Qualified Immunity: A Brief History and Recent U.S. Supreme Court Ruling

A Brief History and Implications for States

The doctrine of qualified immunity protects state and local officials from individual liability unless the official violated a clearly established constitutional right. Some of the police reform bills Congress is considering aim to eliminate qualified immunity for state and local police and correctional officers.

What does it mean for a state or local official to have qualified immunity and what would the impact be if it was eliminated? The evolution of qualified immunity began in 1871 when Congress adopted 42 U.S.C. § 1983 which makes government employees and officials personally liable for money damages if they violate a person's federal constitutional rights. State and local police officers may be sued under § 1983. Until the 1960s few § 1983 lawsuits were successfully brought. In 1967 the U.S. Supreme Court recognized qualified immunity as a defense to § 1983 claims. In 1982 the Court adopted the current test for the doctrine. Qualified immunity is generally available if the law a government official violated isn't "clearly established."

If qualified immunity applies, money damages aren't available even if a constitutional violation has occurred. If qualified immunity doesn't apply, while the government employee or official technically is responsible for money damages, the government entity virtually always pays. So qualified immunity protects states and local governments from having to pay money damages for actions not yet deemed unconstitutional by a court.

The qualified immunity doctrine is very favorable to states and local governments. “Clearly established” means that, at the time of the official’s conduct, the law was sufficiently clear that every reasonable official would understand that what he or she is doing is unconstitutional. According to the Supreme Court qualified immunity protects all except the plainly incompetent or those who knowingly violate the law.

The Supreme Court has offered multiple justifications for qualified immunity, including that it encourages government officials to “unflinching[ly] discharge . . . their duties” without worrying about being sued for actions a court has not yet held violate the constitution.

The Supreme Court has held that police and correctional officer use of force violates the Fourth Amendment when it is “excessive.” Police and correctional officers receive qualified immunity if it isn’t clearly established that their use of force was excessive. According to the Supreme Court, while qualified immunity “do[es] not require a case directly on point,” it does require that “existing precedent must have placed the statutory or constitutional question beyond debate.”

For example, in 2014 the Supreme Court held in *Plumhoff v. Rickard* police officers didn’t use excessive force in violation of the Fourth Amendment when they shot and killed the driver of a fleeing vehicle to end a dangerous car chase. The Court also held that even if the officers used excessive force they were entitled to qualified immunity because it wasn’t clearly established that shooting the driver in these circumstances amounted to excessive force.

One piece of proposed federal legislation eliminates qualified immunity for state police, local police, and correctional officers. It states that for these officers,

acting in good faith or with a belief that conduct was lawful is no longer a defense to a § 1983 lawsuit. Neither is the fact that the law wasn't clearly established nor that the "state of the law was otherwise such that the defendant could not reasonably have been expected to know whether his or her conduct was unlawful." To date, no federal legislation proposes eliminating qualified immunity for all state and local government officials and employees.

SCOTUS Denies Petitions on Qualified Immunity

On June 15, 2020 the U.S. Supreme Court denied nine petitions involving qualified immunity.. Had the Court accepted any of these petitions the case would have had significant implications for states and local governments.

In the last few years, qualified immunity has been criticized by academics, thinktanks, and judges. Since George Floyd's death this year, qualified immunity has faced increasing scrutiny. In a number of the qualified immunity petitions a party and/or *amicus* filing a brief in support of a petition asked the Court to modify or overrule qualified immunity. When the Court kept allowing more and more petitions to pile up, speculation grew that the Court would take a number of petitions at once and somehow alter, if not eliminate, the doctrine.

On June 15 the Supreme Court denied *certiorari* in all of the petitions. Justice Thomas filed a dissenting opinion in one of the cases reiterating his "doubts about our qualified immunity jurisprudence," noting qualified immunity is not included in the text of the statute which allows state and local government officials to be sued for violating the constitution.

Information provided by Lisa Soronen, Executive Director, State & Local Legal Center (SLLC)