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Chair of the House Committee on Ways and Means  
House Chair of the Joint Committee on the Judiciary  
Massachusetts State House  
24 Beacon St.  
Boston, MA 02133

Dear Chairs:

Current events have created a divide, a false dichotomy, where many feel they must choose to EITHER support the police OR support racial equality, and the S.2820 bill seems to be the unfortunate outcome of that sub-par mindset.

We need to do better, specifically around qualified immunity in this bill.

Is the existing version of qualified immunity a barrier to accountability? It is my layman's understanding of qualified immunity that officers are only protected under qualified immunity if they have a reasonable basis for believing their actions occurred within the scope of employment, and it specifically excludes from protection those whose actions display intentional or willful and wanton misconduct. With the nature of the job that police are hired to do there is great enough risk for personal harm whether the officer is trying to save a child from a burning car, or stop an active shooter, that they absolutely deserve this basic protection to do their job. Without this protection, the risk greatly outweighs the purpose. How are we to ask these men and women to not only risk life and limb while processing incredible amounts of data about the situation in nano-seconds but now everything their family has worked for could be lost in a civil lawsuit. It's plain old wrong.

The perspective of my Senator (Brendan Crighton) about the modification to qualified immunity seemed to be that it is not ideal to limit qualified immunity but the concession is that we will provide for indemnification. This makes no sense. If the end result of removing or limiting qualified immunity is to moderate law enforcement's use of force by impacting them financially - indemnification negates that:

## Police Indemnification

Joanna Schwartz. *New York University Law Review*, June 2014.

Schwartz conducted public records requests and interviews for this national study of police indemnification. She gathered information on indemnification practices for 44 of the biggest state and municipal law enforcement agencies in the U.S., along with 37 small and mid-sized agencies, covering 2006 through 2011.

The question: Do police officers pay settlements against them out of pocket?

"The Supreme Court has long assumed that law enforcement officers must personally satisfy settlements and judgments, and has limited individual and government liability in civil rights damages actions — through qualified immunity doctrine, municipal liability standards and limitations on punitive damages — based in part on this assumption," she writes.

The bottom line: Individual officers almost never pay their own settlements. During the study period, governments paid 99.98% of the \$730 million in damages plaintiffs recovered in lawsuits stemming from alleged police misconduct.

"Officers did not contribute to settlements and judgments even when they were disciplined, terminated or criminally prosecuted for their misconduct," Schwartz writes. "And officers were not required to contribute to settlements and judgments even when applicable law prohibited indemnification."

Source of above screen clip: <https://journalistsresource.org/studies/government/qualified-immunity-analyses-police-misconduct-lawsuits/>

If civil suit is allowed, frivolous lawsuits will arise and under an indemnification system, who is to pay for them? The taxpayers, ultimately, I am sure. This begs the question: who are we punishing for bad behavior? The taxpayers, really, not "bad cops".

**The logical conclusion here is that ending qualified immunity will make it prohibitively dangerous for police to do their work, and indemnifying civil suits under a limited qualified immunity system defeats the objective of holding officers accountable.** Therefore, qualified immunity is not the area of policing that should be examined for improvement. In fact, I believe that police are not the problem here in Massachusetts and we are punishing all of our police and by cause/effect (police will NOT be able to do proactive police work in the same way they do now if they're not protected by qualified immunity) we are punishing our citizens by taking away qualified immunity. There have studies that racism is present in Boston in the following areas:

- real estate (<https://www.wbur.org/bostonmix/2020/07/01/study-black-renters-in-boston-face-deep-discrimination-subsidized-renters-face-even-more>)
- education (<https://www.bostonglobe.com/2020/06/22/metro/black-students-stories-reveal-pattern-racism-elite-high-schools/>)
- transportation (<https://huntnewsnu.com/55680/city-pulse/systemic-inequality-threatens-bostons-transit-system/>)

...and I'm sure there are many, many more areas that are impacting the every day lives of Black Bostonians more than our police. I would love to see legislation tackle those areas. Why are we punishing our police.

My husband is a proud Massachusetts State Trooper. He is a deserving Medal of Valor recipient. He sits watch outside Governor Baker's house, keeping the Governor's family safe many nights while my family is at home without him and I am proud of this. I am proud of the work he has done taking guns and drugs off the streets of the district he works in. He deserves more from you, my family deserves better than this, and the people of this state at large do too.

Thank you for hearing my concerns,

Maryanne Conway