , 137 S. Ct. 548 (2017), 600
- White v. Rochford, 592 F.2d 381 (7th Cir. 1979), 210
- Whitley v. Albers, 475 U.S. 312 (1986), 67, 100, 122, 155, 161, 334, 398, 408, 607
- Whitney v. Simonson, 2007 WL 3274373 (E.D. Cal. Nov. 5, 2007), 575
- Wickersham v. City of Columbia, 481 F.3d 591 (8th Cir. 2007, 316
- Wilkerson v. Utah, 99 U.S. 130 (1879), 58
- Wilkins v. Gaddy, \_\_U.S. \_\_\_, 130 S.Ct. 1175 (Feb. 22, 2010), 48, 78, 83
- Wilkins v. May, 872 F.2d 190 (7th Cir. 1989), 398
- Williams v. City of Grosse Pointe Park, 496 F.3d 482 (6th Cir. 2007), 384
- Williams v. Morton, 343 F.3d 212 (3d Cir. 2003), 820
- Williams v. Pettiford, 2007 WL 3119548 (D.S.C. Oct. 22, 2007), 575
- Williams v. Smith, 2006 WL 938980 (W.D. Ky. April 10, 2006), 577
- Williams v. United States, 341 U.S. 97 (1951), 29
- Williams v. Vincent, 508 F.2d 541 (2nd Cir. 1974), 59
- Williams v. Wendler, 530 F.3d 584 (7th Cir. 2008), 446
- Wilson v. Garcia, 471 U.S. 261 (1985), 8, 578
- Wilson v. Layne, 526 U.S. 603 (1999), 620, 648
- Wilson v. Seiter, 501 U.S. 294 (1991), 77, 105, 122, 140
- Wilson v. Spain, 209 F.3d 713 (8th Cir. 2000), 397
- Wilson v. Williams, 83 F.3d 870 (7th Cir. 1996), 402
- Wisconsin v. Yoder, 406 U.S. 205 (1972), 788, 799
- Wojcik v. Mass. State Lottery Comm'n., 300 F.3d 92 (1st Cir. 2002), 442
- Wolff v. McDonnell, 418 U.S. 539 (1974), 145, 148, 161
- Wood v. Ostrander, 879 F.2d 583 (9th Cir. 1989), 210, 217, 649, 650
- Wood v. Strickland, 420 U.S. 308 (1975), 596

- Wood v. Moss, U.S. , 134 S.Ct. 2056 (2014), 604
- Woodford v. Ngo, 548 U.S. 81 (2006), 25, 566
- Wright v. Goord, 554 F.3d 255 (2d Cir. 2009), 79
- Yorkey v. Pettiford, 2007 WL 2750068 (D.S.C. Sept. 20, 2007), 575
- Young v. City of Mt. Ranier, 238 F.3d 567 (4th Cir. 2001), 177
- Young v. City of Providence ex rel. Napolitano, 404 F.3d 4 (1st Cir. 2005), 692
- Young v. Lane, 922 F.2d 370 (7th Cir. 1991), 807
- Youngberg v. Romeo, 457 U.S. 307 (1982), 200, 203, 224, 254, 258, 266, 649
- Yousuf v. Motiva Enters. LLC, 246 Fed. Appx. 891 (5th Cir. 2007), 561
- Yvonne L. v. New Mexico Dep't of Human Servs., 959 F.2d 883 (10th Cir. 1992), 267
- Zadeh v. Robinson, 928 F.3d 457 (5th Cir. 2019), 630, 641
- Zehner v. Trigg, 133 F.3d 459 (7th Cir. 1997), 578
- Ziccardi v. City of Philadelphia, 288 F.3d 57 (3d Cir. 2002), 166, 236, 237
- Ziglar v. Abbasi, U.S. , 137 S. Ct. 1843 (2017), 593, 640



# What's Past Is Prologue: Foreword to Third Edition by Aderson Bellegarde François<sup>1</sup>

---

In the winter of 1907, Albert Martin Kales, an 1899 graduate of Harvard Law School and professor at Northwestern University Law School, published an article in the *Harvard Law Review* titled “The Next Step in the Evolution of the Casebook.”<sup>2</sup> In it, Professor Kales argued that “the comparative merits of the casebook and the text-book methods of teaching law are no longer an issue in legal education,” that casebooks “have driven the text-book out of existence as a means of education,” and that the time had come to ask “what is to be the next step in their evolution?”<sup>3</sup> In Professor Kales’ view, for all of their virtues, casebooks had one fatal flaw: by focusing exclusively on important English and national cases they did not afford sufficient flexibility to the law teacher who wished to instruct students on how the law of local jurisdictions fits into the national scheme.

In the spring of 2007, Professor Matthew Bodie published an article in the *Journal of Legal Education* titled “The Future of the Casebook: An Argument for an Open-Source Approach.”<sup>4</sup> In it, Professor Bodie argued that “ever since Christopher Langdell devised the first compilation to teach his students using the case method, law professors have relied on casebooks to provide the substantive basis for their courses,” that “the casebook is, quite simply, the written centerpiece of legal education,” but that “despite its privileged position, the casebook as we know it is probably on its way to extinction.”<sup>5</sup> In Professor Bodie’s view, for all of their virtues, the fatal flaw of most casebooks is that, by relying on a fixed set of bound cases they do not afford law teachers sufficient flexibility to customize the materials in the book to fit their teaching styles, the demands of their courses, and the needs of their students.

---

1. A version of this essay was published in *THE LAW TEACHER* (Fall 2011) at 26. Since then, the author has joined the faculty of Georgetown Law School as Professor of Law & Director, Institute for Public Representation Civil Rights Law Clinic.

2. Albert Martin Kales, *The Next Step in the Evolution of the Casebook*, 2 *HARV. L. REV.* 92 (1907).

3. *Id.*

4. Matthew Bodie, *The Future of the Casebook: An Argument for an Open-Source Approach*, 57 *J. Legal Educ.* 10 (2007).

5. *Id.*

At the time Professor Kales published his call for the next evolutionary step in the development of the casebook, the case method had been in widespread use for barely thirty-five years,<sup>6</sup> there were only sixty-one published casebooks in circulation,<sup>7</sup> and it would be at least another year before West Publishing company established a national casebook market with the launch of the American Casebook Series.<sup>8</sup> In the intervening century between Professor Kales' call for its evolution and Professor Bodie's warning of its extinction, the casebook has been in a near constant state of change. Indeed, a year after he first distributed the introductory bound collection of cases to his Harvard students, Langdell himself began to edit it, not only adding and expunging cases but also eventually including commentaries that had been absent in the very first iterations of the book.<sup>9</sup> It sometimes seems as though the casebook has been in a constant state of flux ever since.

Perhaps the reason law teachers seem to be endlessly tinkering with the format of the casebook is that, as a teaching tool, the casebook is not terribly well suited for the case method. Strictly understood, the case method rests on the idea that the goal of law teaching is not to impart legal knowledge but to introduce legal reasoning. As Professor Peggy Cooper Davis recently showed, while it has long been the accepted view that Langdell's case method is overly rigid and formalistic in its insistence that law is a science and that legal reasoning, when subjected to scientific methods, can lead to the right answers, there is, in fact, nothing in Langdell's published works, letters and other collected papers that supports the claim that he was concerned about imparting knowledge so that students arrived at the right answers.<sup>10</sup> Rather, the case method and its accompanying Socratic dialogue was first and foremost an attempt at "giving students the chance to learn in the way that psychologists increasingly say that both children and adults learn best: by working collaboratively and at the growing edge of their abilities—at times sharing and applying collaborators' knowledge and methods, at times gaining new knowledge and developing new methods."<sup>11</sup> The problem is that a relatively short time after the case method was widely adopted, casebook authors increasingly began to organize and format their volumes to achieve maximum coverage of particular legal subjects.<sup>12</sup> That transformation of the casebook into a tool for coverage was based on a failure to recognize that, in Langdell's view, "science or not, law poses hard questions that can't be, or at least haven't been, resolved with certainty." As such, "the notion that the courses offered should include everything a

---

6. Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 520–21 (1991).

7. Douglas W. Lind, *An Economic Analysis of Early Casebook Publishing*, 96 LAW LIBR. J. 95, 103–04 (2004).

8. *Id.* at 107.

9. Steve Shepard, *Casebooks, Commentaries, and Curmudgeons: An Introductory History of Law in the Lecture Hall*, 82 IOWA L. REV. 547, 600–01 (1997).

10. Peggy Cooper Davis, *Desegregating Legal Education*, 26 GA. ST. L. REV. 1271, 1281 (2010).

11. *Id.* at 1289.

12. *See generally*, Shepard, *Casebooks, Commentaries*, 82 IOWA L. REV. 547.

student need know, that he need consider or will consider that is not gone over in class, is a mistaken one.”<sup>13</sup>

Of all the non-core upper-level law school courses, perhaps none is as prone to the mistaken notion that “courses should include everything students need to know,” and none is as ill equipped to keep that dubious promise, than the typical civil rights course. I speak from personal experience, being both the supervising attorney for the Civil Rights Clinic at Howard University School of Law and a professor of several upper level civil rights and constitutional law seminars.

So, it is particularly heartening to now have a casebook from Professor Sarah Ricks and her collaborator Professor Evelyn Tenenbaum that offers a vision of civil rights litigation teaching, not as a survey of the body of constitutional provisions, judicial decisions, legislative enactments, and regulatory regimes that make up federal civil rights law, but as a meditation on whether and how Congress, the courts, and American society have kept or broken faith with the constitutional ideal of respect for human rights and equality. Using mostly—though not exclusively—prison and police litigation, focusing on selected legislation, cases, briefs, and social developments, and relying on a set of interlocking questions and problems for discussion, Professor Ricks demonstrates that, particularly when it comes to civil rights litigation, “law professors should worry less about details and ramifications, and should concentrate more on method, technique, vocabulary, approach, arts, and the other things that go to make up a lawyer who will be adequately qualified to dig into problems,—for the most part, problems the details of which we could not possibly teach him now no matter how hard we tried.”<sup>14</sup>

Professor Ricks’ decision to use civil rights law to teach the fundamental indeterminacy of legal reasoning and the intellectual versatility of legal practice is perhaps best demonstrated not just by the relatively small number of cases she has culled from the vast body of civil rights precedent, but by her decision to place federal district and circuit court rather than Supreme Court opinions at the center of her book. Indeed, it is no exaggeration to suggest that Supreme Court precedent is the least important feature of the book. This choice is made abundantly clear in the introductory chapter on § 1983, more than two-thirds of which Ricks devotes to a discussion of the social milieu of the reconstruction Era, the rise of the Ku Klux Klan, and first-hand testimony of victims of Klan violence. Only after providing this background does Ricks make any mention of the Supreme Court’s decision of *Monroe v. Pape*,<sup>15</sup> which is credited with reviving § 1983 as a viable civil rights tool after it had fallen into disuse following the Supreme Court’s evisceration of the Reconstruction civil rights statutes of 1866, 1870, 1871 and 1875.

---

13. Roscoe Pound, *Book Review*, 4 ILL. L. REV. 150 (1909).

14. Erwin Griswold, *Some Thoughts About Legal Education Today*, in FRONTIERS IN LAW AND LEGAL EDUCATION 77 (1961).

15. 365 U.S. 167 (1961).

Where one would normally expect a recapitulation of Supreme Court precedent, Professor Ricks offers attorneys' interviews and briefs as a way of making evident the indispensable role advocates play in the development of civil rights law. The relegation of the Supreme Court as a distant overseer is, like so many decisions in this beautifully written book, an attempt to take back the casebook to its true origins: as a tool to teach not knowledge but reasoning, not details but techniques, not doctrine but method.

Of course, Professor Ricks' casebook is not the first or the only one to supplement cases with historical materials, scholarly discussions, workbook problems, or even practice documents. Many, if not most, casebooks nowadays do the same thing in one fashion or another. However, in many casebooks, these supplemental materials are yet another means of increasing coverage of the substantive doctrinal law students need to know—the idea being that, to fully cover, say, federal employment discrimination law, it is necessary for students to know the historical circumstances of the passage of Title VII of Civil Rights Act of 1964. What makes Professor Ricks' casebook different in an important respect is that the historical and practice materials are not there to supplement coverage of doctrine but to provide a structure for students to address “the complex and contradictory interplay of a formalistic deference to authority and an indeterminacy that allows the law to respond to notions of justice and efficiency.”<sup>16</sup>

My years of serving both as a civil rights clinician and a doctrinal professor of constitutional law have taught me that the most difficult issues students encounter are almost never about doctrine. Rather, far more challenging are questions such as: How do you choose between advancing a new theory of a claim, knowing you will likely face a skeptical, if not hostile, judicial audience, or rehearsing the more conventional argument that does nothing to advance the law? How do you rhetorically frame your case in a way that the court is predisposed to understand, accept and respect, while at the same time telling a story that rings true to a client who spent years trying to just get someone to listen? Why, if we are being honest, do so many pro bono civil rights litigants seem at first (or even second) blush a little mentally disturbed? Did the psychological pressure of spending years fighting a losing battle against social forces bent on destroying them eventually extract a psychic cost now made manifest through their unshakable conviction that their pro bono attorney is secretly conspiring against them? Or is the fact that they took on the fight in the first place itself evidence of a less than fully developed sense of self-preservation because most of us supposedly rational folks would not be so quick to tilt at the windmills of the system by, say, trying, as did James Meredith, to singlehandedly racially integrate the University of Mississippi? Or is it really us advocates, ever the products of the legal status quo even while challenging it, who are afflicted with a skewed perspective for being too quick to reduce every question of justice and fairness into a legal issue?

No Supreme Court case I am aware of holds the answer to these questions. But, without explicitly framing her book as a historical and cultural critique of American

---

16. Davis, *Desegregating Legal Education*, 26 GA. ST. L. REV. at 1289.



civil rights law, Professor Ricks has, in fact, offered a trenchant account of how civil rights law is a catalogue of public morality and a registry of social consciousness; how any civil rights doctrine, whether significant or minor, whether honored or abused, reveals something about the people who adopted it and the ideas they profess to hold dear; and how civil rights litigation is not merely (or indeed mainly) a contest over the technical requirements of judicial, legislative and administrative rules but a reflection of American society's ideas of justice, fairness, power, equality and democracy.

But above all this: Professor Ricks has managed to accomplish in this textbook, with prose at once clearheaded and lyrical, in a format at once straightforward and complex, and with materials at once conventional and unexpected, the difficult and seemingly contradictory task of pointing the way to the future of the casebook while at the same time proving herself a true intellectual heir to Langdell's original vision of the case method.

Aderson Bellegarde François  
Professor of Law & Director,  
Institute for Public Representation Civil Rights Law Clinic  
Georgetown Law School  
Washington, DC December 2019  
(originally published in 2011)



# Foreword to Second Edition by Rebecca E. Zietlow

---

---

Professor Ricks and Professor Tenenbaum's *CURRENT ISSUES IN CONSTITUTIONAL LITIGATION* is an excellent, innovative textbook. It is both a comprehensive treatment of the substantive material and an effective tool for teaching practical skills to law students. As law students increasingly demand practical skills courses, some professors fear that they will be required to sacrifice coverage of substantive law. This textbook shows that it is not necessary to make such a choice. The innovative means in which the material is presented motivates students to learn the substantive law in even greater scope and depth than a conventional lecture class. The material is presented through appellate decisions, jury instructions, and other sources that practicing lawyers use. This material is accessible to students, and it more closely resembles the practice of law than the conventional presentation of only Supreme Court cases. The book also presents contextual information, which enables students to understand the issues covered in a sophisticated fashion. Students become engaged in the subjects presented, and this also motivates them to learn more.

The strongest aspect of *CURRENT ISSUES IN CONSTITUTIONAL LITIGATION* is the inclusion of simulation exercises. The students enjoy the exercises and take on the responsibility of teaching the material to other students as they engage in the simulations. Thus the students take ownership of the learning process, and have a great time as well. Many of my students have told me that they wish that there were more classes like this one in law school. I agree.

Rebecca E. Zietlow  
Charles W. Fornoff Professor of Law and Values  
University of Toledo College of Law  
January 2015



# Foreword to Second Edition by Michael P. O'Connor

---

---

CURRENT ISSUES IN CONSTITUTIONAL LITIGATION: A CONTEXT AND PRACTICE CASEBOOK is far and away the best book available today to teach, and for your students to learn, constitutional litigation. Before using this text, I had used several other books to teach civil rights litigation courses. None of the other texts compared favorably with that produced by Ricks and Tenenbaum. The cases are well chosen and go beyond the standard Supreme Court offerings, providing students with examples of how the law is interpreted and developed by litigators in the lower courts.

But the additional materials are what make this text stand apart as a “Context and Practice Casebook.” The law practice simulations allow students to access this material in a manner that bridges the divide between doctrinal and clinical education, while the supplemental materials permit professors to engage students with various learning modalities.

No book I have used has been so uniformly praised by my students (100% favorable ratings). The interviews, background reports and excerpts of briefs allow students to grasp the critical development of both the law and the litigation strategies used by practitioners to shape the law in the trenches.

CURRENT ISSUES IN CONSTITUTIONAL LITIGATION engages students across the spectrum, from those taking the class because it fits their schedules to those who intend to pursue careers in civil rights litigation. It is that rare casebook that can help you make a difference in your students’ career choices and, ultimately, their lives. It helps you to bring alive the stories of the people behind these cases, both the litigants and the litigators. By making the litigation real and accessible, students embrace it. Through that embrace, the next generation of civil rights litigators is born, and the struggle to safeguard and expand constitutional protections continues.

Michael P. O'Connor  
University of La Verne College of Law  
January 2015



# Foreword to First Edition by David Rudovsky

---

This new casebook admirably fills a significant need in the teaching of the complex and dynamic issues in the area of constitutional litigation. For many years, law teachers of this increasingly important topic have either had to generate their own materials or choose among some few standard casebooks. Now, Professor Ricks has authored a new and quite different casebook that provides far more than the usual cases, comments and questions.

Professor Ricks approaches the constitutional and statutory materials from several perspectives: doctrinal development, legislative responses, litigation decisions, and practical considerations that inform the litigation and decision making in this area. Included in each substantive chapter are the social and political contexts of the constitutional issues, leading Supreme Court and Circuit Court opinions, excerpts from oral arguments on major cases in the Supreme Court, legislative initiatives, expert reports, jury instructions, representative pleadings, and even interviews with leading civil rights litigators. Students are provided with the full range of materials from the files of litigators to the decisions by the courts.

As an example, the chapter on prisoner rights litigation includes the leading cases and the development of controlling doctrine, but also provides a rich mix of materials from litigation files, investigative reports from public interest organizations, and legislative hearings that bear on the major issues. Professor Ricks also provides thoughtful questions and innovative simulations that will encourage students to think through these problems from the perspectives of the lawyers, inmates, prison officials, judges, and legislators.

The world of constitutional litigation is far broader than case law. Professor Ricks has captured the multi-dimensional aspects of this field of law and has produced a casebook that will greatly enhance teaching, learning and practice of constitutional litigation.

David Rudovsky  
Kairys, Rudovsky, Messing & Feinberg  
University of Pennsylvania Law School  
Philadelphia, Pennsylvania  
August 2010





# Foreword to First Edition by Karen Blum

---

For years I've been putting together my own materials to teach a course on Police Misconduct Litigation. The course takes a practical approach and gets the students involved in working on real cases with attorneys, from both the plaintiffs' and defense bar, who are experienced in the area of section 1983 litigation. There has been no casebook that provides students with the opportunity to see how all the facets of a case come together.

Sarah Ricks has created an incredibly useful, contextually-based casebook that tells the story of constitutional litigation from many different perspectives. Students go behind the scenes and come to understand litigation from reading not only case law, but from examining briefs, oral arguments, pleadings, and expert opinions.

Chapter Six explores Fourth Amendment standards and Police Misconduct. The Chapter begins with facts and statistics about a police officer's job, the typical job requirements, salaries, and training. This is important information for students to have when they are reading cases that evaluate the reasonableness of a police officer's conduct. Following the key cases of *Tennessee v. Garner* and *Graham v. Connor*, the Chapter includes sample jury instructions and verdict forms for excessive force cases. An excessive force "dog-bite" case is followed from complaint to verdict, giving the students insight into how multiple claims and defendants may be reduced as the case proceeds, with the ultimate disposition of the case turning on a single issue in a single claim with respect to a single officer. Students are invited to think about the time and expense of litigation and the economic pressures to reject a settlement that would not compensate for the investment of time expended by plaintiff's counsel. The coverage of *Scott v. Harris* includes excerpts from the oral argument and an amicus brief submitted by the National Police Accountability Project. A post-*Scott* Circuit decision provides a window for exploration of how *Scott* is being applied and whether it establishes a "*per se*" rule for the use of deadly force in cases involving motor vehicle chases.

For professors and students who want more from legal education than the unadorned case-method approach can provide, Professor Ricks has compiled a set of

materials that brings the case law to life. Teaching and learning about constitutional litigation will be a much richer experience thanks to her efforts.

Karen M. Blum  
Professor of Law  
Suffolk University Law School  
Boston, Massachusetts  
August 2010

# Series Editor's Preface

---

Welcome to a new type of casebook. Designed by leading experts in law school teaching and learning, Context and Practice casebooks assist law professors and their students to work together to learn, minimize stress, and prepare for the rigors and joys of practicing law. **Student learning and preparation for law practice are the guiding ethics of these books.**

Why would we depart from the tried and true? Why have we abandoned the legal education model by which we were trained? Because legal education can and must improve.

In Spring 2007, the Carnegie Foundation published *Educating Lawyers: Preparation for the Practice of Law* and the Clinical Legal Education Association published *Best Practices for Legal Education*. Both works reflect in-depth efforts to assess the effectiveness of modern legal education, and both conclude that legal education, as presently practiced, falls quite short of what it can and should be. Both works criticize law professors' rigid adherence to a single teaching technique, the inadequacies of law school assessment mechanisms, and the dearth of law school instruction aimed at teaching law practice skills and inculcating professional values. Finally, the authors of both books express concern that legal education may be harming law students. Recent studies show that law students, in comparison to all other graduate students, have the highest levels of depression, anxiety and substance abuse.

**The problems with traditional law school instruction begin with the textbooks law teachers use.** Law professors cannot implement *Educating Lawyers* and *Best Practices* using texts designed for the traditional model of legal education. Moreover, even though our understanding of how people learn has grown exponentially in the past 100 years, no law school text to date even purports to have been designed with educational research in mind.

The Context and Practice Series is an effort to offer a genuine alternative. Grounded in learning theory and instructional design and written with *Educating Lawyers* and *Best Practices* in mind, Context and Practice casebooks make it easy for law professors to change.

I welcome reactions, criticisms, and suggestions; my e-mail address is mschwartz@pacific.edu. Knowing the author(s) of these books, I know they, too, would appreciate your input; we share a common commitment to student learning. In fact, students,

if your professor cares enough about your learning to have adopted this book, I bet s/he would welcome your input, too!

Michael Hunter Schwartz, Series Designer and Editor  
Consultant, Institute for Law Teaching and Learning  
Dean and Professor of Law, McGeorge School of Law,  
University of the Pacific

# Acknowledgments for First, Second, and Third Editions

---

---

Thank you to Michael Hunter Schwartz and Gerry Hess for creating and editing the Context and Practice Series, and for energetic and thoughtful guidance along the way.

Professors who assign the casebook generously have shared suggestions for this Third Edition. In particular, thank you to the Honorable John A. Gibney, Jr., United States District Judge for the Eastern District of Virginia, Barry N. Kramer, and Rebecca Zietlow for offering valuable comments. Law professors who teach and write about civil rights, federal courts, and constitutional law generously gave constructive feedback on much of this material in earlier drafts. Thank you to Karen Blum, Aderson Francois, Sally Goldfarb, Earl Maltz, Joan Meier, Andrea Mooney, Mike O'Connor, David Rudovsky, Richard Saphire, Allan Stein, and Penny Venetis. Thank you to Harriet Katz and David Nadvorney for encouragement and for sharing their teaching expertise, and to Mary Kay Ricks for sharing her historical expertise. I learned a great deal from the thorough vetting and insightful comments of active civil rights practitioners Elise Bruhl, Craig Gottlieb, and Jane Istvan, and federal court litigator Tom Dolgenos. Thank you to the many civil rights lawyers who allowed me to include interviews with them.

For inspiration and guidance on how to shape these ideas into a book, thank you to my current and former colleagues, Bob Williams, Beth Hillman, John Beckerman, Earl Maltz, and colleagues at other schools, Joan Malmud Rocklin, Susan Wawrose, and especially Tom Cobb.

Several groups gave me constructive feedback on presentations of earlier drafts of portions of these materials. Thank you to Lynda Dodd and participants in a City University of New York civil rights writers' workshop, to the Association of Legal Writing Directors Scholars Forum (Marquette Law School, Milwaukee WI); the Delaware Valley Legal Writing Consortium (Temple Law School, Philadelphia PA); the Women's Studies Senior Seminar (Rutgers-Camden College, Camden, N.J.); and the Rutgers-Camden Clinical Faculty Scholarship Colloquium. Thank you to Hays Butler and John Joergensen for library research guidance. Thanks especially to Evelyn Tenenbaum for her thoughtful comments on every single chapter.

All of the Rutgers Law School students and University of Pennsylvania Law School students who enrolled in *Current Issues in Civil Rights Litigation* and in *Civil Rights* between 2004 and 2019 contributed to shaping this book. I am grateful to them for their flexibility and willingness to work with these materials as they evolved. Several

Rutgers students made particularly valuable contributions: Alison Anderson, Lucille Bongiovanni, Patrick Castaneda, Erin Carroll, Shanon Chant, Jessica Corbett, Jacqueline Corsentino, Ashley Cunliffe, Shlomo Cytryn, Elizabeth D'Ancona, Jacqueline Dilks, Nick Ferrara, Jason Fortenberry, Angie Gambone, Carl Goldfarb, Morgan Humphrey, Bryce Hurst, Alison Keating, Kathleen Kelliher, Aryn Keyel, Yoshi Kumara, Brad Kushner, Valerie Manos, Carl Minniti, Brian Morrison, Arthur Murphy, Amanda Nordstrom, Julie Paull, Amy Pearl, Peter Colonna Romano, Alex Rubenstein, Marie Saraceni, Kristofer Scarpa, Meha Siyam, Peregrin Sorter, Geoff Stark, Lisa Szymanski, Alyson Tomljenovic, Cody Valdez, Christy Whitfield, Catie Williams, Lynda Yamamoto, Diane Yandach, and Jack Lee Young. Thank you to Jason Fortenberry for creating the companion website for the book.

Thank you to Rutgers Law School and University of Pennsylvania Law School for financial support. I am grateful to Rutgers Law Co-Dean Kim Mutcherson and former Dean Ray Solomon for their support of my scholarship.

Thank you to my husband, Tom Dolgenos, for talking through these ideas and for unflagging support, and to my children, Kate and Charlie, for sharing their mother's attention and time with this project.

At Carolina Academic Press, Evelyn and I are grateful to Linda Lacy, Scott Sipe, and Tim Colton for enthusiasm and patient guidance, and to Keith Sipe and Rachael Meier for their efforts and support. Evelyn Tenenbaum adds thanks and appreciation for their assistance to Michael Pape, Patrick Collins, Chelsea Cerutti, Ashley Behan, Jonathan Gillerman, and Chitra Anbalagan, to Dean Thomas F. Guernsey and Associate Dean James T. Gathii for their support of her scholarship, and to Albany Law School for financial support. For the third edition, Evelyn would like to thank Stephanie Reighart for her invaluable research assistance, editing suggestions, and photographs, and Theresa Colbert for her invaluable assistance with the manuscript. She would also like to thank Dean Alicia Ouellette and Director of Faculty Research and Scholarship Christian Sundquist for their support of her scholarship.