

Unanimous US Supreme Court expands reactionary “qualified immunity” doctrine

By Tom Carter
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With the support of the Obama administration, the US Supreme Court Tuesday expanded the reach of a reactionary doctrine that protects government agents who violate the Constitution from being sued. The court’s unanimous decision, authored by Chief Justice John Roberts, extends the “qualified immunity” doctrine to “individuals hired by the government to do its work,” but who are not full-time government employees.

Roberts justified the extension of qualified immunity on the grounds that lawsuits against state officials that allege violations of constitutional rights are “distractions” that interfere with government business.

The underlying facts of the case, *Filarsky v. Delia*, provide a stark example of the appalling conditions that have come to prevail in many workplaces around the country. Nicholas Delia, a California firefighter, became seriously ill after he was ordered to respond to a toxic spill. His doctor subsequently instructed him to take three weeks off of work to recover. The city administrators responded to the doctor’s orders by hiring private investigators to spy on Delia.

After these investigators watched Delia buying insulation from a home improvement store, city officials launched an investigation against him on the grounds that he was using his time off to work on his home and therefore was not as sick as he claimed to be. For many workers, this kind of retaliation is all too familiar.

Delia was ordered to appear for an interview to answer allegations that he was working on his home. Presiding over the interview were fire department officials and a private attorney hired by the city named Steve Filarsky. Delia admitted to buying the insulation, but said he had not been able to do any work on his home. Knowing that he had no power to enter Delia’s home to find out whether the insulation had been used, Filarsky ordered Delia to go home and bring the unused insulation onto the front lawn where city officials could see it. Delia’s

attorney objected and warned that the order violated the Constitution, but Filarsky issued the order anyway.

Delia did as he was ordered, entering his house and bringing the insulation out onto his lawn—unused—and the city officials closed the investigation. Delia subsequently sued the city, fire department, fire department officials and Filarsky, alleging that his Fourth Amendment rights had been violated. The Fourth Amendment to the US constitution provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,” and requires that the state obtain a warrant before conducting a search. In Delia’s case, no warrant was ever issued.

A core provision of the Civil Rights Act of 1871 (known as “Section 1983” after its location in the US Code) permits individuals whose constitutional rights are violated by state officials to sue those officials in federal court. This provision was designed to help enforce the provisions of the democratic Civil War amendments against state officials in the South. Ever since, it has constituted the primary means by which individual citizens can challenge constitutional violations. In the civil rights period of the 1960s, Section 1983 played a major role in litigation over the worst police abuses, particularly in the South.

The “qualified immunity” doctrine, invented by the US Supreme Court in 1967, immunizes government agents who violate the constitution from litigation “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” In other words, where a judge finds that a police officer, prison guard or public official in the position of the agent who violated the Constitution would not have known about the constitutional right in question, the case is summarily tossed out.

“Qualified immunity” is a reactionary doctrine that has

no basis in the US Constitution, the Bill of Rights, or the 1871 Civil Rights Act. The Fourth Amendment identifies rights that “shall not be violated”—it does not say “except where state officials do not know about those rights.” The clear purpose of the 1871 Civil Rights Act was to punish state officials who violated the constitution—whether those officials knew they were violating the constitution or not—and to afford victims a remedy.

Beginning in earnest in the early 1980s and through to the present, successive Supreme Court decisions have expanded “qualified immunity” to proportions that swallow nearly the entire spectrum of possible Section 1983 cases, shutting down cases at the starting gate and leaving victims with no remedy.

In *Delia*’s case, the judge summarily granted qualified immunity to all of the defendants, throwing out the entire case. On appeal, the Ninth Circuit Court of Appeals affirmed the grant of qualified immunity with respect to all of the defendants except *Filarsky*, on the grounds that *Filarsky* was not a city employee.

Not for the first time this term, the Obama administration intervened in this case to defend *Filarsky* and to argue in favor of expanding immunity for government agents who violate the Constitution. “The United States has an interest in ensuring that private contractors and volunteers acting on its behalf are able to serve the public good effectively and without undue fear of personal liability,” wrote Solicitor General Donald Verrilli.

The court’s opinion, authored by Roberts, echoes the Obama administration’s brief: “The public interest in ensuring performance of government duties free from the distractions that can accompany even routine lawsuits is also implicated when individuals other than permanent government employees discharge these duties.”

In other words, according to the Obama administration and the unanimous Supreme Court, lawsuits that seek to hold public officials accountable for violations of the Constitution are “distractions” that cause “undue fear” and otherwise get in the way of government business.

The court’s decision in *Filarsky v. Delia* provides a particularly revealing example of the modus operandi of the present Supreme Court. It decides each case according to the justices’ political agendas and constructs the legal arguments to accomplish the desired result. Legal principles, logic, and precedents set by prior cases are shoved aside to make way for the pre-determined outcome.

Less than 20 years ago, the Supreme Court declined to

extend qualified immunity to non-government employees in a case called *Richardson v. McKnight* (1993). The judicial principle of *stare decisis*, or respect for prior decisions, would traditionally have operated to make *Filarsky v. Delia* a simple case, since the court had already decided the issue. Roberts dismisses precedent and logic with a wave of the hand: “*Richardson* involved the unusual circumstances of prison guards employed by a private company who worked in a privately run prison facility,” wrote Roberts.

The decision in the case was unanimous (9-0), with Justices Ruth Bader Ginsburg and Sonia Sotomayor filing concurring opinions that opted out of the more extreme sections of Roberts’ majority opinion.

In this election year, the American population will once again be told that the election of a Democratic president is necessary to prevent right-wing justices from being appointed to the Supreme Court. The *Filarsky v. Delia* decision exposes one more time the true colors of the supposedly “liberal” Supreme Court justices appointed by Obama—Sonia Sotomayor and Elena Kagan—both of whom contributed their votes to a unanimous decision expanding immunity for government agents who violate the Constitution. This, moreover, is only the latest in a series of anti-democratic Supreme Court rulings in which the Obama White House intervened in support of attacks on civil liberties and constitutional protections. Earlier this month, the administration lined up with the right-wing bloc on the court in a ruling sanctioning blanket strip searches of people who are arrested even for minor offenses.

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