Fraud, Mistake, and Section 1983 Prison Claims: Why the Federal Rules of Civil Procedure Should Be Amended To Require Heightened Pleading For Section 1983 Inmate Litigation

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FRAUD, MISTAKE, AND SECTION 1983 PRISON CLAIMS: WHY THE FEDERAL RULES OF CIVIL PROCEDURE SHOULD BE AMENDED TO REQUIRE HEIGHTENED PLEDING FOR SECTION 1983 INMATE LITIGATION

INTRODUCTION

Section 1983 of the Civil Rights Act\(^1\) was enacted to provide equal treatment to all U.S. citizens, prisoners, and nonprisoners alike.\(^2\) Now, however, claims brought by prisoners under Section 1983 flood the federal civil court docket, creating a nuisance and wasting valuable judicial resources.\(^3\) This is particularly true in states that require fact pleading because the federal system requires merely plausibility or notice pleading;\(^4\) therefore, prisoners in those states are more likely encouraged to engage in forum shopping by filing their lawsuit in federal courts.\(^5\)

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While federal courts require notice pleading or plausibility pleading, some states, including Illinois and several others, require fact pleading—a heightened standard. Conley v. Gibson, a U.S. Supreme Court case, mandated notice pleading for federal courts and held that Federal Rule of Civil Procedure 8 only requires a short and plain statement in the complaint that gives the defendant fair notice of the suit. Bell Atlantic Corp. v. Twombly and Ashcroft v. Iqbal may have heightened the federal pleading standard, but the U.S. Supreme Court has maintained that the federal standard remains below heightened pleading. Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, another U.S. Supreme Court case, held that heightened pleading is not appropriate for federal Section 1983 claims alleging municipal liability. Despite this holding, many circuit courts continue to require heightened pleading for Section 1983 claims in

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7. 735 ILL. COMP. STAT. 5/2-603 (2014) (“All pleadings shall contain a plain and concise statement of the pleader’s cause of action, counterclaim, defense, or reply.”).

[T]he basic law regarding the nature of a complaint requires that it contain a statement of facts constituting the cause of action claimed. A complaint that does not allege facts, the proof of which are necessary to entitle a plaintiff to judgment, fails to state a cause of action. The complaint must contain factual allegations of every fact which must be proved in order for the plaintiff to be entitled to judgment on the complaint, and a judgment cannot be rendered on facts demonstrated by evidence at trial unless those facts shown were alleged in the complaint.

Beckman v. Freedom United Coal Mining Co., 527 N.E.2d 303, 305 (Ill. 1988) (quoting In re Beatty, 517 N.E.2d 1065, 1069 (Ill. 1987)).


10. But see Twombly, 550 U.S. at 547 (holding that there is not a heightened pleading requirement, but plaintiffs must plead “enough facts to state a claim to relief that is plausible on its face”).


12. Erikson v. Pardus, 551 U.S. 89, 93 (2007) (per curiam) (reaffirming that “[Federal Rule of Civil Procedure 8] requires only ‘a short and plain statement of the claim showing that the pleader is entitled to relief.’ Specific facts are not necessary; the statement need only ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” (second alteration in original) (citation omitted) (quoting Twombly, 550 U.S. at 555)).


14. Id. at 168–69.
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other contexts because Leatherman’s holding is limited to municipal liability.15

There are three main reasons for subjecting Section 1983 prison claims to a heightened pleading standard. First, and most importantly, differing pleading standards in federal and state courts encourage forum shopping16 and the flood of Section 1983 claims reduces the federal courts’ efficiency—especially in states that require fact pleading.17 When federal courts decide Section 1983 claims, the state statute of limitations, immunities, and privileges standards are already borrowed from the forum state;18 thus the state’s heightened pleading standards should be borrowed as well. Second, Section 1983 prison claims should be made an exception to federal notice pleading—a low pleading standard—for the same principle that fraud and mistake are exceptions:19 claims that are quasi-criminal require a heightened pleading standard. Section 1983 prison claims are quasi-criminal and fit into the current exception to notice pleading.20 Third, despite the U.S. Supreme Court’s reiteration that federal courts require notice pleading,21 many circuit courts, in practice, continue to require heightened pleading in certain instances.22

17. See Interview with Michael Pasquinelli, a Chicago attorney who defends Section 1983 claims in federal court (Oct. 3, 2014) (on file with author). Pasquinelli predicts that if Section 1983 prison claims were subjected to a heightened pleading standard similar to that of the state of Illinois, more attention could be given to claims of merit.
19. See generally Fed. R. Civ. P. 9(b) (“In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.”).
20. See, e.g., United States ex rel. Atkins v. McInteer, 470 F.3d 1350, 1360 (11th Cir. 2006) (“Requiring relators to plead FCA claims with particularity is especially important in light of the quasi-criminal nature of FCA violations (i.e., a violator is liable for treble damages). Rule 9(b) ensures that the relator’s strong financial incentive to bring an FCA claim—the possibility of recovering between fifteen and thirty percent of a treble damages award—does not precipitate the filing of frivolous suits.”). The False Claims Act (FCA) authorizes any private person to bring an action in the name of the United States against anyone who files a claim proscribed by the FCA. 31 U.S.C § 3730(b)(1) (2012). Subjecting a person to triple the damages is arguably quasi-criminal because the litigants have more on the line than a typical civil suit. This is akin to criminal suits where a litigant is subject to larger fines and possibly jail time.
22. See Christopher M. Fairman, Heightened Pleading, 81 TEX. L. REV. 551, 582–84 (2002). Before 1993, federal courts required notice pleading for several reasons, including the desire to
Some scholars claim that Section 1983 claims should not be subjected to a heightened pleading standard, but they are mistaken. These scholars’ arguments focus on the correlation between the heft of a pleading and the success of a case,23 the benefits of meritless litigation,24 and the prisoners’ sympathetic nature; however, courts cannot reap justice for prisoners when they are too clogged by Section 1983 prison claims.25 Once the Federal Rules of Civil Procedure are amended to require a heightened pleading standard for these claims, the decongested federal court docket will bring efficiency to all states.26

Part II of this Comment discusses the background of Section 1983 pleading requirements in federal court, the relevant U.S. Supreme Court cases relating to these requirements, pleading standards for state and federal courts, the common types of Section 1983 prison claims, and the quasi-criminal nature of the prisoners’ claims that flood the docket.27 Part III of this Comment argues that a heightened pleading standard should apply to Section 1983 prison claims in federal court, particularly in states that adhere to fact pleading, because: (1) federal notice pleading encourages forum shopping, which over-crowds the federal docket; (2) Section 1983 prison claims are quasi-prevent vexatious litigation and protect the municipalities. United States v. City of Philadelphia, 644 F.2d 187, 206 (3d Cir. 1980) (requiring fact pleading because the potential for frivolous suits causes municipal defendants to suffer expense and harassment). After 1993, the use of heightened pleading was struck down for Section 1983 cases against municipalities. Leatherman v. Tarrant Cty. Narcotics & Intelligence Coordination Unit, 507 U.S. 163, 168 (1993). Nonetheless, federal courts were still unsure about whether heightened pleading was permitted. Some courts disallowed heightened pleading, some permitted heightened pleading in all but municipal liability actions, and others permitted heightened pleading when intent was an element of the claim. See, e.g., Judge v. City of Lowell, 160 F.3d 67, 72–73 (1st Cir. 1998), overruled by Educadores Puertorriqueños en Acción v. Hernandez, 367 F.3d 61 (1st Cir. 2004) (describing the requirement that an illegal motive be pled with specific, nonconclusory facts still survives Leatherman); Edington v. Mo. Dep’t of Corr., 52 F.3d 777, 779 n.3 (8th Cir. 1995), abrogated by Doe v. Cassel, 403 F.3d 986, 988–89 (8th Cir. 2005) (per curiam) (explain that Leatherman struck down heightened pleading for complaints seeking damages against government officials, but heightened pleading may still apply in individual capacity suits); Baxter v. Vigo Cty. Sch. Corp., 26 F.3d 728, 743 (7th Cir. 1994), superseded by statute on other grounds as recognized in Guzman v. Sheahan, 495 F.3d 852 (7th Cir. 2007) (“There is no heightened pleading requirement for civil rights actions.”); see also infra notes 253–88.

26. See infra notes 304–13 and accompanying text.
27. See infra notes 32–182 and accompanying text.
criminal offenses; and (3) many circuits already apply a heightened pleading standard for Section 1983 prison claims in practice.\(^{28}\) Part III of this Comment also debunks the popular arguments against implementing a heightened pleading standard for Section 1983 prison claims.\(^{29}\) Finally, Part IV of this Comment explains the impact of an amendment to the Federal Rules of Civil Procedure that would require fact pleading for Section 1983 prison claims.\(^{30}\) This Part notes that subjecting prisoners to heightened pleading for Section 1983 claims will clear the congestion in federal courts, discourage forum shopping, and bring uniformity to federal and state courts.\(^{31}\)

## II. BACKGROUND

### A. An Introduction to Section 1983

Section 1983 of the Civil Rights Act provides a cause of action to those whose constitutional or legal rights are infringed on by state or federal government actors.\(^{32}\) It was enacted to enforce equality and combat racism during the 1960s.\(^{33}\) In fact, “Section 1983 was originally known as Section 1 of the Ku Klux Klan Act of 1871.”\(^{34}\) The Act “does not mention race, . . . but it was originally passed specifically to help African-Americans enforce the new constitutional rights” enacted after the Civil War.\(^{35}\) “Although these Amendments became law, white . . . judges in the state courts refused to enforce these [Amendments]”\(^{36}\) so a federal remedy was necessary. Hence, Section 1983 was enacted.

When the U.S. Supreme Court decided *Monroe v. Pape*\(^{37}\) in 1961, it transformed Section 1983 into a valuable tool for state prisoners be-
cause the Court stated that the Act was meant as a supplemental federal remedy to state laws.\textsuperscript{38} In \textit{Monroe}, petitioners brought a Section 1983 suit against state police officers and city officials arguing that the warrantless search of their home, and ultimately their warrantless arrest, violated their constitutional rights.\textsuperscript{39} The Court addressed whether the petitioners could file a Section 1983 claim against state government officials in federal court.\textsuperscript{40} The Court in \textit{Monroe} held that Section 1983 applies to state officials because state officials act under the color of law.\textsuperscript{41} Additionally, the Court held that the individuals injured under the Act were entitled to a federal remedy even if the state actors violated a state law.\textsuperscript{42} This meant that state prisoners could file federal claims in federal court when federal or state government officials wronged them. Once Section 1983 became a federal remedy for people injured by state government actors, prisoners soon began to file more federal suits challenging state prison abuses.\textsuperscript{43}

A Section 1983 claim is comprised of four elements: (1) a violation of rights protected by the U.S. Constitution or other federal law; (2) a proximate cause linking the violation of rights and the action complained of; (3) a person causing the violation of rights; and (4) the person’s action is taken under color of law (statute, regulation, custom, or usage of any state, territory, or district).\textsuperscript{44} A plaintiff can

\begin{itemize}
  \item \textsuperscript{38} \textit{Id.} at 174–77; \textit{Schwartz}, supra note 18, at 2.
  \item \textsuperscript{39} \textit{Monroe}, 365 U.S. at 170.
  \item \textsuperscript{40} \textit{Id.} at 180–83.
  \item \textsuperscript{41} \textit{Id.} at 187; \textit{Schwartz}, supra note 18, at 1–2.
  \item \textsuperscript{42} \textit{Monroe}, 365 U.S. at 187.
  \item \textsuperscript{43} \textit{Schwartz}, supra note 18, at 1–3 (“With \textit{Monroe} opening the door to the federal courthouse, constitutional litigation against state officials developed. Later, plaintiffs seeking monetary damages sued not only state officials, but began to sue cities and counties as well. They also sought prospective injunctive relief against state officials. Ultimately, the federal court became the principal forum for bringing state and local governmental policies and practices into compliance with federal law.” (footnote omitted)). Before Section 1983 became a remedy against state officials, prisoners could only file Section 1983 lawsuits if they were wronged by federal agents. L.A. Cty. v. Humphries, 562 U.S. 29, 34–38 (2010) (noting how the legislative history shows that municipalities may be subject to prospective relief under Section 1983 only when a violation of federal rights is attributable to enforcement of municipal policy or practice). Now, since Section 1983 became a remedy for citizens wronged by state officials, prisoners can bring lawsuits when wronged by government agents in state prisons as well. \textit{Monroe} v. Pape, 365 U.S. 167, 170–71 (1961), overruled by Monell v. Dep’t of Social Servs. of N.Y.C., 436 U.S. 658 (1978) (explaining that Section 1983 provides a federal remedy independent of state law remedies and is available even when state official acted in violation of state law). Because state and federal government agents are subject to § 1983 liability, the number of lawsuits filed under Section 1983 inherently increased. See Table C-2, supra note 3, for a breakdown of the numbers and types of lawsuits filed in federal courts.
  \item \textsuperscript{44} 42 U.S.C. § 1983 (2012). But see Jerald Jay Director, Annotation, Relief Under Federal Civil Rights Acts, to State Prisoners Complaining of Conditions Relating to Corporal Punishment, Punitive Segregation, or Other Similar Physical Disciplinary Measures, 18 A.L.R. Fed. 7, 14
\end{itemize}
make a claim under Section 1983 by satisfying two main requirements: “(1) the conduct complained of was engaged in under color of state law, and that (2) such conduct subjected the plaintiff to the deprivation of rights, privileges, and immunities secured by the federal Constitution and laws.”

A plaintiff can satisfy the under “color of law” prong by suing government employees and entities for actions executed pursuant to their governmental duties. Therefore, defendants must be government employees acting in a manner pursuant to their duties at the time of the incident. This color of law criterion is usually very clear; however, it becomes difficult when a petitioner sues a private actor not employed by the government but arguably considered a government agent, such as a physician under state contract.

Plaintiffs satisfy the “deprivation of rights” prong by claiming a violation of their constitutional due process rights or a violation of a federal law. To claim a violation of constitutional due process, plaintiffs may assert a procedural or substantive due process claim. Procedural due process claims are brought when a law is unconstitutional because it deprives a person of life, liberty, or property. “A court encountering a procedural due process claim must first determine whether the plaintiff has been deprived of a life, liberty, or property interest that is [constitutionally protected as a matter of substantive law].” Courts examine the process that accompanies the deprivation of a protected right to decide whether the procedural safeguards built into the process are constitutionally adequate. Common Section 1983 claims alleging procedural due process violations fall under the First, Fourth, Eighth, and Fourteenth Amendment to the U.S. Constitution. On the other hand, substantive due process claims are lim-

45. Director, supra note 44, at 14.
46. SCHWARTZ, supra note 18, at 2. Examples of people acting under color of law include police officers and prison employees because they are employed by either the federal or state government. See id. at 82.
47. See, e.g., West v. Adkins, 487 U.S. 42 (1988) (holding that a physician under contract with the state to provide medical services acts under the color of law); Polk Cty. v. Dodson, 454 U.S. 312 (1981) (holding that a public defender does not act under the color of law for purposes of Section 1983).
48. See generally SCHWARTZ, supra note 18, at 34–45 (describing procedural and substantive due process).
49. Id. at 34.
50. Id.
51. Id.
53. See generally id. at 29.
ited to “matters [of] marriage, family, procreation, and the right to bodily integrity.”\textsuperscript{54} In addition to asserting a violation of the U.S. Constitution, plaintiffs can also assert that government officials violated a federal statute.\textsuperscript{55} The National Labor Relations Act and the Medicaid Act are examples of federal statutes actionable under Section 1983.\textsuperscript{56}

When government officials are sued under Section 1983, they often assert the defense of qualified immunity:\textsuperscript{57} a defense for an official who is sued in her individual capacity for damages.\textsuperscript{58} The purpose of qualified immunity is to protect government officials from a burdensome discovery process on insubstantial claims or on claims that assert violations of the law and are not clearly established.\textsuperscript{59} Pearson v. Callahan\textsuperscript{60} altered the way by which courts handle the qualified immunity defense.\textsuperscript{61} Before Pearson, courts were required to first determine if an official violated a constitutional right before deciding if the individual was protected by qualified immunity.\textsuperscript{62} Now, after Pearson, courts may first decide that an individual is protected from suit by qualified immunity and avoid the constitutional determination.\textsuperscript{63} The intersection of Section 1983 and the appropriate pleading standard have an intricate history.

**B. History of Notice Pleading: The Federal Pleading Standard**

Federal courts require notice pleading.\textsuperscript{64} According to Federal Rule of Civil Procedure 8, a pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court’s jurisdiction, unless the court already has jurisdiction and the claim needs

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\textsuperscript{54} Schwartz, supra note 18, at 40 (quoting Albright v. Oliver, 510 U.S. 266, 272 (1994)).

\textsuperscript{55} Id. at 75.

\textsuperscript{56} Id. at 76–77.


\textsuperscript{59} Id. at 501.

\textsuperscript{60} 555 U.S. 223 (2009). Afton Callahan sued police officers who conducted a warrantless search of his home incident to arrest. Id. at 227. The U.S. Supreme Court held that the officers were entitled to qualified immunity because the officers did not violate a clearly established law. Id. at 227.

\textsuperscript{61} Rolfs, supra note 57, at 474

\textsuperscript{62} Id. at 473.

\textsuperscript{63} Id.

no new jurisdictional support; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.65

In 1957, the U.S. Supreme Court coined the term “notice pleading” when it interpreted Federal Rule of Civil Procedure 8 in Conley.66 Petitioners in Conley brought a class action under the Railway Labor Act claiming that the railway union discriminated against African-American employees by failing to represent them.67 The U.S. Supreme Court held that Rule 8 only requires “a short and plain statement of the claim’ that will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.”68 The Court held that the Federal Rules of Civil Procedure do not require a claimant to set forth factual details at the pleading stage.69 Conley stood as a guarantee that civil rights claimants would at least reach the discovery stage without being forced to plead factual details.70

Although notice pleading was the accepted pleading standard for federal claims prior to Leatherman, many federal courts required heightened pleading for Section 1983 prison claims.71 Traditionally, through common law, federal courts required heightened pleading when prisoners brought civil rights claims under Section 1983 in an attempt to weed out frivolous claims.72 In Elliot v. Perez,73 the Fifth Circuit reasoned that the notice pleading rule must be narrowly tailored in Section 1983 prison claims to assure the defendants’ substantive rights are protected from the immense burdens of pretrial preparations that are inherent to Section 1983 claims.74 In Elliot, a grand jury witness brought a Section 1983 claim against a state judge, assistant district attorney, and other officials, claiming that the grand jury proceedings violated her civil rights.75 The district court dismissed the complaint based on the defendant’s assertion of absolute

65. FED. R. CIV. P. 8.
66. Spencer, supra note 64, at 104–05.
68. Id. at 47 (footnote omitted) (quoting FED. R. CIV. P. 8.).
69. Id. at 45–46.
70. Spencer, supra note 64, at 101.
74. Elliot, 751 F.2d at 1479; Blum, supra note 72, at 71.
75. Elliot, 751 F.2d at 1474.
immunity, but the Fifth Circuit Court of Appeals vacated the judgment. In vacating, the court held that because the complaint alleged a Section 1983 violation, the district court should have required the plaintiff to plead specific facts demonstrating a cause of action for a civil rights violation before dismissing the complaint. Similarly, the D.C. Circuit and the Second Circuit required civil rights complaints to plead specific facts. This tradition of requiring plaintiffs to adhere to a heightened pleading standard changed with Leatherman.

In 1993, Leatherman, a landmark U.S. Supreme Court case, defined the necessary pleading standard for Section 1983 claims. In Leatherman, petitioners filed suit under Section 1983 against municipal corporations alleging that the police officers’ conduct while searching their homes violated the Fourth Amendment. The Fifth Circuit Court of Appeals dismissed the case for failure to meet a heightened pleading standard. The U.S. Supreme Court reversed and held that heightened pleading could not be applied in Section 1983 cases. The holding was limited to municipal liability cases, and the U.S. Supreme Court did not address the application of heightened pleading when the defendant is not a municipality. This left open the question of whether heightened pleading could be applied against an individual government officer—a defendant who is not a municipality.

In 2007, Twombly established a new federal pleading standard, but the U.S. Supreme Court and other federal courts still adhered to the lenient standard of pleading stated in Federal Rule of Civil Proce-

77. Id. at 1482.
78. Id. at 1479.
82. Id. at 168–69.
83. Id. at 165.
85. See Leatherman, 507 U.S. at 167–68.
86. Id.; Christopher M. Fairman, The Myth of Notice Pleading, 45 ARIZ. L. REV. 987, 1063 (2003) (explaining that while the rhetoric of Leatherman is sweeping, the holding is very narrow because it only applies to municipal liability cases).
87. Fairman, supra note 22, at 584–85.
dure 8. In **Twombly**, the U.S. Supreme Court reinterpreted Federal Rule of Civil Procedure 8 because it held that a pleading must demonstrate the plausibility of the plaintiff’s claim. This standard came to be known as plausibility pleading. The wording in **Twombly** differed from the language in **Conley** because a short and plain statement is not the same as a plausible statement. Although it appeared that the U.S. Supreme Court stepped away from notice pleading, it stated no intention of departing from the previously accepted rule articulated in **Conley**.

Less than two weeks after **Twombly**, in **Erikson v. Pardus**, the U.S. Supreme Court reiterated that Rule 8’s simple “short and plain statement” requirement remained the accepted pleading standard for federal courts. In **Erikson**, a prisoner filed a pro se Section 1983 claim alleging that prison medical officials diagnosed him with hepatitis C but discontinued his treatment. The prisoner pled that the prison violated his Eighth Amendment right to be free from cruel and unusual punishment. The Tenth Circuit dismissed the claim because it stated only conclusory allegations. The U.S. Supreme Court reversed the dismissal and held that Rule 8 required only a short and plain statement showing that the pleader is entitled to relief.

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90. **Twombly**, 550 U.S. at 570 (noting that a pleading must contain “enough facts to state a claim to relief that is plausible on its face”). But see **Erikson v. Pardus**, 551 U.S. 89, 93 (2007) (per curiam) (stating that the federal pleading standard simply requires a short and plain statement).

91. Spencer, *supra* note 89, at 432.

92. **Twombly**, 550 U.S. at 556.

93. **Conley v. Gibson**, 355 U.S. 41, 47 (1957) (holding that Federal Rule of Civil Procedure 8 only requires “a short and plain statement of the claim that will give the defendant fair notice of the plaintiff’s claim”) (footnote omitted) (quoting FED. R. CIV. P. 8(a)(2)).

94. See **Conley**, 355 U.S. at 47. But see **Twombly**, 550 U.S. at 570 (requiring a pleading to contain “enough facts to state a claim to relief that is plausible on its face”). Nonetheless, both standards fall short of heightened fact pleading.

95. **Erikson**, 551 U.S. at 93 (2007) (stating that the federal pleading standard simply requires a short and plain statement); Daniel R. Karon, “**T’was Three Years After Twombly and All Through the Bar, Not a Plaintiff Was Troubled from Near or from Far**”—The Unremarkable Effect of the U.S. Supreme Court’s Re-exposed Pleading Standard in **Bell Atlantic Corp. v. Twombly**, 44 U.S.F. L. Rev. 571, 594 (2010).

96. **Conley**, 355 U.S. at 47–48 (setting the federal standard of notice pleading).


98. **Erikson**, 551 U.S. at 89–90.

99. Id. at 89.

100. Id. at 90.

101. Id. at 93 (“[Rule 8] requires only ‘a short and plain statement of the claim showing that the pleader is entitled to relief.’ Specific facts are not necessary; the statement need only ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” (quoting **Twombly**, 550 U.S. at 555)).
though in 2009 the U.S. Supreme Court reapplied the plausibility standard when deciding *Iqbal*, the Court also reiterated that the short and plain statement standard of Rule 8 applies. Whether the federal pleading standard is called notice pleading or plausibility pleading, requiring litigants to plead a short and plain statement that is plausible is a far less stringent standard than requiring litigants to plead facts on the face of their complaints as required by heightened pleading.

Although *Leatherman* held that the heightened pleading standard could not be applied in Section 1983 cases against municipalities, circuits continue to require a heightened pleading standard for Section 1983 claims in a roundabout way. After *Leatherman*, there was a circuit split over whether and in what circumstances courts could require heightened pleading for Section 1983 prison claims. The Seventh and Tenth Circuits employ an expansive view of *Leatherman*, applying it to all civil rights cases. According to these circuits, there are no special pleading requirements for nonmunicipal Section 1983 claims, even in an individual capacity; moreover, the accepted federal pleading standard is notice pleading. On the other hand, the Fifth and Eleventh Circuits limit *Leatherman*’s prohibition of heightened pleading to municipal liability actions and require heightened pleading for Section 1983 claims brought against officers in their individual capacity. The Ninth Circuit applies heightened pleading, but only to a subset of Section 1983 claims when intent is an element of the alleged tort. The D.C. Circuit requires a heightened pleading standard to all individual capacity Section 1983 claims. Although these circuits apply heightened pleading to certain Section 1983 claims, these standards are not explicitly authorized by the Federal Rules of Civil Procedure.

C. Notice Pleading Exceptions

The Federal Rules of Civil Procedure contain explicit exceptions to notice pleading by stating instances in which heightened pleading is

104. *Fairman, supra* note 22, at 582.
105. *Id.* at 584.
106. See *Blum, supra* note 72, at 78 (examining the Seventh Circuit’s position in *Triad Assocs.*, Inc. v. *Robinson*, 10 F.3d 492, 497 (7th Cir. 1993)).
108. *Id.* at 587–88.
109. *Blum, supra* note 72, at 78.
necessary. For example, fraud or mistake require a heightened pleading standard because they are quasi-criminal charges. According to Rule 9, when "alleging fraud or mistake, a party must state with particularity the circumstances constituting the fraud or mistake." however, "[m]alice, intent, knowledge, and other conditions of a person’s mind and other elements may be alleged generally." In applying Rule 9, "lower courts also scrutinize conspiracy allegations with care," and "broad, vague charges of conspiracy [in a pleading] do not suffice." As such, Rule 9 requires heightened pleading specificity for fraud and conspiracy claims, including the "‘who, what, where, when and how’ of the fraud” and the conspiracy. These pleading specificity rules are “designed to discourage a ‘sue first, ask questions later’” approach.

In essence, for quasi-criminal cases of fraud or mistake the interests at stake are more substantial than the loss of money; therefore, a more stringent standard is applied. The exceptions to notice pleading relate to claims that are quasi-criminal because pleading with particularity is especially important in light of quasi-criminal violations. A quasi-criminal claim contains some qualities of a criminal prosecution, such as a Section 1983 excessive force or false arrest claim. A different standard applies to fraud and other quasi-criminal violations for a few reasons. A heightened pleading for these offenses protects the reputation of the defendant, deters frivolous suits, and provides adequate notice. Thus, the legislature recognized that

111. Fed. R. Civ. P. 9 (“In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.”).
112. Id.
115. Id.
117. Wojcik, 2013 WL 5904996, at *5 (quoting AnchorBank, FSB v. Hofer, 649 F.3d 610, 615 (7th Cir. 2011)).
118. Id. (quoting Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. Walgreen Co., 631 F.3d 436, 441 (7th Cir. 2011)).
120. See, e.g., United States ex rel. Atkins v. McInteer, 470 F.3d 1350, 1360 (11th Cir. 2006).
122. Teichner, supra note 119, at 1398.
123. Fairman, supra note 22, at 563–64 (using Harrison v. Westinghouse Savannah River Co., 176 F.3d 776, 784 (4th Cir. 1999) as an example describing the purposes of Rule 9(b)).
when a charge may seriously damage an individual’s reputation, more
facts should be required at the pleading stage.\textsuperscript{124}

Although fraud, mistake, and conspiracy are the only exceptions to
notice pleading stated by the U.S. Supreme Court or listed in the Fed-
eral Rules of Civil Procedure,\textsuperscript{125} there are several other federal claims
that contain elements of heightened pleading in practice.\textsuperscript{126} First,
courts implement targeted use of heightened pleading to certain ele-
ments of antitrust claims by requiring greater factual specificity as to
the conspiracy element and also for allegations of fraudulent conceal-
ment.\textsuperscript{127} Second, Congress enacted the Comprehensive Environ-
mental Response, Compensation, and Liability Act (CERCLA)\textsuperscript{128} to
facilitate the cleanup of hazardous waste and require plaintiffs to
plead specific facts for these environmental litigation claims.\textsuperscript{129} Third,
the Copyright Rules of Practice\textsuperscript{130} differ from the Federal Rules on
the matter of pleading.\textsuperscript{131} Courts embrace a four part heightened
pleading requirement for copyright claims that requires the plaintiff to
state: “(1) which specific original work is the subject of the copyright
claim, (2) that the plaintiff owns the copyright, (3) that the work has
been registered[,] . . . and (4) by what acts and during what time the
defendant infringed the copyright.”\textsuperscript{132} Fourth, even after \textit{Leatherman},
some federal courts require pleading with specificity for defamation
cases.\textsuperscript{133} Fifth, some jurisdictions apply Rule 9 to negligent misrepre-
sentation claims, and this standard is justified because negligent mis-
representation is similar to fraud.\textsuperscript{134} And lastly, sixth, some
jurisdictions apply Rule 9 to predicate acts of racketeering, but there
is a universal heightened pleading where mail or wire fraud is the
predicate act.\textsuperscript{135}

In general, heightened pleading is applied toward claims that “re-
present important segments of activity in the litigation boom” and

\textsuperscript{124} Fairman, \textit{supra} note 22, at 564.
\textsuperscript{125} See \textit{generally} \textit{Leatherman v. Tarrant Cty. Narcotics Intelligence \\ & Coordination Unit}, 507 U.S. 163, 168 (1993) (holding that Federal Rule of Civil Procedure 9(b) can only be applied
to fraud or mistake, \textit{expressio unius est exclusio alterius}, the expression meaning some excludes all others).
\textsuperscript{126} See Marcus, \textit{supra} note 116, at 449–50.
\textsuperscript{128} \textit{Id.} at 1021.
\textsuperscript{129} \textit{Id.} at 1021–22.
\textsuperscript{130} \textit{Id.} at 1037.
\textsuperscript{131} \textit{Id.} at 1036–37.
\textsuperscript{132} \textit{Id.} at 1038 (footnote omitted).
\textsuperscript{133} Fairman, \textit{supra} note 86, at 1043–47.
\textsuperscript{134} \textit{Id.} at 1048–49.
\textsuperscript{135} \textit{Id.} at 1052–55.
present problems for potential abuse because they involve behavior that can result in substantial liability depending on the defendant’s state of mind. A heightened pleading standard for Section 1983 prison litigation may protect defendants from damaging claims and deter frivolous lawsuits.

D. State Pleading Standards

To understand why federal pleading standards encourage forum shopping, it is essential to understand that some states have pleading standards that differ from those in federal courts and those articulated in the Federal Rules of Civil Procedure; therefore, plaintiffs are able to choose a more favorable forum and impact the load on respective court dockets. However, over one-half of the states and the District of Columbia are “replica states” using pleading standards that “replicate or are based largely on the Federal Rules of Civil Procedure.” In response to Twombly, these replica states are split on the issue of whether the appropriate pleading standard is notice pleading or plausibility pleading. The states that do not incorporate the Federal Rules of Civil Procedure in their own rules are called nonreplica states. Among the nonreplica states, there are two categories: (1) states that require notice pleading; and (2) states that require fact pleading. Iowa, Michigan, New Hampshire, and Wisconsin merely require notice pleading for state claims and also require that complaints brought in state court contain a short and plain statement to give the defendant notice of the suit. The remaining seventeen nonreplica states require fact pleading, thus, complaints brought in state court must contain factual allegations. Illinois, for example, initially appears to embrace notice pleading, but in fact, its case law requires fact pleading to survive a motion to dismiss for failure to

136. Marcus, supra note 116, at 450.

137. United States v. City of Philadelphia, 644 F.2d 187, 206 (3d Cir. 1980) (requiring fact pleading because the potential for frivolous suits causes municipal defendants to suffer expense and harassment); Fairman, supra note 22, at 582.

138. See Spencer, supra note 4, at 17.

139. Id. at 14.

140. Id. at 14–16, 14–16 tbls. 1 & 2.

141. Id. at 17.

142. Id.

143. See id.

144. Spencer, supra note 4, at 17–18, 18 n.63.

145. 735 ILL. COMP. STAT. 5/2-603 (2014) (“All pleadings shall contain a plain and concise statement of the pleader’s cause of action, counterclaim, defense, or reply.”).
state a cause of action. When petitioners residing in fact pleading states consider venue for bringing a lawsuit, they realize that a complaint brought in state court must contain more factual allegations as opposed to a complaint brought in federal court. Thus, fact pleading states have a pleading standard that differs drastically from the federal courts, enticing plaintiffs to choose a more favorable forum.

E. Section 1983 Prison Claims

Section 1983 prison claims are plentiful. Common Section 1983 prison claims relate to corporal punishment, punitive segregation, inadequate medical care, excessive force, or other similar physical disciplinary measures. These claims may be protected under the First Amendment’s right to freedom of expression and freedom of religion, the Fourth Amendment’s right to be free from unreasonable searches and seizures, the Eighth Amendment’s right to be free from cruel and unusual punishment, and the Fourteenth Amendment’s right to equal protection and due process of law. Most Section 1983 prison claims are brought under the Eighth Amendment’s cruel and unusual punishment clause, while the Fourteenth Amendment’s Due Process Clause applies to arrestees or pretrial detainees alleging mistreatment. The appropriate standard is whether the officers acted with deliberate indifference. All prisoners have rights to procedural due process, equal treatment, medical treatment, and effective counsel.

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146. Rigsbee, supra note 16, at 42 (discussing Beckman v. Freeman United Coal Mining Co., 527 N.E.2d 303 (Ill. 1988)).
149. Approximately 17% of all civil cases on the federal docket in 2013 were prisoner civil rights cases. Table C-2, supra note 3.
150. Director, supra note 44, at 11–12; Interview with Michael Pasquinelli, supra note 17 (explaining the most common Section 1983 claims that he litigates).
151. Director, supra note 44, at 13–15.
152. See, e.g., Cottrell v. Caldwell, 85 F.3d 1480, 1490 (11th Cir. 1996).
153. See, e.g., Martinez v. Burns, 459 F. App’x 849, 851 (11th Cir. 2012) (holding that the prison nurse did not meet the standard of deliberate indifference to violate the defendant’s Eighth Amendment rights); Cottrell, 85 F.3d at 1490–91 (holding that police officers did not act with deliberate indifference to violate the Fourteenth Amendment due process rights of an inmate).
Most prison claims either allege the use of force by government officials or inadequate conditions of confinement.\textsuperscript{155} For example, government officials may be subject to Section 1983 claims when they use force to control their suspects, pretrial detainees, and prisoners.\textsuperscript{156} The source of this claim depends on the petitioner’s status, but as stated \textit{supra}, prisoners typically rest their claims on the Eighth Amendment’s prohibition of cruel and unusual punishment, whereas arrestees\textsuperscript{157} and detainees tend to rely on the Fourteenth Amendment’s Due Process Clause.\textsuperscript{158} For conditions of confinement claims, prisoners must prove that the officials acted with subjective, delinquent indifference and that the deprivation was sufficiently serious under an objective standard.\textsuperscript{159} When prisoners are deprived of their rights, they are entitled to a remedy.\textsuperscript{160}

Examples of Section 1983 prison claims brought under the Eighth Amendment are abundant. In \textit{Lira v. Herrera},\textsuperscript{161} a prisoner in Pelican Bay Prison filed a Section 1983 claim after being placed in segregation and then in a special housing unit based on his gang affiliation.\textsuperscript{162} He claimed that the officers jeopardized his safety and violated his Eighth Amendment right to be free from cruel and unusual punishment by assigning him a cellmate with no consideration to gang affiliation.\textsuperscript{163} In \textit{Minor B v. Duff},\textsuperscript{164} a prisoner in an Illinois youth center filed a Section 1983 claim against prison guards after alleged sexual and physical abuse.\textsuperscript{165} Again, the prisoner claimed that these actions violated his Eighth Amendment right to be free from cruel and unusual punishment.\textsuperscript{166} In \textit{Lang Vo Tran v. Illinois Department of Corrections},\textsuperscript{167} a prisoner at Pinckneyville Correctional Center filed a Sec-
tion 1983 claim against the prison personnel alleging that he was denied medical treatment for his hernia while incarcerated.\textsuperscript{168} Once again, this claim relied on the prisoner’s Eighth Amendment right, which is a procedural due process claim brought by a state prisoner against a state facility.\textsuperscript{169}

While these claims may appear legitimate, Section 1983 prison claims are presumed frivolous by some judges.\textsuperscript{170} The presumption of frivolousness arises because these claims consume almost 20% of the federal civil docket.\textsuperscript{171} While litigants should be sanctioned for filing frivolous lawsuits, this does not always happen, especially when they file lawsuits pro se and \textit{in forma pauperis}.\textsuperscript{172} Rule 8’s simplified pleading standard is meant to work in conjunction with Rule 11 sanctions.\textsuperscript{173} Thus, pleadings need only contain a short and plain statement, but litigants, and usually their attorneys, will be sanctioned if frivolous lawsuits are filed. Because prisoners are often pro se and indigent, courts do not always inflict sanctions on them for filing inadequate complaints.\textsuperscript{174}

The legitimate claims cannot overshadow the mass amounts of frivolous claims brought under Section 1983.\textsuperscript{175} For example, in \textit{Franklin}

\begin{thebibliography}{99}
\bibitem{168} Id. at *1.
\bibitem{169} Id. at *2.
\bibitem{170} Blaze, supra note 3, at 936–37 (citing Valley v. Maule, 297 F. Supp. 958, 960 (D. Conn. 1968)).
\bibitem{171} See Korb & Bales, supra note 3, at 291 (stating that Section 1983 prison claims occupy approximately 17% of a federal court’s docket). There were 303,820 total cases filed in federal district courts. \textit{Table C-2}, supra note 3. Of those, 18,306 were civil rights lawsuits filed by prisoners. Id.
\bibitem{173} Fed. R. Civ. P. 11; Interview with Michael Pasquinelli, supra note 17 (explaining that Rule 11 acts as a check on Rule 8, and that Rule 8 allows litigants to plead a “short and plain statement,” but if the pleading is too frivolous, the litigants may be sanctioned under Rule 11). \textit{See}, e.g., \textit{Warren}, 29 F.3d 1386. Mr. Pasquinelli has defended numerous Section 1983 prison claims. Interview with Michael Pasquinelli, supra note 17. He does not recall many times in which a pro se prison plaintiff was required to pay Rule 11 sanctions. Id.
\bibitem{174} See Blaze, supra note 3, at 979 n.280 (explaining that the federal in \textit{forma pauperis} statute, 28 U.S.C. § 1915, permits indigent individuals to file claims notwithstanding their inability to pay court costs and litigation expenses). “For example, in 1976 approximately 70% of civil rights
v. Oregon, one zealous litigant brought several civil rights actions deriving from the overwatering of a prison lawn, the baking of desserts in aluminum pans, and the fact that a seat belt requirement did not apply to bicycles. Additionally, in Word v. Cook County Department of Corrections, an inmate brought a Section 1983 claim against the Department of Corrections for serving soft drinks containing artificial sweeteners. This claim was dismissed. In Russell v. Bodner, a prisoner brought a civil rights claim based on the deprivation of due process when a prison guard took cigarettes from his cell.

The low pleading standard allows frivolous claims to occupy space on the federal court docket, whereas a heightened pleading standard would remove frivolous claims but still permit claims with merit to proceed. Section 1983 claims cover an enormous amount of legal ground and often afford prisoners with necessary remedies, but a reinterpretation of the required pleading standard is necessary for the reasons stated infra.

III. Analysis

The Federal Rules of Civil Procedure should be amended to require a heightened pleading standard for Section 1983 prison claims brought in federal court. Fraud and mistake require heightened pleading because they are quasi-criminal, and civil rights claims brought by prisoners should be an exception to notice pleading for the same reason. Despite the U.S. Supreme Court’s decision to apply notice pleading in federal courts, circuit courts continue to adopt a heightened
pleading standard. In states that require fact pleading, federal notice pleading for Section 1983 prison claims encourages forum shopping, and the flood of Section 1983 claims reduces the federal courts’ efficiency. Despite some criticism, a heightened pleading standard for Section 1983 prison claims is the best solution for the efficiency and fairness of the federal court system. This section discusses the three reasons for subjecting Section 1983 prison claims to heightened pleading: (1) notice pleading for Section 1983 prison claims encourages forum shopping; (2) Section 1983 prison claims are quasi criminal and akin to the “fraud or mistake” exception to notice pleading; and (3) federal courts require a heightened pleading standard in practice.

A. Heightened Pleading for Section 1983 Prison Claims Is Necessary Because Notice Pleading Encourages Forum Shopping

Federal notice pleading for Section 1983 claims encourages forum shopping, and the flood of Section 1983 claims reduces the federal courts’ efficiency. Although Section 1983, a concurrent jurisdiction statute, was enacted to provide plaintiffs an opportunity to choose a forum, plaintiffs inherently choose a forum that is more promising for them. While total uniformity between state and federal courts is unachievable, it is required to avoid overwhelming the federal docket when a state forum and a federal forum have drastically different procedural requirements.

The U.S. Supreme Court’s decision in Leatherman resulted in drastically different standards for Section 1983 claims in federal courts and

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186. See Rigsbee, supra note 16, at 46.
187. Supra notes 23–25 and accompanying text (explaining counter arguments, including: (1) research suggests that there is no correlation between the heft of a pleading and the ultimate success of a case; (2) meritless litigation is very beneficial to courts; and (3) prisoners are members of society with the least amount of liberty, so the pleading standard should be sympathetic towards them).
188. See Rigsbee, supra note 16, at 46.
189. Schwartz, supra note 18, at 26 (describing that state courts have concurrent jurisdiction over Section 1983 prison claims). When plaintiffs assert federal claims in state court, states may establish the rules of procedure governing litigation but may not apply state rules that unduly burden, frustrate, or discriminate against the federal claim for relief. In state courts, federal law provides the elements of the Section 1983 claim for relief and the defenses to the claim, and state law may not alter either the elements or defenses. Id.
191. Id. at 1101.
192. See id. at 1123–24.
state courts adhering to fact pleading. Illinois, Nebraska, and Pennsylvania are the three states that adopt rules least similar to the Federal Rules of Civil Procedure because these states require the strictest fact pleading; therefore, forum shopping is most severe in these states. In these states, Section 1983 litigants are required to plead facts in state courts while they need only adhere to notice pleading if they bring their lawsuit in federal court. This disparity in pleading standards leads to unmistakable forum shopping and the inequitable administration of laws because prisoners tend to bring claims in the federal court with the more lenient pleading standard.

The flood of Section 1983 prison claims in the federal docket reduces the court’s efficiency. Civil rights lawsuits are targeted as one of the largest burdens on federal courts because a “litigation explosion” of civil rights actions occurred in these courts. Civil rights cases occupy close to 20% of a federal court’s entire caseload. Additionally, civil rights cases brought by inmates constitute almost one-half of the civil rights cases on federal dockets. When federal court dockets are overcrowded with frivolous prison lawsuits by petitioners wanting to occupy their time, the courts cannot focus their attention on the claims with merit or the other cases seeking dispute resolution.

193. See generally, Spencer, supra note 4, at 17–18, 18 n.63.
195. See id. at 326–28; see also Erwin Chemerinsky & Barry Friedman, The Fragmentation of Federal Rules, 46 MERCER L. REV. 757, 759, 782 (1995) (“Different procedural rules will have an impact upon substantive justice. Varying procedures will lead to forum shopping, unnecessary cost, and widespread confusion.”). Thus, because the local and state pleading standards differ most in Illinois, Nebraska, and Pennsylvania these states are inherently more prone to forum shopping.
196. See Main, supra note 194, at 327. (“[S]tate courts of all three of the survey states are code pleading jurisdictions.”). Code pleading is another term for “fact-pleading.” Id. Code pleading requires plaintiffs to state factual support the elements of their cause of action.
199. Kugler, supra note 3, at 551.
201. Korb & Bales, supra note 3, at 291. Prison civil rights cases occupy 17% of the federal district court docket. Table C-2, supra note 3.
202. Hoffman v. Halden, 268 F.2d 280, 295 (9th Cir. 1959), overruled by Cohen v. Norris, 300 F.2d 24 (9th Cir. 1962) (“[F]ew of the actions for violations of civil rights have any real merit.”); Blaze, supra note 3, at 950 (quoting Valley v. Maule, 297 F. Supp. 958, 960–61 (D. Conn. 1968)) (articulating that many civil rights cases are frivolous by presumption). In 2013, 34,667 civil rights lawsuits were filed in federal district courts. Of those civil rights lawsuits, 18,306 civil rights lawsuits were filed by prisoners. Table C-2, supra note 3.
203. See Blaze, supra note 3, at 935, 937.
resolution in the federal courts.204 Thus, the Federal Rules of Civil Procedure should be amended to require heightened pleading for Section 1983 prison claims.

Although the fact pleading and notice pleading jurisdictions require drastically different pleading standards, one particular study argues that these standards tend to merge together.205 If this contention is true, it does not explain why an overwhelming amount of Section 1983 prison claims are brought in federal court as opposed to state court.206 Alternatively, even if the pleading standards did merge, the merge was likely caused by the lack of specificity in the pleading standards relating to Section 1983 claims.207 Neither the standard of notice pleading under the Federal Rules of Civil Procedure nor the requirement of fact pleading under the state rules establishes a clear mandate for the amount of specificity required in a Section 1983 complaint.208 In other words, because the courts do not have strict guidelines as to what level of pleading is required, and because Leatherman is limited to municipal liability,209 courts do not know what level of pleading they can require of prisoner-petitioners.

By amending the Federal Rules of Civil Procedure to require heightened pleading for Section 1983 prison claims, the federal circuits will no longer be confused about what pleading standard they should require.210 This will allow both the federal and state courts to properly administer justice to inmates deprived of their rights protected by Section 1983.

204. Interview with Michael Pasquinelli, supra note 17 (explaining that the severe influx of meritless inmate litigation takes time away from the cases pleading constitutional harms).
205. See Main, supra note 194, at 319.
206. Interview with Michael Pasquinelli, supra note 17 (estimating, based on his experience litigating Section 1983 prison claims, that a vast majority of Section 1983 prison claims are brought in federal court). However, there are so few civil rights lawsuits and inmate lawsuits that neither are a category in the statistical summary. ADMIN. OFFICE OF ILL. COURTS, ANNUAL REPORTS OF THE ILLINOIS COURTS: STATISTICAL SUMMARY – 2013, at 2, 150 (2013), http://www.illinoiscourts.gov/supremecourt/annualreport/2013/statsumm/2013_statistical_summary.pdf. Rather, lawsuits filed by prisoners are placed in the miscellaneous category. Id.
207. Interview with Michael Pasquinelli, supra note 17.
208. Id.
210. See infra notes 241–75 and accompanying text.
B. Heightened Pleading Is Necessary for Section 1983 Prison Claims Because They Are Quasi-Criminal and Similar to Fraud or Mistake Claims.

When federal courts desire to import fact-based pleading requirements they borrow from other substantive areas of the law that require heightened pleading.211 Fraud is the seed of the heightened pleading analysis.212 The Federal Rules of Civil Procedure require heightened pleading for fraud and mistake because they are quasi-criminal offenses.213 Section 1983 prison claims are also quasi-criminal; thus a heightened pleading standard is justified.214

Section 1983 prison claims are quasi-criminal because most are claims of “corporal punishment, excessive force, punitive segregation, or other similar physical disciplinary measures.”215 These claims involve a physical and violent nature—an underpinning of criminal law.216 Sometimes, a prison official may be charged with a crime and sued under Section 1983 for the same offense.217 For example, Section 1983 claims are often brought simultaneously with other criminal claims, such as battery218 or sexual assault.219 If a prison official commits these acts, she may be liable under a state’s criminal law and

211. Fairman, supra note 86, at 1061.
212. Id. (explaining that heightened pleading for fraud under Federal Rule of Civil Procedure 9 leads to the proliferation of heightened pleading in other areas by two distinct ways: (1) the rationales for fraud’s heightened pleading is incorporated as justifications for other claims; and (2) claims with fraud as a component import the fraud-based heightened pleading requirement). See generally Fed. R. Civ. P. 9 (stating that matters of fraud or mistake are to be pleaded with particularity).
213. United States ex rel. Atkins v. McInteer, 470 F.3d 1350, 1360 (11th Cir. 2006); Fairman, supra note 22, at 563–65 (stating that the exceptions to notice pleading relate to claims that are quasi-criminal to protect the reputation of the defendant, deter frivolous suits, and provide adequate notice).
214. Director, supra note 44, at 1 (litigating issues in Section 1983 claims concern “corporal punishment,” “punitive segregation,” and “physical disciplinary matters”’; these are also litigated items in criminal matters).
215. Id. at 11–12 nn.4–5 (defining “corporal punishment” as any kind of punishment inflicted on the body, such as whipping, beating, and slapping; defining “punitive segregation” as occurring when “a prisoner is taken out of the general population and placed in segregated confinement . . . for the purpose of discipline”; defining “physical disciplinary measures” by contrasting it with other prison discipline such as “withdrawal, forfeiture, modification, or denial of . . . good-time allowance”).
217. See Jon Loey, Section 1983 Litigation in A Nutshell: Make A Case out of It!, J. DuPAGE COUNTY B. Ass’n, Oct. 2004, at 14, http://www.dcba.org/page/vol171004art12 (“Section 1983 claims may be brought in either federal or state court, in conjunction with other claims such as state law counts for battery or false imprisonment.”).
218. E.g., Hinton v. Hanson, 47 F. App’x 325 (6th Cir. 2002).
219. E.g., Parker v. Williams, 862 F.2d 1471 (11th Cir. 1989).
under Section 1983. Therefore, lawsuits and criminal charges often stem from the same occurrence in a prison setting.

Section 1983 prison claims are also quasi-criminal because the remedies for Section 1983 claims serve the same function as the remedies for criminal charges: deterring future wrongful acts. It is a serious societal wrong when prison officials abuse inmates, so, similar to criminal charges, claims regarding physical disciplinary measures should be taken very seriously. Nevertheless, these claims must be pled with particularity so that legitimate claims of abuse are not lost in the flood of unmeritorious Section 1983 claims.

A different standard applies for fraud and other quasi-criminal violations to protect the reputation of the defendant, deter frivolous suits, and provide adequate notice. These justifications are present in Section 1983 prison claims as well. First, when prisoners sue a prison or prison official under Section 1983, it is important to protect the reputation of federal or state institutions. For an efficient legal system and an efficient functioning society, it is important for the public to trust the penitentiary system and law enforcement. This public trust falls apart when prison officials are constantly subjected to Section 1983 lawsuits. Additionally, if public officials are defendants to a Section 1983 lawsuit, they have less time to ensure the general public’s welfare.

220. Loevy, supra note 217, at 14.


222. See Cottrell, supra note 25, at 1101 (“[Section] 1983 was intended not only to provide compensation to the victims of past abuses, but to serve as a deterrent against future constitutional deprivations, as well.” (quoting Owen v. City of Independence, 445 U.S. 622 (1980))).

223. See generally Dressler & Garvey, supra note 216, at 29–38 (explaining that a purpose of punishment for a crime is to deter crime in the future).

224. Fairman, supra note 22, at 563–64 (using Harrison v. Westinghouse Savannah River Co., 176 F.3d 776, 784 (4th Cir. 1999) as an example and describing the purposes of Rule 9(b)).

225. Fairman, supra note 86, at 1059 (arguing that justification for a heightened pleading standard is stronger when defendants are public officials because they are especially susceptible to reputational damage).


227. See id.

228. See, e.g., Resignation of Ferguson Police Officer Darren Wilson Unlikely To Halt Protests, FOX NEWS (Nov. 30, 2014), http://www.foxnews.com/us/2014/11/30/ferguson-police-officer-darren-wilson-resigns/. Officer Darren Wilson, who spent months as the suspect of a civil rights investigation, eventually stepped down, but the investigation remains ongoing. Id.
Second, “[t]here is a widespread belief that frivolous suits are responsible for many of the court system's most serious problems, including case backlogs, long trial delays, high litigation costs, and excessive liability that chills innovation and impedes vigorous competition.”229 Rooted in the rationale of common law fraud, heightened pleading is used to deter frivolous lawsuits in the area of civil rights and fraud because these suits are presumptively frivolous.230 When frivolous lawsuits are deterred, prison officials can focus on their jobs without fear of litigation’s burdensome discovery231 but may still know that they will be accountable if and when they violate a prisoner’s rights.232 State officers should not be dragged into a lawsuit without just cause because they have important jobs to do, such as ensuring the safety of citizens and prisoners. This duty is diluted when government employees must consistently defend themselves from frivolous claims.233

Third, Section 1983 claims, like fraud and conspiracy, have a very detailed discovery process that burdens defendants more than plaintiffs.234 Section 1983 prison claims cost defendants, public officials, policemen, and citizens much expense, time, and notoriety because numerous documents and depositions must be produced.235 Judges recognize this issue and often impose heightened pleading requirements.236 “In Anderson v. Creighton,237 the U.S. Supreme Court ac-

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230. Fairman, supra note 86, at 1060 (explaining that this presumption of frivolousness correlates to a protection-of-defendants rationale that manifests itself in two ways: (1) defendants should be protected from burdensome discovery; or (2) the reputation of defendants should be protected from frivolous lawsuits).
231. Id.
232. 42 U.S.C. § 1983 (2012) (stating that prisoners have a cause of action under Section 1983 when federal or state officials violate rights protected by the Constitution or a statute).
234. See Kugler, supra note 3, at 557.
235. Fairman, supra note 22, at 575.
236. Id. at 574–76 (“Civil rights cases constitute the most active area of judicially imposed heightened pleading requirements. This device arose out of the . . . rationale of . . . protection of the defendant. . . . A heightened pleading burden on plaintiffs certainly shields defendants from discovery and litigation expense.”).
237. 483 U.S. 635 (1987). An FBI agent conducted a forcible warrantless search of a home in the mistaken belief that a bank robbery suspect might be found there. Id. at 635. The homeowners filed suit against the agent in a Minnesota state court asserting a claim for money damages under the Fourth Amendment. Id. The agent removed the suit to a U.S. district court. Id. Without any discovery having taken place, the district court granted the agent summary judgment. Id. The U.S. Court of Appeals for the Eighth Circuit reversed, holding that unresolved factual disputes made it impossible to determine, as a matter of law, that there had been proba-
knowledged that when the parties’ factual allegations differ, discovery may be necessary before a summary judgment motion can be resolved. Therefore, discovery is often necessary for Section 1983 prison claims even when the government’s summary judgment motion is granted. Because the discovery process is so involved and burdensome on defendants, it is important to provide notice to the federal prison or prison officials. In addition to the justifications mentioned infra, Section 1983 prison claims should be uniformly subjected to a heightened pleading standard because they already are in practice.


Although the U.S. Supreme Court has stated that notice pleading is the appropriate standard, federal courts continue to adopt heightened pleading in a roundabout way. The Federal Rules of Civil Procedure should adopt the pleading standard that the federal circuits deem necessary for justice and efficiency. Because the U.S. Supreme Court has not decided a Section 1983 lawsuit since Leatherman in 1993, the U.S. Supreme Court has not stopped the circuits from requiring a prison claimant to plead facts in a Section 1983 claim. Therefore, the Federal Rules of Civil Procedure should reflect this common practice.

After Leatherman, “the Fifth Circuit continued to require a civil rights plaintiff to meet a heightened pleading standard” by switching the plaintiff’s burden to the reply stage of the litigation. In Schultea v. Wood (Schultea II), a plaintiff filed a suit against public officials and claimed that officials “conspired to demote him after he reported

238. Id. at 646 n.6; Gary T. Lester, Schultea II—Fifth Circuit’s Answer to Leatherman—Rule 7 Reply: More Questions Than Answers in Civil Rights Cases? 37 S. Tex. L. Rev. 413, 459 (1996) (citing Anderson, 483 U.S. at 646 n.6).
240. See Fairman, supra note 22, at 589.
242. Lester, supra note 238, at 445–46.
243. 47 F.3d 1427 (5th Cir. 1995).
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to state authorities that one of the [officials] might be involved in illegal activity.”244 The trial court denied the defendant’s motion to dismiss.245 With respect to the Section 1983 prison claim, the Fifth Circuit Court of Appeals held that if the defendant pleads qualified immunity as a defense, the plaintiff must meet a heightened pleading standard in a detailed reply.246 The Fifth Circuit requires the plaintiff to plead facts even before the defendant raises the issue of immunity, or the court could dismiss the complaint under Federal Rule of Civil Procedure 12247 for failure to state a claim.248 Rule 7, which states the acceptable forms of pleadings,249 contains a detailed reply requirement that allows the Fifth Circuit to place a burden of heightened pleading on the plaintiff while still complying with Leatherman250 and Rules 8251 and 9252 of the Federal Rules of Civil Procedure. The court in Schultea II concluded that the Rule 7 reply can be detailed and does not have to meet the plain and simple notice-pleading standard.253 While this approach is effective, it would be easier for the sake of consistency if the Federal Rules of Civil Procedure authorized a heightened standard at the pleading stage of Section 1983 prison claims.

The Eleventh Circuit is also convinced that a heightened pleading standard is necessary for Section 1983 prison claims. The Eleventh Circuit limited Leatherman and its prohibition of heightened pleading to municipal liability actions and continues to apply heightened pleading to other types of Section 1983 claims.254 The Eleventh Circuit found Leatherman noncontrolling outside of the municipal liability context because Leatherman’s holding concerns a Section 1983 claim where a municipality is the defendant.255 When the Eleventh Circuit

244. Id. at 1427–28.
245. Id. at 1434.
246. Id. at 1433–34; Lester, supra note 238, at 446–47.
248. Lester, supra note 238, at 446.
249. Fed. R. Civ. P. 7 (“Only [the following] pleadings are allowed: (1) a complaint; (2) an answer to a complaint; (3) an answer to a counterclaim designated as a counterclaim; (4) an answer to a crossclaim; (5) a third-party complaint; (6) an answer to a third-party complaint; and (7) if the court orders one, a reply to an answer.”).
250. Lester, supra note 238, at 447.
251. Fed. R. Civ. P. 8 (stating that notice pleading is the appropriate pleading standard in federal court).
252. Fed. R. Civ. P. 9 (stating that fraud or mistake require a heightened pleading standard, but all claims not mentioned need only comply with notice pleading).
253. Lester, supra note 238, at 447.
254. Fairman, supra note 22, at 585.
255. Id. (discussing Monell claims, which are also known as municipal liability claims). Two plaintiffs brought Section 1983 claims against Tarrant County for violations of their civil rights...
Court of Appeals revisited this issue in *GJR Investments, Inc. v. County of Escambia*,256 the court held that a heightened pleading standard is required for Section 1983 claims asserting qualified immunity.257 In *GJR*, the Eleventh Circuit stated that a heightened pleading standard was necessary to weed out nonmeritorious claims, yet it did not specify why a heightened standard was necessary for qualified immunity claims but not other Section 1983 claims.258 Therefore, for clarity, the Federal Rules of Civil Procedure must be amended to state which pleading standard is necessary for Section 1983 prison claims.

The Ninth Circuit also applies heightened pleading but only to a subset of Section 1983 claims when intent is an element of the tort.259 If subjective intent is an element of the tort and qualified immunity is pled, a plaintiff is subjected to a heightened pleading standard and must plead nonconclusory allegations that set forth specific evidence of unlawful acts.260 In *Housley v. United States*,261 the Ninth Circuit held that heightened pleading is still a valid standard post-*Leatherman*.262 Section 1983 needs clarification in the Federal Rules of Civil Procedure because many circuit courts believe that a height-

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256. 132 F.3d 1359 (11th Cir. 1998). The plaintiff-developer sought to build a campground and submitted four applications to public officials for approval. *Id.* at 1362. The first three were denied, so the developer filed suit against the public officials under Section 1983. *Id.* The district court denied defendant’s motion to dismiss. *Id.* at 1367. On appeal, the Eleventh Circuit Court of Appeals reversed and remanded and held that plaintiff failed to plead facts sufficient to show it was similarly situated to other persons, that defendants had a discriminatory intent, or that appellants were entitled to qualified immunity. *Id.* at 1367–70.

257. *Id.* at 1370; Fairman, *supra* note 22, at 587. See generally, *Qualified Immunity*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“Immunity from civil liability for a public official who is performing a discretionary function, as long as the conduct does not violate clearly established constitutional or statutory rights.”).

258. *GJR Invs.*, 132 F.3d at 1367.


260. *Id.* at 588.

261. 35 F.3d 400 (9th Cir. 1994), overruled by *Galbraith v. Cty. Of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002). An inmate filed a claim against law enforcement officials and alleged that illegal searches and unauthorized electronic surveillance violated his constitutional and statutory rights. *Id.* at 401. The district court dismissed plaintiff’s complaint for failure to state a claim because it did not satisfy a heightened pleading standard. *Id.* The Ninth Circuit Court of Appeals vacated and remanded and held that the “heightened pleading requirement . . . [did] not apply to [plaintiff’s] complaint because defendants’ subjective intent [was] not an element of his . . . claim.” *Id.* However, heightened pleading is appropriate when subjective intent is an element of a Section 1983 claim. *Id.*

262. *Id.* at 401; Fairman, *supra* note 22, at 588, 588 n.283.
ened pleading standard for Section 1983 claims is necessary to meet the needs of the court.\textsuperscript{263}

The D.C. Circuit required notice pleading for Section 1983 claims, but in \textit{Crawford-El v. Britton},\textsuperscript{264} the court offered several suggestions for trial courts to require fact-based pleading while still complying with \textit{Leatherman}.\textsuperscript{265} The court offered suggestions in dicta to solve the conflicts between qualified immunity in subjective-intent claims and burdensome discovery.\textsuperscript{266} These suggestions, some of which are adopted by the other circuits—such as the Rule 7 reply process—\textsuperscript{267} are backhanded ways for the court to comply with a notice pleading standard while still requiring a heightened pleading standard in practice.

The Third Circuit requires notice pleading for Section 1983 claims brought in federal court but has been known to ask for more specificity for the sake of clarity.\textsuperscript{268} For example, in \textit{Ersek v. Township of Springfield},\textsuperscript{269} the district court asked the plaintiff to clarify his allegations and state explicitly which defendants were responsible for the wrongful acts.\textsuperscript{270} The court reasoned that \textit{Leatherman} justified this request because the court did not ask the plaintiff to amend the complaint to meet a level of heightened pleading, but rather, it merely asked the plaintiff to plead with “intelligible particularity.”\textsuperscript{271} There is arguably no difference between heightened pleading and intelligible

\begin{footnotesize}
\begin{enumerate}[\textsuperscript{263}.]
\item[	extsuperscript{264}.] 523 U.S. 574 (1998).
\item[	extsuperscript{265}.] \textit{Id.} at 597–99 (offering procedural suggestions for trial courts to combat the conflict between notice pleading for Section 1983 claims and burdensome discovery, such as ordering a Rule 7 reply, granting a Rule 12 motion for a more definite statement, tailoring discovery under Rule 26, weeding out insubstantial claims with Rule 56 summary judgment, or using Rule 11 sanctions).
\item[	extsuperscript{266}.] Fairman, \textit{supra} note 22, at 589 (explaining that the suggestions include ordering a Rule 7 reply, granting a Rule 12 motion for a more definite statement, tailoring discovery under Rule 26, weeding out insubstantial claims with Rule 56 summary judgment, or Rule 11 sanctions).
\item[	extsuperscript{267}.] \textit{See supra} notes 242–53, 264–66 and accompanying text (explaining that both the Fifth Circuit and the D.C. Circuit authorize a heightened pleading standard for a Rule 7 reply).
\item[	extsuperscript{268}.] Wolff, \textit{supra} note 15, at 456–57, 473.
\item[	extsuperscript{269}.] 102 F.3d 79 (3d Cir. 1996). Appellant-employee challenged the summary judgment granted in favor of appellee-employers in appellant’s civil rights action, which alleged that appellees’ “false statements [in the newspaper reports] impaired [appellant’s] opportunities for future employment as a golf pro.” \textit{Id.} at 84. The court held that the claim failed, even with particularity, as there was insufficient evidence to prove that the false statements themselves caused the appellant harm. \textit{Id.} at 81. The court upheld the district court’s decision to require the complaint to be clarified. \textit{Id.} at 85.
\item[	extsuperscript{270}.] \textit{Id.} at 225.
\item[	extsuperscript{271}.] \textit{Id.} at 225.
\end{enumerate}
\end{footnotesize}
particularity, but the court found a way around *Leatherman* because it deemed a heightened pleading standard necessary.272

Even though the U.S. Supreme Court held that notice pleading or plausibility pleading is the appropriate standard, the Court has partially created the disconnect between the federal standard and the accepted practices in the circuit courts.273 In other words, the circuit courts are aware of *Leatherman*’s holding, but they are unsure of how much deviance they can get away with when imposing particularity restrictions on Section 1983 prison claims.274 The relevant U.S. Supreme Court holdings contain considerable room for maneuverability, specifically because *Leatherman*’s holding is limited to municipal liability cases.275 Although the federal circuits should follow the U.S. Supreme Court’s decision, these courts find it necessary to use roundabout ways and to respond to frivolous Section 1983 prison claims that congest the federal docket. Notwithstanding the reasons for heightened pleading stated supra, the Federal Rules of Civil Procedure should be amended to require heightened pleading in Section 1983 prison litigation for the sake of clarity.

D. The Arguments Advocating Against Heightened Pleading for Section 1983 Claims Are Flawed

There are several arguments against a heightened pleading standard for Section 1983 claims.276 Nonetheless, a heightened pleading standard for Section 1983 prison claims is the best solutions for the efficiency and fairness of the federal court system. The arguments against a heightened pleading standard for Section 1983 prison claims proceed as follows: (1) notice pleading does not allow meritless cases; (2) heightened pleading is unfair to prisoner-plaintiffs; (3) Rule 8 protects disfavored prison-litigants; (4) summary judgment can be used in place of heightened pleading; and (5) heightened pleading is unworkable.277

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272. *Id.* (requiring heightened pleading despite *Leatherman*’s direction otherwise).


274. *See supra* note 263 (explaining that courts implement varying pleading standards).

275. Fairman, *supra* note 86, at 1063 (explaining that while the rhetoric of *Leatherman* is sweeping, the holding is very narrow as it applies to municipal liability cases). While Crawford-El states the importance of adherence to the Federal Rules of Civil Procedure, it provides an “out” for circuit courts if they want to apply heightened pleading. *Id.* In *Swiekiewicz v. Sorema, N.A.*, the U.S. Supreme Court reinforced the rule of notice pleading but stated that there are limited exceptions without giving more direction. 534 U.S. 506 (2002).


At the root of the argument for heightened pleading is the assumption that notice pleading lets in too many meritless cases; however, one study claims that complaints surviving the notice pleading standard are just as likely to be successful as those complaints surviving the heightened pleading standard. This research suggests that there is no correlation between the heft of a pleading and the ultimate success of a case. While this argument has merit, the overall benefits of the heightened pleading standard is not that it keeps unsuccessful claims off the docket, but that it lightens the docket in general. This is important because Section 1983 prison claims constitute such a large portion of the federal docket; the docket should not be weighed down by meritless claims, such as prisoners complaining of inadequate lawn care or inadequate desserts. Further, other critics argue that Section 1983 prison claims are not frivolous but only reflect judges’ own hostility toward inmate civil rights cases.

Other scholars argue that it is unfair to protect the defendant from burdensome litigation while placing a heightened burden on disadvantaged plaintiffs. However, a heightened pleading standard does not mean that prison officials can violate prisoner rights. Prison officials will still be held accountable when an inmate pleads the nature of the violation with factual particularity. Because the typical schedule of an inmate affords them time to draft complaints, it should not be a problem for them to recount an instance of unconstitutional abuse.

278. Reinert, supra note 23, at 119 (“For its advocates, heightened pleading promises to reduce crowded dockets, make discovery available to only worthy litigants, and generally improve the quality of litigation to which attorneys and federal courts devote their attention. And at the bottom of it all lies a fundamental assumption: notice pleading lets in too many meritless cases, and heightened pleading will keep them out.”).

279. Id. at 120 (“The data reported here show that pleadings that survive a notice pleading standard but not a heightened pleading standard . . . are just as likely to be successful as those cases that would survive heightened pleading.”).

280. Id. (“[T]here is no correlation between the heft of a pleading and the ultimate success of a case.”).

281. Supra note 177 and accompanying text.

282. See, e.g., Fairman, supra note 22, at 576.

283. See, e.g., id.

284. See generally Crawford-El v. Britton, 951 F.2d 1314 (D.C. Cir. 1991) (holding that the allegations and supporting evidence of unconstitutional motive by a correction officer satisfied the heightened pleading requirements of the D.C. Circuit, but the inmate failed to allege actual injury to his litigation, so the case was remanded to permit the inmate to add nonconclusory allegations showing actual injury); Ctr. for Constitutional Rights & Nat’l Lawyers Guild, supra note 2, at 1 (explaining that a prisoner can file several different kinds of cases about conditions and treatment in prison).


286. See e.g., Stringer v. Thompson, 537 F. Supp. 133 (N.D. Ill. 1982).
Additionally, prisoners have sufficient resources, such as access to law libraries, guides on how to conduct research, and legal aid clinics.

Others argue that a heightened pleading standard is not necessary because Federal Rule of Civil Procedure 8 sometimes protects disfavored litigants, such as prisoners and the poor. While some litigants file suits over and over again, Rule 8 states that repeat litigants should not be subject to a stricter pleading standard. Although courts are not allowed to make the inference that individuals who filed frivolous lawsuits in the past file frivolous lawsuits in the present, no party will likely be substantially harmed if plaintiffs are required to plead facts when alleging a Section 1983 violation because it will enhance the chance of the lawsuit containing allegations with merit. Proponents of notice pleading also point out that Rule 8 sometimes helps the poor, who often have less to lose by bringing lawsuits, and pro se prison litigants who cannot afford an attorney and do not understand the pleading standards. This argument is not valid because there are numerous legal aid clinics, help desks, legal aid law firms, and pro bono attorneys who assist prisoners in filing Section 1983 litigation. Additionally, courts often appoint counsel to pro se litigants.


288. CTR. FOR CONSTITUTIONAL RIGHTS & NAT’L LAWYERS GUILD, supra note 2, at 134–35 (describing various sources of legal support, for example, the Prisoner Self Help Legal Clinic).


290. Id. at 473–74.

291. Id.; see also MAUT & WOLFSON, TRIAL EVIDENCE 86 (5th ed. 2012) (stating that evidence is not admissible if the relevant purpose is propensity).


293. Id.

gants to alleviate this concern.\textsuperscript{295} Therefore, it is not overly burdensome for litigants to include factual allegations in their complaint.

Some argue that a motion for summary judgment pursuant Federal Rule of Civil Procedure 56\textsuperscript{296} is an alternative to heightened pleading.\textsuperscript{297} A critic argues that a motion for summary judgment is better suited to dispose of frivolous lawsuits than a heightened pleading standard.\textsuperscript{298} While both procedures may effectively rid the federal docket of frivolous lawsuits, a motion for summary judgment still takes up the court’s time and constitutes space on the docket, whereas a heightened pleading standard for Section 1983 lawsuits is more likely to deter the filing of frivolous suits altogether.\textsuperscript{299}

Another critic argues that heightened pleading is inherently unworkable.\textsuperscript{300} According to this critic, heightened pleading is unworkable because there is inconsistency as to the treatment of civil rights plaintiffs—some courts accept heightened pleading and others reject it.\textsuperscript{301} In addition to being procedurally inconsistent, the argument asserts that a heightened pleading standard has several different meanings.\textsuperscript{302} Courts are unsure about the amount of detail to require, or courts try to describe the standard to no avail.\textsuperscript{303} This argument may be true, but it also demonstrates the necessity of amending the Federal Rules of Civil Procedure. An amendment to the Federal Rules of Civil Procedure would provide the judicial branch with direction, consistency, and detail. It should be clear to the circuit courts that heightened pleading is necessary for Section 1983 prison claims, and the amendment to the Federal Rules of Civil Procedure will outline exactly what a heightened pleading standard looks like.

\begin{itemize}
\item \textsuperscript{295} Interview with Michael Pasquinelli, \textit{supra} note 17 (explaining that private counsel is often court appointed to prisoners litigating Section 1983 claims).
\item \textsuperscript{296} Fino. R. Civ. P. 56 (stating that a party may move for summary judgment, identifying each claim or defense, or the part of each claim or defense, on which summary judgment is sought). The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. \textit{Id.} The court should state on the record the reasons for granting or denying the motion. \textit{Id.}
\item \textsuperscript{297} Cottrell, \textit{supra} note 25, at 1109.
\item \textsuperscript{298} \textit{Id.}
\item \textsuperscript{299} Fairman, \textit{supra} note 22, at 564.
\item \textsuperscript{300} \textit{Id.} at 590–93.
\item \textsuperscript{301} \textit{Id.} at 590–91.
\item \textsuperscript{302} \textit{Id.} at 591.
\item \textsuperscript{303} \textit{Id.} at 591–92 (arguing that even when courts attempt to explain the heightened pleading standard, they often fall short because “specific, nonconclusory factual allegations” is not a phrase understood by the average litigant).
\end{itemize}
IV. IMPACT

Once the Federal Rules of Civil Procedure are amended to require heightened pleading for Section 1983 prison claims, both federal and state courts will be more capable of seeking justice for prisoners. This change will occur by: (1) reducing the crowded federal court docket; (2) returning Section 1983 prison claims to state courts; (3) creating uniformity between federal and state courts; and (4) clarifying the appropriate pleading standard for Section 1983 claims.

While federal courts adhere to a standard of notice pleading, many state courts require fact pleading. This disparity means that inmate-civil-rights litigants, or any plaintiff for that matter, will be subjected to a more lenient pleading standard if their lawsuit is brought in federal court as opposed to state court. This disparity is especially apparent with Section 1983 prison claims in states that adhere to fact pleading. For example, in Illinois, a fact pleading state, Section 1983 claims are predominantly brought in federal court instead of state court. By imposing a heightened pleading standard, frivolous lawsuits will be deterred because plaintiffs will have a heightened burden to meet. This will likely impact the volume of Section 1983 prison claims because they are often presumed frivolous by some judges. Because federal courts are congested, a lighter load on the federal docket will likely increase the efficiency of the justice system.

Further, if the state and federal pleading standards mirror each other, Section 1983 prison claims will be filed in both state and federal courts, which would likely lighten the federal docket’s load of Section 1983 prison claims. By assumption, once pleading standards mirror each other in both state and federal court, inmates will have one less incentive to bring their lawsuits in federal courts as opposed to state

305. See supra notes 138–48 and accompanying text.
306. Id.
307. Interview with Michael Pasquinelli, supra note 17.
308. Fairman, supra note 22, at 576.
309. William Bennett Turner, When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts, 92 HARV. L. REV. 610, 618 (1979) (stating that 1976, approximately 70% of civil rights actions filed by inmates were dismissed as a result of initial judicial review under Section 1915).
310. See Blaze, supra note 3, at 935.
311. Interview with Michael Pasquinelli, supra note 17 (speculating that if there are fewer cases to litigate, more attention can be given to each lawsuit).
312. Id. (explaining that inmate litigation is often brought in federal court because in Illinois, the state pleading standard is stricter than the federal pleading standard); see supra notes 138–48 and accompanying text.
courts unless otherwise appropriate to do so. It is a core principal of federalism that judicial power must be shared between the state and federal government.\textsuperscript{313} If both state and federal courts share the burden of litigating Section 1983 prison claims, justice will be more attainable for prisoners who suffered a legitimate infringement on their constitutional rights.

While state and federal courts often differ on the accepted pleading standard,\textsuperscript{314} a heightened pleading standard for Section 1983 prison claims would bring uniformity to the courts. Uniformity between federal and state courts is valued for the sake of clarity as established \textit{supra}.\textsuperscript{315} Additionally, prisoners are often among the poor and uneducated group of society, so clarity as to the pleading standard would be beneficial to them—especially pro se litigants.\textsuperscript{316}

Moreover, although clarity is valued for civil rights litigants, clarity is also necessary for the circuit courts. Since \textit{Leatherman},\textsuperscript{317} circuit courts have been implementing roundabout methods and standards to require heightened pleading for Section 1983 claims while still complying with Federal Rule of Civil Procedure 8.\textsuperscript{318} Even though these federal circuits feel the need to address the pleading standard for Section 1983 prison claims and require heightened pleading, they should be following the direction of the U.S. Supreme Court, which requires notice pleading.\textsuperscript{319} After \textit{Leatherman}, an amendment to the Federal Rules of Civil Procedure is necessary to dictate the appropriate pleading standard for Section 1983 prison claims because it will sweep more broadly than the holding of \textit{Leatherman}, leaving no doubt as to the appropriate pleading standard for Section 1983 prison claims.\textsuperscript{320} By amending Rule 9 to include Section 1983 as an exception to notice pleading, thus requiring a heightened pleading standard, the federal courts will no longer be left with any doubt as to what the appropriate pleading standard is. This amendment will dissipate confusion, enhance judicial efficiency, and bring justice to all parties involved.

\textsuperscript{313} Cooperative Federalism, \textit{BLACK’S LAW DICTIONARY} 729, 1278 (10th ed. 2014).
\textsuperscript{314} See \textit{supra} notes 138–48 and accompanying text.
\textsuperscript{315} See \textit{supra} notes 241–75 and accompanying text.
\textsuperscript{316} Marcus, \textit{supra} note 116, at 473–77.
\textsuperscript{318} See \textit{supra} notes 241–75 and accompanying text.
\textsuperscript{319} See generally Kathleen M. Sullivan & Noah Feldman, \textit{Constitutional Law} (18th ed. 2013) (noting that the U.S. Supreme Court is the supreme law of the land).
\textsuperscript{320} \textit{Leatherman}, 507 U.S. at 168 (holding that Federal Rule of Civil Procedure 9(b), which authorizes heightened pleading, does not apply to Section 1983 municipal liability actions).
Amending the Federal Rules of Civil Procedure is necessary for the reasons stated in this Comment. First, a heightened pleading standard is imperative to combat forum shopping and increase the federal courts’ efficiency.321 Because federal courts require notice pleading and many state courts require fact pleading, an overwhelming majority of Section 1983 claims are brought in federal court as opposed to state court, which decreases the federal courts’ efficiency.322 A substantial number of Section 1983 claims should be litigated in state court because they involve state-official defendants.323 Second, Section 1983 prison claims are similar to fraud or mistake—the two stated exceptions to notice pleading.324 Fraud and mistake are exceptions to notice pleading because they are quasi-criminal offenses; similarly, Section 1983 prison claims are quasi-criminal offenses because they often relate to conditions of confinement involving punitive segregation, excessive force, and physical disciplinary measures.325 Finally, many federal courts subject Section 1983 prison claims to a heightened pleading standard already, so the rules should mirror reality.326 There are circuit splits differing over the proper pleading standard for Section 1983 prison claims because many states feel that embracing heightened pleading would deter frivolous lawsuits, protect defendants, and increase efficiency.327

Amending Federal Rule of Civil Procedure 9 to include Section 1983 prison claims will reduce the crowded federal court docket, return Section 1983 prison claims to state courts, create uniformity between federal and state courts, and clarify the appropriate pleading standard.328 Most importantly, heightened pleading will allow courts to address the true purpose behind Section 1983 prison litigation: bringing justice to those inmates who suffered a constitutional harm and brought a meritorious claim before the court. Protecting the con-
inmate litigation is vital for a fair society, but this can only be accomplished if the procedural rules are clarified.

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