



# DETECTIVES' ENDOWMENT ASSOCIATION, INC.

POLICE DEPARTMENT • CITY OF NEW YORK

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## Testimony of Detective Paul DiGiacomo

**President, Detectives' Endowment Association, Inc.**

**Committee on Public Safety**

**New York City Council**

**February 16, 2021**

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Dear Chairwoman Adams and Members of the Committee on Public Safety,

I am Detective Paul DiGiacomo, and I am the President of the New York City Detectives' Endowment Association. I have the privilege of representing more than 19,000 active and retired New York City Detectives.

I submit this testimony in strenuous objection and opposition to Introduction 2220, a Local Law to amend the Administrative Code of the City of New York, ostensibly in relation to creating a right of security against unreasonable search and seizure that is enforceable by civil action and requiring the law department to post online certification information regarding such civil actions. Specifically, Int. 2220 creates a local statutory "right of security" identical to the already existing protections of the 4th Amendment of the United States Constitution, and authorizes private rights of action against employees of the Police Department and Peace Officers who allegedly violate those rights. The proposal expressly creates personal liability for a defendant and prohibits asserting qualified immunity as an affirmative defense to such actions. Personal liability for an individual law enforcement Officer under the proposal could reach \$25,000, in addition to the costs of defending against claims.

While the purported rationale of this legislation, as suggested by its prime sponsor, is to "hold Officers accountable if those

Officers violate their civil rights,”<sup>1</sup> the proposal demonstrates outright contempt for law enforcement officials and a shocking misunderstanding of the doctrine of qualified immunity. In the aftermath of the tragic killing of George Floyd, proposals to eliminate qualified immunity for Police Officers began to resonate. The United States Congress and several state and local legislatures introduced legislation that sought to eliminate qualified immunity for Police Officers, similarly claiming the proposals were necessary for police accountability. However, qualified immunity played absolutely no role in the killing of George Floyd. Further, the doctrine did not prevent the criminal prosecution of the Officers involved in Mr. Floyd’s death. In fact, qualified immunity is not available as a defense in any criminal proceedings. Nor would qualified immunity be available as a defense in the civil lawsuit stemming from Mr. Floyd’s death as it does not protect intentional deprivations of an individual’s civil or statutory rights.

Instead, qualified immunity is a judicially created doctrine that provides protections from personal liability for government officials — not just law enforcement Officers — who are acting lawfully and have not violated clearly established rights. The Supreme Court has long recognized that qualified immunity is necessary to ensure that government officials are not subjected to frivolous lawsuits in their personal capacities for carrying out the duties of their public offices, which not only could be financially burdensome, but also discourages them from acting. Qualified immunity is just that: *qualified*; it does not provide absolute immunity to law enforcement Officers to intentionally, or even recklessly, violate the Constitutional rights of individuals. It allows Officers to perform their duties to the best of their abilities, without the constant fear of being sued. It also recognizes that the actions of law en-

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<sup>1</sup> New York City Council Press Release 4-2021, “City Council Unveils Legislative Plans to Redefine Public Safety and Strengthen Police Accountability.”

forcement Officers should be judged from the perspective of a reasonable Officer in the same circumstances and not based on the results of his or her actions in hindsight.

Although the sponsor of Int. 2220 has claimed that “[t]he legislation is not intended to be vindictive — the personal liability is limited,” the standards for liability in the bill evidence otherwise. In addition to expressly providing that “[i]mmunity is not a defense to liability ... including any form of ... qualified immunity,”<sup>2</sup> the bill also expressly provides that the good faith of an Officer, or the reasonable belief that conduct was lawful, are also not defenses. Essentially, the bill would establish a strict liability standard.

Our members understand we will be subjected to risks to life and limb when joining our ranks. Despite this knowledge, we commit by swearing and fulfilling the oath to “serve and protect.” Upon taking that oath, we commit ourselves to be among those who run toward danger to allow others to run to safety. However, very few would be willing to continue taking those same risks if it might render them bankrupt or leave their families destitute — even when acting in good faith and acting with a reasonable belief that what they are doing is lawful.

The proposal also ignores the role that the Office of the Corporation Counsel plays in representing our members in these lawsuits. Where an Officer was acting within the scope of his or her employment, and in compliance with Police Department rules and regulations, he or she is entitled to representation by the Corporation Counsel in such lawsuit, and likewise entitled to be indemnified in the event of any judgment in the case. The reality in many of these cases is that the Corporation Counsel, for reasons of their own and not based on a finding of any wrongdoing, chooses to settle these cases before trial. Under your proposal, however, the Of-

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<sup>2</sup> Introduction 2220 § 8-804

ficer would be required personally to pay towards a settlement in which he or she played no role in brokering. Even if an Officer doesn't want to settle – because the Officer firmly believes he or she did nothing wrong in the incident in question – this proposal requires the Officer's contribution towards such settlement. By including settlements in this proposal, the City Council will be creating a statute-based conflict of interest between the City's lawyers and their clients, New York City Police Officers, who will need separate legal representation at a cost to New York City tax payers greater than any settlement contribution contemplated by this legislation.

Ultimately, the Council's targeting of qualified immunity for elimination is grossly misguided. Qualified immunity does not prevent prosecution for violations of criminal law; it does not bar recovery in civil suits when an Officer violates clearly established rights; and it does not prevent disciplinary action. Int. 2220 will only serve to embolden the criminal element by providing the ability to use the threat of frivolous lawsuits against law enforcement Officers to discourage them from carrying out their duties.

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