Elimination of Qualified Immunity

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Abstract:

The United States Supreme Court in 1967 created qualified immunity for federal officers and employees. Federal and State police officers have successfully argued that qualified immunity shields them from civil liability despite their actions. In recent years, States have started moving to eliminate or reduce qualified immunity. The U.S. Supreme Court has in recent years revisited the 1967 decision requiring Plaintiffs to prove clearly established statutory or constitutional rights to overcome qualified immunity. In 2020, the United States Supreme Court carved out an objectively unreasonable exception to qualified immunity whereby police officers and other government employees could be held personally civilly liable.

Qualified Immunity, Supreme Court, George Floyd Justice In Policing Act, Constitutional Violation

INTRODUCTION

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This paper will review the genesis of the Qualified Immunity defense to civil liability. The U.S. Supreme Court created this defense to shield federal police officers from civil liability that may arise from their actions as members of law enforcement. In recent years, both states and the U.S. Supreme Court have elected to revisit qualified Immunity. This paper explores the history and evolution of qualified immunity and the future of qualified immunity.

On September 30, 2021, California Governor Gavin Newsom signed into law Senate Bill 2. This law eliminates qualified immunity that previously shielded members of law enforcement from civil rights lawsuits.

Qualified Immunity, Supreme Court, George Floyd Justice In Policing Act

What is qualified immunity? Qualified immunity essentially shields government officials from being held personally liable for the violation of constitutional law. Qualified immunity, as it pertains to members of law enforcement, offers them protection from being personally liable for constitutional violations committed while acting in the course and scope of their employment. No matter how egregious the violation, the individual police officer is immune from personal civil liability. For example, in a civil suit should a member of the Los Angeles Police Department be found to have violated a person's civil rights, that police officer would be spared from having civil liability. This would leave the City of Los Angeles on the hook for paying any civil judgment owed to the injured party.

California's audacious action on September 30, 2021, eliminating qualified immunity, was preceded by a similar action of Congress. The United State House of Representatives on March 3, 2021, passed H.R. 1280 commonly referred to as the George Floyd Justice in Policing Act. The proposed legislation was named after George Floyd, the African-American male who was killed at the hands of Minneapolis Police Officer Derek Chauvin. The tragic killing of Mr. Floyd was seen around the world and resulted in months of civil unrest around the globe at the height of the COVID-19 Pandemic. One of the co-sponsors of the bill, Congressman Ritchie Torres (D-NY) said on the House floor "The purpose of the George Floyd Justice in Policing Act is not to second guess officers who act in good faith, the objective is to hold liable officers who repeatedly abuse their power and who rarely, if ever, face consequences for their repeat abuses." Like the George Floyd incident, there have been many examples of police officers avoiding personal civil liability despite their horribly egregious acts such as pepper-spraying a protester in the face so badly that her contact lenses were fused to her eyes, handcuffing a pregnant woman face down on the concrete and tasing her three times over a speeding ticket, and locking a naked prisoner in a cell full of feces.

H.R. 1280 never became law and has little chance of becoming law due in part to the highly partisan and divided U.S. Congress. Had the George Floyd Justice in Policing Act become law, it would have effectively eliminated qualified immunity for all federal law enforcement officers. It is important to note that even if Congress had passed the George Floyd Justice in Policing Act, it would not have applied to non-federal law enforcement officers. Thus, the law would not apply to State Police Officers. It is also important to note that qualified immunity does not shield any member of law enforcement from possible criminal prosecution.

Qualified immunity's genesis is not from an act of Congress or any state legislature. Its genesis is not legislative law, but law created from the judiciary, i.e. the courts. The legal shield concept of qualified immunity finds its genesis in a 1967 United States Supreme Court case, Pierson v. Ray. The United States Supreme Court for the first time in Pierson v. Ray created the legal

doctrine of qualified immunity to shield, police officers from potential civil liability. The United States Supreme Court in its 1982 landmark ruling in the case of Harlow v. Fitzgerald held that government employees were shielded from civil liability for violations of constitutional rights. This shield applies to government employees (including members of law enforcement) when acting under the cover of law. Color law is generally understood to mean an act beyond the bounds or borders of lawful or legal authority. The U.S. Supreme Court went on to carve out an exception to qualified immunity: unless that right is “clearly established” in a previous case. Lawyers representing members of law enforcement have time and time again effectively asserted qualified immunity by relying on the holding of Harlow v. Fitzgerald. In this landmark 8-1 decision arising out of the chaos at the end of Richard Nixon’s presidency, the U.S. Supreme Court created this “new” case precedent regarding qualified immunity. The U.S. Supreme Court Harlow v. Fitzgerald further held that government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct:

1. Does not violate clearly established statutory or constitutional rights.
2. Which a reasonable person would have known.

Thus, a government employee including a member of law enforcement is shielded or protected from personal civil damages unless the litigant can meet this two-prong test or analysis. As we have seen in recent years some members of law enforcement engaged in particularly heinous acts of violence and yet have been personally immune from civil liability. For a litigant to successfully overcome the assertion of qualified immunity s/he has a rather steep legal hill to climb.

Qualified Immunity Elimination At The State Level

California is not alone in taking steps to eliminate or reduce qualified immunity for law enforcement. New Mexico became the third state to eliminate qualified immunity joining California and Colorado. New Mexico’s governor, Lujan Grisham when she signed the bill making it the law wasn’t anti-police and that the law doesn’t endanger any first responder or public servant so long as they act within the confines of the law.

Again, California wasn’t the first step to move in this direction. California was the second state to eliminate qualified immunity. The first state to pass a law ending qualified immunity was Colorado. It is important to note that at the time of the signing of these bills, the state’s governors were all Democrats. The Colorado law only eliminated qualified immunity for its state’s peace officers.

New Mexico’s law eliminates qualified immunity (as a legal defense) for any state or local government employee with some minor exceptions for employees of certain land or water use employees.

Connecticut also passed a qualified immunity “reform” bill. The Connecticut bill unlike Colorado, California, and New Mexico laws does not eliminate qualified immunity. In

Connecticut beginning in July 2021, police officers will have to pay their own defense i.e., lawyer fees and civil judgments, if a court finds that the officers engaged in a malicious, wanton, or willful act.

A similar bill passed the Illinois House Restorative Justice Committee and legislators in Florida are also considering and debating qualified immunity reform. There's a move-afoot nationwide to reform qualified immunity.

Qualified Immunity Elimination At The Local Level

New York City on April 25, 2021, became the first U.S. city to outlaw qualified immunity. This is of particular importance based on the population of the City of New York (8.468 million in 2021). Since 2015, New York City has paid out more than 1.1 billion in police misconduct cases. The City of New York is seeking to shift the responsibility for paying civil judgments and settlements away from the city onto the shoulders of offending police officers.

Qualified Immunity And The Courts: The United States Supreme Court

In a recent decision on November 2, 2020, the U.S. Supreme Court issued a short unsigned opinion in the case of Taylor v. Riojas. Mr. Taylor a former prisoner who was kept in "shockingly unsanitary cells" one of which was covered, nearly floor to ceiling, in massive amounts of feces for six days. The District Court (The Federal Trial Court) hearing the case granted the government's Motion for Summary Judgment in favor of the correction officers upon their assertion of qualified immunity. Mr. Taylor appealed that decision to the U.S. Supreme Court. The Supreme Court reversed the lower court's decision granting qualified immunity to the correction officers. The Supreme Court held that any "reasonable officer should have realized that Mr. Taylor's conditions of confinement offended the Constitution." The Taylor v. Riojas case is of particular importance because, for the first time, the U.S. Supreme Court relied on the "obviousness" of a constitutional violation to overturn a lower court's decision to grant qualified immunity to the actions of a government official. Thus, litigants hoping to overcome qualified immunity can now argue that a police officer's actions were an "obvious" violation of a person's constitutional rights. What obvious means from a constitutional basis remains to be seen. More cases will have to be litigated for appellate courts to establish what obvious means. But for the moment obvious at least means the actions of the correctional officers in the Taylor v. Riojas.

The Supreme Court in McCoy v. Alamu heard on appeal a case from Prince McCoy, a Texas prisoner who filed suit claiming Texas corrections officers sprayed him in the face with mace "for no reason at all." Following prior case precedent, the Fifth Circuit Court of Appeals granted and agreed with the correctional officers' assertion of qualified immunity in February 2020.

Mr. McCoy's lawyers appealed the decision of the Fifth Circuit Court of Appeal. The U.S. Supreme Court in a surprise decision reversed the Fifth Circuit's decision and instructed the Fifth Circuit to reconsider its decision considering the U.S. Supreme Court's decision in Taylor v. Riojas. It appears that the U.S. Supreme Court is prepared to do something that the U.S. Congress is not, reform qualified immunity.

The "Cost" of Police Misconduct

The motivation to modify and/or restrict qualified immunity is likely monetary. States and cities must contend with rising inflation and budgetary constraints and appear to be less willing to solely shoulder the cost of expensive settlements and jury verdicts because of police misconduct. For example, the city of Los Angeles alone has paid over $245 million dollars since 2015 to resolve legal claims involving L.A.P.D. officers. The city of Chicago has paid more than $238 to resolve legal claims since 2015. In the past six years, twenty (20) combined states and cities paid out over 2 billion dollars to victims of alleged police misconduct or abuse. This is unsustainable. The recent and horrific beating of Tyre Nichols by five terminated Memphis Police Officers of the now disbanded SCORPION Unit will cost the City of Memphis millions of dollars. The unjustifiable violence at the hands of the police officers in Memphis will fuel the debate on ending qualified immunity.

This is no doubt a factor in legislators at the local and state level deciding to revisit the idea (and cost) of qualified immunity to their budgets. In addition to the financial cost of qualified immunity on government budgets, there's also the cost associated with the public's lack of faith and trust in police officers. Qualified Immunity sends the message to the public that police officers are above the law.

With the nearly impregnable defense of qualified immunity, police agencies have little motivation to invest in more police officer training. Without ongoing training police officers are more likely to engage in misconduct intentionally or unintentionally. Police officers fearing potential liability will be highly motivated to request and participate in additional training. Without qualified immunity, police agencies will be under great pressure to invest more money into officer training to ensure police officers act within the confines of the law. The benefit of this additional training is a better-trained and safer police force that is less likely to engage in police misconduct, even if that motivation is to avoid personal civil liability.

Elimination of Qualified Immunity Is Not A Magic Bullet

Elimination of qualified immunity may lead to greater “cover-ups” by police officers hoping to hide evidence of wrongdoing that could later be used against the police officer in a civil suit.

There’s the genuine concern that police officers fearing civil liability will be less reluctant to enforce laws or apply force to arrest or detain a suspect even when that force may be justified. Police agencies are already having staffing challenges. The elimination of qualified immunity will likely dissuade the public from seeking an inherently dangerous career where one “bad” decision could lead to financial ruin. Without qualified immunity, police officers will face litigation filed by the attorney of the Plaintiffs, hoping for a quick settlement or even worse frivolous litigation from disgruntled members of the public using the civil courts to harass and retaliate against a police officer with whom they have a gripe.

REFERENCE PAGE

Qualified Immunity, Supreme Court, George Floyd Justice In Policing Act

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