

QUALIFIED IMMUNITY

WHAT IS “QUALIFIED IMMUNITY”?

Qualified immunity is a legal defense that can enable a police officer to escape liability for misconduct under certain circumstances.

In general, when state or local government officials violate a citizen’s federal constitutional rights, a victim can bring a lawsuit under a provision of federal law known as “Section 1983.” If the plaintiff is successful, a court can award money damages to the victim, along with other forms of relief.

However, government officials—especially police officers—receive an extra layer of protection from liability under the doctrine of **qualified immunity**. This doctrine—developed over time by the Supreme Court—says that a public official cannot be held liable under Section 1983 unless a prior case has “clearly established” that his or her specific action was illegal. In the case of law enforcement, qualified immunity was intended to protect police officers from liability when they had behaved reasonably or acted in “good faith” on the job.

WHY IS QUALIFIED IMMUNITY A PROBLEM?

Courts have interpreted the doctrine of qualified immunity in an extremely broad manner—extending it far beyond its original intent. In order to meet the “clearly established” requirement, a victim of police misconduct must point to a past case with nearly identical facts where a court held that the same police action was unlawful. Slight factual differences between cases make this an extremely difficult standard to meet.

As a result, qualified immunity has served to shield police officers from misconduct in many egregious cases over the years, including those involving excessive force, abuse of power, shootings, and death.

History has shown that actors in the criminal system are reluctant to charge, indict, or convict police officers. Thus, without effective means to hold police accountable in the civil courts, officers are left free to violate constitutional rights with near impunity.

SOLUTION: A STATE CIVIL CAUSE OF ACTION

The State of Hawai‘i can provide an effective means to hold police officers accountable by creating a civil cause of action giving injured parties the right to sue law enforcement officers for state constitutional violations and specifically barring the defense of qualified immunity in such cases. This would fill the void left by Section 1983’s qualified immunity jurisprudence, and offer victims of police violence an avenue for legal recourse and reparation. Establishing this through legislation allows Hawai‘i lawmakers an opportunity to explicitly address the desire to protect officers acting in “good faith”—and to ensure that this protection will not be expanded past reasonable limits.

ACLU
Hawai‘i

