

Clearing the Hurdles:

Getting to a ruling on the merits in the Fifth Circuit

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Judicial Restraint

- You'd like to address merits.
- The Court may not want to.
- Avoidance doctrine.
- Informal avoidance.



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I: QUALIFIED IMMUNITY

Qualified Immunity: What is it?

- Qualified immunity protects government officials when the official's conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."
- An extremely powerful tool for the defense.

Qualified Immunity: Under assault?

- Justice Thomas: Qualified Immunity represents “precisely the sort of free-wheeling policy choices” that the Supreme Court has rejected.
Zigler v. Abassi (2017)
- Prof. William Baude: “The modern doctrine of qualified immunity is inconsistent with conventional principles of law” *Is Qualified Immunity Lawful?*

Qualified Immunity: You can win.

- *Darden v. City of Fort Worth*, 880 F.3d 722 (5th Cir. 2018).
 - Peaceful but resistant suspect was beaten and tased by police during arrest. He suffered a heart attack and died.
 - Over an initial dissent from Judge Southwick, the Fifth Circuit denied qualified immunity.

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