

## PCCEP Recommendation Template

<b>Title of Recommendation</b>	<b>Recommendation To Mayor Wheeler to Initiate Dialogue with Oregon’s Elected Representatives to the United States House of Representatives to Amend the Federal “Qualified Immunity” Standard</b>		
<b>Author(s): (Subcommittee or committee members)</b>	Co-Chair Lakayana Drury, Marcia Perez, Yolonda Salguiero, Amy Anderson, Ann Campbell, André La Roche	<b>Date presented</b>	<b>May 31, 2020</b>
<p><b>Summary of Recommendation:</b> This recommendation requests that Mayor Wheeler use the platform of his office as Mayor of Portland to initiate dialogue with Oregon’s delegation of elected Representatives to the United States House of Representatives.</p> <p>This dialogue should ask those Representatives to begin the process of enacting federal legislation that would revise the current doctrine of qualified immunity, and grant courts greater powers to hold officials liable for violations of the law.</p>			

**WHEREAS:** This recommendation comes during a time of national crisis. Not only is America facing a global pandemic that has resulted in unprecedented lockdowns, quarantine, and killed over 100,000 citizens to date, but the tragic killing of George Floyd by a disgraced former police officer has ignited protests and riots across America that have resulted in the further loss of innocent lives, and untold amounts of property destruction.

It is clear that the legal standards affecting policing in Portland and America need to change.

The doctrine of qualified immunity protects public officials individually from lawsuits for violating the legal rights of citizens. It has been used to protect police officers from actions that shock and appall the conscience. The qualified immunity doctrine was first articulated by the Supreme Court in the 1967 case of *Pierson v. Ray*, 386 U.S. 547 (1967). The doctrine shielded officials from lawsuits that did not violate “clearly established” statutory or constitutional rights. *Pierson*, in announcing the doctrine of qualified immunity, said that it stemmed from common law principals that pre-dated the founding of the United States, NOT constitutional principles. As such, the doctrine can be changed via legislative enactment.

Despite a seemingly sensible legal standard, courts across the country have consistently been unable to apply the doctrine of qualified immunity in a way that makes sense, or complies with the common understandings of justice, fairness, and proportional uses of force.

Recently, the 9th Circuit Court of Appeals—which provides appellate review for federal cases arising out of Portland—granted qualified immunity to an officer who, without warning, shot a 15-year-old holding an airsoft gun. *Nicholson v. City of Los Angeles*, 935 F.3d 685 (9th Cir. 2019). The court’s majority stated that “Under the circumstances, a rational finder of fact could find that [Officer] Gutierrez’s use of deadly force shocked the conscience and was unconstitutional under the Fourteenth Amendment,” but concluded that “because no analogous case existed at the time of the shooting, the district court erred by denying Gutierrez qualified immunity for this claim.”

The “clearly established” requirement of the qualified immunity doctrine has been abused in the following ways:

- To protect officers who stole \$225,000 when executing a search warrant. *Jessop v. City of Fresno*, 918 F.3d 1031 (9th Cir. 2019).
- To protect prison officials who locked an inmate in a sewage-flooded cell for days. *Taylor v. Stevens*, No. 17-10253 (5th Cir. 2019).
- To protect an officer who body-slammed a 5-foot-tall woman for simply walking away from him. *Kelsay v. Ernst*, No 17-2181 (8th Cir. 2019).

A more comprehensive list can be found online. In all of these cases, the courts held that officials were immune from lawsuit simply because a previous court hadn’t already ruled those specific violations to be illegal.

The “clearly established” standard has failed America. In the past, it has failed this city of Portland. We believe that changing this standard so that officials may be held liable for “reasonably foreseeable” violations of law that do not require “clearly established” case precedent. With this standard in place, officers such as those above who shot 15-year-olds without warning, locked inmates amongst flooding sewage, and body-slammed a woman for walking away could have been held liable for their actions.

It is time for it to change.

**BE IT RESOLVED:**

That the PCCEP Membership, **HEREBY RECCOMENDS** to Mayor Wheeler, that he

initiate dialogue with Oregon’s Congressional Members in the United States House of Representatives, and request that they begin the work of crafting and passing legislation that would change the legal doctrine of qualified immunity to create liability for officials whose actions were “reasonably foreseeable” violations of law with “no requirement of clearly established past case precedent.”

<p><b>How does this recommendation redress barriers to racial equity?</b></p>	<p>The doctrine of qualified immunity has long been an almost-insurmountable barrier to the victims of police brutality in achieving civil justice for the violations of their rights.</p> <p>Practices that common sense deems to be shockingly abusive and illegal have nevertheless been thrown out of court under this doctrine.</p> <p>If Mayor Wheeler’s office and Oregon’s delegation of House representatives are successful in crafting this law, and having it pass through the bicameral process to be signed by the President, or bypass the President by virtue of overriding a veto, this will change the standard of policing accountability not just in Portland, but across all of America.</p> <p>As people of color are disproportionately the targets of police brutality, they will benefit from a legal doctrine that causes officers who are problematic to raise the standards of their conduct, whereas exemplary officers will be able to carry on as they were.</p>
<p><b>How does this recommendation improve outcomes for persons with mental illness and or behavioral health?</b></p>	<p>Persons experiencing behavioral health episodes are also subject to disproportionately being the victims of police brutality. They likewise will benefit from a tightening of policing standards.</p>

**How were marginalized and underrepresented communities, including those who will be affected by this recommendation, engaged to shape, write and otherwise develop this recommendation?**

This draft was authored by a breakout group of PCCEP members including Co-Chair Lakayana Drury, Marcia Perez, Yolanda Salguero, Amy Anderson, Ann Campbell, and André La Roche—all are members who have experience as people of color, or are familiar with behavioral health issues.

## **Resources**

*Please list all relevant resources to this recommendation.*

1. *Pierson v. Ray*, 386 U.S. 547 (1967)
2. Patrick Jaicomo and Anya Bidwell, *Police act like laws don't apply to them because of 'qualified immunity.' They're right.* Available at [https://www.usatoday.com/story/opinion/2020/05/30/police-george-floyd-qualified-immunity-supreme-court-column/5283349002/?utm\\_campaign=qawareness&utm\\_medium=Facebook&utm\\_source=Native%20Social&fbclid=IwAR1zjtVn07B4tm99NZdIOJM-wpBlnGJXKDDcXMgALd7OiR6stSD9Vk9Lbjg](https://www.usatoday.com/story/opinion/2020/05/30/police-george-floyd-qualified-immunity-supreme-court-column/5283349002/?utm_campaign=qawareness&utm_medium=Facebook&utm_source=Native%20Social&fbclid=IwAR1zjtVn07B4tm99NZdIOJM-wpBlnGJXKDDcXMgALd7OiR6stSD9Vk9Lbjg)