

Co-Chairs and Members of the Joint Committee,

Qualified immunity has become absolute impunity. It is an unjust doctrine that shields law-enforcement officials who break the law, prevents those they injure from getting relief, and erodes public trust and accountability in government at all levels.

Qualified immunity is why police officers in Fresno, CA, felt emboldened to steal nearly \$300,000 while executing a search warrant. They knew they'd get away with it—and they did.[1]

Qualified immunity is why a police officer in Georgia felt free to shoot wildly at a nonthreatening dog, missing it and hitting a nearby child instead. He knew he'd get away with it—and he did.[2]

Qualified immunity is why prison guards in Texas didn't think twice about keeping prisoners in cells teeming with human waste for six days. They knew they'd get away with it—and they did.[3]

Don't just take it from me. Take it from learned commentators across the political spectrum—qualified immunity has got to go:

- "[Q]ualified immunity abets and exacerbates the violation of constitutional rights of every sort—including the rights to freedom of speech and religious exercise, to keep and bear arms, to be free from unreasonable searches and seizures, to be free from cruel and unusual punishment, to be free from racial discrimination, and to pursue a lawful occupation, just to name a few." — Brief of Cross-Ideological Groups including ACLU, Reason Foundation, Americans for Prosperity, and Law Enforcement Action Partnership. ([PDF](#)[4] at 7.)
- "To some observers, qualified immunity smacks of unqualified impunity, letting public officials duck consequences for bad behavior—no matter how palpably unreasonable[.]" —Don R. Willett, appointed by President Donald Trump to the U.S. Court of Appeals for the Fifth Circuit. ([PDF](#)[5] at 21.)
- "[J]udges have invented a legal doctrine to protect law enforcement officers from having to face any consequences for wrongdoing. The doctrine is called 'qualified immunity.' In real life it operates like absolute immunity." —Judge Carlton W. Reeves, appointed by President Barack Obama to the U.S. District Court for the Southern District of Mississippi. ([Web](#)[6].)
- "I continue to have strong doubts about our §1983 qualified immunity doctrine." —Justice Clarence Thomas, dissenting from denial of certiorari in *Baxter v. Bracey*, No. 18-1287 ([PDF](#)[7] at 6.)

Qualified immunity is a doctrine of federal law. It is immunity to liability under 42 U.S.C. § 1983. State legislatures have limited power to address it. But one thing state legislatures can do—and which states across the country have been doing—is enact *state*-level causes of action under which qualified immunity is not a defense. To the best of my knowledge, Colorado was the first to pass such a law.[8] That bill has flaws, but this Committee can use it as a model. My primary substantive critique is that it protects only "rights, privileges, or immunities secured by the Colorado constitution." There is no reason a state cause of action cannot protect federal and statutory rights as well, and this Committee's bill should encompass all rights that a law-enforcement official might invade.

One final point bears mention. I understand that one Michael Selvaggio has submitted testimony to this Committee stating that "as Legislators, the members of this Committee and your colleagues enjoy the protection of Qualified Immunity for every vote and every legislative action you take. Without it,

legislators would be personally liable for votes and actions that were later found to impede a person's rights."

That testimony is categorically false. State legislators are protected by parliamentary or legislative privilege, a much more ancient and normatively desirable privilege.[9] This Committee would be ill-served by considering Mr. Selvaggio's testimony on this or any other matter relating to police reform.

Respectfully submitted,
Athul K. Acharya

- [1] <http://cdn.ca9.uscourts.gov/datastore/opinions/2019/09/04/17-16756.pdf>
- [2] <https://media.ca11.uscourts.gov/opinions/pub/files/201715566.pdf>
- [3] <http://www.ca5.uscourts.gov/opinions/pub/17/17-10253-CV0.pdf>
- [4] https://www.supremecourt.gov/DocketPDF/17/17-8654/52935/20180711143053649_7.11.2018_Panideological%20Amicus%20Brief%20FINAL.pdf
- [5] <http://www.ca5.uscourts.gov/opinions/pub/17/17-50518%20-CV0.pdf>
- [6] <https://casetext.com/case/jamison-v-mcclendon>
- [7] https://www.supremecourt.gov/opinions/19pdf/18-1287_09m1.pdf
- [8] <https://leg.colorado.gov/bills/hb20-1287>
- [9] <https://supreme.justia.com/cases/federal/us/341/367/>