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Kyle Johnson
Loyola University Chicago School of Law

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A New Frontier For Ending Qualified Immunity: State Civil Rights Acts

Kyle Johnson

The United States faced a reckoning in the aftermath of the murder of George Floyd.¹ Floyd, a 46-year-old black man, was killed by a Minneapolis police officer after being arrested on May 25, 2020.² A bystander video of Floyd's last moments was broadcast across the nation on social media and major media outlets, provoking the nation's anger over police violence against black people.³ Civil unrest reached every corner of the United States and spread to other countries as millions of people took to the streets in protest.⁴ An international pandemic could not keep millions of people from gathering together and calling for justice and accountability.⁵

To survivors of police violence this reckoning over the policing of black and brown bodies was overdue.⁶ Many of those survivors and their allies have been calling for broader police reform and accountability for decades.⁷ To the activists who have been working in the movement for police accountability the protests were an opportunity to focus the nation's attention on the social and legal mechanisms that protect police officers from criminal and civil liability for their misconduct.⁸ One protection in particular, "qualified immunity," gained national attention during the months that followed Floyd's death.⁹

Qualified Immunity is best-known for its availability to government officers in actions brought under Title 42 Section §1983 (Section §1983) of the United States Code (U.S.C.).¹⁰ Section §1983 provides a right to sue govern-

¹ Vandana Rambaran, *Watchdog group accuses police of excessive force in George Floyd protests*, FOX NEWS (Aug. 4, 2020), <https://www.foxnews.com/us/amnesty-international-police-force-protests>.

² Rambaran, *supra* note 1.

³ Rambaran, *supra* note 1.

⁴ Hailey Fuchs, *Qualified Immunity Protection for Police Emerges as Flash Point Amid Protests*, The New York Times, <https://www.nytimes.com/2020/06/23/us/politics/qualified-immunity.html> (last updated July 20, 2020).

⁵ Fuchs, *supra* note 4.

⁶ Fuchs, *supra* note 4.

⁷ Fuchs, *supra* note 4.

⁸ Fuchs, *supra* note 4.

⁹ Fuchs, *supra* note 4.

¹⁰ Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 Notre Dame L. Rev. 1797, 1801 (2018).

ment officers and agents in court to rectify violations of federal rights.¹¹ Section §1983 was passed as part of the Klu Klux Klan Act of 1871 to fill a void left by the states where there existed no meaningful way of holding non-elected government officers accountable for violating peoples' constitutional rights.¹² Although the effect of the act was not immediately apparent, in the 150 years since its passing, it has become the most frequently utilized civil rights law available.¹³

The doctrine of qualified immunity protects officers from Section §1983 suits unless their conduct violates "clearly established . . . constitutional rights of which a reasonable person would have known."¹⁴ In practice this means that if a government officer violates someone's rights, so long as they were reasonably unaware that they were violating those rights or the case law defining those rights is not clearly established, they are immune from being brought to trial to defend themselves.¹⁵ This doctrine is notorious for protecting police officers accused of police misconduct from lawsuits arising from their actions.¹⁶

I. Qualified Immunity Controversy

The text of Section §1983 makes no mention of defenses or immunity for government officials.¹⁷ The statute states "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . ."¹⁸

Notwithstanding this specific grant of a right to bring suit, the United States Supreme Court decided in *Pierson v. Ray* that Congress meant to leave

¹¹ *Monroe v. Pape*, 365 U.S. 167, 172 (1961).

¹² *Monroe*, 365 U.S. at 173.

¹³ John C. Jeffries, Jr. et.al., *CIVIL RIGHTS ACTIONS: ENFORCING THE CONSTITUTION*, 11 (Foundation Press, 4th ed. 2018) ("[O]nly 21 suits brought under this provision in the years between 1871 and 1920.")

¹⁴ Alan K. Chen, SYMPOSIUM: THE INTRACTABILITY OF QUALIFIED IMMUNITY, 93 Notre Dame L. Rev. 1937, 1937 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).)

¹⁵ *Id.*

¹⁶ Schwartz, *supra* note 10

¹⁷ 42 U.S.C.S. § 1983 (LexisNexis 1871).

¹⁸ *Id.*

common-law immunities in place when they enacted Section §1983.¹⁹ *Pierson* involved a suit against a judge and police officers for wrongful arrest and conviction.²⁰ Despite the reprehensible conduct of the government officials in *Pierson*, the Court denied relief based on government officer and good faith immunity.²¹ The Court held that common law sovereign immunities were well established at the time that Section §1983 was passed and that congress would have specified had it wished to abolish the doctrine.²² The Court later used this same justification to uphold other immunities against Section §1983 lawsuits, including grants of qualified immunity to police officers.²³

The court no longer justifies qualified immunity as a common-law defense.²⁴ The justification used now is one of balance and public policy.²⁵ If government officials are given the power of discretion, they must be able to use their discretion without fear of acting on that discretion.²⁶ This justification seems reasonable until you examine just how much police officers can get away with because of the doctrine. As federal judge Carleton J. Reeves of the US district court for the Southern District of Mississippi detailed in a rebuke of the doctrine while lamenting his requirement to follow its flawed edicts, qualified immunity has shielded officers from liability for heinous acts.²⁷ For example, the law wasn't clearly established with enough specificity to prohibit an officer from accidentally shooting a child while attempting to shoot the family dog, or body-slammng a woman because she didn't listen to the officer's commands.²⁸

Proponents of qualified immunity for police officers attempt to justify the doctrine as a means of protecting officers from high court costs, frivolous lawsuits, and from being influenced in the field based on the probability of being sued.²⁹ However, each of these concerns do not hold up to scrutiny.³⁰ Quali-

¹⁹ *Pierson v. Ray*, 386 U.S. 547, 566 (1967).

²⁰ *Pierson*, 386 U.S. at 557

²¹ *Pierson*, 386 U.S. at 557.

²² *Id.* at 566.

²³ Schwartz, *supra* note 10, at 1801.

²⁴ *Id.*

²⁵ *Harlow v. Fitzgerald*, 457 U.S. 800, 800

²⁶ *Harlow*, 457 U.S. at 800

²⁷ *Jamison v. McClendon*, No. 3:16-CV-595-CWR-LRA, 2020 U.S. Dist. LEXIS 139327, at *27-28 (S.D. Miss. Aug. 4, 2020)

²⁸ *Id.* referencing *Corbitt v. Vickers*, 929 F.3d 1304, 1323 (11th Cir. 2019), and *Kelsay v. Ernst*, 933 F.3d 975, 980 (8th Cir. 2019) among others.

²⁹ Chen, *supra* note 14, at 1960

³⁰ Schwartz, *supra* note 10.

fied immunity does not have the effect of freeing up court resources or reducing costs, as discovered by qualified immunity scholar Joanna Schwartz.³¹ Motions, briefs, and appeals for grants of qualified immunity often take significantly longer and can cost clients more than would an actual jury trial on the merits of the officers' actions.³² Further, Congress has created other barriers to discourage frivolous cases, such as awarding prevailing parties to attorney fees and court costs.³³ Finally, commentators often refer to the widespread use of indemnification to show that officers are not influenced by fear of civil litigation because they rarely contribute to paying damages from their own pockets.³⁴

Unlike most hot button issues, critiques of qualified immunity come from both sides of the political spectrum.³⁵ Supreme Court Justice Sonya Sotomayor famously called the Court's Qualified Immunity Doctrine an absolute shield for police officers to act, shoot, and think later.³⁶ On the other end of the bench, consistently conservative Justice Clarence Thomas called for a reexamination of the courts doctrine because it bared little, if any, resemblance to the common law immunities it was originally purported to uphold.³⁷

One of the strongest criticisms of qualified immunity is how difficult it is to implement.³⁸ This difficulty is noticeable in statistical breakdowns of suitable immunity grants and holistic reviews of qualified immunity doctrine.³⁹ A Reuters study of over 1,000 cases from 2014 to 2019, where the defendants sought qualified immunity, showed that judges in Texas were "more likely to grant immunity to officers who used force against unarmed civilians than judges in California were for officers in cases where civilians were armed."⁴⁰ That same study showed that the disparity was present at the appeals court level as well.⁴¹ According to the research, the 5th Circuit Court of Appeals was

³¹ Schwartz, *supra* note 10, at 1803

³² Schwartz, *supra* note 10, at 1808

³³ 42 U.S.C. §1988 (2000).

³⁴ Schwartz, *supra* note 10, at 1797. See also Joanna C. Schwartz, Police Indemnification, 89 N.Y.U. L. Rev. 885, 936 (2014)

³⁵ Schwartz, *supra* note 10, at 1808.

³⁶ *Kisela v. Hughes*, 138 S. Ct. 1148, 1162 (2018).

³⁷ Schwartz, *supra* note 10 at 1798.

³⁸ Chen, *supra* note 14, at 1951

³⁹ Reuters Staff, *Reuters finds stark disparity in how judges apply qualified immunity*, REUTERS, <https://www.reuters.com/article/idUSKBN25L17F> (last updated Aug. 25, 2020, 5:36 AM).

⁴⁰ Reuters Staff, *supra* note 39, at 3.

⁴¹ Reuters Staff, *supra* note 39, at 3.

much more likely to grant qualified immunity than the 9th Circuit Court of Appeals.⁴² From 2005 to 2019 the Fifth Circuit approved 62 percent of all Qualified Immunity requests, whereas the Ninth only granted 42 percent.⁴³

The controversy surrounding qualified immunity does not end with its effects and effectiveness. There is an ongoing debate on who's problem it is to solve.⁴⁴ The Supreme Court continuously signals that qualified immunity is a big problem, but that it is on congress to rectify it.⁴⁵ Qualified immunity detractors most often say that although congress could handle the qualified immunity issue, the doctrine was made by the courts and it should be their responsibility.⁴⁶

II. States Taking Action

One path to eliminating qualified immunity that not many saw coming was the states that Section §1983 was meant to reach. At least that was the case before the 2020 protests forced state legislatures to take a hard look at the doctrine because of public pressure. In response to such pressure Colorado Governor Jared Polis signed “The Enhance Law Enforcement Integrity Act” (The Integrity Act) less than a month after George Floyd’s killing.⁴⁷

The Integrity Act instituted a host of police reform measures including body cameras for nearly all police officers by July 2023, data management and reporting requirements, a ban on chokeholds, and protections for Americans who take to the streets in protest.⁴⁸ Also included in the Integrity Act was a new cause of action which allows civilians to sue police officers for money damages if that officer violates their rights under the laws and constitution of Colorado.⁴⁹ It was this new cause of action, and its prohibition on the legal defense of qualified immunity that put The Integrity Act into the national spotlight.⁵⁰

⁴² Reuters Staff, *supra* note 39, at 3.

⁴³ Reuters Staff, *supra* note 39, at 3.

⁴⁴ Jamie Ehrlich, *Supreme Court punts police immunity question to Congress where reform faces an uphill battle*, CNN, <https://www.cnn.com/2020/06/16/politics/qualified-immunity-congress-bill/index.html> (last updated Jun. 16, 2020).

⁴⁵ Ehrlich, *supra* note 44.

⁴⁶ Ehrlich, *supra* note 44.

⁴⁷ Keith Coffman, *Colorado reform law ends immunity for police in civil misconduct cases*, REUTERS, <https://www.reuters.com/article/idUSKBN23R05X> (last updated June 19, 2020, 11:20 PM).

⁴⁸ *Id.*

⁴⁹ Colo. Rev. Stat. § 13-21-131 (2020).

⁵⁰ Coffman, *supra* note 47

Much of the reporting on the Integrity Act focused on its qualified immunity prohibition, calling it a landmark decision and a first for the nation.⁵¹ Legislators in other states soon began looking at whether they too should strike with public support to limit the availability of qualified immunity for police officers.⁵² None as of yet have been successful.

Virginia came closest in September of 2020 when a civil rights bill that included a cause of action against police officers that prohibited qualified immunity passed through the state House of Delegates.⁵³ However, proponents of the bill failed to push it through Senate committee meetings.⁵⁴ The qualified immunity prohibition proved to be the sticking point and was removed from the bill before it finally passed through both state legislative houses.⁵⁵

The failure in Virginia showed that it will take tremendous political willpower to deal with qualified immunity in state legislatures. But Colorado and Virginia are just the first two states to try and the issue is being raised in other state houses. Despite the strong arguments against qualified immunity, the political and legal barriers to ending it hold firm.⁵⁶ Passing a bill like Colorado's likely requires more than simple majorities because the issue doesn't track consistently across party lines.⁵⁷ The state of Virginia found this out the hard way as their qualified immunity banishing bill petered out in their Virginia Senate despite democratic majorities in both houses.⁵⁸ However, it still shows that states are discussing creating their civil actions in the vein of Section §1983

⁵¹ Coffman, *supra* note 47

⁵² Raymon Troncoso, *Lawmakers in Illinois eye limits on qualified immunity for law enforcement*, Belleville News Democrat, (Nov. 07, 2020 07:00 AM) <https://www.bnd.com/news/politics-government/article247018227.html>; Associated Press, *Concerns Raised About Costs of New Mexico Civil Rights Act*, U.S. News (Dec, 6 2020) <https://www.usnews.com/news/best-states/new-mexico/articles/2020-12-06/concerns-raised-about-costs-of-new-mexico-civil-rights-act>; John Haughey, *Florida Democrat's qualified immunity bill to be pre-filed, likely forgotten*, Washington Examiner (November 13, 2020, 8:00 PM). <https://www.washingtonexaminer.com/politics/florida-democrats-qualified-immunity-bill-to-be-pre-filed-likely-forgotten>;

⁵³ Gregory S. Schneider and Laura Vozzella, *Virginia General Assembly wraps up marathon session with votes on budget, police oversight bills*, The Washington Post, https://www.washingtonpost.com/local/virginia-politics/virginia-special-session-ending/2020/10/16/940e14c4-0f29-11eb-b1e8-16b59b92b36d_story.html (Oct. 16, 2020 at 8:22 p.m.)

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Laura Barrón-López, *Democrats' Coming Civil War Over Police Unions*, POLITICO (Oct. 14, 2020, 7:55 PM), <https://www.politico.com/news/magazine/2020/10/14/police-reform-police-unions-qualified-immunity-democratic-party-420122>.

⁵⁷ Barrón-López, *supra* note 56, at 5.

⁵⁸ Gregory S. Schneider and Laura Vozzella, *Virginia General Assembly wraps up marathon session with votes on budget, police oversight bills*, The Washington Post (October 16, 2020, 8:22

and giving qualified immunity the boot by passing on the federal cause of action.

III. State-Based Civil Rights Acts and Tort Immunities

Colorado's Integrity Act creates a civil action similar to 42 U.S.C. §1983 that can be brought against a police officer for violating a right secured by the Colorado constitution, and the Act states explicitly that *qualified immunity is not a defense to the civil action*.⁵⁹ Despite being the first to explicitly limit qualified immunity in state law civil rights actions against police officers, Colorado is not the first state to pass its own civil rights action against government officials. Nearly every state has enacted civil rights laws, which prohibit discrimination in the public and private sector.⁶⁰ Very few have created private causes of action that reach public officials.⁶¹ Most state civil rights acts allow for a complaint to be made to a civil rights board or commission but do not allow private citizens to sue the government agents who deprived them of their rights.⁶² A few state civil rights acts allow the state Attorney General or civil rights commission to bring a civil action on behalf of an injured party, but do not allow a private party to do so.⁶³ Those that do permit a private cause of action are mostly subject to qualified immunity or similar defenses.⁶⁴

The Arkansas Civil Rights Act of 1993 created a private cause of action against government officers who violate people's rights under the Arkansas Constitution.⁶⁵ However, the statute specifically states that the law should be interpreted in the same manner as federal civil rights claims under Section §1983.⁶⁶ What this brings back into the conversation is qualified immunity,

PM), https://www.washingtonpost.com/local/virginia-politics/virginia-special-session-ending/2020/10/16/940e14c4-0f29-11eb-b1e8-16b59b92b36d_story.html.

⁵⁹ Coffman, *supra* note 47, at 1.

⁶⁰ *State Civil Rights Law*, FindLaw, <https://statelaws.findlaw.com/civil-rights-laws.html> (last visited Nov. 23, 2020, at 9:36 AM).

⁶¹ *Id.*

⁶² See Appendix C, listing the 5 state civil rights laws that currently include a private cause of action against state government officers.

⁶³ Fla. Stat. Ann. § 760.51 (West); Mass. Gen. Laws Ann. ch. 12, § 11H (West); 42 R.I. Gen. Laws Ann. § 42-9.3-2 (West).

⁶⁴ See Appendix C.

⁶⁵ Ark. Code Ann. § 16-123-101 (LexisNexis 2020).

⁶⁶ *Id.*

which Arkansas courts grant in much the same way as federal courts.⁶⁷ The same principle applies for the civil rights laws of Maine and New Jersey.⁶⁸

These statutes focus primarily on violations of constitutional rights, but what about common law torts? Those states that do not have a Civil Rights Act granting a cause of action against government actors rely on common law or statutory immunities to protect their officers from civil suits.⁶⁹ The tort immunities that states provide for government officials vary in form but, aside from a few notable exceptions, boil down to the similar principles.⁷⁰ Government officers cannot be sued in state court for injuries they cause while acting in their official capacity or in a position that requires discretion.⁷¹

A few outliers exist. Four states immunize officers from specific enumerated tort actions which clearly aim to shield police officers from lawsuits stemming from their on-duty activities. These states are Alaska, Iowa, Nebraska and Utah.⁷² All four of these states immunize government officers from the torts of “assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.”⁷³

Some states provide absolute immunity for officers who engaged in tortuous activity while performing duties associated with their employment.⁷⁴ Idaho provides complete immunity from civil suit for police officers acting within the scope of their law enforcement duties.⁷⁵ Otherwise, tort immunity is qualified based on the discretion granted to the government officer, or that officers specific intent. States like Nevada and Nebraska focus on the level of discretion permitted for the government official, forbidding suit where the injury arose from a discretionary function.⁷⁶ Illinois on the other hand provides immunity so long as the officer’s conduct was not “willful or wanton.”⁷⁷

⁶⁷ *Graham v. Cawthorn*, 427 S.W.3d 34, ¶¶ 15-16 (Ark. 2013).

⁶⁸ See Appendix C

⁶⁹ See Appendix A collecting state statutes that immunize government officers from tort liability. See also Appendix B listing states that provide common law tort immunity to government officers.

⁷⁰ See Appendix A.

⁷¹ See Appendix A.

⁷² Alaska Stat. Ann. § 09.50.253 (West); Iowa Code Ann. § 669.14 (West); Neb. Rev. Stat. Ann. § 13-910; Utah Code Ann. § 63G-7-201

⁷³ *Id.*

⁷⁴ See Appendix A.

⁷⁵ Ala. Code § 6-5-338, 2006 (West).

⁷⁶ First quoting Nev. Rev. Stat. Ann. § 41.032 (LexisNexis 2020); then quoting Neb. Rev. Stat. Ann. § 81-8,219 (LexisNexis 2020).

⁷⁷ 745 Ill. Comp. Stat. § 10/2-202 (LexisNexis 2020).

States that still follow common-law immunity seem to be more consistent across the board, focusing on governmental discretion.⁷⁸ Missouri's official immunity doctrine insulates public officials from suit when liability arises from discretionary acts or omissions taken by them.⁷⁹ New York, North Carolina, and North Dakota also follow the discretionary approach to government official immunity, and each immunity was established by case law rather than statute.⁸⁰

The one exception, aside from Colorado's explicit prohibition on qualified immunity, is California's Tom Bane Civil Rights Act (the Bane Act).⁸¹ The Bane Act gives private persons the ability to sue anyone that interferes with or deprives them of their rights under United States or California law.⁸² This cause of action is not only available against government actors, but also private individuals.⁸³ The Bane Act was passed in 1987 to combat hate crimes by private individuals and originally did not include the right to a civil action against government individuals.⁸⁴ Initially the act only included a cause of action against private individuals.⁸⁵ Ten years after its passing, the Bane Act was amended to include a private cause of action against government actors.

Nothing is said of immunities in the text of The Bane Act, and the California courts have not found arguments to read in immunities persuasive.⁸⁶ For this reason, actions brought under the Bane Act are not subject to qualified immunity defenses.⁸⁷ This makes California one of two states where officers can be sued for violating people's rights guaranteed by their state constitution.⁸⁸

Colorado's law sets itself apart by specifically prohibiting statutory and common law immunities as a defense for actions that violate a person's rights guaranteed under the Colorado constitution.⁸⁹ The law unfortunately does not

⁷⁸ See Appendix B.

⁷⁹ *Teasley v. Forler*, 548 F. Supp. 2d 694, 711-712 (E.D. Mo. 2008).

⁸⁰ first quoting *Valdez v. City of N.Y.*, 960 N.E.2d 356 (2011); then quoting *Wilcox v. City of Asheville*, 730 S.E.2d 226 (N.C. Ct. App. 2012); and then quoting *Kitto v. Minot Park District*, 224 N.W.2d 795 (N.D. 1974).

⁸¹ Tom Bane Civil Rights Act, Cal. Civ. Code Ann. § 52.1 (West).

⁸² *Venegas*, 63 Cal. Rptr. 3d at 751

⁸³ *Id.* at 751

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Colo. Rev. Stat., *supra* note 49.

apply to violations of the United States Constitution and Colorado still provides tort immunity and indemnification to government officers acting within the scope of their employment.⁹⁰ Undoubtedly the Integrity Act will help to evolve the law under Colorado's constitution, but qualified immunity will still stand as a barrier to those trying to hold police officers accountable for their misconduct.⁹¹

IV. Other States Discussing Eliminating Qualified Immunity

Other states are learning from Colorado's example. Bills looking to limit the effect of qualified immunity have been introduced or discussed in state legislatures across the country.⁹² New Mexico state legislators introduced a bill in November that would create a cause of action against officers that violate people's freedom of speech rights, making officers unable to rely on qualified immunity as a defense.⁹³ Although some are likely to flounder in committee meetings and never see the legislative floor for a vote others might stand a chance, especially with the country energized behind a movement for racial justice and an end to police violence.⁹⁴

Qualified immunity is likely far from becoming irrelevant, but if more states follow Colorado's example, maybe one day Section §1983 will no longer be necessary because the states themselves will provide the means for their citizens to hold their government to task. Section §1983 was only necessary because there was not a meaningful way for litigants to get a fair trial against government officials in state courts during reconstruction. These days the barriers are statutory, and Section §1983 remains the most effective means of vaulting over them. That means qualified immunity will continue to protect police officers accused of violating people's rights, unless the Supreme Court or Congress finally steps up and does something about it.

⁹⁰ Quoting Colo. Rev. Stat. Ann. § 24-10-118 (West).

⁹¹ *Id.*

⁹² *supra* note 52

⁹³ Dan Boyd, *NM Civil Rights Act recommended*, Albuquerque Journal, <https://www.abqjournal.com/1517914/nm-civil-rights-act-recommended.html> (last updated Nov. 14, 2020, 12:02 AM).

⁹⁴ Boyd, *supra* note 95. See also Haughey, *supra* note 53.

Appendix A.

Appendix A includes the states that provide statutory immunity that shield officers from state law tort immunities. The table is organized by the state, the statute providing immunity, the relevant portion of the statute's title, the type of immunity provided, the year that immunity was first enacted into law.

State	Immunity Statute	Immunity Type	Originally Enacted
Alabama	AL ST § 6-5-338	Qualified	1994
Alaska	AK ST § 09.50.253	Specific Tort	2004
Arizona	AZ ST § 12-820.02	Qualified	1984
Arkansas	AR ST § 19-10-305	Qualified	1981
California	CA GOVT § 820.2	Qualified	1963
Colorado	CO ST § 24-10-118	Qualified	1979
Connecticut	CT ST § 4-165	Qualified	1959
Delaware	DE ST TI 10 § 4001	Qualified	1978
Florida	FL ST § 768.28	Qualified	1973
Georgia	GA ST § 50-21-25	Qualified	1992
Idaho	ID ST § 6-904	Qualified	1971
Illinois	IL ST CH 745 § 10/2-202	Qualified	1965
Indiana	IN ST 34-13-3-3	Qualified	1998
Iowa	IA ST § 669.14	Specific Tort	1993
Kansas	KS ST 75-6104	Absolute	1979
Louisiana	LA R.S. 9:2793.1	Qualified	1985
Maine	ME ST T. 14 § 8103	Absolute	1977
Maryland	MD CTS & JUD PRO § 5-507	Qualified	2001
Massachusetts	MA ST 258 § 2	Absolute	1978
Michigan	MI ST 691.1407	Qualified	1986
Minnesota	MN ST § 3.736	Qualified	1976
Mississippi	MS ST § 11-46-9	Qualified	1984
Montana	MT ST 2-9-305	Absolute	1974
Nebraska	NE ST § 13-910	Specific Tort	1969
Nevada	NV ST 41.032	Qualified	1965
New Hampshire	NH ST § 541-B:19	Qualified	1985
New Jersey	NJ ST 59:3-3	Qualified	1972
New Mexico	NM ST § 41-4-4	Waived	1976
New York	NY GEN MUN § 50-j	Absolute	1974
North Dakota	ND ST 32-12.1-04	Qualified	1977
Ohio	OH ST § 2744.03	Qualified	1984
Oklahoma	OK ST T. 51 § 152.1	Absolute	1984
Oregon	OR ST § 30.265	Absolute	1967
Pennsylvania	PA ST 42 Pa.C.S.A. § 8546	Qualified	1980
South Carolina	SC ST § 15-78-70	Qualified	1986
South Dakota	SD ST § 21-32-17	Absolute	1983
Tennessee	TN ST § 9-8-307	Qualified	1984
Utah	UT ST § 63G-7-201	Absolute	2008
Virginia	VA ST § 8.01-195.3	Qualified	1981
West Virginia	WV ST § 29-12A-5	Qualified	1986
Wisconsin	WI ST 893.80	Qualified	1987
Wyoming	WY ST § 1-39-104	Complete	1979

Appendix B.

Appendix B includes the states that provide common law immunity to officers sued in their individual capacity. The table below includes the state, a state level case that includes a description or interpretation of the immunity, and the type of immunity provided.

State	Case on Point	Type
Hawaii	<i>Touse v. State</i> , 64 Haw. 624, 631, 647 P.2d 696, 702 (1982)	Qualified
Kentucky	<i>Yanero v. Davis</i> , 65 S.W.3d 510, 521 (Ky. 2001)	Qualified
Missouri	<i>Betts-Lucas v. Hartmann</i> , 87 S.W.3d 310 (Mo. Ct. App. 2002)	Qualified
NC	<i>Wilcox v. City of Asheville</i> , 222 N.C. App. 285	Qualified
Texas	<i>City of Lancaster v. Chambers</i> , 883 S.W.2d 650, 653 (Tex. 1994)	Qualified
Vermont	<i>Cook v. Nelson</i> , 167 Vt. 505, 509, 712 A.2d 382, 384 (1998)	Qualified

Appendix C.

Appendix C includes that states that provide a private right of action against government officers for violations of state constitutional rights, the statute that cause of action is provided in, whether officers are provided with immunity, and the standard that immunity is based in.

States	Civil Rights Act	Immunity	Immunity Standard
Arkansas	AR ST § 16-123-105	Qualified	Fed Law
California	CA CIVIL § 52.1	None	None
Colorado	CO ST § 13-21-131	None	None
Maine	ME ST T. 5 § 4682	Qualified	Fed Law
New Jersey	NJ ST 10:6-2	Qualified	Fed Law