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## **NCLA Asks U.S. Supreme Court to Rein in Qualified Immunity for Officials Who Violate Speech Rights**

*William Felkner v. John Nazarian, et al.*

**Washington, DC (September 18, 2023)** – Invoking the contentious “qualified immunity” doctrine, state courts in Rhode Island prevented Rhode Island College (RIC) officials from facing civil liability for violating a student’s First Amendment rights to free speech and expression. The officials had expelled NCLA’s client, William Felkner, for refusing to parrot the school’s progressive ideological perspective on social work. Today, NCLA [petitioned](#) the U.S. Supreme Court for a *writ of certiorari* in *William Felkner v. John Nazarian, et al.*, asking the Justices to reexamine the doctrine and abolish the ahistorical standard for “qualified immunity” that requires violations of the law to be “clearly established” via prior court precedents before officials can be held to account. In particular, Felkner’s petition asks the justices to decide whether deskbound officials, who have time to consider the law and to consult legal counsel, deserve qualified immunity for violating people’s rights. Unlike officers in the field, school officials do not have to make split-second, life-or-death decisions with limited information.

The faculty of the public RIC’s Master of Social Work program were hostile to then-student William Felkner’s conservative/libertarian views, repeatedly hindering, for ideological reasons, his progression through the program until the interim dean dismissed him from the program entirely in 2008. One professor even tried to force Mr. Felkner to advocate for legislation he personally opposed and failed him when he argued instead for the bill’s defeat. In 2019, the Supreme Court of Rhode Island decided that Mr. Felkner presented sufficient evidence to establish that university officials in fact had violated his rights to free speech and expression.

However, on remand, the Rhode Island Superior Court granted the RIC officials “qualified immunity” because it was not “clearly established” ahead of time that their conduct would violate Mr. Felkner’s free speech rights. The Supreme Court of Rhode Island upheld that ruling on a second appeal to that court, relying on the “clearly established law” standard to question whether a “reasonable educator would have understood what they were doing violated a student’s constitutional rights.”

NCLA urges the U.S. Supreme Court to take account of recent scholarship which concludes that qualified immunity has been textually unmoored and historically flawed since its creation, and to reconsider whether the doctrine still serves any positive goals. The Court should recognize that the “clearly established law” standard lacks a textual or historical basis and has proven unworkable, forcing the justices to correct lower courts’ mistakes repeatedly while providing little more than “I know it when I see it” guidance. Hence, the Court should discard the doctrine, at least as applied to officials with ample time to research the law before violating someone’s rights.

### **NCLA released the following statements:**

“This judge-made doctrine, concocted a century after post-Civil War legislation intended to protect Americans’ civil rights, allows government officials not only to deprive Americans of their civil liberties, but encourages unprecedented new incursions. Any rule creating such perverse incentives must be abandoned.”

— **Peggy Little, Senior Litigation Counsel, NCLA**

“Qualified immunity doctrine runs contrary to the will of Congress, stunts the development of constitutional law, and encourages government officials to disrespect citizens’ constitutional rights. And it does all of it while increasing, rather than decreasing, litigation costs. It is time for the Court to abrogate this ill-considered doctrine.”  
— **Greg Dolin, Senior Litigation Counsel, NCLA**

“The Supreme Court has yet to address the fundamental flaws with the clearly established law standard—flaws conservatives and liberals alike condemn and ones which recent academic scholarship confirms.”  
— **Margot Cleveland, Of Counsel, NCLA**

**For more information visit the case page [here](#).**

## **ABOUT NCLA**

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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