SUPREME COURT OF THE UNITED STATES

No. 91–126

HOWARD WYATT, PETITIONER *v.* BILL COLE AND JOHN ROBBINS, II

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[May 18, 1992]

JUSTICE O'CONNOR delivered the opinion of the Court.

In *Lugar* v. *Edmondson Oil Co.*, 457 U. S. 922 (1982), we left open the question whether private defendants charged with 42 U. S. C. §1983 liability for invoking state replevin, garnishment, and attachment statutes later declared unconstitutional are entitled to qualified immunity from suit. *Id.*, at 942, n. 23. We now hold that they are not.

This dispute arises out of a soured cattle partnership. In July 1986, respondent Bill Cole sought to dissolve his partnership with petitioner Howard Wyatt. When no agreement could be reached, Cole, with the assistance of an attorney, respondent John Robbins II, filed a state court complaint in replevin against Wyatt, accompanied by a replevin bond of $18,000.

At that time, Mississippi law provided that an individual could obtain a court order for seizure of property possessed by another by posting a bond and swearing to a state court that the applicant was entitled to that property, and that the adversary ``wrongfully took and detain[ed] or wrongfully detain[ed]'' the property. 1975 Miss. Gen. Laws, ch. 508,
§1. The statute gave the judge no discretion to deny a writ of replevin.

After Cole presented a complaint and bond, the court ordered the County Sheriff to seize 24 head of cattle, a tractor, and certain other personal property from Wyatt. Several months later, after a postseizure hearing, the court dismissed Cole's complaint in replevin and ordered the property returned to Wyatt. When Cole refused to comply, Wyatt brought suit in Federal District Court, challenging the constitutionality of the statute and seeking injunctive relief and damages from respondents, the County Sheriff, and the deputies involved in the seizure.

The District Court held that the statute's failure to afford judges discretion to deny writs of replevin violated due process. 710 F. Supp. 180, 183 (SD Miss. 1989).[1] It dismissed the suit against the government officials involved in the seizure on the ground that they were entitled to qualified immunity. App. 17–18. The court also held that Cole and Robbins, even if otherwise liable under §1983, were entitled to qualified immunity from suit for conduct arising prior to the statute's invalidation. *Id.*, at 12–14. The Court of Appeals for the Fifth Circuit affirmed the District Court's grant of qualified immunity to the private defendants. 928 F. 2d 718 (1991).

We granted certiorari, 502 U. S. ___ (1991), to resolve a conflict among the Courts of Appeals over whether private defendants threatened with 42 U. S. C. §1983 liability are, like certain government officials, entitled to qualified immunity from suit. Like the Fifth Circuit, the Eighth and Eleventh Circuits have determined that private defendants are entitled to qualified immunity. See *Buller* v. *Buechler*, 706 F. 2d 844, 850–852 (CA8 1983); *Jones* v. *Preuit & Mauldin*, 851 F. 2d 1321, 1323–1325 (CA11 1988) (en banc), vacated on other grounds, 489 U. S. 1002 (1989). The First

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[1]The State amended the statute in 1990. Miss. Code Ann. §11–37–101 (Supp. 1991).

and Ninth Circuits, however, have held that in certain circumstances, private parties acting under color of state law are not entitled to such an immunity. See *Downs* v. *Sawtelle*, 574 F. 2d 1, 15–16 (CA1), cert. denied, 439 U. S. 910 (1978); *Conner* v. *Santa Ana*, 897 F. 2d 1487, 1492, n. 9 (CA9), cert. denied, 498 U. S. ___ (1990); *Howerton* v. *Gabica*, 708 F. 2d 380, 385, n. 10 (CA9 1983). The Sixth Circuit has rejected qualified immunity for private defendants sued under §1983 but has established a good faith defense. *Duncan* v. *Peck*, 844 F. 2d 1261 (CA6 1988).

Title 42 U. S. C. §1983 provides a cause of action against ``[e]very person who, under color of any statute . . . of any State . . . subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws . . . .'' The purpose of §1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails. *Carey* v. *Piphus*, 435 U. S. 247, 254–257 (1978). In *Lugar* v. *Edmondson Oil Co.*, 457 U. S. 922 (1982), the Court considered the scope of §1983 liability in the context of garnishment, prejudgment attachment, and replevin statutes. In that case, the Court held that private parties who attached a debtor's assets pursuant to a state attachment statute were subject to §1983 liability if the statute was constitutionally infirm. Noting that our garnishment, prejudgment attachment, and replevin cases established that private use of state laws to secure property could constitute ``state action'' for purposes of the Fourteenth Amendment, *id.*, at 932–935, the Court held that private defendants invoking a state-created attachment statute act ``under color of state law'' within the meaning of §1983 if their actions are ``fairly attributable to the State.'' *Id.*, at

937. This requirement is satisfied, the Court held, if two conditions are met. First, the ``deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible.'' *Ibid.* Second, the private party must have ``acted together with or . . . obtained significant aid from state officials'' or engaged in conduct ``otherwise chargeable to the State.'' *Ibid.* The Court found potential §1983 liability in *Lugar* because the attachment scheme was created by the State and because the private defendants, in invoking the aid of state officials to attach the disputed property, were ``willful participant[s] in joint activity with the State or its agents.'' *Id.*, at 941 (internal quotation marks omitted).

Citing *Lugar*, the District Court assumed that Cole, by invoking the state statute, had acted under color of state law within the meaning of §1983, and was therefore liable for damages for the deprivation of Wyatt's due process rights. App. 12. With respect to Robbins, the court noted that while an action taken by an attorney in representing a client ``does not normally constitute an act under color of state law . . . an attorney is still a person who may conspire to act under color of state law in depriving another of secured rights.'' *Id.*, at 13. The court did not determine whether Robbins was liable, however, because it held that both Cole and Robbins were entitled to qualified immunity from suit at least for conduct prior to the statute's invalidation. *Id.*, at 13–14.

Although the Court of Appeals did not review whether, in the first instance, Cole and Robbins had acted under color of state law within the meaning of §1983, it affirmed the District Court's grant of qualified immunity to respondents. In so doing, the Court of Appeals followed one of its prior cases, *Folsom Investment Co.* v. *Moore*, 681 F. 2d 1032 (CA5

1982), in which it held that ``a §1983 defendant who has invoked an attachment statute is entitled to an immunity from monetary liability so long as he neither knew nor reasonably should have known that the statute was uncon-stitutional.'' *Id.*, at 1037. The court in *Folsom* based its holding on two grounds. First, it viewed the existence of a common law probable cause defense to the torts of malicious prosecution and wrongful attachment as evidence that ``Congress in enacting §1983 could not have intended to subject to liability those who in good faith resorted to legal process.'' *Id.*, at 1038. Although it acknowledged that a defense is not the same as an immunity, the court maintained that it could ``transfor[m] a common law defense extant at the time of §1983's passage into an immunity.'' *Ibid.* Second, the court held that while immunity for private parties is not derived from official immunity, it is based on ``the important public interest in permitting ordinary citizens to rely on presumptively valid state laws, in shielding citizens from monetary damages when they reasonably resort to a legal process later held to be unconstitutional, and in protecting a private citizen from liability when his role in any unconstitutional action is marginal.'' *Id.*, at 1037. In defending the decision below, respondents advance both arguments put forward by the Court of Appeals in *Folsom*. Neither is availing.

Section 1983 ``creates a species of tort liability that on its face admits of no immunities.'' *Imbler* v. *Pachtman*, 424 U. S. 409, 417 (1976). Nonetheless, we have accorded certain government officials either absolute or qualified immunity from suit if the ``tradition of immunity was so firmly rooted in the common law and was supported by such strong policy reasons that `Congress would have specifically so provided had it wished to abolish the doctrine.'''

Owen v. *City of Independence*, 445 U. S. 622, 637 (1980) (quoting *Pierson* v. *Ray*, 386 U. S. 547, 555 (1967)). If parties seeking immunity were shielded from tort liability when Congress enacted the Civil Rights Act of 1871—§1 of which is codified at 42 U. S. C. §1983—we infer from legislative silence that Congress did not intend to abrogate such immunities when it imposed liability for actions taken under color of state law. See *Tower* v. *Glover*, 467 U. S. 914, 920 (1984); *Imbler*, *supra*, at 421; *Pulliam* v. *Allen*, 466 U. S. 522, 529 (1984). Additionally, irrespective of the common law support, we will not recognize an immunity available at common law if §1983's history or purpose counsel against applying it in §1983 actions. *Tower*, *supra*, at 920. See also *Imbler*, *supra*, at 424–429.

In determining whether there was an immunity at common law that Congress intended to incorporate in the Civil Rights Act, we look to the most closely analogous torts—in this case, malicious prosecution and abuse of process. At common law, these torts provided causes of action against private defendants for unjustified harm arising out of the misuse of governmental processes. 2 C. Addison, Law of Torts §1, p. 65, ¶852, and n. 2, p. 82, ¶ 868, and n. 1 (1876); T. Cooley, Law of Torts 187–190 (1879); J. Bishop, Commentaries on Non-Contract Law §§228–250, pp. 91–103, §490, p. 218 (1889).

Respondents do not contend that private parties who instituted attachment proceedings and who were subsequently sued for malicious prosecution or abuse of process were entitled to absolute immunity. And with good reason; although public prosecutors and judges were accorded absolute immunity at common law, *Imbler* v. *Pachtman*, *supra*, at 421–424, such protection did not extend to complaining witnesses who, like respondents, set the wheels of government in motion by instigating a legal action. *Malley* v. *Briggs*, 475 U. S. 335, 340–341 (1986) (``In 1871, the

generally accepted rule was that one who procured the issuance of an arrest warrant by submitting a complaint could be held liable if the complaint was made maliciously and without probable cause'').

Nonetheless, respondents argue that at common law, private defendants could defeat a malicious prosecution or abuse of process action if they acted without malice and with probable cause, and that we should therefore infer that Congress did not intend to abrogate such defenses when it enacted the Civil Rights Act of 1871. We adopted similar reasoning in *Pierson* v. *Ray*, 386 U. S., at 555–557. There, we held that police officers sued for false arrest under §1983 were entitled to the defense that they acted with probable cause and in good faith when making an arrest under a statute they reasonably believed was valid. We recognized this defense because peace officers were accorded protection from liability at common law if they arrested an individual in good faith, even if the innocence of such person were later established. *Ibid.*

The rationale we adopted in *Pierson* is of no avail to respondents here. Even if there were sufficient common law support to conclude that respondents, like the police officers in *Pierson*, should be entitled to a good-faith defense, that would still not entitle them to what they sought and obtained in the courts below: the qualified *immunity* from suit accorded government officials under *Harlow* v. *Fitzgerald*, 457 U. S. 800 (1982).

In *Harlow*, we altered the standard of qualified immunity adopted in our prior §1983 cases because we recognized that ``[t]he subjective element of the good-faith defense frequently [had] prove[n] incompatible with our admonition . . . that insubstantial claims should not proceed to trial.'' *Id.*, at 815–816. Because of the attendant harms to government effectiveness caused by lengthy judicial inquiry into subjective motivation, we concluded that

``bare allegations of malice should not suffice to subject government officials either to the costs of trial or to the burdens of broad-reaching discovery.'' *Id.*, at 817–818. Accordingly, we held that government officials performing discretionary functions are shielded from ``liability for civil damages insofar as their conduct [did] not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'' *Id.*, at 818. This wholly objective standard, we concluded, would ``avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment.'' *Ibid.*

That *Harlow* ``completely reformulated qualified immunity along principles not at all embodied in the common law'' *Anderson* v. *Creighton*, 483 U. S. 635, 645 (1987), was reinforced by our decision in *Mitchell* v. *Forsyth*, 472 U. S. 511 (1985). *Mitchell* held that *Harlow* established an ``*immunity from suit* rather than a mere defense to liability,'' which, like an absolute immunity, ``is effectively lost if a case is erroneously permitted to go to trial.'' 472 U. S., at 526 (emphasis supplied). Thus, we held in *Mitchell* that the denial of qualified immunity should be immediately appealable. *Id.*, at 530.

It is this type of objectively determined, immediately appealable immunity that respondents asserted below.[2] But, as our precedents make clear,

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[2]In arguing that respondents are entitled to qualified immunity under *Harlow* v. *Fitzgerald*, 457 U. S. 800 (1982), the dissent mixes apples and oranges. Even if we were to agree with the dissent's proposition that elements a plaintiff was required to prove as part of her case-in-chief could somehow be construed as a ```defense,''' *post*, at 1, n. 1, and that this ``defense'' entitles private citizens to some protection from liability,

the reasons for recognizing such an immunity were based not simply on the existence of a good-faith defense at common law, but on the special policy concerns involved in suing government officials. *Harlow*, *supra*, at 813; *Mitchell*, *supra*, at 526. Reviewing these concerns, we conclude that the rationales mandating qualified immunity for public officials are not applicable to private parties.

Qualified immunity strikes a balance between compensating those who have been injured by official conduct and protecting government's ability to perform its traditional functions. *Harlow*, *supra*, at

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we cannot agree that respondents are entitled to *immunity from suit* under *Harlow*. One could reasonably infer from the fact that a plaintiff's malicious prosecution or abuse of process action failed if she could not affirmatively establish both malice and want of probable cause that plaintiffs bringing an analogous suit under §1983 should be required to make a similar showing to sustain a §1983 cause of action. Alternatively, if one accepts the dissent's characterization of the common law as establishing an affirmative ``defense'' for private defendants, then one could also conclude that private parties sued under §1983 should likewise be entitled to assert an affirmative defense based on a similar showing of good faith and/or probable cause. In neither case, however, is it appropriate to make the dissent's leap: that because these common law torts partially included an objective component—probable cause—private defendants sued under §1983 should be entitled to the objectively-determined, immediately-appealable immunity from suit accorded certain government officials under *Harlow*.

819; *Pierson*, *supra*, at 554; *Anderson*, *supra*, at 638. Accordingly, we have recognized qualified immunity for government officials where it was necessary to preserve their ability to serve the public good or to ensure that talented candidates were not deterred by the threat of damage suits from entering public service. See, *e. g.*, *Wood* v. *Strickland*, 420 U. S. 308, 319 (1975) (denial of qualified immunity to school board officials ```would contribute not to principled and fearless decision-making but to intimidation''') (quoting *Pierson*, *supra*, at 554); *Butz* v. *Economou*, 438 U. S. 478, 506 (1978) (immunity for Presidential aides warranted partly ``to protect officials who are required to exercise their discretion and the related public interest in encouraging the vigorous exercise of official authority''); *Mitchell*, *supra*, at 526 (immunity designed to prevent the ```distraction of officials from their governmental duties, inhibition of discretionary action, and deterrence of able people from public service''') (quoting *Harlow*, *supra*, at 816). In short, the qualified immunity recognized in *Harlow* acts to safeguard government, and thereby to protect the public at large, not to benefit its agents.

These rationales are not transferable to private parties. Although principles of equality and fairness may suggest, as respondents argue, that private citizens who rely unsuspectingly on state laws they did not create and may have no reason to believe are invalid should have some protection from liability, as do their government counterparts, such interests are not sufficiently similar to the traditional purposes of qualified immunity to justify such an expansion. Unlike school board members, see *Wood*, *supra*, or police officers, see *Malley* v. *Briggs*, 475 U. S. 335 (1986), or Presidential aides, see *Butz*, *supra*, private parties hold no office requiring them to exercise discretion; nor are they principally concerned with enhancing the public good. Accordingly, extending *Harlow* qualified immunity to private parties would

have no bearing on whether public officials are able to act forcefully and decisively in their jobs or on whether qualified applicants enter public service. Moreover, unlike with government officials performing discretionary functions, the public interest will not be unduly impaired if private individuals are required to proceed to trial to resolve their legal disputes. In short, the nexus between private parties and the historic purposes of qualified immunity is simply too attenuated to justify such an extension of our doctrine of immunity.

For these reasons, we can offer no relief today. The question on which we granted certiorari is a very narrow one: ``[W]hether private persons, who conspire with state officials to violate constitutional rights, have available the good faith immunity applicable to public officials.'' Pet. for Cert. i. The precise issue encompassed in this question, and the only issue decided by the lower courts, is whether qualified immunity, as enunciated in *Harlow*, *supra*, is available for private defendants faced with §1983 liability for invoking a state replevin, garnishment or attachment statute. That answer is no. In so holding, however, we do not foreclose the possibility that private defendants faced with §1983 liability under *Lugar* v. *Edmondson Oil Co.*, 457 U. S. 922 (1982), could be entitled to an affirmative defense based on good faith and/or probable cause or that §1983 suits against private, rather than governmental, parties could require plaintiffs to carry additional burdens. Because those issues are not fairly before us, however, we leave them for another day. Cf. *Yee* v. *Escondido*, ___ U. S. ___ (1992) (draft op., at 13–17).

As indicated above, the District Court assumed that under *Lugar* v. *Edmondson Oil Co.*, 457 U. S. 922 (1982), Cole was liable under §1983 for invoking the state replevin under bond statute, and intimated that,

but did not decide whether, Robbins also was subject to §1983 liability. The Court of Appeals never revisited this question, but instead concluded only that respondents were entitled to qualified immunity at least for conduct prior to the statute's invalidation. Because we overturn this judgment, we must remand since there remains to be determined, at least, whether Cole and Robbins, in invoking the replevin statute, acted under color of state law within the meaning of *Lugar*, *supra*. The decision of the Court of Appeals is reversed and the case is remanded for proceedings consistent with this opinion.

It is so ordered.