S._____

To amend the Revised Statutes to reform the defense of qualified immunity in the case of any action under section 1979, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. BRAUN introduced the following bill; which was read twice and referred to the Committee on ____________

A BILL

To amend the Revised Statutes to reform the defense of qualified immunity in the case of any action under section 1979, and for other purposes.

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 “Reforming Qualified
5 Immunity Act”.
6 SEC. 2. FINDINGS.
7 The Congress finds the following:
8 (1) Congress passed the Act of April 20, 1871
9 (commonly known as the “Ku Klux Klan Act”; 17
10 Stat. 13, chapter 22) to combat rampant violations
of civil and constitutionally secured rights across the
nation, particularly in the post-Civil War South.

(2) Included in that Act was a provision, now
codified at section 1979 of the Revised Statues (in
this section referred to as “section 1983”), which
provides a cause of action for individuals to file law-
suits 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 viola-
tion.

(4) From the law’s beginning in 1871, through
the 1960s, government actors were not afforded
qualified immunity for violating rights.

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

(6) The Supreme Court of the United States
later extended the good-faith defense 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 Supreme Court of the United States 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.

(9) As a result, the intent of Congress in passing section 1983 has been frustrated, and the rights secured by the Constitution of the United States have not been appropriately protected.

SEC. 3. SENSE OF THE CONGRESS.

It is the sense of the Congress that Congress must correct the erroneous interpretation of section 1979 of the Revised Statutes and reform the court-created doctrine of qualified immunity.

SEC. 4. REFORM OF QUALIFIED IMMUNITY.

Section 1979 of the Revised Statutes (42 U.S.C. 1983) is amended—
(1) by inserting ``(a)'' before ``Every person'';

and

(2) by adding at the end the following:
``(b)(1) Except as provided in paragraph (2), it shall not be a defense to any action brought under this section that, at the time of the deprivation—
``(A) the defendant was acting in good faith;
``(B) the defendant believed, reasonably or otherwise, that his or her conduct was lawful;
``(C) the rights, privileges, or immunities secured by the Constitution and laws were not clearly established; or
``(D) the state of the law was such that the defendant could not reasonably have been expected to know whether his or her conduct was lawful.
``(2) A defendant sued in his or her individual capacity under this section shall not be liable if the defendant establishes that, at the time the deprivation occurred—
``(A)(i) the conduct alleged to be unlawful was specifically authorized or required by a Federal statute or regulation, or by a statute passed by the primary legislative body of the State, Territory, or District of Columbia in which the conduct was committed;
“(ii) no court of competent jurisdiction had issued a final decision on the merits holding, without reversal, vacatur, or preemption, that the provision or provisions of the statute or regulation authorizing or requiring such conduct were inconsistent with the Constitution or Federal laws; and

“(iii) the defendant reasonably believed that his or her conduct was in conformance with the Constitution of the United States and Federal laws; or

“(B)(i) a court of competent jurisdiction had issued a final decision on the merits holding, without reversal, vacatur, or preemption, that the specific conduct alleged to be unlawful was consistent with the Constitution of the United States and Federal laws; and

“(ii) the defendant reasonably believed that his or her conduct was in conformance with the Constitution of the United States and Federal laws.

“(c)(1) In a covered action, a municipality or other unit of local government shall be liable for a violation of subsection (a) by an agent or employee of the municipality or other unit of local government acting within the scope of his or her employment.

“(2) It shall not be a defense to a covered action described in paragraph (1) that—
“(A) the agent or employee was acting in good faith, or that the agent or employee believed, reasonably or otherwise, that his or her conduct was lawful at the time when it was committed; or

“(B) the rights, privileges, or immunities secured by the Constitution and laws were not clearly established at the time of their deprivation by the agent or employee, or that at this time, the state of the law was otherwise such that the agent or employee could not reasonably have been expected to know whether his or her conduct was lawful.

“(d) In this section—

“(1) the term ‘court of competent jurisdiction’ means—

“(A) the Supreme Court of the United States;

“(B) a district court or court of appeals of the United States that has jurisdiction over the territory in which the deprivation occurred; or

“(C) a court of general jurisdiction of a State, Territory, or District that has jurisdiction over the territory in which the deprivation occurred;

“(2) the term ‘covered action’ means an action under subsection (a) against—
“(A) an agent or employee of a municipality or other unit of local government acting in his or her official capacity; or

“(B) a municipality or other unit of local government; and

“(3) the term ‘defendant’ does not include—

“(A) a municipality or other unit of local government; or

“(B) an individual employed by a municipality or other unit of local government acting in his or her official capacity.”.