116TH CONGRESS
2D SESSION

S. 4142

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

JULY 1, 2020

Ms. WARREN (for 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

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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''.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:
8 (1) In 1871, Congress passed the Ku Klux
9 Klan Act to combat rampant violations of civil and

1 constitutionally secured rights across the nation,
2 particularly in the post-Civil War South.

3 (2) Included in the act was a provision, now
4 codified at section 1983 of title 42, United States
5 Code, which provides a cause of action for individ-
6 uals to file lawsuits against State and local officials
7 who violate their legal and constitutionally secured
8 rights.

9 (3) Section 1983 has never included a defense
10 or immunity for government officials who act in
11 good faith when violating rights, nor has it ever had
12 a defense or immunity based on whether the right
13 was ''clearly established'' at the time of the viola-
14 tion.

15 (4) From the law's beginning in 1871, through
16 the 1960s, government actors were not afforded
17 qualified immunity for violating rights.

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

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

1 (7) Finally, in Harlow v. Fitzgerald, 457 U.S.
2 800 (1982), the Court found the subjective search
3 for good faith in the government actor unnecessary,
4 and replaced it with an "objective reasonableness"
5 standard that requires that the right be "clearly es-
6 tablished" at the time of the violation for the de-
7 fendant to be liable.

8 (8) This doctrine of qualified immunity has se-
9 verely limited the ability of many plaintiffs to re-
10 cover damages under section 1983 when their rights
11 have been violated by State and local officials. As a
12 result, the intent of Congress in passing the law has
13 been frustrated, and Americans' rights secured by
14 the Constitution have not been appropriately pro-
15 tected.

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

17 It is the sense of the Congress that we must correct
18 the erroneous interpretation of section 1983 which pro-
19 vides for qualified immunity, and reiterate the standard
20 found on the face of the statute, which does not limit li-
21 ability on the basis of the defendant's good faith beliefs
22 or on the basis that the right was not "clearly established"
23 at the time of the violation.

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

2 Section 1979 of the Revised Statutes (42 U.S.C.
3 1983) is amended by adding at the end the following: ''It
4 shall not be a defense or immunity to any action brought
5 under this section that the defendant was acting in good
6 faith, or that the defendant believed, reasonably or other-
7 wise, that his or her conduct was lawful at the time when
8 it was committed. Nor shall it be a defense or immunity
9 that the rights, privileges, or immunities secured by the
10 Constitution or laws were not clearly established at the
11 time of their deprivation by the defendant, or that the
12 state of the law was otherwise such that the defendant
13 could not reasonably have been expected to know whether
14 his or her conduct was lawful.''.

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