

Organizations Across Ideological Spectrum Call for Government Accountability

June 21, 2021

Following the end of the Civil War, Congress enacted Section 1983 to enforce the guarantees of the Fourteenth Amendment and ensure that government officials would be held accountable when they acted unlawfully. But over 50 years ago, the Supreme Court fundamentally undermined Section 1983's protections when it created the doctrine of qualified immunity, which too often leaves individuals without a remedy for abuses of power and constitutional violations. And for decades, the Supreme Court has separately imposed stiff barriers to holding government employers liable for the constitutional violations committed by their employees. These restrictions on employer liability exacerbate the harms of qualified immunity. Together, these two doctrines significantly undermine the accountability that Section 1983 sought to provide to victims of government misconduct. It is long past time for Congress to take action to fix the Supreme Court's mistake by simultaneously ending qualified immunity and reforming government employer liability.

The coalition of organizations listed above support the following reasonable and meaningful reforms to 42 U.S.C. § 1983 to end qualified immunity and ensure that there is a remedy for constitutional violations committed by all individuals and entities acting under color of law:

- Congress should end the qualified immunity doctrine for *all* public officials, government contractors, and other individuals acting under color of law.
 - Some have suggested that the “sweet spot” for reform could be limited to cases involving only the most serious physical harms, such as death and serious bodily injury. **We disagree with this proposal and strongly oppose it.** Such a limited reform would leave no redress for censorship, crackdowns on protest, arbitrary stops and arrests, invasions of privacy, seizures of property, discriminatory enforcement, and violations of other important constitutional rights. It would allow for serious constitutional violations to continue without accountability.
- Congress should create a cause of action enabling individuals to sue federal officials in the same manner as state and local officials. Federal officials should be held to the same standards as state and local officials.
- Congress should mandate that government employers—including federal agencies, states, cities, and counties—and government contractors be liable for constitutional violations committed by their employees by:
 - specifying that an employer is liable for an employee’s violation, regardless of whether a “policy or custom” of the employer caused the violation and regardless of the employer’s state of mind with respect to the violation; and
 - abrogating States’ sovereign immunity and waiving federal sovereign immunity to the extent necessary to create such liability and specifying that all public employers are proper defendants.

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American Civil Liberties Union | Amnesty International | The Black Police Experience
The Campaign to End Qualified Immunity | Cato Institute | Civil Rights Corps
Center for Disability Rights | Constitutional Accountability Center | The Daniel Initiative
Drug Policy Alliance | The Federal School Discipline and Climate Group
Human Rights Watch | Innocence Project | Institute for Justice
Open Society Policy Center | Project on Government Oversight | Protect Democracy