FACT SHEET

QUALIFIED IMMUNITY

July 2, 2020

HISTORY OF QUALIFIED IMMUNITY

The Civil Rights Act of 1871, codified as 42 U.S.C. § 1983 (section 1983), provides for a cause of action against any person acting under color of law for the violation of rights protected by the U.S. Constitution or federal statutes. Section 1983 may be implicated when a law enforcement officer makes an arrest, uses force or conducts a search, but also may be implicated when a public school official disciplines a student or teacher, or when a public employer discharges or disciplines an employee on the basis of race or sex. The liability under section 1983 applies to the individual official or employee, and not the governmental entity. The law was rarely used as the basis for suits against government officials until 1961, when the U.S. Supreme Court held that local government officials, in that case city police officers conducting an entry into a home, could be sued individually under section 1983 as acting "under color of state law" even though the entry was not authorized and may have been forbidden by the municipality.[1]

In 1967, the U.S. Supreme Court established the doctrine of qualified immunity as a defense to actions under section 1983. In *Pierson v. Ray,* police officers were granted qualified immunity for an arrest that was executed in good faith and with probable cause under a statute that the officers believed to be valid at the time of the arrest.[2]

QUALIFIED IMMUNITY TODAY

In 1982, the U.S. Supreme Court, in *Harlow v. Fitzgerald,* adopted the present standard that provides qualified immunity if the law violated by a government official, such as a police officer, is not "clearly established."[3] In other words, a plaintiff could overcome a qualified immunity defense only by showing that the defendant's conduct violated a clearly established federal statutory or constitutional right of which a reasonable person would have known.

The Court's justification for qualified immunity described it as a balance between holding officials accountable and the cost to society as a whole for those violations, identifying four costs that would be avoided:

1. The expense of litigation by allowing dismissal of suits at earlier stages of litigation and without extensive inquiry into an individual officer's motivations.
2. The distraction of energy and resources from essential governmental functions caused by litigation.

[1] *Monroe v. Pape*, 365 U.S. 168 (1961).
[2] *Pierson v. Ray*, 386 U.S. 547 (1967).
[3] *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

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500 East Capitol Avenue | PO Box 5180 | Springfield, IL 62705-5180 | Ph: 217.525.1220 | Fx: 217.525.7438 | **iml.org**

3. The deterrent effect potential liability would have on qualified individuals seeking to serve the public as government officials.
4. The chilling effect of liability on the conduct of officials in the unflinching discharge of their duties.

Qualified immunity applies unless prior case law from the U.S. Supreme Court or the U.S. Circuit Court of Appeals for that jurisdiction clearly establishes that the official violated a right on substantially similar facts, or if the violation is plainly excessive or unreasonable conduct.

IMPACT OF QUALIFIED IMMUNITY

Qualified immunity provides local government officials protection from the disruptive impact of frivolous litigation. It allows those officials the ability to exercise their best judgment in their daily work without the fear of being sued individually over those decisions. The defense does not remove all liability from municipal operations, but does allow the individual employees and officials a measure of protection, so long as they comply with appropriate training and policies of the unit of government.

Qualified immunity likely prevents many cases from being filed, and provides for a more efficient disposition of lawsuits. By reducing litigation costs and potential judgments, qualified immunity allows local governments to focus resources on essential services.

WITHOUT QUALIFIED IMMUNITY

The justifications for qualified immunity voiced by the U.S. Supreme Court in 1982 are still relevant today. Government officials, especially police officers, are duty bound to intervene in highly volatile situations where they must take immediate action. Without qualified immunity, the challenging task of recruiting law enforcement officers will become more difficult, as potential police officers will seek alternative careers that do not pose significant risks to their personal assets.

The loss of qualified immunity would also impact municipal officials and a wide range of functions such as code enforcement, employment matters and distribution of public benefits. Employees would reasonably demand insurance coverage, or the costs of that coverage as part of their compensation, to the extent municipal insurers might exclude such coverage due to high risk exposure. There would be a direct, unavoidable increase in the expense of litigation, settlements and judgments. This would impact insurance rates and perhaps insurability, eventually leading to either an increase in taxes or a corresponding reduction in municipal services.

WHERE WE STAND

The Illinois Municipal League (IML) is aware of the growing movement to abolish or limit qualified immunity, in part a reaction to widely publicized instances of police misconduct. While IML supports efforts to reform policing, the impairment of qualified immunity threatens the core ability of municipalities to continue to deliver critical services with available resources.

IML supports the preservation of qualified immunity.