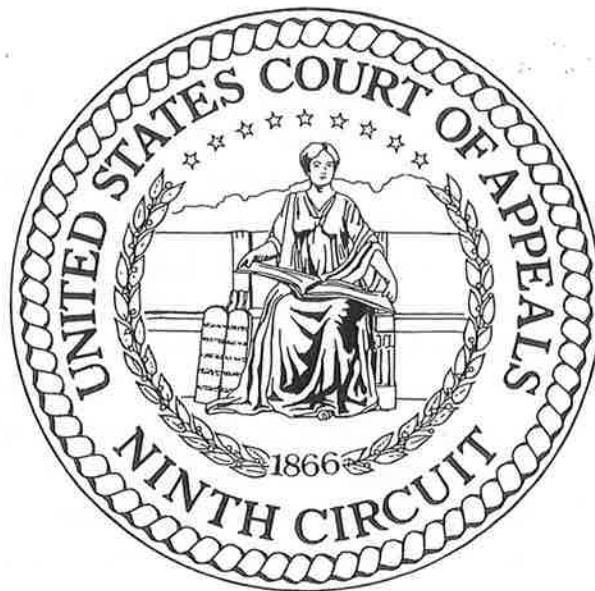


**From the Desk  
of Senator Boquist**

**United States Court of Appeals for the Ninth Circuit  
Office of Staff Attorneys**



## **Section 1983 Outline**

Updated 2022

---

Office of Staff Attorneys  
United States Court of Appeals  
for the Ninth Circuit

---

**This outline is intended for use as a starting point for research. It is not intended to express the views or opinions of the Ninth Circuit, and it may not be cited to or by the courts of this circuit.**

#### d. Presidential Immunity

The President is absolutely immune from suit for damages for conduct that is part of the President's official duties. See *Forrester v. White*, 484 U.S. 219, 225 (1988); *Nixon v. Fitzgerald*, 457 U.S. 731, 756–58 (1982); *Fry v. Melaragno*, 939 F.2d 832, 836 (9th Cir. 1991); cf. *Clinton v. Jones*, 520 U.S. 681, 694–95 (1997) (holding no immunity from suit for conduct not taken in official capacity).

#### e. Legislative Immunity

“Under the doctrine of legislative immunity, members of Congress and state legislators are entitled to absolute immunity from civil damages for their performance of lawmaking functions.” *Jones v. Allison*, 9 F.4th 1136, 1139–40 (9th Cir. 2021). See also *Bogan v. Scott-Harris*, 523 U.S. 44, 48–49 (1998); *Tenney v. Brandhove*, 341 U.S. 367, 378–79 (1951); *Norse v. City of Santa Cruz*, 629 F.3d 966, 976–77 (9th Cir. 2010) (en banc) (explaining, “[l]ocal legislators are absolutely immune from liability under § 1983 for their legislative acts[,]” but concluding that defendants were not entitled to absolute immunity where decisions were administrative, not legislative.); *Schmidt v. Contra Costa Cnty.*, 693 F.3d 1122, 1132 (9th Cir. 2012); *Cnty. House, Inc. v. City of Boise, Idaho*, 623 F.3d 945, 959 (9th Cir. 2010); *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163 (9th Cir. 2005); *Kaahumanu v. Cnty. of Maui*, 315 F.3d 1215, 1219 (9th Cir. 2003); *Bechard v. Rappold*, 287 F.3d 827, 829 (9th Cir. 2002); *Chateaubriand v. Gaspard*, 97 F.3d 1218, 1220–21 (9th Cir. 1996); *Trevino v. Gates*, 23 F.3d 1480, 1482 (9th Cir. 1994).

“Congressional representatives enjoy immunity for comments made on the congressional floor.” *Lund v. Cowan*, 5 F.4th 964, 972 (9th Cir. 2021), cert. denied, 142 S. Ct. 900 (2022). However, “legislative immunity does not depend on the actor so much as the functional nature of the act itself.” *Jones*, 9 F.4th at 1140. To assess a government official's asserted defense of legislative immunity, the court looks “to the purpose and effect of the challenged acts when deciding whether they are legislative in nature.” *Jones*, 9 F.4th at 1141 (holding that state executive officials of the California Department of Corrections and Rehabilitation were immune from claims brought under 42 U.S.C. § 1983 for damages stemming from the CDCR's adoption of regulations pursuant to the authority delegated to it by the California Constitution).

This immunity extends both to suits for damages and suits for prospective relief. See *Supreme Court of Va. v. Consumers Union of the U.S., Inc.*, 446 U.S. 719, 732–33 (1980); *Cnty. House, Inc.*, 623 F.3d at 959.