CONSTITUTIONAL LAW – FOURTH AMENDMENT: EIGHTH CIRCUIT REPLACES CLEAR STATEMENT RULE WITH COURSE OF PROCEEDINGS TEST IN § 1983 CLAIMS

S.A.A. v. Geisler, 127 F.4th 1133 (8th Cir. 2025).

ABSTRACT

In *S.A.A. v. Geisler*, the Eighth Circuit Court of Appeals en banc replaced the "clear statement rule" with the "course of proceedings test" for determining the capacity in which defendants are sued under 42 U.S.C. § 1983.

Plaintiff S.A.A. brought § 1983 claims against Defendant Samantha Geisler, a police officer with the city of Maple Grove, Minnesota. S.A.A. alleged that Officer Geisler violated her Fourth Amendment rights for false arrest and excessive force while arresting her. However, her complaint failed to state the capacity under which she was suing Officer Geisler. Under the clear statement rule, a complaint that is silent about the capacity of the officer is interpreted to include only official capacity claims. As a result, the district court in Minnesota granted Officer Geisler's motion for summary judgment and the appeals court affirmed.

When the case was petitioned for rehearing en banc, the Eighth Circuit concluded the clear statement rule improperly barred S.A.A. from pursuing individual capacity claims against Officer Geisler and should be abandoned in favor of the course of proceedings test. The course of proceedings test considers multiple factors to help identify a defendant's capacity. From the court's position, earlier interpretations of the federal pleading rules were mistaken, and the clear statement rule was inconsistent with the approach adopted by all other circuits. In making this change, the court fundamentally altered the manner in which courts in the Eighth Circuit determine whether the defendant is sued in her official or individual capacity.

Now, Eighth Circuit practitioners must consider all filings to assess a defendant's liability, but they may welcome this new substantive approach, which favors more contextual inquiry over a rigid, bright-line test. By setting new circuit precedent, this shift represents an effort to resolve conflicts between the clear statement rule and the Federal Rule of Civil Procedure and multiple Supreme Court decisions, as well as an attempt to unite the Eighth Circuit with all other Circuits.

I. FACTS

On January 7, 2020, police officers executed a search warrant at the residence of S.A.A. and her husband for stolen goods.[1] Upon arrival, the officers knocked on the door of the residence, however, neither S.A.A nor her husband knew who was at the door.[2] S.A.A.'s husband fired gunshots toward the

1. S.A.A. v. Geisler, 127 F.4th 1133, 1135 (8th Cir. 2025) (en banc).

2. S.A.A. v. Geisler, No. 21-CV-2071, 2023 WL 5533344, at *1 (D. Minn. Aug. 28, 2023), *aff'd*, 108 F.4th 699 (8th Cir. 2024), *vacated*, No. 23-3119, 2024 WL 4128448 (8th Cir. Sep. 10, 2024), *rev'd en banc*, 127 1133 (8th Cir. 2025).

officers out of fear.[3] While no officers were physically harmed, both S.A.A. and her husband were asked to exit their home.[4] At this time, S.A.A.'s husband informed the officers that she was thirty-eight weeks pregnant.[5] "S.A.A. was arrested under Felony First Degree Assault as a suspect in the shooting" and, after booking at the Maple Grove Police Department, was transferred to the Hennepin County Jail.[6] While in custody, "S.A.A. began to experience labor symptoms."[7] Later thereafter, her water broke and she was transported to a medical center, where she gave birth.[8]

In 2021, S.A.A. filed a lawsuit against Officer Geisler, as well as other defendants who were subsequently dismissed.[9] S.A.A. alleged that Officer Geisler violated her rights under the Fourth Amendment, claiming that she "falsely arrested, unreasonably seized, falsely imprisoned, and detained" S.A.A., and that she used "excessive force" during the arrest.[10] Specifically, S.A.A. alleged Officer Geisler "violently" threw her to the concrete, causing her to scrape her knees and hit her stomach on the ground.[11] S.A.A. reported experiencing back pain shortly after her arrest and later gave birth to a healthy baby while in custody.[12] In response to the complaint, Officer Geisler objected to S.A.A.'s claims and moved for summary judgment.[13] Officer Geisler argued that "S.A.A. did not plead any of her § 1983 claims against Geisler in her individual capacity claims, and S.A.A. does not have a viable official-capacity claim."[14]

S.A.A. filed her lawsuit against Officer Geisler under 42 U.S.C. § 1983.[15] The complaint failed to specify the capacity in which Geisler was sued, either in her official or individual capacity, as compelled by case law

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3. *Id.* at *2.

4. *Id.*

5. *Id.*

6. Brief for Appellant, S.A.A. v. Geisler, 127 F.4th 1133, 1135 (8th Cir. 2025) (No. 23-3119), 2024 WL 248917, at *7.

7. *Id.*

8. *See id.* at *8-*10.

9. *See S.A.A.*, 2023 WL 5533344, at *1 ("Since filing this lawsuit, S.A.A. has amended her complaint three times. The operative third amended complaint was filed on May 27, 2022. In that complaint, S.A.A. brings three claims against Geisler: (1) a § 1983 claim for false arrest in violation of the Fourth Amendment; (2) a § 1983 claim for excessive force in violation of the Fourth Amendment; and (3) a state-law claim for intentional infliction of emotional distress." (citations omitted)).

10. Brief for Appellant, *supra* note 6, at *31-32 (citation modified).

11. *S.A.A.*, 2023 WL 5533344, at *1.

12. *Id.*

13. *Id.* at *2.

14. *Id.*

15. S.A.A. v. Geisler, 127 F.4th 1133, 1136 (8th Cir. 2025) (en banc).

and is best practice when determining liability and immunity.[16] As such, the U.S. District Court for the District of Minnesota granted Officer Geisler's motion for summary judgment under the Eighth Circuit's "clear statement rule."[17]

Following the district court's decision, the Eight Circuit Court of Appeals affirmed, applying the clear statement rule and noting that it was bound by precedent under the rule.[18] In doing so, the panel concluded the circuit court's clear statement precedent was sound.[19]

In response to the panel's initial decision, S.A.A. petitioned for a rehearing en banc.[20] S.A.A. advocated for reconsideration of the circuit court's clear statement rule precedent for determining capacity in § 1983 claims.[21] She challenged the initial ruling, asserting that through the course of proceedings she asserted both official and individual capacity claims against Officer Geisler.[22] Considering that the clear statement rule has been rejected by every other circuit and conflicts with federal pleading rules and recent Supreme Court rulings, the Eighth Circuit reassessed its prior framework.[23] The court *held* that the course of proceedings test provides the proper means for determining whether S.A.A. adequately pleaded capacity claims.[24] The court remanded the case back to the district court application under this new test.[25]

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16. *See id.*; *see also* Nix v. Norman, 879 F.2d 429, 431 (8th Cir. 1989) ("As a judgment against a public servant in his individual capacity exposes him or her to compensatory and punitive damages, we have repeatedly stated that [§] 1983 litigants wishing to sue government agents in both capacities should simply use the following language: 'Plaintiff sues each and all defendants in both their individual and official capacities.'" (citing Rollins by Agosta v. Farmer, 731 F.2d 533, 536 n.3 (8th Cir. 1984))); MARTIN A. SCHWARTZ, SECTION 1983 LITIGATION 95 (Kris Markarian ed., 3d ed. 2014) ("The § 1983 complaint should clearly specify the capacity (or capacities) in which the defendant is sued.").

17. *S.A.A.*, 127 F.4th at 1135 (citing *S.A.A.*, 2023 WL 5533344).

18. *Id.* (citing S.A.A. v. Geisler, 108 F.4th 699, 701 (8th Cir. 2024), *vacated*, No. 23-3119, 2024 WL 4128448 (8th Cir. Sep. 10, 2024), *rev'd en banc*, 127 1133 (8th Cir. 2025)).

19. *See generally id.*

20. *Id.*

21. *See id.*

22. *See id.* at 1136. Since the court's original pleading standards required a clear statement by the plaintiff specifying the capacity under which he or she is suing the defendant, all complaints silent about capacity were interpreted to only include official capacity claims. *See generally id.* When S.A.A. challenged the court's initial ruling and filed for a rehearing *en banc*, she asserted that, if the court considers the course of proceedings, her complaint does include both official and individual capacity claims against Officer Geisler. *See generally id.*

23. *See generally id.* ("The clear statement rule conflicts with the Federal Rules of Civil Procedure, is in tension with Supreme Court decisions, and unwarrantedly sets us alone among the courts of appeals. For each of these reasons, we now reject the clear statement rule.").

24. *See id.* at 1139-40.

25. *See id.*

II. LEGAL BACKGROUND

For the last thirty years, Eighth Circuit plaintiffs with the intent to bring § 1983 claims against government officials were required to use specific language to formally sue defendants in both their individual and official capacities.[26] Up until *S.A.A. v. Geisler*, the bright-line rule in the Eighth Circuit provided that a plaintiff who failed to stipulate individual capacity claims within her complaint restricted her suit against the defendant to only include official capacity claims.[27] Limiting claims has a direct impact on the relief and monetary damages a plaintiff may seek,[28] and may even preserve claims if one capacity level fails.[29] When asked to reconsider this rule, the Eighth Circuit looked to federal pleading rules, Supreme Court decisions, and sister circuit interpretations.[30]

A. 42 U.S.C. § 1983 AND THE CAPACITY QUESTION

An important piece of Reconstruction era legislation, § 1983 allows an injured party to bring civil action against "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage" who causes a violation of federal statutory or constitutional rights.[31] Integral to American jurisprudence, § 1983 mandates that the federal judiciary hold state actors accountable for denying individuals equal protection of the laws.[32] While the

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26. *See* Nix v. Norman, 879 F.2d 429, 431 (8th Cir. 1989).

27. *See* Egerdahl v. Hibbing Cmty. Coll., 72 F.3d 615, 619 (8th Cir. 1995), *abrogated by*, S.A.A. v. Geisler, 127 F.4th 1133 (8th Cir. 2025) (en banc).

28. *See generally* Kentucky v. Graham, 473 U.S. 159, 171 n.13 (1985) ("In addition, punitive damages are not available under § 1983 from a municipality, but are available in a suit against an official personally." (citation modified)).

29. *See* Hafer v. Melo, 502 U.S. 21, 30-31 (1991). Separate avenues of relief are available to plaintiffs, allowing them to sue state officials in federal court in both their official- and personal-capacities. *See id.* at 25. This allows plaintiffs to preserve claims if either fails due to sovereign immunity (official-capacity) or qualified immunity (individual-capacity) defenses available to defendants. *See generally id.* at 25-27, 30-31.

30. *See S.A.A.*, 127 F.4th at 1137.

31. 42 U.S.C. § 1983 ("Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person with the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."). *See generally* Richard Briffault, *Section 1983 and Federalism*, 90 HARV. L. Rev. 1133, 1141-56 (1977) ("The third new source of judicial power stemmed from the Reconstruction civil rights acts themselves. The Civil Rights Act of 1870 created federal jurisdiction over suits alleging racially inspired interference with the franchise; the Act of 1871 — embodying the current 42 U.S.C. § 1983 — provided a broad civil rights jurisdiction for all claims of deprivations of federally secured rights 'under the color of' state law; and the Civil Rights Act of 1875, assuring blacks equal access to places of public accommodations, granted jurisdiction to the federal trial courts to enforce its provisions." (footnotes omitted)).

32. *See* Briffault, *supra* note 31, at 1153-56.

statute's procedural interpretation has varied across the circuits, the Eighth Circuit's decision in *S.A.A. v. Geisler*, redefines how § 1983 litigants may sue government officials in both their individual and official capacities.[33] However, because the Eighth Circuit's decision was not unanimous and "the Supreme Court has not indicated that the course of proceedings approach is preferable," uncertainty remains about how broadly these claims may be construed, particularly since this practice is new for the Eighth Circuit.[34] Understanding the statute's history clarifies why courts have moved away from bright-line procedural standards in favor of a broader, more adaptable approach to evaluating § 1983 claims.

1. *A Short History of § 1983*

After the Civil War, the American court system "witnessed the greatest expansion of federal court jurisdiction since 1789."[35] A series of Congressional decisions expanded federal removal jurisdiction, increased "the habeas corpus powers of the lower federal courts," and provided "guaranteed access to the federal courts."[36] These provisions were controversial at a time of national healing while individuals in power grew hostile towards state courts for their apparent "inaction and the toleration of private lawlessness" in instances of flagrant civil rights atrocities committed by the Ku Klux Klan.[37] As a result, a debate over the federal-state balance of power ensued.[38]

In 1871, President Ulysses S. Grant acknowledged a need to address this violence and requested immediate action from Congress regarding anarchy in the South and the states' lack of power in combatting these issues.[39] Not long after this request, Congress passed the Civil Rights Act of 1871, with the intention of widening the breadth of congressional power to regulate the enforcement of Fourteenth Amendment provisions.[40] The Act specifically offered individuals a means to seek relief for deprivations of their constitutional rights by someone acting under color of law.[41] For example, when a police

33. *See generally S.A.A.*, 127 F.4th 1133.
34. *See generally id.* at 1142 (Shepherd, J., dissenting).
35. Briffault, *supra* note 31, at 1147.
36. *Id.* at 1147-48.
37. *Id.* at 1153.
38. *See generally id.* at 1141-56.
39. *Id.*
40. *See id.* at 1135, 1153.
41. Brief of Petitioners, Williams v. Washington, No. 23-191 (U.S. Apr. 11, 2024), 2024 WL 1639749, at *3-4. *See generally, e.g.*, Mitchum v. Foster, 407 U.S. 225 (1972) (recognizing § 1983 as a primary federal safeguard for protecting constitutional rights against state officials acting under color of law); Smith v. Wade, 461 U.S. 30 (1983) (explaining that § 1983 provides remedies for constitutional violations by state actors), *superseded by statute*, 42 U.S.C. § 1983, *as recognized in*, Ngo v. Reno Hilton Resort Corp., 140 F.3d 1299, 1302 (9th Cir. 1998); Felder v. Casey, 487 U.S.

officer conducts an unlawful search and seizure, the individual whose rights were violated may file a claim against the officer for relief by violating her Fourth Amendment rights. The first section of the Civil Rights Act of 1871 was later codified as § 1983, which has remained a pillar of civil rights litigation for more than a century.[42] Despite its historical significance, § 1983's procedural intricacies continue to plague its interpretation.

2. *Capacity Under § 1983*

As is understood today, § 1983 offers plaintiffs a cause of action for holding state and local government officials accountable for violating their constitutional and federal statutory rights.[43] In asserting a claim, the threshold question for governmental immunity is whether Congress "unambiguously conferred" an individual right enforceable under § 1983.[44] If the Statute does not create such a right, nor privileges or immunities within the meaning of § 1983, the plaintiff is barred from suing under the Statute.[45]

A key factor in § 1983 litigation is whether a plaintiff is asserting claims against officials in their official capacity, individual capacity, or both.[46] "Official-capacity suits typically involve either allegedly unconstitutional state policies or unconstitutional actions taken by state agents possessing final authority over a particular decision."[47] Asserting individual capacity claims establish personal liability against officials who take actions "outside the scope of their official duties."[48] As applied, an imprisoned plaintiff may file a § 1983 complaint against a state official in both her official and individual capacity for violating her Eighth Amendment rights for cruel and unusual punishment.[49]

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131 (1988) (holding that § 1983 claims cannot be restricted by state procedural rules because Congress intended robust federal remedial measures to protect against misconduct under color of law), *superseded by statute*, 42 U.S.C. § 1997, *as recognized in*, Suncoast Post-Tension, Ltd. V. Scoppa, No. 4:13-cv-3125, 2014 WL 12596471, at *14 (S.D. Tex. May 13, 2014); Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (acknowledging that § 1983 was enacted to ensure judicial relief when state actors fail to comply with federally protected rights), *abrogated by*, Medina v. Planned Parenthood S. Atl., 606 U.S. 357 (2025); Haywood v. Drown, 556 U.S. 729 (2009) (reaffirming that § 1983 provides individuals federal remedial measures to redress constitutional violations by state officials).

42. *See* Briffault, *supra* note 31, at 1155.

43. SCHWARTZ, *supra* note 16, at 1.

44. *See* Gonz. Univ. v. Doe, 536 U.S. 273, 283-84 (2002).

45. *See Wilder*, 496 U.S. at 508; *see also Gonz. Univ.*, 536 U.S. at 283; Medina v. Planned Parenthood S. Atl., 606 U.S. 357, 365 (2025).

46. *See* S.A.A. v. Geisler, 127 F.4th 1133 (8th Cir. 2025) (en banc).

47. Nix v. Norman, 879 F.2d 429, 431 (8th Cir. 1989).

48. *Id.*

49. *See generally* SCHWARTZ, *supra* note 16, at 87-90.

Furthermore, a frequent topic of debate is whether states are considered "persons" within the scope of this statute. The Civil Rights Act's legislative history reveals no suggestion that Section 1 of the bill, which § 1983 codifies, did not intended to subject the "States themselves" to liability under this law.[50] An "established principle of jurisprudence" elicits a great deal of influence on the scope § 1983 and helps courts tailor a clearer understanding of how the law applies to relevant parties of whom it is intended to govern.[51] The seminal case, *Monell v. Department of Social Services of City of New York*, clarified a central constitutional law question considering whether "municipalities and other local government units to be included among those persons to whom § 1983 applies."[52] Looking again at the legislative history of the Civil Rights Act of 1871, the Court determined that Congress intended to consider these governmental bodies as "persons," citing their inclusion of "customs and usages [in § 1983] because of the persistent and widespread discriminatory practices of state officials . . . [that] could well be so permanent and well settled as to constitute a 'custom or usage' with the force of law."[53]

B. THE EIGHTH CIRCUIT'S CLEAR STATEMENT RULE

For decades, the Eighth Circuit has adhered to the "clear statement rule" that required § 1983 plaintiffs to offer a clear statement of intent to sue a defendant in their individual capacity.[54] Pursuant to this rule, plaintiffs were instructed by the court to simply include the phrase: "[p]laintiff sues each and

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50. *See* Will v. Mich. Dep't State Police, 491 U.S. 58, 68 (1989).

51. *See id.* at 67-68 (quoting Beers v Arkansas, 61 U.S. 527, 529 (1857)).

52. *See* 436 U.S. 658, 690 (1978).

53. *Id.* (first alteration in original) (quoting Adickes v. S.H. Kress & Co., 398 U.S. 144, 167-68 (1970)); *see also* Nash., C. & St. L. Ry. Co. v. Browning, 310 U.S. 362, 369 (1940). "It would be a narrow conception of jurisprudence to confine the notion of 'laws' to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled state practice…can establish what is state law. The equal protection clause did not write an empty formalism into the Constitution. Deeply embedded traditional ways of carrying out state policy, such as those of which petitioner complains, are often tougher and truer law than the dead words of the written text." *Id.*

54. S.A.A. v Geisler, 127 F.4th 1133, 1136 (8th Cir. 2025) (en banc) (adopting the "course of proceedings" test and overruling the Eighth Circuit's prior bright-line capacity pleading rule); *see also* Nix v. Norman, 879 F.2d 429, 431 (8th Cir. 1989) (explaining the need for clear pleading to indicate individual capacity liability). *See generally, e.g.*, Egerdahl v. Hibbing Cmty. Coll., 72 F.3d 615 (8th Cir. 1995) (applying the bright-line rule treating ambiguous complaints as official capacity claims), *abrogated by*, S.A.A. v. Geisler, 127 F.4th 1133 (8th Cir. 2025) (en banc); Murphy v. Arkansas, 127 F.3d 750 (8th Cir. 1997), *abrogated by*, S.A.A. v. Geisler, 127 F.4th 1133 (8th Cir. 2025) (en banc); Andrus *ex rel.* Andrus v. Arkansas, 197 F.3d 953 (8th Cir. 1999), *abrogated by*, S.A.A. v. Geisler, 127 F.4th 1133 (8th Cir. 2025) (en banc); Baker v. Chisom, 501 F.3d 920 (8th Cir. 2007), *abrogated by*, S.A.A. v. Geisler, 127 F.4th 1133 (8th Cir. 2025) (en banc); Sanders v. Newton, 117 F.4th 1059 (8th Cir. 2024), *abrogated by*, S.A.A. v. Geisler, 127 F.4th 1133 (8th Cir. 2025) (en banc).

all defendants in both their individual and official capacities."[55] Thus, under the rule, a court was not expected to decode "cryptic hint[s] in a plaintiff's complaint" to discern the capacity in which a defendant was being sued.[56]

This bright-line standard was supported by Rule 8 of the Federal Rules of Civil Procedure, which requires a party to make a "short and plain statement" to establish a right to relief.[57] This practice helps the court understand what the plaintiff intends to prove. However, for § 1983 claims, it is vital for a plaintiff to state that a defendant is being sued in both her official and individual capacity as it directly affects what relief is available.[58] "If a plaintiff's complaint is silent about the capacity in which she is suing the defendant, [the court] interpret[s] the complaint as including only official-capacity claims."[59]

Since a silent complaint is presumed to assert only official capacity claims, Rule 9(a) of the Federal Rules of Civil Procedure and the Eleventh Amendment together require plaintiffs to specify the defendant's capacity in their § 1983 claims.[60] Rule 9(a) of the Federal Rules of Civil provides: "[i]t is not necessary to aver the capacity of the party to sue or to be sued…except to the extent required to show the jurisdiction of the court."[61] The Eleventh Amendment precludes § 1983 damage claims against states and their employees acting in their official capacities.[62] However, state officials "may be sued in [their] official capacity *if* the plaintiff merely seeks injunctive or prospective relief for a legally cognizable claim."[63] The Eleventh Amendment also allows plaintiffs to sue state officials in their individual capacity and does not prevent damage claims.[64] This is supported by *Ex parte Young*,

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55. *Nix*, 879 F.2d at 431 (quoting Rollins by Agosta v. Farmer, 731 F.2d 533, 536 n.3 (8th Cir. 1984)).

56. *Egerdahl*, 72 F.3d at 620.

57. FED. R. CIV. P. 8(a).

58. *See Egerdahl*, 72 F.3d at 619-20.

59. *Egerdahl*, 72 F.3d at 619 (citing DeYoung v. Patten, 898 F.2d 628, 635 (8th Cir. 1990), *overruled on other grounds by*, Forbes v. Arkansas Educ. Television Commc'n Network Found., 22 F.3d 1423 (8th Cir. 1994) (en banc)).

60. *Nix*, 879 F.2d at 431; s*ee also* FED. R. CIV. P. 9(a); U.S. CONST. amend. XI.

61. S.A.A. v Geisler, 127 F.4th 1133, 1142 n.2 (8th Cir. 2025) (en banc) ("The text of Rule 9 different slightly when [the court] decided *Nix*, but the substance has not changed" (first citing Nix, 879 F.2d at 431; and then citing FED. R. CIV. P. 9 advisory committee's notes to 2007 amendment)).

62. *See* Murphy v. Arkansas, 127 F.3d 750, 754 (8th Cir. 1997) (citing Will v. Mich. Dep't State Police, 491 U.S. 58 (1989)), *abrogated by*, S.A.A. v. Geisler, 127 F.4th 1133 (8th Cir. 2025) (en banc). *See generally* U.S. CONST. amend. XI.

63. *Nix*, 879 F.2d at 432 (emphasis added) (citing *Will*, 491 U.S. 58 (concluding official-capacity claims for prospective relief are not actions against the state because state officials are "persons" under § 1983 if they are sued in their official capacity for injunctive relief)).

64. *Egerdahl*, 72 F.3d at 619; *see also, e.g.*, *Murphy*, 127 F.3d at 754 (recognizing the Eleventh Amendment does not bar individuals from seeking damages against state officials when they are sued in their individual capacities).

which clarifies that sovereign immunity imposed by the Eleventh Amendment does not bar individuals from suing officials in their individual capacity for injunctive relief.[65] Because § 1983 jurisprudence is shaped by Eleventh Amendment stare decisis, the court has recognized a jurisdictional limitation on federal courts' authority to hear § 1983 claims absent a short, plain capacity stipulation.[66]

Until *S.A.A. v. Geisler*, the Eighth Circuit used this jurisprudence to support the use of the clear statement rule in shaping its review of § 1983 claims.[67] This formalistic approach often resulted in dismissals on technical pleading grounds, underscoring the circuit's emphasis on Eleventh Amendment immunity and jurisdictional clarity.[68] The shift to the course of proceedings test marked a significant departure from established legal precedent for the Eighth Circuit.[69]

C. THE COURSE OF PROCEEDINGS TEST IN OTHER CIRCUITS

Before adjusting its approach in alignment with other circuits, the Eighth Circuit was the only federal appellate court to require a clear statement when assessing capacity claims under § 1983.[70] All other circuits adopted the course of proceedings test in favor of flexible pleading requirements for plaintiffs rather than utilizing a "restrictive, overly technical" procedure that restricts a plaintiff's claims against a state official.[71] Grounded in case law from both the circuit courts of appeals and the Supreme Court of the United

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65. *See Ex parte* Young, 209 U.S. 123, 159-60 (1908) ("If the act . . . [is] a violation of the Federal Constitution, the officer . . . is . . . stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct.").

66. *See Nix*, 879 F.2d at 431 (citing Rose v. Nebraska, 748 F.2d 1258, 1262 (8th Cir. 1984)).

67. *See generally* 127 F.4th 1133 (8th Cir. 2025) (en banc).

68. *See* Hill v. Shelander, 924 F.2d 1370, 1373 (7th Cir. 1991) ("The dissent siphons from *Kolar* the following rule–that a § 1983 action that fails to designate the defendant in his official or individual capacity shall be presumed to be against him in his official capacity. . . . For this reason, then, the dissent believes that the suit, without further clarification, must be construed as an official capacity suit. The dissent's interpretation of the complaint places the plaintiff in a chokehold of restrictive, overly technical pleading requirements." (citing Kolar v. County of Sangamon, 756 F.2d 564 (7th Cir. 1985))).

69. *See S.A.A.*, 127 F.4th at 1138.

70. *Id.* at 1136; *see, e.g.*, Powell v. Alexander, 391 F.3d 1, 22 (1st Cir. 2004); Rodriguez v. Phillips, 66 F.3d 470, 482 (2d Cir. 1995); Downey v. Pa. Dep't of Corrs., 968 F.3d 299, 310 (3d Cir. 2020); Biggs v. Meadows, 66 F.3d 56, 59-61 (4th Cir. 1995); Robinson v. Hunt Cnty., 921 F.3d 440, 446 (5th Cir. 2019); New Alb. Main St. Props. v. Watco Cos., 75 F.4th 615, 632 (6th Cir. 2023); Xiong v. Fischer, 787 F.3d 389, 398 (7th Cir. 2015); Stoner v. Santa Clara Cnty. Off. Educ., 502 F.3d 1116, 1123 (9th Cir. 2007); Trackwell v. U.S. Gov't, 472 F.3d 1242, 1244 (10th Cir. 2007); Young Apartments, Inc. v. Town of Jupiter, 529 F.3d 1027, 1047 (11th Cir. 2008); Daskalea v. District of Columbia, 227 F.3d 433, 448 (D.C. Cir. 2000); Pennington Seed, Inc. v. Produce Exch. No. 299, 457 F.3d 1334, 1339 (Fed. Cir. 2006).

71. *See S.A.A.*, 127 F.4th at 1138 (quoting *Hill*, 924 F.2d at 1373).

States, the course of proceedings test relies on the implied intention of the plaintiff to hold a defendant personally liable for their actions.[72]

The course of proceedings test examines multiple factors to determine the capacity in which the plaintiff intended to sue the defendant when it is not explicitly stated.[73] As one of the factors, courts must determine how early individual capacity claims were asserted, if punitive damages were included in the prayer for relief, and if "the defendant declined to raise a qualified immunity defense."[74] In essence, the goal of this approach is to "set up a system wherein matters are to be decided on their merits whenever possible"[75] rather than perpetuating a bright-line rule that is "beyond the requirements of Rule 9 and is overly restrictive for plaintiffs.[76]

Although not dispositive, the plaintiff's early indication of an intent to hold the defendant personally liable increases the likelihood that the defense will have adequate notice of such claims.[77] However, the timeframe in which this intent is ascertained is based on the circumstances of each case.[78] In *Houston v. Reich*, the Tenth Circuit determined that the "pleadings, pre-trial order, and [jury] instructions ma[d]e it clear" the plaintiff intended to sue the defendants in both official and individual capacities.[79] The Sixth Circuit shared a similar approach in *Moore v. City of Harriman*, where the court held initial pleading deficiencies could be corrected in subsequent filings, "including responses to motions to dismiss for failure to state a claim or to motions for summary judgment."[80] For example, in *Moore*, the court held that a motion filed one month after the initial complaint, clarifying an individual capacity argument, was timely and sufficient to satisfy the course of proceedings test.[81] Alternatively, in *Daskalea v. District of Columbia*, the D.C. Circuit decided that asserting individual capacity claims against the defendant during rebuttal argument at trial was too late to begin claiming personal

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72. *See id.* at 1136.

73. *See id.* at 1139 (citing *Powell*, 391 F.3d at 23).

74. *Id.*

75. *See* Jeffrey K. O'Connor, Note, *Civil Rights/Civil Procedure–Is It the Officer or the Gentleman?: Issues of Capacity in § 1983 Actions Brought in Federal Court*, 28 W. NEW ENG. L. REV. 323, 355 (2006).

76. *See S.A.A.*, 127 F.4th at 1138 (citing FED. R. CIV. P. 9).

77. Powell v. Alexander, 391 F.3d 1, 23 (1st Cir. 2004).

78. *Id.*

79. *See id.* (quoting Houston v. Reich, 932 F.2d 883, 885 (10th Cir. 1991) (alterations in original)).

80. *See id.* (citing Moore v. City of Harriman, 272 F.3d 769, 774 (6th Cir. 2001)).

81. *See Moore*, 272 F.3d at 772 ("While it is clearly preferable that plaintiffs explicitly state whether a defendant is sued in his or her individual capacity, failure to do so is not fatal if the course of proceedings otherwise indicates that the defendant received sufficient notice." (citation modified)).

liability against the defendant.[82] Accordingly, courts frequently look to the course of the proceedings to determine whether the plaintiff's assertion was timely enough to afford the defense a meaningful opportunity to respond, or whether it emerged too late to permit a fair defense.[83]

Another factor courts consider when using the course of proceedings test is whether the plaintiff asserted punitive damages against the defendant.[84] Punitive damages are only available for individual-capacity claims, so including them in the complaint puts defense counsel on notice that individual capacity claims are being pursued.[85] By including punitive damages in a complaint, the courts agree that a plaintiff is indicating an intention to include individual capacity claims against the defendant.[86] Although the inclusion of punitive damages is not dispositive of intention, it is useful to consider when utilizing the course of proceedings.[87]

Another primary consideration courts often weigh is whether the defendant declined to raise a qualified immunity defense—an affirmative defense reserved for personal liability claims a plaintiff may assert against the defendant. [88] Therefore, the defense is unavailable for official-capacity actions where the only immunities that can be declared are "forms of sovereign immunity that the entity, *qua* entity, may possess, such as the Eleventh Amendment."[89] As a result, electing not to assert a qualified-immunity defense suggests to both the court and the prosecuting party that "the defendant is not on notice of the potential for personal liability."[90]

The Eighth Circuit's adoption of the nationally accepted course of proceedings test reflects the legal profession's desire to balance procedural precision and substantive fairness in § 1983 litigation. Rather than requiring a rigid, overly technical process for pursuing personal- and official-capacity liabilities, the course of proceedings test helps preserve meritorious claims from being dismissed due to technical pleading missteps while still affording defendants adequate notice to respond.[91]

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82. *See* S.A.A. v. Geisler, 127 F.4th 1133, 1140 (8th Cir. 2025) (en banc) (citing Daskalea v. District of Columbia, 227 F.3d 433, 448-49 (D.C. Cir. 2000)).

83. *See* Powell v. Alexander, 391 F.3d 1, 23 (1st Cir. 2004).

84. *S.A.A.*, 127 F.4th at 1139.

85. *Id.* at 1140.

86. *Id.* at 1139.

87. *See id.* (citing *Powell*, 391 F.3d at 22).

88. *Id.* 1139-40*; see also* Biggs v. Meadows, 66 F.3d 56, 61 (4th Cir. 1995).

89. *See* Kentucky v. Graham, 473 U.S. 159, 167 (1985); *see also id.* at 171 n.14 ("In many cases, the complaint will not clearly specify whether officials are sued personally, in their official capacity, or both. 'The course of proceedings' in such cases typically will indicate the nature of the liability sought to be imposed." (citing Brandon v. Holt, 469 U.S. 464, 469 (1985))).

90. *S.A.A.*, 127 F.4th at 1140.

91. *See id.* at 1138.

III. ANALYSIS

In *S.A.A.*, the Eighth Circuit Court of Appeals was presented with a question of "exceptional importance" that conflicts with other courts of appeals and the Supreme Court regarding capacity stipulations in § 1983 claims, thus making S.A.A.'s case an appropriate one for a rehearing en banc.[92] The case was granted a rehearing en banc by the full court after a 2024 Eighth Circuit decision upheld the district court's decision to maintain the circuit's clear statement rule precedent.[93] The court summarily reversed circuit precedent, replacing the clear statement rule in favor of the course of proceedings test.[94]

A. THE MAJORITY OPINION

There were three main reasons why the panel decided to reconsider the circuit's § 1983 pleading standards: (1) it conflicts with federal pleading rules, (2) it conflicts with Supreme Court decisions, and (3) it hinders unanimity amongst the rest of the circuit courts.[95]

1. *Conflicts with Federal Pleading Rules*

In the present case, the Eighth Circuit reconsidered its initial interpretation of Rule 9 of the Federal Rules of Civil Procedure.[96] The court's decision in *Nix* established the now defunct bright-line rule requiring plaintiffs to include a capacity stipulation within a § 1983 complaint pursuant to Rule 9 pleading standards and the jurisdictional limitations the Eleventh Amendment imposes on civil rights cases in federal court.[97] The Eighth Circuit was alone in its interpretation of the relationship between Rule 9 and the Eleventh Amendment, particularly regarding the application of Amendment's jurisdictional and immunity components in § 1983 litigation.[98]

In *Nix*, the court reasoned the Eleventh Amendment implicates a "*jurisdictional* limit on federal courts in civil rights cases," which is of particular

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92. *See generally* FED. R. APP. P. 40(b)(2)(D) ("A petition for rehearing en banc must begin with a statement that: . . . the proceeding involves one or more questions of exception importance, each concisely stated.").

93. *See* S.A.A. v. Geisler, 108 F.4th 699, 701 (8th Cir. 2024) (affirming the district court's ruling that individual capacity claims must be explicitly presented pursuant to the clear statement rule), *vacated*, No. 23-3119, 2024 WL 4128448 (8th Cir. Sep. 10, 2024), *rev'd en banc*, 127 1133 (8th Cir. 2025). *See generally* Mader v. United States, 654 F.3d 794, 800 (8th Cir. 2011) (overturning a prior panel's decision requires a hearing before the en banc court).

94. *See S.A.A.*, 127 F.4th at 1138 (overturning the clear statement rule in favor of the course of proceedings test as new circuit precedent).

95. *Id.* at 1136.

96. *See id.* at 1137.

97. *See id.* (citing Nix v. Norman, 879 F.2d 429, 431 (8th Cir. 1989)). *See generally* FED. R. CIV. P. 9(a); U.S. CONST. amend. XI.

98. *See S.A.A.*, 127 F.4th at 1138.

importance for § 1983 claims.[99] The court interpreted Rule 9's pleading requirements as providing the procedural mechanism for specifying a defendant's capacity, since that determination can be dispositive in assessing whether Eleventh Amendment immunity limits federal jurisdiction.[100] Expressly pleading individual capacity helps show "Eleventh Amendment immunity is not implicated and that jurisdiction is proper."[101] However, when deciding the present case, the court conceded it used faulty logic and failed to consider the "differences between Eleventh Amendment immunity and federal jurisdiction."[102]

Where the course of proceedings test is applied, some courts have agreed the Eleventh Amendment bars federal courts from granting relief against nonconsenting states and state officials sued in their official capacity unless the plaintiff seeks injunctive or prospective relief.[103] This does not limit the courts of subject matter jurisdiction over § 1983 claims, rather it places a "block on the *exercise* of that jurisdiction" for actions beyond what the Constitution grants the federal courts.[104] For § 1983 defendants, their immunity coincides with their capacity to be sued, "which is expressly distinct from jurisdiction."[105] This distinction relinquishes a plaintiff's responsibility to clearly assert the defendant's capacity because, under Rule 9, no such statement is required unless it is to establish federal court jurisdiction.[106]

Recognizing its misunderstanding, the Eighth Circuit decided in *S.A.A.* to reconsider its former interpretation of what Rule 9 requires. The court conceded its use of the clear statement rule to compel plaintiffs to provide a short, plain statement in their complaints is contradictory with what is needed according to the federal pleading rules.[107] Requiring an "express allegation of the defendant's capacity" under Rule 9 is burdensome on plaintiffs when it "explicitly conflicts with" Rule 9's purpose of establishing federal court jurisdiction.[108]

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99. *See id.* at 1137 (quoting *Nix*, 879 F.2d at 431).

100. *Nix*, 879 F.2d at 431.

101. Biggs v. Meadows, 66 F.3d 56, 60 (4th Cir. 1995) (explaining the legal reasoning of the Sixth and Eighth Circuit Courts of Appeals, both of which still utilized the clear statement rule at this time).

102. *S.A.A.*, 127 F.4th at 1137 (quoting *Biggs*, 66 F.3d at 60).

103. *Nix*, 879 F.2d at 432.

104. *See Biggs*, 66 F.3d at 60 (emphasis added).

105. *S.A.A.*, 127 F.4th at 1137.

106. *Id.* (citing FED. R. CIV. P. 9(a)(1)(A)).

107. *Id.*

108. *See id.* (citing FED. R. CIV. P. 9(a)(1)(A)).

2. *Conflicts with Supreme Court Decisions Regarding Notice of Pleading Standards*

The clear statement rule is not embraced by the Supreme Court as an effective method for pleading § 1983 suits in federal court.[109] The Court has repeatedly rejected heightened pleading requirements that increase the likelihood a plaintiff's case would be dismissed on a technicality.[110] In *Kentucky v. Graham*, the Court acknowledged that the course of proceedings can effectively signal the degree of liability the plaintiff intends to impose on the defendant.[111] Many complaints omit the precise terminology contemplated in *Nix*.[112] Adopting a more flexible approach therefore permits courts to evaluate the pleadings as a whole to discern the plaintiff's intended claims, rather than dismissing the action on a mere technicality.[113]

A similar sentiment was expressed in *Johnson v. City of Shelby, Mississippi* where the Court reasoned that while the federal pleading rules prompt a plain declaration of the claim, "they do not countenance dismissal of a complaint for [an] imperfect statement."[114] Circuit courts applying the course of proceedings test have embraced this rationale, acknowledging that adding procedural hurdles undermines access to remedies for violations of federal statutory or constitutional rights and compromises judicial efficacy.[115]

3. *Hindrance on Circuit Courts of Appeals Unanimity*

Lastly, by adhering to a legally controversial test left the Eighth Circuit in a "lonely position" among its sister circuits.[116] The decision highlighted

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109. *Id.* (citing Kentucky v. Graham, 473 U.S. 159, 171 n.14 (1985)).

110. *Id.* at 1137-38.

111. *Id.* at 1137 (citing *Graham*, 473 U.S. at 171 n.14); *see also* Brandon v. Holt, 469 U.S. 464, 469 (1985) (explaining that when the complaint does not clearly state a defendant's liability the course of proceedings will indicate what the plaintiff intends to assert).

112. *See generally* Nix v. Norman, 879 F.2d 429, 431 (8th Cir. 1989) (stating § 1983 litigants should use the following language, "[p]laintiff sues each and all defendants in both their individual and official capacities").

113. *See Graham*, 473 U.S. at 166-67.

114. *S.A.A.*, 127 F.4th at 1137-38 (citing Johnson v. City of Shelby, 574 U.S. 10, 11 (2014) (quoting FED. R. CIV. P. 8(a)(2))).

115. *See id.* at 1138 ("The clear statement rule 'places the plaintiff in the chokehold of restrictive, overly technical pleading requirements.'" (quoting Hill v. Shelander, 924 F.2d 1370, 1373 (7th Cir. 1991))); *see also, e.g.*, Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512-14 (2002) ("Before discovery has unearthed relevant facts and evidence, it may be difficult to define the precise formulation of the required prima facie case in a particular case. Given that the prima facie case operates as a flexible evidentiary standard, it should not be transposed into a rigid pleading standard for discrimination cases," which relates to § 1983 civil claims.); Doe v. Cassel, 403 F.3d 986, 989 (8th Cir. 2005) (observing *Swierkiewicz* invalidates the Eighth Circuit's clear statement rule for § 1983 claims).

116. *See S.A.A.*, 127 F.4th at 1138 (quoting Baker v. Chisom, 501 F.3d 920, 928 n.2 (8th Cir. 2007), *abrogated by*, S.A.A. v. Geisler, 127 F.4th 1133 (8th Cir. 2025) (en banc)).

the use of the course of proceedings test by all the other circuits and its endorsement by the Supreme Court.[117] The en banc rehearing in *S.A.A.* afforded the Eighth Circuit an opportunity to reconsider aligning with the other circuit courts in adopting a more merit-focused, substantive approach to evaluating § 1983 capacity claims.[118] The court here justifies upending the circuit's long-standing precedent by stating that keeping the clear statement rule would "leave this circuit on an island" and "perpetuate unwarranted disuniformity in the law."[119]

B. THE DISSENT

While the majority of the en banc panel in the *S.A.A.* case believe the course of proceedings test is an appropriate method in determining capacity, Circuit Judge Shepherd authored a dissenting opinion, which was joined by Circuit Judge Loken, opposing the change in precedent.[120] The judges dissented for two reasons: (1) the clear statement rule is sound according to Rule 8 of the Federal Rules of Civil Procedure, and (2) the clear statement rule is easy for people to understand.[121]

1. *The Clear Statement Rule and Federal Rule of Civil Procedure 8*

Under Rule 8 of the Federal Rules of Civil Procedure, a complaint must contain "a short and plain statement . . . showing that the pleader is entitled to relief."[122] The clear statement rule required § 1983 plaintiffs to specify a defendant's capacity, or the claim would be construed as official capacity only.[123] However, by abrogating the clear statement rule, both defense counsel and the court will be required to comb through numerous files to interpret the intention of the plaintiff.[124] As described by the dissenting judges, this may further frustrate the litigation process and is likely to prolong it, thus leading to excessive costs for all parties involved.[125]

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117. *See generally id.* at 1142 n.5 (listing cases representing the circuits that utilize the course of proceedings test).

118. *See generally S.A.A.*, 127 F.4th at 1138.

119. *Id.* (quoting United States v. $579,475.00 in U.S. Currency, 917 F.3d 1047, 1050 (8th Cir. 2019)).

120. *See generally id.* at 1140 (Shepherd, J., dissenting).

121. *Id.*

122. *Id.* (quoting FED. R. CIV. P. 8(a)(2)).

123. *Id.*

124. *Id.* at 1141.

125. *See id.*

Providing a short and plain statement also helps resolve immunity questions as early in the litigation process as possible.[126] A factor the course of proceedings test considers is whether the defendant raised a qualified immunity defense, and declining to do so suggests the defense is unaware of her personal liability.[127] Since qualified immunity "is an *immunity from suit* rather than a mere defense to liability," the Supreme Court and the Eighth Circuit historically underscored the importance of addressing said immunity as early as possible.[128] The dissent expressed concern that abandoning the clear statement rule will force defendants to "play a potentially ruinous guessing game" to determine the scope of liability they face.[129]

2. *The Clear Statement Rule is Sound Precedent*

Lastly, the dissenting judges highlight that though the Supreme Court has praised the course of proceedings test, it has not endorsed it as the sole method of interpretation for parties and courts involved in § 1983 claims.[130] In *Hafer v. Melo*, the Court acknowledged the circuit-split opinion between the course of proceedings test and the clear statement rule, though refused to resolve the issue because the issue has yet to be properly presented to the Court.[131] The Court has frequently positioned itself in favor of the plaintiff being specific in the initial pleading to avoid ambiguity.[132] The dissenting judges found this formal acknowledgement sufficient, recognizing the inherent complexity of applying the course of proceedings test. They emphasize the clear statement rule as sound precedent, supported by both the Supreme Court and the Federal Pleading Rules, that is easy for professional legal practitioners and pro se litigants to understand.[133]

IV. IMPACT ON NORTH DAKOTA LAW

The Eighth Circuit's decision in *S.A.A. v. Geisler*, has significant implications for legal professionals in North Dakota, where federal courts routinely adjudicate § 1983 claims against state and local officials.[134] Since

126. *Id.* (citing Hunter v. Bryant, 502 U.S. 224, 227 (1991)).
127. *See id.* at 1139-40 (majority opinion).
128. *Id.* at 1141 (Shepherd, J., dissenting) (quoting *Hunter*, 502 U.S. at 227).
129. *Id.*
130. *See id.* at 1142.
131. *Id.* (citing Hafer v. Melo, 502 U.S. 31, 24 n.* (1991)).
132. *Id.* (citing *Hafer*, 502 U.S. at 31 n.*).
133. *Id.* at 1140.
134. *See generally, e.g.*, Turtle Mountain Band of Chippewa Indians v. Howe, 137 F.4th 710 (8th Cir. 2025) (recognizing "§ 1983 provides a cause of action for private plaintiffs seeking to enforce the Fifteenth Amendment"); Roberson v. Dakota Boys & Girls Ranch, 42 F.4th 924 (8th Cir. 2022) (ruling private psychiatric facility and its employees may be considered "state actors"

North Dakota rests within the Eighth Circuit, the decision immediately reshapes the analytical framework for assessing how a plaintiff asserts official and individual capacity claims against officials in its federal courts. By shifting from the clear statement rule and embracing the course of proceedings test, the court replaced a rigid, formalistic rule with a context-sensitive approach that prioritizes a claim's substance over its technical precision.[135] This shift has practical, procedural, and strategic implications for litigants and courts across the state, altering how complaints are drafted, how motions are argued, and how liability is allocated in civil rights litigation.[136]

Moving forward, the course of proceedings test will require legal professionals to consider how early in the litigation a plaintiff asserts individual capacity claims, if the defense asserts qualified immunity, and if punitive damages are included in the prayer for relief.[137] Although none of these factors on their own is dispositive of a plaintiff's assertion of individual capacity claims against a defendant, courts must consider them from a substantive perspective to ensure that the defense receives fair notice and can adequately prepare for subsequent proceedings.[138]

A. FOR PLAINTIFFS

For North Dakota practitioners representing plaintiffs, *S.A.A.* offers a more forgiving and predictable framework that enhances access to federal remedies.[139] Under the former clear statement rule, many § 1983 suits were threatened with dismissal because of the "restrictive, overly technical pleading requirements" that, if overlooked by prosecutors, could prove detrimental to the entire case.[140] It also threatened pro se litigants and small firms unfamiliar with the doctrinal nuances of § 1983 pleading standards, making it

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under § 1983 because they assume the state's constitutional duty to provide medical care for a minor in its custody).

135. *See* Powell v. Alexander, 391 F.3d 1, 22 (1st Cir. 2004) ("[T]he 'course of proceedings' test . . . balances a defendant's need for fair notice of potential personal liability against a plaintiff's need for the flexibility to develop his or her case as the unfolding events of litigation warrant").

136. *See S.A.A.*, 127 F.4th at 1142 n.8 ("Accordingly, the factors indicating that a plaintiff is alleging individual capacity claims may look different at various stages over the course of proceedings. Some factors, like punitive damages, may be relevant at the pleading stage; others, like the absence of a qualified immunity defense, may play a role only at the summary judgement stage. In other words, applying the ordinary rules of procedure, the manner and degree of clarity required to answer the capacity question will change over the course of proceedings.").

137. *See generally id.* at 1139.

138. *See generally id.* at 1140 (citing *Powell*, 391 F.3d at 22).

139. *See generally id.* (explaining that plaintiffs suing state agents in their official capacity are unable to receive punitive damages unless they also include individual capacity claims).

140. *See id.* at 1138 (quoting Hill v. Shelander, 924 F.2d 1370, 1373 (7th Cir. 1991)).

more compelling for the Eighth Circuit to adopt a more forgiving standard.[141] By shifting to the course of proceedings test, the Eighth Circuit now allows courts to determine capacity based on the totality of the record, including pleadings, briefing, discovery, and party conduct, as they make up the *course of the proceedings*. Moreover, attorneys can focus on developing factual allegations and building a record that clearly signals intent to pursue individual capacity liability for officials who violate the constitutional rights of § 1983 plaintiffs.[142]

From a strategic standpoint, the new standard encourages North Dakota plaintiffs' attorneys to adopt a more deliberate approach to framing pleadings and subsequent filings.[143] Rather than relying on formulaic language at the complaint stage, where the clear statement rule was applied the most, practitioners must now ensure they reflect their intent to pursue official capacity, individual capacity, or both throughout the litigation process.[144] This might involve explicitly referencing it in briefing, identifying the relief sought against individuals, or using discovery responses to reinforce their client's intentions.[145] In practice, this is likely to make § 1983 litigation more dynamic in North Dakota federal courts, as capacity disputes are resolved through the evidentiary and procedural record rather than through early dismissal.[146] By separating itself from the bright-line rule, the Eighth Circuit reunited itself with the rest of the federal circuits, thus bringing North Dakota's federal practice into closer doctrinal alignment with its sister circuits

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141. *See* Rory K. Schneider, Comment, *Illiberal Construction of Pro Se Pleadings*, 159 U. PA. L. REV. 585, 602 (2011) ("Accordingly, courts attempt to mitigate the impact that pro se litigants' 'inartful' drafting may have on the adequacy of their complaints with the first form of liberal construction: to the extent possible, pro se allegations should be read only for substance, disregarding poor style, vocabulary, syntax, superfluities, and the like. Courts, then, must discern from the allegations the factual scenario that the plaintiff intended to allege." (footnote omitted)).

142. *See* Brandon v. Holt, 469 U.S. 464, 469-73 (1985) (explaining that the course of proceedings may clarify whether a defendant is sued in an individual capacity, and "even at [a] late stage of the proceedings, petitioners are entitled to amend their pleadings to conform to the proof and to the District Court's findings of fact").

143. *See generally id.*

144. *See generally S.A.A.*, 127 F.4th at 1139 (recognizing the inquiry into whether the plaintiff intends to assert official and individual capacity claims should be evident throughout the course of proceedings, so the defendant is "on notice that she was being sued in her individual capacity" (quoting Daskalea v. District of Columbia, 227 F.3d 433, 448 (D.C. Cir. 2000))).

145. *See generally id.* ("Relevant factors include, but are not limited to, how early in the litigation the plaintiff first specified individual capacity claims, whether the plaintiff's complaint included a prayer for punitive damages, and whether the defendant declined to raise a qualified immunity defense.").

146. *See generally id.* (Shepherd, J., dissenting) (noting the question of qualified immunity can be answered according to the defendant's capacity, so resolving that issue earlier in litigation is preferred (citing O'Neil v. City of Iowa City, 496 F.3d 915, 917 (8th Cir. 2007)).

and the Supreme Court's pleading jurisprudence.[147] This harmonization reduces the likelihood that North Dakota district courts will issue decisions that diverge from sister circuits and strengthen uniformity for multi-state practitioners.

B. FOR DEFENDANTS

For defense attorneys representing state or municipal officials, the *S.A.A.* decision introduces a new layer of uncertainty. The course of proceedings test, though now the dominant approach across the federal circuits, continues to receive criticism from judges for its inherent ambiguities.[148] The clear statement rule previously offered an efficient tool for narrowing exposure early in litigation; however, without that bright-line rule, defense counsel must now analyze the entire procedural history to assess whether personal liability is implicated.[149] This process demands greater vigilance and potentially prolongs pretrial proceedings.[150] In the District of North Dakota, where judicial resources are limited, and dockets already face pressure from criminal and civil caseloads, this procedural shift could increase the time and expense required to resolve capacity-related disputes.[151] Municipalities and state agencies may need to adjust their litigation strategies by investing more resources in early-stage discovery and motion practice to clarify the nature of claims before trial, or risk subjecting themselves to increased liability.[152]

Additionally, the decision has implications for qualified immunity defenses, which hinge on whether an official is sued in an individual capacity.[153] Under the old rule, a lack of clarity in the pleadings often allowed defendants to avoid personal liability altogether.[154] The new rule now requires

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147. *See generally id.* at 1142 n.5 (listing cases representing the circuits that utilize the course-of-proceedings test).

148. *See generally S.A.A.*, 127 F.4th at 1140-42 (Shepherd, J., dissenting).

149. *See id.* at 1141-42.

150. *See generally id.* at 1141 ("The clear statement rule places public employee defendants on notice of the capacity in which they are sued—the entire purpose of Rule 8—without needless, expensive litigation to ascertain the capacity through the "course of proceedings"—our Court's yet-to-be-hammered-out, multi-part test.").

151. *See generally Profile of the Legal Profession 2024: Demographics*, A.B.A., https://www.americanbar.org/news/profile-legal-profession/demographics/ [https://perma.cc/A94W-ZM9V] (last visited Jan. 14, 2026) (providing that "North Dakota has the fewest lawyers among the 50 states: 1,663," whereas New York has the most lawyers: 187,656).

152. *See generally S.A.A.*, 127 F.4th at 1141 (Shepherd, J., dissenting) ("We stress the importance of doing the qualified immunity analysis early in litigation because those entitled to qualified immunity hold an entitlement not to stand trial or face the other burdens of litigation." (citation modified)); Ashcroft v. Iqbal, 556 U.S. 662, 685 (2009) (explaining that the qualified-immunity doctrine allows officials to be "free . . . from the concerns of litigation").

153. *See S.A.A.*, 127 F.4th at 1140 (citing *Graham*, 473 U.S. at 166-67).

154. *See* Egerdahl v. Hibbing Cmty. Coll., 72 F.3d 615, 619 (8th Cir. 1995) ("If a plaintiff's complaint is silent about the capacity in which she is suing the defendant, we interpret the complaint

North Dakota defense attorneys to anticipate these allegations, which could emerge as the record develops. Cities, counties, and state agencies may find it necessary to update policies clarifying when and how they will indemnify employees sued under § 1983, particularly as personal capacity exposure becomes more fluid under the new standard.

Ultimately, this procedural shift may inevitably increase litigation costs and could prolong the time required to reach a sound resolution.[155] The added complexity of sifting through case filings may not only strain the resources of defendants but could end up burdening the courts, thus extending the journey to a final conclusion.[156]

V. CONCLUSION

It is a significant for a federal circuit to depart from long-standing precedent as the Eighth Circuit has done in *S.A.A. v. Geisler*. The decision to depart from the clear statement rule in favor of the course of proceedings test shows not only a doctrinal realignment, but also a philosophical one, choosing contextual interpretation over rigidity. While this change promotes consistency among circuits, it also raises legitimate concerns about predictability, judicial efficiency, and the risk of expanding litigation uncertainty.[157] However, its success will ultimately depend on how the courts and practitioners adapt to the new analytical framework.

For North Dakota's legal community, the implications are immediate and practical. Plaintiff's lawyers may find greater procedural protection using a meritorious approach, while defense counsel must prepare for more complex pretrial strategy and potentially lengthier proceedings.[158] Regardless, this legal evolution in the Eighth Circuit reinforces the magnitude of careful record-building and strategic foresight to safeguard procedural efficiency.

Ultimately, this decision challenges legal professionals in North Dakota to reconsider the balance between access to justice and procedural clarity.

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as including only official-capacity claims."), *abrogated by*, S.A.A. v. Geisler, 127 F.4th 1133 (8th Cir. 2025) (en banc).

155. *See S.A.A.*, 127 F.4th at 1141-42 (Shepherd, J., dissenting) ("By abrogating the clear statement rule, we needless increase litigation costs and obscure an easily understood rule that has benefitted § 1983 defendants as well as plaintiffs for decades." (footnote omitted)); *see also* Nix v. Norman, 879 F.2d 429, 431 (8th Cir. 1989) (explaining that plaintiffs wishing to sue "all defendants in both their individual and official capacities" should provide a clear statement expressing as such to "guarantee[] that the defendant receives prompt notice of his or her potential personal liability").

156. *See S.A.A.*, 127 F.4th at 1141-42.

157. The dissenting opinion, while only persuasive, presents valid concerns about the legal ramifications broadening procedural pleading standards for plaintiffs pursuing § 1983 claims against officials in their official and individual capacities. *See generally id.* at 1140-42.

158. *See generally* discussion *supra* Sections IV.A, IV.B.

Whether it represents a necessary modernization or an unwarranted departure from succinctly identifying capacity in a complaint will become evident over time. What is certain, however, is how it will affect § 1983 litigation across the state for years to come.

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