



Death of George Floyd brings debate on qualified immunity for police misconduct

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June 2, 2020

George Floyd's death while taking a knee to his neck by a Minneapolis police officer has raised debate on qualified immunity for police misconduct.

The doctrine allows police to escape civil liability for violating a person's rights under Section 1983 of the Civil Rights Act when those rights are not "clearly established."

The concept of qualified immunity has come under attack in libertarian legal circles, Fox News reports. The New York Times has also criticized the doctrine, saying it shields police in virtually every lawsuit.

Fox News quoted Judge Don Willett of the 5th U.S. Circuit Court of Appeals at New Orleans on the impact of the doctrine.

"To some observers, qualified immunity smacks of unqualified impunity, letting public officials duck consequences for bad behavior—no matter how palpably unreasonable," Willett wrote in a 2018 opinion.

A Cato at Liberty blog post explains the qualified immunity concept this way: "Enacted in 1871 and referred to as Section 1983 after its placement in the U.S. Code, America's primary civil rights law provides that police and other state actors 'shall be liable' to the person injured for 'the deprivation of any rights.' On its face, Section 1983 creates a standard of strict liability for police and other public officials who violate people's constitutional rights, including the right to be free from the unreasonable use of force. But in a tragic and legally baseless act of judicial policymaking, the Supreme Court radically altered that standard by holding that the right in question must be 'clearly established.' And thus was born the doctrine of qualified immunity."

As a result of the legal shield, plaintiffs have to hunt for cases with nearly identical facts that hold that the police practice is a constitutional violation, the Cato Institute says. If there is none, police officers are protected by qualified immunity.

The U.S. Supreme Court could reconsider the doctrine as it considers whether to grant certiorari in 10 pending cases, Slate reports.

In many cases in which cert petitions are pending, libertarian groups such as the Cato Institute and the Institute for Justice opposed qualified immunity in the lower courts, aligning with groups on the left such as the American Civil Liberties Union, USA Today reports.

Two Supreme Court justices have raised concerns about the doctrine. Justice Sonia Sotomayor says it has led to “shoot first, think later” police conduct. And Justice Clarence Thomas has said he would like to reconsider the court’s qualified immunity jurisprudence.

Slate highlights three of the 10 pending cases that seek certiorari. They are:

- *Baxter v. Bracey*, in which a police dog was unleashed on a suspect who was sitting on the ground with his hands in the air.
- *Corbitt v. Vickers*, in which police shot a 10-year-old child in the back of his knee while trying to shoot a suspect’s a pet dog.
- *Cooper v. Flaig*, in which police used a stun gun nine times on a man who had a mental health episode, including a period of time while the man was handcuffed. The man died.