

117TH CONGRESS
1ST SESSION

S. 3415

To ensure that the United States, States, and local governments are liable for monetary damages for constitutional violations by law enforcement officers.

IN THE SENATE OF THE UNITED STATES

DECEMBER 16, 2021

Mr. WHITEHOUSE introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To ensure that the United States, States, and local governments are liable for monetary damages for constitutional violations by law enforcement officers.

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 “Constitutional Ac-
5 countability Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The 14th Amendment to the Constitution of
9 the United States was passed by Congress and rati-
10 fied by the people of the United States against the

1 backdrop of numerous State laws, policies, and prac-
2 tices that denied African Americans and others their
3 enjoyment of fundamental rights.

4 (2) Congress drafted the 14th Amendment to
5 broadly protect fundamental rights and guarantee
6 equality to all persons.

7 (3) To help realize the promise of equality pro-
8 tected in the 14th Amendment, Congress passed sec-
9 tion 1979 of the Revised Statutes (42 U.S.C. 1983)
10 (referred to in this section as “section 1983”), cre-
11 ating a statutory remedy for violations of the Con-
12 stitution of the United States and Federal law. Ac-
13 cording to *Mitchum v. Foster*, 407 U.S. 225, 242
14 (1972), section 1983 was intended “to interpose the
15 Federal courts between the States and the people, as
16 guardians of the people’s Federal rights”.

17 (4) By creating this remedy, Congress recog-
18 nized that civil suits are a necessary and powerful
19 tool to protect individual rights. Suits under section
20 1983 can not only make whole victims who are
21 wronged. The suits can incentivize actors to take the
22 steps necessary to avoid wrongdoing in the first
23 place.

1 (5) Unfortunately, the Supreme Court’s current
2 crabbed interpretation of section 1983 undermines
3 its ability to accomplish these goals.

4 (6) Private employers are responsible for the
5 torts of their employees under the doctrine of
6 respondeat superior. The risk of liability incentivizes
7 private employers to effectively hire, supervise, train,
8 and discipline their employees.

9 (7) In contrast, under *Monell v. Department of*
10 *Social Services of the City of New York*, 436 U.S.
11 658 (1978), municipal defendants are not subject to
12 respondeat superior liability for the constitutional
13 torts of their officers. Cities may only be held liable
14 for the constitutional torts of their officers only
15 when the plaintiff can show that the violation was
16 the result of a municipal policy or custom. Under
17 *Will V. Michigan Department of State Police*, 491
18 U.S. 58 (1989), States cannot be held liable at all.

19 (8) The Monell doctrine requires judges to re-
20 solve difficult questions regarding which officials are
21 policymakers, whether an official was acting in State
22 or local capacity, and municipalities’ training and
23 hiring processes.

24 (9) In *Board of County Commissioners v.*
25 *Brown*, 520 U.S. 397, 430 (1997), Justice Breyer

1 criticized this “highly complex body of interpretive
2 law” and called for a reexamination of “the legal
3 soundness” of the Monell doctrine. Numerous schol-
4 ars, as well as other jurists, have criticized the
5 Monell doctrine as convoluted, inconsistent, arbi-
6 trary, and unintelligible.

7 (10) There is no statutory cause of action for
8 constitutional violations by Federal officials. Victims
9 can only bring their claims if courts infer a cause of
10 action, which they are increasingly unlikely to do.

11 (11) Police officers are regularly called upon to
12 make split-second, life-or-death decisions. The cur-
13 rent liability regime, however, is not sufficient to en-
14 sure that police departments adequately hire, train,
15 supervise, and discipline their officers so that they
16 can respond to these situations in a constitutional
17 manner.

18 (12) There are over 18,000 police departments
19 in the United States and no uniform standard on
20 how officers should be trained. Departments gen-
21 erally require significantly more training on how to
22 deploy force than when it is appropriate to do so. As
23 recently as 2017, 34 States did not mandate de-es-
24 calation training for all officers.

1 (13) A National Public Radio study of fatal po-
2 lice shootings of unarmed Black people nationwide
3 found that several officers were involved in multiple
4 shootings without consequences. The same study
5 found that departments hired officers with histories
6 of domestic violence, as well as officers who were
7 fired or forced out of other police departments due
8 to prior misconduct.

9 (14) According to *United States v. Georgia*,
10 546 U.S. 151, 158 (2006), Congress has the power
11 under section 5 of the 14th Amendment to the Con-
12 stitution of the United States to provide for direct
13 enforcement of section 1 of the 14th Amendment
14 “by creating private remedies,” including ones
15 “against the States.”.

16 (15) Eliminating restrictions on the liability of
17 State and local governments is necessary to ensure
18 that no “State [shall] deprive any person of life, lib-
19 erty, or property, without due process of law; nor
20 deny to any person within its jurisdiction the equal
21 protection of the laws.”.

22 **SEC. 3. CIVIL ACTIONS FOR DEPRIVATION OF RIGHTS.**

23 Section 1979 of the Revised Statutes (42 U.S.C.
24 1983) is amended—

1 (1) in the first sentence, by striking “Every”
 2 and inserting the following:

3 “(a) In this section:

4 “(1) The term ‘person’ includes—

5 “(A) the United States;

6 “(B) a State or Territory or the District of
 7 Columbia;

8 “(C) a local government;

9 “(D) an agency, government body, or any
 10 subdivision of the United States, a State or
 11 Territory or the District of Columbia, or a local
 12 government, or an entity created by a combina-
 13 tion of any of the foregoing; and

14 “(E) an individual or private entity.

15 “(2) The term ‘law enforcement officer’ in-
 16 cludes any officer of a local government, or of a
 17 State or Territory or the District of Columbia, or of
 18 the United States, or an entity created by a com-
 19 bination of any of the foregoing who is empowered
 20 by law to execute searches, to seize evidence, or to
 21 make arrests for violations of law.

22 “(b) Every”;

23 (2) in subsection (b), as so designated, in the
 24 first sentence, by inserting “the United States,” be-
 25 fore “any State”; and

1 (3) by adding at the end the following:

2 “(c) A person is liable under this section for a viola-
3 tion of rights, privileges, or immunities secured by the
4 Constitution and laws committed by an individual who at
5 the time of the violation is employed by the person as,
6 or contracted by the person to do the work of, a law en-
7 forcement officer. Liability under this subsection shall
8 exist without regard to whether such employee or con-
9 tractor would be immune from liability, and without re-
10 gard to whether the employee or contractor was acting
11 pursuant to a policy or custom of the person who is the
12 employer.

13 “(d) Pursuant to section 5 of the 14th Amendment,
14 no State shall be immune from suit, under the Eleventh
15 Amendment or other doctrine of State sovereign immu-
16 nity, for any claims on which subsection (c) subjects a per-
17 son to liability.

18 “(e) For purposes of an action under subsection (c),
19 the United States waives its sovereign immunity.

20 “(f) Except as expressly stated, no provision of this
21 section shall be construed to abolish, repeal, or limit the
22 scope of any right of action otherwise available under this
23 section or any other source of law.”.

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