



Statement of National Police Accountability Project (NPAP)
In Support of House Bill No. 0004

House Bill No. 0004 Will Reduce, Not Increase, Litigation Costs

Opponents of the proposed New Mexico Civil Rights Act have argued, without evidence to support their position, that the Bill will increase the costs to cities and towns of defending civil rights suits. That is not the case.

It is true that this Bill will make it possible for some additional victims of rights violations to recover compensation for their injuries and losses. That is one of the purposes of the Bill, and justice and fairness require that result. That does not mean, however, that overall litigation expenses will rise.

Under current law, civil rights suits in federal court are lengthy ordeals. Even where it is evident that public officials have violated a victim's constitutional rights, officials are encouraged by the qualified immunity defense to exhaust every possible procedural maneuver. Cases that the parties might have settled early for a reasonable sum are taken to trial and appealed, often resulting in judgments that are a multiple of what the settlement might have been. Defendants may appeal their claim of immunity even before a trial has been held. And not just once—multiple qualified immunity appeals are permitted before trial. Years go by while immunity defenses are exhausted. The costs that result are extreme.

Where a victim finally prevails, the defendants have to pay not only their lawyers, but also fees they have forced the plaintiff to incur. Legal fees often amount to a sum far in excess of the compensation due the victim. For example, in *Lundstrom v. Romero*, 616 F.3d 1108 (10th Cir. 2010), an Albuquerque case, the jury awarded plaintiffs a total of \$175,000, and on top of that defendants paid them close to \$500,000 in attorneys' fees and another \$400,000 to their own lawyers over the course of 6 years and an interlocutory appeal. Plaintiffs had offered early on to settle for \$50,000.

Civil rights lawyers do not seek and do not want such proceedings to run up their fees. The costs are solely due to unnecessary litigation of qualified immunity issues by official defendants. The victims of the qualified immunity regime are the injured parties whose cases are delayed and whose rights are frequently denied when officials who have violated the Constitution are afforded immunity.

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