THE IOWA LAW OF RES JUDICATA AND THE ENFORCEMENT OF CONSTITUTIONAL RIGHTS UNDER 42 U.S.C. SECTION 1983

*Donald Bohlken**

TABLE OF CONTENTS

I. Introduction 457
II. Claim Preclusion 460
A. Raising Claim Preclusion 460
B. Proof 461
C. Parties Affected 461
D. Claims Precluded 462
III. Issue Preclusion 463
IV. Iowa Tort Claims Act 465
V. Iowa Administrative Procedures Act—Judicial Review Decisions 468
VI. Iowa Administrative Procedures Act—Contested Case Decisions 473
VII. Conclusion 475

I. INTRODUCTION

The primary vehicle for redressing constitutional violations by persons acting under "color of state law" is 42 U.S.C. section 1983. The statute provides:

> 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 persons within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the person injured in an action at law, suit in equity, or other proper proceedings for redress. For purposes of this section any Act of

---

* Mr. Bohlken (B.A. University of Iowa 1974, J.D. Drake University 1986) is a former law clerk to the Fifth Judicial District of Iowa and is currently an administrative law judge with the Iowa Civil Rights Commission in Des Moines, Iowa. This article reflects only the views of the author and does not purport to represent the views of any state agency. The article received both the First Prize and the Bicentennial of the Constitution Award in the Mason Ladd Legal Writing Competition.

> Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.[1]

Litigation under section 1983 has increased dramatically over the past twenty-five years. In 1961,[2] the U.S. Supreme Court opened the floodgate. In *Monroe v. Pape*, the Court held that plaintiffs may directly sue state officials under 42 U.S.C. section 1983 to redress constitutional violations.[3]

Prior to the explosion of section 1983 litigation, the prevailing theory was that the doctrines of claim and issue preclusion might not apply in constitutional rights cases when such claims and issues had been litigated in state court and the plaintiff sought to relitigate his claim or issue in federal court.[4] Decisions of the U.S. Supreme Court litigated under 42 U.S.C. § 1983, however, have rejected this notion. The Court has held that the Full Faith and Credit Statute, 28 U.S.C. § 1738, requires that "[f]ederal court[s] . . . give to a state court judgment the same preclusive effect as will be given that judgment under the laws of the State in which the judgment was rendered."[5] This holds true for both the claim and issue preclusive effects of such judgments.[6]

Two United States Supreme Court decisions, *Allen v. McCurry*[7] and *Migra v. Warren City School District Board of Education*,[8] set forth the principle that the state law of issue and claim preclusion determines the preclusive effect of prior state court decisions in section 1983 cases in federal courts. In *Allen v. McCurry*, respondent Willie McCurry sought one million dollars in damages in a section 1983 action against police officers and others for an alleged conspiracy to violate his fourth amendment rights, for actual violations of those rights by the "search and seizure of his house," and for an assault upon him by police officers.[9] In the criminal case against McCurry, which resulted in his conviction on state drug and assault charges, the trial judge had upheld a warrantless entry of McCurry's home and the seizure of evidence within plain view, but had also suppressed evidence not found in plain view within the home.[10] In his section 1983 action, McCurry sought to relitigate those search and seizure questions previously decided against him in state court.[11] The Eighth Circuit Court of Appeals held that

---

1. 42 U.S.C. § 1983 (1982).
2. Note, *A Question of Analysis: Civil Rights Litigation Under 42 U.S.C. Section 1983*, 19 NEW ENG. L. REV. 575, 575 (1984).
3. Monroe v. Pape, 365 U.S. 167 (1961) (overruled as to municipal liability by Monell v. Department of Soc. Serv., 436 U.S. 658 (1978)).
4. A. VESTAL, V RES JUDICATA 268-71 (1969).
5. Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75, 81 (1984).
6. *Id.*; Allen v. McCurry, 449 U.S. 90, 96 (1980).
7. Allen v. McCurry, 449 U.S. 90 (1980).
8. Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75 (1984).
9. Allen v. McCurry, 449 U.S. at 92.
10. *Id.*
11. *Id.* at 93.

the doctrine of issue preclusion did not apply to bar relitigation of these issues in McCurry's section 1983 claim because that action was the only avenue available to McCurry for bringing his constitutional claims before a federal court.[12] In its reversal of the Eighth Circuit, the Supreme Court implicitly held that when the federal courts ascertain the issue preclusive effect of a state court decision in a section 1983 action, they must utilize that state's law of issue preclusion.[13]

In *Migra v. Warren City School District Board of Education*, petitioner Dr. Ethel D. Migra, the former supervisor of elementary schools for the respondent board of education, filed an action under 42 U.S.C. sections 1983 and 1985 against her employer for allegedly failing to renew her annual contract in retaliation for exercising her first amendment rights, for depriving her of a property right without due process, and for denying her equal protection of the laws.[14] In state court, Migra had previously sued both the board and the three individual members who had voted not to renew her contract for breach of contract; she had also sued the three members individually for tortious interference with her contract of employment.[15]

On the basis of the breach of contract action alone, Dr. Migra was awarded reinstatement and compensatory damages.[16] The tortious interference claim was eventually dismissed without prejudice upon Dr. Migra's motion.[17] Summary judgment was granted the defendants on the federal claims based, in part, on claim preclusion principles.[18] This judgment was affirmed by the Sixth Circuit Court of Appeals.[19]

In holding that Dr. Migra's state court judgment had the same preclusive effect in the section 1983 action in federal court as it would have had in the Ohio state court, the Supreme Court rejected the argument that, because Dr. Migra's constitutional claims had not been litigated in the state court, the state court judgment was not entitled to any claim preclusive effect.[20] The judgment of the Sixth Circuit was vacated and remanded solely for the purpose of instructing the district court to apply Ohio state preclusion law in the case.[21]

---

12. *Id.* at 103. This action was McCurry's only way to bring these claims before a federal court because the other possible route, a federal habeas action, was barred by McCurry's failure to allege that the state court had denied him a full and fair opportunity to litigate his fourth amendment claims. *Id.* at 91, 93.

13. *Id.* at 94-95, 105. *See* Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75, 82-83 (1984).

14. Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75, 78-79 (1984).

15. *Id.*

16. *Id.* at n.2.

17. *Id.*

18. *Id.* at 80.

19. *Id.*

20. *Id.* at 83-84.

21. *Id.* at 87.

This article provides an overview of the law of claim and issue preclusion in the context of section 1983 actions. It will address the preclusive effect of state court judgments under the Iowa Tort Claims Act[22] and of judicial review of contested case[23] and administrative[24] decisions under the Iowa Administrative Procedures Act.

II. Claim Preclusion

The preclusion doctrines formerly referred to as "res judicata" are now denominated either "claim preclusion" or "issue preclusion."[25] These doctrines are designed to ensure that an "existing final judgment rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of rights, questions, and facts in issue, as to the parties and all their privies, in all other actions in the same or any other judicial tribunal of competent jurisdiction."[26] This section of the article discusses claim preclusion.

Claim preclusion prohibits further litigation of a claim after adjudication has occurred.[27] When the plaintiff has lost the case, the prohibition is referred to as a "bar."[28] When the plaintiff has won, the prohibition is designated as a "merger," *i.e.*, the plaintiff's claim has "merged" into the judgment.[29]

Under the doctrine of claim preclusion, a party must litigate all matters concerning a claim at one time because an adjudication of a claim is "final [between the parties] as to all matters which *could* have been presented to [the] court for determination."[30] The purposes served by claim preclusion are: to prevent parties from being harassed by and required to sustain the cost of repetitive litigation, to ensure efficient use of scarce judicial resources, and to enable parties to rely on past adjudications as determinative of their rights.[31] A fourth suggested purpose is to preserve the prestige of the courts.[32]

A. *Raising Claim Preclusion*

Despite the importance of these purposes, claim preclusion is not auto-

---

22. Iowa Code Ch. 25A (1987).
23. Iowa Code Ch. 17A (1987).
24. Iowa Code Ch. 17A.12 (1987).
25. Israel v. Farmers Mut. Ins. Ass'n, 339 N.W.2d 143, 146 (Iowa 1983).
26. A. Vestal, *supra* note 4, at V-6.
27. Jorge Constr. Co. v. Wiegel Excavating and Grading Co., 343 N.W.2d 439, 443 (Iowa 1984).
28. A. Vestal, *supra* note 4, at 6.
29. *Id.*
30. Israel v. Farmers Mut. Ins. Ass'n, 339 N.W.2d 143, 146 (Iowa 1985) (emphasis added).
31. Allen v. McCurry, 449 U.S. 90, 94 (1980).
32. A. Vestal, *supra* note 4, at 43.

matic. Claim preclusion is an affirmative defense which must be asserted and proved by the party who wishes to take advantage of it.[33] Claim preclusion may be raised by motion to dismiss, motion for summary judgment, answer, or evidence or amendment of the pleadings introduced during the pretrial conference or the trial.[34] One commentator noted that the utility of the motion to dismiss for this purpose is limited because this motion tests the sufficiency of the plaintiff's pleadings, which may not contain any indication of a prior judgment.[35] If the defendant waits until trial to introduce evidence of claim preclusion, the plaintiff may object that the evidence of prior judgment is beyond the scope of the pleadings.[36] Denial of permission to amend the defendant's pleadings is a possibility, albeit a remote one, at that point.[37] The motion for summary judgment may, therefore, be the best procedural device for raising claim preclusion since it provides for early adjudication of the question.[38]

B. *Proof*

Proof of claim preclusion is established by comparing the pleadings and evidence submitted in the former adjudication and in the subsequent case to determine whether common claims are involved.[39] It is often necessary to examine the entire record to determine the preclusive effect of the previous judgment in a subsequent action.[40] Significantly, the failure of a court to mention constitutional issues or claims raised by the plaintiff does not rob the judgment of any preclusive effect it may have regarding those claims.[41]

C. *Parties Affected*

Under Iowa law the defense of claim preclusion will be sustained if the defendant proves that the former case involved the same parties and the same causes of action.[42] In *Jordan v. Stuart Creamery, Inc.*,[43] the Iowa Supreme Court quoted with approval the following statement concerning the identity of parties: "[I]f the parties to the two suits are really and substantially in interest the same, although they may nominally be different, or al-

33. Bloom v. Steeve, 165 N.W.2d 825, 827 (Iowa 1969).
34. A. VESTAL, *supra* note 4, at 541-45.
35. *Id.* at 542.
36. *Id.* at 545.
37. *Id.*
38. *Id.*
39. Bloom v. Steeve, 165 N.W.2d 825, 827 (Iowa 1969).
40. Burd v. Board of Educ., 260 Iowa 846, 857, 151 N.W.2d 457, 464 (1967) (cited in A. VESTAL, *supra* note 4, at 551).
41. Grubb v. Public Util. Comm., 281 U.S. 470, 477-78 (1930); Kaufman v. Somers Bd. of Educ., 368 F. Supp. 28 (D. Conn. 1973) (section 1983 teacher termination—due process claim).
42. B & B Asphalt Co. v. McShane, 242 N.W.2d 279, 286 (Iowa 1976).
43. Jordan v. Stuart Creamery, Inc., 258 Iowa 1, 137 N.W.2d 259 (Iowa 1965).

though nominal parties may be added in the second suit, the former judgment is a bar."[44]

The defense will also be sustained if the parties were in privity with the parties in the former case.[45] "Privity" has been defined as:

> [A] mutual or successive relationship to the same rights of property, and if it is sought to bind one as privy by an adjudication against another with whom he is in privity, it must appear that at the time he acquired the right, or succeeded to the title, it was then affected by the adjudication, for *if the right was acquired by him before the adjudication, then the doctrine cannot apply.*[46]

Under certain circumstances privity does not define the outer limits of the application of the doctrine of claim preclusion. As one court stated:

> [T]he limitation of the doctrine . . . to parties or their privies "has a broadening exception to the effect that 'Persons who, although not parties or privies, were so connected in interest . . . with plaintiff or defendant in the former action that the judgment may be regarded as virtually recovered for them, may avail themselves of such judgment as res judicata in a subsequent suit.' "[47]

A person represented by a party to an action is bound by the judgment as though he were a party.[48] A party appearing in an action in a representative capacity for another is bound by the rules of claim and issue preclusion when he again appears as a representative of the same person, although he would not be bound if he appeared in a representative capacity in the first action, and in his individual capacity in the second.[49] Furthermore, "[a] judgment binding on a representative in his capacity as such . . . is binding on a successor to his fiduciary office."[50]

D. *Claims Precluded*

Claim preclusion presents the problem of determining whether the causes of action involved in a subsequent suit are the same as those tried in a prior action. The term "cause of action" has largely been replaced by the modern term "claim" in discussions of res judicata.[51] To determine whether a claim involved in a subsequent case is the same as that asserted in a prior suit, it is necessary to "examine the protected right, the alleged wrong, and

---

44. *Id.* at 263 (citing 50 C.J.S. *Judgments* § 651).
45. Bloom v. Steeve, 165 N.W.2d 825, 827 (Iowa 1969).
46. *In re* Richardson's Estate, 250 Iowa 275, ____, 93 N.W.2d 777, 781 (1958) (emphasis in original).
47. Goolsby v. Derby, 189 N.W.2d 909, 915 (Iowa 1971).
48. RESTATEMENT (SECOND) OF JUDGMENTS § 41 comment a (1982).
49. *Id.* at § 36 and comments a and b.
50. *Id.* at comment g.
51. A. VESTAL, *supra* note 4, at 43.

the relevant evidence."[52] Claims are the same when identical invasions of a right, or identical wrongs are asserted in both claims.[53] Allegation of a new theory of recovery for the same wrong does not establish an independent claim for the purposes of claim preclusion.[54]

Claims are considered to be identical when they are supported by the same evidence concerning the same events or transactions between the parties.[55] It must be remembered, however, that "the right to join related claims does not bar subsequent litigation of . . . distinct claims."[56] The same transaction or set of facts may yield several successive claims.[57] A judgment on one claim will not preclude a judgment on the others.[58] An exception exists where there are several simultaneous tortious acts or where there are successive tortious acts of the same nature.[59] In the latter case, judgment on an initial or intermediate tortious act precludes subsequent claims concerning similar torts occurring prior to the filing date of the action.[60]

A previous judgment, however, cannot operate to preclude subsequent judgments concerning "after-occurring facts not involved in the suit in which the decree was rendered."[61] Thus, judgments for permanent injuries, which accrue entirely when inflicted and are compensated by both past and future damages, are claim preclusive.[62] In contrast, judgments for "continuing injuries" which are not terminated, and which are compensated solely on the basis of past damages, are not claim preclusive for post-judgment injuries.[63]

III. Issue Preclusion

"Issue preclusion" is also referred to as "collateral estoppel."[64] The doctrine of issue preclusion is concerned with determining under what circum-

---

52. Westway Trading Corp. v. River Terminal Corp., 314 N.W.2d 398, 401 (Iowa 1982).
53. *Id.*
54. *Id.*
55. Board of Supervisors v. Chicago & N.W. Transp. Co., 260 N.W.2d 813, 816 (Iowa 1977).
56. Westway Trading Corp. v. River Terminal Corp., 314 N.W.2d at 401.
57. *In re* Richardson's Estate, 250 Iowa 275, 284, 93 N.W.2d 777, 782-83 (1958).
58. *Id.*
59. Restatement of Judgments § 62 comment f (1942).
60. *Id.*; Bennun v. Board of Governors, 413 F. Supp. 1274, 1280 (D.N.J. 1976) (citing Restatement of Judgments § 62 (1942), but referring to events occurring prior to *trial* rather than events prior to the *filing* of the action).
61. Citizens for Washington Square v. City of Davenport, 277 N.W.2d 882, 885 (Iowa 1979).
62. Bizer v. Ottumwa Hydraulic Power Co., 70 Iowa 145, 146-47, 30 N.W. 172, 173 (1886) (action for damages for overflow of water backing up from dam—injury is permanent).
63. Buser v. City of Cedar Rapids, 115 Iowa 683, 685-86, 87 N.W. 404, 405 (1901) (action for damages for raising street level a second time—injury is continuing).
64. Hunter v. City of Des Moines, 300 N.W.2d 121, 123 n.2 (Iowa 1981).

stances issues resolved in previous litigation are precluded, *i.e.*, may not be redetermined in subsequent litigation.[65] Under Iowa law there are four requirements for issue preclusion:

(1) The issue concluded must be identical;

(2) The issue must have been raised and litigated in the prior action;

(3) The issue must have been material and relevant to the disposition of the prior action; and

(4) The determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.[66]

If the plaintiff in a subsequent case had a full and fair opportunity to litigate the issue in a prior action, a showing of the four requisites will allow the defensive use of issue preclusion.[67] Such defensive use occurs where a stranger to the original judgment, usually the defendant in the later action, uses that judgment to bar relitigation of an issue which was resolved in the first action.[68]

Offensive use of issue preclusion occurs when the plaintiff, a stranger to the original judgment, seeks to use that judgment to bar relitigation of an issue which was resolved in the first action to aid his prosecution of the claim.[69] Offensive use of issue preclusion is allowed when, in addition to showing the above four requirements, the present plaintiff could not have become a party to the original action, the present defendant had a full and fair opportunity to litigate the issue, and no other circumstances justify affording the defendant the opportunity to relitigate the issue.[70]

Issue preclusion may be raised by all the methods used to raise claim preclusion and also by motion to strike.[71] Proof of the prior judgment and its scope can be offered through judicial notice or through examination of the judgment, record, and pleadings.[72]

The principles discussed above will often apply to claims and issues which were previously adjudicated and which are subsequently raised in section 1983 actions. Nonetheless, the preclusive effects of prior decisions under the Iowa Administrative Procedures Act and the Iowa Tort Claims Act may differ substantially from the issue and claim preclusive effects of a typical common law action, such as an action for negligence. This difference is crucial in determining whether claims and issues previously litigated under these acts may be relitigated in subsequent section 1983 actions.

---

65. *Id.* at 123.

66. Jorge Constr. Co. v. Wiegel Excavating and Grading Co., 343 N.W.2d 439, 444 (Iowa 1984).

67. Hunter v. City of Des Moines, 300 N.W.2d at 123.

68. *Id.*

69. *Id.*

70. *Id.* at 124-25 & n.4.

71. A. VESTAL, *supra* note 4, at 541.

72. *Id.* at 549-53.

IV. Iowa Tort Claims Act

The Iowa Tort Claims Act provides a mechanism for presenting, settling, and litigating claims against the state and state employees for "damage to or loss of property or on account of personal injury or death" resulting from the negligence of any state employee.[73] The Act provides that certain final judgments in previous actions under the Act shall bar all further actions. The statute provides in pertinent part:

> The final judgment in any suit under this Chapter shall constitute a complete bar to any action by the claimant, by reason of the *same subject matter*, against *the state or the employee of the state* whose act or omission gave rise to the claim. However, this section shall not apply if the court rules that the claim is not permitted under this Chapter.[74]

The most striking feature of this section is that it precludes further claims against *both* the state *and* state employees even though the previous action may have been against *only* the state *or* state employees.[75] Therefore, common law claim preclusion differs from claim preclusion under the Tort Claims Act, in that, a prior final judgment under the Act could bar a claim against entities who were neither parties, privies, nor persons with identity of interest.[76]

The key issue in determining the preclusive effect of a prior suit under chapter 25A of the Iowa Code is whether the subsequent and prior suits concern the same subject matter.[77] This question has been considered by the Iowa Supreme Court only once.[78] In *Speed v. Beurle*, the Iowa Supreme Court began its discussion of this issue by noting that the term "subject matter" is difficult to define.[79] The court interpreted an earlier version of section 25A.8 which prohibited subsequent actions "by reasons of the same subject matter" against state employees, but which did not mention subsequent actions against "the state" per se.[80] In a prior action under the Iowa Tort Claims Act, the plaintiff in *Speed* was awarded $750,000 in compensatory damages against the state due to blindness resulting from negligent medical treatment.[81] The plaintiff subsequently initiated a tort action against the physicians in their individual capacities seeking compensatory and punitive damages.[82] The issue presented was whether section 25A.8 barred an action for punitive damages by a plaintiff who had previously re-

---

73. Iowa Code § 25A.2(5) (1987).
74. Iowa Code § 25A.8 (1987) (emphasis added).
75. *Id.*
76. *Id.*
77. *Id.*
78. Speed v. Beurle, 251 N.W.2d 217 (Iowa 1977).
79. *Id.* at 219 (citing Ryan v. Amodeo, 216 Iowa 752, 754, 249 N.W. 656, 657 (1933)).
80. *Id.* at 218.
81. *Id.*
82. *Id.*

covered compensatory damages for the same injuries under the Iowa Tort Claims Act.[83] The court held that the second action was barred under Iowa Code section 25A.8.[84]

In considering the term "subject matter," the court in *Speed* referred to its "attempted definition" of the term in *Ryan v. Amodeo*.[85] In that case, the court had interpreted a statute permitting cross-claims by the defendants in a civil action. In *Ryan*, the court stated:

> The subject of an action is to be distinguished from a cause of action. The subject of an action is a thing or subject-matter to which the litigation pertains . . . "the matter or thing differing both from the wrong and the relief, in respect to which the controversy has arisen." . . . This pronouncement, while making clear that the subject of an action is to be distinguished from the cause of action and "is the thing or subject matter to which the litigation pertains," does not give us any light as to how much or how little is included in the term "subject matter of the action."[86]

Ultimately, in both *Ryan* and *Speed*, the court refused to rely on "the confused and conflicting definitions which have been given to the term 'subject matter of the action.' "[87] Rather, the court looked to the legislative intent and purpose of that phrase.[88]

In *Speed*, the court held that the legislature intended to bar the subsequent punitive damage action through the "same subject matter" prohibition of section 25A.8.[89] The court reasoned that the state only waived its immunity on a limited basis by enacting the Tort Claims Act.[90] The state's waiver of immunity was conditioned upon the section 25A.8 bar against plaintiffs filing subsequent actions to recover from state employees.[91]

A clearer understanding of the phrase "subject matter" may be obtained by referring to judicial interpretations of analogous provisions of the Federal Tort Claims Act.[92] The Iowa Supreme Court has repeatedly cited federal decisions interpreting the federal act. The court has concluded that "because our statute is based on the Federal Tort Claims Act [and] we assume our legislature intended it to have the same meaning as the Federal statute . . . Federal decisions therefore are entitled to great weight."[93]

---

83. *Id.*
84. *Id.* at 219.
85. Ryan v. Amodeo, 216 Iowa 752, 754, 249 N.W. 656, 657 (1933).
86. *Id.*
87. *Id.*
88. *Id.*
89. Speed v. Beurle, 251 N.W.2d 217, 219 (Iowa 1977).
90. *Id.*
91. *Id.*
92. 28 U.S.C.A. § 2676 (1987).
93. *E.g.*, Adams v. Mount Pleasant Bank & Trust Co., 340 N.W.2d 251, 252 (Iowa 1983); Lloyd v. State, 251 N.W.2d 551, 556 (Iowa 1977) (federal court construction of Federal Tort

In *Armstrong v. Vogel*, the United States District Court for the District of South Carolina considered a tort action against doctors for performing a hysterectomy in a naval hospital without the informed consent of the patient.[94] The patient had previously sought damages through a Federal Tort Claims Act suit which was settled.[95] The defendant doctors moved to dismiss for failure to state a claim. The defendants argued that the claim was barred by the plaintiff's recovery in the prior action. The defendants relied on 28 U.S.C.A. section 2676, which states in pertinent part: "The judgment in an action under Section 1346(v) of this title shall constitute a complete bar to any action by the claimant, *by reason of the same subject matter*, against the employee of the government whose act or omission gave rise to the claim."[96]

In holding that the action was barred by statute, the court stated:

> [T]his Court is convinced that the instant action arises "by reason of the same subject matter" as the action originally brought by the plaintiff under the Tort Claims Act. The damages sought by the plaintiff herein, regardless of how they are characterized, allegedly arise from an operation performed upon the plaintiff by agents and employees of the United States, and the plaintiff concedes that the defendant in this action was a surgeon in charge of that operation. thus, this court can reach no other conclusion, factually or legally, but that *the instant action originates from the same subject matter as the previous action, that is the operation performed upon the plaintiff, and the damages sought here are identical to the damages sought in the prior suit.* While the claim in the instant action is set forth in different language, *it is the substance of the claim which this Court must consider in deciding this issue.*[97]

As previously noted, the Iowa Supreme Court has looked to the legislative intent of statutes in which the term "subject matter" appears in determining what effect that term will have.[98] In *Speed*, the court concluded that the waiver of the state's immunity was conditioned upon the plaintiff's forbearance with respect to subsequent actions against state employees.[99] Given the present language of section 25A.8, it can reasonably be argued that the purpose of that section is to prohibit further suits on the same subject matter against *either* the state *or* state employees once a final judgment on an original Iowa Tort Claims Act claim has been rendered. Applying the treatment of the term "subject matter" in *Armstrong* to the Iowa statute, one finds that a subsequent claim concerning an identical injury will

---

Claims Act language approved as a guidepost in determining Iowa legislative intent).

94. Armstrong v. Vogel, 424 F. Supp. 445 (D.S.C. 1977).
95. *Id.* at 446.
96. *Id.* (quoting 28 U.S.C.A. § 2676 (1987)) (emphasis added).
97. *Id.* at 447 (emphasis added).
98. *See supra* notes 87-93 and accompanying text.
99. Speed v. Beurle, 251 N.W.2d at 219.

be barred by the statute.[100] Therefore, section 1983 actions concerning tortious acts adjudicated under chapter 25A bar subsequent claims for the same injury regardless of whether the defendants in the Tort Claims Act suit and the section 1983 action are the same.

V. Iowa Administrative Procedures Act—Judicial Review Decisions

The Iowa Administrative Procedures Act was enacted to provide a minimum procedural standard for all state agencies which take actions affecting the rights and obligations of the public.[101] The Act sets forth procedures for administrative hearings in "contested cases" which, due to constitutional or statutory requirements, can only be decided after an evidentiary hearing.[102] Final decisions[103] of administrative agencies in contested cases[104] may be appealed to district courts.[105] Appeal is made under provisions which are "the exclusive means by which a person who is aggrieved or adversely affected by agency action may seek judicial review of such agency action."[106] In judicial review proceedings the district court sits as an appellate body[107] and does not hear new evidence.[108] The court's review of the record is limited to determining whether "substantial rights of the petitioner have been prejudiced"[109] by agency action which committed any of seven designated categories of errors of law.[110] Appeal of the district court's judicial review decision is "taken as in other civil cases."[111]

Will a judicial review decision under the Iowa Administrative Procedures Act serve to bar subsequent litigation of claims and issues under 42 U.S.C. section 1983? Although this question has not been directly addressed by any court, an answer can be obtained through examination and analysis of two Title VII decisions applying res judicata principles, *Kremer v. Chemical Construction Corp.*[112] and *Hickman v. Electronic Keyboarding, Inc.*;[113] one section 1983 decision applying these principles, *Smith v. Updegraff*;[114]

---

100. *See* Armstrong v. Vogel, 424 F. Supp. at 447; Iowa Code § 25A.8 (1987).
101. Iowa Code § 17A.1(2) (1987).
102. Iowa Code § 17A.2(2) (1987).
103. Final decisions in contested cases occur when either the agency presides at the hearing, Iowa Code § 17A.15(1) (1987), or the proposed decision of the hearing officer, Iowa Code § 17A.15(3) (1987), or intermediate review body, if any, Iowa Code § 17A.15(4) (1987), is not appealed within the agency within the time prescribed by rule.
104. Iowa Code § 17A.2(2) (1987).
105. Iowa Code §§ 17A.1-A.23 (1987).
106. Iowa Code § 17A.19 (1987).
107. Black v. University of Iowa, 362 N.W.2d 459, 462 (Iowa 1985).
108. Iowa Code § 17A.19(7) (1987).
109. Iowa Code § 17A.19(8) (1987).
110. Iowa Code §§ 17A.19(8)(a)-(g) (1987).
111. Iowa Code § 17A.20 (1987).
112. Kremer v. Chemical Constr. Corp., 456 U.S. 461 (1982).
113. Hickman v. Electronic Keyboarding, Inc., 741 F.2d 230 (8th Cir. 1984).
114. Smith v. Updegraff, 744 F.2d 1354 (8th Cir. 1984).

and a recent Iowa Supreme Court decision prohibiting joinder of an original action with a petition for judicial review, *Black v. University of Iowa*.[115]

In *Kremer*, the U.S. Supreme Court held that, due to the operation of the Full Faith and Credit Act, 28 U.S.C. section 1738,[116] a litigant's Title VII claim was barred by a prior state court judicial review decision affirming an administrative agency's dismissal of an employment discrimination claim.[117] The New York statute at issue clearly precluded "any other action, civil or criminal, based upon the same grievance" as that underlying the judicial review decision.[118] Since the Full Faith and Credit Act requires that the same preclusive effect be given to the state court judicial review decision in federal courts as it would be given in New York state courts, the federal action was barred.[119] The res judicata effect of the decision was premised on the theory that the issue of employment discrimination was already determined. Alternatively, the decision could be justified on the basis that the claim itself was precluded; the decision had preclusive effect even though it was a judicial review of administrative action without a de novo hearing.[120] At least one commentator has compared the Supreme Court's decision in *Migra v. Warren City School District*[121] to the *Kremer* decision, thereby implying that, under similar circumstances, the Court would reach the same result in a section 1983 action as it did in *Kremer*.[122]

The effect of the *Kremer* decision is further demonstrated by the Eighth Circuit's decision in *Hickman v. Electronic Keyboarding, Inc.*[123] In this case, unlike *Kremer*, the judicial review of the Missouri Commission on Human Rights' decision resulted from the appeal of the employer, not the complainant.[124] Nonetheless, the judicial review decision, adverse to the complainant, precluded the complainant's claims under Title VII and 42 U.S.C. section 1981.[125] The court noted that its previous decision in *Gunther v. Iowa State Men's Reformatory*[126] would have supported a distinction resulting in no preclusion when the adverse state court decision was not the result of the complainant's action, but concluded that the *Gunther* distinc-

---

115. Black v. University of Iowa, 362 N.W.2d 459 (Iowa 1985).

116. The statute provides in part that: "[J]udicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken." 28 U.S.C. § 1738 (1987).

117. Kremer v. Chemical Constr. Corp., 456 U.S. at 466-67.

118. N.Y. Exec. Law § 300 (McKinney 1972) (cited in Kremer v. Chemical Constr. Corp., 456 U.S. at 467).

119. Kremer v. Chemical Constr. Corp., 456 U.S. at 466-67.

120. *Id.* at 481 nn.21, 22.

121. Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75 (1984).

122. S. Nahmod, Civil Rights & Civil Liberties Litigation § 5.17 (Supp. 1983).

123. Hickman v. Electronic Keyboarding, Inc., 741 F.2d 230 (8th Cir. 1984).

124. *Id.* at 232 n.3.

125. *Id.* at 234.

126. Gunther v. Iowa State Men's Reformatory, 612 F.2d 1079 (8th Cir.), *cert. denied*, 446 U.S. 966 (1980).

tion is no longer good law after *Kremer*.[127]

The *Hickman* court went on to reject the plaintiff's argument that he was neither a party to the state court action nor in privity with the Missouri Commission on Human Rights.[128] In alternative holdings, the court found that the plaintiff's claims, or issues essential to those claims,[129] could be considered precluded from further litigation either: (a) because plaintiff and the Missouri Commission on Human Rights were sufficiently closely identified in interest to be considered "in privity",[130] or (b) because plaintiff was a party to the first action as indicated by the caption of the case, his receipt of the Commission's "Notice to Withdraw Notice of Appeal," and his ability to fight the motion to dismiss or prosecute on his own.[131]

Kremer and *Hickman* indicate that, if a claim or issue previously determined in a judicial review decision would be precluded in the state courts, it will be precluded in section 1983 actions in federal court. This conclusion is supported by *Hickman's* status as both a Title VII and a section 1981 action. There seems to be no rationale for failing to give preclusive effect to state judicial review decisions in section 1983 actions unless it can be shown that the state law of res judicata would not result in preclusion based on judicial review of administrative agency actions under similar circumstances. Therefore, in order to determine whether judicial review decisions under the Iowa Administrative Procedures Act will have preclusive effect in section 1983 actions, it will be necessary to focus on Iowa law.

In *Smith v. Updegraff*[132] the Eighth Circuit applied Iowa law and determined that claims of conspiracy to deprive of, and of actual deprivation of, "constitutional rights to freedom from coercion, due process of law and equal protection," brought under sections 1983, 1985, and 1986, were not barred by an earlier judicial review of a county civil service commission's decision to discharge the plaintiff.[133] The judicial review was not made pursuant to the Administrative Procedures Act, but was done pursuant to provisions for review of such commission actions.[134] These provisions state, in part:

> The court shall proceed to hear and determine the appeal in a summary manner. Such hearing shall be confined to the determination of whether the order of removal, suspension or demotion made by the commission

127. Hickman v. Electronic Keyboarding, Inc., 741 F.2d at 232 n.3.

128. *Id.* at 232.

129. *Id.* at 233. Neither the decision of the district court nor that of the Eighth Circuit specified whether the plaintiff was barred by issue preclusion or claim preclusion. *Id.* at 232 n.2. The Eighth Circuit's decision indicates the distinction was not important in this case.

130. *Id.* at 233.

131. *Id.* at 233-34.

132. Smith v. Updegraff, 744 F.2d 1354 (8th Cir. 1984).

133. *Id.* at 1362-63.

134. Iowa Code § 341A.12 (1987).

> was made in good faith and for cause, and no appeal shall be taken except upon such grounds.[135]

Claim preclusive effect of the prior decision was denied by the court for two reasons.[136] First, the appellants were neither parties nor in privity with those party to the section 1983 action.[137] Second, the limited review in the first action meant that the plaintiff "did not have a 'full legal opportunity for an investigation and determination of' the matters he raised before [the federal] court."[138] Both requirements must be met for claim preclusion to take effect under Iowa law.[139] The court concluded that "[*b*]*ecause Iowa law precluded Smith from presenting his section 1983 claim* to the Jasper County Court, *res judicata* [*i.e.*, claim preclusion] *does not* now *bar the claim.*"[140]

The limited review authority of the court, the fact that no constitutional issues were litigated before the civil service commission, and the fact that no evidence of conspiracy was discovered until after the hearing all served to show that the four requirements for issue preclusion in Iowa had not been met.[141]

It is clear from *Smith v. Updegraff* that any denial of a "full legal opportunity for an investigation and determination of the matters"[142] raised by the plaintiff in the subsequent section 1983 action, due to the limited scope of judicial review in the original action, will weigh heavily against attributing claim or issue preclusion effect to the original action. The decisive inquiry must be, in the words of the *Smith* decision, "[whether] Iowa law precluded [the plaintiff] from presenting his section 1983 claim to the . . . [Iowa district] court[?]"[143] If so, "res judicata does not now bar the [section 1983] claim."[144]

The Iowa Supreme Court has provided an answer to this question in the context of judicial review proceedings under the Iowa Administrative Procedures Act. In *Black v. University of Iowa*,[145] the plaintiff, an assistant professor at the University of Iowa, filed a petition for judicial review of the university's decision to deny her academic tenure pursuant to the Iowa Administrative Procedures Act.[146] In addition to the first count of her petition

---

135. *Id.* (cited in Smith v. Updegraff, 744 F.2d at 1362).
136. Smith v. Updegraff, 744 F.2d at 1362.
137. *Id.*
138. *Id.*, (citing Third Missionary Baptist Church v. Garrett, 158 N.W.2d 771, 775 (Iowa 1968)).
139. *Id.*
140. *Id.* (emphasis added).
141. *Id.* at 1363. *See* text accompanying footnote 66.
142. Smith v. Updegraff, 744 F.2d at 1362.
143. *Id.*
144. *Id.*
145. Black v. University of Iowa, 362 N.W.2d 459 (Iowa 1985).
146. *Id.* at 460.

requesting judicial review, the plaintiff also joined three counts requesting damages for violation of civil rights, intentional infliction of emotional distress, and breach of implied covenants of good faith and fair dealing in the employment contract.[147]

When the university moved to dismiss the damage claims, the district court upheld this joinder. The court based its conclusion on Iowa's liberal procedural rules concerning joinder of claims and the nonexistence of an explicit prohibition of joinder in the Iowa Administrative Procedures Act.[148] The Iowa Supreme Court reversed and held that its joinder rules did not explicitly or implicitly permit the joinder of original actions with petitions for judicial review where the district court exercised only its appellate rather than its original jurisdiction.[149] The court stated: "Judicial review proceedings are fundamentally different from original actions commenced in the district court. Judicial review proceedings have a different jurisdictional base, proceed in a different manner toward disposition, and provide only those types of relief to the successful petitioner which chapter 17A specifically prescribes."[150]

The court concluded that, although original actions could not be joined with petitions for judicial review, "our decision, of course, is without prejudice to petitioner's right to assert those claims in a separate original action."[151]

Black clearly provides an affirmative answer to the question: Does Iowa law preclude the plaintiff from presenting his section 1983 claim to the Iowa district court in judicial review proceedings under the Iowa Administrative Procedures Act? Therefore, pursuant to the reasoning of *Smith v. Updegraff*, judicial review proceedings under the Act are not res judicata with respect to a subsequently filed section 1983 action.[152]

Although the petition in *Black* did not concern a contested case,[153] the court cited contested case decisions which illustrate the differences between judicial review proceedings and original actions which justify the prohibition of their joinder.[154] These differences demonstrate that joinder of original

147. *Id.* at 461-62.
148. *Id.*
149. *Id.* at 464-65.
150. *Id.* at 462.
151. *Id.* at 464.
152. *See supra* notes 132-44 and accompanying text.
153. Black v. University of Iowa, 362 N.W.2d at 461.
154. *Id.* at 463-64 (citing Kohorst v. Iowa State Commerce Comm'n, 348 N.W.2d 619, 621 (Iowa 1984) (one practical difference is that the liberal notice pleading permitted in original actions by rule 69 of the Iowa Rules of Civil Procedure does not apply to judicial review proceedings, which are subject to more stringent pleading requirements of § 17A.19); Christensen v. Iowa Civil Rights Comm'n, 292 N.W.2d 429, 431 (Iowa 1980) (simplification of the judicial review process of agency actions and increase in its ease and availability are important purposes of the administrative procedure act, which would not be served satisfactorily if "parties were able to interrupt agency proceedings by bringing original district court actions to obtain assis-

claims with petitions for judicial review of contested case decisions would not be permitted. Accordingly, prior judicial review proceedings under the Iowa Administrative Procedures Act would not have claim preclusive effect on subsequent section 1983 actions whether or not the judicial review concerned a contested case. As to issue preclusion, the district court has no power to make findings of fact when reviewing a contested case decision.[155] Therefore, the judicial review of a contested case cannot result in the preclusion of any factual issues in a section 1983 case.

VI. Iowa Administrative Procedures Act—Contested Case Decisions

The final question addressed in this article is the preclusive effect of a final contested case decision when there is no judicial review of that decision. In *University of Tennessee v. Elliott*,[156] the U.S. Supreme Court addressed this question. *Elliott* provided a three-step analysis for determining whether an administrative decision has issue preclusive effect:

(1) Was the state agency "acting in a judicial capacity" when it decided the disputed issue?[157]

(2) Did the parties have "an adequate opportunity to litigate" the issue?[158]

(3) Would the decision be entitled to issue preclusive effect under state law?[159]

If all three questions are answered affirmatively, the fact issue previously adjudicated by the administrative agency is entitled to preclusive effect in a subsequent section 1983 action.[160]

How would these criteria be applied to a contested case hearing decision? The definition of "contested case," the extensive procedural safeguards provided for the conduct of contested case hearings, and the description of the functions of hearing officers and the effect of their decisions, all indicate that an agency conducting a "contested case" hearing under the Iowa Administrative Procedure Act is functioning as an adjudicative body.[161] Thus, the first inquiry is answered affirmatively.

The second requirement—that the parties have "an adequate opportunity to litigate" the issue—mirrors the requirement that the parties must have had a "full and fair opportunity" to litigate the issue at the original hearing to be precluded from relitigating it.[162] The procedural safeguards

---

tance with every discovery problem which conceivably might arise")).

155. Kohorst v. Iowa State Commerce Comm'n, 348 N.W.2d 619, 621-22 (Iowa 1984).

156. University of Tennessee v. Elliott, 478 U.S. 788 (1986).

157. *Id.* at 799.

158. *Id.*

159. *Id.*

160. *Id.*

161. Iowa Code §§ 17A.2(2), 17A.11-A.12, 17A.15 (1987).

162. Hunter v. City of Des Moines, 300 N.W.2d 121, 123 (Iowa 1981). *See* University of

incorporated in the Iowa Administrative Procedure Act ensure such a "full and fair opportunity."[163]

The third criterion addresses the issue preclusive effect which the administrative hearing findings would have under the common law of the state.[164] To date, no Iowa appellate court has determined whether an administrative contested case decision is entitled to any issue preclusive effect in the courts of this state. In a pre-*Elliott* decision, one federal district court addressed the question whether a state unemployment insurance public hearing decision is entitled to issue preclusive effect in a section 1983 case.[165] Although the court answered the question in the affirmative, the court did not apply the Iowa three-step issue preclusion test.[166] Instead, the court applied criteria developed in a U.S. Supreme Court decision addressing the issue preclusive effect of a federal administrative agency decision in a non-section 1983 case.[167] Nevertheless, this decision, and the opinions of commentators,[168] are persuasive authority for the proposition that administrative hearing decisions should be given issue preclusive effect if they meet the same requirements for issue preclusion as are mandated for court decisions. If this proposition is accepted, and the first two *Elliott* criteria are met, then the case-by-case application of state common law requirements for issue preclusion will determine whether the issues decided in a given contested case decision will have issue preclusive effect.

There is even less authority addressing the claim preclusive effect of an agency decision on a subsequent section 1983 constitutional claim. However, it would be rare for an agency's enabling statute to give it the authority directly to address constitutional issues or enforce constitutional rights. It is well established that an agency cannot rule on the constitutionality of its own enabling statute.[169] Also, the issue preclusive effect of an agency decision might preclude proof of a fact necessary to establish the section 1983 plaintiff's constitutional claim, thereby mooting the question of claim preclusion. For example, an agency ruling that race was not a factor in a plaintiff's discharge from city employment would negate a section 1983 claim that the plaintiff was denied equal protection of the laws on the basis of her race.[170]

Tennessee v. Elliott, 478 U.S. 788, 797-98 (1986).

163. *See* IOWA CODE §§ 17A.11-A.15 (1987).

164. University of Tennessee v. Elliott, 478 U.S. 788, 799 (1986).

165. Gear v. City of Des Moines, 514 F. Supp. 1218 (S.D. Iowa 1981).

166. *Id.* at 1224.

167. United States v. Utah Constr. & Mining Co., 384 U.S. 394, 422 (1966).

168. University of Tennessee v. Elliott, 478 U.S. 788, 798 n.6 (1986).

169. Salsbury Laboratories v. Iowa Dep't of Environmental Quality, 276 N.W.2d 830, 836 (Iowa 1979).

170. *See generally* Gear v. City of Des Moines, 514 F. Supp. 1218 (S.D. Iowa 1981).

VII. Conclusion

Due to the impact of the U.S. Supreme Court's decisions in *Migra* and *Allen*, an attorney litigating civil rights actions under 42 U.S.C. section 1983 must be aware of the possible preclusive effects of prior litigation concerning the same parties, claims, or issues. In order to determine the potential preclusive effect of such actions under Iowa law, an attorney must be aware not only of Iowa law concerning claim and issue preclusion, but also of the special problems that may arise when claims or issues have previously been litigated under the Iowa Tort Claims Act, in a judicial review proceeding pursuant to the Iowa Administrative Procedure Act, or in a contested case hearing under that Act.

A prior claim under the Iowa Tort Claims Act may effectively bar any subsequent section 1983 action against the state or state employees, even though only one of them was a defendant in the prior Tort Claims action. In contrast, judicial review of contested case decisions under the Iowa Administrative Procedure Act will neither preclude subsequent section 1983 actions nor bar the litigation of any fact issues in those actions.

Finally, if unappealed contested case decisions are ultimately held to have some issue preclusive effect in Iowa, each decision must be separately evaluated under the three-step test set forth in *University of Tennessee v. Elliott* and under the requirements for issue preclusion found in Iowa case law. Because contested case decisions will rarely resolve constitutional claims, the issue preclusive effect of such decisions is probably of greater practical significance for the section 1983 litigant.