

118TH CONGRESS
1ST SESSION

S. 1196

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

APRIL 19, 2023

Mr. MARKEY (for himself, Mr. SANDERS, and Ms. WARREN) 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 Congress finds the following:

8 (1) Congress passed the Act of April 20, 1871
9 (commonly known as the “Ku Klux Klan Act”; 17

1 Stat. 13, chapter 22) to enforce the 14th Amend-
2 ment to the Constitution of the United States and
3 combat rampant violations of civil and constitu-
4 tionally secured rights across the United States, par-
5 ticularly those of newly freed slaves and other Black
6 people in the post-Civil War South.

7 (2) Included in that Act was a provision, now
8 codified at section 1979 of the Revised Statutes (in
9 this section referred to as “section 1983”), which
10 provides a cause of action for individuals to file law-
11 suits against persons acting under color of law, in-
12 cluding State and local officials, who violate their
13 Federal legal and constitutionally secured rights.

14 (3) Under section 1983 a person may be held
15 liable for acting under color of State law, even if
16 they are not acting in accordance with State law.

17 (4) Section 1983 has never included a defense
18 or immunity for government officials who act in
19 good faith when violating rights, nor has it ever had
20 a defense or immunity based on whether the right
21 was “clearly established” at the time of the viola-
22 tion.

23 (5) From 1871 through the 1960s, government
24 actors were not afforded qualified immunity for vio-
25 lating rights.

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

6 (7) The Supreme Court of the United States
7 later extended the good-faith defense beyond false
8 arrests, turning it into a general good-faith defense
9 for government officials.

10 (8) Finally, in Harlow v. Fitzgerald, 457 U.S.
11 800 (1982), the Supreme Court of the United States
12 found the subjective search for good faith in the gov-
13 ernment actor unnecessary, and replaced it with an
14 “objective reasonableness” standard that requires
15 that the right be “clearly established” at the time of
16 the violation for the defendant to be liable.

17 (9) The doctrine of qualified immunity has se-
18 verely limited the ability of many plaintiffs to re-
19 cover damages under section 1983 when their rights
20 have been violated by State and local officials.

21 (10) As a result, the intent of Congress in pass-
22 ing section 1983 has been frustrated, and the rights
23 secured by the Constitution of the United States
24 have not been appropriately protected.

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

2 It is the sense of Congress that Congress must cor-
3 rect the erroneous interpretation of section 1979 of the
4 Revised Statutes that provides for qualified immunity and
5 reiterate the standard found on the face of the statute,
6 which does not limit liability on the basis of the good-faith
7 belief of the defendant or on the basis that the right was
8 not “clearly 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—

12 (1) by inserting “(a)” before “Every person”;

13 and

14 (2) by adding at the end the following:

15 “(b) It shall not be a defense to any action pending
16 on, or filed after, the date of enactment of this subsection
17 that, at the time of the deprivation—

18 “(1) the defendant was acting in good faith;

19 “(2) the defendant believed, reasonably or oth-
20 erwise, that his or her conduct was lawful;

21 “(3) the rights, privileges, or immunities se-
22 cured by the Constitution and laws were not clearly
23 established; or

1 “(4) the state of the law was such that the de-
2 fendant could not reasonably have been expected to
3 know whether his or her conduct was lawful.”.

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