

118TH CONGRESS  
1ST SESSION

# H. R. 2847

To amend the Revised Statutes to remove the defense of qualified immunity in the case of any action under section 1979, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2023

Ms. PRESSLEY (for herself, Mrs. BEATTY, Mr. BLUMENAUER, Ms. BONAMICI, Mr. BOWMAN, Ms. BUSH, Mr. CARSON, Mr. CASAR, Mr. CLEAVER, Ms. CROCKETT, Mr. DAVIS of Illinois, Mr. ESPAILLAT, Mrs. FOUSHEE, Mr. FROST, Mr. GARCÍA of Illinois, Mr. GOMEZ, Mr. GREEN of Texas, Mr. IVEY, Ms. JACKSON LEE, Ms. JAYAPAL, Mr. JOHNSON of Georgia, Ms. KAMLAGER-DOVE, Mr. KHANNA, Ms. LEE of California, Ms. LEE of Pennsylvania, Mr. MCGOVERN, Mr. MOULTON, Ms. NORTON, Ms. OCASIO-CORTEZ, Ms. OMAR, Mr. PAYNE, Ms. PINGREE, Ms. SCHAKOWSKY, Mr. SMITH of Washington, Mr. TAKANO, Ms. TLAIB, Ms. TOKUDA, Ms. VELÁZQUEZ, Mrs. WATSON COLEMAN, Ms. WILLIAMS of Georgia, and Ms. WILSON of Florida) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Revised Statutes to remove the defense of qualified immunity in the case of any action under section 1979, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ending Qualified Im-  
5 munity Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds as follows:

3 (1) In 1871, Congress passed the Ku Klux  
4 Klan Act to enforce the Fourteenth Amendment and  
5 combat rampant violations of civil and constitu-  
6 tionally secured rights across the Nation, particu-  
7 larly those of newly freed slaves and other Black  
8 Americans in the post-Civil War South.

9 (2) Included in the Act was a provision, now  
10 codified at section 1983 of title 42, United States  
11 Code, which provides a cause of action for persons  
12 to file lawsuits against people acting under color of  
13 State law, including State or local officials, who vio-  
14 late their Federal legal and constitutionally secured  
15 rights.

16 (3) Under section 1979 of the Revised Statutes  
17 (42 U.S.C. 1983) a person may be held liable for  
18 acting under color of State or local law, even if they  
19 are not acting in accordance with State law.

20 (4) Section 1979 has never included a defense  
21 or immunity for government officials who act in  
22 good faith when violating rights, nor has it ever had  
23 a defense or immunity based on whether the right  
24 was “clearly established” at the time of the viola-  
25 tion.

1           (5) From the law’s beginning in 1871, through  
2 the 1960s, government actors were not afforded  
3 qualified immunity for violating rights.

4           (6) In 1967, the Supreme Court in *Pierson v.*  
5 *Ray*, 386 U.S. 547, suddenly found that government  
6 actors had a good faith defense for making arrests  
7 under unconstitutional statutes based on a common  
8 law defense for the tort of false arrest.

9           (7) The Court later extended this beyond false  
10 arrests, turning it into a general good faith defense  
11 for government officials.

12           (8) Finally, in *Harlow v. Fitzgerald*, 457 U.S.  
13 800 (1982), the Court found the subjective search  
14 for good faith in the government actor unnecessary,  
15 and replaced it with an “objective reasonableness”  
16 standard that requires that the right be “clearly es-  
17 tablished” at the time of the violation for the de-  
18 fendant to be liable.

19           (9) This doctrine of qualified immunity has se-  
20 verely limited the ability of many plaintiffs to re-  
21 cover damages under section 1983 when their rights  
22 have been violated by State and local officials. As a  
23 result, the intent of Congress in passing the law has  
24 been frustrated, and Americans’ rights secured by

1 the Constitution have not been appropriately pro-  
2 tected.

3 **SEC. 3. SENSE OF THE CONGRESS.**

4 It is the sense of the Congress that we must correct  
5 the erroneous interpretation of section 1979 of the Revised  
6 Statutes which provides for qualified immunity, and reit-  
7 erate the standard found on the face of the statute, which  
8 does not limit liability on the basis of the defendant's good  
9 faith beliefs or on the basis that the right was not "clearly  
10 established" at the time of the violation.

11 **SEC. 4. REMOVAL OF QUALIFIED IMMUNITY.**

12 Section 1979 of the Revised Statutes (42 U.S.C.  
13 1983) is amended by adding at the end the following: "In  
14 any suit pending on, or filed after, the effective date of  
15 the Ending Qualified Immunity Act of 2021, it shall not  
16 be a defense or immunity to any action brought under this  
17 section that the defendant was acting in good faith, or  
18 that the defendant believed, reasonably or otherwise, that  
19 his or her conduct was lawful at the time when it was  
20 committed. Nor shall it be a defense or immunity that the  
21 rights, privileges, or immunities secured by the Constitu-  
22 tion or Federal laws were not clearly established at the  
23 time of their deprivation by the defendant, or that the  
24 state of the law was otherwise such that the defendant

- 1 could not reasonably have been expected to know whether
- 2 his or her conduct was lawful.”.

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