

Support HB 647 – Don’t Close the Courthouse Doors to Victims of Police Abuse

HB 647 would establish a cause of action against the state for violations against individual rights. Under this proposal, the government employer and not a government employee would be the defendant. As the bill states, a “government employer shall be liable for an injury caused by an act or omission of a government employee who, under color of law, violates a right under the laws or constitution of the state of New Hampshire or the United States.”

This legislation is a New Hampshire solution to a substantial hurdle faced by Granite Staters seeking to hold police officers and other government actors accountable for violating their rights – a hurdle known as qualified immunity. Qualified immunity is a legal doctrine created by the U.S. Supreme Court that shields government officials, including police officers, who violate a community member’s constitutional or civil rights (e.g. engaged in excessive force) from lawsuits for money damages unless the individual whose rights were violated can show that the government official violated “clearly established law.” HB 647 would not ensure an outcome, it merely ensures that victims of government abuse can have their day in court.

Qualified Immunity effectively closes the courthouse doors to victims of police abuse. For a violation to be clearly established, a victim of government violence must find another case with identical or nearly identical facts where a court overruled a qualified immunity defense. This applies even in cases where the government violence resulted in serious injury or death. Here’s a real-world example of qualified immunity in action: a police officer shot a 10-year-old child in the leg (the officer was trying to shoot a nearby non-aggressive pet dog and missed). Qualified immunity protected the officer from accountability because there was no other case where another child was shot when the officer intended to shoot something else.¹ Legislators must ensure that victims receive their day in court.

New Hampshire and New England are not immune from the injustice of this legal regime. For example:

- *Farrelly v. City of Concord*, 902 F. Supp. 2d 178, 195 (D.N.H. 2012) (qualified immunity barred a false arrest claim against an officer for arresting the plaintiff under a statutory provision that had been held unconstitutional by the New Hampshire Supreme Court some 5 years before).
- *Simone v. Monaco*, No. 20-cv-336-SM, 2022 U.S. Dist. LEXIS 3017 (D.N.H. Jan. 6, 2022) (granting qualified immunity to several officers despite allegations that these officers restrained the plaintiff while other officers struck him because the restraining officers testified that they did not know why the plaintiff was being beaten).
- *Gray v. Cummings*, 917 F.3d 1, 10, 12 (1st Cir. 2019) (“Based on the body of available case law, we hold that an objectively reasonable police officer in May of 2013 could have concluded that a

single use of the Taser in drive-stun mode to quell a nonviolent, mentally ill individual who was resisting arrest, did not violate the Fourth Amendment. Even if such a conclusion was constitutionally mistaken — as a jury could find on the facts of this case — Cummings is shielded by qualified immunity.”; noting that “the plaintiff must identify either controlling authority or a consensus of cases of persuasive authority sufficient to send a clear signal to a reasonable official that certain conduct falls short of the constitutional norm”).

Support HB 647 – Ensure that victims of government abuse can have their day in court.

ⁱ *Corbitt v. Vickers*, 929 F.3d 1304 (11th Cir. 2019).