

Law Enforcement and Changing Societal Expectations – Multiple Challenges for Pools



AGRiP Homecoming
October 2021

Representative liability payments

2014 - \$5.9 million

2016 - \$3 million

2018 - \$2.4 million

2020 - \$27 million

Qualified Immunity – The Basics

What is it: A Defense Against Federal Civil Claims

Who gets it: Public Officials Performing Discretionary (not Ministerial) Acts

When Created? 1967 By U.S. Supreme Court in a Civil Rights Case

Why Created? To Balance Competing Public Values

What Qualified Immunity is Not

- ✓ Not a Defense to State Law Claims
- ✓ Not Applicable in Criminal Matters
- ✓ Not Applicable in Administrative/Internal Matters
- ✓ No Immunity Where Official Performs “Ministerial” Act

Note: This exception is very narrow in law enforcement context

Arguments “for” Qualified Immunity

- ✓ Shield public officials from harassment and distraction
- ✓ Provide “good faith” defense for officials making split-second decisions in stressful circumstances
- ✓ Police officers cannot be expected to be legal scholars or think through legal arguments when making an arrest
- ✓ Shield public officials from costs of discovery and trial in cases where law was not clear at time of challenged action
- ✓ Reduce the “social costs” of Section 1983/Civil Rights claims including:
 - The expenses of litigation;
 - The diversion of official energy from pressing public issues;
 - The deterrence of able citizens from acceptance of public office

And then 2020 happens.....

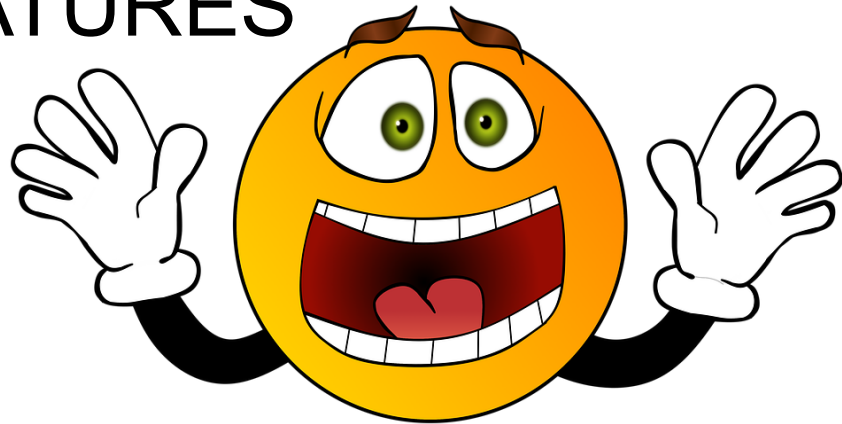


The Future of Qualified Immunity

- CONGRESS



- STATE LEGISLATURES



Challenges Facing Law Enforcement

- Recruiting and retention
- Duty disability retirements
- Ad hoc implementation of less proactive policing
- Consolidation of public safety departments and decrease in local control
- Public debate over actual or perceived increase in crime



Effects on Policy-Making

Oversight being transferred to:

- Insurers/pools
- Judges, juries, and attorneys
- State legislatures and Congress



Practical limitations on Reimagining Public Safety

- Availability of mental health and other social service resources
- Sustainability of long-term funding for alternative programs
- Failure to rely on evidence-based research
- Lack of clarity on legal authority and uncertainty regarding potential exposures

What Can Pools Do?



Questions, Comments, and Contacts

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