

**THE STATE OF RIDGEWAY
RIDGEWAY SUPERIOR COURT**

Cyberphiliac,
Plaintiff,

v.

Matrix_oc, in his quasi-official
capacity as Commander-in-Chief of the
Ridgeway National Guard,

Defendant.

Case No. RSC-CV-3153

RESPONSE TO THE MOTION TO
DISMISS PLAINTIFF'S CIVIL
COMPLAINT FOR
GUBERNATORIAL IMMUNITY

Presiding Judge: Hon. Koala4life

Plaintiff Cyberphiliac, by and through counsel, files this response in opposition to Defendant Matrix_oc's Rid. Civ. Pro R.12(a)(5) motion to dismiss the complaint for failure to state a claim upon which relief can be granted. For the reasons set forth below, Plaintiff respectfully requests that this Court deny Defendant's motion. Attached hereto is a memorandum of points and authorities rebuking dismissal.

Respectfully submitted,

CENTER FOR INDIVIDUAL RIGHTS

s/ 
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INTRODUCTION

Defendant Matrix_oc's Motion to Dismiss is completely without merit and must be denied in its entirety. Plaintiff's complaint states valid claims for relief, including battery, deprivation of rights and official misconduct. Defendant's arguments for dismissal, including gubernatorial immunity, fail to address the factual and legal sufficiency of the complaint.

LEGAL STANDARD

In reviewing a Motion to Dismiss, the Court must accept all factual allegations in the Complaint as true and construe them in the light most favorable to the Plaintiff. The Motion to Dismiss should be denied if the complaint states a plausible claim to relief. See *Bell Atl. Corp v Twombly*, 550 U.S 544, 570 (2007). It is "only the extraordinary cases in which dismissal is proper" for failure to state a claim. See *United States v. City of Redwood City*, 640 F.2d 963, 966 (9th Cir. 1981). The Court may only dismiss a complaint as a matter of law only if the complaint: (1) lacks a cognizable legal theory; or fails to support a cognizable legal claim. *Robertson v Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534, (9th Cir. 1984). A motion to dismiss for failure to state a claim can be granted under Fed. Civ. Pro. R. 12(a)(5) and 28(b)(2) but should not be granted unless it appears that beyond unreasonable doubt, that Plaintiff can prove no set of facts in support of their claim which would entitle them to relief, (See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

ARGUMENTS

I. Defendant Is Not Entitled To Absolute Immunity For His Official Acts As Governor.

Absolute immunity does not apply to actions that are outside the scope of official duties or that are unconstitutional. The Supreme Court has consistently held that government officials are not immune from suit for actions that clearly establish the violation of constitutional rights. See *Larson v Domestic & Foreign Commerce Corp.*, 337 U.S 682 (1949) (holding that public officers are individually liable for their “unconstitutional use of power”). Governors as public officers, are individually liable for their “unconstitutional use of power”.

Defendant employed excessive use of force against Plaintiff, striking Plaintiff with a baton and deploying a Taser without legal cause. These actions detailed in full in the original complaint are completely at odds with the constitutional protections afforded to individuals against unreasonable force by state actors. Individuals are protected by the “objective reasonableness” standard of the Fourth Amendment to the U.S. Constitution (See *Graham v Connor*, 490 U.S. 386 (1989). This protection does extend to actions taken by state officials, including the Governor when acting in a law enforcement capacity. Thus, the Governor’s actions are in breach of the “objective reasonableness” standard of the Fourth Amendment, and therefore, the actions constitute an “unconstitutional use of power”, for which he is individually liable for, following the standard set in *Larson v Domestic & Foreign Commerce Corp.*

Defendant’s actions also deprived Plaintiff of his rights to due process guaranteed by the Fourteenth Amendment of the U.S. Constitution. Under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, Plaintiff

enjoys a right to be free from the deprivation of “life, liberty, or property, without due process of law.”. If the allegations in the complaint were to be construed as true, the Defendant’s actions were not based on any security or law enforcement concerns which would warrant the use of force employed by him on the Plaintiff.

Due process requires procedural fairness and substantive limitations on government, and when a state official, like the Defendant, acts outside of the confines of their lawful authority and violates another’s constitutional rights, they completely fail to meet those standards, thus are exercising an “unconstitutional use of power”. See also in *United States v. Lanier*, 520 U.S. 262 (1997), where the Fourteenth Amendment’s Due Process Clause includes the concept of “personal bodily integrity and the right to be free of unauthorized and unlawful physical abuse . . .”, all which was violated by the Defendant’s actions.

Defendant’s actions, if we were to construe all facts in favor of the Plaintiff, are unauthorized and unlawful. Thus, the Defendant, as the Governor of the State of Ridgeway and the Commander-in-Chief of the Ridgeway National Guard, through his actions, was derelict in his duty to “take care that the laws be faithfully executed.” RID. CONST. art. IV, § 1.”“. See also *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972). Further corroborating that this was an “unconstitutional use of power”, and that the Governor is individually liable.

Furthermore, the Governor, while having operational control as Commander-in-Chief over the Ridgeway National Guard, granting him the power to deploy and have oversight over the Guard, this authority is definitely not absolute. The Fourth and Fourteenth Amendments, as aforementioned, impose

substantive limitations on the Governor's exercise of power, especially regarding the use of force on civilians.

While the Governor holds the role of Commander-in-Chief of state forces, this authority is certainly not a *carte blanche* to act without regard to constitutional constraints. Use of force must strictly still abide by constitutional standards. The citation of *Trump v. United States*, No. 23–939, is also misplaced, as *Trump v. United States* discusses immunity from criminal prosecution but not immunity from civil liability. Even if executive discretion is recognized, it does not shield officials from liability for actions which very clearly violate constitutional rights. See *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971). In *Bivens*, the Court recognized that individuals have a recourse against government officials who impinge their constitutional rights.

Furthermore, if we are comparing the Office of the Governor to the Office of the President, in terms of their respective immunities, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) is also very clear, “for then he [the President] can rely only upon his own constitutional powers”. “Constitutional powers” is repeated roughly six times or more in this case, if we were to construe the facts in favor of the Plaintiff, the Defendant was constantly in breach of his constitutional powers, thereby, exceeding the confines of his Office as Governor, and duties as the Commander-in-Chief. Governor Matrix's assertion of absolute immunity for actions which violate an individual's constitutional rights completely disregard the checks and balances which protect individual liberties.

Another notable case discussing the immunity of senior government officials which also establishes confines to immunity is *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), in which, the Court ruled that government officials performing their

discretionary functions, as Governor Matrix was doing, are “shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known”. Then, if the question becomes whether the Defendant’s actions did not violate clearly statutory or constitutional rights, that becomes a triable issue, and thus the Court must deny the motion to dismiss and move to trial. Absolute immunity can protect government officials, but this immunity cannot be enjoyed when their actions are outside the scope of their authority.

Moreover, the analogy used by the Defense with the use of pardoning power precedents is just completely out of place; the cited cases, Myers, Youngstown, and Egan focus on specific executive powers but do not support immunity for actions which violate constitutional rights of individuals. The discretionary power to pardon is not infringed upon by the legislative or judicial branches of government, however, that power is fundamentally different from the use of force on individuals. In the footnotes of the Defense’s motion to dismiss, they compare the President’s foreign recognition powers to other executive functions, but it still does not provide valid justification for unconstitutional powers, again, the cases cited such as Zivotofsky and Crosby are completely distinct from the topic of use of force against civilians. Governor Matrix’s assertion of absolute immunity is fundamentally flawed. The violations of the constitution as alleged in the complaint fall outside the scope of protected discretionary powers. The Courts have a duty to uphold these rights, and have a duty to ensure the Governor doesn’t have carte blanche to violate constitutional rights.

While the chilling effect is a factor which can affect bolder decision-making, the power of judicial review is still necessary to ensure the prevention of abuses of power. The SCOTUS has continually held that absolute immunity does not apply to actions outside of constitutional confines, as we saw in *Larson*, where officers are individually liable for breaches of constitutional rights. Furthermore, while resolving immunity at the earliest stages is important to prevent unnecessary litigation, the Court must carefully analyze whether the actions alleged in the complaint can be defended by absolute immunity, and in the precedent of *Mitchell v. Forsyth*, 472 U.S. 511, while early resolution is emphasized to, perhaps, prevent severe detriment to the executive abilities of an official it cannot come under the expense of justice for unconstitutional acts. See also *Bivens* and *Larson* which both affirm the role the judiciary plays in addressing unconstitutional executive actions.

Relying also on the impeachment clauses of the Ridgeway Constitution for gubernatorial misconduct is insufficient. Impeachment is a political process, and it does not always address constitutional violations. Claimants still need an avenue for redress through the Courts per the Constitution's protection of individual rights, just as the Framers would have intended. These checks such as media scrutiny and voter accountability too are very important, but are unable to provide immediate or effective remedies for individuals whose constitutional rights have been violated.

CONCLUSION

For the foregoing reasons, Defendant Matrix_oc's Motion to Dsmiss should be denied.

Respectfully submitted,

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