

117TH CONGRESS
1ST SESSION

S. 492

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.

IN THE SENATE OF THE UNITED STATES

MARCH 1, 2021

Mr. MARKEY (for himself, Ms. WARREN, and Mr. SANDERS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

8 (1) In 1871, Congress passed the Ku Klux
9 Klan Act to enforce the Fourteenth Amendment and

1 combat rampant violations of civil and constitu-
2 tionally secured rights across the Nation, particu-
3 larly those of newly freed slaves and other Black
4 Americans in the post-Civil War South.

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

12 (3) Under section 1979 of the Revised Statutes
13 (42 U.S.C. 1983) a person may be held liable for
14 acting under color of State or local law, even if they
15 are not acting in accordance with State law.

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

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

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

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

9 (8) Finally, in *Harlow v. Fitzgerald*, 457 U.S.
10 800 (1982), the Court found the subjective search
11 for good faith in the government actor unnecessary,
12 and replaced it with an “objective reasonableness”
13 standard that requires that the right be “clearly es-
14 tablished” at the time of the violation for the de-
15 fendant to be liable.

16 (9) This doctrine of qualified immunity has se-
17 verely limited the ability of many plaintiffs to re-
18 cover damages under section 1983 when their rights
19 have been violated by State and local officials. As a
20 result, the intent of Congress in passing the law has
21 been frustrated, and Americans’ rights secured by
22 the Constitution have not been appropriately pro-
23 tected.

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

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

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

10 Section 1979 of the Revised Statutes (42 U.S.C.
11 1983) is amended by adding at the end the following: "In
12 any suit pending on, or filed after, the effective date of
13 the Ending Qualified Immunity Act of 2021, it shall not
14 be a defense or immunity to any action brought under this
15 section that the defendant was acting in good faith, or
16 that the defendant believed, reasonably or otherwise, that
17 his or her conduct was lawful at the time when it was
18 committed. Nor shall it be a defense or immunity that the
19 rights, privileges, or immunities secured by the Constitu-
20 tion or Federal laws were not clearly established at the
21 time of their deprivation by the defendant, or that the
22 state of the law was otherwise such that the defendant
23 could not reasonably have been expected to know whether
24 his or her conduct was lawful."

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