

QUALIFIED IMMUNITY

PAST, PRESENT, AND FUTURE

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IOWA : PAST

Godfrey v. State, 898 N.W.2d 844, 881 (Iowa 2017)

- Constitution self-executing
- But have to go with statutory remedies if they exist

IOWA : PAST

Baldwin v. City of Estherville, 915 N.W.2d 259 (Iowa 2018)

- All due care immunity for individual defendants

IOWA : PAST

Baldwin v. City of Estherville, 929 N.W.2d 691, 700 (Iowa 2019)

- All due care applies to employers
- No punitives
- No attorney fees without statutory authority

IOWA : PAST

Wagner v. State, 952 N.W.2d 843 (Iowa 2020)

- ITCA procedural rules apply

IOWA : PRESENT

669.14 Exceptions.

The provisions of [this chapter](#) shall not apply, with respect to any claim against the state, to:

1. Any claim based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion be abused.

IOWA : PRESENT

670.4 Claims exempted.

the municipality shall be immune from liability:

c. Any claim based upon an act or omission of an officer or employee of the municipality, exercising due care, in the execution of a statute, ordinance, or regulation whether the statute, ordinance or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the municipality or an officer or employee of the municipality, whether or not the discretion is abused.

DISCRETIONARY FUNCTION

- Protect “administrative decisions grounded in social, economic, and political policy” *Ette ex rel. Ette v. Linn-Mar Cmty. Sch. Dist.*, 656 N.W.2d 62, 68 (Iowa 2002)
- Not “performance of a routine duty.” *Madden v. City of Eldridge*, 661 N.W.2d 134, 139 (Iowa 2003)
- “[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights” *Harlow v. Fitzgerald*, 102 S. Ct. 2727, 2738 (1982)

FEDERAL CASES ON IOWA LAW

- *Baldwin v. Estherville, Iowa*, 333 F. Supp. 3d 817 (N.D. Iowa 2018)
- *Meyer v. Herndon*, 419 F. Supp. 3d 1109, 1125 (S.D. Iowa 2019)
- *Ohlson-Townsend v. Wolf*, No. 18-CV-4093-CJW-MAR, 2019 WL 6609695 (N.D. Iowa Dec. 5, 2019)
- *Saunders v. Thies et. al*, No. 4:19-cv-00191-JAJ-HCA (S.D. Iowa Sept. 8, 2020)

ALL DUE CARE

- *Baldwin 2018*: “Proof of negligence, i.e., lack of due care, was required for comparable claims at common law at the time of adoption of Iowa's Constitution. And it is still the basic tort standard today.”
- *Ohlson-Townsend*: “the Iowa standard for qualified immunity is more stringent than the federal standard”

ALL DUE CARE

- The distinction appears to me to be between taking reasonable action to “conform” to the requirements of the law, under the Iowa “all due care” qualified immunity standard, and avoiding action one should reasonably know would violate the law, under the . . . federal qualified immunity standard.

Baldwin v. Estherville, Iowa, 333 F. Supp. 3d 817, 843 (N.D. Iowa 2018)

CONSIDERATIONS

- Is your constitutional provision self-executing
- ITCA procedures
 - Exhaustion
 - Filing in State court
 - Scope of employment
- ICRC procedures
 - Exhaustion
- Access to damages – Punitives? Attorney fees?
- Pleading both federal & state claims

IOWA : FUTURE

Senate File 342

Sec. 34. NEW SECTION. **669.14A Qualified immunity.**

Sec. 36. NEW SECTION. **670.4A Qualified immunity.**

a. The right, privilege, or immunity secured by law was not clearly established at the time of the alleged deprivation, or at the time of the alleged deprivation the state of the law was not sufficiently clear that every reasonable employee would have understood that the conduct alleged constituted a violation of law.

IOWA : FUTURE

Senate File 342

4. Any decision by the district court denying qualified immunity shall be immediately appealable.

5. This section shall apply in addition to any other statutory or common law immunity.

IOWA : FUTURE

04/14/2021 Passed House, yeas 63 nays 30.

04/15/2021 Message from House, with
amendment [S-3158](#). S.J. 887.

04/27/2021 Amendment [S-3167](#) filed. S.J. 962.

FEDERAL : PRESENT

Every person who, under color of any statute, ordinance, regulation, custom, or usage . . . subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured

42 U.S.C.A. § 1983

FEDERAL : PRESENT

1. deprivation of a constitutional or statutory right
2. the right was clearly established at the time of the deprivation

CLEARLY ESTABLISHED

- Doesn't have to be exactly the same
- Must be apparent conduct is unlawful
- “[O]fficials can still be on notice that their conduct violates established law even in novel factual circumstances.” *Hope v. Pelzer*, 122 S. Ct. 2508, 2516 (2002).
- But can't be defined at high level of generality
- Needs to be particularized

FEDERAL : FUTURE

H.R.1280 - George Floyd Justice in Policing Act of 2021

117th Congress (2021-2022) | [Get alerts](#)

““It shall not be a defense or immunity in any action brought under this section against a local law enforcement officer

“(1) the defendant was acting in good faith, or that the defendant believed, reasonably or otherwise, that his or her conduct was lawful at the time when the conduct was committed; or

“(2) the rights, privileges, or immunities secured by the Constitution and laws were not clearly established at the time of their deprivation by the defendant, or that at such time, the state of the law was otherwise such that the defendant could not reasonably have been expected to know whether his or her conduct was lawful.”.

FEDERAL : FUTURE

H.R.1470 - Ending Qualified Immunity Act

117th Congress (2021-2022) | [Get alerts](#)

... **it shall not be a defense** or immunity to any action brought under this section that the defendant was **acting in good faith**, or that the defendant believed, reasonably or otherwise, that his or her conduct was lawful at the time when it was committed. **Nor shall it be a defense** or immunity that the rights, privileges, or immunities secured by the Constitution or Federal laws **were not clearly established** at the time of their deprivation by the defendant, or that the state of the law was otherwise such that the defendant could not reasonably have been expected to know whether his or her conduct was lawful.

QUESTIONS?