

QUALIFIED IMMUNITY – THE GREAT POLITICAL DIVIDE

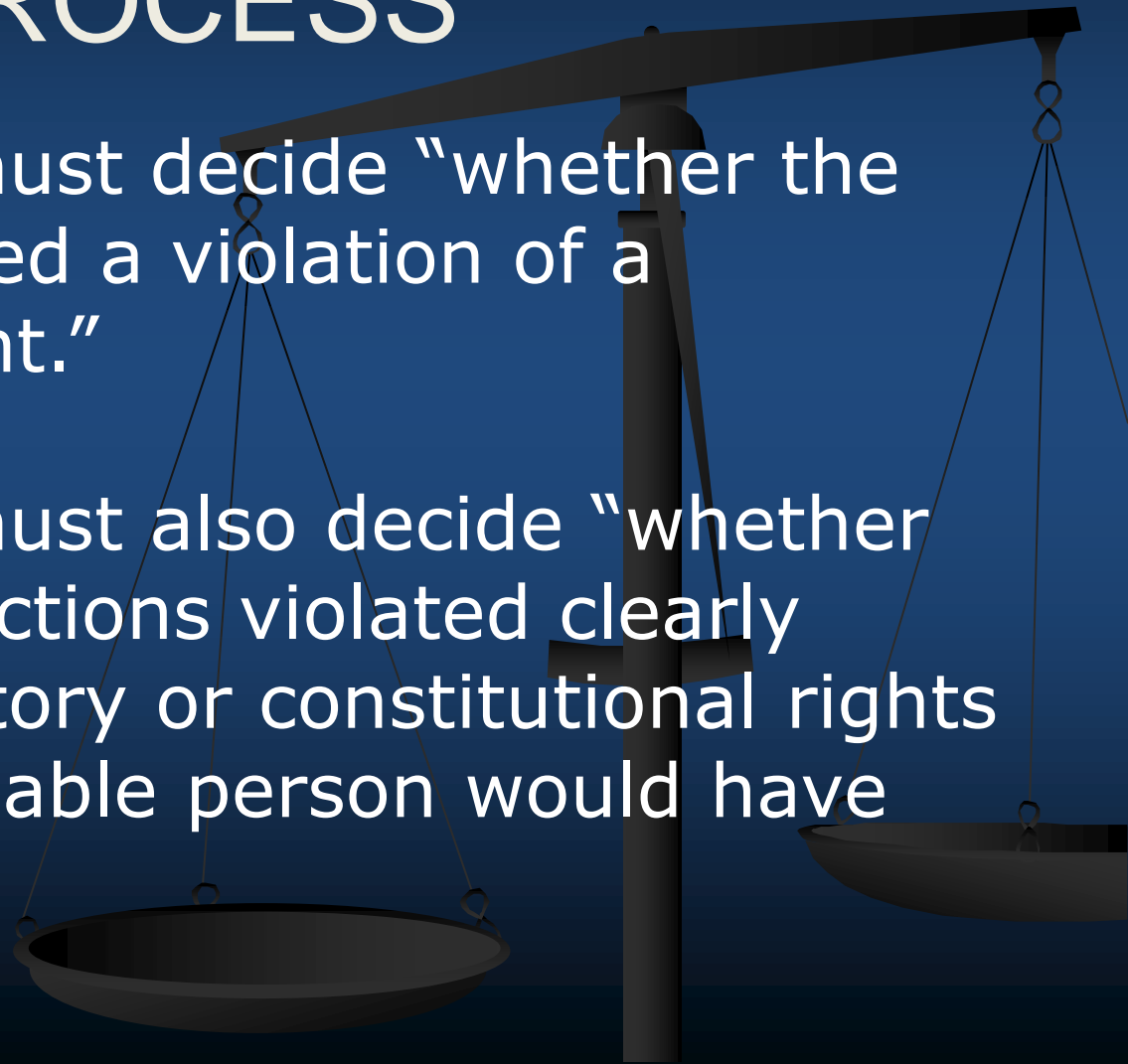


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**TEXAS CITY ATTORNEYS ASSOCIATION
2020 FALL CONFERENCE
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QUALIFIED IMMUNITY- 2 STEP PROCESS

- Step 1: a court must decide “whether the plaintiff has alleged a violation of a constitutional right.”
- Step 2: a court must also decide “whether the defendant’s actions violated clearly established statutory or constitutional rights of which a reasonable person would have known.”

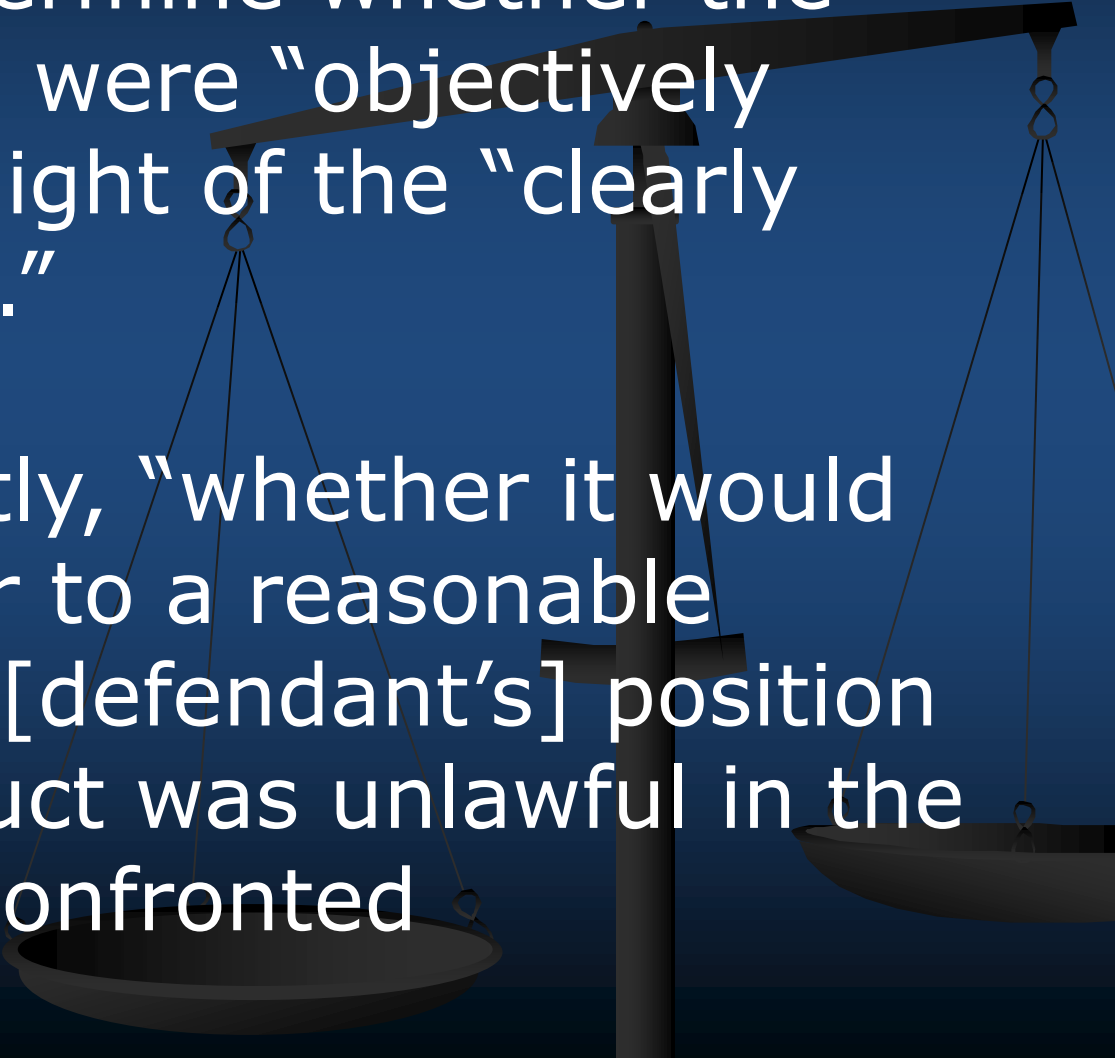


FIRST STEP

- Fairly self-explanatory.
- So long as the plaintiff cites a relevant constitutional amendment, they satisfy the first step.

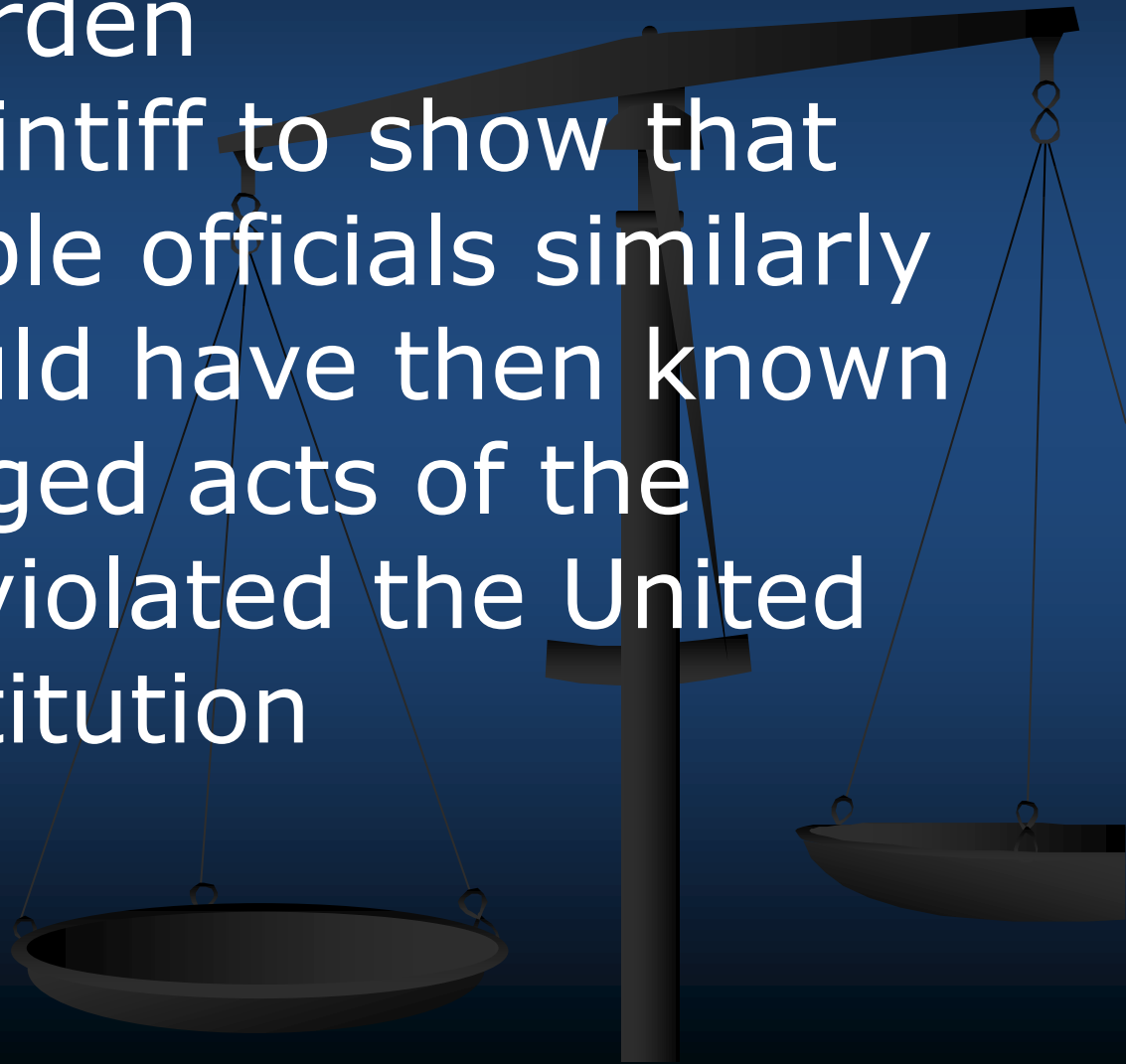


SECOND STEP

- Court must determine whether the officer's actions were "objectively reasonable" in light of the "clearly established law."
 - Stated differently, "whether it would have been clear to a reasonable [official] in the [defendant's] position that their conduct was unlawful in the situation they confronted"
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- A silhouette of a balance scale is positioned on the right side of the slide. The scale is tilted, with the right pan being lower than the left pan. The background is a dark blue gradient.

MSJ & QUALIFIED IMMUNITY

- Plaintiff's burden
- Requires plaintiff to show that "all reasonable officials similarly situated would have then known that the alleged acts of the defendants violated the United States Constitution"



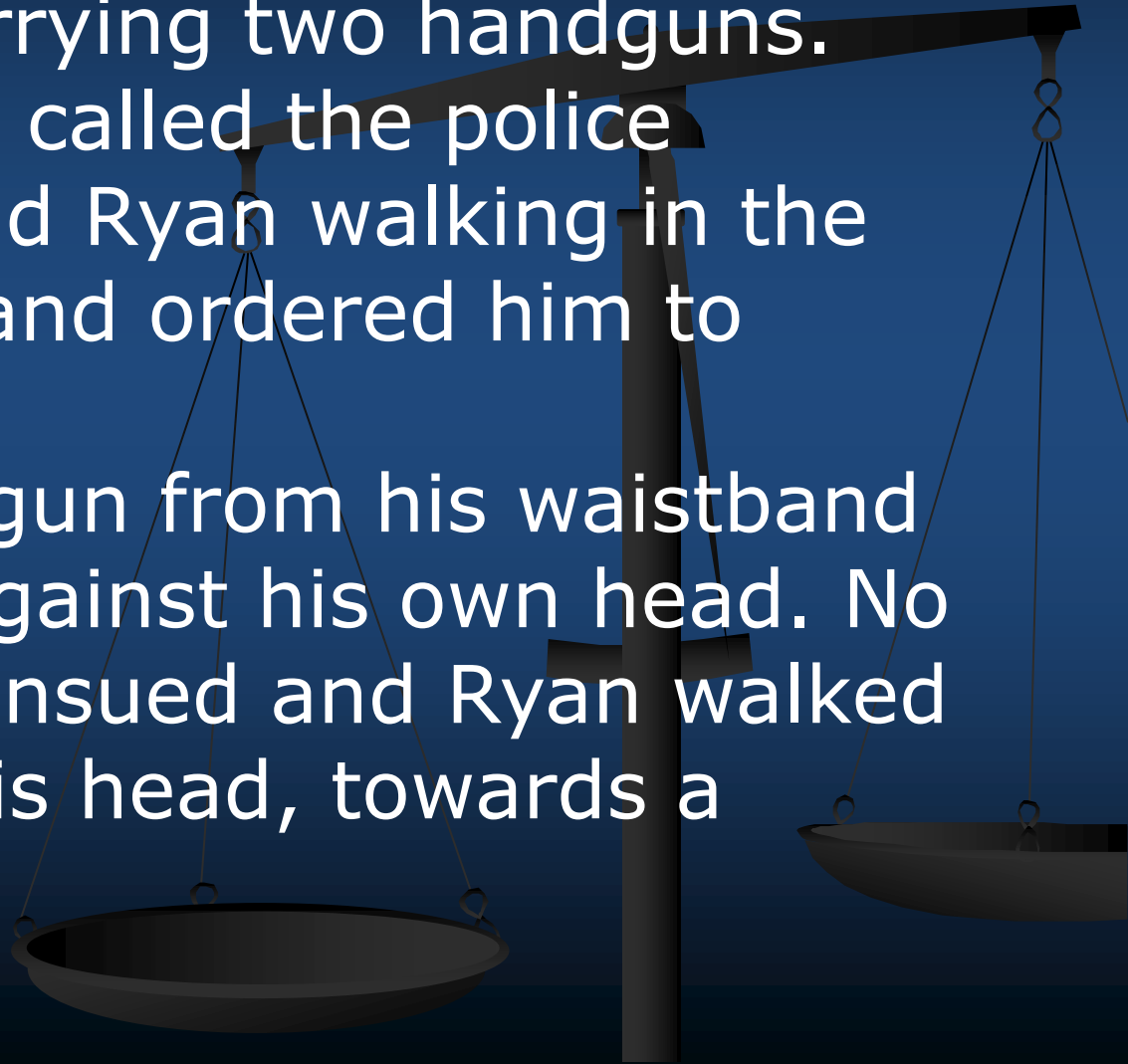
MSJ & QUALIFIED IMMUNITY



- Inquiry “must be undertaken in light of the specific context of the case, not as a broad general proposition.”
- Supreme Court does “not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate.”
- “It is the plaintiff’s burden to find a case in favor that does not define the law at a ‘high level of generality.’”

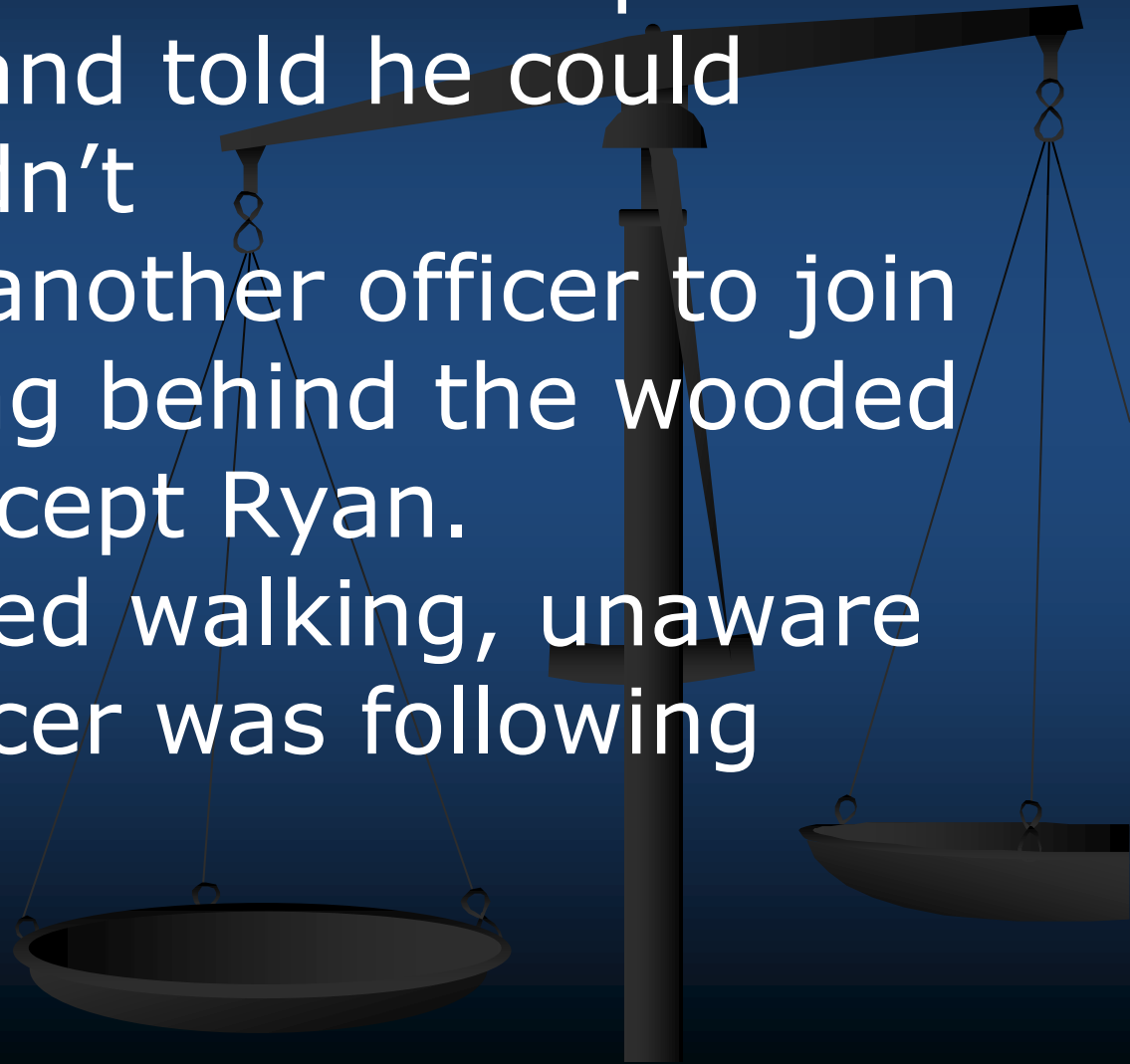
Cole v. Carson

- Ryan Cole, a 17-year-old visited his friend while carrying two handguns.
- Friend's father called the police
- The police found Ryan walking in the neighborhood and ordered him to stop.
- Ryan took the gun from his waistband and placed it against his own head. No confrontation ensued and Ryan walked away, gun to his head, towards a wooded area.

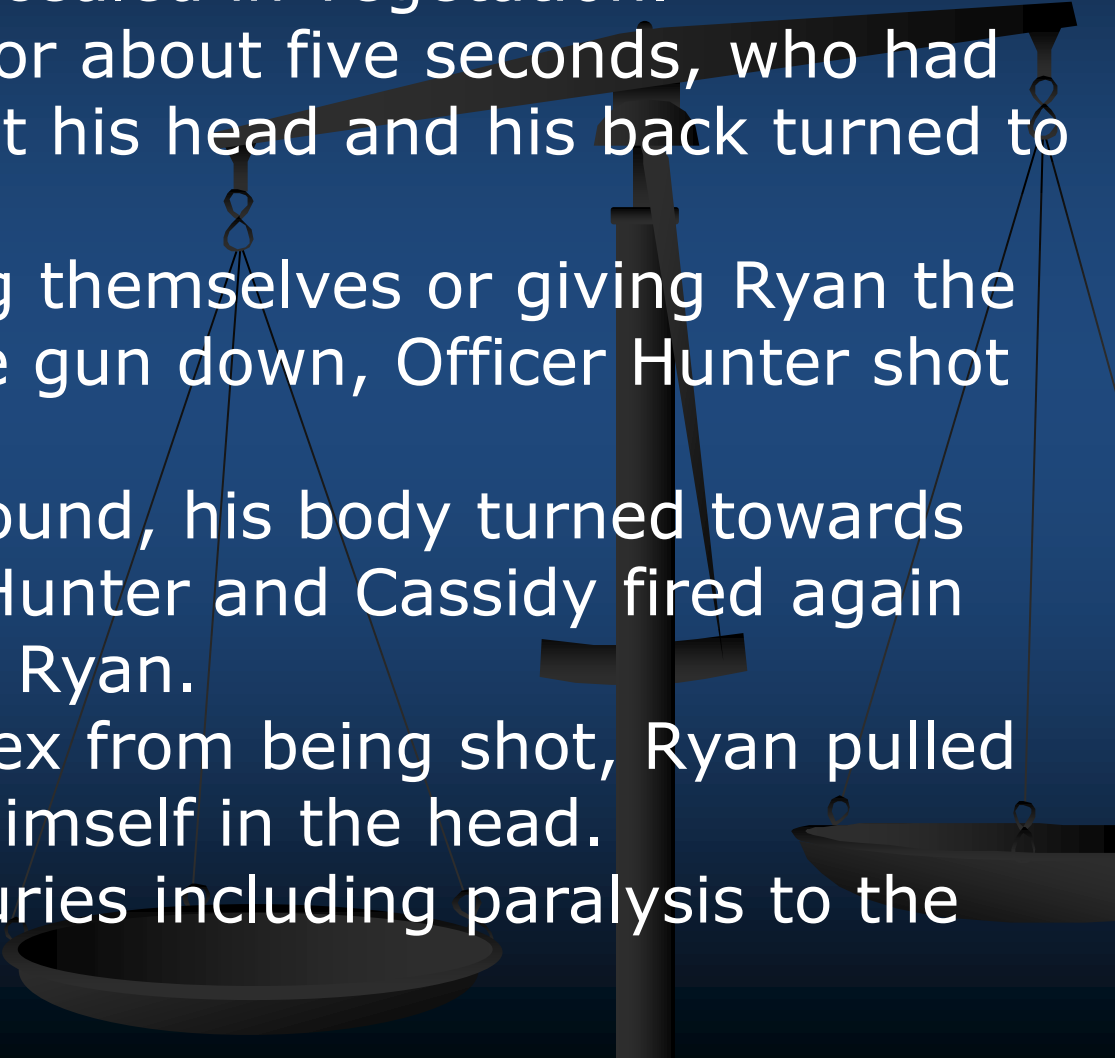


Cole v. Carson

- Officer Michael Hunter responded to the area and told he could leave but didn't
- Hunter told another officer to join him in circling behind the wooded area to intercept Ryan.
- Ryan continued walking, unaware that any officer was following him.



Cole v. Carson

- When Ryan exited the woods, Officers waiting with their guns drawn, concealed in vegetation.
 - They watched Ryan for about five seconds, who had the gun still pointed at his head and his back turned to the two officers.
 - Instead of announcing themselves or giving Ryan the opportunity to put the gun down, Officer Hunter shot Ryan.
 - As Ryan fell to the ground, his body turned towards the officers. Officers Hunter and Cassidy fired again and another bullet hit Ryan.
 - As an involuntary reflex from being shot, Ryan pulled the trigger and shot himself in the head.
 - suffered profound injuries including paralysis to the left side of his body.
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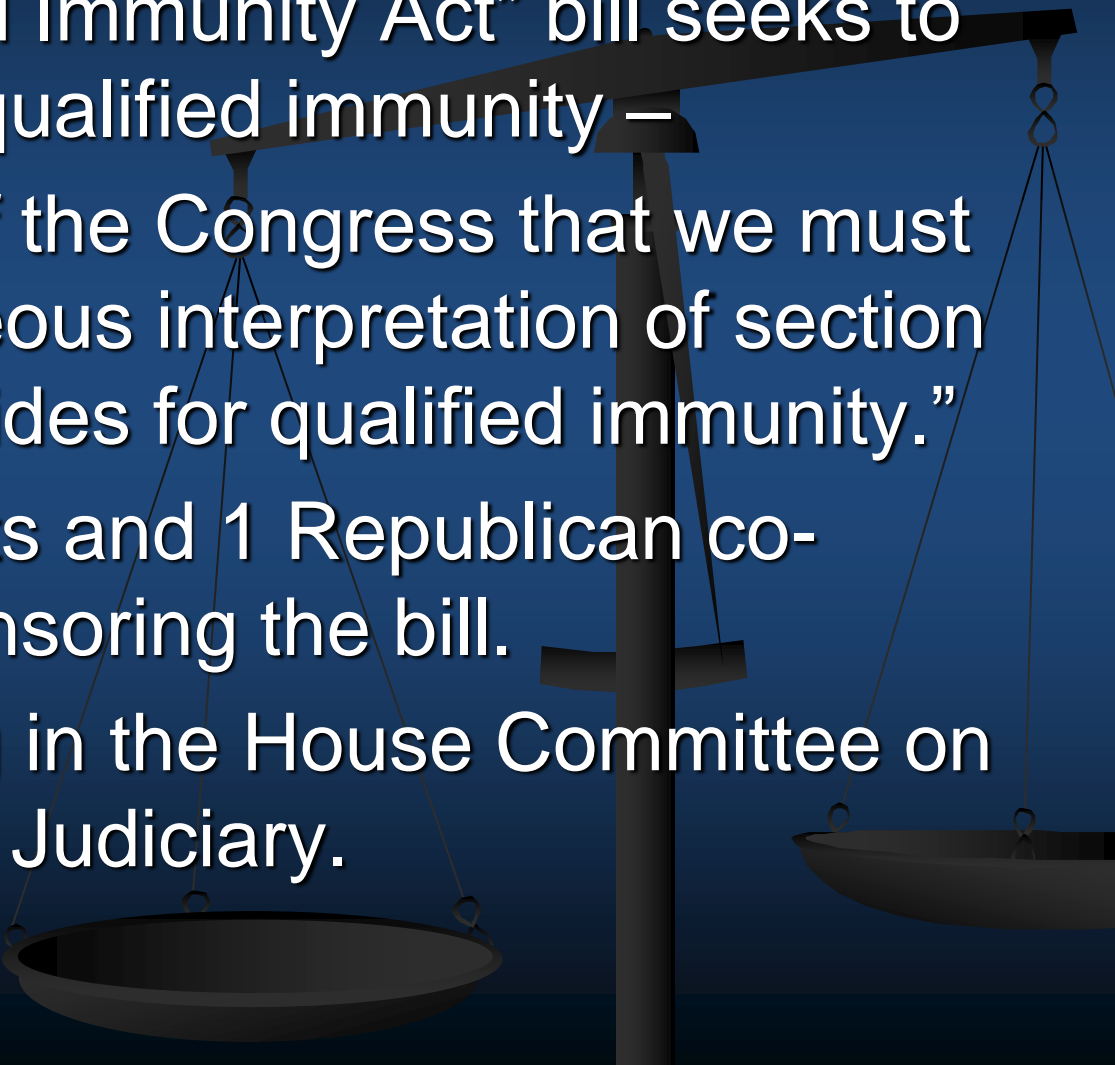
FIFTH CIRCUIT – Fifth Circuit at War

Majority-Higgenbotham joined by Stewart, Dennis, Clement, Elrod, Southwick, Haynes, Graves, Higginson, Costa and Engelhardt.

Concurring justices- Elrod, joined by Stewart, Clement, Haynes, Higginson, Costa and Engelhardt

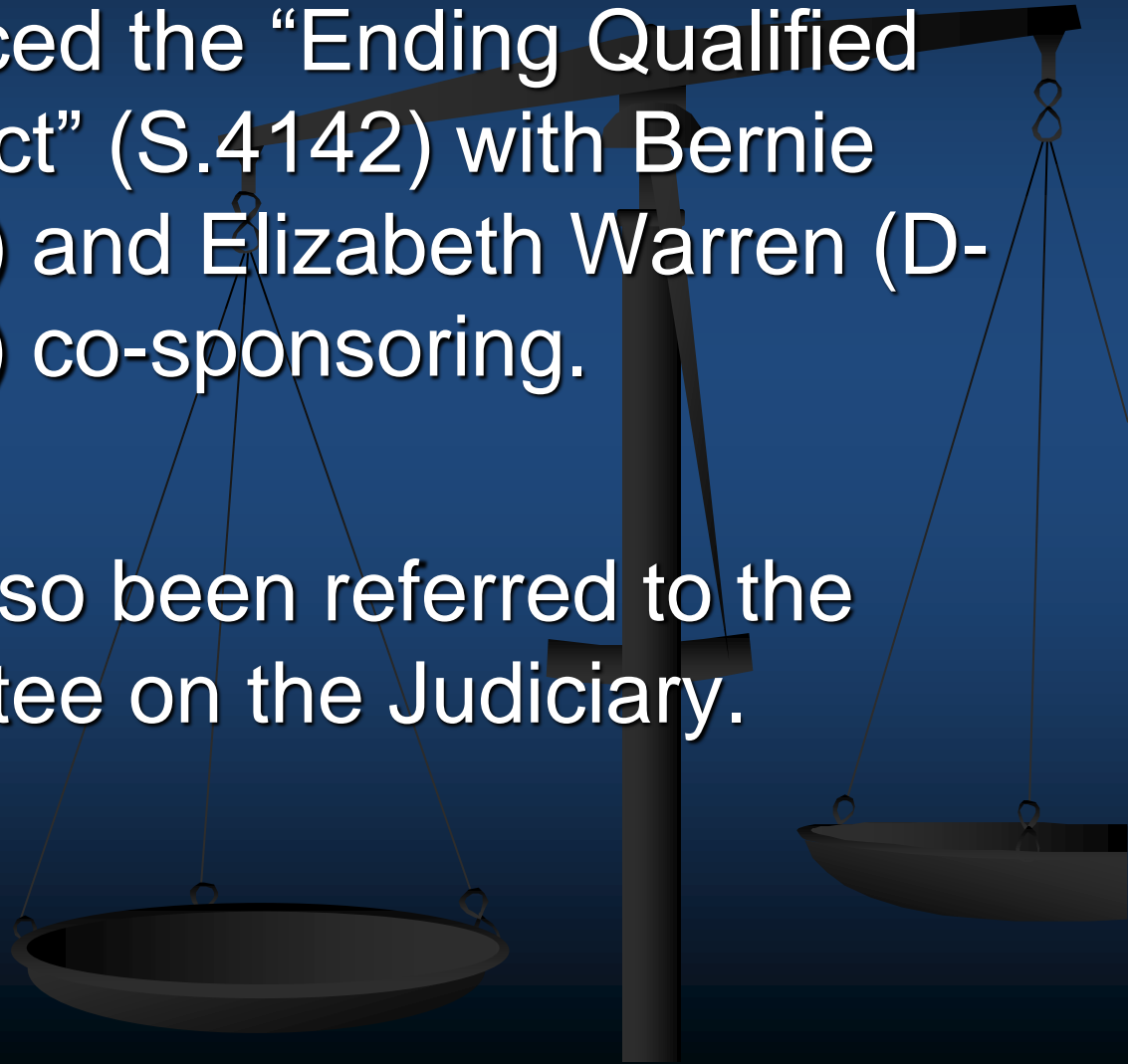
Dissenting justices – Jones, Ho, Duncan, Oldham and Willett

Where is Qualified Immunity Heading?

- “Ending Qualified Immunity Act” bill seeks to abolish qualified immunity –
 - “It is the sense of the Congress that we must correct the erroneous interpretation of section 1983 which provides for qualified immunity.”
 - 65 Democrats and 1 Republican co-sponsoring the bill.
 - Currently is sitting in the House Committee on Judiciary.
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Where is Qualified Immunity Heading?

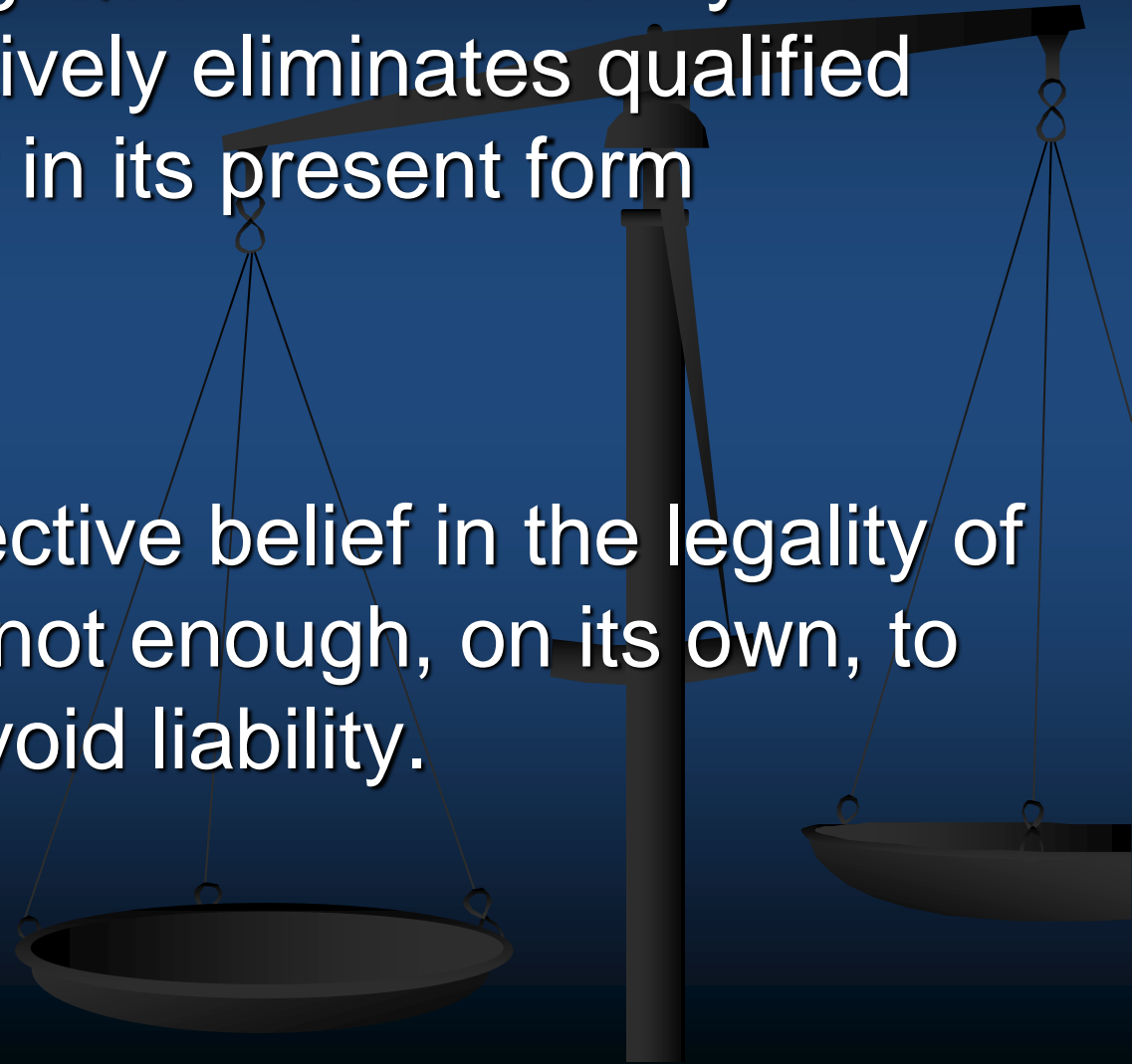
- Also introduced the “Ending Qualified Immunity Act” (S.4142) with Bernie Sanders (I-VT) and Elizabeth Warren (D-MA) co-sponsoring.
- This has also been referred to the Committee on the Judiciary.



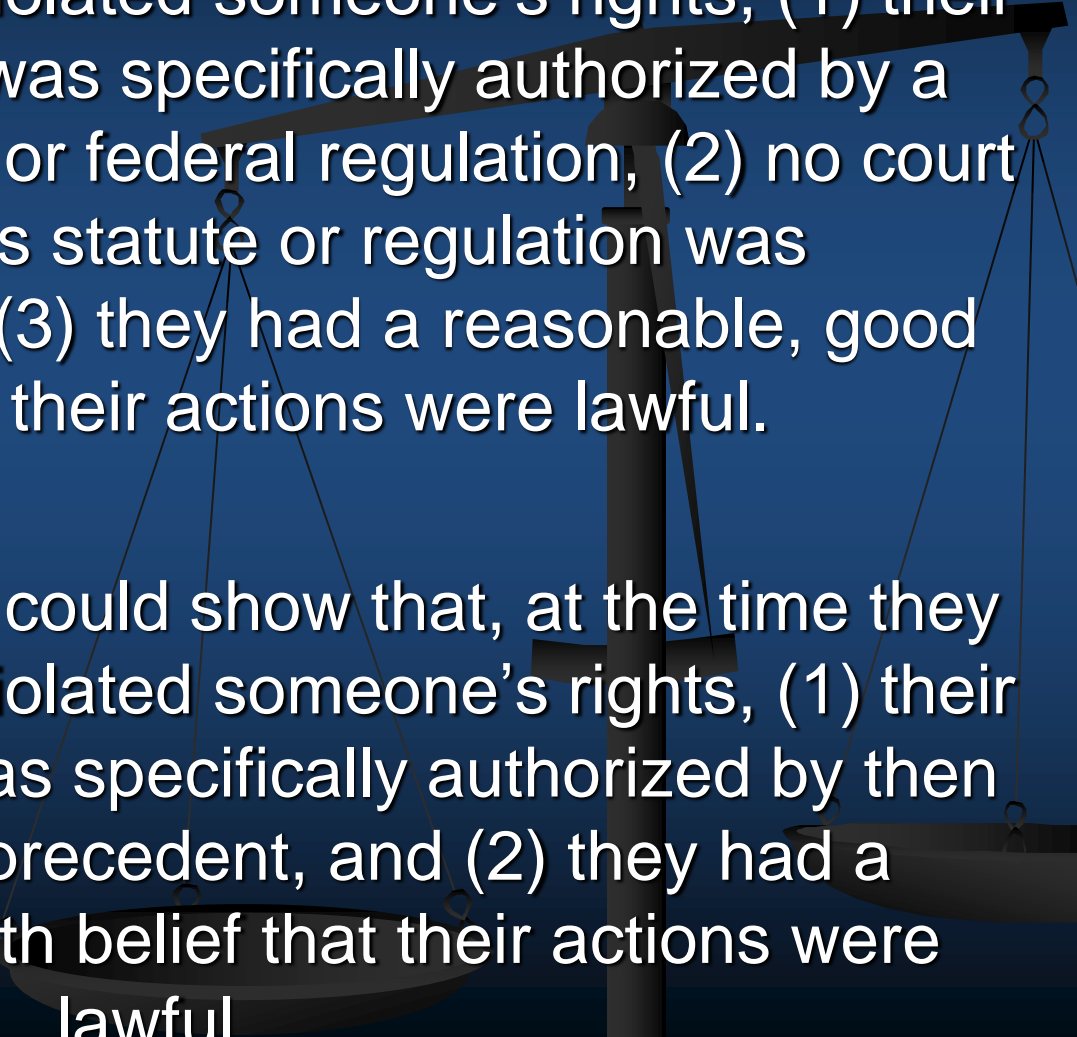
Where is Qualified Immunity Heading?

The “Reforming Qualified Immunity Act” (S.4036) effectively eliminates qualified immunity in its present form

Defendant’s subjective belief in the legality of their conduct is not enough, on its own, to avoid liability.



Instead, a defendant sued in his individual capacity shall not be liable under two sets of circumstances:

- If the defendant could show that, at the time they were alleged to have violated someone's rights, (1) their challenged conduct was specifically authorized by a federal or state statute or federal regulation, (2) no court had held that this statute or regulation was unconstitutional, and (3) they had a reasonable, good faith belief that their actions were lawful.
 - If the defendant could show that, at the time they were alleged to have violated someone's rights, (1) their challenged conduct was specifically authorized by then applicable judicial precedent, and (2) they had a reasonable, good faith belief that their actions were lawful.
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Where is Qualified Immunity Heading?

- This proposal effectively reverses the current application of “clearly established law.”
if defendant can show a prior case or statute authorizing his conduct, then he will not be liable.
 - Under the Reforming Qualified Immunity Act, a municipality or other unit of local government shall be liable for a violation by an agent or employee acting within the scope of his employment. This eliminates the “custom, policy or practice” argument
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