



## QUALIFIED IMMUNITY

### *Myth vs Fact*

#### **Myth**

- Qualified immunity makes officers immune to state or federal criminal charges for a wrongful act.

#### **Fact**

- Qualified immunity does not make officers immune to state or federal criminal charges for a wrongful act.
- Qualified immunity only protects officers from liability for acts that have never been determined to violate constitutional rights.
- To retroactively punish a peace officer for conduct that he or she had no way of knowing at the time that such conduct would later be found to violate the Constitution would be wrong.

#### **Myth**

- Qualified immunity prevents individuals from recovering damages from law enforcement officers who knowingly violate an individual's constitutional rights.

#### **Fact**

- Qualified immunity only prevents lawsuits in federal court where the constitutional validity of a particular action was not known at the time. Claimants are free to sue in state court under state law for the same incident, both for negligence as well as intentional torts.

#### **Myth**

- Qualified immunity protects law enforcement agencies from unconstitutional policies and practices.

## **Fact**

- Qualified Immunity does not protect law enforcement agencies from unconstitutional practices.
- Eliminating qualified immunity will only benefit trial lawyers in obtaining substantial fee awards for lawsuits that would have been dismissed under qualified immunity.

## **Myth**

- Eliminating qualified immunity financially affects the officer and will deter him from unconstitutional actions.

## **Fact**

- Eliminating qualified immunity does not financially affect the officer because most judgments are paid by the agency's insurance company whose premiums are paid with public funds.

## **More Facts:**

- Eliminating qualified immunity will keep officers from making crucial, split-second, life or death decisions to stop a lethal threat. Innocent victims and officers will be hurt or killed as a result. *Mullenix v. Luna*, 136 S. Ct. 305 (2015).
- Qualified immunity not only protects officers from liability for unknowingly violating constitutional rights, it protects all government actors from liability to allow them to function in uncertain situations where immediate action is needed for the public good. *Pearson v. Callahan*, 555 U.S. 223 (2009).
- The qualified immunity rule seeks a proper balance between two competing interests. On one hand, damages suits may offer the only realistic avenue for vindication of constitutional guarantees. On the other hand, permitting damages suits against government officials, not just peace officers, can entail substantial social costs, including the risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties. As one means to accommodate these two objectives, judicial precedent holds that government officials are entitled to qualified immunity with respect to discretionary functions performed in their official capacities.

The doctrine of qualified immunity gives officials, peace officers or otherwise, breathing room to make reasonable but mistaken judgments about open legal questions. *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017).

- As to peace officers, qualified immunity applies to jail operations including medical decisions, failure to protect, suicides in jails, and many other situations not involving use of force. *Taylor v. Barkes*, 135 S. Ct. 2042 (2015); *Berry v. Sherman*, 365 F.3d 631(8<sup>th</sup> Cir. 2004).
- It is not necessary that the very action in question has previously been held unlawful. That is, an officer might lose qualified immunity even if there is no reported case directly on point. But in the light of pre-existing law, the unlawfulness of the officer's conduct must be apparent. *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017).
- Qualified immunity protects all but the plainly incompetent or those who knowingly violate the law. To determine whether a given officer falls into either of those two categories, a court must ask whether it would have been clear to a reasonable officer that the alleged conduct was unlawful in the situation he confronted. If so, then the defendant officer must have been either incompetent or else a knowing violator of the law, and thus not entitled to qualified immunity. If a reasonable officer might not have known for certain that the conduct was unlawful, then the officer is immune from liability. *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017).
- Eliminating qualified immunity for cases where the peace officer didn't know they were violating constitutional rights will open the flood gates for additional litigation and have a substantial negative impact on the budgets of communities that will have to pay for increasing judgments and attorneys' fees.