

# Tampa Bay Times

## Could Florida end qualified immunity, which gives cops ‘absolute shield’ in lawsuits?

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The legal doctrine makes it nearly impossible to sue individual officers in abuse cases. A proposed bill would change that, but faces an uphill battle in the legislature.

The Black Lives Matter movement wasn't even a year old in 2014 when a pickup truck swerved into oncoming traffic in Seminole Heights. Tampa police officers said the Black man driving resisted their commands. They wrestled him out of the truck and handcuffed him.

Then Arthur Green Jr. stopped breathing. Officers realized he was having a diabetic seizure and uncuffed him. The community activist died an hour later at the hospital.

Green's family sued the Tampa Police Department in federal court, saying officers restrained the 63-year-old man in a way that restricted his breathing — and failed to use CPR to revive him.

The judge dismissed the case, citing a federal doctrine familiar to anyone who has tried to sue law enforcement. Qualified immunity largely shields government employees — most notably police officers — from civil liability when they're accused of violating someone's rights.

"I think people are surprised" when they learn about qualified immunity, said attorney Paul Rebein, who represents the Green family as they sue the city of Tampa for negligence in state court. "The reality is, most of the time, those cases end up getting dismissed and the family gets nothing."

A pair of Florida lawmakers, state Rep. Michele Rayner-Goolsby of St. Petersburg and Sen. Shevrin Jones of West Park, want to change that.

The two Democrats have proposed legislation that would dismantle the defense at the heart of qualified immunity: That a constitutional right was not "clearly established" at the time of the violation. That phrasing makes it impossible to bring suits against officers in many cases, experts say, because some judges won't let a case move forward unless it perfectly matches the facts of a previous case that established a rights violation.

The legislation proposed by Rayner-Goolsby and Jones would also allow cases to move forward in Florida's courts even if officers claimed they weren't acting maliciously, weakening a "good faith" defense. It faces an uphill battle in Florida's Republican-dominated legislature, however.

"With the filing of this bill, I hope to heal the fragmented relations within our communities with law enforcement," Rayner-Goolsby said in a statement earlier this year. "Taking measures to

show that every life has value and that no one is above the law is one way we can make that future a reality.”

The U.S. Supreme Court established the current version of qualified immunity in 1982, and the doctrine’s ability to block civil action against law enforcement has become more prominent amid calls for police reform after George Floyd was killed by a Minneapolis police officer last year.

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Weeks after Floyd died, Colorado became the first state to effectively restrict the use of qualified immunity as a civil defense, allowing officers to be sued there.

Jones said he felt emboldened by the Black Lives Matter protests of 2020 and Colorado’s success. He and Rayner-Goolsby, who couldn’t be reached for comment for this story, used the law there to craft their bills.

“Police officers are the only ones who can violate someone’s rights with the possibility of getting off,” he said. “And the somebodys are usually people who look like me, who don’t get justice when those rights were violated.”

‘Absolute shield’

In a 2018 dissent, Supreme Court Justice Sonia Sotomayor wrote that qualified immunity has become “an absolute shield” for law enforcement. In recent years, legal scholars and advocacy groups have pushed back against the doctrine, said UCLA School of Law professor Joanna Schwartz.

Opponents of qualified immunity are no longer optimistic that the Supreme Court will do away with it, Schwartz said. But there are two proposals in Congress to end qualified immunity, and the Colorado law suggests a new way forward for reformers.

Schwartz says qualified immunity makes cases needlessly complicated, shuts out of court those who have had their rights violated and sends the message that government officials — especially law enforcement officers — can act with impunity.

“I think that there are some important ways in which the world would be different” without it, she said. “Bringing civil rights cases would be less time consuming, less expensive, less complicated. The focus in those cases would be on what I think it should be, which is on whether their constitutional rights had been violated, not on whether there was a prior decision with identical facts.”

Many of the arguments in favor of qualified immunity, Schwartz said, have been disproven or can’t be proven.

Supporters of the doctrine say it protects officers from going broke if they’re sued. But Schwartz’s research shows that when officers are successfully sued for rights violations, they almost never wind up footing the bill — municipalities or agencies do. Qualified immunity proponents also assert, without hard evidence, that ending the doctrine would make it harder for agencies to recruit and retain officers.

Still, Schwartz said, these are “emotionally powerful, not empirically powerful” arguments that have kept qualified immunity afloat for four decades — arguments that resonate with conservative politicians.

Rebein, the Green family’s attorney, thinks Rayner and Jones’ bills have “a zero percent chance of getting passed.”

Pinellas Sheriff Bob Gualtieri, one of the nation’s most influential lawmen, is an opponent. He believes the bills constitute “self-serving rhetoric” by the lawmakers, he said, and he thinks the issue should be left up to federal judges.

Qualified immunity, he believes, gives officers a necessary peace of mind that allows them to do their jobs.

“You don’t have to worry about whether someone’s going after your family, your house, your savings and all those other things, and you can act,” he said.

‘A true partnership’

Qualified immunity isn’t a strictly partisan issue. Colorado’s police reform bill had overwhelming bipartisan support — though Rep. Leslie Herod, one of its architects, noted that the legislature’s Democratic majority made it clear the bill had legs.

Even the state’s police unions and law enforcement leaders sided with the bill. Since it passed, she said, judges in some cases have already thrown out qualified immunity defenses.

“It was a true partnership with progressives and activists alongside conservatives and places like the Cato Institute,” the libertarian think tank, she said. “That partnership really made the qualified immunity provision a very solid part of the bill.”

At the same time, some Democrats have backed off from opposing qualified immunity for fear of losing their jobs: After Republicans took an unexpected number of House seats in the 2020 election, Rep. Bill Pascrell, a New Jersey Democrat who was at one point the top recipient of police union contributions in Congress, complained he’d been forced to “walk the plank” on qualified immunity when he voted for the George Floyd Justice in Policing Act.

The reform bill, which would also ban chokeholds and certain no-knock warrants, passed the Democratic-controlled House last year but failed in the Republican-controlled Senate.

The effort to end qualified immunity could return to the national stage. The Justice in Policing Act, which was reintroduced and includes the same qualified immunity reforms as last year’s bill, passed the House on Wednesday. Pascrell, like all Democrats but one, voted in its favor. A group of Massachusetts Democrats, Rep. Ayanna Pressley and Sens. Ed Markey and Elizabeth Warren, has introduced a congressional bill that would end qualified immunity entirely.

And in late February, the Supreme Court denied an officer qualified immunity. In a suit against a prison guard who pepper-sprayed an innocent inmate, the justices ruled that it didn’t matter that it didn’t match a previous case in granular detail — the action was obviously wrong, and the officer shouldn’t qualify for immunity.

Were Florida to ever eliminate qualified immunity, Jones said, it wouldn’t be the silver bullet of police reform. He believes it is just one of many changes that needs to be made.

But he does think getting rid of doctrine that has long shielded officers from being held responsible in civil court would compel them to act more responsibly. It would also send a message that Florida won't let law enforcement abuse its power.

"All police officers are not bad," he said. "But I'm looking forward to us getting to a place where we can hold bad officers accountable."