



## **Ayanna Pressley is leading legislation to end qualified immunity. Here's what that means.**

Nik DeCosta-Klipa

June 6, 2020

Despite the national protests against — and mounting examples of — excessive use of force by police, officers remain shielded from being held legally responsible except in the most clear-cut cases.

Rep. Ayanna Pressley wants that to change.

The Boston Democrat teamed up with Rep. Justin Amash, a former Republican-turned-Libertarian congressman from Michigan, to introduce the Ending Qualified Immunity Act on Thursday, which would eliminate the legal doctrine that shields government officials — including police officers — from civil lawsuits unless their conduct violates “clearly established statutory or constitutional rights.”

As the *Washington Post*, ABC News, and other outlets have recently reported, legal experts say the threshold has made it virtually impossible to successfully sue individual members of law enforcement if their actions haven’t previously been found unconstitutional in a case involving “virtually identical facts.” And over the past half-century, the Supreme Court has only bolstered protections — including for excessive use of force — that distorts the original intent of the law, according to Pressley and Amash.

In other words, the doctrine is doing more than just protecting officials from frivolous lawsuits.

Reuters reported last month that courts have increasingly sided with police over the past 15 years, including in cases in which a mistakenly identified bicyclist was shot and killed by Dallas police from 100 yards away and when an unarmed Alabama man died of cardiac after being hogtied and kneeled on by a 385-pound officer.

“Qualified immunity shields police from accountability, impedes true justice, and undermines the constitutional rights of every person in this country,” Pressley said in a statement.

“It prevents accountability for the ‘bad apples’ and undermines the public’s faith in law enforcement,” Amash added.

The four-page bill introduced Thursday would amend part of the original Civil Rights Act of 1871, known as Section 1983, to effectively cancel the precedents set by the Supreme Court. Specifically, the legislation would clarify the law to say it is not a sufficient defense for a government official to say they were acting in good faith or reasonably believed their conduct was lawful “at the time,” nor is it a defense that the rights violated were not “clearly established.”

“There can be no justice without healing and accountability, and there can be no true accountability with qualified immunity,” Pressley said

The “bipartisan” legislation was introduced with 16 other Democratic cosponsors, including Minnesota Rep. Ilhan Omar, New York Rep. Alexandria Ocasio-Cortez, and Massachusetts Reps. Jim McGovern and Joe Kennedy III. It was also endorsed by a slate of legal advocacy, civil rights, and libertarian groups.

Pressley’s office say they’re having additional conversations with House members on both sides of the aisle about cosponsoring the bill.

Qualified immunity... for whom?

A similar Senate resolution introduced this week by Democrats — including Massachusetts Sens. Ed Markey and Elizabeth Warren — called for the abolishment of qualified immunity specifically for law enforcement officers, given their unique right to use physical, and potentially lethal, force.

According to Pressley’s office, their bill with Amash wouldn’t affect liability standards for other government officials either. But not everyone agrees — including their cosponsor.

“The bill isn’t targeted at police officers,” a spokesperson for Amash told Boston.com in an email, referring to the text of the bill, which broadly refers to “government officials” at the local and state level.

Though the Supreme Court has repeatedly expanded the qualified immunity doctrine in cases involving law enforcement, Section 1983 applies generally to government employees.

As the Courthouse News Service reported, the bill introduced by Pressley and Amash would effectively eliminate qualified immunity for all state and local government officials in general, which has been a goal of libertarians and even some conservative Christian groups. Ian Milhiser, a Supreme Court reporter for Vox, recently wrote that “a world without qualified immunity” could theoretically spur lawsuits intended to discourage government officials from enforcing laws in other areas, from anti-LGBTQ discrimination laws to environmental regulation, based on an interpretation of constitutional rights.

“Members of Congress have a duty to ensure government officials can be held accountable for violating Americans’ rights, and ending qualified immunity is a crucial part of that,” Amash said.

Libertarian groups, like the Cato Institute, argue the risk of “chilling” public officials does not outweigh the importance of protecting individuals’ constitutional rights, especially when it comes to the use of police force, which is where the shield is most often applied. According to Reuters, at least 529 federal circuit court opinions published from 2005 through 2019 involving cops accused of excessive force raised a qualified immunity defense.

The Supreme Court is also expected to announce next week whether it will hear a qualified immunity case involving an officer who shot a 10-year-old boy in his own backyard while pursuing his mother, who was unarmed. According to court appeal, the officer was shooting at the family’s dog, who posed no threat. He missed twice, and instead hit and seriously injured the boy, who was following orders to lie on the ground.