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.

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

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

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

(3) Section 1983 has never included a defense or immunity for government officials who act in good faith when violating rights, nor has it ever had a defense or immunity based on whether the right was “clearly established” at the time of the violation.
(4) From the law’s beginning in 1871, through the 1960s, government actors were not afforded qualified immunity for violating rights.

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

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

(7) Finally, in Harlow v. Fitzgerald, 457 U.S. 800 (1982), the Court found the subjective search for good faith in the government actor unnecessary, and replaced it with an “objective reasonableness” standard that requires that the right be “clearly established” at the time of the violation for the defendant to be liable.

(8) This doctrine of qualified immunity has severely limited the ability of many plaintiffs to recover damages under section 1983 when their rights have been violated by State and local officials. As a result, the intent of Congress in passing the law has been frustrated, and Americans’ rights secured by
the Constitution have not been appropriately pro-
tected.

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

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

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