

9.0 Introductory Comment

This chapter focuses on 42 U.S.C. § 1983, which provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

This chapter is organized to provide separate “elements” instructions for 42 U.S.C. § 1983 claims against individuals (Instructions 9.3-9.4) and against local governing bodies (Instructions 9.5-9.8) because there are different legal standards establishing liability against these two types of defendants. Instructions 9.9-9.38 provide instructions to establish the deprivation of particular constitutional rights. An elements instruction should be used only in conjunction with a “particular rights” instruction appropriate to the facts of the case at hand.

The chart below identifies the instructions for violations of particular federal rights to be used in conjunction with an elements instruction. “[W]here a particular amendment ‘provides an explicit textual source of constitutional protection’ against a particular sort of government behavior, ‘that Amendment, not the more generalized notion of ‘substantive due process,’ must be the guide for analyzing these claims.’” *County of Sacramento v. Lewis*, 523 U.S. 833, 842 (1998) (quoting *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (plurality opinion)); *Kirkpatrick v. Cnty. of Washoe*, 843 F.3d 784, 788 n.2 (9th Cir. 2016). When necessary, these instructions include right-specific mental states because § 1983 “itself ‘contains no state-of-mind requirement independent of that necessary to state a violation’ of the underlying federal right.” *Bd. of Cnty. Comm’rs of Bryan Cnty., Okl. v. Brown*, 520 U.S. 397, 405 (1997) (quoting *Daniels v. Williams*, 474 U.S. 327, 328 (1986)).

Person Subject to § 1983 Liability

It is well settled that a “person” subject to liability can be an individual sued in an individual capacity (*see Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001) (en banc)) or in an official capacity (*see Hartmann v. Cal. Dep’t of Corr. & Rehab.*, 707 F.3d 1114, 1127 (9th Cir. 2013)). A “person” subject to liability can also be a municipality, county, or other local governing body. (*See Monell v. Dep’t of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 690 (1978); *Waggy v. Spokane County*, 594 F.3d 707, 713 (9th Cir. 2010) (“Municipalities are considered ‘persons’ under 42 U.S.C. § 1983.”); *King v. County of Los Angeles*, 885 F.3d 548,

558 (9th Cir. 2018) (“A county is subject to Section 1983 liability . . .”).

Local Governing Body Liability

A local governing body is not liable under § 1983 “unless action pursuant to official municipal policy of some nature caused a constitutional tort.” *Monell*, 436 U.S. at 691. *But see* Instruction 9.7 (Section 1983 Claim Against Local Governing Body Defendants Based on Ratification—Elements and Burden of Proof) (addressing ratification and causation). “[A] municipality cannot be held liable under §1983 on a *respondeat superior* theory.” *Monell*, 436 U.S. at 691.

A local governing body defendant, such as a school district or municipality, is not entitled to qualified immunity. *See Owen v. Independence*, 445 U.S. 622, 638 (1980) (holding that “municipality may not assert the good faith of its officers or agents as a defense to liability under § 1983”).

“The ‘official policy’ requirement ‘was intended to distinguish acts of the *municipality* from acts of *employees* of the municipality,’ and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible.” *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479 (1986) (emphasis in original). Because there are several ways to establish “*Monell* liability,” *see Christie v. Iopa*, 176 F.3d 1231, 1235 (9th Cir. 1999); *Webb v. Sloan*, 330 F.3d 1158, 1164 (9th Cir. 2003), the Committee also includes in this chapter separate elements instructions for several bases of such liability (Instructions 9.5, 9.6, 9.7, and 9.8).

Good-Faith Defense

Private parties and local governments “may invoke a good faith defense to liability under section 1983.” *Danielson v. Inslee*, 945 F.3d 1096, 1097 (9th Cir. 2019) (citing *Clement v. City of Glendale*, 518 F.3d 1090, 1096-97 (9th Cir. 2008)); *see Allen v. Santa Clara Cnty. Corr. Peace Officers Ass’n*, 38 F.4th 68, 71 (9th Cir. 2022) (holding that municipalities may also be entitled to a good faith defense).

Specifically, both private parties and local governments “may invoke an affirmative defense of good faith to retrospective monetary liability under 42 U.S.C. § 1983, where they acted in direct reliance on then-binding Supreme Court precedent and presumptively-valid state law.” *Danielson*, 945 F.3d at 1097 (holding that public-sector unions could rely on good-faith defense to avoid liability for unlawful fees collected when binding precedent authorized such fees); *see Allen*, 38 F.4th at 75 (holding that county which assisted public-sector union’s efforts to collect unlawful fees could rely on same good-faith defense).

A private party that acted upon the instructions of a local police department may also invoke a good faith defense. *Clement*, 518 F.3d at 1096-97 (holding that a towing company that relied on a police officer’s authorization, towed vehicle under close police supervision,

and did its best to follow the law could rely on a good-faith defense to liability even though the police officer's decision to tow vehicle violated plaintiff's due process rights).

Eleventh Amendment Immunity

Despite the language of § 1983, "every person" does not have a universal scope; it does not encompass claims against a state or a state agency because the Eleventh Amendment bars

such encroachments on a state's sovereignty. *Doe v. Lawrence Livermore Nat'l Lab.*, 131 F.3d

836, 839 (9th Cir. 1997) ("States or governmental entities that are considered 'arms of the State' for Eleventh Amendment purposes are not 'persons' under § 1983," quoting *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 70 (1989)). Even if a plaintiff seeks only injunctive relief, a state

that has not waived its Eleventh Amendment immunity cannot be sued in its own name under § 1983. *Will*, 491 U.S. at 64, 71, n.10.

The Ninth Circuit applies a three-factor test to determine whether a government entity is a state agency for Eleventh Amendment purposes: (1) what is the state's intent as to the status of the entity, including the functions performed by the entity; (2) what is the state's control over the entity; and (3) what is the entity's overall effects on the state treasury. *Kohn v. State Bar of California*, 87 F.4th 1021, 1031 (9th Cir. 2023) (en banc) (adopting the D.C. Circuit's three-factor test). The inquiry is an entity-based approach; the status of an entity does not change from one case to the next based on the nature of the suit. Waiver and abrogation are "second-stage inquiries as to whether, *if* an entity is immune, that immunity may be overcome." *Id.* (emphasis in original) (citations omitted); *see also Kohn v. State Bar of California*, 119 F.4th 693, 696 (9th Cir. 2024) (discussing the three-part inquiry for the abrogation analysis of Title II ADA claims).

In contrast to a state or state agency, a state official may be sued in his or her official capacity under § 1983, but only for prospective injunctive relief. This is because "official-capacity actions for prospective relief are not treated as actions against the State." *Will*, 491 U.S. at 71 n.10. In *Matsumoto v. Labrador*, 122 F.4th 787, 802 (9th Cir. 2024), the court held that a pre-enforcement action brought by abortion rights advocacy organizations against the Idaho attorney general fell within an exception to *Ex parte Young* for the state's Eleventh Amendment immunity, which allows "actions for prospective declaratory or injunctive relief against state officers in their official capacities" provided that the officer has "some connection with the enforcement of the act." The attorney general had "some connection" to the enforcement because the statute specifically granted authority to the attorney general to prosecute "abortion trafficking." *Id. Accord Planned Parenthood Great*

Nw., Hawaii, Alaska, Indiana, Kentucky v. Labrador, 122 F.4th 825, 843 (9th Cir. 2024). A state official may be sued under § 1983 in his or her individual capacity for damages. *Kentucky v. Graham*, 473 U.S. 159, 165 (1985); *but see Avalos v. Baca*, 596 F.3d 583, 587 (9th Cir. 2010) (holding that in to be individually liable under § 1983, the individual must personally participate in alleged rights deprivation). *K. J. v. Jackson*, 127 F.4th 1239, 1251 (9th Cir. 2025) (holding that the plaintiff could sue a public school superintendent for expungement of information from school records because such expungement was a form of prospective relief that the plaintiff could receive under the *Ex parte Young* doctrine).

Exhaustion under the Prison Litigation Reform Act

“The Prison Litigation Reform Act of 1995 (PLRA) requires prisoners with complaints about prison conditions to exhaust available grievance procedures before bringing suit in federal court.” *Perttu v. Richards*, 605 U.S. 460, 464 (2025) (citing 42 U.S.C. § 1997e(a)). In *Perttu*, Richards, a prisoner in Michigan, alleged that he was sexually abused by Thomas Perttu, a prison employee. *Id.* Richards also alleged that when he tried to file grievances about the abuse, Perttu destroyed them and threatened to kill him if he filed more. *Id.* Richards sued Perttu for violating his First Amendment right to file grievances, and Perttu responded that Richards had failed to exhaust available grievance procedures as required by the PLRA. *Id.* The parties agreed that the exhaustion and First Amendment issues were intertwined, as both depended on whether Perttu did in fact destroy Richards’s grievances and retaliate against him. *Id.* The Supreme Court held that “parties are entitled to a jury trial on PLRA exhaustion when that issue is intertwined with the merits of a claim protected by the Seventh Amendment.” *Id.* at 1807.

The Committee also recommends the Section 1983 Outline prepared by the Office of Staff Attorneys, United States Court of Appeals for the Ninth Circuit, available at: or

Revised September 2025