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It's time to end qualified immunity in Vermont

James Lyall

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Vermonters agree that when police violate someone's civil rights, they should be held accountable for their actions and victims should get the justice they deserve.

The legal doctrine of qualified immunity prevents those things from happening, effectively closing the courthouse doors to victims of police misconduct and making it harder to hold abusive officers accountable.

That's why it is heartening news that Vermont legislators will be considering a bill to end qualified immunity for police in the coming year. When they do, they should know that Vermonters are firmly behind them.

Recent polling shows nearly three in four Vermonters support eliminating qualified immunity in Vermont. That support extends across the political spectrum, including 85 percent of Vermont Democrats – more than half of whom say they “strongly” support ending qualified immunity — and 51 percent of Republicans. It also extends statewide, from two thirds of Northeast Kingdom residents to four out of five central Vermonters who say they support ending qualified immunity.

The U.S. Supreme Court created the doctrine of qualified immunity in 1967 and it was later adopted in Vermont's courts. It requires a victim of police misconduct pursuing a civil lawsuit to

show there is already “clearly established law” where someone else’s rights were violated in the same way. Unless the victim can point to another case with nearly identical circumstances, their case can’t go forward – even when police abuse resulted in serious injury or death.

The upshot is that when police abuse their power, their victims are unable to access justice and compensation for any injuries they may have suffered, and police are not held accountable for even the most serious misconduct.

Numerous examples of cases that have been thrown out due to qualified immunity include a ten-year-old boy who was shot while lying on the ground by an officer aiming at the child’s non-threatening dog; a teenager shot by officers after he dropped his BB gun and raised his hands; and an officer who stole \$225,000 while executing a search warrant.

Qualified immunity fosters an environment where some police may feel empowered to violate people’s rights, knowing they will face few if any consequences. This legal barrier erodes relationships with the community and diminishes the legal system’s credibility.

Legal experts from across the political spectrum agree that qualified immunity is extreme, unnecessary, and incompatible with civil rights. The libertarian Cato Institute has said, “Qualified immunity is one of the most obviously unjustified legal doctrines in our nation’s history...[It] has failed utterly as a matter of law, doctrine, and public policy.”

Law enforcement leaders agree. In a letter to Congress earlier this year, members of the Law Enforcement Action Partnership (LEAP) wrote, “[W]e believe it is crucial to end a legal doctrine that has contributed to the erosion of public trust in the justice system and made all of us less safe: qualified immunity.”

Qualified immunity is also a major barrier in the fight for racial justice. As with almost every aspect of our legal system, a lack of meaningful police accountability in Vermont has a disproportionate impact on Black people, who are stopped, searched, cited, arrested, and subjected to police violence at far greater rates than white people. Qualified immunity is yet another inexcusable feature of a legal system virtually defined by systemic racism.

With Vermont's legislative leaders considering a bill to eliminate qualified immunity in the coming legislative session ("Senate proposal would end qualified immunity for civil rights violations," Reformer, Dec. 16), Vermont can better ensure that police who violate civil rights are held accountable and victims of police misconduct can access justice. A growing number of states have passed or are considering legislation to eliminate qualified immunity — Vermont should be next.