



It's Nearly Impossible to Sue a Cop for Shooting Someone. These Democratic Candidates Are Trying to Change That.

Emma Ockerman

October 31, 2019

It's nearly impossible to sue an individual cop for shooting someone in the U.S. And with police departments and prosecutors repeatedly letting officers off the hook, several Democratic candidates want to make it easier for victims or their families to go after the perpetrators themselves.

This week, former Texas Congressman Beto O'Rourke and Mayor of South Bend, Indiana Pete Buttigieg said they hope to either reform or outright abolish a defense tactic known as "qualified immunity." It's ostensibly intended to shield cops from a deluge of lawsuits for just doing their jobs.

But the standard has also roadblocked lawsuits accusing cops of tasing a pregnant woman, handcuffing a crying 7-year-old, and unfairly sicking a police dog on a surrendering person. In many cases, attorneys don't even want to take up the cases because they know it won't go anywhere. And that leaves cops with little-to-no repercussions.

"Qualified immunity is one of the almost secret drivers of police violence, particularly among black and brown communities," said Somil Trivedi, a senior staff attorney with the ACLU's Criminal Law Reform Project.

"Qualified immunity is one of the almost secret drivers of police violence."

With his announcement, O'Rourke joined Sen. Elizabeth Warren, Sen. Bernie Sanders, and Julian Castro, who all want to amend qualified immunity in some way. Buttigieg, however, is the only candidate who said he would end the standard entirely through legislation. That would have huge ramifications for the nation's approximately 18,000 federal, state, county, and local law enforcement agencies — and open up a new pathway for justice against individual officers.

"Civil rights cases will be significantly less complex and time-consuming to bring," said Joanna Schwartz, a law professor at the UCLA School of Law.

When someone wants to sue over a police-involved shooting or any other egregious conduct, they typically have to go after the department as a whole. And they have to prove they were

wronged by a systemic problem or an official police department policy, which is a high standard to meet.

Without qualified immunity, it's not that police officers would have to pay out of their own pockets for wrongdoing, since civil damages are almost always paid out by the government and not the cop. But people would be able to hold a single officer legally accountable, which can feel like the only path to justice, especially when criminal charges and firings are so rare.

The ACLU, alongside the conservative group Americans for Prosperity, also told the Supreme Court last year that the defense tactic is eroding community trust with police and that "official accountability is in crisis."

"Officers who violate someone's constitutional rights are often shielded from civil rights lawsuits by qualified immunity," Warren wrote on Twitter in August, when she introduced her criminal justice plan. "That's wrong — and needs to change. When an officer abuses the law, that's bad for law enforcement, victims, and communities."

The Federal Civil Rights Act of 1871 granted people the ability to sue public officials if they violated their Constitutional rights. The law came about in response to states and officials supporting the Ku Klux Klan and citizens having no way to fight back. But since then, the Supreme Court has issued a series of decisions to establish and reinforce immunity for police.

Now, a person who wants to sue an officer has to prove an officer violated a "clearly established" right already outlined in a previous court case using the same context and same conduct. But because so few of these cases make it to court, that can be nearly impossible.

"You're going to need to find a lawyer to take your case, and that lawyer is going to be very aware of the qualified immunity doctrine," said Clark Neily, vice president for criminal justice at the Cato Institute. "And even if you can find a lawyer to take your case, you're going to have to convince a judge that there's a pre-existing case exactly on point so you can survive qualified immunity."

For example, someone wanting to sue a cop for, say, accidentally shooting their 10-year-old child, would have to prove there's adequate precedent for declaring that specific act unconstitutional. If that ultra-specific example doesn't exist, then judges can say — and did say, in that case — that the person didn't have the established right to not be shot by police.

"There are plenty of horrific events that have occurred that simply have never occurred before," Schwartz said. "The message that's being sent through these cases, even through these Supreme Court opinions, is that officers aren't meaningfully accountable."