



Limiting Qualified Immunity for Police is Necessary for Reform

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The special session kicks off this week, and on the table are telehealth, absentee voting, limiting the price of insulin, and of course, police reform. There are some **broad areas of agreement**, but it looks like one of the sticking points is going to be whether to change or abolish qualified immunity. Let's hope reformers win this one, because if qualified immunity doesn't change then neither will the police.

We have a problem with the police in this country, and the reasons can be found in every corner of our society and all throughout our history. Changing the police into the benevolent, protective force they're supposed to be feels like trying to undo the Gordian Knot. But one important thread to pull is how the police are treated in court when facing excessive force accusations, and that means looking at qualified immunity.

Qualified immunity is a doctrine that protects any government worker from being sued in civil court over violating someone's constitutional rights as long as they were not breaking "clearly established" law. The whole point was to be able to shield government workers from being sued for carrying out their duties. It was also meant to shield them from changes in the laws and frivolous, nuisance cases that would do nothing but gum up the works of government.

Seems like a good idea, right? Unfortunately, this doctrine has been interpreted in a more and more pro-police fashion for over 50 years, which makes it not nearly as **straightforward** as you'd think.

The way qualified immunity works in practice can be traced to a series of **Supreme Court decisions starting in 1967**, which, over time, made it less and less likely for someone to successfully sue a police officer for excessive force. Right now plaintiffs must point to a previous judicial decision that more or less replicates their situation exactly. It's a very high standard, one that makes winning civil cases against police nearly impossible.

Here's an example from a Reuters **special report** on the topic:

In February, the federal appeals court in Cincinnati, Ohio, granted immunity to an officer who shot and wounded a 14-year-old boy in the shoulder after the boy dropped a BB gun and raised his hands. The court rejected as a precedent a 2011 case in which an officer shot and killed a man as he began lowering a shotgun. The difference between the incidents was

too great, the court determined, because the boy had first drawn the BB gun from his waistband before dropping it.

In short, courts can gin up any distinction they want, no matter how inconsequential, to give a police officer qualified immunity.

Unsurprisingly, since 2005 **fewer and fewer** excessive force cases have been decided against the police. In 2009, the Supreme Court **ruled** that judges could actually *ignore the question of excessive force in excessive force cases*, focusing instead on whether the police were acting lawfully based on past precedent. A growing percentage of cases are decided according to this standard, which is even less fair to plaintiffs.

So if you needed more proof that the judiciary and the police have too cozy of a relationship with one another, there you go.

Police have pushed back on ending qualified immunity, claiming that officers will be afraid to act at all should they no longer have this legal shield. I have my doubts about that. Besides, the opposite is too often true: police feel free to overreact and use excessive force because they know they won't be held liable for it.

The police need to be disentangled from the judiciary – which is why part of the police reform bill would establish an independent unit to investigate police shootings. The courts need to start thinking of the rights of victims, not just the rights of police.

And if lawmakers are worried that police officers will face financial ruin because of actions they take on the job, here's a solution from the libertarian Cato Institute: make them all carry **individual liability insurance**, like doctors do. Bad cops will get higher premiums, and soon become uninsurable, while cash-strapped local governments would no longer have to pay out enormous sums when excessive force complaints actually go against them.

How about that? A way to use insurance that would actually work out for everyone.