



## *An* INTRODUCTION to QUALIFIED IMMUNITY

1. **What is qualified immunity (QI)?** QI is a defense available to police officers sued for excessive force and other civil rights violations. It is not based on a statute but was created by the SCOTUS.<sup>1</sup>
2. **What does QI mean?** An officer will be granted immunity from the lawsuit – that is, will not have to defend the lawsuit – unless the alleged wrongful conduct violated “clearly established law.”<sup>2</sup> Whether misconduct is clearly established is determined by examining reported decisions from the SCOTUS or the Court of Appeals or state supreme court of the state where the alleged wrongful conduct occurred.
3. **Why did the Court create QI?** To give public officials freedom to do their job without fear of the expense of litigation, stop diverting the official from his/her duties, remove disincentive to accept public office, and chill law enforcement conduct. Unfortunately, the defense has resulted in the dismissal of many substantial cases seeking to hold officers and officials accountable to their sworn constitutional oaths and it does not serve these ends in any meaningful way.<sup>3</sup>
4. **Why Do Lawyers Suing Police Oppose QI?** The defense is unfair to victims; officers get a pass. The Court is not required to state whether facts as alleged constitute a constitutional violation.<sup>4</sup> Rather courts can and do simply launch into a search for “clearly established law.” Every case has some unique aspects. Many times, minor differences in facts between prior cases and the case at hand cause a court to rule that the law was not clearly established and therefore cause the case to be dismissed. For example, in one of my cases a man suffering a psychotic episode broke windows and disrupted property on a condo patio. Officers charged him, wrestled with him, tased him and he died at the site. I argued that prior precedent required de-escalation efforts when dealing with a mentally ill person. The majority said the prior precedent was based on an episode with a mentally ill man that was not quite the same. The dissent said the prior episode did in fact constitute clearly established law and de-escalation was required. The officers received immunity without the court ever clarifying whether de-escalation was in fact required when dealing with mentally ill suspects under the Fourth Amendment.<sup>5</sup> These officers got a pass and no clarification in the law emerged from the case.
5. **What Other Problems are Caused by QI?** The defense causes undue delays. The defense can be raised in motions before the case is ever tried and even before all the facts are fully discovered. If the officer loses the motion the officer can appeal that ruling – delaying the case in many cases for up to two years.<sup>6</sup>

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<sup>1</sup> *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)

<sup>2</sup> *Anderson v. Creighton*, 483 U.S. 635 (1987). See also *Hope v. Pelzer*, 536 U.S. 730 (2002).

<sup>3</sup> [USA Police Immunity SCOTUS](#); See, “[The case Against Qualified Immunity.](#)”

<sup>4</sup> *Pearson v. Callahan*, 129 S.Ct. 808 (2009). The SCOTUS has stated that QI protects “all but the plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 457 U.S. 335 (1986)

<sup>5</sup> See *Roell v. Hamilton Cty., Ohio/Hamilton Cty. Bd. of Cty. Commissioners*, 870 F.3d 471 (6th Cir. 2017)

<sup>6</sup> *Mitchell v. Forsyth*, 472 U.S. 511 (1985). The delays are simply not worth the cost.

6. **Who opposes QI?** Opposition comes from Left and Right. Constitutional rights protect persons who hold views across the ideological spectrum. Qualified immunity denies those rights to people regardless of their views. That is why opposition to QI crosses the aisle.<sup>7</sup>
7. **What are NPAP lawyers doing to eliminate QI?** NPAP and other civil rights lawyers have been fighting to repeal and narrow the impact of QI for many years. The SCOTUS is currently debating whether to accept some the cases that challenge QI.<sup>8</sup> NPAP is also 100% behind the federal “End Qualified Immunity Act” that would repeal QI.<sup>9</sup>
8. **What can you do?** Support repeal of QI. Also support repeal of similar laws that extend immunity under state law.

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<sup>7</sup> See Cato Institute project on “[Unlawful Shield.](#)”; and the [ACLU opposition to QI](#)

<sup>8</sup> [Supreme Court Weighs Qualified Immunity for Police Accused of Misconduct](#)

<sup>9</sup> [NPAP Statement on Ending QI](#); The text of the Act is [here](#).