



## For Immediate Release

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### **DRI Submits Amicus Brief to High Court in *Manuel v. City of Joliet***

*At Issue Is The Role Of The Fourth Amendment In Malicious Prosecution Cases*

**CHICAGO – (August 15, 2016)**— DRI-The Voice of the Defense Bar has filed a merits-stage amicus brief supporting the City of Joliet’s position in *Manuel v. City of Joliet*. The brief was filed through DRI’s Center for Law and Public Policy. The case threatens to increase governmental liability by expanding the Fourth Amendment beyond its text and meaning to fill a perceived gap in civil liability for government officials.

The Fourth Amendment protects individuals from unreasonable searches and seizures, as well as from warrants being issued without probable cause. The Supreme Court has long held that any application of the search and seizure clause must have an objective standard. Thus, the individual intent of a person conducting a search or seizure is irrelevant.

Malicious prosecution, on the other hand, is heavily based on the individual intent of the person pursuing the prosecution. The history of a malicious prosecution cause of action dates back a thousand years, to when the penalty for instigating an unsuccessful prosecution was the loss of one’s tongue. Over the centuries, the manner for resolving malicious prosecution evolved, and the basic tort was developed in the past two hundred years. Now, a party may successfully claim malicious prosecution when the defendant, with malice, instituted a criminal proceeding without probable cause that was terminated in favor of the plaintiff.

The issue in *Manuel* is whether there is a federal constitutional cause of action for malicious prosecution under the Fourth Amendment. In this case, the plaintiff claims that police fabricated evidence that led to his prosecution. The plaintiff’s claims for false arrest are barred by the statute of limitations, and he has forfeited his state law claim for malicious prosecution. He now asserts that his malicious prosecution claim is cognizable under 29 U.S.C. § 1983—which bars state and local officials from violating federal constitutional rights—as a violation of his Fourth Amendment rights against unreasonable search and seizure.

DRI’s amicus brief argues that the Fourth Amendment does not encompass a malicious prosecution claim, as the name of the tort suggests. The Search and Seizure Clause neither allows consideration of malice nor applies to the act of prosecuting someone. Any detention related to prosecution may be tried as an unlawful detention, but it must be done within the standards expressed in the plain language of the Fourth Amendment.

Shoehorning malicious prosecution into the Fourth Amendment will unnecessarily create liability for an act outside of an officers’ control—the decision to prosecute—based on adjudication of an officer’s state of mind years after the fact. As a result, municipalities will be forced to train officers not to use the full scope of their

authority in life-and-death situations, and officers will not be able to effectively execute their duties. That generates a risk to officer safety, and a risk to public safety. Additionally, as a jurisprudential matter, the Supreme Court should not venture so far from the Fourth Amendment's text to address a perceived gap in coverage. Individuals are protected from malicious prosecution by state law claims and the Due Process Clause. They are protected from unlawful detention by the Fourth Amendment. Blurring the lines dividing these rights only creates an atmosphere whereby governments and officers cannot effectively discern the boundaries of their authority.

Amicus brief author [Tillman J. Breckenridge](#) is a member of DRI's Amicus Committee. He is available for interview or expert comment through DRI's Office of Public Policy. The complete text of the DRI brief can be found [here](#).

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