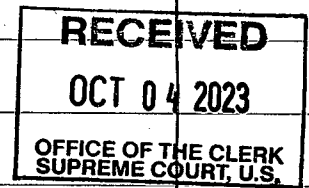


ORIGINAL

23-5832

In The
Supreme Court of the United States



William R. Abbott
Petitioner

v.

Latoya Oatis-Sanders, et al
Respondents

On Petition For A Writ OF Certiorari To
United States Court of Appeals for the Fifth Circuit

William R. Abbott
U.S. Penitentiary Thomson
P.O. Box 1002
Thomson, Illinois 61285

Question(s) Presented

Whether the State of Louisiana Constitution's Equal Protection Clause embodies through the United States Constitution Fourteenth Amendment federal statute of limitation terms where a Suite at common law was benchmarked under an Act of Congress.

Whether the Prison Rape Elimination Act appends a private right of action upon federal prisoners under the Eight Amendment Cruel and Unusual Punishment Clause holding liable prison officials whom violate its terms.

List of Parties

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Latoya Oatis-Sanders

Norwick Patterson

Shelley Power

Related Cases

William R. Abbott v. United States of America, Appeal No. 23-30259, Fifth Circuit Court of Appeals

William R. Abbott v. United States of America, Civil Case No. 2:21-cv-03774, United States District Court Western District of Louisiana

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Opinions Below

The opinion of the United States Court of Appeals for the Fifth Circuit appears at Appendix A to the petition and is reported at William R. Abbott v. Latoya Oatis-Sanders, Appeal No. 22-30561.

The opinion of the United States District Court Western District of Louisiana appears at Appendix B to the petition and is reported at William R. Abbott v. Latoya Oatis-Sanders, Civil Case No. 2:22-cv-01271.

Jurisdiction

The date on which the United States Court of Appeals for the Fifth Circuit decided my case was July 26, 2023. No petition for rehearing was timely filed in my case. The jurisdiction of the Supreme Court of the United States is invoked under 28 Title U.S.C. §1254(1).

Constitutional and Statutory Provisions Involved

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 Title U.S.C §1658(a)

Time limitations on the commencement of civil actions arising under Acts of Congress. (a) Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section [enacted Dec. 1, 1990] may not be commenced later than 4 years after the cause of action accrues.

Statement of the Case

Whether The State Of Louisiana Constitution's Equal Protection Clause Embodies Through The United States Constitution Fourteenth Amendment Federal Statute Of Limitation Terms Where A Suit At Common Law Was Benchmarked Under An Act Of Congress.

Measure of the Fifth Circuit Court of Appeals to statute of limitations in assessment of 42 Title U.S.C. §1983 held; "Abbott argues that the district court should have applied the four-year limitation period of 28 U.S.C. §1658(a). Under the analogous §1983, Abbott had one year in which to file his complaint." (Appendix A).

Vest opinion of the District Court Western District of Louisiana held; "the court's ruling dismissing his Bivens action based on the borrowed one-year statute of limitations for personal injury claims under Louisiana law. Abbott maintains that the court ought to have applied the four-year federal statute of limitations at 28 U.S.C. §1658 for causes of action arising under federal laws passed after 1990, because his suit arises under the Prison Rape Elimination Act ("PREA"), 34 U.S.C. §30301 et. seq. This position is without merit...

Accordingly, the court correctly applied the borrowed statute of limitations under *Bivens* to Abbott's claims." (Appendix B).

Where an Act of Congress, codified after December 1, 1990, presented as the benchmark to a suit at common law encompassing Federal Bureau of Prisons staff as being in deliberate indifference to a right held under the Cruel and Unusual Punishment Clause of the Eighth Amendment, governing statute of limitations cites to 28 Title U.S.C. §1658(a). State of Louisiana Constitution Article I, Section 3 appends federal statute of limitations indifferent to the borrowed state statute of limitations principle.

(A) Background

A protective right was assessed through the Prison Rape Elimination Act (PREA)-34 Title U.S.C. §30301 et seq.-in guard against a violation of the Eighth Amendment Cruel and Unusual Punishment Clause. The Federal Bureau of Prisons was not immune from adherence of §30301's elements where federal prisoners secured a legal right:

(i) Section 30301(13): The high incidence of sexual assault within prisons involves actual and potential violations of the United

States Constitution. In *Farmer v. Brennan*, 511 U.S. 825 [128 L. Ed. 2d 811] (1994), the Supreme Court ruled that deliberate indifference to the substantial risk of sexual assault violates prisoner's rights under the Cruel and Unusual Punishment Clause of the Eighth Amendment.

Section 30302(7): Protect the Eighth Amendment rights of Federal, State, and local prisoners.

(iii) Section 30307(b): Applicability to Federal Bureau of Prisons.

The national standards referred to in subsection (a) shall apply to the Federal Bureau of Prisons immediately upon adoption of the final rule under subsection (a)(4).

The Prison Rape Elimination Act ("PREA") was ratified by Congress on September 4, 2003 (Public Law 108-79, § 2, 117 Stat. 972).

Instructed through 28 CFR § 115.11(a), "An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct." Federal Bureau of Prisons Policy Statement 5324.12 - Sexually Abusive Behavior Prevention and Intervention Program (June 4, 2015) - standardized § 30301's terms for the Federal Bureau of Prisons. (see <https://www.f>

bop.gov/policy/progstat/5324_012.pdf).

Inauguration of a Suit at common law where Bureau of Prisons staff factor in litigation bears to 42 Title U.S.C. §1983. Section 1983 reads; "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and law, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

Associated to Section 1983 are the terms of Section 1988; "Applicability of statutory and common law. The jurisdiction in civil matters conferred on the district and circuit courts... for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil... cause

is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the... disposition of the cause..." 42 Title U.S.C. §1988(a).

Statute of Limitations to a Prison Rape Elimination Act ("PREA")
Suite at common law where Federal Bureau of Prisons staff were with deliberate indifference to a created right, is governed through Section 1658; "Time limitations on the commencement of civil actions arising under Acts of Congress. Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section [enacted Dec. 1, 1990] may not be commenced later than 4 years after the cause of action accrues." 28 Title U.S.C. §1658(a).

State of Louisiana Constitution Article I, Section 3 states "No person shall be denied the equal protection of the laws." Common law suits in Louisiana are affected by Louisiana Civil Code 3492 which reads; "Delictual actions are subject to a liberative prescription of one year. This prescription commences to run from the day injury or damages is sustained... Comment (b): The notion of delictual liability includes intentional conduct, negligence, abuse of right, and liability without negligence."

The United States Constitution Fourteenth Amendment states;
"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...
Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."

Weight of the Bond court bears in that "What the Supreme Court has said, though, is that individual rights...made applicable against the States through the Fourteenth Amendment have the same scope as against the Federal Government. Bruen, 142 S.Ct. at 2137."

NR v. Bond, 2023 U.S. App. LEXIS 5672, at 10-11 (11th Cir. 2023). Reference to Bruen cites further, "to carry its burden, the government must generally point to historical evidence about the reach of the [amendment's] protections." New York State Rifle and Pistol Association, Inc. v. Bruen, 142 S.Ct. 2111, 2130 (2023).

(B) Legal Standard

Through ratification of 28 Title U.S.C. §1658(a), the United States Congress provided a catchall 4-year statute of limitations for actions arising under Federal statutes enacted after December 1, 1990, that do not include a limitations provision. Actions arising under Federal statutes enacted on or before December 1, 1990 that do not include a limitations provision are governed by the appropriate or analogous state statute of limitations.

Guidance to Section 1658(a)'s use is vested from the Jones Court which reconciled: "we conclude that a cause of action arises under an Act of Congress enacted after December 1, 1990 and therefore is governed by §1658's 4-year statute of limitations if the plaintiff's claim against the defendant was made possible by a post-1990 enactment. That construction best serves Congress' interest in alleviating the uncertainty inherent in the practice of borrowing state statutes of limitations while at the same time protecting settled interests." Jones v. R.R. Donnelley and Sons Co., 541 U.S. 369, 382 (2004).

Secondary remarks to Section 1658 from the Supreme Court in its use in conjunction with 42 Title U.S.C. §1983 holds, "Aspects of §1983 which are not governed by reference to state law are governed

by federal rules conforming in general to common-law Tort principles."

Wallace v. Kato, 549 U.S. 384, 388 (2007). Section 1983 proscribes

"Every person who under color of any statute, ordinance, regulation, custom, or usage... subjects or causes to be subjected, any person... to the deprivation of any rights... secured by the Constitution and law, shall be liable to the party injured in an action at law..."

The Fifth and Eleventh Circuits harmonize to Section 1658 not being usurped in favor of the borrowed state statute of limitations where Acts of Congress enacted after December 1, 1990 evidence. See Smith v. Reg'l. Transit Auth., 827 F.3d 412, 423 n.6 (5th Cir. 2016) ("The borrowed state statute is applied where there is no federal statute of limitations. The catchall four-year federal statute of limitations applies for actions arising under federal statutes enacted after December 1, 1990"); Rosas v. Univ. of Tex. at San Antonio, 793 Fed. Appx. 267, 270 (5th Cir. 2019) ("We borrow the relevant state statute of limitations for statutes that do not set forth a limitations period and where the claim in question was not made possible by a post-1990 Congressional enactment."); and Giddens v. Lawson, 839 Fed. Appx. 350, 354 (11th Cir. 2020).

Pre-December 1, 1990 enactment of 28 Title U.S.C. §1658 brought commentary from the Owens Court, "we again confront the consequences of Congress' failure to provide a specific statute of limitations to

govern §1983 actions. Title 42 USC §1988 endorses the borrowing of state-law limitations provisions where doing so is consistent with federal law. Owens v. Okure, 488 U.S. 235, 239 (1989). See also Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 465 (1975).

Section 1988, 42 Title, United States Code received ratification on October 19, 1976 and bore as a governing standard of law for actions initialize under 42 Title U.S.C. §1983. Because Section 1983 claims "bred confusion and inconsistency in the lower courts and generated time-consuming litigation" where the courts "found analogies in common-law tort, others in contract law, and still others in statutory law," Owens 488 U.S. at 240, Congress ratified 28 Title U.S.C. §1658 regulating when Section 1988 and Section 1658 govern.

The Fifth Circuit has offered terms to use of Section 1988 and 1658 but has created disparity in the interim. First, in the civil action brought before the District Court Western District of Louisiana assessed was the "position is without merit" where the cause of action arose from the Prison Rape Elimination Act which garnered Section 1658 statute of limitations. But, the "borrowed statute of limitations under Bivens" governed. (Appendix B). The appellate concurred, "Under the analogous §1983, Abbott had one year in which to file his complaint." (Appendix A).

Eleventh Circuit reasoning simulates the Fifth Circuit, "Section 1983 cases in which we have invoked the discovery rule have typically involved constitutional or general civil rights claims. In these ordinary §1983 cases, the forum state's statute of limitations for personal injury action applies. On the other hand, when a §1983 claim arises under a federal statute enacted after December 1, 1990, and the underlying statute does not provide its own limitations period, the limitations period set forth in §1658 - not the forum state personal injury statute - governs." Fouldy v. Indian River Cnty. Sheriff's Office, 845 F.3d 1117, 1123-24 (11th Cir. 2017).

(C) Fourteenth Amendment Equal Protection Clause

Terms of the United States Constitution Fourteenth Amendment bearing relation to the pleadings in form "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. nor deny to any person within its jurisdiction the equal protection of the laws." United States Constitution; Amendment Fourteen; Section 1. The State of Louisiana Constitution states, "No person shall be denied the equal protection of the laws." State of Louisiana Constitution; Article 1; Section 3.

In the State of Louisiana where a 42 Title U.S.C. §1983 civil claims

is brought in federal court, Louisiana Civil Code 3492's statute of limitations is given first impression as authority. Where an Act of Congress ratified after December 1, 1990 gives rise to the civil claim than 28 Title U.S.C. §1658 governs the statute of limitations period. The Romer Court and Cleburne Court posit use of the Fourteenth Amendments Equal Protection Clause as:

"Central both to the idea of the rule of law and to our own Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance. Equal protection of the laws is not achieved through indiscriminate imposition of inequalities. Respect for this principle explains why laws singling out a certain class of citizen for disfavored legal status or general hardships are rare. A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense."

Romer v. Evans, 517 U.S. 620, 633 (1996).

"The Equal Protection Clause of the Fourteenth Amendment commands that no State shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated should be treated alike. Plyler v. Doe,

infringes fundamental constitutional rights must be upheld against equal protection challenges if there is any reasonably conceivable state of facts that could provide a rational basis for the classification").

Pioneered by the Fourth Circuit, lower courts should "give great weight to Supreme Court dicta." N.L.R.B. v. Bluefield Hosp. Co., LLC, 821 F.3d 534, 541 n.6 (4th Cir. 2016). To that point, the Bruen Court and Jones Court amplifies the Fourth Circuit admonishment:

"To carry its burden, the government must generally point to historical evidence about the reach of the [amendments] protections."

New York State Rifle and Pistol Association, Inc. v. Bruen, 142 S.Ct. 2111, 2130 (2022)

"We conclude that a cause of action arises under an Act of Congress enacted after December 1, 1990 and therefore is governed by §1658's 4-year statute of limitations if the plaintiff's claim against the defendant was made possible by a post-1990 enactment."

Jones v. R.R. Donnelley and Sons Co., 541 U.S. 369, 382 (2004).

II

Whether The Prison Rape Elimination Act Appends A Private Right Of Action Upon Federal Prisoners Under The Eighth Amendment Cruel And Unusual Punishment Clause Holding Liable Prison Officials Whom Violate Its Terms.

Through unanimous concurrence of Congress, the Prison Rape Elimination Act (Public Law 108-79; §3; 117 Stat. 974; September 4, 2003) - 34 Title U.S.C. §30301 et seq. - vested a zero tolerance standard for sexual assault and sexual harassment in the United States prisons. (See About Prison Rape Elimination Act; National PREA Resource Center; <https://www.prearesourcecenter.org/about/prison-rape-elimination-act>). The Prison Rape Elimination Act directed the Attorney General to publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison sexual abuse. Section 30307(a)(1).

The Fifth Circuit and District Court Western District of Louisiana position conclusion "Insofar as Abbott sought to raise a stand-alone claim under the Prison Rape Elimination Act (PREA), he cites no case in support of his position that the PREA established a private action for such a claim" (Appendix A) and "The courts have

repeatedly affirmed that nothing in the PREA suggests that Congress intended to create a private right of action for inmates to sue prison officials" (Appendix B). Use of the canons of statutory construction analyze to contradict the Fifth Circuit and District Court.

(A) Background

Statutory provisions in simplicity to the Federal Bureau of Prisons duty to federal prisoners is that "The Bureau of Prisons, under the direction of the Attorney General, shall... provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States." 18 Title U.S.C. §4042(a)(3). The Eight Amendment imposes duties on prison officials, who must provide humane conditions of confinement, including taking reasonable measures to guarantee the safety of the inmates.

Analysis to a private right of action initializes where the Doe Court cited "where the text and structure of a statute provide no indication that Congress intends to create new individual rights, there is no basis for a private suit, whether under §1983 or under an implied right of action." Gonzaga Univ. v. Doe, 536 U.S. 273, 286 (2002). The text of the Prison Rape Elimination Act unambiguously confers a private right of action where the Act's purpose is to "protect the

Section 115.11: An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.

Section 115.22: The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.

Section 115.6: Sexual harassment includes - Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate... towards another.

Section 115.51: Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

Section 115.61: The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility.

Section 115.67: The agency shall establish a policy to protect all inmates and staff who report sexual abuse or sexual harassment from retaliation by other inmates or staff.

Section 115.71: Shall include an effort to determine whether staff actions or failures to act contributed to the abuse.

"It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." Davis v. Mich. Dept. of Treasury, 489 U.S. 803, 809 (1989). See also Russello v. United States, 464 U.S. 16, 21 (1983); Nastase v. Barr, 964 F.3d 313, 317 (5th Cir. 2020); Ali v. Barr, 951 F.3d 275, 280 (5th Cir. 2020). Bearing to the canons of statutory construction, the Prison Rape Elimination Act appends a private right of action under the Eighth Amendment Cruel and Unusual Punishment Clause holding liable prison officials whom violate its terms.

(B) Legal Standard

The Fifth and Fourth Circuits cite from the Farmer Court in that "The Eighth Amendment requires prison officials take reasonable measures to guarantee the safety of the inmates. Farmer v. Brennan, 511 U.S. 825, 832 (1994), Garcia v. Lee, 2023 U.S. App. LEXIS 13606, at 2

(5th Cir. 2023); and "To establish a constitutional violation... [Plaintiff] would have to prove that the defendant's knew of an excessive risk to his health or safety and consciously disregarded that risk... See Farmer v. Brennan, 511 U.S. 825, 837 (1994)." Nelson v. Doe, 2023 U.S. App. LEXIS 11463, at 4 (4th Cir. 2023).

Moreover, to state a claim for violation of civil rights, a plaintiff must allege "that [prison] officials, acting under color of [law], deprived him of a right guaranteed by the Constitution or laws of the United States. Moreover, defendant's actions at the time must have been objectively unreasonable in light of clearly established federal law." Rodriguez v. Phillips, 66 F.3d 470, 473 (2nd Cir. 1995). Citation to the Farmer Court by Section 30301(13) empowers the creation of a right of action where held was:

"Held: (1) A prison official may be held liable under the Eighth Amendment for acting with deliberate indifference to inmate health or safety only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it, (2) Prison officials have a duty under the Eighth Amendment to provide humane conditions of

"
Confinement.

Farmer v. Brennan, 511 U.S. 825, 837 (1994).

Reasoned from the Southern District of New York, "every injury suffered by one prisoner at the hands of another... translates into unconstitutional liability for prison officials responsible for the victim's safety."

Bouknight v. Shaw, 2009 U.S. Dist. LEXIS 35402, at 9 (S.D.N.Y. April 6, 2009). See also Altura St. Michael Ewers v. City of New York, 2021 U.S. Dist. LEXIS 101497, at 14 (2nd Cir. 2021); and Purcell ex rel. Estate of Morgan v. Tooms Cnty., Ga., 400 F.3d 1313, 1320-21 (11th Cir. 2005) (The Eighth Amendment also provides an inmate the right "to be reasonably protected from constant threat of violence... by his fellow inmates").

"It is a prison official's deliberate indifference to a substantial risk of serious harm to an inmate that violates the Eighth Amendment... a prison official cannot escape liability for deliberate indifference by showing that he did not know that the complainant was especially likely to be assaulted by the specific prisoner." Gaffney v. Warden, 2022 U.S. App. LEXIS 88, at 6-7 (11th Cir. 2022). Preponderance of the evidence standard witnesses a right of action was created under the Prison Rape Elimination Act and the Eighth Amendment Cruel and Unusual Punishment Clause.

Reasons For Granting The Petition

- 1) Opinion of the Fifth Circuit Court of Appeals to statute of limitations in a civil cause of action conflicts with the terms of the Fourteenth Amendment to equal protection of the laws where an Act of Congress ratified after December 1, 1990 served as benchmark to the claim.
- 2) Opinion of the Fifth Circuit Court of Appeals to statute of limitations in a civil cause of action conflicts with preceding Fifth Circuit Court of Appeals opinion, Supreme Court opinion, and other Appellate Court opinion.
- 3) Opinion of the Fifth Circuit Court of Appeals conflicts with federal statute, Supreme Court opinion, and Appellate Court opinion to whether the Prison Rape Elimination Act created a private right of action and effects the Eighth Amendment Cruel and Unusual Punishment Clause in holding prison officials liable.

Conclusion

The petition for a writ of Certiorari should be granted.

Respectfully Submitted,

William R. Abbott

William R. Abbott

October 2, 2022

Date