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February 17, 2023

Submitted Electronically

Luke H. Clippinger, Chair
David Moon, Vice Chair
House Judiciary Committee
Maryland House of Delegates
House Office Building
6 Bladen St. Room 101
Annapolis, MD 21401

RE: House Bill 430 – Police Immunity and Accountability Act – Favorable

Dear Chairperson Clippinger and Vice Chair Moon:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF),¹ we appreciate the opportunity to submit written testimony in support of HB 430, the Police Immunity and Accountability Act. Maryland’s Black residents are disproportionately policed and likely to experience police violence. In 2022, statewide Black people made up 60 percent of people fatally shot by police.² In Baltimore, between 2015 and 2019, a city where 63 percent of the residents are Black, 90 percent of the people whom police used force against were Black, compared with just 7.3 percent of white residents.³ HB 430 creates a solution for people whose state or federal constitutional rights have been violated by law enforcement officers but are barred from relief in civil court due to qualified immunity. HB 430 would allow people to file suit in state court and would prevent officers from claiming qualified immunity as a shield from civil liability in limited, cases involving violations of constitutional rights.

¹ Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. It has been a separate organization from the NAACP since 1957. LDF’s work to address police violence and misconduct dates back to its inception. *See, e.g., Shepherd v. Florida*, 341 U.S. 50 (1951) (in reversing the wrongful interracial rape convictions of Black men who were brutally beaten by sheriff’s deputies in an attempt to force confessions). Today, LDF’s Justice in Public Safety Project uses litigation, policy advocacy, research, community organizing, and strategic communications to transform public safety systems, advance police accountability, and prevent and remedy the impact of racial bias in public safety.

² Wash. Post, Fatal Force (last updated Jan. 25 2023) <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> (selecting for deaths in Maryland for 2022).

³ AMERICAN CIVIL LIBERTIES UNION OF MARYLAND, CHASING JUSTICE: ADDRESSING POLICE VIOLENCE AND CORRUPTION IN MARYLAND, 15, (Jan. 2019), <https://www.aclu-md.org/en/publications/chasing-justice-addressing-police-violence-and-corruption-maryland>.

For the reasons outlined below, Maryland should pass HB 430, the Police Immunity and Accountability Act.

I. Qualified Immunity Creates Near-Impunity for Law Enforcement Officers Even When They Violate People’s Fundamental Rights

Qualified immunity is a judicial doctrine that has evolved to protect government officials, including police officers, from liability when they are sued except when they are “plainly incompetent” or “knowingly violate the law.”⁴ In practice, qualified immunity undermines accountability for law enforcement officers by shielding them from civil liability even when they have egregiously violated the constitutional rights of an individual. Courts have afforded qualified immunity to officers in situations where the court has deemed that their actions did not violate “clearly established” law.⁵ However, “clearly established” has been interpreted in some cases to mean that a previous court must have found virtually the same facts to be unconstitutional.⁶ For example, the Eleventh Circuit in *Corbitt v. Vickers* ruled that law enforcement officers were shielded from civil liability after shooting an unarmed child because a “child’s right to not be accidentally shot in the leg was not clearly established.”⁷ Similarly, the Ninth Circuit in *Jessop v. City of Fresno* ruled that officers who allegedly stole money and rare coins worth more than \$225,000 had acted immorally but were “protected by qualified immunity” because it was not “clearly established” that they had violated the Fourth Amendment.⁸ In these, and too many other cases, victims have been denied a civil remedy because the courts found no substantially similar prior case, in which a constitutional violation occurred. By defining “clearly established” so narrowly, qualified immunity denies the victims of police violence or misconduct the opportunity to seek justice through civil damages in court – and removes an important mechanism for police accountability.

While the doctrine of qualified immunity was created by federal courts and can only be overturned through federal courts or by Congress, states can enact laws like HB 430 to create state law causes of action for constitutional rights violations that expressly disavow qualified immunity. This type of legislation allows victims of police violence and misconduct to file suit in state court, where they can vindicate their rights without artificial impediments.

II. HB 430 Would Provide Compensation to Victims and Deter Misconduct

HB 430 creates a path for victims of police violence and misconduct to be compensated for the violations of their rights and prevents officers from being shielded from liability for their actions that

⁴ *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

⁵ *City & Cty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 616, 135 S. Ct. 1765, 1777, 191 L. Ed. 2d 856 (2015) (officers were immune from liability because there was no “clearly established” law requiring them to provide accommodations to an armed, mentally ill person).

⁶ See e.g. *Baxter v. Bracey*, 751 F. App’x 869, 872 (6th Cir. 2018) (officers did not violate “clearly established” law when using a canine to apprehend a person who had surrendered with his hands raised even though a prior decision, *Campbell v. City of Springboro*, 700 F.3d 779, 789 (6th Cir. 2012), held officers violated Fourth Amendment by using canine on suspects who were not fleeing).

⁷ *Corbitt v. Vickers*, 929 F.3d 1304 (11th Cir. 2019).

⁸ *Jessop v. City of Fresno*, 936 F.3d 937, 942 (9th Cir. 2019)

caused the rights violations. Importantly, it permits law enforcement agencies to be recompensated for up to \$25,000 by officers if they violate a person’s rights under the Maryland or U.S. Constitution. In instances where only the law enforcement agency is required to pay damages, victims of misconduct are compensated, but officers are not deterred from committing the same misconduct again. Currently, state and local law enforcement agencies indemnify officers in more than 99 percent of cases, often amounting to millions of dollars of public funds to satisfy judgements for officers’ abusive actions.⁹ The threat of civil liability alone, when officers know that they will not be required to contribute to the damages paid, has little to no deterrent effect on officer misconduct. Law enforcement officers will only be deterred from future bad conduct by a real threat of personal liability. Thus, HB 430’s provision of personal liability for officers is an important component.

III. Other States Have Enacted Laws to Impede Law Enforcement Officers from Hiding Behind Qualified Immunity

There is precedent for a prohibition on the defense of qualified immunity such as that included in HB 430. Colorado¹⁰ and New Mexico¹¹ have already enacted similar prohibitions to defenses of qualified immunity by law enforcement officers. Additionally, New York City has enacted a prohibition on officers’ claims of qualified immunity for certain rights granted under the city code, and efforts continue to prohibit qualified immunity for all state employees statewide in New York.¹² HB 430 differs from Colorado’s law, which limits an officer’s personal liability based on their employer’s determination that the officers acted unreasonably or in bad faith. The Colorado law reduces the likelihood of officer personal liability, that is so critical to changing a culture of impunity associated with police brutality, HB 430 addresses this issue more directly. Finally, several other states are considering similar prohibitions.¹³ Maryland can set a new standard and continue to be a leader on police accountability issues by enacting HB 430 into law.

⁹ Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U L. REV. Vol. 885, 885 (2014), <https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-89-3-Schwartz.pdf>.

¹⁰ Law Enforcement Integrity and Accountability Act, SB20-217, Colorado (2020), https://leg.colorado.gov/sites/default/files/2020a_217_signed.pdf.

¹¹ New Mexico Civil Rights Act, HB 4, sec. 3(A) (2021), <https://www.nmlegis.gov/Sessions/21%20Regular/final/HB0004.pdf>.

¹² New York City, NY. Local Law 2021/048

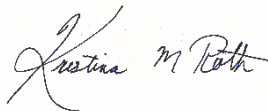
(2021), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4771043&GUID=32ED0C83-7506-45F9-81AA-F5144FCA193A&Options=&Search=>.

¹³ See e.g. *Vermont legislators preparing bill to end qualified immunity*, VERMONTBIZ (Dec. 15, 2021), <https://vermontbiz.com/news/2021/december/15/vermont-legislators-preparing-bill-to-end-qualified-immunity>; Corina Cappabianca, *Progressive lawmakers, advocates rally for bill to end qualified immunity*, NY CAPITOL NEWS (Jun. 2, 2021), <https://www.news10.com/news/progressive-lawmakers-advocates-rally-for-bill-to-end-qualified-immunity/>; *WA lawmakers should pass two bills to add accountability to policing*, SEATTLE TIMES (February 2, 2023), <https://www.seattletimes.com/opinion/wa-lawmakers-should-pass-two-bills-to-add-accountability-to-policing/>.

We applaud the efforts to strengthen law enforcement accountability for incidents of misconduct that result in violations of people's fundamental rights and urge the committee to vote in favor of HB 430.

Thank you for considering our testimony. If you have any questions, please do not hesitate to contact us at kroth@naacpldf.org.

Sincerely,

A handwritten signature in black ink that reads "Kristina M. Roth". The signature is written in a cursive style with a large initial 'K'.

Kristina Roth
Senior Policy Associate

Puneet Cheema
Manager, Justice in Public Safety Project

Lisa Cylar Barrett
Director, Policy and Director, Washington
D.C. Office