

## Court Permits First Amendment Retaliation Claim Against Municipality Despite Probable Cause To Arrest

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Fane Lozman was something of a political gadfly to the City of Riviera Beach's city council, and had filed a lawsuit against it. During a closed meeting, one of the council members suggested that the council intimidate Mr. Lozman, which the council supported. At a subsequent public meeting, when Lozman sought to discuss the recent arrest of a former county official, a councilmember directed that the police arrest and remove him. Lozman was charged with disorderly conduct and resisting arrest without violence, but the prosecutor dismissed the charges. Lozman then sued the council alleging, among other things, that his arrest was retaliatory in violation of his First Amendment rights. At trial, the jury entered judgment for the council, and the Eleventh Circuit affirmed, on the basis that the existence of probable cause to arrest (which Lozman conceded existed in this case) precluded any such claim. The Court, in an 8-1 decision by Justice Kennedy, reversed, holding that in these precise circumstances, probable cause did not bar Lozman's claim. The Court specified that for Lozman to prevail, he would have to prove the existence and enforcement of an official policy motivated by retaliation, and left it to the Eleventh Circuit to determine whether a new trial was appropriate under the facts established at trial. Justice Thomas filed a dissent, arguing that the Court should not have narrowed its opinion to the unique circumstances of this case, which are unlikely to recur, and that he would have held that for Lozman's retaliation claim to succeed, he would have had to prove a lack of probable cause. A link to the opinion in *Lozman v. City of Riviera Beach* is [here](#).

**TAGGED:** [scotus](#), [First Amendment](#), [Retaliation Claim](#), [Probable Cause](#), [Lozman v. City of Riviera Beach](#)