Ending Qualified Immunity

For too long, the judicial doctrine of qualified immunity has **prevented victims of police brutality and misconduct from pursuing justice in civil court**. Under the doctrine, a person can only bring a lawsuit if they can point to a factually identical case in which the court previously ruled an officer acted improperly, even in cases of brutal violence or malicious intent.

3 states* have successfully passed legislation to end or restrict this harmful doctrine. These states provide sample legislation for how legislators in other states can do the same.

State Bills

	New Mexico ***HB 4*** *(2021)*	***Colorado*** ***SB 20-217*** *(2020)*	***Connecticut*** ***HB 6004*** *(2020)*
Who does it apply to?	All public employees	Law enforcement only	Law enforcement only
Does it create a right of action?	**Yes,** under the state constitution	**Yes,** under the state constitution	**Yes,** under the state constitution
Does it eliminate the defense of QI?	**Yes**	**Yes**	**Yes**, unless the officer acted in "good faith"
Do individual public employees have to pay damages?	**No**	**Yes**, 5% or $25,000, if the officer acted in "bad faith" and it is financially feasible	**No**
Does it allow for attorneys fees?	**Yes**	**Yes**	**Yes**
Can the employer be held vicariously liable for the employee's misconduct?	**Yes**	**No**	**No**
Does the employer have to indemnify the employee?	**Yes,** with a cap of $2 million	**Yes,** unless the officer is convicted of a crime	**Yes,** unless the officer acted "maliciously, wantonly, or wilfully"
Other reforms included?	**No**	**Yes**	**Yes**

*3 additional states have limited qualified immunity through judicial decisions, including Nevada, Michigan, and New Jersey.

The Truth About

Qualified Immunity

MYTH Ending QI will expose police officers to personal liability and financial ruin.

FACT **Police officers are almost always indemnified** for alleged misconduct. In the largest study of its kind, Professor Joanna Schwartz showed that 99.98% of all dollars paid to plaintiffs alleging civil rights violations by law enforcement came out of the government's pocket, not from individual officers.

MYTH Ending QI will expose police departments to financial destruction.

FACT While qualified immunity reform will make it possible for additional victims of police misconduct to recover compensation, that does not mean there will be a significant net rise in costs. **Qualified immunity does not save costs.** It shifts them to the victims of police misconduct. An increased risk of liability will help save government entities money in the long run through deterrence.

MYTH QI protects law enforcement from being penalized for the rapid life-or-death decisions.

FACT Qualified immunity only authorizes lawsuits when an officer violates someone's constitutional rights. **Our legal standards** for evaluating if a constitutional rights violation has occurred **are already highly deferential to police discretion** to make split-second decisions. Under the Fourth Amendment reasonableness standard, an officer can mistakenly determine that force is necessary without facing constitutional liability so long as their mistake is reasonable.

MYTH Ending QI will negatively impact officer retention & recruitment.

FACT There is no evidence that qualified immunity alone will negatively impact retention and recruitment of police officers. Moreover, the police officers we want to recruit and retain are not individuals who are drawn to a job by the promise of no accountability to the people they nominally serve and protect.

MYTH Ending QI will paralyze officers, making them too apathetic or afraid to do their jobs.

FACT Qualified immunity is currently not protecting police officers who are making reasonable, good faith decisions in carrying out their duties. Officers who follow their training and department policies, and who are doing their job "by the book," do not need qualified immunity—Fourth Amendment law provides that safeguard.

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