

2023

Rehberg v. Paulk 132 S. Ct. 1497 (2012)

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Recommended Citation

Lawhun, Marissa K. (2023) "Rehberg v. Paulk 132 S. Ct. 1497 (2012)," *Ohio Northern University Law Review*. Vol. 39: Iss. 2, Article 8.

Available at: https://digitalcommons.onu.edu/onu_law_review/vol39/iss2/8

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Rehberg v. Paulk
132 S. Ct. 1497 (2012)

I. INTRODUCTION

In *Rehberg v. Paulk*,¹ the Supreme Court of the United States was asked to determine whether a complaining witness in a grand jury proceeding is entitled to absolute immunity from civil litigation in an action under 42 U.S.C. § 1983.² A unanimous Court determined that grand jury witnesses are entitled to absolute immunity from civil litigation under section 1983.³ The Court reasoned that to promote a fair and unbiased judicial system, the witnesses must be given immunity.⁴ Additionally, this decision maintains the secrecy that is necessary for grand jury proceedings.⁵ The Court also abolished the distinction between lay witnesses and complaining witnesses.⁶

II. STATEMENT OF FACTUAL AND PROCEDURAL HISTORY

Petitioner, Charles Rehberg, was alleged to have harassed and assaulted members of the managerial staff of a hospital in Albany, Georgia.⁷ Respondent, James Paulk, in his capacity as chief investigator, was investigating Petitioner on behalf of the local district attorney's office.⁸ Respondent testified twice in front of the grand jury, both times resulting in indictments against Petitioner.⁹ Both indictments were subsequently

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1. 132 S. Ct. 1497 (2012).
 2. *Id.* at 1500, 1503. The statute at issue in the case states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

- 42 U.S.C. § 1983 (2006).
3. *Rehberg v. Paulk*, 132 S. Ct. at 1500, 1506.
4. *Id.* at 1505 (citing *Briscoe v. LaHue*, 460 U.S. 325, 333 (1983)).
5. *Id.* at 1509.
6. *See infra* notes 93-95 and accompanying text.
7. *Rehberg*, 132 S. Ct. at 1500.
8. *Id.*
9. *Id.* at 1501.

dismissed in favor of Petitioner for lack of evidence.¹⁰ While the second indictment was pending, Petitioner brought the suit at issue in this appeal.¹¹

This action originated when Petitioner filed suit against Respondent under section 1983.¹² Petitioner alleged that Respondent's false testimony at the grand jury proceedings led to the indictments against the Petitioner.¹³

The United States District Court for the Middle District of Georgia denied Respondent's motion to dismiss based on immunity.¹⁴ Respondent appealed to the Eleventh Circuit Court of Appeals, which reversed the District Court's ruling.¹⁵ The Eleventh Circuit Court held that grand jury witnesses are entitled to absolute immunity from section 1983 liability, even when the witness conspired to present false testimony.¹⁶ Additionally, the Eleventh Circuit declined to recognize an exception to immunity for a complaining witness in a grand jury proceeding.¹⁷

Petitioner subsequently appealed, and the Supreme Court of the United States granted certiorari.¹⁸ The Supreme Court affirmed the Court of Appeals' decision, extending immunity from section 1983 liability to witnesses in grand jury proceedings.¹⁹

III. THE COURT'S DECISION AND RATIONALE

A. *The Majority Opinion*

Speaking for a unanimous Court, Justice Alito began his opinion by discussing the history of section 1983.²⁰ The statute's purpose was to codify long-standing common law.²¹ Its enactment aimed at preventing those acting on behalf of the government from depriving citizens of their constitutional rights.²² This interpretation has allowed for the retention of common law defenses, including immunity.²³ Justice Alito then determined that section 1983 actions are subject to the defense of common law

10. *Id.*

11. *Id.*

12. *Rehberg*, 132 S. Ct. at 1500-01.

13. *Id.* at 1501.

14. *Id.*

15. *Id.*

16. *Rehberg v. Paulk*, 611 F.3d 828, 839 (11th Cir. 2010) (citing *Briscoe*, 460 U.S. at 326).

17. *Id.* (quoting *Jones v. Cannon*, 174 F.3d 1271, 1287 n.10 (11th Cir. 1999)).

18. *Rehberg*, 132 S. Ct. at 1501.

19. *Id.*

20. *Id.* at 1501-02.

21. *Id.* at 1502.

22. *Id.* at 1501.

23. *Rehberg*, 132 S. Ct. at 1502 (citing *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951)).

immunity.²⁴ Applying these common law principles, the Court then determined that immunity is available to grand jury witnesses.²⁵

Justice Alito went on to explain how courts have taken a “functional approach” in determining whether an expansion of immunity for witnesses in grand jury proceedings is warranted.²⁶ This approach identifies the governmental functions in the public sector that are so important and vulnerable to interference that immunity is necessary.²⁷ The evaluation is to be done in accordance with common law principles.²⁸ Using this approach, the Court identified several roles deserving of immunity, including legislators, judges, prosecutors, and witnesses giving testimony at trial.²⁹

The Court then turned to the history of prosecutorial immunity.³⁰ In 1871, when section 1983 was adopted, private citizens prosecuted crimes.³¹ Today, only public prosecutors conduct criminal proceedings.³² The Court distinguished private citizen prosecutors from public prosecutors, and extended immunity from section 1983 claims only to public prosecutors.³³ This is necessary because public prosecutors need immunity to conduct their jobs properly.³⁴ Private-citizen-prosecutors are not a general part of the legal system and were not afforded immunity due to their infrequent and voluntary participation in the legal process.³⁵ Therefore, section 1983 has been adapted to meet the needs of an evolving legal system.³⁶

Next, the Court determined the scope of immunity afforded to witnesses at trial.³⁷ Specifically, trial witnesses are allowed a limited form of absolute immunity.³⁸ If trial witnesses were subject to threats of civil litigation, the truth might not be found, and justice could not be served.³⁹ The Court has consistently held that trial witnesses are entitled to absolute immunity.⁴⁰ To hold otherwise would impair “the truth-seeking process.”⁴¹

24. *Id.* (quoting *Kalina v. Fletcher*, 522 U.S. 118, 123 (1997)).

25. *Id.* at 1502, 1506.

26. *Id.* at 1503.

27. *Id.*

28. *Rehberg*, 132 S. Ct. at 1503.

29. *Id.*

30. *See id.*

31. *Id.*

32. *Id.* at 1504.

33. *Rehberg*, 132 S. Ct. at 1504.

34. *Id.*

35. *See id.* at 1503-04.

36. *See id.* at 1504.

37. *Id.* at 1505.

38. *Rehberg*, 132 S. Ct. at 1505.

39. *Id.* (citing *Briscoe*, 460 U.S. at 332-33).

40. *Id.*

41. *Id.*

Then the Court decided whether a witness at a grand jury proceeding should be afforded the same immunity that was given to witnesses at trial.⁴² The Court, in concluding that witnesses in grand jury proceedings are entitled to immunity, applied the same reasoning that justified providing immunity for witnesses at trial, “chiefly [the possibility of] prosecution for perjury.”⁴³ Thus, witnesses at grand jury proceedings are to be given immunity from section 1983 claims.⁴⁴

The Court declined, however, to recognize an exception for witnesses connected with law enforcement.⁴⁵ Law enforcement officers testify more often than lay people and are thus more in need of immunity than other witnesses.⁴⁶ If a law enforcement officer’s liability was predicated upon exoneration of the accused, appellate courts might take those external influences into consideration when deciding cases.⁴⁷ This would compromise impartiality within the judicial system.⁴⁸ Additionally, government officers may be subject to employment-related sanctions if they give false testimony.⁴⁹ Thus, the Court declined to recognize a distinction.⁵⁰

The Court then declined to endorse Petitioner’s main argument—that there should be an exception to the defense of immunity for complaining witnesses.⁵¹ Historically, the role of the complaining witness was as “a party who procured an arrest and initiated a criminal prosecution.”⁵² This was part of the jurisprudence of section 1983’s predecessor,⁵³ but today it is irrelevant because prosecutors decide when and against whom to press charges, not complaining witnesses.⁵⁴ The Court acknowledged that a particular witness can play a vital role in the decision to press charges, but this role is ultimately not decisive.⁵⁵ Thus, an exception for complaining witnesses would essentially be meaningless due to the obsolete nature of the term.⁵⁶

The Court next addressed Petitioner’s claim that witnesses in grand jury proceedings are not able to be cross-examined, and, therefore, should not be

42. *Id.* at 1505-06.

43. *Rehberg*, 132 S. Ct. at 1505.

44. *Id.* at 1506.

45. *Id.* at 1505.

46. *Id.* at 1506.

47. *Id.*

48. *See Rehberg*, 132 S. Ct. at 1506 (citing *Briscoe*, 460 U.S. at 344).

49. *Id.*

50. *Id.* at 1505-06.

51. *Id.* at 1507.

52. *Id.* (citing *Kalina*, 522 U.S. at 135).

53. *Rehberg*, 132 S. Ct. at 1503 (citing *Stewart v. Sonneborn*, 98 U.S. 187, 198 (1879)).

54. *Id.* at 1508.

55. *Id.*

56. *See id.* at 1508-09.

immune from civil liability under section 1983.⁵⁷ This claim was rejected because the secrecy of the grand jury proceedings must be upheld, thus making cross-examination inappropriate.⁵⁸ Additionally, witnesses who testify in grand jury proceedings will generally testify again at trial and will be cross-examined there.⁵⁹ The Court emphasized the importance of protecting witnesses and allowing them to testify “fully and frankly.”⁶⁰ If the identity of the witnesses were made known by subjecting them to section 1983 liability, grand jury secrecy would be compromised, along with the entire grand jury process.⁶¹

Lastly, the Court determined that creating immunity for grand jury witnesses would not create a distinction between states that have grand juries and states that do not.⁶² This issue was addressed by comparing grand juries to preliminary hearings, noting that witnesses at preliminary hearings are given immunity.⁶³ The Court cited cases in which the lower courts created immunity for witnesses at preliminary hearings.⁶⁴ Petitioner’s claim to the contrary was rejected, and the Court affirmed the decision of the appellate court.⁶⁵

IV. ANALYSIS

A. Introduction

The Court in *Rehberg* established a precedent that promotes efficiency within the justice system, and allows witnesses to testify freely without the threat of civil liability in a section 1983 action.⁶⁶ This preserves the secrecy of grand jury proceedings, which is of the utmost importance within our justice system. Additionally, declining to recognize a distinction between a complaining witness and a non-complaining witness decreases confusion within the system and thus decreases the burden on the State, as well as the witnesses.

57. *Id.* at 1509.

58. *Rehberg*, 132 S. Ct. at 1509.

59. *Id.*

60. *Id.* (quoting *United States v. Sells Eng’g, Inc.*, 463 U.S. 418, 424 (1983)).

61. *Id.*

62. *Id.*

63. *Rehberg*, 132 S. Ct. at 1509-10.

64. *Id.* at 1510 (citing *Brice v. Nkaru*, 220 F.3d 233, 239 n.6 (4th Cir. 2000); *Curtis v. Bembenek*, 48 F.3d 281, 284-85 (7th Cir. 1995)).

65. *Id.*

66. *See generally Rehberg*, 132 S. Ct. at 1497.

B. Discussion

There are two very important competing interests involved in this decision: the right of citizens to be free from violations of their constitutional rights under color of law, and the need to ensure the justice system is efficient in enabling the truth to come out in its proceedings.⁶⁷ The Supreme Court created a proper balance between these two interests by allowing a witness to be free from section 1983 claims based upon his or her testimony in grand jury proceedings.⁶⁸

This decision is also consistent with the goal of section 1983, which was enacted to protect citizens from unnecessary intrusion by government actors under color of law.⁶⁹ The statute was enacted to be consistent with common law principles and not to replace them.⁷⁰ It was not meant to abolish common law defenses for government actors, including the immunity at issue in this case.⁷¹ Allowing a grand jury witness, who is acting on behalf of the government, to use the common law defense of immunity enables him or her to provide testimony freely. The threat of prosecution for perjury protects criminal defendants against the potential for witnesses giving false testimony.⁷² Therefore, the Court's decision is in line with the objectives of section 1983 and promotes an efficient judicial system.

The Court's holding is consistent with both modern and historical practices. In *Imbler v. Pachtman*,⁷³ the Court expanded immunity to public prosecutors, while still denying that immunity to private citizen prosecutors.⁷⁴ Historically, private citizen prosecutors decided whether to bring an action against a defendant, and, due to the personal nature of that choice, were denied immunity.⁷⁵ In today's legal world, public prosecutors alone hold the discretion to prosecute.⁷⁶ The Supreme Court extended immunity to public prosecutors in *Imbler* because immunity was essential to the proper functioning of their job.⁷⁷ Thus, the expansion of immunity to grand jury witnesses from section 1983 claims is consistent with prior

67. *See generally id.*

68. *See generally id.*

69. *Id.* at 1501 (quoting *Imbler v. Pachtman*, 424 U.S. 409, 417 (1976)).

70. *Imbler*, 424 U.S. at 417-18 (citing *Tenney*, 341 U.S. at 376).

71. *Id.* (citing *Tenney*, 341 U.S. at 376).

72. *Rehberg*, 132 S. Ct. at 1505 (citing *Briscoe*, 460 U.S. at 342).

73. 424 U.S. 409 (1976).

74. *Id.* at 427.

75. *Id.* at 1503-04 (citing *Malley v. Briggs*, 475 U.S. 335, 340-41 & n.3 (1986)).

76. *Id.* at 1504.

77. *Imbler*, 424 U.S. at 426.

practices of the Supreme Court because of its demonstrated willingness to adapt to the changing legal environment.

Taking a functionalist approach, the Court has emphasized maintaining the goals of the common law when allowing immunity as a defense to a section 1983 claim.⁷⁸ The Court determined that the role of witnesses in grand jury proceedings is so important and vulnerable to interference that grand jury witnesses must be granted absolute immunity.⁷⁹ This protects grand jury witnesses going forward because they will be able to testify freely and not be subjected to fear of retaliatory litigation.⁸⁰ This is essential because it allows trials and the justice process to proceed in a proper and effective manner.⁸¹

There are existing incentives for a witness to only give the truth in his or her testimony—chiefly, the potential of prosecution for perjury.⁸² The Court highlighted this incentive to demonstrate that safeguards are already in place to promote truth in testimony eliminating the need for fear of civil litigation.⁸³ A witness may be prosecuted for perjury whether he or she is giving testimony to a grand jury or at trial.⁸⁴ Therefore, the incentive to tell the truth exists in both situations.

If the Supreme Court had taken Petitioner's view that a government official is not immune from section 1983 claims based on his or her testimony at trial, the judicial process would have been disrupted.⁸⁵ Witnesses would not have come forward for fear of retaliatory litigation.⁸⁶ Witnesses who did come forward would have had a greater tendency toward self-censorship.⁸⁷ The establishment of a system where witnesses in grand jury proceedings are protected against section 1983 claims is essential to allow the truth to come out in their testimonies. This promotes the interests of an efficient justice system without interfering with a private citizen's expectation to be free from violations of his or her constitutional rights under the color of law.

Immunity from liability under section 1983 for trial witnesses has existed for a long time.⁸⁸ In *Briscoe v. LaHue*,⁸⁹ the Supreme Court stated

78. See *Forrester v. White*, 484 U.S. 219, 224 (1988).

79. *Rehberg*, 132 S. Ct. at 1505 (citing *Briscoe*, 460 U.S. at 333).

80. See *Briscoe*, 460 U.S. at 335 (citing *Butz v. Economou*, 438 U.S. 478, 512 (1978)).

81. *Id.* (quoting *Butz*, 438 U.S. at 512).

82. See *Rehberg*, 132 S. Ct. at 1505 (citing *Briscoe*, 460 U.S. at 342).

83. *Id.* (citing *Briscoe*, 460 U.S. at 342).

84. *Id.*

85. *Briscoe*, 460 U.S. at 335 (citing *Butz*, 438 U.S. at 512).

86. See *Imbler*, 424 U.S. at 439.

87. *Briscoe*, 460 U.S. at 333.

88. See *id.* at 345.

89. 460 U.S. 325 (1983).

that section 1983 does not apply to private citizens who give perjured testimony because they are not acting under “color of law.”⁹⁰ This could create a distinction between lay witnesses and government employees serving as witnesses because government officials would be acting under color of law.⁹¹ The Supreme Court has correctly denied this distinction.⁹²

A distinction created between lay witnesses and those acting under their official governmental capacity would hinder the judicial process.⁹³ Government officials would not give open testimony as frequently or without reservation for fear of liability under section 1983.⁹⁴ This hesitation would obstruct the truth finding process, as well as clog the judicial system with civil rights cases under section 1983 every time a defendant was subsequently exonerated.⁹⁵ Citizens’ interest in a properly functioning judiciary overrides the need to allow defendants to pursue potentially frivolous civil rights claims against witnesses who testified against them.

The Court correctly determined that there is no acceptable justification for distinguishing grand jury and trial testimony.⁹⁶ Both proceedings are integral parts of the judicial system. In both instances witnesses are crucial to the way a prosecutor presents his or her case.⁹⁷ A witness in grand jury proceedings needs immunity, like a witness at trial, so that she is empowered to present truthful and open testimony.⁹⁸ A grand jury witness’s testimony will lead to a grand jury indictment.⁹⁹ If witnesses are afraid to present testimony, prosecutors will struggle to secure indictments.¹⁰⁰ Additionally, the Supreme Court has held that the witnesses themselves are not subject to section 1983 claims in the trial setting even if they perjure themselves.¹⁰¹ The standard for a witness to be subject to a section 1983 claim has been set very high, demonstrating the Supreme Court’s commitment to protecting witnesses.¹⁰² The importance of the role of the

90. *See id.* at 339-41.

91. *See id.* at 329 & n.6 (citing *Polk Cnty. v. Dodson*, 454 U.S. 312, 319 (1982); *Ferri v. Ackerman*, 444 U.S. 193, 204 (1979)).

92. *See id.* at 334 (citing *Stump v. Sparkman*, 436 U.S. 349 (1978); *Imbler*, 424 U.S. at 440; *Pierson v. Ray*, 386 U.S. 547 (1967)).

93. *See id.* at 335 (quoting *Imbler*, 424 U.S. at 439).

94. *Briscoe*, 460 U.S. at 335 (quoting *Butz*, 438 U.S. at 512).

95. *Rehberg*, 132 S. Ct. at 1504 (citing *Imbler*, 424 U.S. at 423, 425).

96. *See id.* at 1509-10 (citing *Imbler*, 424 U.S. at 423, 425).

97. *See United States v. Mandujano*, 425 U.S. 564, 571-72 (1976) (citing *United States v. Nixon*, 418 U.S. 683, 709 (1974)).

98. *See id.* at 570 (quoting *United States v. Orta*, 253 F.3d 312 (5th Cir. 1958)).

99. *See Branzburg v. Hayes*, 408 U.S. 665, 688 (1972).

100. *See id.*

101. *See Briscoe*, 460 U.S. at 331-33.

102. *See id.* at 334 (citing *Tenney*, 341 U.S. at 376).

witness in the grand jury and the trial are similar.¹⁰³ Generally, witnesses present similar testimony in each setting.¹⁰⁴ Thus, grand jury witnesses should be entitled to the same immunities as trial witnesses.

Petitioner's main argument against extending immunity to grand jury witnesses is not persuasive.¹⁰⁵ He argued for an exception for a complaining witness, the witness who initiated the action against the defendant.¹⁰⁶ At common law, a complaining witness initiated criminal prosecutions.¹⁰⁷ Thus, the complaining witness was an important feature at common law when private parties brought criminal prosecution against defendants.¹⁰⁸ The justice system has since changed, and prosecution has become the job of public officials.¹⁰⁹ Consequently, "complaining witness" has become an obsolete term. Although there are cases in which one witness is essential to the prosecution, the witness never initiates the action.¹¹⁰ The prosecutor has discretion regarding when to file charges against a defendant.¹¹¹ No exception should exist for a complaining witness because the term is not relevant in the modern legal system.

The Court's decision also maintains the vital secrecy of grand jury proceedings.¹¹² Secrecy is important because it prevents the defendants from escaping or tampering with witnesses,¹¹³ and would be impaired if defendants were able to pursue section 1983 claims against a grand jury witness for his or her testimony.¹¹⁴ Allowing such claims would cause the transcripts of grand jury proceedings to be made public before trial, hindering the very goals secrecy attempts to accomplish.¹¹⁵ Most importantly, secrecy does not allow the defendant to know that there is an indictment coming, because that knowledge would give him or her a chance to flee.¹¹⁶ Opening these proceedings to litigation would result in fewer indictments as people would be unwilling to come forward for fear of retaliatory litigation.¹¹⁷

103. *See id.* at 345-46.

104. *Rehberg*, 132 S. Ct. at 1509.

105. Brief for Petitioner at 17, *Rehberg*, 132 S. Ct. 1497 (No. 10-788), 2011 WL 2310185 at *9.

106. *Id.*, 2011 WL 2310185, at *9.

107. *Rehberg*, 132 S. Ct. at 1507 (citing *Kalina*, 522 U.S. at 135).

108. *See id.* (citing *Kalina*, 522 U.S. at 135).

109. *Id.* at 1504.

110. *Id.* at 1508.

111. *Id.*

112. *United States v. Proctor & Gamble Co.*, 356 U.S. 677, 681 (1958) (citing *United States v. Johnson*, 319 U.S. 503, 513 (1943)).

113. *Id.* at 681 & n.6 (quoting *United States v. Rose*, 215 F.2d 617, 628-29 (3rd Cir. 1954)).

114. *See id.* at 682.

115. *See id.*

116. *Id.* at 681 & n.6 (quoting *Rose*, 215 F.2d at 628-29).

117. *See Proctor*, 356 U.S. at 681 & n.6 (quoting *Rose*, 215 F.2d at 628-29).

The Supreme Court's decision maintains the integrity of the justice system. Allowing immunity for these grand jury witnesses does not interfere with the citizens' right to be free from violations of their constitutional rights. Citizens cannot pursue claims against trial witnesses because of subsequent exoneration.¹¹⁸ There are mechanisms in place, such as perjury penalties, that protect citizens from false testimony.¹¹⁹ Therefore, allowing immunity for grand jury witnesses maintains the secrecy of the grand jury proceedings and does not interfere with citizens' rights.

This decision allows common law principles to be upheld. It promotes efficiency within the justice system and does not interfere with established rights afforded to all parties in criminal proceedings. This standard is well established and is not a substantial deviation from current practices.¹²⁰ It is a confirmation of practice that is already in place, demonstrated by the Court's unanimous decision.¹²¹ This decision is in the best interest of the government, judiciary, and citizens of the United States.

V. CONCLUSION

The holding of the Supreme Court in *Rehberg v. Paulk* is not a substantial deviation from current common law and practice. Granting grand jury witnesses absolute immunity from section 1983 claims is a well-established practice. The decision promotes efficiency in the judicial system. Abolishing a distinction between complaining witness and lay witness takes confusion out of the practice of law. The decision reached by the Supreme Court preserves citizens' right to be free from violations of their constitutional rights under color of law while ensuring that an efficient judicial system is maintained.

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118. *Briscoe*, 460 U.S. at 335.

119. *See id.* at 342-43.

120. *See Rehberg*, 132 S. Ct. at 1499 (syllabus).

121. *See id.* at 1498-99 (syllabus).