



## NAACP NEW ENGLAND AREA CONFERENCE

### Qualified Immunity Talking Points

#### What is Qualified Immunity?

Qualified Immunity came from a 1967 case *Pierson v. Ray*. It states essentially that an officer cannot be held personally liable unless he has deliberately violated a constitutional right AND that their case mirrors a case already decided in the Supreme Court.

Since this time, the Supreme Court has narrowed its decisions even more and stated that cases can be dismissed under Qualified Immunity if the case is not the same factually and that this can be done prior to even looking at whether a constitutional right has been violated.

The Immunity is not just a shield from liability, but protects police and other officials from having to go to trial in the first place. In the era of George Floyd – we must change or modify all laws that seek to limit or stop a victims right for justice and allow for violators actions to go unaccounted for.

Qualified Immunity is just one piece of the puzzle, but it's an important one when criminal charges against the police are often difficult to prove or abandoned, leaving civil lawsuits as the only way for victims to seek redress.

## **Reasons why the Qualified Immunity doctrine must be abolished and/or limited in its language:**

- 1.) This doctrine essentially renders the protections of the constitution hollow. By forcing the plaintiffs to establish the same facts and circumstances as in the Pierson case, the Court can never even reach whether a defendant violated a constitutional right that was clearly established. By allowing courts to dismiss these cases without even ruling on constitutional claims sends the message that officers can shoot first and think later. It also tells the public that egregious conduct can go unpunished.
- 2.) We cannot allow unsubstantiated fears about an increase in frivolous lawsuits, undue financial burden on officers, and the notion that good people will shy away from government jobs such as law enforcement, as a reason to maintain a doctrine that goes against our common law principles.
  - a.) Qualified Immunity is unnecessary to shield law enforcement officers from financial burdens of being sued because they are already never required to contribute to financial judgements or settlements entered against them. Policies are already in place and history has shown that an officer rarely ever has to contribute to settlements and judgments and never has to pay for defense counsel in a civil matter as that is always paid by the municipality or union.
  - b.) Multiple studies have found that law enforcement officers infrequently think about the threat of being sued when performing their jobs. There is absolutely no evidence to suggest that the threat of being sued will play a meaningful role in job application decisions or in officers' decision on the street. In the alternative, it may play a role in the inverse.

c.) Also, the notion that good people will leave these jobs or won't apply because of the fear of being sued is unfounded as well. One should instead look to this difficulty in recruiting or loss of officers instead to negative publicity about the police, increasing use of cell phone camera footage of egregious and rogue behavior by police while in the street, high profile shootings and murders of innocent civilians, the low rate of solving crimes because of the severe distrust between the community and police, strained relationships with communities of color and tightened budgets as reasons. We must look to actual facts than an unfounded scare tactic. Limiting Qualified Immunity should be done on constitutional grounds and not on unsubstantiated claims or financial ones that bear no real weight through evidence.

3.) Qualified Immunity is illogical and does damage to the Constitution. As it now stands, the lower courts must grant qualified immunity unless they can find a supreme court decision, binding precedents, or a consensus of cases in which an officer "acting under similar circumstances" has been found to have violated the Constitution. Then the police (defendants) advise the courts that they must allow Qualified Immunity without the courts even ruling on a constitutional claim, the basis of the civil action. This accepted doctrine of Qualified Immunity lessens the lower courts ability of finding established law and the doctrine has essentially tied the plaintiff's hands in every case. There need not be a case on point (as is required now) when the constitutional violation is obvious.

4.) The Qualified Immunity Doctrine has and will continue to discourage attorneys from bringing cases where a victim has had his or her constitutional rights violated. This doctrine as it stands

has sent a very clear message to plaintiffs' attorneys that their cases will be dismissed even with the most egregious of facts.

- 5.) Limiting Qualified Immunity will allow for more tracking of data in these types of cases. Officers names, underlying facts and amounts paid can help make policy and supervision decisions aimed at reducing the costs of those types of cases in the future. Most law enforcement agencies don't collect and keep and exchange this type of data so there has been little to no effort to track and analyze these claims. Information in these cases can lead to significant changes needed in policing. Also, court settlements often lead to reforms to police policies and trainings.
- 6.) Qualified Immunity is unrealistic, ineffective at achieving its policy ends and detrimental to the development of constitutional law.