

The following are the principal defenses of qualified immunity as a necessary protection for police officers and government officials when sued in their individual capacities.

1. **Police officers need protection in order to perform discretionary functions.**

Every single factual scenario an officer encounters is different and unknown. It is extremely difficult for an officer to determine how a legal doctrine will apply to a split-second factual scenario that the officer confronts. Thus, unless there is existing precedent that squarely governs the facts before the officer, the reasonable officer needs to be afforded a certain degree of discretion to make split-second decisions in situations that could put lives, including their own, at risk. Officers should not be punished for doing so.

2. **The courts have been balanced in denying or granting qualified immunity.**

- A recent study of more than 200 lower court decisions where qualified immunity was raised as a defense, the court denied officers qualified immunity 43% of the time.
- Only 5 cases have made it to the Supreme Court since 2015. In all 5 cases, officers were granted qualified immunity, including 9-0 and 8-1 decisions. This suggests that there is very little dispute, despite acknowledgement from strong justices on both sides (Thomas and Sotomayor) of a desire to revisit the defense.
- There are currently 10 petitions before the Supreme Court which ask the Court, in some manner, to revisit qualified immunity.

3. **Qualified immunity only protects the individual officers—not the government itself.**

Qualified immunity does not protect a city from suit for its policies and practices or failure to train. If an individual has a viable claim that the city has a practice of misconduct or failed to train its officers, that claim can go forward irrespective of an individual officers' qualified immunity.

4. **Qualified immunity avoids expending substantial litigation costs and resources.**

Qualified immunity prevents a plaintiff from being able to make a frivolous allegation against an officer or government official with a hope of finding some evidence during time-consuming discovery. Absent qualified immunity, every time a police officer or government official is sued, they would be subject to extensive personal litigation costs.

5. **Departments will not defend officers in egregious cases.**

In the most egregious examples we have seen, such as out of Minneapolis, qualified immunity will not be available to those officers. The city will not defend officers involved in obvious misconduct. Qualified immunity protects the reasonable police officer, not those whose actions demonstrate complete incompetence.