

## Members of the Judiciary Committee:

I am writing to address a portion of the proposed legislation before you in LCO No. 3471 ('An Act Concerning Police Accountability'). Specifically I wish to comment on Section 41 of this Bill (Civil Cause of Action Against Certain Police Officers).

As the Deputy Corporation Counsel for the City of Norwalk I have been on the front line in representing the City of Norwalk, its Police Department and the citizens and residents of the City for more than thirty (30) years. It must be stated that in defending the rights of the police officers to use reasonable means to keep order within our community we are also safeguarding the rights of the others in our community to live safely and peacefully.

It is the goal of Section 41 of the Act to remove the defenses of 'governmental immunity' and 'qualified immunity' as they might be applied under the law in civil litigation. It is my belief that these defenses, that have been developed and/or passed as laws as the result of public policy considerations, are widely misunderstood and misconstrued. These immunities are not designed to allow police officers to 'get away with' illegal acts. Instead, they are designed to allow the officers to perform their jobs effectively and reasonably in order to protect the members of our community.

We all know that the defense of governmental immunity is based on a balance between allowing for recovery and unnecessarily (and dangerously) 'handcuffing' (no pun intended) our municipal officials in the effective performance of their duties. The Court explained this balance in *Thivierge v. Witham*, 150 Conn. App. 769, 774-775 and in countless other the decisions as follows:

*"Affording immunity to municipal officers performing discretionary acts serves the policy goal of avoiding expansive exposure to liability, which would cramp the exercise of official discretion beyond the limits desirable in our society.... Discretionary act immunity reflects a value judgment that—despite injury to a member of the public—the broader interest in having government officers and employees free to exercise judgment and discretion in their official functions, unhampered by fear of second-guessing and retaliatory lawsuits, outweighs the benefits to be had from imposing liability for that injury.... In contrast, municipal officers are not immune from liability for negligence arising out of their ministerial acts, defined as acts to be performed in a prescribed manner without the exercise of judgment or discretion.... This is because society has no analogous interest in permitting municipal officers to exercise judgment in the performance of ministerial acts."*

It needs to be made clear that governmental immunity (CGS Sect. 52-557n/Common Law) does not protect the officer against conduct that is intentional or reckless (only negligence). Thus, if there is a claim that an officer intentionally harmed someone and/or engaged in "criminal conduct, fraud, actual malice or willful misconduct", that officer can be held individually liable. In addition, that officer can be prosecuted criminally.

All of this means that there is no 'free pass' for an officer who so clearly violates someone's rights or who acts maliciously or criminally. See also CGS Sect. 7-101a that requires a City to indemnify and hold harmless any officer for any claim alleging negligence or an infringement of another's civil rights -- unless it is later determined that the officer acted maliciously, wantonly or wilfully (in which case the City is to be reimbursed by the officer).

To the General Assembly Judicial Committee:

Greetings --

I have been listening to the 'virtual live testimony' all day long and am appreciative that the Judiciary Committee has made this opportunity for commentary available. I only learned of this last evening and was not able to submit 'written testimony' in advance of the session.

I am attaching this commentary at this time. This is being submitted on behalf of the City of Norwalk and the Norwalk Police Department. While there may be additional areas that should or could be commented on, I am addressing only Section 41 of the proposed Act (that which removes the protections of governmental and qualified immunity, etc.).

In listening to the live testimony (and questioning) it is clear to me that the contours and protections of these defenses are not clearly understood. These doctrines allow for a trier of fact to judge the acts of a police officer and to determine if their actions were made in good faith or in the exercise of their honest discretion. It is totally inappropriate for these defenses to be removed across the board.

Please accept my written testimony on this matter.

M. Jeffry Spahr  
Deputy Corporation Counsel  
City of Norwalk  
125 East Avenue  
Norwalk, Conn. 06851  
(203)854-7750  
(203)854-7901 (f)

