



Power Up: Republican Sen. Mike Braun to unveil new bill scaling back qualified immunity for police

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GOING IT ALONE: A lone Republican senator, Mike Braun (R-Ind.), will today unveil a new bill to reform qualified immunity for law enforcement.

The move sets up a potential collision course with Senate Majority Leader Mitch McConnell, who is throwing his weight behind another Republican police reform bill that does not tackle this issue — and President Trump, who opposes revising the 50-year-old legal doctrine that shields police from civil lawsuits.

Braun insists that now is the time to move ahead with this bill — even without co-sponsors — given the mass protests against racism and police brutality in the wake of the killing of George Floyd, a black man who died in Minneapolis police custody. “It’s a watershed moment,” the freshman senator told Power Up in an interview ahead of the bill’s release.

And it sets up a difficult decision for Republicans in a competitive election year when polls show majorities of Americans from both parties say showing Floyd’s killing was a sign of broader problems in law enforcement and that police need to do more to ensure blacks are treated equally to whites.

Braun called the measures within the McConnell-backed policing bill crafted by Sen. Tim Scott (R-S.C.) — which include discouraging but not banning controversial tactics such as chokeholds and no-knock warrants — “low hanging fruit.” Qualified immunity, he argues, is “something that everybody knows we need to do.”

Braun's Reforming Qualified Immunity Act would scale back protections that let police officers avoid being held personally liable in lawsuits brought over issues such as the use of excessive force or alleged civil rights violations. It comes just after the Supreme Court punted on the issue, leaving Congress to decide whether to address the doctrine. As it stands now, Braun says qualified immunity is a judicial overreach “in which protection is extended to those acting under the color of the law, even when they commit egregious acts which deprive fellow citizens of their constitutional and statutory rights.”

“The doctrine, created by the Supreme Court decades ago, allows civil suits only when it can be shown that an official’s actions violated a ‘clearly established’ statutory or constitutional right,” our colleague Robert Barnes and Ann Marimow report. “When determining whether the right was clearly established, courts consider whether a reasonable official would have known that the actions were a violation. In practice, the ‘clearly established’ test often means that for their lawsuits to proceed, civil rights plaintiffs must identify a nearly identical violation that has been recognized by the Supreme Court or appellate courts in the same jurisdiction.”

Braun says this standard is nearly impossible to reach — and fails to protect the rights of citizens secured by the Constitution.

Braun's bill is one of several proposals to end or change qualified immunity on Capitol Hill in the wake of Floyd's death. Reps. Justin Amash (I-Mich.) and Ayanna Pressley (D-Mass.) introduced a bill to eliminate qualified immunity earlier in June. And scaling back qualified immunity is one of the key components of House Democrats' ambitious package to overhaul policing and increase accountability.

“House Democrats' bill, which is scheduled to get a vote next week, would overhaul qualified immunity by allowing individuals to receive damages in civil court 'when law enforcement officers violate their constitutional rights by eliminating qualified immunity for law enforcement,' according to a Judiciary Committee fact sheet,” per The Hill's Jordain Carney. “The measure would specify that a defendant is not immune from lawsuits just because they were acting in a way they thought was reasonable or lawful at the time or because they weren't violating a 'clearly established' law.”

Braun's bill also specifies that employees' belief their actions were in good faith or lawful would not be considered a defense — and it would only allow government employees to claim qualified immunity in two instances: when “conduct alleged to be unlawful had previously been authorized or required by federal or state statute or regulation” or “a court had found that alleged unlawful conduct was consistent with the Constitution and federal laws.”

“This is for reforming it and not getting rid of it,” Braun says.

On The Hill

STATE OF PLAY: Braun says he has the support of some Democratic senators and believes that five to seven Republicans will ultimately sign on to his bill. His office says the bill has the

support of influential conservative and libertarian think tanks in Washington — Justice Action Network, Freedom Works, Americans for Prosperity, Right on Crime, and R Street.

Jay Schweikert, a policy analyst with the libertarian-leaning Cato Institute's Project on Criminal Justice, called Braun's bill "significant" and said that other Republicans have publicly and privately expressed "a recognition that there is something deeply wrong with how qualified immunity is working but an unwillingness to eliminate it entirely."

"From our perspective, there is no meaningful policing reform without confronting qualified immunity because it's the stumbling block for accountability for law enforcement," Schweikert told us. "Every member of Congress needs to ask themselves: are they serious about confronting the lack of accountability for law enforcement?"

It's also significant that Braun's applies to all government officials and police officers and House Democrats' bill only applies to "local law enforcement officer" and "state correctional officer," Schweikert said.

Showing how the issue could have broad political reach, two members of the Supreme Court from ideologically opposite wings — Justices Clarence Thomas and Sonia Sotomayor — have also called the doctrine into question.

Yet Scott called changes to qualified immunity a "poison pill" for Republicans. "My position has been that when the Democrats start talking about qualified immunity and the ability to aggressively pursue the officers at a higher threshold, that is a poison pill from my perspective. Is there a conversation that could be had around something different? Perhaps," Scott told reporters last week.

@WesleyLowery

The possibility of ending qualified immunity was the measure George Floyd's family and their attorneys were most excited by in terms of the reforms being discussed in response to his death.

GOP rules it out completely <https://twitter.com/axios/status/1272206304174628864> ...

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Sen. Tim Scott (R-S.C.) says that ending qualified immunity for police officers is "off the table" for Republicans: "Any poison pill in legislation means we get nothing done."

<https://www.axios.com/tim-scott-police-reform-bill-qualified-immunity-899fccfe-f517-4512-b890->

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And a McConnell aide told Power Up that GOP leadership is squarely focused on that bill, the Justice Act. “Republicans broadly support Sen. Scott’s bill,” the aide said. “The question right now is whether Democrats in the Senate will allow us proceed to consider the bill (which takes 60 votes). I don’t want to get into the specifics on qualified immunity until the Senate starts debating the Justice Act.”

The White House has also made clear its opposition to the idea of limiting qualified immunity: “Taking away qualified immunity would make the streets of this country a whole lot less secure,” White House press secretary Kayleigh McEnany told reporters last week. “The Supreme Court has litigated this for decades and has approached what they think is the appropriate balance with qualified immunity.”

Braun, however, is optimistic that Trump won't rule out reform as opposed to eliminating it entirely: “Reforming it? Doing it in a common sense way? That might be different and a lot of times these things evolve as you get further into the discussion,” Braun said about the president's potential reaction to his proposal.

There is already bipartisan movement happening on the state level. “Colorado Gov. Jared Polis on Friday signed into law a bill to remove the shield of legal immunity that has long protected police officers from civil suits for on-the-job misconduct, a measure civil libertarians hailed as landmark legislation,” Reuters' Keith Coffman reports.

Not to mention the other Senate Republicans who have expressed openness to making changes to qualified immunity, making it a realistic possibility that Braun's bill will gain traction:

“Being in the policing business is not your normal business. There needs to be a filter when it comes to lawsuits,” Sen. Lindsay Graham (R-S.C.) told The Hill. “It is now time, in my view, to look at the development of the qualified immunity doctrine as it relates to the 1983 underlying statute and see if we could make it better, not gut it,” Graham said.

“If you presented to me qualified immunity in its current form as a legislative proposal, I would vote hell no,” Graham said.

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The Campaign

SIGNS OF TROUBLE AHEAD OF TODAY'S PRIMARIES: “Voters in Kentucky and New York headed to the polls amid signs that they could face the kind of delays that have plagued other states, which in recent months struggled to cope with an influx of mail ballots and a dearth of poll workers because of the pandemic,” Amy Gardner, Elise Viebeck and Michelle Lee report. Virginians will also head to the polls today as well.

We may not know many results tonight: New York will not begin tabulating absentee ballots until one week from day and Kentuckians are allowed to postmark their ballots by today as long as they are received by Saturday. “As of the end of last week,” our colleagues write, “an estimated 30,000 voters in New York City had not received their ballots — a result of a record increase in absentee-ballot applications across the state, which officials estimated to be 11 times greater than for the 2016 presidential primary.”

WAITING IN THE WEST WING: November could be even trickier. “If voters remain reluctant to cast ballots in person, November is likely to bring an even more massive wave of voting by mail than what has swept across the country during primary season. That, in turn, means that a close race between [Trump] and former vice president Joe Biden, the presumptive Democratic nominee, in a pivotal state could take days, even weeks, to resolve, election officials across the country are warning,” Amy Gardner reports.

We've never seen anything like the fight that could entail: “Barring a landslide for either candidate, that scenario could invite an unprecedented test of the country’s faith in its elections: an extended period without a declared winner. Amid that uncertainty, few expect Trump, who has said repeatedly that he thinks mail voting could cost him the election, to soothe voter anxieties.” (While he profess anxiety about mail-in voting, both Trump and now reportedly Vice President Pence both voted by mail in recent primaries.)

Outside the Beltway

WHAT TO WATCH FOR: The Democratic Party's liberal wing has multiple opportunities to reassert itself after Biden walked away with the presidential nomination.

Those chances are strongest in New York where middle school principal Jamaal Bowman could join Rep. Alexandria Ocasio-Cortez in the rare feat of ousting a powerful incumbent; his target is Rep. Eliot Engel, the chairman of the powerful House Foreign Relations Committee. Upstart state lawmaker Charles Booker could derail former Marine fighter pilot Amy McGrath, who has

Senate Minority Leader Chuck Schumer's blessing in her quest to take down Senate Majority Leader Mitch McConnell this November.

In Virginia: “Key congressional races include the Republican primary to decide who will challenge Rep. Elaine Luria (D) in the 2nd District and the four-way Democratic primary to decide the nominee for an open seat in Virginia’s 5th District after the recent ouster of Rep. Denver Riggleman (R),” Jenna Portnoy reports this morning.

In the Big Apple: “Engel, 73, seems to be the party’s most vulnerable incumbent in the nation at the moment, a potential victim of its emboldened left wing, which has grown impatient with the establishment politics that [he] seems to represent,” the New York Times's Jesse McKinley wrote last week. Bowman's challenge has been emboldened by Engel's missteps, most notably, the congressman's absence from the district during the worst part of the city's pandemic and being caught on a hot mic at a Bronx Black Lives Matter rally saying, "If I didn't have a primary, I wouldn't care.”

Big names have made the division crystal clear: In a sign of an establishment rescue effort, former Secretary of State Hillary Clinton, Speaker Nancy Pelosi, Gov. Andrew Cuomo and House Majority Whip Jim Clyburn have all lined up behind Engel, who has been in the House for three decades. Bowman has received the backing of Ocasio-Corez and Sens. Bernie Sanders and Elizabeth Warren.

Not the only race for your radar: “[Rep. Yvette] Clarke is perhaps the most endangered incumbent after Engel. The Brooklyn Democrat faces a rematch with progressive challenger Adem Bunkeddeko, who lost to Clarke by fewer than 2,000 votes in 2018,” Politico's Zach Montellaro, Sarah Ferris and Ally Mutnick report.

ELSEWHERE ON THE TRAIL: “Biden’s campaign committed to three scheduled debates with President Trump in September and October and criticized the president for taking varied positions on whether he would participate in debates and how many,” Matt Viser reports.

But at least of the venues for those debates is now in jeopardy: The University of Michigan is withdrawing from hosting the second presidential debate “because of concerns of bringing the campaigns, media and supporters of both candidates to Ann Arbor and campus during a pandemic, two sources with direct knowledge of the move told the Detroit Free Press,” Freep's David Jesse reports.

More coronavirus cases in connection with Trump's Tulsa rally: “Two members of a campaign advance team who attended [Trump’s] rally in Oklahoma on Saturday have tested positive ...,” CNBC's Dan Mangan reports. That means eight advance staffers have now tested positive in connection with the event.

How one visa program keeps America fed

The pandemic redefined where essential work happens in America and brought recognition to seasonal agricultural workers under the H-2A visa program. (Luis Velarde/The Washington Post)

At The White House

TRUMP EXPANDS IMMIGRATION BAN: “Trump issued a proclamation barring many categories of foreign workers and curbing immigration visas through the end of the year, moves the White House said will protect U.S. workers reeling from job losses amid the pandemic,” Nick Miroff and Tony Romm report.

What's happening: “The restrictions will prevent foreign workers from filling 525,000 jobs, according to the administration’s estimates. The measures will apply only to applicants seeking to come to the United States, not workers who already are on U.S. soil,” our colleagues write.

The details: “The ban expands earlier restrictions, adding work visas that many companies use, especially in the technology sector, landscaping services and the forestry industry. It excludes agricultural laborers, health-care professionals supporting the pandemic response and food-service employees, along with some other temporary workers.”

Trump keeps accusing his perceived political enemies of committing treason

Trump without evidence also accused Obama of committing treason: “The president has frequently accused others of ‘treason,’ but Monday marked the first time that he has leveled that claim against the man who preceded him in the Oval Office,” Felicia Sonmez reports.

Inside the Beltway

POLICE STOP ATTEMPT TO TOPPLE STATUE NEAR THE WHITE HOUSE: “Protesters attempted to topple a bronze statue of former president Andrew Jackson in a park next to the White House on Monday night but were thwarted when police intervened,” Fredrick Kunkle, Susan Svrluga and Justin Jouvenal report.

Trump expressed his dismay on Twitter: He slammed the “disgraceful vandalism, in Lafayette Park, of the magnificent Statue of Andrew Jackson.” Interior Secretary David Bernhardt, whose agency oversees the Park Police, later added: “Let me be clear: we will not bow to anarchists.”

It was a chaotic scene: “Inside the metal pickets surrounding the statue, a smaller group — some clad in black with goggles, helmets and gas masks — scaled the statue and draped ropes around the seventh president astride a horse. Someone scrawled ‘killer’ in black on the pedestal below,” our colleagues write.

More on what unfolded: “A helicopter flew low over the park as 150 to 200 U.S. Park and D.C. police moved through the park. Officers used a chemical irritant to disperse protesters and sweep them back to H Street NW. Protesters did smash the wooden wheels of four replica cannons at the base of the Jackson statue.”

What happened at St. John's: “As the protest unfolded, someone spray painted ‘BHAZ’ on the columns of the historic St. John’s Episcopal Church. A similar sign was spray-painted on a piece of plywood on H Street: ‘BHAZ: Black House Autonomous Zone.’ The graffiti and sign appeared to be a play on the area that protesters have cordoned off in Seattle’s Capitol Hill neighborhood, dubbed the ‘CHAZ.’”

Viral

NASCAR TAKES A STAND: “NASCAR’s full complement of drivers and crew members lined up to push Bubba Wallace’s No. 43 Chevrolet to the front of the grid before the restart of a rain-delayed race at Talladega Superspeedway in Alabama,” Liz Clarke reports.

“Wallace, the top-flight Cup Series’s lone African American competitor, was [later] embraced by several fellow drivers before climbing back in his car for the race’s official start less than 24 hours after a noose was discovered hanging in his garage stall.” (The FBI announced that they are joining an investigation into that act.)