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WHAT THE HECK WERE THEY THINKING? IT'S TIME FOR THE COURT TO ABANDON THE *HECK* DOCTRINE

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ABSTRACT

Prisoner litigation is often chaotic. The Supreme Court could have quelled the disorder, but instead fueled the fire by constructing additional blockades between state prisoners and the federal courts. Now, a state prisoner challenging the

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constitutionality of their conviction or confinement is unable to proceed with a § 1983 claim for monetary damages if a verdict in their favor would suggest the invalidity of the underlying conviction or sentence. In that event, unless the underlying conviction or sentence is invalidated or reversed on appeal, district courts must dismiss the suit. This judicial creation—the Heck doctrine—is a preclusion rule that runs directly counter to Congress' intent in enacting § 1983.

§ 1983 exists to ensure that victims of constitutional violations committed by the state are able to obtain federal redress; the Heck doctrine does the opposite. Instead, it severely restricts state prisoners' access to the federal courts and causes tremendous confusion for lower courts around the nation. As these problems persist nearly three decades later, it is time for the Supreme Court to overrule Heck and preserve the true meaning of § 1983.

I. INTRODUCTION

It began only as a heated exchange of words between a state prisoner[1] and a group of correctional officers, but the situation quickly erupted. The officers responded with force, and the prisoner sustained significant injuries. Once the beating was over, and with no witnesses to attest otherwise, the officers carefully tailored their reports to all provide identical details capturing the same overall idea: the inmate was the initial aggressor; he attacked them, and they responded with appropriate force. The prisoner was later charged and brought before a disciplinary hearing committee—which consisted of the same officers' colleagues—and was found guilty of the alleged assault on staff and penalized with the loss of good-time credits. His appeals to the state were futile, with every tribunal deferring to the prison hearing's findings. Months later, he discovered a discrepancy in the officers' reports which was certain to prove his case, and he filed a claim in federal court seeking monetary damages for the violations of his constitutional rights. Despite that evidence, the district court was required to dismiss his action solely because the claims seemed to suggest that the initial disciplinary hearing was invalid.

Because of the Supreme Court's 1994 decision in *Heck v. Humphrey*,[2] these situations have become increasingly common. In *Heck*, the Supreme Court addressed the issue of "whether a state prisoner may

1. For purposes of this discussion, any general usage of "prisoner" refers specifically to *state* prisoners.

2. Heck v. Humphrey, 512 U.S. 477 (1994).

challenge the constitutionality of his conviction in a suit for damages under 42 U.S.C. § 1983."[3] Concluding that he may not, the Court constructed a powerful rule that haunts prisoner-plaintiffs to this day: when a state prisoner seeks monetary damages in a § 1983 claim challenging the constitutionality of their conviction or confinement, the claim will not proceed unless the conviction or sentence was first invalidated or reversed on appeal.[4] If there is no prior invalidation or reversal, courts will assess and determine whether the claim would, if successful, "necessarily imply the invalidity of the conviction or sentence;" if so, it must be dismissed—regardless of the merits.[5]

The decision seems straightforward, but *Heck* is riddled with issues. The Supreme Court already recognized that § 1983 "provides a remedy, to be broadly construed, against all forms of official violation of federally protected rights,"[6] but rather than furthering that purpose, the court-constructed *Heck* doctrine severely restricts state prisoners' access to the federal courts, leaving them with no means of redress for constitutional rights violations suffered at the hands of state officials.[7] Moreover, district and circuit courts throughout the country constantly struggle to determine if and how the *Heck* bar applies.[8] The result, despite multiple Supreme Court attempts to settle the debates, is a powerful preclusion doctrine receiving wildly inconsistent treatment throughout the federal courts.[9] The reality, however, is that it is time to abandon the *Heck* doctrine.

This Note will argue that because *Heck* and its progeny severely limited § 1983 and run afoul of the statute's intended purpose, the Supreme Court must overrule *Heck*. Part II of this Note will describe § 1983's history and use in practice, before then contrasting it with the federal habeas corpus statute. Part III will give a detailed overview of *Heck*, including Justice Souter's concurrence. Part IV will examine implementation problems resulting from *Heck* and its progeny. Finally, Part V will revisit *Heck*'s majority opinion, analyzing the decision and contending that it is time for the Court to abrogate the doctrine and overrule *Heck*.

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3. *Id.* at 478.
4. *Id.* at 486–87.
5. *Id.* at 487.
6. *Id.* at 502 (Souter, J., concurring) (citations omitted).
7. *See infra* Part V.B; *see also infra* Part III.C.
8. *See infra* Part IV.
9. *See* Lyndon Bradshaw, *The Heck Conundrum: Why Federal Courts Should Not Overextend the* Heck v. Humphrey *Doctrine*, 2014 BYU L. REV. 185, 188–92 (2014).

II. 42 U.S.C. § 1983

Before diving into *Heck*, it is necessary to first consider the statute that sits at the core of the dispute.[10] Since its enactment in 1871, § 1983 has received inconsistent treatment and undergone various developments over the years.[11] We must look to the origins of § 1983 to uncover its true purpose, before then considering how it functions in practice and the ways in which it differs from 28 U.S.C. § 2254, the federal habeas corpus statute.

A. The History of § 1983

Originally, § 1983 was enacted as § 1 of the Civil Rights Act of 1871, also known as the Ku Klux Klan Act.[12] At a time of social upheaval, plagued by "widespread legal abuses and physical violence . . . against Southern Blacks and their white supporters," Congress recognized the need for legislation to ensure enforcement of the Fourteenth Amendment.[13] § 1983's passage stems from the fact that many "*state authorities* were either unwilling or unable to control the widespread violence of the Ku Klux Klan against blacks and their supporters."[14] In fact, the congressional record indicates that § 1983 "was strongly motivated by a grave concern that state courts were deficient in protecting federal rights."[15] A revealing and quite moving statement from then-Representative Aaron F. Perry clearly illustrates the congressional concern over state institutions in this context:

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10. § 1983 provides, in pertinent part:

> Every person who, under color of [state law], 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. . . .

42 U.S.C. § 1983.

11. *See* CTR. FOR CONSTITUTIONAL RIGHTS & NATIONAL LAWYER'S GUILD, THE JAILHOUSE LAWYER'S HANDBOOK: HOW TO BRING A FEDERAL LAWSUIT TO CHALLENGE VIOLATIONS OF YOUR RIGHTS IN PRISON 5 (Rachel Meeropol & Ian Head eds., 5th ed. 2010), https://ccrjustice.org/files/Report_JailHouseLawyersHandbook.pdf [hereinafter JAILHOUSE LAWYER'S HANDBOOK]; *see also* Theodore Eisenberg, *Section 1983: Doctrinal Foundations and an Empirical Study*, 67 CORNELL L. REV. 482, 483 (1982); Martin A. Schwartz, *The Preiser Puzzle: Continued Frustrating Conflict Between the Civil Rights and Habeas Corpus Remedies for State Prisoners*, 37 DEPAUL L. REV. 85, 87 (1988).

12. *See* Eisenberg, *supra* note 11, at 484.

13. *Id.*; Orange Cnty. Dept. of Educ., *Liability Under Section 1983*, at 1 (2003) https://ocde.us/LegalServices/Documents/LIABILITY_UNDER_SECTION_1983_wcopyright.pdf [hereinafter OCDE, *Liability Under Section 1983*].

14. *See* Schwartz, *supra* note 11, at 89 (emphasis added).

15. *See id.* at 90 (citing Allen v. McCurry, 449 U.S. 90, 98–99 (1980)).

> Sheriffs, having eyes to see, see not; judges, having ears to hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they might be accomplices. In the presence of these gangs all the apparatus and machinery of civil government, all the processes of justice, skulk away as if government and justice were crimes and feared detection. Among the most dangerous things an injured party can do is to appeal to justice. Of the uncounted scores and hundreds of atrocious mutilations and murders it is credibly stated that not one has been punished.[16]

Certainly, history unveils "a firm congressional resolve that the problem feel the full effect of federal power."[17] Further, Congress intended the statute to apply broadly "to allow people to sue in federal court when a state or local official violated their federal rights,"[18] which is clear today where "[t]he typical § 1983 action involves plaintiffs bringing state officials into federal court."[19] Now, § 1983 is often viewed "as the general federal remedy for violations of all constitutional rights."[20]

B. § 1983 in Practice

In practice, § 1983 operates largely in line with its historical roots and construction—it "is designed to compensate and deter constitutional violations under color of state law by authorizing" relief.[21] To succeed in a § 1983 action, plaintiffs must demonstrate (1) "that the alleged conduct occurred under color of state law," and (2) "that the conduct deprived plaintiffs of" a federal right.[22]

In 1961, the Court's landmark ruling in *Monroe v. Pape*[23] held that the meaning of "under color of" state law included the "[m]isuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law."[24] One source of disagreement, among others, centered on whether to employ a narrow or broad reading of the phrase "under color of state law," but the historical

16. CONG. GLOBE, 42d Cong., 1st Sess. App. 78 (1871) (statement of Rep. Aaron F. Perry).
17. Eisenberg, *supra* note 11, at 485.
18. *See* JAILHOUSE LAWYER'S HANDBOOK, *supra* note 11, at 5.
19. *See* Emery G. Lee, *Federal Rights, Federal Forum: Section 1983 Challenges to State Convictions in Federal Court*, 51 CASE W. RES. L. REV. 353, 357 (2000).
20. Eisenberg, *supra* note 11, at 486.
21. Martin A. Schwartz, Feature, *The Supreme Court's Unfortunate Narrowing of the Section 1983 Remedy for Brady Violations*, 37 CHAMPION 58, 58 (2013).
22. *See* OCDE, *Liability Under Section 1983*, *supra* note 13, at 2.
23. Monroe v. Pape, 365 U.S. 167 (1961).
24. *Id.* at 184 (citation omitted); *see also* Eisenberg, *supra* note 11, at 487.

analysis and principle of *stare decisis* made clear that Congress recognized the statute's broad reach.[25] Accordingly, the Court reaffirmed the broad reading of the phrase to include conduct that occurs both with or without specific state authority.[26] In the years that followed, the Court reiterated that "[t]he very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights – to protect the people from unconstitutional action under color of state law."[27]

C. § 1983 vs. Federal Habeas Corpus

Finally, it is important to distinguish between § 1983 and the federal habeas corpus statute,[28] two of the main and quite contentious legal cornerstones at play in *Heck*.[29] Although both "provide access to a federal forum for claims of unconstitutional treatment at the hands of state officials," a key distinction, among others, is that "exhaustion of state remedies is *not* a prerequisite to a[] [section 1983] action,"[30] while the federal habeas statute "requires that state prisoners first seek redress in a state forum."[31] That difference may seem simple on its face, but the history and purpose of § 1983 reveal that the distinction is of vital importance.[32]

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25. *See Monroe*, 365 U.S. at 172.
26. *See id*. at 186–87.
27. Mitchum v. Foster, 407 U.S. 225, 242 (1972) (citation omitted).
28. The federal habeas corpus statute provides, in pertinent part:

> (a) The [federal courts] shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.
> (b) (1) An application for a writ of habeas corpus . . . shall not be granted unless it appears that—
> (A) The applicant has exhausted the remedies available in the courts of the State . . .
> . . . .
> (c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State . . . if he has the right under the law of the State to raise, by any available procedure, the question presented.
> . . . .
> (e) (1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

28 U.S.C. § 2254.
29. *See* Heck v. Humphrey, 512 U.S. 477, 480 (1994).
30. *Id*. (citing Patsy v. Board of Regents of Fla., 457 U.S. 496, 501 (1982)).
31. *Id*. at 480–81.
32. *See* Schwartz, *supra* note 11, at 98.

In general, the federal habeas statute serves a similar purpose as § 1983 in that it seeks to provide a federal remedy for claims of unconstitutional state actions,[33] but the exhaustion requirement means, in essence, that an individual who suffers a constitutional rights violation, at the hands of the state, must first rely on that same state for redress.[34] If they fail to exhaust, the claim will almost certainly be dismissed.[35] In addition to the exhaustion requirement, which causes lengthy delays for a prisoner seeking relief, the federal habeas statute also requires that federal courts "give substantial deference to state findings of fact."[36] As discussed, however, Congress did not believe states were capable of administering justice when it pertained to state violations of federal constitutional rights, and instead, with § 1983, endorsed federal courts as far "less susceptible than state courts to local prejudice and defects in the fact finding processes."[37]

The commonalities and yet clear differences between § 1983 and the federal habeas statute, unsurprisingly, left the two legal cornerstones standing in great tension with one another.[38] Today, although state prisoners rely on both statutes to bring these types of claims, § 1983 provides relief for a broader range of constitutional violations and does so with few obstacles along the way, which is precisely what Congress hoped to achieve with its 1871 statute.[39] Yet, as we will see, the Court in *Heck* went against the congressional intent and constructed a barrier for § 1983 claims by state prisoners with no basis in legislation enacted by Congress.

III. *HECK V. HUMPHREY*

In 1994, the Supreme Court heard arguments in *Heck v. Humphrey*, which presented the issue, in Justice Scalia's words, of "whether a state prisoner may challenge the constitutionality of his conviction in a suit for damages under 42 U.S.C. § 1983."[40] Ultimately, the justices concluded that absent a prior invalidation or reversal of the underlying conviction, the § 1983 claim for monetary damages is not cognizable.[41] And despite the unanimous decision, Justice Souter expressed skepticism with

33. *See Heck*, 512 U.S. at 480.
34. *See* 28 U.S.C. § 2254(b)(1)(A).
35. *See* Schwartz, *supra* note 11, at 102.
36. *Id.* at 103.
37. *See id.* at 98, 103.
38. See *id.* at 88–92, for an in-depth comparison.
39. *See* Bradshaw, *supra* note 9.
40. Heck v. Humphrey, 512 U.S. 477, 478 (1994).
41. *See id.* at 486–87.

various aspects of the majority opinion and, as will be discussed, his concurrence proved quite influential in *Heck*'s aftermath.

A. Facts and Procedural History

Roy Heck, the petitioner, was found guilty in Indiana state court for the killing of his wife and was convicted of voluntary manslaughter.[42] He appealed, and while it was pending, also filed a claim *pro se* under 42 U.S.C. § 1983 in the federal district court against two Dearborn County prosecutors and an investigator with the Indiana State Police.[43] The complaint sought, among other things, compensatory and punitive monetary damages.[44]

After the District Court dismissed his complaint for raising issues that "directly implicate[d] the legality of [his] confinement," Heck appealed to the Seventh Circuit.[45] At the same time, the Indiana Supreme Court affirmed both his conviction and sentence, and Heck also twice petitioned for federal habeas corpus without success.[46] The Seventh Circuit affirmed the District Court's dismissal, noting that if Heck were to succeed on a suit challenging the legality of his conviction, "the state would be obliged to release him even if he hadn't sought that relief," which, they reasoned, would amount to the application and grant of habeas corpus.[47] Heck then filed a petition for certiorari and the Supreme Court agreed to hear the case.[48]

B. Justice Scalia's Majority Opinion

Writing for the majority, Justice Scalia sought to answer "the question whether a state prisoner may challenge the constitutionality of his conviction in a suit for damages under 42 U.S.C. § 1983."[49] Scalia identified the exhaustion requirement as the key difference between § 1983 and the federal habeas statute,[50] and then distinguished the present matter from that in *Preiser v. Rodriguez*, where the Court determined that a state prisoner's "exclusive remedy" in a challenge to "the fact or duration of his confinement" is habeas corpus.[51] Here, the issue differed in that Heck sought monetary damages, and Scalia was

42. *Id.* at 478.
43. *Id.*, at 478–79.
44. *Id.* at 479.
45. *Id.*
46. *Id.*
47. *Id.* at 479–80.
48. *See* Heck v. Humphrey, 997 F.2d 355, cert. granted 510 U.S. 1061 (1994).
49. *Heck*, 512 U.S. at 478.
50. *See id.* at 480–81.
51. *Id.* at 481; *see also* Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

reluctant to rely on *Preiser* dicta because the Court there had not fully considered the damages question.[52] Scalia then turned to Heck's contention that the Court addressed the present issue in *Wolff v. McDonnell,*[53] which permitted a prisoner's § 1983 claim for the "restoration of good-time credits [and] 'damages for the deprivation of civil rights resulting from . . . allegedly unconstitutional procedures.'"[54] Scalia rejected Heck's assertion, determining instead that *Wolff* "recognized a § 1983 claim for using the wrong procedures, not for reaching the wrong result," and that the claim "did *not* call into question the lawfulness of" his confinement.[55]

Addressing the issue of whether a claim for compensatory and punitive monetary damages, here, is cognizable under § 1983, Justice Scalia relied on the common law of torts.[56] He found the common law cause of action for malicious prosecution to be most analogous to the claims at issue because "it permits damages for confinement imposed pursuant to legal process."[57] Common law malicious prosecution claims also require "termination of the prior criminal proceeding in favor of the accused," which avoids the possibility of a "collateral attack on the conviction through the vehicle of a civil suit."[58] This, Scalia continued, aligned well with the Court's long-held "concerns for finality and consistency."[59] Thus, the majority in *Heck* held that:

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus. A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the

52. *See Heck*, 512 U.S. at 481–82.
53. Wolff v. McDonnell, 418 U.S. 539 (1974).
54. *See Heck*, 512 U.S. at 482 (quoting *Wolff*, 418 U.S. at 553.
55. *See id.* at 482–83.
56. *See id.* at 483.
57. *Id.* at 484.
58. *Id.* (citations omitted).
59. *Id.* at 484–85 (citations omitted).

> plaintiff can demonstrate that the conviction or sentence has already been invalidated.[60]

The Court's holding, on its face, seems fairly simple; it effectively bars a state prisoner from seeking damages in a § 1983 action if success in that action would undermine the validity of the claimant's conviction or sentence.[61] It goes further, however, by narrowly defining the means by which the conviction or sentence may be properly invalidated in order for the § 1983 suit to proceed.[62] If a prisoner is unable to do so, the damages claim is not cognizable under § 1983.[63] Accordingly, when applied to the issue at hand, the Court affirmed the Seventh Circuit's dismissal of Heck's § 1983 action.[64]

C. Justice Souter's Concurrence

Also quite important is Justice Souter's concurring opinion, which later became a main source of confusion for lower courts grappling with *Heck*. Justice Souter agreed with the ultimate outcome but took issue with the majority's reliance on the malicious prosecution analogy, which he contended was flawed in that the majority imported just one element of the common law tort but ignored others that "cannot coherently be transplanted."[65] More broadly, Justice Souter criticized the majority for relying on the common law as "the master of statutory analysis, not the servant."[66] He noted that the Court has "consistently refused to allow common-law analogies to displace statutory analysis, declining to import even well-settled common-law rules into § 1983 'if [the statute's] history or purpose counsel against'" it.[67] Instead of effectively "shut[ting] off federal courts altogether to claims that fall within the plain language of § 1983," as the majority appeared to do, Souter believed the more

60. *Id.* at 486–87 (footnotes omitted).

61. *See id.*; *see also* Leon Friedman, *Challenging Unjust Convictions Under Section 1983*, 23 TOURO L. REV. 27, 30 (2007) (citing *Heck*, 512 U.S. at 486–87).

62. *See* Lee, *supra* note 19, at 369; Martin A. Schwartz, *Seventh and Ninth Circuits Decide Important 'Heck' Issues*, N.Y.L.J. (Apr. 28, 2020), https://www.law.com/newyorklawjournal/2020/04/28/seventh-and-ninth-circuits-decide-important-heck-issues/.

63. *See Heck*, 512 U.S. at 487; *see also* Friedman, *supra* note 61, at 30.

64. *Heck*, 512 U.S. at 490.

65. *Id.* at 493–94 (Souter, J., concurring) (citations omitted). Justice Souter further contends that the analogy is historically flawed in that the conviction, "under Reconstruction-era common law, dissolved [the] claim for malicious prosecution because the conviction was regarded as irrebuttable evidence" and that the means of favorable termination suggested by the majority is inconsistent with the definition known to the framers of § 1983 "(if they were aware of [one])." *See id.* at 496.

66. *See id.* at 494 (Souter, J., concurring).

67. *See id.* at 492 (quoting Wyatt v. Cole, 504 U.S. 158, 164 (1992)).

appropriate holding would have been that state prisoners may not use § 1983 to sidestep the habeas requirements.[68]

Lastly, Justice Souter criticized the majority's failure to consider the potential issue of a formerly incarcerated individual that wishes to bring a § 1983 claim but, because he is no longer imprisoned, is unable to first bring a habeas petition.[69] He acknowledged that "[i]t would be an entirely different matter . . . to shut off federal courts altogether to claims that fall within the plain language of § 1983," which, he asserted would stand in opposition to the history and purpose of the statute.[70] In those situations where the habeas statute is inapplicable, Justice Souter "would not cast doubt on the ability of an individual . . . to take advantage of the broad reach of § 1983."[71] Overall, Souter's concurrence made clear that "congressional policy as reflected in enacted statutes must ultimately be the guide," and rejected the notion of narrowing § 1983.[72] In the years following *Heck*, with many questions still unanswered and as Justice Souter's concurrence gained increasing support from his fellow justices, confusion stirred in the lower courts, which, today, still struggle to interpret the Court's 1994 decision.[73]

IV. IMPLEMENTATION PROBLEMS UNDER *HECK* AND ITS PROGENY

The result of the *Heck* decision was a rule that provided little guidance while leaving open the door to a number of potential interpretation issues, many of which came to fruition.[74] Although the Court did attempt to address a few of the more prominent dilemmas, the debates appear to continue. A few problems worth discussing include

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68. *See id.* at 500–01; *see also* Preiser v. Rodriguez, 411 U.S. 475, 488–90 (1973); Lee, *supra* note 19, at 371.

69. *See Heck*, 512 U.S. at 501–02 (Souter, J., concurring).

70. *See id.* at 501 (Souter, J., concurring). Justice Souter expanded on this idea, noting that the majority's interpretation of section 1983 "to exclude claims from federal court would run counter to '§ 1983's history' and defeat the statute's 'purpose.'" *Id.* (quoting *Wyatt*, 504 U.S. at 158).

71. *Id.* at 503 (Souter, J., concurring).

72. *See id.* Justice Souter stated clearly:

> [A]bsent such a statutory policy, surely the common law can give us no authority to narrow the "broad language" of § 1983, which speaks of deprivations of "any" constitutional rights, privileges, or immunities, by "every" person acting under color of state law, and to which "we have given full effect [by] recognizing that § 1983 'provides a remedy, to be broadly construed, against all forms of official violation of federally protected rights.'"

Id. at 502 (Souter, J., concurring) (citations omitted).

73. *See* Lee, *supra* note 19, at 355 ("[A] majority of the present Court appears to have accepted a broad reading of both § 1983 and the powers of the federal courts to intervene in matters traditionally left to the state courts.").

74. *See, e.g.*, Bradshaw, *supra* note 9, at 199–203 (discussing circuit splits).

those surrounding the favorable termination requirement, the effect of prison disciplinary proceedings, and how the statute of limitations should apply.

A. Favorable Termination

One of the more significant concerns stemming from *Heck* involves the application of the favorable termination requirement in situations where an individual lacks access to habeas relief and is thus unable to invalidate their underlying sentence or conviction. Because those who are "not 'in custody' cannot invoke federal habeas jurisdiction," many former prisoners are left without any remedy given their inability to invalidate their conviction and are thereby foreclosed from any statutory mechanism to sue state officials in federal court.[75] This should sound familiar, given that Justice Souter, concurring in *Heck*, pointed to this precise dilemma.[76]

Although *Spencer v. Kemna*,[77] did not entail a direct application of the *Heck* doctrine, it presented the exact issue that Justice Souter highlighted[78] – the same issue that Justice Scalia flatly rejected because "no real-life example c[ame] to mind."[79] Spencer had filed a habeas petition challenging his parole revocation, but prior to a decision being made, his sentence expired and as such, the petition was dismissed as moot.[80] Spencer put forth a number of arguments on appeal, including that because *Heck* "would foreclose him from pursuing a damages action under 42 U.S.C. § 1983 unless he can establish the invalidity of his parole revocation, his action to establish that invalidity cannot be moot."[81] Still, Justice Scalia condemned the idea "that a § 1983 action must always and everywhere be available."[82] As in *Heck*, however, the key dilemma arising from *Spencer* stems from Justice Souter's concurring opinion.[83]

Justice Souter agreed with Scalia that Spencer's *Heck* argument should fail,[84] but their reasoning differed entirely. Instead, Souter explained that "the answer to Spencer's [*Heck*] argument . . . is that *Heck*

75. *See Heck*, 512 U.S. at 500 (Souter, J., concurring).
76. *See id.* at 500–02 (Souter, J., concurring).
77. Spencer v. Kemna, 523 U.S. 1 (1998); *see also* Jason A. Jones, *Prisoner Litigation and the Mistake of* Jenkins v. Haubert, 86 CORNELL L. REV. 140, 149 (2000).
78. *See Heck*, 512 U.S. at 500–03 (Souter, J., concurring).
79. *Id.* at 490 n.10.
80. *See Spencer*, 523 U.S. at 3–7.
81. *Id.* at 17.
82. *See id. But see Heck*, 512 U.S. at 502 (Souter, J., concurring).
83. *Compare Spencer*, 523 U.S. at 19–21 (Souter, J., concurring), *with Heck*, 512 U.S. at 498–501 (Souter, J., concurring).
84. *See Spencer*, 523 U.S. at 18–19.

has no such effect."[85] Again, Justice Souter expressed his view that individuals who are no longer in custody are not bound by *Heck*'s favorable termination requirement, as they cannot be bound to a "requirement that it would be impossible as a matter of law for [them] to satisfy."[86] After *Heck* and *Spencer*, despite Justice Souter's views being made in a non-binding fashion, he appeared to have a majority of the Court supporting his position, and in turn, a majority of the then-present Court had implicitly endorsed "a broad reading of both § 1983 and the powers of the federal courts to intervene in matters traditionally left to the state courts."[87] While most lower courts align with Justice Scalia's view and rule that *Heck*'s requirements still apply, a smaller but substantial number of courts endorse Souter's perspective and permit such an action.[88] The Souter concurrences and their signatories, along with § 1983's history and purpose, certainly provide a strong basis for courts to shift toward the latter.[89] Regardless, as of this time, the divide continues and the question of whether *Heck* applies where habeas relief is impossible remains open.[90]

B. Prison Disciplinary Proceedings

Another source of confusion stemming from *Heck* was how—if at all—the doctrine applies to decisions made in prison disciplinary hearings. Procedures differ by state, but generally, prisoners are subject to various disciplinary codes of conduct, violations of which lead to sanctions for the prisoner.[91] These situations typically occur as follows: a prisoner is "charged with misconduct, issued an incident report . . . , brought before a hearing body consisting of the reporting officer's peers, found guilty . . . and sanctioned for the alleged conduct."[92] Those hearings, however, are "nothing more than a proverbial kangaroo court."[93] The determination of

85. *Id.* at 21.

86. *See id.*

87. Note, *Defining the Reach of* Heck v. Humphrey*: Should the Favorable Termination Rule Apply to Individuals Who Lack Access to Habeas Corpus?*, 121 HARV. L. REV. 868, 875 (2008) [hereinafter *Defining the Reach*] ("[A] majority of the Spencer Court appeared to endorse Justice Souter's view."). In *Heck*, Justices Stevens and O'Connor signed on to Souter's concurring opinion. *See Heck*, 512 U.S. at 491 (Souter, J., concurring). In *Spencer*, Souter was joined by Justices O'Connor, Ginsburg, and Breyer. *See Spencer*, 523 U.S. at 18 (Souter, J., concurring).

88. *Defining the Reach*, *supra* note 87, at 869, 875.

89. *See id.* at 875.

90. *See id.* at 869, 882.

91. *See* Christopher Zoukis, *Seven Tips to a Successful Prison Disciplinary Hearing Outcome*, ZOUKIS CONSULTING GRP. (Dec. 23, 2013), https://www.prisonerresource.com/legal-activities-of-prisoners/9za0li50sdguqls5r5pmmyfyti7dz6article-226/.

92. *Id.*

93. *Id.*

guilt is made not by judges or juries, but rather only by a "colleague or two of the reporting officer[],"[94] and of course, these hearings are often plagued by injustices and far from fair. Also worth noting is that prison disciplinary hearings may result in loss of good-time credits. Because good-time credits—the right to which was created not by the Constitution but by the states—affect the duration of an individual's confinement, the deprivation of such credits implicates an individual's liberty interest and thereby triggers due process requirements.[95]

In *Heck*'s immediate aftermath, it was unclear whether findings made in these internal hearings would trigger the *Heck* bar in a prisoner's related § 1983 action. The Court addressed the debate in *Edwards v. Balisok*, which presented the question of "whether a claim for damages and declaratory relief brought by a state prisoner challenging the validity of the procedures used to deprive him of good-time credits is cognizable under § 1983."[96] Justice Scalia, writing for the unanimous Court, clarified "that the nature of the challenge to the procedures could be such as necessarily to imply the invalidity of the judgment," which, in effect, extended *Heck* to include procedural due process claims stemming from a prison disciplinary hearing.[97] By further restricting prisoners' access to § 1983 suits, the Court yet again acted contrary to the statutory purpose, with the result being precisely the opposite of what Congress in 1871 hoped to achieve.[98]

C. Statute of Limitations

Debates over the statute of limitations for a § 1983 claim existed years before *Heck* and stem mainly from the fact that § 1983 does not provide its own statute of limitations. Instead, "courts . . . should borrow the state statute of limitations for personal injury actions,"[99] and where a state has more than one option, "the residual or general personal injury statute of limitations applies."[100] *Heck* added to the confusion, but the question was narrower; put simply, when does a particular claim accrue?[101] The inquiry long went unanswered, with circuit courts split on

94. *Id.*
95. *See* Wolff v. McDonnell, 418 U.S. 539, 557 (1974); *see also* Friedman, *supra* note 61, at 30.
96. Edwards v. Balisok, 520 U.S. 641, 643 (1997).
97. *Id.* at 645.
98. *See* Eisenberg, *supra* note 11, at 485.
99. Owens v. Okure, 488 U.S. 235, 236 (1989) (citation omitted).
100. *Id.*
101. *See generally* John Stanfield Buford, *When the Heck Does This Claim Accrue?* Heck v. Humphrey*'s Footnote Seven and § 1983 Damages Suits for Illegal Search and Seizure*, 58 WASH. & LEE L. REV. 1493 (2001).

the issue.[102] For example, in a § 1983 claim alleging a Fourth Amendment violation, the Second, Sixth, and Ninth Circuits found that such claims "do[] not accrue under *Heck* until the criminal charges have been dismissed,"[103] while the Seventh, Tenth, and Eleventh Circuits endorsed the contrary view "allow[ing] immediate accrual."[104] More than two decades after *Heck* was decided, the Supreme Court finally clarified the issue in *McDonough v. Smith*,[105] and the decision also created another use for the *Heck* doctrine—one which can operate to the *plaintiff's* advantage.

In *McDonough*, the Court granted certiorari to determine "when the statute of limitations began to run" for the petitioner's fabricated evidence claim.[106] Writing for the majority, Justice Sotomayor emphasized that "the time at which a § 1983 claim accrues . . . is presumptively 'when the plaintiff has "a complete and present cause of action."'"[107] This, according to her, was crucial to avoiding parallel litigation and collateral attacks on criminal judgments through civil litigation, which was also a central concern expressed in *Heck*.[108] Logically, with McDonough's fabricated evidence claim, there could not be a "complete and present cause of action" while the underlying criminal proceedings had yet to conclude because there was nothing to challenge yet.[109] Thus, the Court held that "[o]nly once the criminal proceeding has ended in the defendant's favor, or a resulting conviction has been invalidated within the meaning of *Heck* will the statute of limitations begin to run."[110]

Of course, *Heck* is widely viewed as a doctrine advantageous to § 1983 defendants, given its dominant preclusive effects.[111] After *McDonough*, however, *Heck* may also be considered a "double-edged sword."[112] Now, plaintiffs have increasingly "invoke[ed] *Heck* in an effort to head off a statute of limitations defense by arguing for a delayed accrual date."[113]

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102. *See, e.g.*, *id.* at 1503–08.

103. Harvey v. Waldron, 210 F.3d 1008, 1015 (9th Cir. 2000); *see* Shamaeizadeh v. Cunigan, 182 F.3d 391, 399 (6th Cir. 1999); Woods v. Candela, 47 F.3d 545, 546 (2d Cir. 1995).

104. Buford, *supra* note 101, at 1499; *see* Beck v. City of Muskogee Police Dep't, 195 F.3d 553, 559 n.4 (10th Cir. 1999); Copus v. City of Edgerton, 151 F.3d 646, 648 (7th Cir. 1998); Datz v. Kilgore, 51 F.3d 252, 253 n.1 (11th Cir. 1995).

105. McDonough v. Smith, 139 S. Ct. 2149 (2019).

106. *Id.* at 2155.

107. *Id.* at 2158 (quoting Wallace v. Kato, 549 U.S. 384, 388 (2007)).

108. *Id.* at 2157.

109. *Id.* (citing *Wallace*, 549 U.S. at 388).

110. *Id.* (citing Heck v. Humphrey, 512 U.S. 477, 486–87 (1994).

111. *See generally* Schwartz, *supra* note 62.

112. *Id.* at 4.

113. *Id.* at 1.

In fact, the strategic tactic has led to the coining of *Heck*'s "deferred accrual rule," which is "clearly a pro-plaintiff concept."[114]

Although the doctrine has shifted to provide at least some use to plaintiffs in a § 1983 action, the overall effects of *Heck* are hardly equal. And even after the Court's repeated attempts to clarify the numerous issues that *Heck* has caused—both for federal courts and plaintiffs throughout the nation—the problems persist; lower courts remain uncertain, circuits remain split, and state prisoners remain barred from seeking redress. Certainly, change is needed.

V. ANALYZING AND ABANDONING *HECK*

The *Heck* doctrine has been plagued with issues since its inception; it has fueled confusion in the lower courts and significantly limited prisoners' access to justice. The overarching issue, however, is that *Heck* is wholly inconsistent with the history and purpose of § 1983 and should be abandoned to preserve the true meaning of the statute.

A. Analyzing the Heck Decision

Justice Scalia's majority opinion in *Heck* ignored the reality of the statute at issue. It left us with just one reference—in a footnote, in response to Justice Souter—to § 1983's history and purpose.[115] And even still, Scalia's response to Justice Souter, who expressed concern that an individual no longer in custody could be precluded from a postconviction challenge, was that "no real-life example comes to mind" and overreliance on the historical purpose of § 1983 would have led to "the entire landscape of our § 1983 jurisprudence" looking "different."[116]

In addition to his conclusory rejection of Justice Souter's views, Justice Scalia set aside the fact that Congress intended § 1983 "to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional [state] action."[117] The legislative history makes plain both Congress' "concern[] that state instrumentalities could not protect" federal rights and that state officials might "be antipathetic to the vindication of those rights,"[118] as well as their intent for "state governments' autonomy [to] yield . . . where federally protected rights are concerned."[119] Even a textualist approach to the statute provides *Heck* no

114. *Id.*
115. *See* Heck v. Humphrey, 512 U.S. 477, 490 n.10 (1994).
116. *Id.*
117. Mitchum v. Foster, 407 U.S. 225, 242 (1972).
118. *Id.*
119. *See* Lee, *supra* note 19, at 356.

support, "given that § 1983 is broadly drawn with few apparent internal limitations."[120] Regardless, the *Heck* majority's holding resulted in a preclusion rule barring the use of § 1983 if a decision in the plaintiff's favor would in some way call into question the state conviction's validity.[121]

Rather than ensuring access to a federal forum, the majority forced an individual to first rely on state mechanisms to satisfy the favorable termination requirement, despite the clear underlying principle of § 1983, namely, "Congress' distrust for state fact finding processes."[122] And while § 1983 was premised on expanding access to justice, the Court's import of the favorable termination requirement does precisely the opposite; its "primary effect . . . is to limit the availability of § 1983" in civil rights actions.[123] Although the consequences of *Heck* were troubling enough as it stood, the Court's expansion of the doctrine in subsequent cases sparked even more confusion and further strained the purpose of § 1983.[124]

B. The Court Must Overrule Heck

The *Heck* doctrine is undoubtedly flawed. The Court's 1994 decision appeared to develop a clear-cut rule, but the reality is far from clear. Since its creation, the *Heck* doctrine has been a nightmare for all parties—including the courts themselves.[125] By enacting such a substantial limit on § 1983—a limit which runs directly counter to the statute's history and purpose[126]—*Heck* continues to blockade prisoners seeking federal redress for the unconstitutional horrors they endure at the hands of the state. Now, twenty-eight years after *Heck* was decided, it is time for the Court to reconsider and overrule *Heck*.

For more than a quarter century, the federal courts have struggled to determine how *Heck* should be applied. Of course, in general, disagreement between the federal circuit courts is not uncommon. The judicial construct coming out of *Heck*, however, did not generate a split on just one area of the doctrine; rather, lower courts were divided on

120. *See* Jack M. Beermann, *Common Law Elements of the Section 1983 Action*, 72 CHI.-KENT L. REV. 695, 699 (1997).
121. *See* Lee, *supra* note 19. at 369.
122. *See* Schwartz, *supra* note 11, at 90; *see also* Monroe v. Pape, 365 U.S. 167 (1961); Patsy v. Bd. of Regents of Fla., 457 U.S. 496 (1982).
123. Lee, *supra* note 19, at 370.
124. *See supra* Part IV.
125. *See supra* Part IV.
126. *See supra* Part II.A.

many different aspects of the rule,[127] and the obscurity worsened as individual cases presented increasingly particularized circumstances.

An important consideration in overruling *Heck*, which *Heck*'s defenders would likely argue should be strictly applied, is the doctrine of *stare decisis*. *Stare decisis* is "a discretionary 'principle of policy'" under which the Court follows the rules of its prior decisions,[128] but "*stare decisis* is not an inexorable command."[129] The Court has even clarified that *stare decisis* carries its least influence in cases "involving procedural and evidentiary rules," where "change should come from th[e] Court, not Congress."[130] Going further, a factor that weighs in favor of reconsideration is seen "[w]here a decision 'has been questioned by Members of the Court in later decisions and has defied consistent application by the lower courts.'"[131] Certainly, *Heck* meets these descriptions.

Finally, the Court must overrule *Heck* in order to preserve § 1983's true purpose. Despite historical attempts to expand its application, § 1983 has fallen short of its full potential "largely because the Court has constructed numerous limiting doctrines."[132] This judicial narrowing of § 1983, despite its "broad textual features," creates significant challenges for plaintiffs to survive the pre-trial stage, let alone to ultimately prevail on their claim.[133] This is especially true for prisoner-plaintiffs, who are already tasked with overcoming tremendous obstacles.[134] History makes clear that § 1983 was enacted to ensure access to the federal courts, but the Court in *Heck* chose to disregard the statute's purpose, and instead, forged a barrier to obtaining relief for violations of one's constitutional rights. And even though *Heck* left many questions unanswered, decades later, it remains quite relevant as *Heck*'s bar continues to be aggressively utilized.[135]

VI. CONCLUSION

In order to preserve the meaning of § 1983 and thereby safeguard state prisoners' constitutional rights, as well as to relieve the strain on

127. *See supra* Part IV.
128. BRANDON J. MURRILL, CONG. RSCH. SERV., R45319, THE SUPREME COURT'S OVERRULING OF CONSTITUTIONAL PRECEDENT 5 (2018).
129. Pearson v. Callahan, 555 U.S. 223, 233 (2009) (citations omitted).
130. *Id*. at 233–34.
131. *See id*. at 235 (citing Payne v. Tennessee, 501 U.S. 808, 829–30 (1991)).
132. Beermann, *supra* note 120, at 697.
133. *See id*. at 698.
134. *See* Margo Schlanger, *Trends in Prisoner Litigation, as the PLRA Approaches*, 28 CORR. L. REP. 69, 69–86 (Feb./March 2017).
135. *See Defining the Reach*, *supra* note 87, at 878.

the federal courts, the Supreme Court must take action and overrule *Heck*. The *Heck* doctrine operates under § 1983 but does so in a manner that wholly contradicts the statute itself, leaving district courts perplexed over its application and circuits split on a number of interpretive questions. Despite its historical roots, the Court chose to ignore the purpose of § 1983 in favor of constructing a rule that restricts prisoners' access to federal remedies when their constitutional rights are violated by the states. The seemingly straightforward decision in *Heck* has proven to be anything but, and even after the Court intervened in subsequent cases to ease the confusion, the debates continue to pervade prisoner litigation. In the midst of all the chaos, "*Heck*'s bar is still vigorously applied,"[136] and as § 1983's historical purpose continues to erode in practice, state prisoners' ability to obtain relief will continue to crumble right alongside it.

136. *Id*.