**[Blackmun Notes Before Oral Argument 10-08-83 IMAGE HAB394F110014 ][[1]](#footnote-1)**

82-738 Migra v. Board of Education

Findings of Fact and Conclusions and Res Judicata

Petitioner was employee of Board – supervisor of elementary education

Not tenured but terminated 4/24/79 after she had accepted Board’s offer to renew

Suit in Ohio court – contract breach and contract interference

Ohio court ruled board wrongfully terminated

Then dismissed tort claim versus individual board members, at plaintiff’s request, sans [without] jury

Next day, 1983 suit in federal court versus board and member – defamation and violation of constitutional rights.

Federal Court ruled

1) Federal claims could have been litigated as part of the cause of action in state court. Therefore, res judicata.

2) State claims barred by statute of limitations of one year

Sixth Circuit affirmed.

Statutory construction

I would affirm, but narrowly, in *view* of my dissents in Allen[[2]](#footnote-2) and Kremer[[3]](#footnote-3)

Court will affirm and do so broadly, so I should separately concur.

My dissent in Allen rested on proposition 1983 plaintiff had no choice of forum

He was a D to a state criminal charge of heroin possession – 4th Amendment issue

Kremer rested on nature of state court review of administrative ruling

Question of what state law is on preclusion and to what extent a federal court applies it

That review on an arbitrary and capricious basis only – i.e. no full judicial review

I recognized in Allen that proper preclusion principals applied in 1983 actions

Question here is whether 1738 conflicts with any federal policy under 1983

No – Plaintiff could have brought suit in federal court, but chose not to do so

She was in an offensive posture

ACLU position is too extreme (that collateral estoppel is the only applicable preclusion doctrine in 1983)

Therefore, could join only a narrow affirming opinion which court will not produce.

An *element* of *considerable* [illegible] here?

Affirm narrow 8 October 1983

1. Words added by the editor for clarity are enclosed in brackets as are editor comments. Interpretations of which the editor is particularly uncertain are indicated in italics and alternative interpretations may be indicated in footnotes. Red and blue underlining appears to have been added in those colors later. Text in the left margin is placed approximately where it appears in the document itself. [↑](#footnote-ref-1)
2. Allen v. McCurry, 449 U.S. 90, 105 (1980) (Blackmun, J. dissenting). Blackmun’s dissent in Allen argued that the history of § 1983 showed that Congress wanted to create a “federal remedy in federal court” for violations of constitutional rights, and that prior state court litigation should be given collateral estoppel effect only in narrow circumstances in which the plaintiff voluntarily litigated the issue in state court. To review Petition to Decision’s discussion of Allen click [here](http://www1.law.umkc.edu/justicepapers/AllenDocs/AllenMainPage.htm). [↑](#footnote-ref-2)
3. Kremer v. Chemical Construction Co., 456 U.S. 461, 486 (1982) (Blackmun, J. dissenting). Blackmun’s dissent argued that, in Title VII employment discrimination cases, federal courts should not give preclusive effect to a state agency’s adverse findings or to a state court subsequent decision upholding those finding. [↑](#footnote-ref-3)