



City of Highland

Broadway, PO Box 218
Highland, IL 62249



To: Chairman Slaughter, Chairman Sims, Honorable Members of the Task Force on Constitutional Rights and Remedies

From: Chris Conrad-City Manager, Member representing Illinois Association of Chiefs of Police

Date: October 19, 2021 (revised version)

Re: Recommendation for consideration including alternative considerations

I want to thank the Chairs, members, staff and all the panelists for their time, presentations and expertise on the topic of Qualified Immunity.

It is my hope that, as I have requested, staff provide data regarding how many cases in Illinois the issue of Qualified Immunity have impacted a victim's ability to seek redress from the government. In order to make an educated recommendation and avoid any unintended consequences, I believe it is important to know the actual scope of the problem in order to recommend a solution that fits the problem.

Law enforcement officers in Illinois are taught from their earliest days in the academy how to protect citizens, including those we arrest, in the safest way possible for all concerned. Officers are taught to consider the safety of suspects, other officers, involved and uninvolved citizens, and their own personal safety. They are taught to make these decisions in split seconds, under duress, in sometimes extremely high-stress situations and all based only upon the information they know at the time. We show them case studies of when officers get it wrong, stressing the consequences for the officers, their communities, and the citizens they serve. We train officers this way so they stop and think before they act. We run them through numerous scenarios during the academy and in post-



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academy training to hone their decision-making skills in stressful situations.

Even with all this training, police officers will make mistakes. The difference between police and most other professions is that when a cop makes a mistake, a bad guy goes free, a victim doesn't get justice, and in terrible but fortunately infrequent circumstances, someone can be hurt or dies.

The proponents of ending Qualified Immunity have done a fantastic job of highlighting examples of egregious errors where the courts have prevented cases from going forward because of Qualified Immunity. I believe most law enforcement professionals, and even most government officials for that matter, would agree that victims of egregious acts, errors and omissions should not be prevented from seeking compensation for their injuries.

The complex issue is how to protect the interests of all involved when an individual's rights are violated due to a good-faith mistake made by public employees doing very difficult jobs. How do we balance the interests of the citizen, the government actor, the government/community that employs them and the taxpayers who will ultimately pay the price? Sometimes an officer does everything correctly and in accordance with the law, the Constitution, and their training, but tragedy still occurs. Also, as helpful as video and body cameras can be, social media can portray a portion of an event in a way that skews the actual facts. How do we prevent government actors or government itself from being inundated with nuisance court actions based upon misinformation unless there is at least some minimum standard to rise above before starting litigation? Public funds and resources should be preserved for the public good, not wasted defending frivolous lawsuits.

I found Professor Schwartz's testimony enlightening for several reasons. I agree with her that the best way to reduce potentially negative impacts of the Qualified Immunity doctrine is to prevent



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the incidents before they happen. Professor Schwartz pointed out this is primarily accomplished through training and accountability. What was not discussed is where does Illinois rank in training and accountability with regard to police? The proponents of diminishing or ending Qualified Immunity cited egregious cases in federal districts in other parts of the country, but did not cite a single 7th Circuit decision that upheld an egregious act as protected by Qualified Immunity. The only 7th Circuit case provided to the task force to date is *Taylor v. City of Milford*, where the 7th Circuit overturned a District Court finding of Qualified Immunity. So it begs the question as we study a solution for Illinois, does Professor Schwartz's research reflect national trends without looking specifically at the situation in Illinois?

What are we already doing in Illinois?

Training: Since 2014, Illinois has passed two major pieces of police and criminal justice reform legislation: the Police and Community Relations Improvement Act of 2015 and the most recent SAFE-T Act of 2021. If the best way to reduce the impact of the Qualified Immunity doctrine is train officers more, then should we not give this legislation time to work? This additional training is not yet a discussion topic of the Task Force, yet the experts are telling us it is vital in preventing these types of cases.

Below is a current list of mandatory post-academy training required of every Illinois law enforcement officer. The underlined items are areas of training added with the SAFE-T Act:

Minimum in-service training requirements, which a police officer must satisfactorily complete at least annually. Those requirements shall include courses addressing:

1. *law updates*
2. *emergency medical response*
3. *crisis intervention*
4. *officer wellness and mental health*



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Mandatory training to be completed every 3 years. The training shall consist of at least 30 hours of training, at least 12 hours of hands-on, scenario-based role-playing, every 3 years and shall include:

1. At least 6 hours of instruction on use of force techniques, including the use of de-escalation techniques to prevent or reduce the need for force whenever safe and feasible.
2. At least 6 hours of training focused on high-risk traffic stops.
3. Specific training on the law concerning stops, searches, and the use of force under the Fourth Amendment to the United States Constitution.
4. Specific training on officer safety techniques, including cover, concealment, and time.
5. Cultural competency, including implicit bias and racial and ethnic sensitivity.
6. Constitutional and proper use of law enforcement authority.
7. Procedural justice.
8. Civil rights.
9. Human rights.
10. Trauma informed response to sexual assault.
11. Reporting child abuse and neglect.
12. The psychology of domestic violence (change from 5 years to 3 years for consistency).

Accountability: Through both laws, we in Illinois have implemented more provisions for police accountability than most other states.

1. *Anonymous complaints- we allow citizens to make anonymous, unaccountable accusations against our police officers, and we then keep those records regardless of the findings.*
2. *Duty to render aid; duty to intervene*
3. *Codified Officer Misconduct as a Class 3 felony.*
4. *Implemented a body worn camera mandate*
5. *Implemented state -level pattern and practice option for investigations that includes civil penalties.*
6. *Monthly reporting requirements on dispatched mental health crisis calls, incidents of use of force, and deaths in custody.*
7. *Codified and changed use of force*
8. *Provided whistleblower protections*
9. *Prevented the destruction of documents of complaints against officers regardless of the outcome of any investigation.*
10. *Implemented additional requirements for police officer certification to include, verification of compliance and individual training officer requirements and duties*



City of Highland

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on the department ranging from documentation and reporting to mandatory background investigations.

- 11. Mandatory reporting to ILETSB by the agency (Chief) upon learning of potential decertification conduct, and mandatory investigations of all complaints, including anonymous complaints.*

It is apparent we in Illinois have already taken the recommendation of Professor Schwartz and implemented significant new requirements for the training of Illinois Law Enforcement and put in place substantial and overlapping methods of accountability.

In addition, I want to mention that I was present at the Illinois Municipal League Annual Conference last month when Chairman Slaughter and Chairman Sims heard numerous comments and concerns from Illinois municipal leaders about the difficulties they are facing in the recruitment and retention of police officers. Fewer candidates are applying, and a significant number of those possess less education and are less qualified than applicants in the past. Members of the Illinois Association of Chiefs of Police reported in their Membership Survey in September 2021 that “recruitment and retention” is their number one challenge statewide. We can debate the reasons why this is happening, but the fact is this is happening, and it is creating a staffing crisis in police departments.

Illinois municipal leaders also expressed concern about the increases in costs of maintaining police departments due to the numerous unfunded mandates implemented through the reform legislation. Professor Schwartz testified to the task force that as long as indemnity is maintained, the increased cost of diminishing Qualified Immunity will be borne only by the governments who employ the government actors, confirming an increased cost of doing business for the local governments.

How can we as responsible Task Force members recommend removing or diminishing Qualified Immunity without:



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1. Knowing the actual scope of the problem in Illinois;
2. Taking into account increased costs on local governments;
3. Giving time to measure changes such as increased training and added accountability?

To do so would be to denigrate a profession of public servants that is demonstrably suffering from negative media portrayal on a national scale.

Recommendation:

It is the recommendation of the Illinois Association of Chiefs to that the Task Force follow the data before taking any immediate action to address qualified immunity in Illinois:

1. The Task Force must report the actual number of cases in Illinois Federal District Courts that involve a granting of Qualified Immunity. This will be important in reporting the actual scope of the Qualified Immunity issue in Illinois.
2. Include data from ILETSB on the number of officers in the State of Illinois and the estimated number of contacts per day or arrests per year made by those police officers to demonstrate what percentage of the time Qualified Immunity is actually needed and implemented in the grand scheme of Illinois law enforcement.
3. Acknowledge the current morale issues among Illinois Law Enforcement and the impact media coverage on police misconduct and proposed reform has had on police morale, recruitment, and retention.
4. Highlight for the Governor, the General Assembly, and our fellow citizens the reasonable and rational steps we are already taking in Illinois to train and hold our police officers accountable for their actions. Report how these steps are protecting the constitutional rights of our citizens.



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As the late Charles Gruber, an expert on use of force and retired chief of Quincy, Elgin, and South Barrington often said, police officers on a daily basis are the first defenders of civil rights in Illinois.

We believe we can show the country that Illinois is on the leading edge in both training and accountability, something our legislators, citizens and police officers can all be proud of.

As an alternative, should the Task Force elect to move forward with addressing or diminishing Qualified Immunity at this time, we make the following suggestions:

1. Acknowledge that Qualified Immunity as now discussed is largely a federal issue and cannot be “eliminated” by state action.
2. Encourage Congress to consider codifying in federal law some of the reasonable applications of qualified immunity by the U.S. Supreme Court, first in *Saucier v. Katz*, 533 U.S. 194 (2001). Maintain in law a way to hold police agencies accountable without making an officer liable for committing an act that he/she did not know was wrong or unconstitutional.
3. Obtain the data on the actual number of Section 1983 cases in Illinois that are disposed of because of Qualified Immunity. We cannot formulate a remedy without knowing the actual problem. At this point we appear to have a solution in search of a problem.
4. If the Task Force decides to attempt to diminish Qualified Immunity in Illinois, follow the lead of New Mexico and remove state-level qualified immunity for all government employees and entities. None of the experts who testified provided any testimony to the benefit of limiting new restrictions to law enforcement only.
5. Understand that removing indemnity serves only to punish individual government actors and does not actually make victims whole. Removing indemnity would exacerbate the



City of Highland

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current problems with recruitment and retention. To be consistent with the concept of procedural justice advanced by Professor Smith, just as it is unfair to have someone subjected to a civil rights violation go without a remedy, it is also unfair to impose an individual financial liability on a government actor who did not know his or her actions were improper.

6. Follow the recommendation of the Honorable Judge Crowder (Retired) in setting up a special court to hear these specific cases in which a person was denied a remedy because of a federal court determination that Qualified Immunity could be invoked. Judge Crowder suggested something similar as a Worker's Comp process; an alternative for qualified immunity could also exist in the Court of Claims.
7. Set parameters for entry into this special process. For instance, to understand the scope of what the court would be dealing with, limit it to claims that have been barred due to Qualified Immunity in federal court. Also, consider limiting this option to excessive use of force cases, to make it clear that this is not available to anyone who has a complaint against law enforcement and other government actors no longer protected by qualified immunity.
8. Set reasonable limits on recovery. This will require plaintiffs' attorneys to do a cost-benefit analysis before starting litigation and would be necessary to prevent unscrupulous lawyers from filing frivolous claims, thus driving up costs for municipalities or the state.
9. To prevent crippling increases in liability on municipalities, make this a state program with state funding. This would help preserve public funds/resources for the greater public good rather than to benefit the few.



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We understand the pressure on some task force members to find a remedy for those subjected to constitutional rights violations, even when those violations were the result of good-faith mistakes. We want to be clear that we agree it is improper to violate a person's constitutional rights. We respectfully ask the Task Force to take into account not just the impact for the victims, but also the impact on our public servants, our governments, the services they provide and our citizen taxpayers that fund them.

Respectfully submitted,

Christopher Conrad