



Janet T. Mills
Governor

Michael J. Sauschuck
Commissioner

STATE OF MAINE
Department of Public Safety
MAINE STATE POLICE

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COL. Bill G. Ross
Chief

LTC. Brian P. Scott
Deputy Chief

Testimony of Major Scott A. Gosselin
Maine State Police

OPPOSED LD 166o

An Act Creating a Private Right of Action Against a Government Employer
Sponsored by Representative Boyer of Poland
Joint Standing Committee on Judiciary

Senator Carney, Representative Kuhn and other distinguished members of the joint standing committee on Judiciary, my name is Major Scott Gosselin and I am here representing the Maine State Police and the Maine Department of Public Safety to testify in OPPOSITION to LD 166o.

This bill creates a right to sue a State of Maine government entity for an injury caused by an act or omission of a government employee who violates a Constitutional right. This statute specifically eliminates an officer's protection under qualified immunity. Regardless of this statute's elimination of the risk of the officer being found financially liable personally, it does however create a pathway to hold the government employer accountable and financially liable for those actions by individual officers without consideration for whether an officer felt they were acting in good faith or had probable cause to believe their actions were lawful. Additionally, the statute introduces the idea that the finding of a court against a government employee would be just cause to terminate employment for any government employee without contemplating the rights of the employee under collective bargaining agreements.

In this statute, let's be clear, "Government Employee" means law enforcement officer and "Government Employer" means law enforcement agency. I know this because despite their elimination of the protections which all officers know as "qualified immunity" for law enforcement officers, this bill, in section 8 specifically maintains qualified immunity protections for legislators and the judiciary.

This bill targets law enforcement as there are very few, if any, circumstances where any other government employee would be compelled by law and by virtue of their public service employment to the citizens of Maine to act in defense of themselves or others in their use of force against another citizen.

Being a law enforcement officer is difficult, and this bill will make our job more difficult, more stressful and inhibit our ability to hire candidates who may be considering a career in public service at a time when it has never been harder to recruit qualified candidates.



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If you are one who thinks officers are running amok and not held accountable, accept my invitation to come spend a day with me and my colleagues. Watch how we, the Maine Criminal Justice Academy Board of Trustees and the Office of the Attorney General hold our officers, deputies and troopers accountable. We ask that you consider the circumstances in which we, the people, compel law enforcement officers to make decisions in mere seconds for those complicated scenarios which the public, the legislature and judiciary are afforded infinite time to contemplate in the aftermath of such decisions.

If you are one who believes that an officer and their department should be held liable for wrongs even if they acted in good faith and had probable cause to believe their actions were lawful, then this bill would make sense to you. But if that is the case, the Supreme Court of the United States would disagree with you. Qualified immunity has been in place for the last 58 years in Maine because of the court decision of Pierson vs. Ray when the standard to determine "Qualified Immunity" was affirmed in the opinion penned by Chief Justice Earl Warren. Please note the language, "Qualified" Immunity, which this legislation seeks to eliminate. In order to "qualify" for that immunity privilege, an officer's actions must meet those standards set forth in Pierson vs. Ray. The action must have resulted from an officer acting in good faith and the officer must have had probable cause to believe their actions were lawful.

Qualified Immunity does not prevent anyone from suing officers or government entities, but it does require those people seeking such a remedy to meet a certain standard in recognition of the very difficult circumstances that we, the people, put our officers in DAILY.

Please remember that our officers, deputies and troopers are public servants, just like you. They come from the communities you serve. They are compelled by their commitment to serve others and put themselves in harm's way and they deserve the benefit of the protection that the doctrine of Qualified Immunity has always afforded them. That is what the Supreme Court believed in 1967 when they decided Pierson vs. Ray and they first afforded those Qualified Immunity protections to both judges and law enforcement officers because of their additional risk of liability due to them making quick decisions in complex and dynamic situations.

It is for these reasons that we at the Maine State Police and the Department of Public Safety OPPOSE LD 1660 and we urge you to do the same.