

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

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Thomas B. Plunkett, III
Clerk

No. 25-20348

EVA KRISTINE STRAMASKI,

Plaintiff—Appellee,

versus

MARK LAWLEY, *Individually,*

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-156

Before WILLETT, ENGELHARDT, and DOUGLAS, *Circuit Judges.*
DON R. WILLETT, *Circuit Judge.*

Eva Stramaski complained that her paycheck might arrive late. It arrived on time, but her supervisor at Texas A&M University, Mark Lawley, called her “aggressive” about the issue, sent her home, and gave her a “coaching letter” alleging performance problems. Stramaski disputed the letter and was fired a few days later. She sued Lawley personally under the Fair Labor Standards Act (FLSA), alleging that he retaliated against her for complaining about her pay.

No. 25-20348

This is Lawley’s second appeal. In the first, we held that sovereign immunity did not bar the suit against him personally but left open whether he could claim qualified immunity. On remand, the district court held that he could not. Lawley appealed again.

That question is one of first impression in this circuit: May a public official invoke qualified immunity in an FLSA retaliation suit? The answer is no. The common law did not immunize malicious retaliation when Congress authorized private FLSA retaliation suits, and the policies underlying qualified immunity do not justify extending the defense to such claims.

We therefore AFFIRM the denial of Lawley’s motion to dismiss.

I. BACKGROUND

A. The FLSA

The Fair Labor Standards Act (FLSA), enacted in 1938, establishes nationwide wage-related protections for American workers. It also makes it unlawful “to discharge or in any other manner discriminate against any employee” because they asserted their rights under the Act.”¹ The Act defines “employer” to include “any person acting directly or indirectly in the interest of an employer in relation to an employee.”² We have read that language to permit individual-capacity liability for supervisory employees.³

Congress dealt with employer good faith in two 1947 amendments. Under § 259, an employer who relies in good faith on specified administrative

¹ 29 U.S.C. § 215(a)(3).

² *Id.* § 203(d).

³ *Lee v. Coahoma Cnty.*, 937 F.2d 220, 226 (5th Cir. 1991).

No. 25-20348

guidance regarding wage-and-hour liabilities has a defense.⁴ And § 260 gives courts discretion to withhold liquidated damages if the employer acted in good faith and had reasonable grounds to think its conduct was lawful.⁵ The FLSA says nothing about qualified immunity.⁶

Congress extended the Act to some public employees in 1966⁷ and to state and local employees generally in 1974.⁸ At first, only the Secretary of Labor could enforce the anti-retaliation provision.⁹ But in 1977, Congress authorized private retaliation suits.¹⁰

B. Stramaski's Termination

Eva Stramaski was an academic advisor at Texas A&M through the university's Engineering Experiment Station. In 2019, after taking medical leave, she was told that she needed another doctor's release or her pay would be late. She insisted that she be paid on time. Human resources first said that her pay would be on time, then late, then on time again. She was timely paid after all.

After those exchanges, Mark Lawley—the head of the Industrial and Systems Engineering department and Stramaski's supervisor—called her “aggressive” about the pay issue and sent her home for the day. He then gave

⁴ 29 U.S.C. § 259.

⁵ *Id.* § 260.

⁶ *See generally id.* §§ 201–219.

⁷ *See Garcia v. S.A. Metro. Transit Auth.*, 469 U.S. 528, 533 (1985).

⁸ *See Christensen v. Harris Cnty.*, 529 U.S. 576, 579 (2000).

⁹ *See Pineda v. JTCH Apartments, L.L.C.*, 843 F.3d 1062, 1064 (5th Cir. 2016).

¹⁰ *Id.*; 29 U.S.C. § 216(b).

No. 25-20348

her a “coaching letter” listing alleged performance problems. Stramaski disputed the allegations in a memo. A few days later, Lawley fired her.

C. Procedural History

Stramaski sued Lawley under the FLSA, seeking damages and injunctive and declaratory relief. She alleged that Lawley fired her for asserting her “legal right” to timely pay, and that he acted “knowingly, willfully, and with reckless disregard for the law.” Lawley moved to dismiss under Rules 12(b)(1) and 12(b)(6), invoking sovereign immunity and, alternatively, qualified immunity. The magistrate judge recommended dismissing the claims for injunctive and declaratory relief¹¹ but rejecting both immunity defenses. The district court adopted the recommendation over Lawley’s objections.

Lawley appealed. In *Stramaski I*, we affirmed the denial of sovereign immunity because the claim was against Lawley personally, not the State.¹² We did not decide whether Lawley could invoke qualified immunity. Both parties had assumed the defense applied to FLSA claims, so we left the question open for full briefing and “substantial analysis.”¹³

We remanded for the district court to “make the initial resolution of whether the defense applies to the FLSA,”¹⁴ pointing to *Wyatt v. Cole*’s two-

¹¹ Neither side challenges those rulings.

¹² *Stramaski v. Lawley*, 44 F.4th 318, 322–26 (5th Cir. 2022) (“*Stramaski I*”).

¹³ *Id.* at 326–27.

¹⁴ *Id.*

No. 25-20348

part test.¹⁵ We also noted that, even if qualified immunity did apply, Stramaski had not pleaded a violation of clearly established law.¹⁶

On remand, the magistrate judge concluded that qualified immunity does not apply to the FLSA and recommended denying Lawley's motion to dismiss. The district court adopted the recommendation over Lawley's objections, and Lawley appealed again.

II. JURISDICTION AND STANDARD OF REVIEW

"Jurisdiction is always first."¹⁷ Qualified immunity is a protection from suit, not just liability.¹⁸ So the district court's denial of Lawley's qualified-immunity defense gives us jurisdiction under the collateral-order doctrine and 28 U.S.C. § 1291.¹⁹

"We review denials of qualified immunity at the motion-to-dismiss stage de novo."²⁰ "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face."²¹ "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference

¹⁵ *Id.* (citing 504 U.S. 158, 163–64 (1992)).

¹⁶ *Id.* at 329.

¹⁷ *Green v. Thomas*, 129 F.4th 877, 882 (5th Cir. 2025).

¹⁸ *Carswell v. Camp*, 54 F.4th 307, 310 (5th Cir. 2022).

¹⁹ *Green*, 129 F.4th at 882.

²⁰ *Id.*; see also *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 194 (5th Cir. 2009) ("Within our limited jurisdiction, we review de novo defendants' invocations of qualified immunity.").

²¹ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation marks and citation omitted).

No. 25-20348

that the defendant is liable for the misconduct alleged.”²² When ruling on a Rule 12(b)(6) motion, we may rely on the content of the pleadings and “documents attached to either a motion to dismiss or an opposition . . . when the documents are referred to in the pleadings and are central to a plaintiff’s claims.”²³ “These standards are the same when a motion to dismiss is based on qualified immunity.”²⁴

III. QUALIFIED IMMUNITY UNDER THE FLSA

Stramaski I left one issue for remand: whether qualified immunity applies to an FLSA retaliation claim.²⁵ As explained below, it does not.

To find an atextual immunity defense, the claimed immunity must be both (1) “so firmly rooted in the common law” and (2) “supported by such strong policy reasons” that “Congress would have specifically so provided had it meant to abolish the doctrine.”²⁶ *Wyatt* doesn’t presume immunity as the default. It requires an affirmative historical basis.²⁷ As explained below, Lawley satisfies neither of *Wyatt*’s stringent conditions (and either failure alone would defeat the defense), so qualified immunity does not shield him from *Stramaski*’s FLSA retaliation claim.²⁸

²² *Id.*

²³ *Brand Coupon Network, LLC v. Catalina Mktg. Corp.*, 748 F.3d 631, 635 (5th Cir. 2014).

²⁴ *Dyer v. Houston*, 964 F.3d 374, 379 (5th Cir. 2020).

²⁵ *Stramaski I*, 44 F.4th at 327.

²⁶ *Wyatt*, 504 U.S. at 163–64 (quoting *Owen v. City of Independence*, 445 U.S. 622, 637 (1980)).

²⁷ *Id.* at 164; see also *Buckley v. Fitzsimmons*, 509 U.S. 259, 268–70 (1993) (looking to history and settled expectations in determining the scope of immunity).

²⁸ Because the historical record does not support immunity here, the burden of proof makes no difference. Compare *Butz v. Economou*, 438 U.S. 478, 506 (1978) (placing

No. 25-20348

A. The *Wyatt* Framework

The parties agree that *Wyatt* controls but disagree about how it works. We begin with three questions: What do we make of the FLSA’s silence on immunity? Which common-law tort is the closest analogue to what happened here? And when must the claimed immunity have existed?

1. *Statutory Silence Does Not Settle the Immunity Question*

Stramaski argues that since the FLSA says nothing about qualified immunity, the defense is unavailable. If it were only so simple.

Congress legislates against settled common-law principles unless a statute displaces them.²⁹ Section 1983³⁰ is Exhibit A.³¹ Its text is unequivocal: officials who deprive individuals of their federal rights “shall be liable.” There are no qualified-immunity caveats, carve-outs, or conditions. Yet judges have grafted qualified immunity onto § 1983.³²

the burden on an official seeking an “absolute exemption from personal liability for unconstitutional conduct”), *with Bennett v. City of Grand Prairie*, 883 F.2d 400, 408 (5th Cir. 1989) (placing on the plaintiff the burden of overcoming qualified immunity).

²⁹ See *Pierson v. Ray*, 386 U.S. 547, 554–55 (1967); *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951); see also *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104, 108 (1991) (“[W]here a common-law principle is well established, . . . the courts may take it as given that Congress has legislated with an expectation that the principle will apply except ‘when a statutory purpose to the contrary is evident.’” (quoting *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952))); ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 318 (2012) (“A statute will be construed to alter the common law only when that disposition is clear.”).

³⁰ 42 U.S.C. § 1983.

³¹ See *Imbler v. Pachtman*, 424 U.S. 409, 417 (1976) (applying immunity despite recognizing that § 1983 “creates a species of tort liability that on its face admits of no immunities”).

³² But see generally Alexander A. Reinert, *Qualified Immunity’s Flawed Foundation*, 111 CAL. L. REV. 201 (2023) (arguing that “the Reconstruction Congress adopted explicit

No. 25-20348

The FLSA’s silence does not resolve the issue.³³ We must ask whether the common law recognized the claimed immunity at the time Congress acted.³⁴

2. *Wyatt Requires a Common-Law Analogue*

Although *Wyatt* requires us to review the common-law tradition of immunity for analogous torts, Lawley says no such analogue is needed here. Because official immunity historically depended on function, he would ask only whether firing Stramaski was discretionary. But *Stramaski I* already rejected that position.

Stramaski I read *Wyatt* to require comparison with “the most closely analogous *torts* in the common law.”³⁵ That holding controls.³⁶ Lawley’s cases elide the threshold question before us. *Rehberg*,³⁷ *Briscoe*,³⁸ and *Buckley*³⁹ all address the reach of an *established* immunity. Here, we must first decide whether Lawley has an immunity at all.

text that displaced common law defenses when it enacted the original version of Section 1983”).

³³ See *Wyatt*, 504 U.S. at 164 (“[W]e 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.”).

³⁴ See *id.*

³⁵ *Stramaski I*, 44 F.4th at 327 (emphasis added and internal quotation marks omitted) (quoting *Wyatt*, 504 U.S. at 164).

³⁶ See *In re Ultra Petroleum Corp.*, 28 F.4th 629, 639 (5th Cir. 2022) (“It is well-established in this circuit that one panel of this Court may not overrule another.”).

³⁷ *Rehberg v. Paulk*, 566 U.S. 356, 363–66 (2012).

³⁸ *Briscoe v. LaHue*, 460 U.S. 325, 342 (1983).

³⁹ *Buckley*, 509 U.S. at 268.

No. 25-20348

3. *Wyatt Reviews the Common Law When Congress Acted*

The Supreme Court also instructs us to look to the common law as it stood when Congress acted,⁴⁰ with statutory meaning fixed at that time.⁴¹ In his *Stramaski I* concurrence, JUDGE COSTA said inferring an unwritten immunity was “an extraordinary act of interpretation” that puts timing front and center.⁴² Under *Wyatt*’s “statute-specific analysis,” he explained, the question is whether a “tradition of immunity” existed “when Congress enacted the [FLSA]’s antiretaliation provision.”⁴³ That framing follows from *Stramaski I*’s holding, and we adopt it.

For § 1983, the date was 1871.⁴⁴ So nineteenth-century treatises speak to many of § 1983’s officer-immunity questions.⁴⁵ For the FLSA, the chronology is more complicated. Congress passed it in 1938, added good-faith defenses in 1947, extended coverage to public employees in 1966 and 1974, and authorized a private retaliation action in 1977.

For *Wyatt*’s first prong, the precise date makes no difference. Malice defeated immunity throughout the relevant period. The second prong points

⁴⁰ See *Wyatt*, 504 U.S. at 163–64; see also *Tower v. Glover*, 467 U.S. 914, 920 (1984).

⁴¹ See *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018) (“[E]very statute’s meaning is fixed at the time of enactment[.]”); SCALIA & GARNER, *supra*, at 78 (“Words must be given the meaning they had when the text was adopted.”); *id.* at 16 (“In their full context, words mean what they conveyed to reasonable people at the time they were written.”).

⁴² *Stramaski I*, 44 F.4th at 329 (COSTA, J., concurring).

⁴³ *Id.* at 329–31.

⁴⁴ *Wyatt*, 504 U.S. at 163–64; see also *Wyatt v. Cole*, 994 F.2d 1113, 1118 (5th Cir. 1993) (“As the [Supreme] Court stressed in *Wyatt*, it has consistently recognized that Congress, in enacting the Civil Rights Act of 1871, legislated against a background of common-law tort liability.”).

⁴⁵ But see Reinert, *supra*, at 166–67, 172–74 (contending that the original, as-passed version of § 1983 explicitly displaced common-law immunities).

No. 25-20348

naturally to 1977. That’s when Congress authorized private retaliation suits—the very sort of suit from which Lawley now claims immunity.

B. Neither *Wyatt* Prong Supports Immunity for FLSA Retaliation

Neither the common law nor the rationale for qualified immunity supports Lawley’s defense.

1. The Common Law Did Not Immunize Malicious Retaliation

Wyatt asks for the common-law tort “most closely analogous” to the alleged conduct.⁴⁶ We need not find a nineteenth-century “dead ringer” or “historical twin.”⁴⁷ But the analogy must account for the retaliation Stramaski alleges.

Retaliatory discharge is the closest analogue.⁴⁸ Stramaski alleges that Lawley fired her because she asserted a statutory right. She challenges Lawley’s *motive*, not his *authority*. And at common law, malice or bad faith defeated immunity.

The Restatement of Employment Law cites decisions predating 1977 that recognized claims for discharges contrary to public policy.⁴⁹ Courts were

⁴⁶ *Stramaski I*, 44 F.4th at 327 (quoting *Wyatt*, 504 U.S. at 164); *see also Janus v. AFSCME, Council 31*, 942 F.3d 352, 364–65 (7th Cir. 2019) (same).

⁴⁷ *See United States v. Rahimi*, 602 U.S. 680, 692 (2024) (rejecting a requirement of a “dead ringer” or a “historical twin”); *id.* at 704 (BARRETT, J., concurring) (“‘Analogical reasoning’ . . . demands a wider lens: Historical regulations reveal a principle, not a mold [and] . . . a court must be careful not to read a principle at such a high level of generality that it waters down the right.”).

⁴⁸ In *Stramaski I*, JUDGE COSTA suggested that “intentional retaliation in the workplace” was the closest tort analogue. 44 F.4th at 331 (COSTA, J., concurring).

⁴⁹ RESTATEMENT OF EMP. L. § 5.01 (AM. L. INST. 2015) (“wrongful discharge in violation of public policy”); *see, e.g., Sventko v. Kroger Co.*, 245 N.W.2d 151, 153 (Mich. Ct. App. 1976) (“Discouraging the fulfillment of [worker’s compensation] by use of the most powerful weapon at the disposal of the employer, termination of employment, is obviously against the public policy of our state.”); *Nees v. Hocks*, 536 P.2d

No. 25-20348

thus familiar with retaliatory discharge when Congress authorized private FLSA retaliation suits.

Lawley argues for a broader analogue. He cites cases and treatises recognizing immunity for public officials' discretionary acts, including personnel decisions. He also relies on Scott Keller's historical survey, which describes "a freestanding qualified immunity protecting all government officers' discretionary duties,"⁵⁰ subject to exceptions for ministerial acts and acts outside the officer's jurisdiction.⁵¹ Lawley thus contends the proper analogue is wrongful discharge or, more broadly, a discretionary personnel decision.⁵²

We disagree. Neither analogue accounts for Stramaski's allegation that Lawley fired her because she complained about her pay.

Lawley contends that focusing on retaliation reduces "the concept of an 'analogous tort' to the point of absurdity." He cites *Rehberg*'s observation

512, 515–16 (Or. 1975) (recognizing that "there can be circumstances in which an employer discharges an employee for such a socially undesirable motive that the employer must respond in damages for any injury done" and holding that the employers were "liable for discharging plaintiff because she served on [a] jury"); *Frampton v. Cent. Ind. Gas Co.*, 297 N.E.2d 425, 428 (Ind. 1973) ("Retaliatory discharge for filing a workmen's compensation claim is a wrongful, unconscionable act and should be actionable in a court of law."); *Petermann v. Int'l Bhd. of Teamsters*, 344 P.2d 25, 27–28 (Cal. Ct. App. 1959) (recognizing claim of employee discharged for refusing to commit perjury).

⁵⁰ Scott A. Keller, *Qualified and Absolute Immunity at Common Law*, 73 STAN. L. REV. 1337, 1344 (2021).

⁵¹ *Id.* at 1377.

⁵² Under Lawley's approach, nearly any adverse personnel decision could be immune from retaliation claims. That would bypass the statute-specific inquiry *Wyatt* requires. See 504 U.S. at 163–64; see also *Stramaski I*, 44 F.4th at 329–31 (COSTA, J., concurring).

No. 25-20348

that analogies to common-law actions “are bound to be imperfect.”⁵³ Even so, *Rehberg* does not require us to disregard the alleged motive.

The magistrate judge captured the distinction: wrongful discharge tells us what happened; retaliation tells us why. He called the appropriate analogue a “retaliatory employment action”—here, retaliatory discharge.

Lawley’s cases do not establish a historical good-faith defense. All were decided after 1977, so they tell us little about the immunity backdrop against which Congress authorized private retaliation suits.⁵⁴

Even under Lawley’s broader analogue, he fares no better. Lawley cites Mechem’s 1890 treatise, which did recognize immunity for school officials’ discretionary acts . . . but not if they acted “wilfully or maliciously.”⁵⁵ Cooley’s treatise likewise denied the privilege when an officer acted from an “improper or wrongful motive.”⁵⁶

The nineteenth-century Supreme Court cases Lawley cites took the same approach. *Wilkes v. Dinsman* protected “mere errors of judgment” but not conduct marked by “malice, cruelty . . . ill-will, a depraved disposition, or vindictive feeling.”⁵⁷ *Kendall v. Stokes* protected an official who acted

⁵³ See *Rehberg*, 566 U.S. at 366 (quoting *Wilson v. Garcia*, 471 U.S. 261, 272 (1985)).

⁵⁴ *Murphy v. City of Topeka-Shawnee Cnty. Dep’t of Labor Serv.*, 630 P.2d 186 (Kan. Ct. App. 1981); *Behan v. Gagliano*, 581 A.2d 854 (Md. App. Ct. 1990); *Rico v. State*, 472 N.W.2d 100 (Minn. 1991).

⁵⁵ FLOYD R. MECHEM, A TREATISE ON THE LAW OF PUBLIC OFFICES AND OFFICERS §§ 718–19 (1890).

⁵⁶ THOMAS M. COOLEY, A TREATISE ON THE LAW OF TORTS OR THE WRONGS WHICH ARISE INDEPENDENT OF CONTRACT 185 (Chicago, Callaghan & Co. 1879).

⁵⁷ 48 U.S. (7 How.) 89, 129–31 (1849).

No. 25-20348

“without malice.”⁵⁸ *Otis v. Watkins* allowed proof of malice to defeat the protection.⁵⁹

Same for Lawley’s state-court cases. *Burton v. Fulton* immunized officials “unless malice and injury were the impelling motives.”⁶⁰ *Chamberlain v. Clayton* permitted liability only for “wilful, corrupt, or malicious” conduct.⁶¹ And *School District No. 18 of Kearny County v. Davies* treated the school board’s action as final only “in the absence of fraud, corruption, or oppression.”⁶²

Hayes v. Cape Henlopen School District, decided only a few years before 1977, comes closer.⁶³ The case involved alleged retaliation against a school employee for protected activity. Although the court found no bad faith on the facts,⁶⁴ it stated that firing an employee in retaliation for protected activity “would have violated the plaintiffs’ constitutional rights and would be prohibited.”⁶⁵

On this vital point, none of the authorities that Lawley marshals—state or federal, case or treatise—immunized knowing and willful retaliation against a public employee.

Keller’s survey recognizes the same limit. The discretionary-duty immunity he describes “could be overcome if a plaintiff established clear

⁵⁸ 44 U.S. (3 How.) 87, 99 (1845).

⁵⁹ 13 U.S. (9 Cranch) 339, 356 (1815).

⁶⁰ 49 Pa. 151, 154–55 (1865).

⁶¹ 9 N.W. 237, 238 (Iowa 1881).

⁶² 76 P. 409, 411 (Kan. 1904).

⁶³ 341 F. Supp. 823, 827 (D. Del. 1972).

⁶⁴ *Id.* at 829.

⁶⁵ *Id.* at 836.

No. 25-20348

evidence of subjective malice.”⁶⁶ Even under Lawley’s account of the common law, malice defeated immunity.

Lawley nevertheless points to a later development in qualified-immunity doctrine. In *Harlow v. Fitzgerald*, decided five years after Congress authorized private FLSA retaliation suits, the Supreme Court replaced the subjective good-faith inquiry with an objective test: whether the official violated clearly established law.⁶⁷ As Lawley sees it, once some historical basis for immunity exists, *Harlow*’s objective test takes over, even if malice would have defeated the immunity at common law.⁶⁸

But that skips the question *Wyatt* requires us to answer: whether qualified immunity is available under the FLSA at all. And to answer that question, we look to “the common law as it existed when Congress passed [the statute].”⁶⁹ The magistrate judge put it this way: “Lawley wants to be able to point to *any* immunity available for a public official and then graft on the modern-day qualified immunity, even though the common law of the relevant time period would not have permitted a public official to escape answering for the conduct alleged here—intentional retaliation.”

The question, then, is what common-law immunity existed when Congress acted. The relevant dates—1938, 1966, 1974, and 1977—all precede *Harlow*.⁷⁰ In 1975, *Wood v. Strickland* reiterated that malice defeated

⁶⁶ Keller, *supra*, at 1359.

⁶⁷ 457 U.S. 800, 817–18 (1982).

⁶⁸ *Harlow* governs qualified immunity in § 1983 suits, including claims involving improper motive. It does not establish that qualified immunity is available under the FLSA.

⁶⁹ *Filarsky v. Delia*, 566 U.S. 377, 384 (2012).

⁷⁰ *Harlow*, 457 U.S. at 818.

No. 25-20348

official immunity.⁷¹ Two years later, Congress authorized private FLSA retaliation suits.

Wyatt was decided a decade after *Harlow*. But the Court looked to the common law of 1871 to determine what immunity § 1983 incorporated.⁷² JUSTICE KENNEDY’s concurrence described *Harlow* as a departure from historical reasoning and warned against adopting it in other contexts.⁷³

Lawley’s cases show that the common law protected officials exercising discretion. But none of them extends that immunity to malicious conduct.

He therefore fails *Wyatt*’s first prong, which alone defeats the immunity defense. But we address the second prong as well.

2. Immunity Would Undermine the FLSA’s Anti-Retaliation Protection

That leaves the policy question, whether the reasons for qualified immunity are compatible with the FLSA’s protection against retaliation. Lawley says the specter of litigation will make public officials reluctant to make good-faith personnel decisions, and some people will think twice about

⁷¹ 420 U.S. 308, 322 (1975) (holding that a “malicious intention to cause a deprivation of constitutional rights or other injury” defeats official immunity).

⁷² *Wyatt*, 504 U.S. at 164–68.

⁷³ *Id.* at 170–72 (KENNEDY, J., concurring) (explaining that *Harlow* “diverged . . . from the historical standards” because of “special policy concerns” and should not be “extend[ed] . . . to other contexts”). On remand in *Wyatt*, we drew on JUSTICE KENNEDY’s concurrence, *id.* at 169–74, and CHIEF JUSTICE REHNQUIST’s dissent, *id.* at 175, to address the good-faith defense the majority had left open, *id.* at 168–69 (majority opinion). *Wyatt*, 994 F.2d at 1118–20. *Stramaski I* described JUSTICE KENNEDY’s concurrence as “seemingly controlling” on that question. 44 F.4th at 330 n.1.

No. 25-20348

public service altogether.⁷⁴ Stramaski sees a different danger: that immunity would discourage employees from complaining about FLSA violations.

We must decide whether the reasons for qualified immunity justify its application to FLSA retaliation claims.⁷⁵ That part of *Wyatt* comes from *Owen v. City of Independence*, which asked whether the “rationale” for an immunity “was compatible with the purposes of” § 1983 when it was passed.⁷⁶ Congress created the FLSA’s private retaliation action in 1977. Until then, only the Secretary of Labor could enforce § 215(a)(3). The question is whether the usual justifications for qualified immunity can be squared with the private retaliation suits that Congress authorized in 1977?⁷⁷

The FLSA protects wages and working conditions.⁷⁸ And § 215(a)(3) specifically protects employees who complain about violations of the Act. Allowing officials to claim qualified immunity for retaliation would undermine that protection.

Our decision in *Samuel v. Holmes*, involving a similar anti-retaliation provision, supports that conclusion.⁷⁹ There, we held qualified immunity unavailable under the whistleblower provision of the False Claims Act (FCA) because immunity “would hardly spur reluctant employees to step

⁷⁴ See *Filarsky*, 566 U.S. at 389–90; *Wood*, 420 U.S. at 318–20.

⁷⁵ *Wyatt*, 504 U.S. at 164 (internal quotation marks omitted) (quoting *Owen*, 445 U.S. at 637).

⁷⁶ 445 U.S. at 638.

⁷⁷ Nothing turns on using 1977 rather than an earlier date. Section 215(a)(3) has prohibited retaliation since 1938, and immunity for that conduct would have undermined the prohibition from the start.

⁷⁸ 29 U.S.C. § 202(a).

⁷⁹ 138 F.3d 173 (5th Cir. 1998).

No. 25-20348

forward.”⁸⁰ The FLSA’s anti-retaliation provision likewise protects employees who invoke statutory rights.⁸¹

Samuel did not hold that private enforcement alone forecloses qualified immunity. Nor do we. But § 215(a)(3), quite plainly, prohibits retaliation for complaints protected by the FLSA. Stramaski alleges just that: Lawley fired her for complaining about her pay.

As for Lawley’s warning that denying immunity will make public officials reluctant to make difficult personnel decisions, the FLSA doesn’t stand in the way of lawful hiring, firing, or discipline. It forbids retaliation against employees who assert their rights under the Act. Immunizing such actions would thwart the very complaints that § 215(a)(3) protects.⁸²

Lawley contends that “[m]ost legislation reflects a balance of competing interests.”⁸³ Fair enough. But § 215(a)(3) is part of that balance, and it lets employees invoke the rest of the Act.

Lawley has not satisfied *Wyatt*’s second prong.

⁸⁰ *Id.* at 178. Lawley argues that a later case, *United States ex rel. Parikh v. Brown*, left open qualified immunity under the FCA. But *Parikh* addressed direct FCA liability, not retaliation, and did not discuss *Samuel*. See 587 F. App’x 123, 127 (5th Cir. 2014) (unpublished).

⁸¹ See *Darveau v. Detecon, Inc.*, 515 F.3d 334, 342 (4th Cir. 2008) (quoting *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 63 (2006)).

⁸² See *Samuel*, 138 F.3d at 178 (recognizing that immunity “would hardly spur reluctant employees to step forward”); *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 12 (2011) (explaining that the FLSA’s “antiretaliation provision makes [its] enforcement scheme effective by preventing ‘fear of economic retaliation’ from inducing workers ‘quietly to accept substandard conditions.’” (quoting *Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 292 (1960))).

⁸³ See *E.M.D. Sales, Inc. v. Carrera*, 604 U.S. 45, 53 (2025).

No. 25-20348

IV. QUESTIONS LEFT OPEN

Two more issues were briefed, but we need not reach either one.

A. The FLSA’s Good-Faith Provisions

In response to Lawley’s argument that Congress’s silence preserves qualified immunity, Stramaski contends that the FLSA’s two good-faith provisions foreclose immunity. The magistrate judge agreed with Stramaski.

We need not resolve the effect, if any, of §§ 259 and 260, as *Wyatt* fully disposes of this appeal.

B. Our Earlier Clearly-Established-Law Ruling

Stramaski also asks us to revisit our conclusion in *Stramaski I* that she failed to plausibly allege a violation of clearly established law.⁸⁴ We reached that issue only on the *assumption* that qualified immunity applied. We now squarely hold that it does not.⁸⁵

V. CONCLUSION

When Congress authorized private FLSA retaliation suits in 1977, the common law did not immunize malicious retaliation. Lawley remains free to dispute the allegation that he fired Stramaski for asserting her FLSA rights, but he must do so on the merits.

We AFFIRM the district court’s denial of Lawley’s motion to dismiss.

⁸⁴ *Stramaski I*, 44 F.4th at 328–29.

⁸⁵ The law-of-the-case doctrine ordinarily bars reconsideration of an issue decided in an earlier appeal. *See United States v. Lee*, 358 F.3d 315, 320 (5th Cir. 2004).