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New Bill Would Abolish Qualified Immunity, Make It Easier To Sue Cops Who Violate Civil Rights

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In response to the George Floyd protests, the past few days have seen a surge of police violence, with unprovoked attacks on peaceful demonstrators, journalists, and even people just standing in their own homes. Incredibly, even though there's clear video evidence for many of these incidents, holding police accountable for their actions is far from a slam dunk.

A legal rule known as “qualified immunity” often shields police officers and other government officials from being sued by victims and their families, even if the officers violated their civil rights. And since prosecutors are loath to file criminal charges against government agents, suing rogue officers for damages in civil court is often the only recourse available to victims of government abuse.

But late Sunday night, Congressman Justin Amash (L-MI) revealed that he will introduce the End Qualified Immunity Act, which would eliminate a “permanent procedural roadblock for plaintiffs” that thwarts them from “obtaining damages for having their rights violated.”

“The brutal killing of George Floyd by Minneapolis police is merely the latest in a long line of incidents of egregious police misconduct,” Congressman Amash wrote in a letter to his colleagues posted on Twitter. “This pattern continues because police are legally, politically, and culturally insulated from consequences for violating the rights of the people whom they have sworn to serve. That must change so that these incidents of brutality stop happening.”

Ever since Congress passed the Civil Rights Act in 1871, individuals have been able to sue state and local officers for infringing on their constitutional rights. But in 1982, the U.S. Supreme Court ruled that government officials were entitled to qualified immunity from civil-rights lawsuits, if their actions didn't violate “clearly established” rights.

In other words, unless a court had previously ruled that an officer's actions were unconstitutional, police would still be immune from a lawsuit, even if they violated someone's rights. This "clearly established" requirement was crafted whole-cloth by the Supreme Court and appears nowhere in the actual text of the Civil Rights Act or in the federal law codified today, Section 1983.

Unsurprisingly, this has helped foster a culture of impunity for law enforcement, with often absurd results. Just last year, qualified immunity was granted to Fresno officers accused of stealing more than \$225,000 during a search, Idaho police who bombarded an innocent woman's home with tear gas grenades, and a Georgia officer who tried to kill a family's dog, but accidentally shot a 10-year-old boy instead, all on the grounds that the rights involved weren't "clearly established."

"This rule has sharply narrowed the situations in which police can be held liable—even for truly heinous rights violations—and it creates a disincentive to bringing cases in the first place," Congressman Amash noted in his letter. "If a plaintiff knows there is no prior case that is identical to theirs, they may decline to even file a lawsuit because they are very unlikely to win."

Ending qualified immunity, however, would "restore Americans' ability to obtain relief when police officers violate their constitutionally secured rights," he added. At the same time, it would also provide a powerful incentive for municipalities (who are generally responsible for paying out judgements and settlements) to restructure their law enforcement agencies and adopt policies and practices that curtail abuses of power. Those measures could include implementing de-escalation tactics and revising use-of-force standards, as well as firing and blacklisting rogue agents.

Proponents of qualified immunity often claim that it's vital to protect police officers forced to make split-second decisions in life or death struggles. But that justification only applies to a fraction of qualified immunity cases. Case in point: According to the Cato Institute, the Supreme Court is currently considering eight different cert petitions on qualified immunity. Yet the overwhelming majority of those cases did not involve any clear and present danger to police.

Abolishing qualified immunity does not mean that anyone who files a civil rights lawsuit would automatically win their case against an officer. Instead, it would eliminate a barrier that arbitrarily prevents juries from hearing and deciding cases on their merits.

The doctrine's defenders also claim that its abolition would expose police officers to financial ruin, which in turn would disincentivize people from joining the force. But thanks to indemnification by state and local governments, individual officers rarely have to pay out of their own pocket. A 2014 study by UCLA Law Professor Joanna Schwartz found that officers were "financially responsible" for just "0.02% of the total dollars paid."

Moreover, eliminating qualified immunity would disincentivize people from *abusing their authority* as police officers. If being held accountable for violating the Constitution would dissuade someone from becoming a police officer, then they shouldn't become a police officer.

Fortunately, the injustice of qualified immunity is becoming clearly established in the court of public opinion. Earlier this year, the Institute for Justice formed the Project on Immunity and Accountability to challenge qualified immunity and other legal doctrines that make it “nearly impossible for ordinary Americans to hold the government accountable in court.”

Over the weekend, *The New York Times* editorial board called on the Supreme Court to “ratchet back qualified immunity,” asserting that the doctrine “lets cops get away with murder.” On Monday, more than 400 civil rights organizations, including the Leadership Conference, the ACLU, Amnesty International USA, and the NAACP, sent a letter to congressional leadership urging that they enact a package of “meaningful police reform legislation” that includes “an end to qualified immunity doctrine.”

“Qualified immunity was created by the Supreme Court in contravention of the text of the statute and the intent of Congress,” Congressman Amash wrote. “It is time for us to correct their mistake.”