

INNOCENCE PROJECT

Eliminate Qualified Immunity to Prevent Wrongful Convictions

Special Commission on Qualified Immunity Public

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When public officials can escape accountability for violating Constitutional rights, not only does this undermine the public's trust in government, it teaches those officials that Constitutional rights are optional. The consequences of this culture of impunity are numerous and, in the cases of wrongful convictions, **leads to innocent people spending decades behind bars, or worse, for crimes they did not commit.**

The Innocence Project strongly believes strengthening our civil rights laws by eliminating court-created immunities is a foundational reform that impacts every other policing reform bill considered by this body. New rules and regulations for law enforcement will not result in change until there are meaningful consequences for breaking them. Massachusetts must take steps to ensure regular citizens have an effective and powerful tool to combat civil rights violations and make accountability a more pressing priority.

The Innocence Project can draw a straight line in our casework from egregious police misconduct that sends an innocent person to prison to justice denied after the fact because of qualified immunity. **Nearly 50% of Massachusetts' 77 known wrongful convictions involved some form of police officer misconduct**, from lying under oath to coercing false confessions. Because of court-created immunities that undermine Massachusetts' civil rights laws, it's unlikely the victims of even the most egregious misconduct could successfully sue law enforcement for constitutional rights violations. As a result, officers (and other state actors) have near-total freedom to behave outside the law without consequence. Here are just a few examples from around the country of the qualified immunity doctrine blocking accountability for police misconduct that resulted in a wrongful conviction:

Levon Brooks and **Kennedy Brewer** were wrongfully convicted of two separate murders. Despite learning of the many years of misconduct in a particular Mississippi police department, qualified immunity shielded the defendants in their case because while the court found there was indeed negligence there lacked an indication that this misconduct was intentional.

Armand Villasana was wrongfully convicted of kidnaping, rape, and sodomy in Missouri. Villasana suffered two miscarriages of justice because qualified immunity barred his ability to recover because there lacked precedent holding a crime lab liable for not disclosing evidence that may prove Villasana's innocence.

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Alan Beaman was wrongfully convicted of murder in Illinois. Despite holding that Beaman did suffer a constitutional violation when the police and prosecutor failed to disclose exculpatory evidence, such a violation was not clearly established at the time of the conviction thus entitling the defendants to qualified immunity.

Lana Canen was incarcerated in Indiana for over 7 years for a murder she did not commit. Qualified Immunity protected the defendant from accountability for his misidentification of Canen's fingerprint at the crime scene despite his admission that he should not have been doing the fingerprint comparison because he lacked the proper technical training.¹

Zackary Stewart was 18 years old and wrongly convicted for murder in Missouri after the police obtained a false confession. Qualified Immunity blocked his ability to recover because there lacked precedent to put the defendants on notice that their conduct violated a person's constitutional rights.

What message should police officers in Massachusetts and around the country take from these rulings other than that it is fair game to hide exculpatory evidence, coerce false confessions, or provide false testimony because there won't be consequences for doing so?

The "clearly established law" standard often results in absurd conclusions, especially when the court deals with new types of alleged police misconduct involving unique fact patterns. For instance in *Jessop v. City of Fresno*, the Ninth Circuit granted qualified immunity to police officers alleged to have stolen over \$225,000 from the plaintiff while executing a search warrant because, at the time of the incident, the circuit had never addressed a situation involving theft of property seized pursuant to a search warrant by police officers.² Similarly, in *Brent v. Wayne County Department of Human Services*, the Sixth Circuit granted qualified immunity to a social worker alleged to have executed a removal order that would not have been issued if not for false statements the social worker made to the court, because it had not addressed such a situation at the time of the removal.³ In *Mattos v. Agarano*, the court concluded that police officer's repeated use of a taser on a nonviolent pregnant woman who refused to step out of her car did not obviously violate her constitutional rights.⁴

For these reasons, Colorado, Connecticut, New Mexico, and New York City have either ended qualified immunity altogether or limited its application in court cases, and many other states and localities are seriously considering proposals to do the same. The Innocence Project is aware of

¹ *Canen v. Chapman*, 847 F.3d 407, 411 (7th Cir. 2017).

² 936 F.3d 937, 941 (9th Cir. 2014).

³ 901 F.3d 656, 685 (6th Cir. 2018).

⁴ 661 F.3d 443,449 (9th Cir. 2011).

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active or soon-to-be-introduced bills on the topic from California to Louisiana, and we strongly believe Massachusetts should pass similar legislation.

Opponents of this common sense reform allege that holding government officials accountable for patently unconstitutional behavior will result in legal punishment for officers' "split-second decision making." This is simply not true, and represents a fundamental misunderstanding of the qualified immunity doctrine. [The New Mexico Civil Rights Commission](#) studied this exact issue last year, and the panel made up of judges, attorneys, law enforcement, and citizens released a majority report recommending the elimination of qualified immunity for government actors (this recommendation became law, see [NM HB 4](#)). In particular, the Commission noted:

"The Majority is sensitive to, and has carefully considered, concerns that public officials must have room to fulfill their important responsibilities in good faith. But the Majority does not believe that qualified immunity provides the answer to that concern. Instead, public officials' reasonable, **good faith conduct is protected through faithful application of substantive constitutional law by judges and careful instructions to juries in cases with enough merit to go to trial.** Excessive force cases against law enforcement officers are a classic example. The Majority agrees that split-second decisions law enforcement officers must make in tense circumstances should not be second-guessed by judges and juries with the benefit of 20/20 hindsight. That is, however, already addressed in the substantive constitutional law. In addition, claims that a public official violated the Constitution (state or federal) consistently are evaluated under high standards—considerably higher than the standards that apply to, for example, a regular negligence case. Those standards provide the appropriate safeguards against liability for reasonable, good-faith conduct."

Opponents also argue that cost concerns should trump access to justice. Here, too, the New Mexico Civil Rights Commission considered these arguments fully and determined that these concerns "do not undermine the compelling justification for [a robust]" civil rights law, for several reasons:

"First, the cost of protecting the rights of New Mexicans involves values fundamentally different from other budget questions the Legislature faces. Absent a statutory remedy for state constitutional violations, **the Legislature is forcing the citizen who was harmed by government misconduct to pay for the violation they suffered.** That is where things stand today. The Legislature therefore has to consider whether it wants to continue saving money by forcing those harmed by government misconduct to bear the cost for the state or responsible local government.

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Second, **the actual costs of a New Mexico Civil Rights Act are difficult to quantify.** Everyone who presented to the Commission agreed on this. The Commission sought substantial data from state and local governments related to the question, but the responses did not lead to a clear conclusion. It is clear, however, that there are reasons to doubt that adopting the Majority's proposals will result in the significant costs that some have claimed. And the Majority is concerned that the inability to answer this question concretely in advance invites speculative doomsday scenarios that never will come to pass. **The Majority also questions whether allowing New Mexicans to recover when the government violates their state constitutional rights actually will prevent any New Mexico government from securing adequate insurance.** The inability to reasonably insure certainly was not proved during hours of presentations the Commission heard from those best situated to show that—unlike every other statute that preceded it—the New Mexico Civil Rights Act presents an uninsurable risk.”

Opponents argue that police misconduct is not a pervasive issue in Massachusetts, nor is qualified immunity abused in these cases, and therefore, eliminating qualified immunity is a solution in search of a problem. We strongly disagree, and there are plenty of examples:

- In July 2020, the Trump Administration's Department of Justice issued the findings of its investigation into the Narcotics Bureau of the Springfield Police Department, concluding that officers “engage in a pattern or practice of excessive force in violation of the Fourth Amendment,”⁵ without accountability. Particularly relevant to the Innocence Project's work is one example of a sergeant repeatedly kicking a minor in the head while threatening to “fucking kill [one of the youth] in the parking lot,” charge a youth with a murder and “fucking make it stick,” and that he would “stick a fucking kilo of coke in [one of the youth's] pocket and put [him] away for fucking fifteen years.” The report also described numerous examples of officers submitting falsified reports, that investigations of misconduct allegations are inadequate, and that internal discipline is rarely imposed even in the few instances of sustained complaints. The incidents of misconduct described in the report are shocking; but Springfield citizens who want their day in civil court will run headfirst into qualified immunity.
- 48% of known wrongful convictions in Massachusetts involved police officer misconduct, including 14 exonerations in just the last 5 years. The misconduct alleged in these wrongful convictions include withholding exculpatory evidence, manufacturing false eyewitness identifications, intimidating witnesses, coercing false confessions, and perjury. Police misconduct is pervasive across every county in the state, and qualified immunity represents a significant barrier to ever holding these officers accountable.

⁵ Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau

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- When a Tauton police officer's midnight search for drugs in a woman's apartment turned up nothing illegal, he took her to the hospital and made a doctor search her vagina, where he also did not find drugs. The officer got a warrant allowing this vaginal search by telling the magistrate that a confidential informant told police the woman had once gone into the bathroom and then returned with drugs. The informant also said he heard the woman kept drugs in her vagina. The woman's civil rights lawsuit was thrown out of court because the police officer's conduct didn't violate clearly established law. *Rodriques v. Furtado*, 575 N.E.2d 1124 (Mass. 1991)
- Prison guards at MCI-Norfolk repeatedly assigned a man who could not climb stairs to a cell on the second or third floor. When he refused to go to his assigned cell because he could not climb the stairs, guards punished him by putting him in solitary confinement. A court ruled the guards couldn't be held liable because the laws they broke weren't "clearly established." *Shedlock v. Department of Correction*, 818 N.E.2d 1022 (Mass. 2004)

Police misconduct and abuse have degraded trust between law enforcement and the communities they police and compromised the integrity of our criminal legal system threatening justice for the innocent, victims and survivors of crime, and our communities at large. In our recent past, millions of Americans poured into the streets to demand immediate action to confront these issues. Eliminating qualified immunity is one of the clearest steps the State can take to show Bay Staters their concerns are taken seriously.

The Innocence Project remains committed to being a resource to Massachusetts as it continues to pursue needed criminal justice reform. Please do not hesitate to contact us if we can be of assistance to lawmakers:

Laurie Roberts
Innocence Project
lroberts@innocenceproject.org