

AMENDMENT TO H.R.7120, AS REPORTED
OFFERED BY MS. PRESSLEY OF MASSACHUSETTS

Strike section 102 and insert the following:

1 SECTION 102. QUALIFIED IMMUNITY REFORM.

2 (a) FINDINGS.—The Congress finds as follows:

3 (1) In 1871, Congress passed the Ku Klux
4 Klan Act to combat rampant violations of civil and
5 constitutionally secured rights across the nation,
6 particularly in the post-Civil War South.

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

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

1 (4) From the law’s beginning in 1871, through
2 the 1960s, government actors were not afforded
3 qualified immunity for violating rights.

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

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

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

19 (8) This doctrine of qualified immunity has se-
20 verely limited the ability of many plaintiffs to re-
21 cover damages under section 1983 when their rights
22 have been violated by State and local officials. As a
23 result, the intent of Congress in passing the law has
24 been frustrated, and Americans’ rights secured by

1 the Constitution have not been appropriately pro-
2 tected.

3 (b) SENSE OF THE CONGRESS.—It is the sense of
4 the Congress that we must correct the erroneous interpre-
5 tation of section 1983 which provides for qualified immu-
6 nity, and reiterate the standard found on the face of the
7 statute, which does not limit liability on the basis of the
8 defendant’s good faith beliefs or on the basis that the right
9 was not “clearly established” at the time of the violation.

10 (c) REMOVAL OF QUALIFIED IMMUNITY.—Section
11 1979 of the Revised Statutes (42 U.S.C. 1983) is amend-
12 ed by adding at the end the following: “It shall not be
13 a defense or immunity to any action brought under this
14 section that the defendant was acting in good faith, or
15 that the defendant believed, reasonably or otherwise, that
16 his or her conduct was lawful at the time when it was
17 committed. Nor shall it be a defense or immunity that the
18 rights, privileges, or immunities secured by the Constitu-
19 tion or laws were not clearly established at the time of
20 their deprivation by the defendant, or that the state of
21 the law was otherwise such that the defendant could not
22 reasonably have been expected to know whether his or her
23 conduct was lawful.”.

