116TH CONGRESS
2D SESSION

S. RES. 602

Recognizing that the murder of George Floyd by officers of the Minneapolis Police Department is the result of pervasive and systemic racism that cannot be dismantled without, among other things, proper redress in the courts.

IN THE SENATE OF THE UNITED STATES

JUNE 2, 2020

Mr. BOOKER (for Mr. MARKEY (for himself, Mr. BOOKER, Ms. WARREN, Mr. VAN HOLLEN, and Mr. SANDERS)) submitted the following resolution; which was referred to the Committee on the Judiciary

---

RESOLUTION

Recognizing that the murder of George Floyd by officers of the Minneapolis Police Department is the result of pervasive and systemic racism that cannot be dismantled without, among other things, proper redress in the courts.

Whereas Black people in the United States are disproportionately the victims of shootings, chokeholds, and other uses of excessive force by law enforcement officers;

Whereas the use of excessive force during an arrest or investigatory stop constitutes an unreasonable seizure under the Fourth Amendment to the Constitution of the United States, which guarantees the right of every person in the

United States to be free from unreasonable searches and seizures at the hands of law enforcement officers;

Whereas the use of excessive force during a period of pretrial detention constitutes the deprivation of due process under the Fifth and 14th Amendments to the Constitution of the United States, which guarantee the right of every person in the United States to be free from arbitrary interference with the liberty of that person at the hands of law enforcement officers;

Whereas the use of excessive force during a term of imprisonment constitutes the use of cruel and unusual punishment under the Eighth Amendment to the Constitution of the United States, which guarantees the right of every person in the United States to be free from cruel and unusual punishment at the hands of law enforcement officers;

Whereas section 1979 of the Revised Statutes (42 U.S.C. 1983), which is derived from the first section of the Act of April 20, 1871 (commonly known as and referred to in this preamble as the ''Civil Rights Act of 1871'') (17 Stat. 13, chapter 22), makes liable ''every person'', including police officers, correctional officers, and other law enforcement officers, who, under color of law, deprives another person of civil rights;

Whereas the judicial doctrine of qualified immunity wrongly and unjustly precludes the victims of police violence from vindicating the rights of those victims under section 1979 of the Revised Statutes (42 U.S.C. 1983)—

(1) by effectively immunizing law enforcement officers from civil suit unless a prior court case has ''clearly established'' that the challenged use of excessive force is illegal; and

(2) by narrowly construing the ''clearly established'' standard so that any factual or contextual distinctions between the challenged use of excessive force and the use of excessive force in a prior case, even small or insignificant distinctions, are cause for qualified immunity with respect to the challenged use of excessive force;

Whereas the defense of qualified immunity has no historical common law basis;

Whereas the intent of Congress in enacting the Civil Rights Act of 1871 was to hold State and local law enforcement officers accountable for intimidating, harming, and murdering Black people in the United States after the Civil War;

Whereas, in 2017, Supreme Court Justice Clarence Thomas recognized that the defense of qualified immunity has no textual basis in section 1979 of the Revised Statutes (42 U.S.C. 1983) and thereby represents ''precisely the sort of freewheeling policy choice'' that courts ''have previously disclaimed the power to make'';

Whereas the courts of appeals of the United States are more likely than not to grant qualified immunity to law enforcement officers;

Whereas, in 2018, Supreme Court Justice Sonia Sotomayor acknowledged that the Supreme Court of the United States ''routinely displays an unflinching willingness'' to reverse decisions of the courts of appeals of the United States denying qualified immunity to law enforcement officers;

Whereas the lack of accountability that results from qualified immunity arouses frustration, disappointment, and anger throughout the United States, which discredits and en-

dangers the vast majority of law enforcement officers, who do not engage in the use excessive force;

Whereas a civil action under section 1979 of the Revised Statutes (42 U.S.C. 1983) is often the only viable solution for victims of police violence and the families of those victims to hold law enforcement officers accountable for the use of excessive force because criminal prosecutors are reluctant to charge, and juries are hesitant to convict, law enforcement officers; and

Whereas the Government of the United States has established itself as a government of laws, and not of men, but will cease to be so if it does not furnish a viable remedy for all civil rights violations: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes and acknowledges the legal and racial inequities inherent in the judicial doctrine of qualified immunity as that doctrine is applied to law enforcement officers;

(2) recognizes and acknowledges that the doctrine of qualified immunity rests on a mistaken judicial interpretation of a statute enacted by Congress; and

(3) recognizes and acknowledges that, to correct that mistaken judicial interpretation, Congress should amend section 1979 of the Revised Statutes (42 U.S.C. 1983) to eliminate the qualified immu-

nity defense for law enforcement officers as that defense exists as of June 1, 2020.

○