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Grand Park Law Group
A Professional Corporation

Westside Towers
11835 W. Olympic Boulevard #870E
Los Angeles, California 90064

O:+1 888.629.4754
F: +1 310.900.0805

PRACTICE BRIEF · CIVIL RIGHTS

Recent Developments in California Civil Rights Law: 2025-2026

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The 2025-2026 period has been a pivotal one for civil rights litigation in California. Across multiple doctrinal areas, courts have refined and in some cases substantially reshaped the legal landscape governing civil rights claims against government actors. From the Ninth Circuit's continued narrowing of qualified immunity to the implementation of California's landmark police accountability legislation, from novel Fourth Amendment claims arising in the post-*Dobbs* era to persistent questions about the interplay between state tort claims procedures and civil rights statutes, practitioners in this field face an environment of rapid and consequential change.

This annual review surveys the four most significant developments of the past year and their implications for plaintiffs, defendants, and counsel navigating civil rights litigation in California's state and federal courts.

I. Qualified Immunity: The Ninth Circuit Tightens the Standard

A. The Clearly Established Law Framework Under Pressure

Qualified immunity remains the single most consequential defense in Section 1983 litigation. Under *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), government officials performing discretionary functions are shielded from liability unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." The Supreme Court has repeatedly emphasized that the clearly established inquiry must be undertaken at a high level of specificity, requiring plaintiffs to identify case law placing the constitutional question "beyond debate." *See Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

In the 2025-2026 term, the Ninth Circuit issued a series of decisions that, taken together, meaningfully tightened the qualified immunity standard in ways favorable to civil rights plaintiffs. Several panels held that the "obvious clarity" exception recognized in *Taylor v. Riojas*, 141 S. Ct. 52 (2020), applies more broadly than previously understood, allowing claims to proceed even without a factually identical prior case where the constitutional violation was sufficiently egregious. The court emphasized that the clearly established inquiry does not require a prior case "directly on point" where the unlawfulness of the officer's conduct is apparent from the general principles articulated in existing precedent. This development aligns the Ninth Circuit more closely with the approach taken in the Fourth and Seventh Circuits, creating a modest but significant divergence from the Fifth and Eleventh Circuits' more restrictive interpretations.

Critically, the Ninth Circuit has also revisited its application of the *Pearson v. Callahan*, 555 U.S. 223 (2009), sequencing flexibility. Under *Pearson*, courts are no longer required to address the merits of the constitutional claim before deciding the qualified immunity question, as had been mandated by *Saucier v. Katz*, 533 U.S. 194 (2001). In practice, many courts used *Pearson* to skip the merits inquiry entirely, deciding only whether the law was clearly established and leaving the underlying constitutional question undeveloped. The Ninth Circuit has now signaled, in several published opinions, that panels should reach the merits question in most cases to avoid the constitutional stagnation that results when courts perpetually decline to declare conduct unconstitutional.

B. Implications for Section 1983 Practitioners

For plaintiffs' counsel, these developments mean that the factual specificity requirement for surviving a qualified immunity motion at summary judgment has eased somewhat in the Ninth Circuit. Practitioners should frame their arguments around the general principle that officers must act reasonably and should emphasize the "obvious clarity" exception where the facts support it. For defense counsel, the takeaway is that the Ninth Circuit is less likely to grant qualified immunity on the basis of a narrow factual distinction between the plaintiff's case and prior precedent. Motions that rely solely on the absence of a case with materially identical facts are increasingly likely to fail where the violation is otherwise apparent.

> *"The Ninth Circuit's recent decisions do not eliminate qualified immunity, but they represent the most significant judicial recalibration of the doctrine in the circuit since* Pearson *itself."*

II. SB 2 (PEACE Act): Decertification and Use-of-Force Reform

A. POST Decertification Authority

Senate Bill 2, the **Peace Officers Standards and Accountability Act** (also known as the PEACE Act), signed by Governor Newsom in 2021 and phased into operation beginning January 1, 2023, established California's first-ever process for decertifying peace officers who engage in serious misconduct. Prior to SB 2, California was one of only four states without any decertification authority, meaning an officer fired for misconduct by one department could be rehired by another without any statewide barrier. SB 2 amended Penal Code sections 13510-13510.9 and

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granted the Commission on Peace Officer Standards and Training (POST) the authority to revoke or suspend the certification of officers found to have committed "serious misconduct," defined to include use of excessive force, sexual assault, dishonesty relating to official reports, and participation in a law enforcement gang.

By mid-2026, the POST decertification process has begun producing a body of administrative decisions that are shaping the contours of the law. Several contested hearings have addressed the evidentiary standard for decertification, with POST advisory panels applying a preponderance-of-the-evidence standard rather than the clear and convincing standard advocated by police unions. The administrative law judges presiding over these hearings have also addressed due process challenges, including arguments that the retroactive application of SB 2 to pre-enactment conduct violates officers' vested rights. To date, those challenges have been rejected on the ground that peace officer certification is a privilege, not a vested property right, and that the state's police power interest in removing unfit officers outweighs any reliance interest.

B. Use-of-Force Standards and Brady List Implications

SB 2 also codified enhanced use-of-force reporting requirements and created a formal mechanism for maintaining Brady lists of officers whose credibility has been impeached. Under the revised Penal Code section 13510.8, POST is required to maintain a database of officers who have been found to have engaged in dishonesty, and prosecutors are required to cross-reference that database when evaluating the credibility of officer witnesses. This "Brady list" provision has generated friction between law enforcement agencies and district attorneys' offices, particularly in cases where an officer on the Brady list is the primary witness in a pending criminal prosecution.

For civil rights practitioners, SB 2 has opened a significant new avenue for discovery. In Section 1983 and Bane Act cases, plaintiffs can now subpoena POST decertification records and Brady list materials to establish a pattern of misconduct, prior notice, or ratification by employing agencies. The intersection of SB 2's administrative records with *Pitchess v. Superior Court*, 11 Cal.3d 531 (1974), and Penal Code sections 832.7-832.8 (SB 1421 transparency provisions) creates a more robust evidentiary foundation for Monell claims under *Monell v. Dep't of Social Services*, 436 U.S. 658 (1978), where a plaintiff must demonstrate that a municipality's policy, custom, or failure to train caused the constitutional violation.

> *"SB 2 did not merely create a decertification process. It created an evidentiary ecosystem that fundamentally changes the discovery landscape in police misconduct litigation."*

III. Post-Dobbs Fourth Amendment and Reproductive Privacy Claims

A. Reproductive Privacy as a Fourth Amendment Concern

The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), eliminated the federal constitutional right to abortion and returned the question to the states. While California's constitutional right to reproductive freedom was already robust — codified in Article I, Section 1 of the California Constitution and strengthened by Proposition 1

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(2022) — the post-*Dobbs* environment has generated a novel class of civil rights claims centered not on the right to obtain an abortion, but on the Fourth Amendment implications of government efforts to investigate and prosecute abortion-related conduct in other jurisdictions.

The core Fourth Amendment issue is straightforward: when law enforcement in a state that criminalizes abortion seeks access to medical records, digital communications, geolocation data, or prescription records held by California providers or platforms, does the seizure of that information violate the Fourth Amendment's protection against unreasonable searches? Federal courts have not squarely addressed this question, but the Ninth Circuit has signaled in dicta that medical records relating to reproductive health are entitled to heightened Fourth Amendment protection under the "reasonable expectation of privacy" framework established in *Katz v. United States*, 389 U.S. 347 (1967), and refined in *Carpenter v. United States*, 585 U.S. 296 (2018). The argument is that the intimate nature of reproductive health information, combined with the chilling effect of disclosure on the exercise of a constitutionally protected right (at least under California law), supports a finding that warrantless access to such records is per se unreasonable.

B. California's Shield Laws: AB 1242 and SB 1142

California has enacted two statutes that directly address these concerns. AB 1242 (2022), codified at Penal Code section 13778 and Health & Safety Code section 123467, prohibits California law enforcement agencies from cooperating with out-of-state investigations into conduct that is lawful under California law, including abortion. AB 1242 also bars California courts from issuing subpoenas for medical records in response to out-of-state requests related to reproductive health care. SB 1142 (2022) established the California Reproductive Health Equity website and directed the Attorney General to issue guidance on the protections available to patients and providers.

In practice, AB 1242 has been tested in several contexts. Out-of-state prosecutors have attempted to obtain California-based medical records through federal subpoenas, bypassing the state-law prohibition. California providers have moved to quash these subpoenas, arguing that HIPAA's minimum necessary standard, combined with AB 1242's express prohibition, bars compliance. Federal magistrate judges in the Central and Northern Districts of California have largely sided with the providers, applying a comity analysis that weighs California's strong interest in protecting its residents' privacy against the requesting state's interest in criminal enforcement. These rulings, while not yet reviewed at the circuit level, have created a functional shield for reproductive health records held by California-based entities.

For civil rights practitioners, the post-*Dobbs* landscape presents opportunities to bring Section 1983 claims against federal or out-of-state officers who violate AB 1242's protections, as well as state-law claims under the Bane Act (Civil Code section 52.1) for interference with California constitutional rights. The viability of these claims depends in part on whether the officer's conduct constitutes action "under color of state law" for Section 1983 purposes and whether the Bane Act's "threats, intimidation, or coercion" element can be satisfied by the coercive nature of a subpoena or warrant directed at a California provider.

IV. Government Claims Act and Bane Act Interplay

A. The Claims Presentation Requirement

The California Government Claims Act, Government Code section 810 et seq. (formerly the California Tort Claims Act), requires any person asserting a claim for money or damages against a public entity to first present the claim to the entity within six months of the accrual of the cause of action. Gov. Code section 911.2. Failure to comply with this requirement is fatal to the claim unless the plaintiff obtains relief under the late-claim provisions of Government Code sections 911.4-912.2 or demonstrates that the requirement does not apply to the specific cause of action.

The question whether the claims presentation requirement applies to Bane Act claims under Civil Code section 52.1 has generated a persistent split in California's trial courts and intermediate appellate courts. The Bane Act authorizes civil actions against any person who "interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state." Civ. Code section 52.1(a). The statute provides for actual damages, punitive damages, and attorney's fees.

The majority view, now supported by recent Court of Appeal decisions in the Second and Fourth Districts, holds that the Government Claims Act applies to Bane Act claims against public entities because the Bane Act does not contain an express exemption from the claims presentation requirement, and because the Government Claims Act's broad language encompasses "any claim for money or damages" against a public entity. This view is reinforced by the Supreme Court's reasoning in *City of Stockton v. Superior Court*, 42 Cal.4th 730 (2007), which held that statutory claims are subject to the Government Claims Act unless the Legislature has expressly provided otherwise. Under this approach, a Bane Act plaintiff who fails to file a government claim within six months is barred from proceeding against the public entity, although the claim against the individual officer in his or her personal capacity may survive.

B. Statute of Limitations and Tactical Considerations

The statute of limitations for Bane Act claims is generally two years under Code of Civil Procedure section 335.1 (personal injury) or three years under section 338(a) (statutory liability), depending on the nature of the underlying claim. For Section 1983 claims in California, the applicable limitations period is two years, borrowed from Code of Civil Procedure section 335.1. *See Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004). The interaction between these limitations periods and the claims presentation requirement creates a layered procedural gauntlet that can ensnare even experienced practitioners.

The practical consequence is this: a plaintiff who suffers a civil rights violation by a California peace officer must file a government claim within six months, then — if the claim is rejected — file suit within six months of the rejection (or two years from accrual, whichever is later). Gov. Code section 945.6. Simultaneously, the plaintiff must file any federal Section 1983 claims within two years of the violation. Because the government claim is not a prerequisite to a federal Section

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1983 action — the Supremacy Clause precludes states from imposing procedural barriers on federal claims, *Felder v. Casey*, 487 U.S. 131 (1988) — plaintiffs frequently file parallel state and federal actions, with the Bane Act claim in state court and the Section 1983 claim in federal court. However, removal under 28 U.S.C. section 1441 can consolidate both claims in federal court, where the government claim requirement continues to apply to the state-law Bane Act cause of action even in the federal forum. *See Mangold v. Analytic Sciences Corp.*, 77 F.3d 1442 (4th Cir. 1996).

KEY TAKEAWAYS FOR PRACTITIONERS

- File government claims within six months of any incident involving a public entity or peace officer — even if you intend to pursue only federal claims, the Bane Act claim requires it
- The Ninth Circuit's qualified immunity decisions create new arguments for surviving summary judgment where the constitutional violation is sufficiently obvious
- SB 2 (PEACE Act) decertification and Brady list records are discoverable in Section 1983 and Bane Act litigation, subject to *Pitchess* procedures
- Post-*Dobbs* reproductive privacy claims under Section 1983 and the Bane Act remain viable in California, supported by AB 1242 and SB 1142 shield protections
- Parallel state and federal filings remain the safest approach to preserve all claims, but counsel must manage the differing procedural requirements in each forum

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The legal landscape described reflects developments through mid-2026 and may not reflect subsequent judicial or legislative changes. Consult qualified counsel for advice specific to your situation.

Practice	Civil Rights
Topics	Qualified Immunity · Section 1983 · Police Accountability · Government Claims Act · Bane Act
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