



PART OF THE USA TODAY NETWORK

## Chauvin verdict reenergizes debate over Supreme Court's legal deference for police

John Fritze

April 21, 2021

Civil rights leaders and progressive Democrats rapidly shifted from praising the guilty verdict in the historic trial of Derek Chauvin this week to calling for systemic changes to law enforcement, reenergizing a debate over a controversial legal protection that has shielded police from liability.

Advocates used the national spotlight blazing on the Chauvin murder conviction to draw attention to the "qualified immunity" doctrine that protects police and other government officials from civil liability when they do not violate "clearly established" law. The issue has snarled Washington's effort to respond to police misconduct.

Critics say the broad protections of qualified immunity, set by the Supreme Court in a 1982 decision, let police off the hook in virtually every case where their actions are not specifically prohibited. Police groups have long countered that officers need legal protection in cases where split-second decisions go south.

Though not at issue in the Chauvin trial, some signaled their hope that the verdict could give political lift to efforts to unwind the decades-old legal protection for police.

"The same way a reasonable police officer would never suffocate an unarmed man to death, a reasonable justice system would recognize its roots in white supremacy and end qualified immunity," tweeted Derrick Johnson, president of the NAACP.

Despite skepticism from both progressive Democrats and libertarian-minded Republicans, qualified immunity has remained largely intact. Several experts said they don't expect the Chauvin trial to change the political calculation or the Supreme Court's reluctance to explore the issue broadly – at least not right away.

The nation's highest court dodged the issue last year, declining to hear a number of cases dealing with the doctrine. Those decisions came after George Floyd's death and the nationwide protests and riots that it sparked. On the other hand, the court has more recently instructed the lower courts to reconsider claims of qualified immunity in a handful of cases.

"I think the justices realize that the doctrine is being applied in ways that are interfering with just outcomes, but they don't know how to adjust," said Barry Friedman, director of the Policing Project at New York University School of Law. "Surely they, like everyone else, are hearing the voices of impacted communities saying 'enough is enough.'"

Congress has stalled on legislation to unwind the protection for police. A House-approved bill faces resistance from Senate Republicans. Republicans have proposed their own policing bill, authored by Sen. Tim Scott, R-S.C., which Democrats say doesn't go far enough partly because it doesn't address qualified immunity.

President Joe Biden encouraged Congress to act on the Democratic bill.

"George Floyd was murdered almost a year ago. There's meaningful police reform legislation in his name," Biden said Tuesday. "It shouldn't take a whole year to get this done."

Chauvin, a former Minneapolis police officer, was convicted of murder Tuesday in Floyd's May 25 killing. The incident, in which Chauvin knelt on Floyd's neck while he was handcuffed facedown on the street, was captured on cellphone video and flashed across the nation and around the globe. That sparked widespread protests and riots, once again thrusting questions of police conduct, brutality and systemic racism to the fore.

Police groups have pushed back on the assertion that qualified immunity must be overhauled. Bill Johnson, executive director of the National Association of Police Organizations, said Tuesday that the outcome of the Chauvin trial demonstrated that police officers can be held accountable when they commit a crime.

"Due process rights do not prevent the investigation, charging, trial and conviction of a police officer," Johnson said. "Neither does qualified immunity."

Qualified immunity wasn't raised in the civil case filed by Floyd's family because Minneapolis agreed to a \$27 million settlement.

The high court passed on a series of cases last year that would have allowed the justices to reexamine the doctrine. Associate Justice Clarence Thomas, a conservative, dissented from the decision not to hear one of those cases, reiterating "doubts about our qualified immunity jurisprudence." In that case, a burglar sued when he was bitten by a police dog after he surrendered to law enforcement.

On the other end of the spectrum, liberal Associate Justice Sonia Sotomayor labeled the doctrine "an absolute shield for law enforcement officers" in a 2018 dissent.

Jay Schweikert, a research fellow at the libertarian Cato Institute, said that if the court was eager to take up the fundamental question of qualified immunity, "it would have already done it." Instead, he said, the nation's highest court appears to be "trying to curtail some of the very excessive (applications) of the doctrine" in a handful of cases.

In November, the justices sent back to the lower courts a qualified immunity claim from corrections officers who confined a naked prisoner in a cell that was covered "nearly floor to ceiling" in feces. Months later, the court similarly turned back an immunity claim in the case of a corrections officer who pepper-sprayed an asthmatic inmate without provocation.

Robert McNamara, senior attorney with the Institute for Justice, said that for years, lower federal courts had picked up a message from Supreme Court reversals that there were essentially no cases in which a government could be held liable for an obvious violation of law. But in the recent appeals, he said, the justice sent "essentially a countersignal."

"What that means remains to be seen," he said.

For now, the issue has largely been wiped off the Supreme Court's docket. But McNamara noted the justices will soon weigh a related issue of whether to extend similar immunity to local governments in such instances. In that matter, a mother has sued the City of Euclid, Ohio, after a police officer fatally shot her son in 2017.

"There's really quite a bit of consensus in the public policy space," Schweikert said of the potential for Congress to step in and change the law on qualified immunity. "It's still early to say exactly what form that might take."