



The Ending Qualified Immunity Act

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Background

Across the country, police brutality remains a crisis disproportionately harming Black and brown communities. Law enforcement officers continue to avoid legal accountability when they break the law, and are shielded from it by the doctrine of qualified immunity. Congress granted individuals the right to sue state and local officials who violate their rights in the “Ku Klux Klan Act of 1871,” now found under Section 1983. However, since 1967 the Supreme Court has issued several decisions undermining the law by inventing the qualified immunity doctrine, rendering police officers from being sued for misconduct, negligence, or abuse—a unique protection that no other profession holds.

Courts repeatedly shield law enforcement officials from accountability, for even the most egregious conduct, as long as there was no previous case that “clearly establish” the conduct was unlawful. This broad interpretation of this doctrine has allowed police to violate constitutional rights with impunity, providing officers immunity for everything from unlawful traffic stops to brutality and murder. Qualified immunity undermines the constitutional rights of every person in this country. It’s past time to end qualified immunity.

Recent Qualified Immunity Cases

- In 2021, the 6th Circuit held that a police officer who shot into a moving car in a restaurant drive-thru and killed the unarmed driver was protected with immunity.¹
- In 2020, the 5th Circuit held that a correctional officer was entitled to qualified immunity after spraying a person in custody in the face with a chemical agent without provocation.²
- In 2018, the 9th Circuit ruled that a police officer pointing a loaded gun at an unarmed man who remained seated and calm while being watched by another officer was “not objectively reasonable” but that both officers were entitled to immunity, because “the law was not clearly established at the time.”³
- In 2017, the 11th Circuit ruled that it was an unconstitutional use of excessive force to throw a flashbang into a room with two sleeping people that the officer had not inspected first and although one person was badly burned, the court found the officer was still entitled to immunity.⁴

The Ending Qualified Immunity Act

The legislation codifies that the qualified immunity doctrine is not grounds for defense for violations of the law. Specifically, this bill would:

- Amend Section 1983 to explicitly state that the qualified immunity doctrine invented by the Supreme Court does not provide officials that brutalize or otherwise violate civil rights with defense or immunity from liability for their actions.
- Clarify Congress’ original intent for Section 1983 and note the history and necessity of this protection.

¹ U.S. Supreme Court rebuffs challenge to police qualified immunity defense, Reuters, Oct. 11, 2022, <https://www.reuters.com/legal/us-supreme-court-rebuffs-challenge-police-qualified-immunity-defense-2022-10-11/>

² Fifth Circuit Upholds Qualified Immunity for Guard Pepper-spraying Prisoner Without Provocation, PRISON LEGAL NEWS, Apr. 2, 2020, <https://www.prisonlegalnews.org/news/2020/apr/2/fifth-circuit-upholds-qualified-immunity-guard-pepper-spraying-prisoner-without-provocation/>

³ Ibid

⁴ A Legal Doctrine That Protects Cops In Court Is Getting Fresh Attention As Videos Surface Showing Police Violence, BUZZFEED NEWS, June 2, 2020, <https://www.buzzfeednews.com/article/zoetillman/qualified-immunity-police-brutality-protests-george-floyd>