

Lake County Record-Bee

End qualified immunity, hold cops liable for rights abuses

June 10, 2020

Over the past two weeks, Americans have been unified in their anger about the senseless killing of George Floyd by the police. The death of Floyd, and the countless others who have had their lives disrupted or taken from them by the abusive actions of police officers must prompt reforms. At the federal level, now is an opportunity to finally fix the legal folly of qualified immunity.

The Civil Rights Act of 1871 made clear that any state actor who violates the rights of an American “shall be liable” for doing so. In other words, if a police officer violates the civil rights of an American, they “shall be liable” for doing so.

Since 1967, however, the U.S. Supreme Court has distorted the language of the Civil Rights Act of 1871, and created a situation whereby a victim of police abuse could only prevail if a prior case has “clearly established” that the instance of misconduct is illegal.

In other words, as Clark Neily from the Cato Institute notes, “if Mr. Floyd’s family wants to sue the officer who took his life, they will need to find an existing case from the Eighth U.S. Circuit Court of Appeals holding that a police officer may not kneel on a unresisting suspect’s neck, ignoring his pleas for help, until he passes out. If no such case happens to be on the books, their case will be summarily tossed out of court.”

The standard is how we’ve seen cases like that of Micah Jessop and Brittan Ashjian, who sued Fresno police officers who they accused of stealing hundreds of thousands of dollars from them during a police raid.

In response, the Ninth Circuit ruled, “At the time of the incident, there was no clearly established law holding that officers violate the Fourth or Fourteenth Amendment when they steal property that is seized pursuant to a warrant. For that reason, the city officers are entitled to qualified immunity.”

This is an obvious absurdity that makes a mockery of not only the Civil Rights of 1871 but any sense of how a just legal system should operate. It has also served as one of many laws that enable police officers to get away with misconduct.

Most police officers serve their communities admirably and with respect. Some do not. And it is unfortunately the misdeeds of the minority of police officers that not only are lives ruined but the whole profession of law enforcement is constantly put under a dark cloud. It doesn’t have to be this way.

This past week, Rep. Justin Amash, L-Michigan, and Rep. Ayanna Pressley, D-Massachusetts, introduced the “Ending Qualified Immunity Act” to end the doctrine of qualified immunity by restoring the original intent of the Civil Rights Act of 1871.

“Qualified immunity protects police and other officials from consequences even for horrific rights abuses,” said Amash. “It prevents accountability for the ‘bad apples’ and undermines the public’s faith in law enforcement. It’s at odds with the text of the law and the intent of Congress, and it ultimately leaves Americans’ rights without appropriate protection.”

We strongly urge California’s representatives to support what should be a nonpartisan effort.

Taken together with efforts that can be achieved locally — including better training and a greater focus on de-escalation — we hope to live in an America where incidents like that of the killing of George Floyd become a thing of the past.