



My Drift

Title: Qualified Immunity

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Google AI Overview

Qualified immunity is a legal doctrine that shields government officials, including law enforcement officers, from civil liability in lawsuits unless their conduct violates a "clearly established" constitutional or statutory right. It protects all but the "plainly incompetent or those who knowingly violate the law".

How It Works

If a plaintiff sues an official—such as a police officer—for a civil rights violation, the official can raise qualified immunity as a defense. To overcome this defense and proceed with the lawsuit, the plaintiff must prove two things:

1. The official violated a statutory or constitutional right.
2. That specific right was "clearly established."

What is "Clearly Established"?

For a right to be "clearly established," previous court decisions with functionally identical facts must have already put the official on notice that their specific conduct was unlawful. The U.S. Supreme Court has repeatedly emphasized that officials cannot be held liable unless prior precedent places the constitutional question "beyond debate."

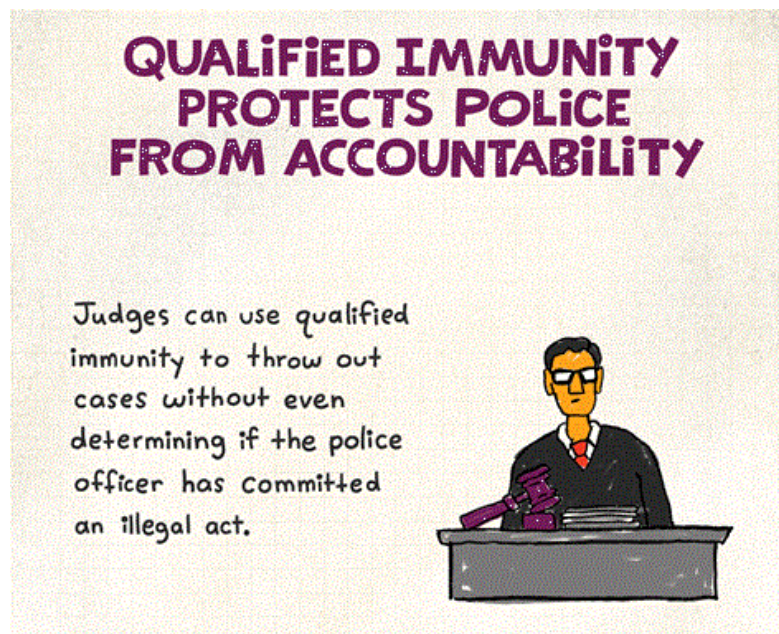
The Core Debate

For Officials: Supporters argue the doctrine is necessary to give public servants "breathing room" to make split-second, reasonable judgments in difficult situations without the constant fear of personal financial ruin or retaliatory lawsuits.

For Civil Rights Advocates: Critics contend the doctrine creates a nearly impossible burden for victims to seek justice. By requiring an almost identical prior court case to defeat the immunity, even egregious cases of misconduct can be dismissed before going to trial.

Recent Developments

While federal efforts to eliminate or severely restrict the doctrine have largely stalled at the national level, some states have taken matters into their own hands. States like Colorado, New Mexico, and California have enacted state-level legislation removing qualified immunity as a defense in certain civil rights lawsuits against law enforcement officers. On the judicial front, high courts continue to define the boundaries of the doctrine on a case-by-case basis.



THE WATCH presents:

QUALIFIED IMMUNITY EXPLAINED

by Nathan Burney



Qualified Immunity: Both Sides of the Debate

Qualified immunity provides protection from civil lawsuits for law enforcement officers and other public officials. It attempts to balance the need to allow public officials to do their jobs with the need to hold bad actors accountable.

Proponents of qualified immunity argue that without a liability shield, public officials and law enforcement officers would be constantly sued and second-guessed in courts. Critics say the doctrine has led to law enforcement officers being able to violate the rights of citizens, particularly disenfranchised citizens, without repercussion.

Qualified immunity is not the result of a law passed by Congress, nor is it written in the Constitution. It is instead a legal doctrine refined by the U.S. Supreme Court. First outlined in 1967, it has since been greatly expanded. Qualified immunity is largely a creation of the courts, one that is not based on the U.S. Constitution. As such, Congress could pass a law amending, affirming, or revoking qualified immunity at any time. It has so far declined to do so. However, both lawmakers and current Supreme Court justices have considered amending or revoking qualified immunity as it currently stands.

Understanding the pros and cons of this once obscure legal doctrine requires some knowledge of the surrounding legal issues and why qualified immunity was created in the first place. This article will briefly recount the history of qualified immunity, how it is applied in courts today, and the pros and cons it affords society.

Section 1983 and Fourth Amendment Claims

In the Enforcement Acts of 1871, also known as the “Ku Klux Klan Acts,” Congress specifically held that groups of people could be liable in court for violating the constitutional rights of other Americans, including public officials. This was an effort to help protect Black Americans, who were the frequent targets of horrific violence (including lynching) that, in some cases, public officials condoned. However, the end of Reconstruction came about shortly after these laws were passed, and the legal system ended up offering little protection for Black citizens until the 1960s.

People refer to lawsuits against the police alleging civil rights violations as section 1983 claims. This is because the civil rights movement of the 1960s reinvigorated 42 U.S.C. section 1983 of the Ku Klux Klan Acts. Section 1983 provides that “every person who . . . subject[s], or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” Put simply, victims of constitutional rights violations can sue whoever was responsible. It was during the civil rights movement that black Americans first began alleging police use of excessive force in violation of section 1983.

The Supreme Court has held that the Fourth Amendment prohibits police from using excessive force when apprehending a suspect or making an arrest. Under section 1983, such a violation means that officers who use excessive force are subject to civil liability. This exact reasoning occurred in the 1961 case *Monroe*

v. Pape. There, the U.S. Supreme Court held that a police officer acted “under the color of law” in using unreasonable force and, as such, could be liable for violating the suspect’s Fourth Amendment rights.

The Supreme Court has also held that a Fourth Amendment violation on its own – regardless of section 1983 – can lead to civil liability in the 1971 case *Bivens v. Six Unknown Fed. Narcotics Agents*. You can read more about Bivens claims by googling the case.

Is the current Qualified Immunity legal as specified in Section 1983?

There are 16 missing words from Section 1 of the Civil Rights Act of 1871 (now codified as 42 U.S. Code Section 1983). Those words are: "any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding". The original text read was:

"...shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party ...

These words could change the way the courts rule on the qualified immunity legal doctrine cases. However, the U.S. Supreme Court has supported the doctrine as currently written.

Creating Qualified Immunity

It was in 1967 that the U.S. Supreme Court first gave a police officer qualified immunity. In *Pierson v. Ray*, the U.S. Supreme Court held that a police officer acting in good faith was not liable for a false arrest. The Court had two reasons for giving qualified immunity in the case. First, it wrote that courts had been granting qualified immunity for many years prior to section 1983 and that Congress did not specifically ban qualified immunity in that section. They then expanded that qualified immunity to acts undertaken by public officials in “good faith.” Legal scholars have since questioned this reading of the law. Secondly, and perhaps more important to the Warren Court, the Supreme Court feared that police would not seek to arrest suspects or do their jobs as diligently if they feared being held liable. “A policeman’s lot is not so unhappy that he must choose between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does,” Chief Justice Earl Warren wrote.

Fifteen years later, in *Harlow v. Fitzgerald*, the Supreme Court greatly expanded the doctrine to become closer to what it is today. In an 8-1 decision, the Supreme Court said that public officials have immunity unless the official

knew or should have known that their actions violated the plaintiff's constitutional rights. It replaced the previous "good faith" test with something more "objective." This test is now the analysis courts use when determining if qualified immunity protects an officer from a lawsuit.

How Qualified Immunity Works

Qualified immunity is not the same as absolute immunity. There are circumstances in which a public official can be held accountable for constitutional violations in civil court. However, in the Supreme Court's own words, qualified immunity is an officer-friendly doctrine that protects "all but the plainly incompetent or those who knowingly violate the law."

Courts employ a two-part test to determine whether qualified immunity applies. If the answer to both questions is yes, then the public official does not get immunity.

- **Did the officer violate a Constitutional right?**
- **Did the officer know their actions violated a "clearly established right"?**

The next issue is to determine when a right is "clearly established." Under the current doctrine, a right is clearly established when the Supreme Court or the relevant federal appeals court has already treated the conduct as unconstitutional or where a public official's conduct is "obviously unlawful."

In 2009, the U.S. Supreme Court told lower courts they could skip the first part of the test at their discretion. Many courts now do so.

The result is that judges now look to past court cases to see whether there is a similar set of facts on record that would put the officer on notice that their actions violated the "clearly established" statutory or constitutional rights of another. The result is that the facts of a situation alleging police misconduct are highly relevant when determining when qualified immunity applies.

Applying Qualified Immunity

The Supreme Court has told lower courts to waive qualified immunity in cases that are very similar. It is not enough to show that a previous case denied an officer qualified immunity for broadly similar circumstances or actions. Instead, the facts must be "sufficiently clear" that a reasonable officer would understand that they are violating a constitutional or statutory right.

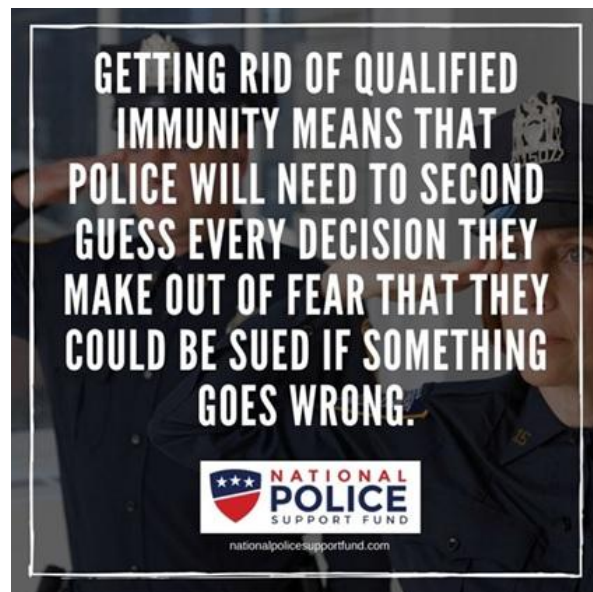
Picking just one example of thousands, the Eleventh Circuit Court of Appeals has distinguished between an officer firing at a dog surrounded by children, hitting and injuring a child, and an officer firing at a truck, instead hitting a passenger. In both cases, the officer fired at a target for questionable reasons, resulting in injury to the accidentally hit victim. However, the Eleventh Circuit said the two were dissimilar enough that the officer who shot the child was given qualified immunity, whereas a previous court found that the officer who fired at the truck did not get qualified immunity.

The Benefits of Qualified Immunity

There are several arguments made to continue the doctrine of qualified immunity as it currently exists, including:

Officers and public officials need qualified immunity to carry out their jobs. Public officials, particularly police officers, perform vital tasks that may require split-second decisions in stressful circumstances. Taking away qualified immunity could lead to officers being hesitant to act when it is most needed.

Removing qualified immunity could open up public officials and police to unwarranted lawsuits, in which judges and juries could second-guess split-second decisions and lead to significant costs for cities, police officers, and other public officials.



Officers do not have absolute immunity, and they can be held liable when they violate a clearly established constitutional right.

The narrow interpretation of clearly established precedent is appropriate. Officers should not be forced to apply an abstract right under the Constitution to specific circumstances in split-second decisions. Officers cannot be expected to be legal scholars or think through legal arguments when attempting to make an arrest.

Officers must have room to make mistakes or have moments of bad judgment without worrying about being sued.

The Arguments Against Qualified Immunity

Several arguments against qualified immunity, as it currently stands, include:

Liability is necessary to hold officers accountable for excessive force. As it stands, officers are free to maliciously violate the Fourth Amendment and other Constitutional rights of citizens without any cost to themselves, provided some obscure court case hasn't already dealt with almost the exact same situation.

The fear of rampant lawsuits against police are overblown. Many municipalities indemnify their officers, meaning the city would pay for any settlement, not the officers themselves.

The current doctrine, as applied today, leads to hairsplitting – it is often impossible for plaintiffs to meet the burden.

The doctrine is applied inconsistently and can greatly depend on the judge or judges involved in the case. For example, one judge has argued that “a court can almost always manufacture a factual distinction” when determining whether a previous precedent precludes an officer from getting qualified immunity.

What Will Happen to Qualified Immunity?

There has long been a discussion of ending or significantly amending the qualified immunity doctrine. Congress has introduced legislation to end qualified immunity, and Supreme Court justices of vastly different judicial philosophies have also endorsed revisiting police officers' liability shield. For now, however, it remains the doctrine of the courts that plaintiffs bringing a section 1983 claim must first show that the public official's actions were very similar to a previous case in which qualified immunity was waived.

The George Floyd Justice in Policing Act

The George Floyd Justice in Policing Act is a comprehensive federal police reform bill designed to increase accountability, enhance transparency, and combat racial bias in law enforcement. First introduced in 2021, the legislation has been repeatedly reintroduced in Congress by Democratic lawmakers.



Key Provisions of the Act

- **Accountability:** Lowers the criminal intent standard for federal prosecution of police misconduct from "willful" to "reckless" and eliminates qualified immunity for law enforcement officers.
- **Federal Ban on Certain Tactics:** Prohibits chokeholds and carotid holds at the federal level and restricts no-knock warrants, specifically in drug-related cases.
- **Data and Oversight:** Establishes a National Police Misconduct Registry to track complaints and disciplinary records, and mandates that state and local departments report disaggregated data on use-of-force incidents.
- **DOJ Investigations:** Grants the Department of Justice Civil Rights Division subpoena power to conduct pattern-or-practice investigations into systemic police misconduct.

Current Status

While the legislation has passed the House of Representatives in previous congressional sessions, it has consistently stalled in the Senate due to a lack of bipartisan support, with major disagreements centered around the elimination of qualified immunity. The bill continues to be championed by civil rights advocates and many lawmakers, with ongoing efforts directed toward negotiating a compromise.

Qualified Immunity Pros

Qualified immunity plays a pivotal role in protecting law enforcement officers from civil liability when performing job duties. Both State and Federal law allow qualified immunity as a defense to civil actions. Qualified immunity applies in civil lawsuits, not criminal proceedings.

THE NEED FOR QUALIFIED IMMUNITY

Qualified immunity is, by its name and purpose, not absolute immunity. It does not protect all types of action committed by law enforcement officers while on duty. Qualified immunity protects an officer who is mistaken about facts but makes reasonable judgments, even if those actions are ultimately deemed wrong in hindsight. To be effective, law enforcement officers must be allowed to enforce the law and carry out public safety functions without fear of being sued when a mistake occurs. There is no protection, however, for those knowingly and willfully violating the law.

Anxiety about civil liability has a chilling effect on the performance of law enforcement duties. Police officers perform duties in high-stress circumstances which require split-second decisions. If an officer hesitates to take action, for fear of being sued and having a career ruined, the officer places not only their life at risk, but possibly the life of another officer or the public.

The ability to recruit and retain law enforcement officers has become an increasingly difficult circumstance. Law enforcement officers are subjected to an ever-increasing level of scrutiny by the media, anti-police public interest groups, and politicians.

Unwarranted and excessive scrutiny leads to portrayal of law enforcement in a bad light, leading to negative public opinion. Movements which seek to defund police and remove protections merely exacerbate the problems in recruiting and retention.

Qualified immunity remains necessary to protect against frivolous litigation which is costly to taxpayers, government entities, and the reputation of law enforcement officers. Because qualified immunity is not absolute, the defense balances the public interest in holding police officers accountable for irresponsible exercise of power, against the need to shield police officers from harassment, distraction, and liability when they perform their duties reasonably.

HOW IS QUALIFIED IMMUNITY APPLIED IN A CIVIL LAWSUIT?

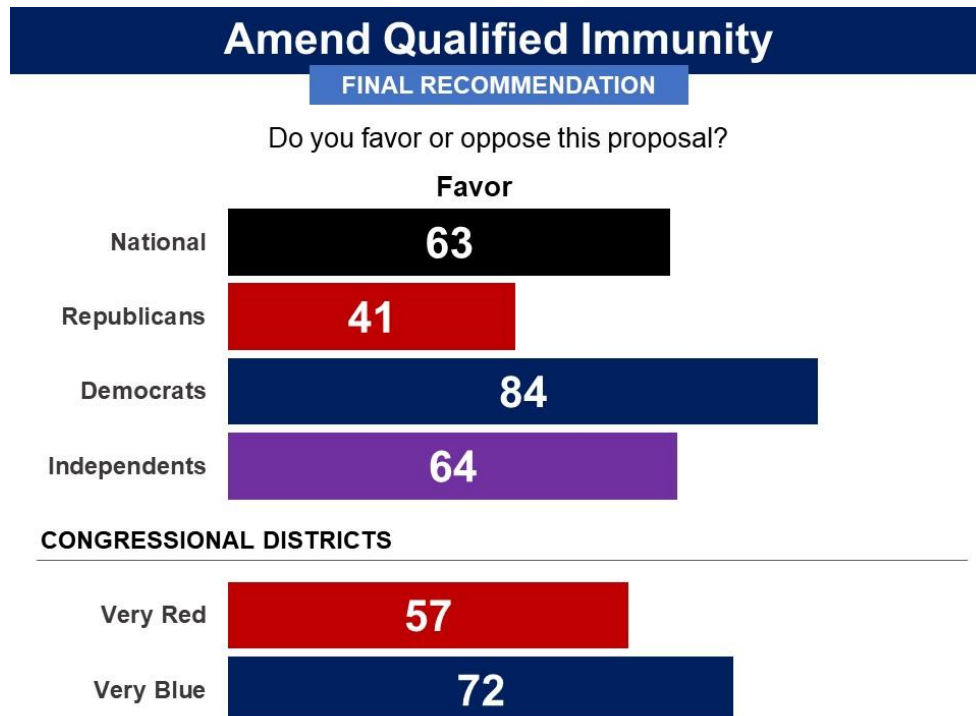
In Michigan, qualified immunity is created by statute. Its application, however, is limited to state court civil actions alleging tortious behavior causing injury or damages, such as cases which allege assault, battery (excessive force claims), and injuries from vehicular accidents. In those cases, qualified immunity will exist if an officer, while acting in the course of employment: (1) reasonably believes he or she is acting within the scope of their authority, which is in the exercise or discharge of governmental functions; and (2) the officer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

Civil actions filed in federal court (under [section 1983 of federal law](#)—alleging deprivation of rights secured by the Constitution, by a person acting under the color of state law), bring into application the defense of qualified immunity under a standard derived by the judiciary. The following considerations are applied when analyzing application of the qualified immunity defense:

- 1. Whether the facts alleged amount to a constitutional violation. This inquiry determines the specific constitutional right allegedly violated. If no constitutional right is impinged, qualified immunity applies.**
- 2. If a constitutional right exists, was it “clearly established” at the time of the action. This inquiry determines whether it would be clear to a reasonable officer that the conduct was lawful in the situation confronted. If the law did not put the officer on notice that the conduct would be clearly unlawful, application of qualified immunity is appropriate.**
- 3. If a constitutional right exists and was clearly established, qualified immunity will still apply if the officer's actions were objectively reasonable under the circumstances of the case. As a result, if an officer's mistake as to what the law requires is reasonable, qualified immunity applies.**
- 4. To overcome it, a plaintiff must establish the officer's conduct was so egregious, or clearly unconstitutional, that any reasonable officer would have known the conduct was unlawful.**

The Supreme Court has stated that immunity is intended for “all but the plainly incompetent or those who knowingly violate the law.” That consideration gives “breathing room” for mistakes of fact and law.

Percentage of US citizens that want Qualified Immunity (as currently written) amended or eliminated.



Majorities of Black (69%), Latino (69%), and White Americans (62%) support eliminating qualified immunity.



Only about 15% of U.S. adults support abolishing or completely eliminating police departments. The vast majority of Americans oppose this measure, with most instead favoring targeted reforms such as body cameras, civilian oversight, and better officer training.

Here is how public opinion breaks down on the broader debate over policing:

- **Abolishing the Police:** Only about 15% of the population supports the outright elimination of police forces.
- **Defunding / Reallocating Funds:** Approximately 35% of Americans support reducing police budgets to shift that money into social services or community programs.
- **Increasing Funding:** Nearly half of the public (around 46%) favor *increasing* funding for their local police departments.
- **Support for Reforms:** Broad bipartisan majorities support specific policy reforms, such as requiring body cameras, banning officers fired for misconduct from being rehired elsewhere, and creating databases to track problem officers.

Conclusions

Well, I admit that I didn't know much about implied or qualified immunity until a friend gave me some details and why he thought it should be abolished. He also suggested that I write this article.

I support the police and believe that the vast majority of them are doing a good job. Most people in the U.S. agree with me. A recent nationwide polling indicates that roughly 74% of Americans expressed high confidence in their local police officers.

However, after doing the research for this article, I realize that there are too many bad police officers out there using excessive force and abusing U.S. citizen's constitutional rights. They are currently getting away with this due to qualified immunity as it is currently written and applied. This is not good!!

I believe that the police do need some immunity so that they can do their job without being constantly sued for their actions. But I do think that the current U.S. Code Section 1983 that pertains to qualified immunity needs to be amended so that bad police officers can be held responsible for their actions.

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