

No. 23-1332

IN THE
Supreme Court of the United States

JARIUS BROWN,

Petitioner,

vs.

JAVARREA POUNCY, ET AL.,

Respondents.

*On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Fifth Circuit*

**BRIEF OF ORLEANS PUBLIC DEFENDERS
AS *AMICUS CURIAE* IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

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INTEREST OF *AMICUS CURIAE*

Orleans Public Defenders (“OPD”) is a not-for-profit organization created in the wake of the criminal justice system failure following Hurricane Katrina. OPD serves thousands of individuals unable to afford an attorney—approximately 85 to 90 percent of all criminal defendants in Orleans Parish. Congress enacted 42 U.S.C. § 1983 to provide vulnerable individuals, such as OPD’s clients, a valuable mechanism to protect their constitutional and statutory rights. Allowing jurisdictions to apply an unreasonably short statute of limitations, such as the one-year statute at issue here, circumvents this important protection and is therefore inconsistent with Congress’ intent. To safeguard the rights of the substantial community that OPD serves, OPD submits this *amicus* brief in support of Petitioner.^{1, 2}

¹ *Amicus* certifies that no counsel for any party authored this brief in whole or in part, no party or its counsel made any monetary contribution intended to fund the preparation or submission of this brief, and that no person or entity other than *amicus* or its counsel made such a contribution.

² *Amicus* certifies that counsel for the respondent was provided with 10-day notice as required by the rules of this Court.

SUMMARY OF ARGUMENT

42 U.S.C. § 1983 provides a federal remedy for certain violations of individuals' constitutional rights, including for the type of police misconduct at issue in this case. Section 1983 does not include an express statute of limitations, which has triggered decades of litigation with widely inconsistent results. Litigants with identical claims may enjoy a limitations period as long as six years, or face a limitations period as brief as one year, depending on their jurisdiction.

This *amicus* brief focuses on two key issues; each one merits granting certiorari in this case. First, this case presents the Court with a perfect opportunity to address the question it left open 35 years ago: whether "applying a 1-year limitations period to § 1983 actions would be inconsistent with federal interests." *Owens v. Okure*, 488 U.S. 235, 251 n.13 (1989). Second, this case presents an opportunity for the Court to examine the suitability of a federal statute of limitations enacted to preserve litigants' remedies for constitutional violations as a more appropriate rule.

These issues are important not only to preserve Jarius Brown's federal rights, but also to provide a remedy for thousands of criminal defendants and other individuals, in and outside of Louisiana, who have suffered police misconduct and other significant violations of their constitutional rights. Amicus urges the Court to address these critical issues and ensure that Section 1983 serves its intended purpose: to offer a meaningful remedy to, and a neutral, federal forum for, individuals whose constitutional rights have been violated.

This Court should grant Petitioner's request for certiorari, find the one-year limitations period is too short for Section 1983 actions, and adopt 42 U.S.C. § 1658's four-year limitations period as the proper analogue for Section 1983 claims.

ARGUMENT

I. Louisiana's one-year limitations period is inconsistent with federal interests.

As this Court has instructed (and as further explained in the petition for certiorari), if no suitable federal rule exists, courts borrow the statute of limitations of the applicable state or territory. However, because of "the predominance of the federal interest," courts apply state law "only if it is *not inconsistent* with the Constitution and laws of the United States." *Burnett v. Grattan*, 468 U.S. 42, 48 (1984) (internal quotations marks omitted) (emphasis added).

The "central objective of § 1983" is "ensur[ing] that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief." *Id.* at 55. Short limitations periods, such as the one-year period at issue here, frustrate that primary objective. Accordingly, the predominance of the federal interests at the heart of Section 1983 precludes the application of such harshly brief limitations periods.

A. *Short limitations periods are particularly onerous when litigating Section 1983 claims.*

This Court has cautioned that supplementing Section 1983 with state law is inappropriate "if it fails

to take into account practicalities that are involved in litigating” the federal claim. *Id.* at 50. Louisiana’s law does just that.

Such practicalities, based in *federal* law, are not considered by *state* legislatures when “devis[ing] their [own] limitations periods.” *Occidental Life Ins. Co. v. EEOC*, 432 U. S. 355, 367 (1977). The Court has therefore concluded that “it is the duty of the federal courts to assure that the importation of state law will not frustrate or interfere with the implementation of national policies.” *Id.* In bringing substance to the “dominant” national policy underpinning Section 1983—that civil rights actions “belong in court”—the Court in *Burnett* recognized the unique difficulties of litigating these claims. 468 U.S. at 50. Injured persons must:

- (1) recognize the constitutional nature of their injury;
- (2) find and retain specialized counsel; and
- (3) conduct investigations, determine damages, and execute legal documents and filings.

See id. at 50–51. A residual one-year limitations period fails to consider such complexities at each step of developing a potential Section 1983 claim.

First, harmed individuals often may not recognize the constitutional nature of their injury absent the assistance of counsel. In many instances, however, they may not be able to obtain representation, whether civil or criminal, until well after the limitations period has run. Indeed, OPD is, in some cases, appointed over two years after the incident

giving rise to a Section 1983 claim.³ In other cases, criminal representation may be too limited in duration or scope. Again, OPD's experience is instructive: even when a defendant is timely represented by OPD at time of arrest and initial bond setting, in most instances, by judicial order, that representation terminates upon pretrial release from custody and until possible reappointment at a later arraignment date—often months, if not years, after the incident giving rise to the Section 1983 claim. Thus, short limitations periods, such as the one-year limitations period applied by the Fifth Circuit in this case, are exceedingly impractical, especially for litigants who cannot afford private counsel.

Second, it is impractical to require Section 1983 claimants to find and retain counsel for their civil

³ OPD-appointed clients may go many months with gaps in representation. For example, the court minutes for an OPD client arrested on May 20, 2020 read: "The appointment will last as long as the defendant is incarcerated. If the defendant is released they must obtain private counsel or apply for representation at the OPD office." The client posted bond on May 22, 2020 and OPD was not appointed again until arraignment on July 27, 2022. The court minutes for another client arrested on April 7, 2021 read: "[T]his appointment will last as long as the defendant is incarcerated—if the defendant makes bond and is released they must obtain private counsel or apply for representation at the public defenders office." The client posted bond on April 9, 2021 and was unrepresented until OPD was reappointed on May 22, 2022. The court minutes for a third client arrested on January 17, 2021 read: "[T]his appointment will last as long as the defendant is incarcerated—if the defendant makes bond and is released they must obtain private counsel or apply for representation at the public defender's office." The client posted bond on January 19, 2021 and was unrepresented until June 1, 2022.

claims while also simultaneously confronting their own criminal charges. Not only do Section 1983 claims operate in a highly specialized area of law, but they can often arise in the context of parallel criminal charges, which exacerbate the practical and legal limitations upon an injured party's time and resources to obtain competent counsel. Victims of civil rights abuses must also determine whether their Section 1983 claim calls into question the validity of a conviction or criminal proceeding. *See* 3 Nahmod, *Civil Rights & Civil Liberties Litigation: The Law of Section 1983*, § 9:59. As a result, the practical effect of the one-year period is that every Section 1983 litigant charged with a crime must pursue parallel civil litigation during her prosecution, or else risk a court barring the claim based on the expired prescriptive period. *See Wallace v. Kato*, 549 U.S. 384, 394 (2007). A one-year statute of limitations is thus impractical and unfair because it requires potential Section 1983 claimants to face concurrent criminal charges (and the accompanying risks of retribution in the form of added charges, thwarted plea negotiations, or increased sentence recommendations) thereby exhausting the time and resources they need to seek and retain specialized counsel for their civil claim.

Third, conducting investigations, determining damages, and executing legal documents and filings within one year is exceedingly difficult due to the violence or other abuse of power that often underlies Section 1983 claims and the complexity of such claims. Indeed, the Court has acknowledged that Section 1983 injuries to personal rights are not immediately apparent because the "constitutional dimensions of the tort may not be" readily

understood. *Owens*, 488 U.S. at 238 (quoting *Okure v. Owens*, 816 F.2d 45, 48 (2d Cir. 1987)). Exploring such constitutional dimensions requires intensive initial investigations. In addition to standard pretrial practices, such as determining damages and executing various filings, Section 1983 claimants must conduct complex constitutional analyses and navigate issues such as qualified immunity. For the many Section 1983 claims that arise in the context of police brutality, a victim's first priority is physical recovery. For OPD's clients, the added mental toll of such violence and incarceration is often combined with arduous pretrial release conditions, such as curfew, use of an ankle monitor, frequent status hearings, as well as recurring financial obligations, such as routine payments toward exorbitant bail amounts, ankle monitor fees, drug testing, court-ordered classes, and frequent transportation to and from court. Often, OPD's clients lose their jobs in the wake of their destabilizing arrests; sometimes, they lose their homes.

Both individually and in tandem, these realities present serious obstacles to individuals' ability to pursue civil rights claims within one year. Indeed, the added need to recover from their injuries, including hospital stays, physical therapy, and other treatments often preclude victims' meaningful participation in the investigation for extended periods of time. The underlying violence and complexity of these claims render victims incapable of pursuing their claims within one year. Accordingly, such a short limitations period is clearly counter to the federal interests underpinning Section 1983.

For all these reasons, short limitations periods, such as the one-year period here, present difficult, practical challenges for indigent litigants with otherwise valid Section 1983 claims and should be addressed by this Court.

B. Application of short limitations periods to Section 1983 claims undermines Congress' purpose in enacting the statute.

To determine if a state law is inconsistent with federal law, “courts must look not only at particular federal statutes and constitutional provisions, but also at ‘the policies expressed in [them].’” *Robertson v. Wegmann*, 436 U.S. 584, 590 (1978) (quoting *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 240 (1969)). The goal of Section 1983 is to “give a remedy to parties deprived of constitutional rights, privileges and immunities by an official’s abuse of his position.” *Monroe v. Pape*, 365 U.S. 167, 172 (1961). That policy is accomplished by providing a remedy for persons whose civil rights have been violated, and by deterring the abuse of state power. *See Burnett*, 468 U.S. at 53.

Achieving these important goals depends, of course, on having a realistic opportunity to seek redress through the courts. Mr. Brown’s experience—along with that of many other OPD clients and other indigent litigants, discussed in the previous section—demonstrates that bringing suit within a short period of time can be a hurdle so high that it is “manifestly inconsistent with [Section 1983’s] central objective” of providing compensation to injured parties. *Id.* at 55; *see also Hardin v. Straub*, 490 U.S. 536, 543 (1989) (tolling a statute of limitations serves “§ 1983’s

compensation goal” because it enhances the “ability to bring suit and recover damages for injuries”).

Section 1983 actions also provide important deterrents to abuses of power by state actors. Indeed, the risk of an award of compensatory damages against state actors is intended not only to compensate victims, but also to serve as a formidable deterrent to unconstitutional conduct. As this Court has recognized, if a person has a realistic ability to file suit, then “[a] state official contemplating illegal activity must always be prepared to face the prospect of a § 1983 action being filed against him.” *Robertson*, 436 U.S. at 592. Conversely, where a limitations period is too short, bad actors have “knowledge that he or she might escape a challenge to [bad] conduct within a brief period of time.” *Hardin*, 490 U.S. at 543.

In light of these concerns, this Court has left open the question of whether a statute of limitations as short as one year may be too short to permit pursuit of Section 1983 claims. *See Owens*, 488 U.S. at 251 n.13. As discussed above, short limitations periods create numerous obstacles for OPD’s clients and similarly situated litigants nationwide. For all these reasons, Louisiana’s one-year limitations period is inconsistent with Section 1983.

C. Louisiana’s recent amendment to its law underscores the importance of this limitations issue.

When enacting Section 1983, Congress “was concerned that state instrumentalities could not protect [federal] rights; it realized that state officers might, in fact, be antipathetic to the vindication of those rights; and it believed that these failings

extended to the state courts.” *Mitchum v. Foster*, 407 U.S. 225, 242 (1972). Louisiana recently lengthened the applicable statute of limitations from one year to two years. *See* 2024 La. Sess. Law Serv. Act 423. While the state’s recognition that a longer statute of limitations was needed, the change in the law demonstrates that Section 1983 litigants’ *federal* rights are subject to the changing views of *state* legislatures dealing with state issues. At least three other jurisdictions still have one-year limitations periods, and many more could adopt the same limitations period (or an even shorter one) at any time. This reliance on states and territories to provide adequate statutes of limitations is at odds with Congress’ concern that states and territories could not, or would not, protect federal rights.

II. 28 U.S.C. § 1658 provides a suitable federal statute of limitations consistent with Section 1983’s purpose.

This Court should grant certiorari to address whether the federal four-year statute of limitations in 28 U.S.C. § 1658, which was enacted after the Court turned to state statutes as guideposts, is more appropriate for Section 1983 claims than the existing patchwork of inconsistent state statutes and court decisions applying them.

Statutes of limitations can provide a measure of predictability and consistency to litigants, but not when the limitations periods are neither predictable nor consistent. As the Court’s prior Section 1983 decisions illustrate, the quest to determine an appropriate Section 1983 statute of limitations by referencing state limitations periods has been

frustrating for both courts and litigants. Adopting Section 1658's four-year limitations period would conclusively resolve the issue presented by this case. Doing so would also provide a clear rule entirely consistent with the Court's long-standing focus on the meaning and intent of Section 1983.

A. *The Court's prior decisions illustrate the need to provide a statute of limitations for Section 1983 that is consistent with federal law.*

The trio of Section 1983 opinions the Court issued in the 1980s—well before enactment of Section 1658—emphasized the need to “ensure that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief.” *Burnett*, 468 U.S. at 55. To that end, this Court instructed: “First, courts are to look to the laws of the United States so far as such laws are suitable to carry [the civil and criminal civil rights statutes] into effect.” *Id.* at 47-48 (cleaned up). Thus, Congress directed courts to adopt a suitable federal statute of limitations, if one exists. *Id.* at 48.

At the time *Burnett* was decided (prior to enactment of Section 1658), the Court determined that, in the absence of a suitable federal law, courts should consider the relevant state's common law. However, the Court cautioned that state law should be applied only if consistent with the U.S. Constitution and laws. *See id.* *Burnett* thus laid the groundwork for applying a state standard, but only if (1) there is no suitable federal law, and (2) the state law is consistent with the federal Constitution and

laws. Prior to Section 1658, there was no such suitable federal law. Now there is.

Reliance on state law raised additional issues, including which specific state statutes of limitation and tolling provisions should apply. Litigation regarding these questions and the resulting uncertainty and inconsistency across the United States have continued for forty years. In additional guidance only one year after *Burnett*, the Court confirmed in *Wilson v. Garcia* that the correct Section 1983 statute of limitations is a federal question and actions under the statute should be categorized as personal injury actions for limitations purposes. See 471 U.S. 261 (1985). This additional guidance, though helpful, left the door open for continuing uncertainty in states with multiple tort limitations periods.

The Court's subsequent 1989 decision in *Owens* only partially resolved the issue. There, the Court affirmed that application of a three-year statute of limitations was not inconsistent with the federal interests underlying Section 1983. However, the Court expressly declined to rule on whether a one-year statute of limitations would be too short to survive the three-part *Burnett* test. Again, as in *Burnett* and *Wilson*, the Court affirmed the importance of *state* limitations periods being consistent with *federal* interests and Section 1983.

The Louisiana statute of limitations at issue fails to meet any of the conditions articulated by this trio of cases. It does not satisfy the *Burnett* three-step analysis, nor does it satisfy the insistence of *Wilson* and *Owens* (consistent with *Burnett*) that a state's

limitations period can apply only when it is consistent with the federal interests underlying Section 1983.

B. Section 1658 provides a statute of limitations for Section 1983 cases that is consistent with federal law.

Notably, *Burnett*, *Wilson*, and *Owens* were all decided prior to the enactment of Section 1658. Thus, in all three cases, the Court did not have any federal law providing a “suitable” statute of limitations to meet the first step of the *Burnett* test. With the enactment of Section 1658, the Court now has a viable path to end its inquiry at that first step and avoid complex analyses of state-law limitations periods altogether. At a minimum, the Court has the opportunity to confirm that the Section 1658 limitations period is appropriate for cases in which state limitations are too short to be consistent with the federal interests underlying Section 1983.

Section 1658, which provides a federal four-year statute of limitations for actions arising under an Act of Congress enacted after December 1, 1990, offers the Court a strong federal statute of limitations analogue for Section 1983 actions. The federal statute offers a point of reference that was not available when the 1980s trio of cases was decided. Now the Court can resolve the untenable situation facing Mr. Brown and many others by providing them a reasonable amount of time to pursue their federal claims. Without action by the Court, a state (like Louisiana in this case) can effectively deny Mr. Brown (and many others) the federal rights provided by Section 1983.

The Court addressed Section 1658 in *Jones v. R.R. Donnelley*, where it traced the history and the

challenges created by Congress' failure to enact a uniform statute of limitations, including "a vast amount of litigation" and "a host of issues that required resolution on a statute-by-statute basis." 541 U.S. 369, 377-78 (2004). Even when courts were able to identify the appropriate state statute, borrowing state limitations periods resulted in uncertainty for both plaintiffs and defendants, as a plaintiff alleging a federal claim in State A would find herself barred by the local statute of limitations while a plaintiff raising the same claim in State B would be permitted to proceed.

In *Jones*, this Court adopted a broad reading of Section 1658, concluding that it applied on its face "if the plaintiff's claim against the defendant was made possible by a post-1990 enactment." *Id.* at 382. In so holding, the Court emphasized that Congress' goal in enacting Section 1658 was to cure the numerous problems arising from borrowing local jurisdictions' statutes of limitations. The Court further noted that the prospective nature of Section 1658 was not a departure from this underlying goal; instead, it was a concession made to preserve settled expectations. Thus, Section 1658 "spares federal judges and litigants the need to identify the appropriate state statute of limitations to apply to new claims but leaves in place the 'borrowed' limitations periods for pre-existing causes of action, with respect to which the difficult work already has been done." *Id.* For Section 1983 claims, however, that work is *not* yet done. *Owens* explained that a court may adopt a statute of limitations of at least three years. But this Court has never articulated a rule for limitations periods shorter than three years. Simply put, no one

knows how brief is too brief for a limitations period to apply to Section 1983 claims. Thus, the concern for settled expectations in *Jones* is not present here.

Even if Section 1658 does not apply on its face to Mr. Brown's claims, it nevertheless provides a "suitable" federal standard, at least when the alternative state law period is less than the three-year minimum established in *Owens*. Relying on the Section 1658 limitations period in this circumstance both preserves settled expectations and fidelity to *Burnett's* instruction that courts should first look to federal analogues for a suitable rule.

Applying the Section 1658 standard to Mr. Brown's case and to others in states whose statutes of limitations unreasonably restrict individuals' access to federally-granted rights also serves this Court's well-articulated directive that state statutes of limitations may apply to Section 1983 claims only if (1) there is no suitable federal law, and (2) state law is consistent with the federal Constitution and laws.

CONCLUSION

Amicus curiae Orleans Public Defenders respectfully requests that the Court grant Mr. Jarius Brown's Petition for Writ of Certiorari and confirm that a one-year state statute of limitations should not apply to an individual's Section 1983 federal claims, and that the Section 1658 federal, four-year statute of limitations is the more appropriate limitations period for Mr. Brown—and for others who, in the absence of this Court's guidance, will be denied their Section 1983 rights.

Respectfully submitted,

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