

Qualified Immunity: *When Protecting Officers Leaves the Community Vulnerable*

Presentation to the Los Angeles County Sheriff
Civilian Oversight Commission

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The Birth of Section 1983

Enforcement Acts: *The Civil Rights Act of 1871*

Also known as the Klu Klux Klan Act of 1871, and the most expansive of the Enforcement Acts, this law gave the federal government the power to use the military to stop "insurrection, domestic violence, unlawful combinations, or conspiracies" in instances of anti-Black terrorism where state governments failed to intervene.

§. XXII. — *An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who, under any law, statute, ordinance, regulation, custom, or usage of any State or Territory, or subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; such proceeding to be prosecuted in the several district or circuit courts of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts, under the provisions of the act of the ninth of April, eighteen hundred and sixty-six, entitled "An act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication"; and the other remedial laws of the United States which are of their nature applicable in such cases.

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Resuscitation of the Civil Rights Act of 1871: § 1983

Monroe v. Pape (1961)

Highlighting the history of the Act, the Court concluded that Congress indeed intended to provide a remedy for such a deprivation of rights by an official's (in this case the police officers') abuse of position, regardless whether it was authorized by state law or other official state conduct.

The decision removed § 1983 from obscurity and has thereafter allowed citizens an avenue down which to pursue abuse by law enforcement that had previously gone unpunished.

Section 1983

“Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

The Supreme Court's Shifting Qualified Immunity Standard

- 1967, *Pierson v. Ray*: qualified immunity for officers who act “in good faith and with probable cause”
- 1982, *Harlow v. Fitzgerald*: qualified immunity unless officers violated “clearly established” rights
- 2002, *Hope v. Pelzer*: factually similar precedent is unnecessary to clearly establish the law when the violation was obvious
- 2016, *White v. Pauly*: The Court “does not require a case directly on point” to be clearly established, but “existing precedent must have placed the statutory or constitutional question beyond debate...’Clearly established law must be particularized to the facts of the case.”

Officers have been granted qualified immunity who:

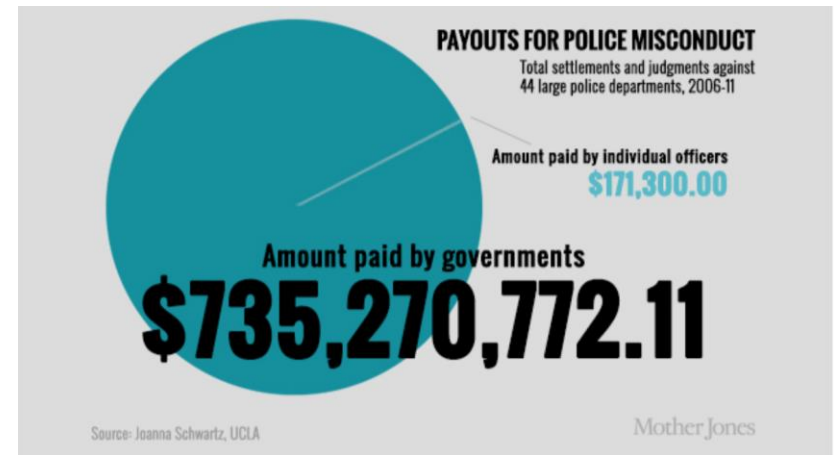
- tased a pregnant Black woman who was pulled over while driving her 11-year-old son to school;
- held a 14-year-old in pretrial solitary confinement for over a month;
- instructed their police dog to attack a man who had surrendered and had his hands in the air;
- repeatedly kicked a handcuffed man;
- shot a ten-year-old boy in the leg while trying to hit his unthreatening dog;
- body slammed a woman to the ground, breaking her collarbone and knocking her unconscious, simply because she had walked a few feet away from him; and
- stole \$225,000 in cash and rare coins when executing a warrant

Defenses of Qualified immunity

- Tucker Carlson: if qualified immunity is eliminated, police officers “could be bankrupted, they **could lose their homes**. That’s unfair. It would also end law enforcement. **No one would serve as a police officer.**”
- Congressman Jim Banks (R-IN): “[e]nding qualified immunity is another way of saying abolish the police. No doubt criminals would love the chance to open **frivolous lawsuits** against the officers who put them behind bars. I’ve heard from many that work in law enforcement that if we strip them of qualified immunity, **they’d be forced to quit, because they couldn’t afford to serve any longer.**”
- International Association of Chiefs of Police: qualified immunity “allows police officers to respond to incidents without pause” and “**make split-second decisions.**” Without qualified immunity, officers would not be shielded from liability when taking “**good faith actions**” that turn out to be unconstitutional.

Is qualified immunity necessary to shield government defendants from financial liability?

- Qualified immunity does not protect officers from financial liability – indemnification does.



Is qualified immunity necessary to protect officers from liability for “split-second decisions” and “good faith actions”?

- Officers do not violate the Constitution when they act reasonably.
- The Supreme Court instructs that “the ‘reasonableness’ of a particular use of force . . . must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.” *Graham v. Connor*.
- Officers do not violate the Constitution when they make reasonable mistakes. “To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them ‘fair leeway for enforcing the law in the community’s protection.’” *Heien v. North Carolina*

The Constitution—not qualified immunity—protects officers who make split-second decisions and act in good faith.

Would ending qualified immunity flood the courts with “frivolous lawsuits”?

- **Constitutional standards** protect against liability for reasonable mistakes.
- **Challenges of finding a lawyer** – who will not accept a case unless they believe they can win (or risk losing the money and time they invest in lawsuits) – protect against frivolous cases being filed.
- **Judges** can dismiss cases if they do not state a claim, or plaintiffs can not produce evidence of constitutional violations.
- **Juries** can find against plaintiffs if they are unconvinced of their claims.

There are multiple protections against “frivolous lawsuits” besides qualified immunity.

What would ending qualified immunity accomplish?

- **Justice.** Courts would stop denying relief to people whose constitutional rights have been violated
- **Accountability.** Courts would stop sending the message that, in Justice Sotomayor’s words, police can “shoot first and think later.” *Mullenix v. Luna*
- **Clarity.** Courts would clarify the scope of constitutional protections, which could help inform police policies and trainings.
- **Simplicity.** The cost, complexity, and time to litigate civil rights cases would decrease – which may mean more lawyers would be willing to take these cases.
- **Transparency.** There would be more focus on what should be the critical question in these cases – whether officers violated people’s constitutional rights.