**ANNOTATIONS AND COMMENTS**

**I. Qualified Immunity**

In cases under § 1983 or *Bivens*, the named defendants will usually assert on motion for summary judgment prior to trial a qualified immunity defense to be addressed by the court under the standards summarized in *Brown v. City of Huntsville, Ala.*, 608 F.3d 724, 733-34 (11th Cir. 2010). The instructions in this chapter presume that the court has previously determined that the defendants do not have a qualified immunity defense. If there is a genuine issue of material fact pertaining to the qualified immunity defense and that issue is not subsumed in the elements of the claim the plaintiff must prove, the model instructions should be revised accordingly.

**II. Retaliation**

The definition of retaliation provided in this instruction is derived from *Smith v. Mosley*, 532 F.3d 1270, 1276 (11th Cir. 2008).

1. **Causation**

For additional information regarding the instruction on causation, see the annotation following Pattern Instruction 5.1.

1. **Damages**

The Eleventh Circuit has noted that physical injury “rarely” results from a First Amendment violation. *Al-Amin v. Smith*, 637 F.3d 1192, 1197 (11th Cir. 2011). In the event a prisoner suffers a physical injury resulting from a First Amendment violation, the jury should be instructed concerning recoverable damages. For the damages instruction, see Pattern Instruction 5.13.