

117TH CONGRESS 1ST SESSION H.R. 6327

To ensure that the United States, States, and local governments are liable for monetary damages for constitutional violations by law enforcement officers.

IN THE HOUSE OF REPRESENTATIVES

December 20, 2021

Mr. Cicilline (for himself, Mr. Johnson of Georgia, and Mr. Raskin) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To ensure that the United States, States, and local governments are liable for monetary damages for constitutional violations by law enforcement officers.

- 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 "Constitutional Ac-
- 5 countability Act".
- 6 SEC. 2. FINDINGS.
- 7 Congress finds the following:
- 8 (1) The 14th Amendment to the Constitution of
- 9 the United States was passed by Congress and rati-

- fied by the people of the United States against the backdrop of numerous State laws, policies, and practices that denied African Americans and others their enjoyment of fundamental rights.
 - (2) Congress drafted the 14th Amendment to broadly protect fundamental rights and guarantee equality to all persons.
 - (3) To help realize the promise of equality protected in the 14th Amendment, Congress passed section 1979 of the Revised Statutes (42 U.S.C. 1983) (referred to in this section as "section 1983"), creating a statutory remedy for violations of the Constitution of the United States and Federal law. According to Mitchum v. Foster, 407 U.S. 225, 242 (1972), section 1983 was intended "to interpose the Federal courts between the States and the people, as guardians of the people's Federal rights".
 - (4) By creating this remedy, Congress recognized that civil suits are a necessary and powerful tool to protect individual rights. Suits under section 1983 can not only make whole victims who are wronged. The suits can incentivize actors to take the steps necessary to avoid wrongdoing in the first place.

- (5) Unfortunately, the Supreme Court's current crabbed interpretation of section 1983 undermines its ability to accomplish these goals.
 - (6) Private employers are responsible for the torts of their employees under the doctrine of respondent superior. The risk of liability incentivizes private employers to effectively hire, supervise, train, and discipline their employees.
 - (7) In contrast, under Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978), municipal defendants are not subject to respondeat superior liability for the constitutional torts of their officers. Cities may only be held liable for the constitutional torts of their officers only when the plaintiff can show that the violation was the result of a municipal policy or custom. Under Will v. Michigan Department of State Police, 491 U.S. 58 (1989), States cannot be held liable at all.
 - (8) The Monell doctrine requires judges to resolve difficult questions regarding which officials are policymakers, whether an official was acting in State or local capacity, and municipalities' training and hiring processes.
 - (9) In Board of County Commissioners v. Brown, 520 U.S. 397, 430 (1997), Justice Brever

- criticized this "highly complex body of interpretive law" and called for a reexamination of "the legal soundness" of the Monell doctrine. Numerous scholars, as well as other jurists, have criticized the Monell doctrine as convoluted, inconsistent, arbitrary, and unintelligible.
 - (10) There is no statutory cause of action for constitutional violations by Federal officials. Victims can only bring their claims if courts infer a cause of action, which they are increasingly unlikely to do.
 - (11) Police officers are regularly called upon to make split-second, life-or-death decisions. The current liability regime, however, is not sufficient to ensure that police departments adequately hire, train, supervise, and discipline their officers so that they can respond to these situations in a constitutional manner.
 - (12) There are over 18,000 police departments in the United States and no uniform standard on how officers should be trained. Departments generally require significantly more training on how to deploy force than when it is appropriate to do so. As recently as 2017, 34 States did not mandate de-escalation training for all officers.

- 1 (13) A National Public Radio study of fatal po-2 lice shootings of unarmed Black people nationwide 3 found that several officers were involved in multiple 4 shootings without consequences. The same study 5 found that departments hired officers with histories 6 of domestic violence, as well as officers who were 7 fired or forced out of other police departments due 8 to prior misconduct.
- 9 (14) According to United States v. Georgia, 10 546 U.S. 151, 158 (2006), Congress has the power 11 under section 5 of the 14th Amendment to the Con-12 stitution of the United States to provide for direct 13 enforcement of section 1 of the 14th Amendment 14 "by creating private remedies", including ones 15 "against the States".
 - (15) Eliminating restrictions on the liability of State and local governments is necessary to ensure that no "State [shall] deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

22 SEC. 3. CIVIL ACTIONS FOR DEPRIVATION OF RIGHTS.

- Section 1979 of the Revised Statutes (42 U.S.C.
- 24 1983) is amended—

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1	(1) in the first sentence, by striking "Every"
2	and inserting the following:
3	"(a) In this section:
4	"(1) The term 'person' includes—
5	"(A) the United States;
6	"(B) a State or Territory or the District of
7	Columbia;
8	"(C) a local government;
9	"(D) an agency, government body, or any
10	subdivision of the United States, a State or
11	Territory or the District of Columbia, or a local
12	government, or an entity created by a combina-
13	tion of any of the foregoing; and
14	"(E) an individual or private entity.
15	"(2) The term 'law enforcement officer' in-
16	cludes any officer of a local government, or of a
17	State or Territory or the District of Columbia, or of
18	the United States, or an entity created by a com-
19	bination of any of the foregoing who is empowered
20	by law to execute searches, to seize evidence, or to
21	make arrests for violations of law.
22	"(b) Every";
23	(2) in subsection (b), as so designated, in the
24	first sentence, by inserting "the United States," be-
25	fore "any State"; and

- 1 (3) by adding at the end the following:
- 2 "(c) A person is liable under this section for a viola-
- 3 tion of rights, privileges, or immunities secured by the
- 4 Constitution and laws committed by an individual who at
- 5 the time of the violation is employed by the person as,
- 6 or contracted by the person to do the work of, a law en-
- 7 forcement officer. Liability under this subsection shall
- 8 exist without regard to whether such employee or con-
- 9 tractor would be immune from liability, and without re-
- 10 gard to whether the employee or contractor was acting
- 11 pursuant to a policy or custom of the person who is the
- 12 employer.
- "(d) Pursuant to section 5 of the 14th Amendment,
- 14 no State shall be immune from suit, under the Eleventh
- 15 Amendment or other doctrine of state sovereign immunity,
- 16 for any claims on which subsection (c) subjects a person
- 17 to liability.
- 18 "(e) For purposes of an action under subsection (c),
- 19 the United States waives its sovereign immunity.
- 20 "(f) Except as expressly stated, no provision of this
- 21 section shall be construed to abolish, repeal, or limit the
- 22 scope of any right of action otherwise available under this
- 23 section or any other source of law.".