

No. 26-

IN THE
Supreme Court of the United States

ANDRE L. ECHOLS, JR.,

Petitioner,

v.

TOM HANSEL,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether this Court should reconsider and overrule, or substantially limit, *Imbler v. Pachtman*, 424 U.S. 409 (1976), which holds that prosecutors are absolutely immune from damages liability under 42 U.S.C. § 1983 for acts taken in initiating and presenting prosecutions, even when a plaintiff alleges malicious prosecution, knowing use or solicitation of false testimony, lack of probable cause, or bad faith.
2. Whether absolute prosecutorial immunity under § 1983 should extend to a municipal attorney prosecuting a civil vehicle-impoundment enforcement proceeding where the plaintiff alleges that the attorney pursued the proceeding despite false testimony and an unlawful impoundment.

PARTIES TO THE PROCEEDING

Petitioner **Andre L. Echols, Jr.** was the plaintiff-appellant below. Respondent **Tom Hansel**, an Assistant Corporation Counsel for the City of Chicago, was the defendant-appellee below.

The district court action also named Chicago Police Officers Peter Niznik and Erik Albright. The Seventh Circuit did not review dismissal of the claims against those officers because Petitioner did not challenge the district court's mootness determination. This petition seeks review only of the judgment affirming dismissal of the claims against Respondent Hansel on absolute-immunity grounds.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner is a natural person. No corporate disclosure statement is required.

RELATED PROCEEDINGS

1. *Echols v. Hansel*, No. 25-1806, United States Court of Appeals for the Seventh Circuit. Judgment entered June 5, 2026.
2. *Echols v. Niznik et al.*, No. 23-cv-16000, United States District Court for the Northern District of Illinois, Eastern Division. Final judgment entered April 29, 2025.
3. *Echols v. Niznik*, No. 20-cv-2226, United States District Court for the Northern District of Illinois, Eastern Division. Summary judgment entered April 29, 2025.

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OPINIONS BELOW

The Seventh Circuit's nonprecedential order was entered on June 5, 2026, in *Echols v. Hansel*, 25-1806 (7th Cir. Jun 05, 2026) and is reproduced at App. 1a. The district court's order granting Respondent's motion to dismiss with prejudice was entered on April 29, 2025, in *Echols v. Niznik*, 23 CV 16000 (N.D. Ill. Apr 29, 2025), and is reproduced at App. 4a.

JURISDICTION

The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1343 because Petitioner brought claims under 42 U.S.C. § 1983. It entered final judgment on April 29, 2025. Petitioner timely appealed on May 8, 2025, and the Seventh Circuit had jurisdiction under 28 U.S.C. § 1291.

The Seventh Circuit entered judgment on June 5, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely under Supreme Court Rule 13 if filed within 90 days after entry of judgment, or within the period allowed after disposition of a timely petition for rehearing.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1983

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 laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

Fourteenth Amendment

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.

STATEMENT OF THE CASE

A. The traffic stop, impoundment, and administrative proceedings

This case arises from the impoundment of petitioner's red 2008 Chevrolet Corvette after a February 24, 2019 traffic stop in Chicago, Illinois.

Petitioner alleged that Chicago Police Officers Peter Niznik and Erik Albright stopped him near 6808 North Sheridan Road and asserted that he was driving without

headlights and without a front license plate. Petitioner alleged that his headlights were on and that the officers' stated basis for the stop was false. When asked for a license, petitioner produced a valid Indiana commercial driver's license. The officers nevertheless treated petitioner as driving on a suspended Illinois license, arrested him, and impounded his vehicle.

The officers issued citations for driving on a suspended license, driving without a front license plate, and driving without headlights. They also reported that an inventory search of the vehicle revealed a controlled substance in a gum container and charged petitioner with felony possession of a controlled substance. Petitioner alleged that the officers' reports contained false statements, including that his headlights were off, that he was driving on a suspended license rather than a valid Indiana license, and that controlled substances were found in his vehicle.

The possession charge was dismissed on March 26, 2019. Petitioner was released from the Cook County Department of Corrections on April 3, 2019.

On August 13, 2019, Respondent Tom Hansel, an Assistant Corporation Counsel for the City of Chicago, prosecuted the administrative impoundment proceeding involving petitioner's vehicle. Petitioner alleged that Respondent focused the proceeding on alleged drugs purportedly found in the vehicle, even though petitioner contended that the true issue was whether the vehicle could lawfully have been impounded when petitioner possessed a valid Indiana commercial driver's license. An administrative law judge upheld the impoundment and ordered petitioner to pay storage fees.

On November 22, 2022, after a second administrative hearing, a different administrative law judge determined that the City had not met its burden of proof and released petitioner's vehicle from impoundment.

B. The district court proceedings

In 2023, petitioner filed this civil-rights action in the United States District Court for the Northern District of Illinois. As relevant here, petitioner asserted a § 1983 malicious-prosecution claim against Respondent Hansel and alleged that Respondent pursued the impoundment despite false testimony and without a lawful basis.

Respondent moved to dismiss on absolute prosecutorial immunity grounds. The district court granted the motion and dismissed the claims against Respondent with prejudice. The court held that Respondent was absolutely immune under *Imbler v. Pachtman*, 424 U.S. 409 (1976), because petitioner alleged that Respondent “prosecuted the impoundment” and did not allege that Respondent acted outside his prosecutorial function.

The district court relied on Seventh Circuit precedent extending absolute immunity to municipal attorneys and civil enforcement proceedings when the attorney functions in an enforcement role analogous to a prosecutor. See, e.g., *Mendenhall v. Goldsmith*, 59 F.3d 685 (7th Cir. 1995); *Smith v. Power*, 346 F.3d 740 (7th Cir. 2003). The district court further held that absolute immunity shields prosecutors even when they allegedly act maliciously, unreasonably, without probable cause, or on the basis of false testimony or evidence.

The district court recognized that petitioner’s argument was directed at this Court, not at a lower court bound by this Court’s precedent. It dismissed the case with prejudice because petitioner’s challenge was a pure question of law: whether *Imbler* should continue to control.

C. The Seventh Circuit’s decision

Petitioner appealed. The Seventh Circuit affirmed in a two-page nonprecedential order. The court stated that petitioner “concedes that he cannot prevail unless we overrule *Imbler v. Pachtman*, 424 U.S. 409 (1976),” and held that the Seventh Circuit lacked authority to do so.

The Seventh Circuit explained that *Imbler* held prosecutors absolutely immune for actions taken while initiating and pursuing prosecutions, and that Seventh Circuit precedent applies the same rule to attorneys in civil proceedings who function in an enforcement role analogous to that of a prosecutor. The Seventh Circuit cited *Bosse v. Oklahoma*, 580 U.S. 1 (2016), for the principle that only this Court may overrule this Court’s precedents. It also quoted its own precedent stating: “If *Imbler* is to be overruled, only the Supreme Court itself can overrule it.”

The Seventh Circuit affirmed solely because *Imbler* controlled.

REASONS FOR GRANTING THE WRIT

This case presents a clean and important question about the continuing validity and scope of absolute prosecutorial immunity under 42 U.S.C. § 1983. The

Seventh Circuit did not affirm because petitioner failed to plead malicious prosecution, did not suffer an injury, or sued the wrong official. It affirmed because *Imbler v. Pachtman* barred the claim as a matter of law. The court expressly stated that petitioner cannot prevail unless this Court revisits *Imbler*, and that only this Court may do so.

Certiorari should be granted because *Imbler* creates a judge-made immunity that is difficult to reconcile with § 1983's text, Congress's remedial purpose in enacting the Civil Rights Act of 1871, and this Court's more recent immunity decisions emphasizing history, function, and narrow tailoring. The issue is recurring and important. Absolute immunity can extinguish civil-rights claims at the threshold, even when a plaintiff alleges malicious prosecution and knowing reliance on false testimony. If that result is required by § 1983, only this Court can say so. If it is not, only this Court can correct the doctrine.

I. Only This Court Can Reconsider *Imbler*, and the Seventh Circuit Expressly Affirmed on That Basis

The lower courts correctly recognized that they were bound by this Court's precedent. The district court described Petitioner's position as "an argument for the Supreme Court." The Seventh Circuit likewise held that it lacked power to overrule *Imbler*.

This Court instructs lower courts to follow directly controlling precedent, leaving to this Court the prerogative of overruling its own decisions. *Agostini v. Felton*, 521 U.S. 203, 237–38 (1997). The Seventh Circuit relied on *Bosse v. Oklahoma*, 580 U.S. 1 (2016), which reiterated that overruling this Court's precedents is this Court's

“prerogative alone.” That is precisely the point of this petition. Petitioner asks this Court to exercise that prerogative and decide whether absolute prosecutorial immunity, as announced in *Imbler* and expanded in lower courts, remains justified under § 1983.

II. Imbler’s absolute-immunity rule conflicts with § 1983’s text, history, and remedial purpose.

Section 1983 provides that “every person” who, under color of state law, subjects another to the deprivation of federal rights “shall be liable” to the injured party. The statute contains no express exception for prosecutors, municipal attorneys, civil enforcement lawyers, or administrative impoundment advocates.

The Ku Klux Klan Act “creates a species of tort liability that, on its face, admits of no immunities.” *Wyatt v. Cole*, 504 U.S. 158, 163 (1992) citing *Imbler v. Pachtman*, 424 U.S. 409, 417 (1976). The Supreme Court explained why in 1882:

No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives. *United States v. Lee*, 106 U.S. 196, 220 (1882).

The Eleventh Amendment does not shield a prosecutor from prosecution by an individual injured as a result of his actions while performing the duties of his office. “[I]t has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law.” *Scheuer v. Rhodes*, 416 U.S. 232, 237, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974). Moreover, “. . . damages against individual defendants are a permissible remedy in some circumstances notwithstanding the fact that they hold public office.” *Id.* at 238. “Under the criteria developed by precedents of this Court, the Ku Klux Klan Act would be drained of meaning were we to hold that the acts of a governor or other high executive officer have ‘the quality of a supreme and unchangeable edict, overriding all conflicting rights of property and unreviewable through the judicial power of the federal government.’ *Sterling v. Constantin*, 287 U.S., at 397, 53 S.Ct., at 195.” *Id.* at 248.

Though *Scheuer* has never been overruled, a second line of cases has developed over the years that stand in opposition to the holding in *Scheuer*.

When President Abraham Lincoln signed the Emancipation Proclamation on September 22, 1862, it stated that as of January 1, 1863, slaves were free in those areas where the Union Army had been victorious and maintained control. Emancipation Proclamation, January 1, 1863; Presidential Proclamations, 1791-1991; Record Group 11; General Records of the United States Government; National Archives. After the Civil War ended in 1865, Congress saw fit to restructure the Confederate South by passing a series of acts known as the Reconstruction Acts of 1867. United States Statutes at

Large, XIV, 428-29; XV, 2-4, 14-16, 41, reprinted in Robert W. Johannsen, *Reconstruction, 1865-1877* (New York: Free Press, 1970), pages 89-92. The southern land owners, however, were vehemently opposed to the Reconstruction Acts, and sought to subvert them at every turn. “These anti-Reconstruction campaigns included state-sanctioned criminal prosecutions of Union officers and federal officials for attempting to enforce federal laws.” Margaret Z. Johns, *Unsupportable and Unjustified: A Critique of Absolute Prosecutorial Immunity*, 80 *Fordham L. Rev.* 509, 522-23, 525 (2011).

So Congress passed the Ku Klux Klan Act in 1871. *Id.* at 519. “Congress did not intend to insulate Southern prosecutors from liability for these abusive practices; on the contrary, it intended to provide a federal civil rights remedy against them for prosecutorial misconduct.” When Congress adopted the Ku Klux Klan Act in 1871, it “did not intend to provide immunity for prosecutorial misconduct, but rather intended to create a federal remedy establishing prosecutorial liability.” *Id.* at 526. “Congress did not intend to insulate prosecutors from liability for malicious prosecutions, since that was one of the tactics of southern defiance to Reconstruction that the Ku Klux Klan Act was intended to remedy.” *Id.* at 526.

105 years after the passage of the Ku Klux Klan Act, the United States Supreme Court undercut the Ku Klux Klan Act with its ruling in *Imbler v. Pachtman*, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976).

In that case, the court determined that Congress had not intended the Ku Klux Klan Act to undercut those immunities that had been firmly established at common

law. It cited *Tenney v. Brandhove*, 341 U.S. 367, 71 S.Ct. 783, 95 L.Ed. 1019 (1951), the case that determined that state legislators had absolute immunity at common law, and hence were immune from prosecution under the Ku Klux Klan Act. The court went on to cite *Pierson v. Ray*, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed. 288 (1967) with regard to common law absolute immunity for judges. The court cited *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974) as an example of where “the Governor and other executive officials of a State had qualified immunity that varied with ‘the scope of discretion and responsibilities of the office and all the circumstances as they reasonably appeared at the time of the action. . . .’” What the *Imbler* court failed to point out was that the Governor and other executive officials had sought absolute immunity pursuant to the Eleventh Amendment in *Scheuer*, and were denied it. Finally, the *Imbler* court cited *Wood v. Strickland*, 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975), granting qualified immunity to school officials stating that “[w]hile on the basis of common law tradition and public policy, school officials are entitled to a qualified good-faith immunity from liability for damages under the Ku Klux Klan Act, they are not immune from such liability if they knew or reasonably should have known that the action they took within their sphere of official responsibility would violate the constitutional rights of the student affected, or if they took the action with the malicious intention to cause a deprivation of such rights or other injury to the student.”

Of the four cases relied upon by the *Imbler* court, only *Tenney* and *Pierson* conferred absolute immunity based upon common law absolute immunity. Absolute immunity in *Scheuer* was sought under the Eleventh Amendment,

and denied. Since only qualified immunity was conferred in *Scheuer* and *Wood*, governors and school officials can be found liable under the Ku Klux Klan Act. So the *Imbler* court's reliance on these last two cases to confer absolute immunity upon prosecutors was misplaced.

The *Imbler* court failed to take two important notions into account: (1) In 1871 when Congress passed the Ku Klux Klan Act, there was no common law immunity for prosecutors, 80 Fordham L. Rev. 509, *supra* at 522; hence, Congress could not have intended to retain a common law rule that did not yet exist, *id.* at 526, and (2) the Ku Klux Klan Act was not enacted to confer liability upon legislators, judges, governors or school officials. It was enacted to confer liability upon state and local officials who were abusing their positions of authority with regard to initiating civil and criminal prosecutions, *i.e.*, prosecutors. 80 Fordham L. Rev. 509, *supra* at 510. Therefore, exceptions can be made for the amount of immunity conferred upon other state actors. No exceptions can be made for the amount of immunity conferred upon prosecutors, however, because they were the primary target of that legislation. Had they had common law immunity, the Ku Klux Klan Act would have stripped them of it. "The normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific." *Costar Group, Inc. v. Loopnet, Inc.*, 373 F.3d 544 (4th Cir. 2004) citing *Midlantic Nat'l Bank v. N.J. Dep't of Env'tl. Prot.*, 474 U.S. 494, 501, 106 S.Ct. 755, 88 L.Ed.2d 859 (1986) (citing *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 266-67, 99 S.Ct. 2753, 61 L.Ed.2d 521 (1979)). The Ku Klux Klan Act made the intention to hold prosecutors accountable abundantly

clear. Therefore, prosecutors have no immunity from liability for malicious prosecutions.

The *Imbler* court relied heavily on a case decided by the Indiana Supreme Court, to wit, *Griffith v. Slinkard*, 146 Ind. 117, 117 N.E. 1001 (1896). The *Imbler* court pointed out that “[t]he *Griffith* view on prosecutorial immunity became the clear majority rule on the issue.” *Imbler v. Pachtman*, 424 U.S., at 422. The *Griffith* court, in turn, relied on the Massachusetts case of *Parker v. Huntington*, 2 Gray, 124. The *Griffith* court found that *Parker* stood for the proposition that “[t]here is . . . no more liability against the prosecuting attorney than there is against the grand jury for the return of an indictment maliciously and without probable cause.” *Griffith v. Slinkard*, 117 N.E. at 1002. However, *Parker* doesn’t stand for that at all. The Indiana Supreme Court got it wrong. In *Parker*, the complaint purported to state a cause of action for conspiracy, and the defendants demurred. However, the demurrer was overruled, because the facts appeared to lay out an action that sounded in tort. In particular, *Parker* went on to say that “[t]he plaintiff can maintain his case by proof of a malicious prosecution by both or either of the defendants. *Payson v. Caswell*, 22 Maine, 226. *Dunlap v. Glidden*, 31 Maine, 435. *Jones v. Baker*, 7 Cow, 445. It necessarily follows from these principles and authorities, that the present action must depend upon the well settled rules applicable to action on the case for a malicious prosecution; . . . ” *Parker v. Huntington*, 2 Gray, at 128. In a cruel irony, the case that has been interpreted to confer absolute prosecutorial immunity in fact confers prosecutorial liability. The *Imbler* court found the disparity, but dismissed it by stating that *Parker* “involved the elements of a malicious prosecution cause of

action rather than the immunity of a prosecutor.” *Imbler v. Pachtman*, footnote 18.

The real tragedy, however, is that so many cases have relied on the *Griffith* reading. The *Imbler* court cited several, *Smith v. Parman*, 101 Kan. 115, 165 P. 663 (1917); *Semmes v. Collins*, 120 Miss. 265, 82 So. 145 (1919); *Kittler v. Kelsch*, 56 N.D. 227, 216 N.W. 898 (1927); *Watts v. Gerking*, 111 Or. 654, 228 P. 135 (1924) (on rehearing). Contra, *Leong Yau v. Carden*, 23 Haw. 362 (1916). *Imbler v. Pachtman*, footnote 19.

The case the *Imbler* court most relied upon, however, was *Yaselli v. Goff*, 12 F.2d 396 (1926), affirmed in a *per curiam* opinion at *Yaselli v. Goff*, 275 U.S. 503, 48 S.Ct. 155, 72 L.Ed. 395 (1927). The *Yaselli* court, like scores of courts before it, also relied heavily on the *Griffith* reading of *Parker*, a reading which we now know was incorrect. In the end, after reviewing several state holdings for and against absolute prosecutorial immunity, the *Yaselli* court determined that “[t]he immunity is absolute, and is grounded on principles of public policy.” *Yaselli v. Goff*, 12 F.2d, at 406. The *Imbler* court followed suit by stating that “[w]e now must determine whether the same considerations of public policy that underlie the common-law rule likewise countenance absolute immunity under the Ku Klux Klan Act. We think they do.” *Imbler, supra*, at 424.

The reasoning the *Yaselli* court employed, however, was flawed. The *Yaselli* court said, “The rule of responsibility of a public officer, as held by the courts, is said to be that, if the duty which the official authority imposes upon an officer is a duty to the public, a failure to perform it, or

an erroneous performance, is regarded as an injury to the public, and not as one to the individual. It is to be redressed in some form of public prosecution, and not by a private person who conceives himself specially injured. Cooley on Torts (3d Ed.) vol. 2, p. 756. In *Thibodaux v. Thibodaux[sic]*, 46 La. Ann. 1528, 16 So. 450, it is said: ‘Officials in the performance of a duty imposed by law cannot be held in damages for acts done strictly within the lines of official duty.’” *Yaselli v. Goff*, 12 F.2d 396, 404 (2d Cir. 1926) *aff’d*, 275 U.S. 503, 48 S.Ct. 155, 72 L.Ed. 395 (1927). Here is the part the *Yaselli* court left out: “When it is alleged that a municipal corporation has executed a lawful power in an injurious and malicious manner, the presumption will be in favor of the propriety and good faith of the acts of the corporation, and the complainant must make out a clear case of willful oppression to obtain relief. (Citation omitted) The acts of the corporation of the town of Thibodeaux have not been shown to be such acts as were not vested in the corporation by the charter of the town, or that they were improperly, wantonly, and maliciously done. We are therefore of opinion that the plaintiff is without cause of action against the defendants. (Citation omitted)” *Thibodaux v. Town of Thibodeaux*, 46 La. Ann. 1528, 1530, 16 So. 450, 451 (1894). In other words, *Thibodaux* conferred qualified, not absolute, immunity.

The problem with both the *Yaselli* and the *Imbler* holdings is that the canons of statutory interpretation require that the intent of the statute not be undercut. “However well these rules may serve at times to decipher legislative intent, they long have been subordinated to the doctrine that courts will construe the details of an act in conformity with its dominating general purpose, will read text in the light of context and will interpret the text so far

as the meaning of the words fairly permits so as to carry out in particular cases the generally expressed legislative policy.” *SEC v. Joiner*, 320 U.S. 344, 35051. But both holdings did exactly the opposite. Both holdings elected to eviscerate the Ku Klux Klan Act and subordinate the intent of Congress to that of the Court. *Kalina v. Fletcher*, footnote 11.

21 days after the U.S. Supreme Court decided *Imbler*, it decided *Paul v. Davis*, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed. 405 (1976). In *Paul*, the court determined that defamation alone was not actionable under the Ku Klux Klan Act, that the claim needed to be combined with some other tangible property loss. This case is important, because Judge Posner relied upon it heavily in *Albright v. Oliver*, 975 F.2d 343 (C.A.7 (Ill.), 1992). “Malicious prosecution, whether civil or criminal, resembles defamation.” *Albright v. Oliver*, 975 F.2d, at 345. Judge Posner goes on to say that “. . . like defamation, malicious prosecution can be a component of a constitutional tort.” *Albright v. Oliver*, 975 F.2d, at 346. The U.S. Supreme Court granted *certiorari*, *Albright v. Oliver*, 510 U.S. 266, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994), and went on to say that “it is the Fourth Amendment, and not substantive due process, under which petitioner *Albright*’s claim [for malicious prosecution] must be judged.” *Albright v. Oliver*, 510 U.S., at 271, 114 S.Ct., at 811. It is Justice Stevens, joined by Justice Blackmun, dissenting, however, who had the most telling comment, to wit, “. . . an official accusation of serious crime has a direct impact on a range of identified liberty interests. That impact, moreover, is of sufficient magnitude to qualify as a deprivation of liberty meriting constitutional protection.” *Albright v. Oliver*, 510 U.S., at 296.

The question to be asked is whether or not the freedom from a false “official accusation of serious crime” is a right that should be afforded the benefit of U.S. Constitutional Amendment protection. When conferring that benefit on rights in the past, the U.S. Supreme Court has asked whether the “right is among those ‘fundamental principles of liberty and justice which lie at the base of all our civil and political institutions,’ (Citations omitted); whether it is ‘basic in our system of jurisprudence,’ (Citations omitted); and whether it is ‘a fundamental right, essential to a fair trial,’ (Citations omitted).” *Duncan v. State of Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968). Clearly, it is. Therefore, the Fifth Amendment guarantee that “[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury” should be imputed to the states via the Fourteenth Amendment.

“In the wake of *Albright*, the courts of appeals have diverged, some finding that the Ku Klux Klan Act does not provide a malicious prosecution cause of action, some that it does, some that it might. The Third Circuit has adopted a variation of the theory offered by the *Lamberts* (Citations omitted) (*Albright* stands for the broader proposition that a section 1983 [malicious prosecution] claim may be based on a constitutional provision other than the Fourth Amendment.’), but no other circuit has followed suit. At least two circuits have indicated that the common law elements of malicious prosecution may establish a Fourth Amendment violation with respect to defendants acting under color of state law. (Citations omitted) Others have held that the malicious prosecution claim under the Ku Klux Klan Act is properly understood as a Fourth Amendment claim for unreasonable seizure

which incorporates certain elements of the common law tort. (Citations omitted)” *Wilkerson v. Hester*, 114 F.Supp.2d 446, 460 (W.D.N.C., 2000).

Finally, footnote 2 of U.S. Supreme Court case *Price v. Montgomery Cnty., Ky.*, No. 23-649 (July 2, 2024), speaks volumes. It reads:

Absolute prosecutorial immunity in theory is limited to “the immunity historically accorded . . . at common law and the interests behind it.” *Imbler*, 424 U.S., at 421; but see *Kalina v. Fletcher*, 522 U.S. 118, 132 (1997) (Scalia, J., concurring) (“There was, of course, no such thing as absolute prosecutorial immunity when §1983 was enacted”). Further, as Judge Nalbandian discussed in his opinion below, recent scholarship details that the 1871 Civil Rights Act included language abrogating common-law immunities that was, for unknown reasons, omitted from the first compilation of federal law. 72 F. 4th 711, 727, n. 1 (CA6 2023) (opinion concurring in part and concurring in judgment) (“So, according to this recent scholarship, because the Civil Rights Act of 1871 explicitly abrogated the common-law immunities grounded in state law, those immunities are abrogated now sub *silentio* under the current version of §1983” (citing *Rogers v. Jarrett*, 63 F. 4th 971, 980 (CA5 2023) (Willet, J., concurring)); Civil Rights Act of 1871, 17 Stat. 13; A. Reinert, *Qualified Immunity’s Flawed Foundation*, 111 Cal. L. Rev. 201, 235 (2023)). This new scholarship

reinforces why, at a minimum, this immunity doctrine should be employed sparingly.

This case squarely presents that issue. Petitioner alleged that Respondent prosecuted an impoundment proceeding based on false testimony and without a lawful foundation. Yet his claim was dismissed at the pleading stage because absolute immunity applies even to malicious, unreasonable, or knowingly false prosecution-related conduct. That is a severe rule. If the text and history of § 1983 do not compel it, the rule should be reconsidered.

III. This case is an appropriate vehicle to decide whether absolute immunity should extend to civil municipal impoundment prosecutions.

Even if this Court does not overrule *Imbler* in full, it should grant review to decide whether *Imbler* should be extended to municipal civil enforcement proceedings such as vehicle-impoundment prosecutions.

Respondent was not a state criminal prosecutor seeking a conviction. He was an Assistant Corporation Counsel prosecuting a municipal administrative impoundment proceeding. The proceeding concerned petitioner's property—his vehicle—and the assessment of storage fees. The later administrative ruling determined that the City had not met its burden and ordered the vehicle released.

The Seventh Circuit nevertheless treated Respondent as absolutely immune because he functioned in an enforcement role analogous to a prosecutor. That extension comes from lower-court doctrine, including *Mendenhall v.*

Goldsmith, 59 F.3d 685 (7th Cir. 1995), and *Smith v. Power*, 346 F.3d 740 (7th Cir. 2003). This case presents a clean opportunity to decide whether that extension is consistent with § 1983 and this Court’s functional-immunity cases.

Municipal impoundment proceedings can impose serious burdens on individuals. A vehicle may be essential for work, family, medical care, and daily life. Storage fees can accumulate beyond a person’s ability to pay, effectively depriving the owner of property even before final adjudication. When a municipal attorney allegedly continues such a proceeding using false testimony or without a lawful basis, the availability of a federal remedy is not an abstract question.

Absolute immunity is especially problematic in this context because the public-policy justifications identified in *Imbler* are at their weakest. A municipal attorney in an administrative impoundment hearing does not exercise the same sovereign charging discretion as a criminal prosecutor deciding whether to initiate felony charges. The proceeding is civil and property-focused. It involves municipal revenue and administrative enforcement. Qualified immunity, rather than absolute immunity, would protect reasonable officials while preserving a remedy for knowing or malicious constitutional violations.

This Court’s functional approach supports that narrower rule. *Buckley* and *Kalina* teach that courts should look to the function performed, not the title of the actor. Here, the function was municipal administrative enforcement affecting property, not criminal advocacy at trial. At minimum, the Court should decide whether *Imbler*’s absolute immunity applies in this setting.

IV. The question is recurring and exceptionally important.

The scope of prosecutorial immunity affects civil-rights litigation nationwide. Absolute immunity bars claims before discovery, before factual development, and regardless of the seriousness of the alleged misconduct. It can foreclose relief even for plaintiffs who allege that government lawyers knowingly used false testimony or pursued proceedings without probable cause.

This Court has recognized a Fourth Amendment malicious-prosecution claim under § 1983. See *Thompson v. Clark*, 142 S.Ct. 1332 (2022). And in *Chiaverini v. City of Napoleon*, 144 S.Ct. 1745 (2024), this Court confirmed that a Fourth Amendment malicious-prosecution claim may proceed as to charges unsupported by probable cause even when other charges are supported. But where absolute immunity applies, the right may exist without a remedy against the official most responsible for initiating or pursuing the challenged proceeding. That remedial gap is difficult to reconcile with § 1983's command that every person acting under color of law who causes a constitutional deprivation shall be liable to the injured party.

The issue also has systemic consequences. Absolute immunity may reduce incentives for care, candor, and accountability in enforcement proceedings. Petitioner does not ask this Court to expose prosecutors or municipal attorneys to liability for reasonable advocacy, good-faith mistakes, or discretionary decisions protected by qualified immunity. Petitioner asks only that government attorneys not receive categorical immunity when they allegedly

prosecute without a lawful basis or knowingly rely on false evidence.

This case is a suitable vehicle because the lower courts identified the dispositive legal issue and resolved it solely under *Imbler*. The record is uncomplicated. The district court dismissed at the pleading stage. The Seventh Circuit affirmed because it lacked authority to reconsider this Court's precedent. The petition therefore presents the immunity question directly and cleanly.

CONCLUSION

For the foregoing reasons, the petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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September 3, 2026

APPENDIX

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1a

**APPENDIX A — ORDER OF THE UNITED
STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT, FILED JUNE 5, 2026**

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 25-1806
No. 23 CV 16000

ANDRE L. ECHOLS, JR.,

Plaintiff-Appellant,

v.

TOM HANSEL,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division

Submitted June 2, 2026*
Decided June 5, 2026

Before

CANDACE JACKSON-AKIWUMI, *Circuit Judge*
JOHN Z. LEE, *Circuit Judge*
REBECCA TAIBLESON, *Circuit Judge*

* We have granted the appellant's motion to waive oral argument and have agreed to decide the case on the briefs and the record. FED. R. APP. P. 34(f).

*Appendix A*John J. Tharp, Jr., *Judge*.**ORDER**

Andre Echols appeals the district court’s dismissal of his suit alleging malicious prosecution. *See* 42 U.S.C. § 1983. Because Echols concedes that he cannot prevail unless we overrule *Imbler v. Pachtman*, 424 U.S. 409 (1976), we affirm.

After a February 2019 traffic stop, Chicago police impounded Echols’s car. Assistant Corporation Counsel Tom Hansel prosecuted the impoundment in August 2019, and an administrative law judge upheld the impoundment and ordered Echols to pay storage fees. The car was released from impoundment in November 2022 after a second administrative law judge determined the city had not met its burden of proof.

In 2023, Echols sued Hansel for malicious prosecution and for soliciting a police officer’s false testimony.[†] The district court dismissed Echols’s complaint, concluding that *Imbler* foreclosed his claims. In *Imbler*, the Supreme

[†]. Echols also sued the two Chicago police officers who conducted the traffic stop and impounded his car, alleging civil conspiracy and violations of his rights under the Fourth and Fourteenth Amendments. The district court dismissed those claims as moot because Echols had raised substantively identical allegations against the officers in an earlier case and lost at summary judgment. *See Echols v. Niznik*, No. 20-CV-2226 (N.D. Ill. Apr. 29, 2025). Echols does not challenge the court’s mootness determination, and so we do not review it here.

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Court held that prosecutors are entitled to absolute immunity for actions taken while initiating and pursuing prosecutions. *See* 424 U.S. at 427; *see also Mendenhall v. Goldsmith*, 59 F.3d 685, 691 (7th Cir. 1995) (absolute immunity bars suit when an attorney in civil proceedings “function[s] in an enforcement role analogous to that of a prosecutor”).

On appeal, Echols concedes that *Imbler* controls and asks us to reconsider the holding in that case. He contends that the holding of *Imbler* is overbroad because neither the common law nor the federal statutory scheme conferred absolute immunity on prosecutors at the time *Imbler* was decided. But we lack the power to overrule Supreme Court precedent. *See, e.g., Bosse v. Oklahoma*, 580 U.S. 1, 3 (2016) (“[I]t is [the Supreme] Court’s prerogative alone to overrule one of its precedents.” (quoting *United States v. Hatter*, 532 U.S. 557, 567 (2001))). “If *Imbler* is to be overruled, only the Supreme Court itself can overrule it.” *Foreman v. Wadsworth*, 844 F.3d 620, 624 (7th Cir. 2016).

AFFIRMED

4a

**APPENDIX B — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF ILLINOIS, EASTERN DIVISION,
FILED APRIL 29, 2025**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 23 CV 16000

ANDRE L. ECHOLS, JR.,

Plaintiff,

v.

OFFICER PETER NIZNIK, OFFICER ERIK
ALBRIGHT, AND ASSISTANT CORPORATION
COUNSEL TOM HANSEL,

Defendants.

Signed April 29, 2025

ORDER

Defendant Hansel's motion to dismiss the complaint [16] is granted. The dismissal is with prejudice. The claims against the defendant officers Niznik and Albright, and any other pending motions, are denied as moot. Final Judgment will be entered. Civil case terminated.

*Appendix B***STATEMENT**

This case is related to Case Number 20-CV-2226. In that case, the plaintiff asserted a claim, supported by multiple legal theories, against defendant Officers Peter Niznik and Erik Albright. In another ruling issued contemporaneously with this ruling, the Court has granted summary judgment in favor of Officers Niznik and Albright in the 2226 case. The facts and claim in this case as to the officers are substantively the same as asserted in this case, *see* Case No. 20-CV-2226, ECF No. 16 (Second Amended Complaint), and the entry of summary judgment for the officers moots the claims asserted in this case.

The only thing new in this case is the addition of Assistant Corporation Counsel Tom Hansel as a defendant. Mr. Hansel prosecuted the initial hearing on the impoundment of Mr. Echols' car in August 2019. Count VII of the complaint in this case asserts a malicious prosecution claim against Mr. Hansel.¹ Mr. Echols alleges that Mr. Hansel argued at the hearing that the impoundment was lawful because of the drugs found in the vehicle when, in fact, "the true issue was whether the car should have been impounded at all given that plaintiff was driving on a valid Indiana license." Compl. ¶ 16. Mr. Echols' premise is that his Illinois license was not suspended but had been surrendered when he obtained

1. The malicious prosecution claim is also directed at Officer Albright, but as noted above, the claim is moot as to Officer Albright (and Officer Niznik) because the court has found that the officers had probable cause to believe that Mr. Echols was driving on a suspended license in violation of Illinois law.

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his Indiana license, and that there was no lawful basis to impound the car. *Id.* at ¶13.

Putting aside the evidence adduced in Case No. 20-CV-2226 that establishes that Illinois records reported that his Illinois license was suspended when he was stopped by Officers Albright and Niznik,² Mr. Echols' new claim fails because Mr. Hansel enjoys absolute immunity for prosecutorial acts. *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976). "To free the judicial process from the harassment and intimidation associated with frivolous litigation, the Supreme Court has held that in initiating a prosecution and in presenting the State's case, the prosecutor is immune from a civil suit for damages." *Anderson v. Simon*, 217 F.3d 472, 475 (7th Cir. 2000). "The immunity covers civil proceedings where the prosecutor "function[s] in an enforcement role analogous to' his role in criminal proceedings. *Smith v. Power*, 346 F.3d 740, 742 (7th Cir. 2003) (quoting *Mendenhall v. Goldsmith*, 59 F.3d 685, 691 (7th Cir. 1995))." *Shachter v. City of Chicago*, 848 F. App'x 208, 209 (7th Cir. 2021). As such, it applies not only to state prosecutors, but also to municipal attorneys conducting enforcement litigation. *See, e.g., id.* (affirming absolute immunity of city attorneys prosecuting municipal code violations); *Johnson v. City of Joliet*, No. 1:04CV06426, 2006 WL 1793574, at *5 (N.D. Ill. June 27, 2006) (absolute immunity bars claim against Assistant

2. That evidence supported summary judgment in favor of the officers in Case No. 20-CV-2226, but does not come into play with regard to the claim against Mr. Hansel as the motion under consideration is a motion to dismiss rather than a motion for summary judgment.

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Corporation Counsel who was acting within scope of her authority when she filed the Ordinance Violation Complaint); *Saniat v. City of Chicago*, No. 96 C 5191, 1997 WL 45304, at *2 (N.D. Ill. Jan. 30, 1997) (Chicago Corporation Counsel and Assistant Corporation Counsel shielded by absolute prosecutorial immunity).

Mr. Echols makes no argument that Mr. Hansel was acting outside the scope of his prosecutorial function. To the contrary, he expressly alleges that Mr. Hansel “prosecuted the impoundment of the plaintiff’s red Corvette,” Compl. ¶16, and makes no allegation that Mr. Hansel had anything to do with the investigation of Mr. Echols’ conduct prior to that proceeding. He does maintain that Hansel knew or should have known that the information provided by Officer Albright concerning Mr. Echols’ license was false, but that does nothing to advance his malicious prosecution claim since “absolute immunity shields prosecutors even if they act ‘maliciously, unreasonably, without probable cause, or even on the basis of false testimony or evidence.’” *Smith v. Power*, 346 F.3d at 742 (quoting *Henry v. Farmer City State Bank*, 808 F.2d 1228, 1238 (7th Cir. 1986)).

The plaintiff’s only argument in defense of his claim against Mr. Hansel is that *Imbler* and its progeny were wrongly decided and make for bad public policy. ECF No. 18, Response, at 1 (“Defendant Hansel should not be given absolute immunity, because the court in *Imbler v. Pachtman*, 424 US [sic] 409 (1976), misinterpreted the cases it relied on to reach its holding.”). That is an argument for the Supreme Court, not this one. *Imbler*

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is binding upon this court until the Supreme Court says otherwise. As the Court has repeatedly confirmed: “If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.” *Agostini v. Felton*, 521 U.S. 203, 237-38, (1997).

The court will therefore facilitate Mr. Echols’ efforts to take his argument to the Supreme Court by dismissing this case with prejudice. No amendment of the complaint will address Mr. Echols’ argument, which is purely a question of law. Final Judgment will be entered on behalf of Mr. Hansel and the defendant officers.

Dated: April 29, 2025

/s/ John J. Tharp, Jr.

John J. Tharp, Jr.

United States District Judge

APPENDIX C — CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment to the United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fourteenth Amendment to the United States Constitution, 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.

42 U.S.C. § 1983 – Civil Action for Deprivation of Rights

The text of 42 U.S.C. § 1983 provides:

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

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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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

28 U.S.C. § 1254(1) – Courts of Appeals; Certiorari

Cases in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.