

# 18-1263

---

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**RASHAD WILLIAMS**

*Plaintiff-Appellee*

v.

**PETER MURPHY, Individually and in their official capacities, QUIROS, Individually and in their official capacities, CAHILL, Individually and in their official capacities, POWERS, Individually and in their official capacities, BUTKIEWICUS, Individually and in their official capacities, MELVIN SAYLOR, Individually and in their official capacities, UCONN CORRECTIONAL MANAGED HEALTH CARE, Individually and in their official capacities, ALPHONSO LINDSEY, Individually and in their official capacities, ROBINSON, Individually and in their official capacities, FRAN, DOCTOR, Individually and in their official capacities, REDDING, Individually and in their official capacities, JILL DOE, Individually and in their official capacities, MIKE DOE, Individually and in their official capacities, JILL HAGA, Individually and in their official capacities, PAUL WILBUR, Individually and in their official capacities,**

*Defendants*

**DENNIS MARINELLI, Individually and in their official capacities,**

*Defendant-Appellant*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

---

**BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF CONNECTICUT IN SUPPORT OF PLAINTIFF-APPELLEE**

---

Dan Barrett  
ACLU Foundation of Connecticut  
765 Asylum Avenue  
Hartford, CT 06105  
Phone: (860) 471-8471  
e-filings@acluct.org

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1 and 29(a)(4)(A), *amicus curiae* states that the American Civil Liberties Union Foundation of Connecticut is a private, non-profit Connecticut corporation. It has no parent corporations and no stock, so no corporation directly or indirectly owns more than 10% of its stock.

**TABLE OF CONTENTS**

Corporate Disclosure Statement .....i

Table of Authorities.....iii

Interest of Amicus Curiae.....1

Summary of Argument.....1

Argument.....3

I. The Award of Punitive Damages Was Not Necessary in Order  
to Establish That the State’s Actions Here Were Preempted by § 1983  
3

A. The Basis for the Trial Court’s Preemption Holding .....3

B. Section 1983’s Goals of Compensation and Deterrence Were  
Violated by the State’s Actions In Recovering the Compensatory  
Damages Award.....6

C. Deterrence Is Particularly Implicated Where, as Here, the  
Compensatory Damages Award Was Based on Conduct With a  
“Culpable Intent” .....8

Conclusion.....11

Certificate of Compliance .....13

**TABLE OF AUTHORITIES**

**Cases**

*Beeks v. Hundley*, 34 F.3d 658 (8th Cir. 1994) .....7

*City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981) .....5

*Farmer v. Brennan*, 511 U.S. 825 (1994) .....9

*Hankins v. Finnel*, 964 F.2d 853 (8th Cir. 1992) .....7,  
8

*Hayes v. New York City Dept. of Corr.*, 84 F.3d 614 (2d Cir. 1996).....9

*Owen v. City of Independence*, 445 U.S. 622 (1980) .....11

*Wyatt v. Cole*, 504 U.S. 158 (1992) .....5

**Statutes**

42 U.S.C. § 1983 ..... passim

Conn. Gen. Stat. § 18-85b..... 4

Conn. Gen. Stat. § 51-298(b) ..... 4

## **INTEREST OF AMICUS CURIAE<sup>1</sup>**

The American Civil Liberties Union (“ACLU”) Foundation of Connecticut is the litigation arm of the ACLU of Connecticut. The ACLU of Connecticut, an affiliate of the national ACLU, is a non-partisan, non-profit organization that defends, promotes and preserves the civil rights and civil liberties guaranteed by the United States and Connecticut Constitutions. The ACLU Foundation of Connecticut has been involved in numerous state and federal cases addressing civil liberties and civil rights and has a keen interest in prisoners’ rights.

## **SUMMARY OF ARGUMENT**

The trial court held that the State of Connecticut’s actions in indemnifying its employee from a civil rights judgment and then using state law to recoup most of its indemnity expense conflicted with 42 U.S.C. § 1983, which is designed to deter state officials from violating citizens’ civil rights and to compensate victims of such violations. Accordingly, the court held that the State’s use of its cost recovery statutes to claw back the bulk of the judgment was preempted by Section 1983. The trial court stated that its

---

<sup>1</sup> Pursuant to Local Rule 29.1(b) and Fed. R. App. P. 29(a)(4)(E), counsel for *amicus curiae* certifies that no counsel for a party authored this brief in whole or in part and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

ruling was “limited to the peculiar facts of this case—where the State voluntarily indemnified an employee found to have committed malicious or reckless conduct. . . .” (Appendix to Brief of Defendant-Appellant (“App.”) at 106.) But the State’s application of its cost recovery statutes here violated Section 1983’s goals of deterrence and compensation, and was therefore preempted, without regard to the presence of the punitive damages award and the associated fact findings.

Clawing back the bulk of Rashad Williams’s compensatory damages award by definition deprived him of compensation for the violation of his constitutional rights, thereby violating a central goal of Section 1983. The deterrent effect of the judgment was also substantially undercut by the State’s decision to pay back to itself the vast majority of the compensatory damages award. Eliminating the financial impact of a judgment, in and of itself, has a negative impact on deterrence. Here, it eliminated the State’s incentive to take steps to avoid the recurrence of employee misconduct, as well as its employees’ incentive to correct their behavior. The conflict with the deterrence goal of Section 1983 was heightened by the jury’s conclusion that the defendant State employee, in violating the Eighth Amendment, was deliberately indifferent to the plaintiff’s rights, *i.e.*, that he acted with a culpable intent.

## ARGUMENT

### **I. The Award of Punitive Damages Was Not Necessary in Order to Establish That the State's Actions Here Were Preempted by § 1983.**

#### **A. The Basis for the Trial Court's Preemption Holding.**

Rashad Williams brought this lawsuit under 42 U.S.C. § 1983 (“Section 1983”), alleging that officials of the Connecticut Department of Correction violated the Eighth Amendment by exposing him to an assault by a cellmate. That assault occurred when Williams was placed with a cellmate who was an active gang member with an extensive disciplinary history. (3/29/18 Ruling on Motions for Aid of Judgment and Release of Funds, App. at 82.) Williams had previously pleaded with prison officials not to “double cell” him with a gang member, in light of previous attacks, and had complained that the prison’s “sequential uncuffing practice” made him particularly vulnerable to attack. (App. at 81-82.) Williams suffered severe injuries to his head, ankle, back, and knee as a result of the assault. (App. at 83.)

At trial, the jury found that Williams had established his Eighth Amendment claim with regard to one defendant, Dennis Marinelli, who was a captain and helped oversee the administrative segregation program at Northern. (App. at 81.) The jury awarded Williams \$250,000 in

compensatory damages and \$400,000 in punitive damages on the claims against Marinelli. The trial court later ordered that the punitive damages award be remitted to \$50,000, which Williams accepted rather than undergo a new trial on damages. (App. at 69-70.)

In denying Marinelli's subsequent motion for judgment as a matter of law under Fed. R. Civ. P. 50(b), the trial court found that the evidence was legally sufficient to support the verdict against Marinelli. It noted that there was "ample evidence" that Marinelli knew of Williams's fears about an assault by a cellmate, especially a gang member, that he participated in the decision to pair Williams with an active gang member who had assaulted other inmates, and that many assaults had occurred at Northern as a result of the practice of uncuffing one cellmate first, leaving the other cellmate vulnerable to attack. (2/8/17 Ruling on Post-Verdict Motions, App. at 24-28.) The trial court concluded that "there was sufficient evidence from which a reasonable jury could infer that Marinelli was aware of a substantial risk of serious harm to Williams and failed to respond reasonably to that risk." (App. at 6.)

After the judgment became final, the State of Connecticut voluntarily chose to indemnify Marinelli and clawed back the bulk of Williams's award. The State applied its incarceration cost recovery statute, Conn. Gen. Stat.



§ 18-85b, to recoup 50 percent of the judgment. It also filed an action in state court under Conn. Gen. Stat. § 51-298(b) to recover for Williams’s use of public defender services in defending against the criminal charges that resulted in his incarceration. As the trial court noted, these combined amounts constituted over two-thirds of Williams’s judgment, with the State reserving the right to seek an even higher amount for Williams’s public defender costs, including expert costs. (3/29/18 Ruling, App. at 100.)<sup>2</sup>

Williams thereafter filed a Motion in Aid of Judgment under Fed. R. Civ. P. 69, which sought to prevent application of Connecticut’s cost recovery statutes against him. The trial court granted the motion in part. It held that the “collective impact of the State’s actions”—its voluntary indemnification of Marinelli followed by its application of state statutes to recover 70 percent or more of its indemnity expense—“irreconcilably conflict with the purposes of Section 1983.” (App. at 100.) It identified those purposes as “to compensate the victims of civil rights violations and to deter state officials from committing such violations in the first

---

<sup>2</sup> The State informed Williams’s counsel that the amended judgment would be paid as follows: \$15,140 made payable for child support (which Williams did not contest); \$142,430 made payable to the State for costs of incarceration; and \$142,430 made payable to Williams. (3/29/18 Ruling, App. at 86.) The State also froze \$65,000 of Williams’s inmate trust account in connection with its state-court action to recover “at least \$48,842.42” for public defender costs, an amount that the State estimated would likely be higher. (App. at 88-89.)

instance.” (App. at 96.) *See Wyatt v. Cole*, 504 U.S. 158, 162 (1992) (“The purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails.”); *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 268 (1981) (noting that “compensation and deterrence” are prominent purposes of Section 1983).

**B. Section 1983’s Goals of Compensation and Deterrence Were Violated by the State’s Actions In Recovering the Compensatory Damages Award.**

The trial court stated that its ruling was “limited to the peculiar facts of this case—where the State voluntarily indemnified an employee found to have committed malicious or reckless conduct and then attempted to recoup most of the judgment, thereby nearly eliminating its own indemnity expense.” (3/29/18 Ruling, App. at 106.) However, Section 1983’s policies of compensation and deterrence were equally violated by the State’s actions in clawing back the compensatory damages award. As the trial court itself noted, “[a] judgment can deter and compensate only if it is paid. Here, due to its indemnification of its employee and its cost recovery efforts, the State is ensuring that no one will ultimately have to pay the bulk of the judgment against Marinelli.” (App. at 101.)

By eliminating over 70 percent of the compensatory damages award, which constituted the major part of the judgment against Marinelli, Connecticut's actions manifestly deprived Rashad Williams of compensation for the violation of his constitutional rights and for his extensive physical injuries. The State's actions interfered just as directly with the goal of deterrence. If the State is allowed to recover the majority of any judgment related to the violation of an inmate's civil rights, its employees have no incentive to correct their behavior and the State has no incentive to take steps to avoid the recurrence of the misconduct. The trial court acknowledged this reality. (3/19/18 Ruling, App. at 106.)

Simply eliminating the financial impact of a judgment has a negative impact on deterrence, regardless of whether an award is for compensatory or punitive damages. The Eighth Circuit recognized as much in *Hankins v. Finnel*, 964 F.2d 853, 857 (8th Cir. 1992), in which it noted that the State of Missouri "voluntarily and deliberately took actions designed to ensure that the money never reached [the plaintiff inmate's] hands." It reasoned that "[t]o allow the State to largely recoup this award would be inimical to the goals of [Section 1983]" because "neither the State nor its employees would have the incentive to comply with federal and constitutional rights of

prisoners.” *Id.* at 861.<sup>3</sup> This reasoning applies with equal force to the State of Connecticut’s actions here in recovering the bulk of the compensatory damages awarded.

Allowing the State to recoup the costs of incarceration from the compensatory damages award also thwarts another important goal of Section 1983 by eliminating inmates’ motivation to bring suit for violation of their civil rights. As the trial court stated, “[s]apping the remedy of its deterrent and compensatory force as the State is doing in this case risks discouraging its use by inmates, who may conclude that, even if they win, they will walk away and the wrongdoer will face no financial consequences.” (3/29/18 Ruling, App. at 102 n.15); *see also Hankins*, 964 F.2d at 855 (“If the State were permitted to seize the Section 1983 damage awards prisoners receive for prison employees’ conduct, the prisoners would have no motive to bring such suits. . . .”) (quoting the trial court).

---

<sup>3</sup> The State argues that *Hankins* should not guide the preemption analysis here because “it is factually distinguishable, and its reasoning has not been much followed since 1992, even within its own circuit.” (Br. of Def.-App. at 32.) It offers no explanation, however, as to why this decision is factually distinguishable, and the only subsequent authority it cites from within the Eighth Circuit, *Beeks v. Hundley*, 34 F.3d 658 (8th Cir. 1994), involved payment of a Section 1983 damage recovery to a victim restitution fund. As the court recognized in *Beeks*, 34 F.3d at 661, the concerns presented in *Hankins* where the State recovered costs of incarceration from “the very monies” it paid on account of its own unlawful conduct simply did not exist in the later case.

Such a direct conflict with the goals of Section 1983 arises whenever Connecticut is allowed to pay itself back the bulk of a § 1983 judgment it has obligated itself to pay, whether the award is for compensatory or punitive damages.

**C. Deterrence Is Particularly Implicated Where, as Here, the Compensatory Damages Award Was Based on Conduct With a “Culpable Intent.”**

The trial court found that the conflict with the deterrence purpose of Section 1983 was “heightened by the punitive damages component of Williams’s award,” which was based on a finding of malicious or reckless behavior. (3/29/18 Ruling, App. at 101.) Deterring culpable misconduct was also a factor in the jury’s award of compensatory damages, however, because of the nature of the showing required to establish a violation of the Eighth Amendment.

The Eighth Amendment’s prohibition against cruel and unusual punishment imposes on prison officials a “duty . . . to protect prisoners from violence at the hands of other prisoners.” *Farmer v. Brennan*, 511 U.S. 825, 833 (1994) (citation and internal quotation marks omitted). Violations of this duty are actionable under Section 1983. *Hayes v. New York City Dept. of Corr.*, 84 F.3d 614, 620 (2d Cir. 1996). Not every injury suffered by one prisoner at the hands of another constitutes a constitutional

violation, however. *Farmer*, 511 U.S. at 834. To prevail, a prisoner-plaintiff must prove that the defendant employees “acted with deliberate indifference to the safety of the inmate.” (2/6/19 Ruling, App. at 21-22) (*citing Hayes*, 84 F.3d at 620).

A prisoner’s claim for violation of his Eighth Amendment rights includes a subjective component, which requires them to show that the prison official possessed “sufficient culpable intent.” *Hayes*, 84 F.3d at 620.<sup>4</sup> “[A] prison official has sufficient culpable intent if he has knowledge that an inmate faces a substantial risk of serious harm and he disregards that risk by failing to take reasonable measures to abate the harm.” *Id.* The prison official “must both be aware of facts from which the inference could be drawn that a substantial risk of harm exists, and he must also draw the inference.” *Farmer*, 511 U.S. at 837.

The trial court drew on these principles in instructing the jury that, in order to establish “deliberate indifference” to a substantial risk of serious harm, a prison official:

must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he or she must also draw the inference. It is not enough to establish a

---

<sup>4</sup> It also includes an objective prong that relates to the “seriousness of the injury” and “excludes from constitutional recognition *de minimis* uses of physical force.” *Id.* at 630 (internal quotation marks and citation omitted). The trial court found it undisputed that the objective prong was met here. (2/8/17 Ruling, App. at 24.)

constitutional violation to prove that a Defendant failed to alleviate a substantial risk that he or she should have perceived but did not.

(Jury Instructions, ECF Doc. 171 at 19.) The trial court further instructed the jury that, to obtain relief on his Eighth Amendment claim, Williams had to establish that Marinelli:

intended the actions or inactions, or recklessly caused the actions or inactions, that resulted in the violation of Mr. Williams's rights. An act or failure to act is intentional if it is done knowingly, that is, if it is done voluntarily and deliberately and not because of a mistake, accident, negligence or other innocent reason. An act or failure to act is reckless if done in conscious disregard of its substantial risk of serious harm. In contrast, an act or failure to act is negligent if the Defendants merely failed to exercise reasonable care.

(*Id.* at 20.)

Thus, in finding that defendant Marinelli violated Williams's rights under the Eighth Amendment—and without reaching the question of punitive damages—the jury concluded that Marinelli had acted either intentionally or recklessly, which required “conscious disregard” of a “substantial risk of serious harm” toward Williams.

Section 1983's goal of deterrence is intended to “create an incentive for officials who may harbor doubts about the lawfulness of their intended actions to err on the side of protecting citizens' constitutional rights.”

*Owen v. City of Independence*, 445 U.S. 622, 651-52 (1980). This goal was

directly implicated by the jury's finding that Marinelli, in violating the Eighth Amendment, had acted either intentionally or recklessly in exposing Williams to a substantial risk of serious harm. Allowing the State to use its carceral lien statute to discount a § 1983 compensatory damages award it has undertaken to pay would directly conflict with that goal.

### **CONCLUSION**

For the foregoing reasons, this Court should hold that the actions of the State of Connecticut in recouping the judgment award to Rashad Williams were preempted by 42 U.S.C. § 1983.



May 10, 2019

Respectfully submitted,

/s/ Dan Barrett

Dan Barrett

ACLU Foundation of Connecticut

765 Asylum Avenue

Hartford, CT 06105

Phone: (860) 471-8471

e-filings@acluct.org

*Counsel for Amicus Curiae*

**CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7)**

1. This brief complies with the type-volume limits of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f) it contains 2,658 words.
2. This brief complies with the typeface requirements of Federal Rules of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Georgia font.

/s/ Dan Barrett  
Dan Barrett

May 10, 2019

## **CERTIFICATE OF SERVICE**

I hereby certify that true and accurate copies of the foregoing brief were served electronically through the Court's CM/ECF System and by first-class mail, postage prepaid, in accordance with Rule 25 of the Federal Rules of Appellate Procedure on this 10th day of May, 2019, to the Clerk of the Court and the following counsel of record:

Terrence M. O'Neill, Esq.  
Assistant Attorney General  
Office of the Attorney General  
110 Sherman Street  
Hartford, CT 06105

Josiah Tyler Denson Butts, Esq.  
Linda Louise Morkan, Esq.  
Robinson & Cole LLP  
280 Trumbull Street  
Hartford, CT 06103

/s/ Dan Barrett

Dan Barrett