



In June Some House Moderates Voted To Abolish Qualified Immunity for Cops. Now They're Not So Sure.

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Strategic politicking, police union influence, or both?

A group of House moderates who voted last June to abolish qualified immunity for cops now want that provision to be modified or removed before Congress proceeds with a recently-revived police reform bill.

The legal doctrine requires that any alleged misconduct be "clearly established" in prior case law if a victim is to sue a public official in federal court. This has protected two cops who stole \$225,000 while executing a search warrant, a cop who caused lasting damage to a subdued suspect's eye after allegedly kneeling him there "20 to 30 times," two cops who assaulted and arrested a man for the crime of standing outside his own home, a cop who shot a 10-year-old, a cop who shot a 15-year-old, and two cops who unleashed a police canine on a man who had surrendered. The Justice in Policing Act—which was originally unveiled in June 2020 after the police killing of George Floyd and was reintroduced on Wednesday—currently eliminates qualified immunity for law enforcement officers.

As reported by *Politico*, the antsy legislators are "between six and a dozen Democrats" in vulnerable re-election positions who have "privately argued that passing a partisan bill tanks any real chance at constructive talks with Republicans down the road." That moderate group also includes Rep. Fred Upton (R–Mich.) and Rep. Brian Fitzpatrick (R–Penn.), the only two sitting GOP congresspeople who voted in support of the bill last June.

The qualified immunity provision *will* probably be a tough sell for Senate Republicans. Although Democrats control the 50–50 chamber with Vice President Kamala Harris available to break a tie, they will need 60 votes to overcome the legislative filibuster.

But the struggle goes beyond strategic politicking and also reflects a balancing act: support *for* police reform chafes against support *from* police unions. Many Democrats who have urged reform still hope to maintain donations and public approval from law enforcement groups.

Josh Gottheimer (D–N.J.) is one of those congressmen. Not long ago, he bragged about receiving a perfect score from the National Association of Police Organizations (NAPO), a coalition of police unions and other related groups. "I will always get the backs of Jersey's law enforcement, just as they get ours," he wrote in a May 2020 press release. Though he voted for the Justice in

Policing bill in June, he is now leading talks that he hopes will water down the qualified immunity provision.

Rep. Tom O'Halleran (D-Ariz.), a former homicide detective, is in a similar position. "I spent a lot of time out there, and it's a dangerous environment," he told *Politico*. "And I don't want an officer's family overly worried. But I also want a mother and father to know that their children are safe on the streets." He, too, received a 100 percent rating from NAPO. By contrast, former Rep. Justin Amash (L-Mich.), who introduced a separate bill to eradicate qualified immunity for all government officials, received a 31 percent rating.

Neither Gottheimer nor O'Halleran responded to requests for comment.

The bill's chief sponsor, Rep. Karen Bass (D-Calif.), is reportedly open to modifications after the measure moves to the Senate, but she insists that this should be where those discussions begin.

"Supporters of the status quo and most prominently the law enforcement lobby have been pretty effective at spreading misinformation about what qualified immunity is so that some people associate it with 'defund the police,'" says Jay Schweikert, a policy analyst with the Cato Institute's Project on Criminal Justice. "Some people think that it's, you know, just protecting really good cops acting reasonably, which, of course, is not what it's doing."

Apart from the Justice in Policing Act, Congress saw two bills introduced last year that would have addressed qualified immunity: Amash's legislation, and a bill introduced by Sen. Mike Braun (R-Ind.) that would have hamstrung the doctrine significantly.

Amash's legislation eventually made its way to the legislative graveyard that defines Congress, and Braun stepped back from his proposal after receiving backlash from Fox News host Tucker Carlson, who misrepresented the doctrine in just about every way possible.

Even still, Schweikert is optimistic that such an approach is still possible in the future. "There's a question about whether this would be complete elimination of qualified immunity or an elimination with certain safe harbors, whether it's going to be limited to law enforcement, law enforcement and correction officers, or everyone," he says. "But without addressing qualified immunity meaningfully in some way, I don't think this will move forward."