

VOL 27 ISS 1 | 0 | INTRODUCTION

It is generally thought that some of those who serve in government should possess some degree of immunity from civil liability for acts performed as part of their official duties.¹ This is considered necessary so that government officials who are called upon to exercise discretion in their duties will not be deterred from vigorously performing their jobs in the public interest.² Thus, in the United States, members of the executive branch, such as governors,³ teachers,⁴ police officers,⁵ and prison officials,⁶ have been granted, under the common law, a qualified immunity from civil liability for their official actions. Under this qualified immunity, executive officers are exempt from civil liability for their wrongful behavior unless it can be shown that they knew or should have known that their behavior was improper.⁷

On the other hand, under the common law, legislators enjoy absolute immunity in their official functions,⁸ and judges likewise enjoy absolute immunity from civil liability for their official functions so long as they are not utterly lacking in jurisdiction.⁹ Absolute immunity for judges means that they may not be sued for their wrongful judicial behavior, even when they act for purely corrupt or malicious reasons.¹⁰

The doctrine of judicial immunity is deeply entrenched in our legal system. It has been used to guard judges from common law causes of action, including false imprisonment,¹¹ malicious prosecution,¹² and libel,¹³ as well as from statutory causes of action for the deprivation of civil liberties and constitutional rights.¹⁴ This immunity, however, does not apply to disciplinary actions against judges for violations of the professional and ethical standards that pertain to their conduct. This Article examines the doctrine of judicial immunity in the civil and criminal spheres. It analyzes the application of judicial immunity, as well as its limits, and appraises the notion that judicial immunity must be absolute to be effective.

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Footnotes

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¹ See Jaffe, *Suits Against Government and Officers: Damage Actions*, 77 HARV. L. REV. 209 (1963); McCormack & Kirkpatrick, *Immunities of State Officials Under Section 1983*, 8 RUT.-CAM. L.J. 65 (1976).

² See Jaffe, *supra* note 1; McCormack & Kirkpatrick, *supra* note 1.

³ *Butz v. Economou*, 438 U.S. 478 (1978).

⁴ *Scheuer v. Rhodes*, 416 U.S. 232 (1974).

⁵ *Wood v. Strickland*, 420 U.S. 308 (1975).

⁶ *O'Connor v. Donaldson*, 422 U.S. 563 (1975).

⁷ *Butz v. Economou*, 438 U.S. 478 (1978).

⁸ *Tenney v. Brandhove*, 341 U.S. 367 (1951).

⁹ See *Stump v. Sparkman*, 435 U.S. 349 (1978); *Pierson v. Ray*, 386 U.S. 547 (1967).

¹⁰ See *Pierson*, 386 U.S. at 554; *Stump*, 435 U.S. at 356.

¹¹ *Ravenscroft v. Casey*, 139 F.2d 776 (2d Cir.), cert. denied, 323 U.S. 745 (1944); *Stahl v. Currey*, 135 Ohio St. 253, 20 N.E.2d 529 (1939).

¹² *O'Bryan v. Chandler*, 352 F.2d 987 (10th Cir. 1965), cert. denied, 384 U.S. 926 (1966).

¹³ *Garfield v. Palmieri*, 297 F.2d 526 (2d Cir.), cert. denied, 369 U.S. 871 (1962).

¹⁴ *Pierson*, 386 U.S. at 555; *Stump*, 435 U.S. at 359.