

Protecting Everyone's Constitutional Rights Act

A State Solution to the Problem of Qualified Immunity
that Stymies Federal Litigation under 42 U.S.C. 1983

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Section 1: Legislative Findings¹

1. Government's most important responsibility is to protect the rights provided by the laws and constitutions of this State and the United States.
2. Government's violation of rights diminishes the lives, liberty, property and pursuits of individuals.
3. Government's failure to remedy a violation of rights imposes an unjust cost on an injured individual.
4. Government's legitimacy is threatened by the absence of a meaningful civil process for an injured individual to seek redress of a violation of rights.
5. Government is responsible for hiring, training, supervising and retaining employees, and for ensuring they perform their duties consistent with rights under the laws and constitutions of this State and the United States.
6. The U.S. Supreme Court has interpreted the U.S. Constitution to protect police officers and other government employees against claims of excessive force in an arrest, investigatory stop or other seizure under a standard of objective reasonableness. An objectively reasonable action does not violate the U.S. Constitution. The Court's interpretation of the 4th Amendment protects against second-guessing reasonable split-second decisions made by police officers. The legislature recognizes and agrees with the Supreme Court's precedent.²
7. Courts can address frivolous lawsuits. Rules of civil procedure authorize judges (a) to grant a motion to dismiss and (b) to sanction an attorney who files a case to harass a defendant.
8. Courts must be free to engage in fact finding to determine whether a government employee's action violates a constitutional right. By making the government a defendant and the financially responsible party, the legislature wants to free courts to determine if an employee's action violated the constitution (a) unencumbered by doctrines that impede fact finding, like the federal doctrine of qualified immunity, and (b) without the employee being exposed to personal financial liability.

¹ These legislative findings will not be codified in state statute.

² A police officer has discretion to make split-second decisions. In *Graham v. Connor*, 490 U.S. 386 (1989), the U.S. Supreme Court held that an officer's split-second decision that is objectively reasonable does not violate the U.S. Constitution. Having decided that an officer's action did not violate the 4th Amendment, the Supreme Court did not have to reach the question of immunity.

Section 2: Definitions

1. "Government" means state, county, municipal, and other governmental entities in this state.
2. "Government employee" means an individual employed or contracted by the government.

Section 3: Respondeat Superior

1. The government is a principal responsible for the actions of its government employees.
2. A government employee is an agent of the government that employs the government employee.
3. The government is legally responsible for a wrongful act of its government employee if such act occurs under the color of law.
4. This chapter constitutes (a) a waiver of sovereign immunity and (b) acceptance of responsibility for a government employee's act under the color of law under the common law theory of respondeat superior by the government as required to enforce the chapter, without regard to whether the government employee acted pursuant to a policy or custom of the government.

Section 4: Cause of Action

1. An individual ("plaintiff") may seek legal, equitable, or other relief in a court of this state for an injury caused by an act or omission of a government employee under the color of law in violation of a right under the laws or constitution of this State or the United States.
2. The plaintiff seeking relief shall name as the defendant the government, pursuant to the State's rules of civil procedure.
3. The plaintiff seeking relief bears the burden of proving a violation of a right under the laws or constitution of this State or the United States by a preponderance of the evidence.

Section 5: Judicial Process

1. A lawsuit shall not be impeded by invocation of a government employee’s defense or immunity³ including that:
 - A. the rights, privileges, or immunities secured by the laws or constitution of this State or the United States were not clearly established at the time of their deprivation by the government employee, or that the state of the law was otherwise such that the government employee could not reasonably or otherwise have been expected to know whether the government employee’s conduct was lawful;⁴ or
 - B. the government employee acted in good faith or that the government employee believed, reasonably or otherwise, that the government employee’s conduct was lawful at the time it was committed.⁵
2. A judgment shall be supported by findings of fact and conclusions of law.
3. A government employee shall not be found financially liable for a violation of a right under the laws or constitution of this State or the United States.

Section 6: Jurisdiction in State Court

1. An action under this chapter arises out of state law.
2. Jurisdiction is in this State’s judicial system pursuant to this State’s laws and rules of civil procedure.

Section 7: Attorney Fees

1. In any proceeding in which a plaintiff’s claims prevail, the government shall be liable for reasonable attorney fees and other litigation costs.
2. Paragraph 1 of this section includes reasonable attorney fees, including those incurred on an hourly or contingency basis, or by an attorney providing legal services on a pro bono basis.

³ In *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978), the U.S. Supreme Court held that a municipality can be liable for constitutional torts. The defenses and immunities available to an individual government employee are not available to a municipality.

⁴ Paragraph 1A is prophylactic. It ensures a state court does not import the federal immunity established in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). It is unnecessary to import the federal immunity into a state court proceeding because this model holds the government employee financially harmless.

⁵ Paragraph 1B is prophylactic. It ensures a state court does not import the federal immunity established in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). It is unnecessary to import the federal immunity into a state court proceeding because this model holds the government employee financially harmless.

Section 8: Termination of Contract, Agreement or Employment

1. Notwithstanding any other law, contract or agreement, the government may terminate a contract, agreement or employment with the government employee if the court finds, under this chapter, that the government employee violated a plaintiff's right under the laws or constitution of this State or the United States.
2. The government's termination of a contract, agreement or employment with the government employee shall not affect the government's liability under this chapter.

Section 9: Statute of Limitations

A claim made under this chapter shall be commenced no later than three years from the date a claim can be brought for the deprivation of a right under the laws or constitution of this State or the United States unless a longer statute of limitations is otherwise provided by state law.

Section 10: Exclusive immunity

This chapter shall not abrogate judicial or legislative immunity.

Section 11: Public information

All judgments, settlements, and complaints are subject to public disclosure.

Section 12: Effective Date

⁴ Paragraph 1B also is prophylactic. It ensures a state court does not import the federal immunity in *Pierson v. Ray*, 386 U.S. 547 (1967). As with footnote 3, it is unnecessary here for a state court to adopt federal immunity.