

State of Illinois  
JB Pritzker, Governor

Illinois Criminal Justice Information Authority  
Delrice Adams, Acting Executive Director



# PRELIMINARY REPORT OF THE TASK FORCE ON CONSTITUTIONAL RIGHTS AND REMEDIES



**ICJIA**

Illinois Criminal Justice Information Authority

Draft

Preliminary Report  
of the  
Task Force on Constitutional Rights and Remedies  
20 ILCS 5165/4-1

Compiled by the Illinois Criminal Justice Information Authority.

## OVERVIEW

The Task Force on Constitutional Rights and Remedies (“Task Force”) was formed with the following purpose: “to develop and propose policies and procedures to review and reform constitutional rights and remedies, including qualified immunity for peace officers.” 20 ILCS 5165/4-5. The Task Force is charged with: “reviewing available research, best practices, and effective interventions to formulate recommendations.” *Id.* at 4-15 (b). It is also charged with producing a report “detailing the Task Force’s findings and recommendations and needed resources.” *Id.* at 4-15 (c). The Illinois Criminal Justice Information Authority (ICJIA) is charged with providing technical assistance to the Task Force. *Id.* at 4-10 (c).

The Task Force has held four meetings to date. During the meeting of October 7, 2021, the task force heard testimony from the following experts:

- Larry James has served as General Counsel of the National Fraternal Order of Police since 2001. He is also co-founder of the African-American Leadership Academy and a member of the Board of Trustees of Kenyon College.
- John Murphy is a partner at Odelson, Sterk, Murphey, Frazier, McGrath, LTD. He represents both plaintiffs and defendants in Section 1983 litigation.
- Lance LoRusso is a civil litigator with a law enforcement background. He is honored to serve as General Counsel to the Georgia State Lodge of the Fraternal Order of Police.
- Professor Joanna Schwartz is a Professor of Law at UCLA School of Law. She teaches *Civil Procedure* and a variety of courses on police accountability and public interest lawyering.
- Professor William Baude is a Professor of Law and the Faculty Director of the Constitutional Law Institute at the University of Chicago Law School, where he teaches federal courts, constitutional law, and elements of the law.
- Professor Fred Smith is an associate professor at Emory University School of Law. He is a scholar of the federal judiciary, constitutional law, and local government.

## MATERIALS

In addition to hearing from these experts, the Task Force has also compiled materials on the question of constitutional rights and remedies.

This preliminary report collects the minutes of the Task Force meetings, a report the Task Force requested from ICJIA and the materials submitted by task force members and testifying experts. The collected materials are:

1. **A list of task force members**
2. **Minutes of the meetings of the task force**
  1. Minutes for September 23, 2021 meeting.
  2. Minutes for October 7, 2021 meeting.
  3. Minutes for October 21, 2021 meeting.

4. Minutes for October 25, 2021 meeting.

### **3. Reported cases submitted to the Task Force**

1. City of Tahlequah v. Bond, 595 U.S. \_\_\_\_ (2021);
2. Graham v. Connor, 490 U.S. 386 (1989);
3. Rivas-Villegas v. Cortesluna, 594 U.S. \_\_\_\_ (2021);
4. Baxter v. Bracey, No. 18-5102 (6th Cir. 2018);
5. Jessop v. Fresno, 17-16756 (9th Cir. 2019);
6. Taylor v. City of Milford, 20-1109 (7th Cir. 2021);
7. Eason v. City of Chicago et al, 18 C 5362 (N.D. Ill. 2021);
8. Jamison v. McClendon, 476 F. Supp. 3d 386 (S.D. Miss. 2020);
9. Timpa v. Dillard, 3:16-CV-3089-N (N.D. Tex. Jul. 6, 2020).

### **4. Scholarly articles submitted to the Task Force**

1. Jeffries, J.C. (1999). The Right-Remedy Gap in Constitutional Law. *The Yale Law Journal*. 109(87);
2. Morganelli, B. (2021). White Paper: Reform of Qualified Immunity for Police Officers: A Pathway to Legislative Reform. Institute for America Police Reform;
3. Reinert, A.A. (2011). Does Qualified Immunity Matter? *University of St. Thomas Law Journal*. 8(477);
4. Reinert, A., Schwartz, J.C. & Pfander, J.E. (2021) New Federalism and Civil Rights Enforcement. *Northwestern University Law Review*. 116(1);
5. Rolfs, C. (2011). Qualified Immunity After *Pearson v. Callahan*, *UCLA Law Review*, 59(468);
6. Schwartz, J.C. (2020). Qualified Immunity's Boldest Lie. *University of Chicago Law Review*. 88(605);
7. Schwartz, J.C. (2020). After Qualified Immunity. *Columbia Law Review*. 120(309);
8. Schwartz, J.C. (2014). Police Indemnification. *New York University Law Review*. 89(885);
9. Schwartz, J.C. (2016). How Governments Pay: Lawsuits, Budgets, and Police Reform. *UCLA Law Review*. 63(1144);
10. Schwartz, J.C. (2017). How Qualified Immunity Fails. *The Yale Law Journal*. 127(1);
11. Schwartz, J.C. (2018). The Case Against Qualified Immunity. *Notre Dame Law Review*. 93(5);
12. Schwartz, J.C. (2020). Qualified Immunity's Selection Effects. *Northwestern University Law Review*. 114(1101);
13. Smith, F. (2017). Local Sovereign Immunity. *Columbia Law Review*. 116(409);
14. Tang, A. & Smith, F.O. (2018). Can Unions be Sued for Following the Law? *Harvard Law Review Forum*. 132(2).

### **5. Testimony**

1. Testimony: Dave Franco, Law Enforcement Action Partnership, Hearing of the Illinois House Restorative Justice Committee on HB 1727 (March 25, 2021);
2. Testimony: Lt. Diane Goldstein (Ret.), Executive Director, Law Enforcement Action Partnership, Hearing of the Illinois House Restorative Justice Committee on HB 1727 (March 25, 2021);
3. Testimony: Peter Hanna, ACLU of Illinois, Hearing of the Illinois House Restorative Justice Committee on HB 1727 (March 25, 2021);
4. Testimony: Larry H. James, General Counsel, National Fraternal Order of Police, Written Testimony to Task Force on Constitutional Rights and Remedies. (October 11, 2021).

## **6. Letters**

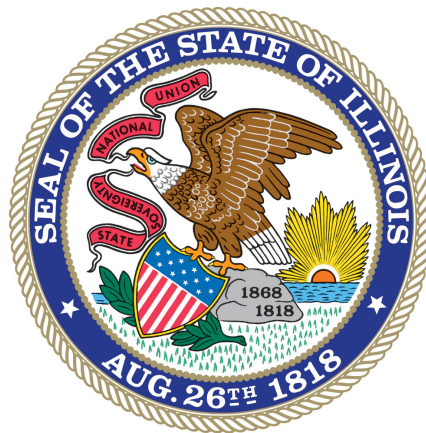
1. Member Letter: Chris Conrad, City Manager, Highland, IL (October 13, 2021);
2. Member Letter: Chris Conrad, City Manager, Highland, IL (revised October 19, 2021);
3. Member Letter: Tamara Cummings, General Counsel, Illinois Fraternal Order of Police (October 19, 2021);
4. Member Letter: Joel A. D’Alba, Asher, Gittler & D’Alba, Ltd., (October 19, 2021);
5. Member Letter: Craig B. Futterman, Vatsala Kumar & Katherine M. Koza, University of Chicago Law School, (October 27, 2021);
6. Member Letter: Jim Kaitschuk, Executive Director, Illinois Sheriff’s Association (October 19, 2021);
7. Member Letter: Dan Ugaste, State Representative, 65th District. (October 19, 2021);
8. Letter with Fact Sheet: Brad Cole, Executive Director, Illinois Municipal League, (July 2, 2020);
9. Letter with Fact Sheet: Brad Cole, Executive Director, Illinois Municipal League, (October 13, 2021);
10. Letter: John B. Murphey, Odelson, Sterk, Murphey, Frazier & McGrath, Ltd., (October 1, 2021).

## **7. Statements**

1. Statement: ACLU of Illinois, HB 1727: The Bad Apples in Law Enforcement Accountability Act;
2. Statement: Colorado Association of Chiefs of Police; County Sheriffs of Colorado, 2020 Colorado Law Enforcement: Challenges and Opportunities as Agencies Implement Senate Bill 20-217, They Seek Clarity, Solutions;
3. Statement: Colorado Association of Chiefs of Police; County Sheriffs of Colorado, Qualified Immunity;
4. Statement: International Association of Chiefs of Police, IACP Statement on Qualified Immunity;
5. Statement: National Sheriffs’ Association, Qualified Immunity Myth vs Fact.

## 8. Other Materials

1. Agenda: A Multi-Part Presentation on the History, Legal Basis, and Utility of the Judge-Made Defense to Claims under 42 U.S.C. § 1983. Washington State Bar Association;
2. Agenda: 37th Annual Section 1983 Civil Rights Litigation Conference, Chicago-Kent College of Law;
3. Agenda: Practical Considerations in Section 1983 Litigation, 37th Annual Section 1983 Civil Rights Litigation Conference, Odelson Sterk, Ltd;
4. Bill: Bad Apples In Law Enforcement Accountability Act of 2021, HB1727, 102nd G.A. (2021);
5. Bill Explainer: HB 1727 (Tarver): Bad Apples in Law Enforcement Accountability Act, ACLU Illinois;
6. Links: Links to other websites;
7. Links: Materials submitted for TFCRR on 10/13;
8. Links: NYTimes.com opinion article (October 27, 2021).
9. News Article: Zak Koeske, “Dolton Officers who fatally shot robbery suspect acted reasonably: jury,” Daily Southtown, (May 28, 2019);
10. Press Release: Justice Department Finds a Pattern of Civil Rights Violations by the Chicago Police Department, Department of Justice (January 13, 2017);
11. Public Act: Statewide Use of Force Standardization Act, Pub. Act 101-0652, (28-31);
12. Q&A: HB 1727 (Tarver): Bad Apples in Law Enforcement Accountability Act Questions and Answers, ACLU Illinois;
13. Q&A: Larry James, General Counsel, National Fraternal Order of Police, Qualified Immunity – What It Is And What It Is Not. (July 21, 2020);
14. Report: New Mexico Civil Rights Commission Report. (November 2, 2020);
15. Report: Survey on Police Workforce Trends, Police Executive Research Forum, (June 11, 2021).



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