

MUNICIPAL LIABILITY UNDER 42 U.S.C. §1983

Legal Theories and Defenses for Constitutional
Violations by City Officials

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1983 Fun Facts, Trivia and History

- 42 U.S.C. was passed in the year 1983
 - ☐ TRUE
 - ☐ FALSE

- Although passed in 1871, 42 U.S.C. § 1983 did not come into use as a tool to prevent abuses by government officials for almost 90 years. In 1961, the U. S. Supreme Court decided the case of [Monroe v. Pape](#) which held there were 3 uses for the statute:
 - *Overriding state laws*
 - *Providing [remedies](#) where state laws are inadequate*
 - *Providing federal remedies where state remedies are available in theory but not in actuality*

1983 Fun Facts, Trivia and History

1. President Reagan referred to the Soviet Union as an “_____” in a speech in Florida.
2. Notable books include _____ by Jackie Collins
3. The final TV episode of _____ aired on CBS, an estimated 125 million watched in the US.
4. _____ became the first American woman in space.
5. Who said “Go ahead, make my day”?

1983 Fun Facts, Trivia and History

True or False

- The first domain names were registered under the .edu, .gov, .org, and .com system
 - ☐ *True*
 - ☐ *False*
- The first mobile phone was launched
 - ☐ *True*
 - ☐ *False*

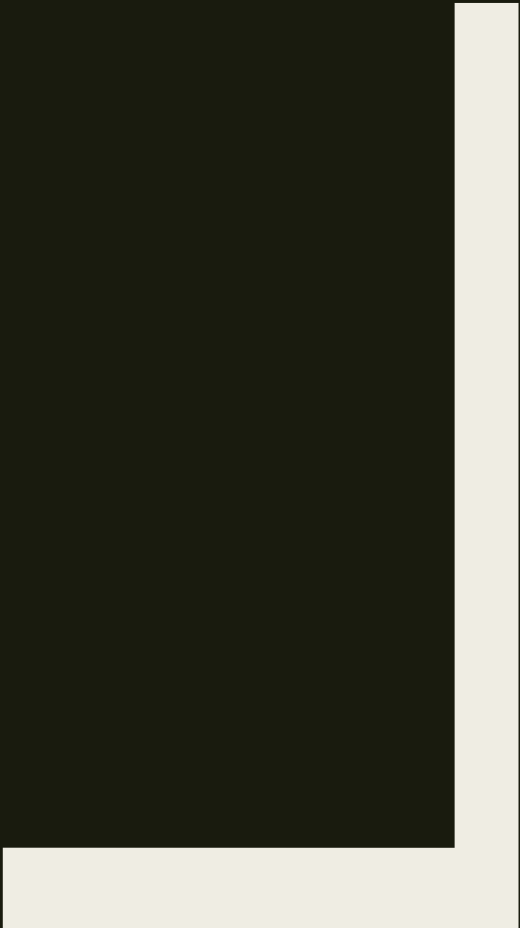
Motorola DynaTAC 8000X





SECTION 1983

Under 42 U.S.C. § 1983, individuals can sue local government entities, including cities, for violations of their constitutional rights committed by officials acting "under color of law."




Defendants in a Section 1983 Action

Local government
employees

Local governments

State or United
States territory
employees in their
individual capacity

Private individuals
acting on behalf of
state or local
governments

A decorative background on the left side of the slide featuring large, 3D, dark gray numbers (0, 1, 2, 3, 4, 5) scattered and overlapping. The numbers have a slight shadow and are set against a dark gray background.

Constitutional Rights Protected Under Section 1983

Most commonly Section 1983 actions involve the deprivation of:

- Rights incorporated from the Bill of Rights (the first ten amendments to the US Constitution).
- Procedural due process rights.
- Substantive due process rights.
- Equal protection of the law.

Fourteenth Amendment's Due Process Clause incorporates Bill of Rights & makes their protections applicable to the states.

Most [Section 1983](#) claims that arise from the Bill of Rights include:

- **First Amendment's** rights of freedom of speech, press, assembly, petition, & religion
- **Fourth Amendment's** protections against excessive force & unreasonable searches and seizures
- **Fifth Amendment's** right to just compensation for property taken by government
- **Eighth Amendment's** protections against excessive bail; cruel & unusual punishment

Available Relief in a Section 1983 Action

- Prospective relief such as:
 - *injunctions; and*
 - *declaratory judgments*
- Compensatory damages
- Punitive damages
- Costs
- *And...*

42 U.S.C. § 1988(b) Attorneys' Fees

- The court may, in its discretion, award the **prevailing party** reasonable attorneys' fee as part of the costs



Most Likely Scenarios Leading to 1983 Claims



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Zoning or Land Use Violations

- Scenario: A city enacts/enforces zoning ordinances that unlawfully deprive individuals of their property without just compensation or due process (rezone/denial of rezoning)
- Legal Basis: Fifth Amendment (Takings Clause) or Fourteenth Amendment (Procedural Due Process)
- Example: A city rezones private land to eliminate all viable uses without proper notice, effectively taking it through regulation



Zoning: Watch for RLUIPA Violations

- Religious Institution/Use
- ***No Need for § 1983:*** Unlike some federal statutes that require § 1983 to enforce rights, RLUIPA's express provision for cause of action makes § 1983 unnecessary
- ***But,*** plaintiffs may still bring § 1983 claims alongside RLUIPA claims if allege related constitutional violations (e.g., First Amendment free exercise claims)

Discrimination by City Programs

- Scenario: City officials or employees (e.g., housing authorities, parks) engage in discriminatory practices based on race, religion, gender, or other protected traits in public services or employment.
- Legal Basis: Fourteenth Amendment (Equal Protection Clause)
- Example: A city housing department systematically denies applications from minority families, and leadership fails to address the pattern.

Retaliation for Free Speech – *Citizens*

- Scenario: City officials retaliate against individual citizens for engaging in protected speech or expressive conduct, such as denying permits, banning them from meetings, or harassing critics of municipal policy
- Legal Basis: First Amendment (Freedom of Speech or Petition)
- Example: A city revokes business owners' business license after they publicly criticize the mayor, with evidence of retaliatory intent tied to city policy



Retaliation for Free Speech – *Employee*

- Scenario: City officials punish employee for engaging in protected speech or expressive conduct, such as denying permits, firing employees, or harassing critics of municipal policy.
- Legal Basis: First Amendment (Freedom of Speech or Petition)
- Example: City fires employee for speaking at a public meeting/Facebook on the issue of pay for first responders.

Police Misconduct and Excessive Force

- Scenario: A city's police officers repeatedly use excessive force (e.g., unjustified shootings, beatings, or tasings) against citizens, and the city fails to train, supervise, or discipline the officers.
- Legal Basis: This often implicates the Fourth Amendment (unreasonable seizures) and can lead to municipal liability if it's shown the city has a "custom or policy" of tolerating such behavior (e.g., *Monell v. Department of Social Services*, 436 U.S. 658 (1978)).
- Example: A pattern of unaddressed brutality complaints resulting in a citizen's injury or death.

Failure to Train Law Enforcement

- Scenario: A city provides inadequate training to police officers on constitutional limits (e.g., use of force, search and seizure), leading to repeated violations of citizens' rights.
- Legal Basis: Liability arises when the failure to train amounts to "deliberate indifference" to constitutional rights
- Example: Officers not trained on de-escalation techniques, resulting in avoidable intensifications & injuries

- Recording interactions with Police
- 1A Auditors
- Solicitors
- “Panhandling” in ROW
- Street performers
- Sign regulations
- Social Media (blocking/removing posts)

More First Amendment Scenarios

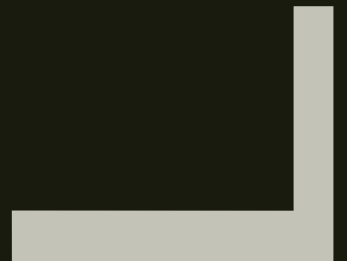
ADA & 1983

- The **ADA** provides its own enforcement mechanisms;
- Plaintiffs typically sue directly under the ADA for violations; not § 1983
- **§ 1983 for Related Constitutional Claims:** However, § 1983 can be used alongside ADA claims if plaintiff alleges violations of constitutional rights distinct from ADA claim
 - e.g., *Equal Protection or Due Process under the Fourteenth Amendment*





DEFENSES



Statute of Limitations

- [Section 1983](#) does not contain a general limitations period
- S/L varies depending on the right or rights at issue.
- Most times, particularly for claims that derive from deprivation of constitutional rights, the applicable limitations period is the most analogous limitations period under state law



Immunities*

**available only to those sued in their personal capacity*

ABSOLUTE
IMMUNITY

QUALIFIED
IMMUNITY

**Absolute
Immunity**
*Falls into
the
following
categories
or
functions:*

Legislative

Judicial

Prosecutorial

Witness

Qualified Immunity

(good faith immunity)



- Government employees performing discretionary function
- Lost if employee violated a **clearly established right**
 - *one that is clear enough in the law that any reasonable official would have understood that their conduct violated the law*
- Plaintiff must show at least one factually similar case that was decided before the alleged incident that would give notice that conduct was unlawful

Qualified Immunity (Indirectly)

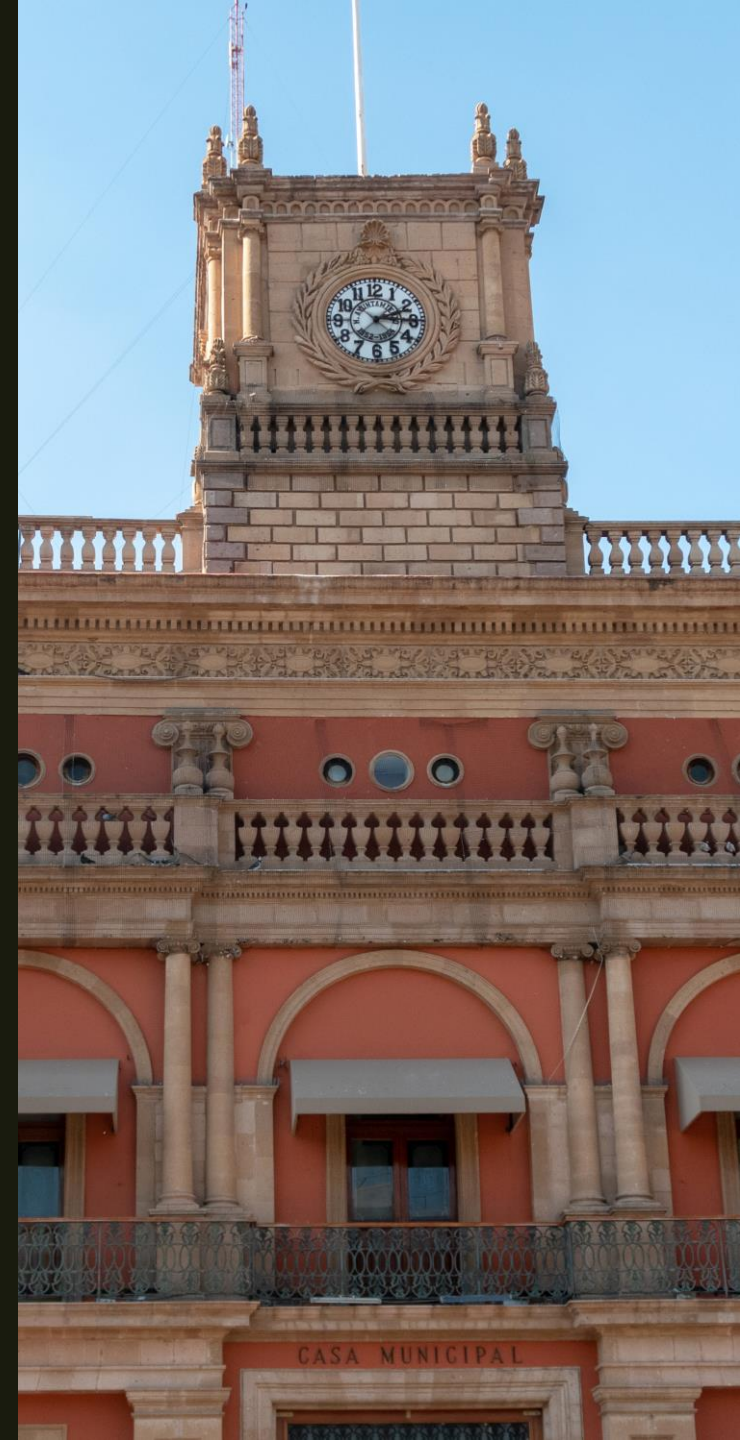
While QI applies to individual officials, not local governments, local government can mitigate lawsuits by training staff and police officers well – avoid stupid mistakes

- If novel or gray-area then law was not "clearly established" -- no notice of need to act differently
- If staff/officers are well trained, & employee does something "clearly established" by law and training – cuts against failure to train

Claims Against the Municipality

Municipal policy or custom may be:

- Formal regulation or policy statement
- Informal custom amounting to a widespread practice that constitutes a custom or usage with force of law
- Decisions of employees with final policymaking authority (includes ratification by authorized subordinates)
- Failure to adequately train or supervise employees if failure results from deliberate indifference to injuries that may be caused



No Official Policy or Custom

- **Monell Liability**
 - *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978)
- Alleged constitutional violation not caused by an official city policy, ordinance, or widespread custom -- isolated incidents by individual employees don't establish municipal liability
- Complaint must allege city has (1) formal policy authorizing the conduct or (2) persistent, widespread practice amounting to a "custom"
- Action even if true was a one-time anomaly, not a deliberate policy or pattern

Causation Break



City's policy or inaction was not "moving force" behind constitutional violation; instead, harm resulted from individual actor's independent choice or external factors



Highlight intervening causes or employee deviations from city directives

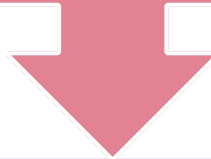


Example: In a retaliation case, permit denial stemmed from official's personal grudge, not city policy


Zoning or Land Use Defense

- Defense: The action was a legitimate exercise of police power, not a taking, or due process was provided (e.g., notice and hearing)
- If due process claim – argue no protected property interest and city’s action was not “truly irrational”
- Alternative: Argue the plaintiff failed to exhaust all remedies
 - *Williamson County ripeness requirement, though partially overruled (Knick) but still need ‘final decision’*

Defense: The adverse action (e.g., permit denial) was based on legitimate, non-retaliatory grounds, or the speech wasn't protected (e.g., threats)



Tactic: Document independent reasons for the decision (e.g., code violations)



Local government prevails if it would have acted the same absent speech

Free Speech Retaliation Defense



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