



## Update from AAJ Linda A. Lipsen

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# AAJ provides advocacy on ending qualified immunity

## A SNAPSHOT OF QUALIFIED IMMUNITY AND OTHER URGENT ADVOCACY ISSUES WE'RE WORKING ON

### WASHINGTON UPDATE

#### Ending qualified immunity

In a positive first step toward ending qualified immunity, the House passed comprehensive policing reform legislation, the George Floyd Justice in Policing Act (H.R. 1280), on March 3 in a vote of 220 in favor to 212 opposed.

As you know, qualified immunity is a court-made doctrine that provides state actors such as police officers, prison guards, and other government agents with broad immunity for violating constitutional and civil rights.

Members of AAJ and state TLAs represent many of the families directly impacted by police violence. AAJ supports the George Floyd Justice in Policing Act (GFJPA), as a path toward decreasing incidents of police violence by increasing accountability for victims and survivors of brutal police misconduct.

The legislation to reform policing includes provisions to ban chokeholds and no-knock warrants. In addition, the current version of the bill would:

- Require use of body cameras by all uniformed federal officers with the authority to conduct searches and make arrests.
- Require use of in-car video camera recording equipment for federal law enforcement agencies.
- Create a national police misconduct registry to help ensure that repeat offenders cannot transfer to other agencies to hide from previous reprehensible conduct.
- Allow for public access to the collected data.
- Eliminate qualified immunity against certain law enforcement officers.

#### Two more changes needed

We also support the following:

1. Completely abolish the doctrine of qualified immunity: The current GFJPA overturns qualified immunity only for certain law enforcement officers; it must also explicitly do so for other state actors and government agents.

2. Hold law enforcement employers publicly accountable for employees' actions: Private sector employers are responsible for the unlawful acts of their employees under the doctrine of respondeat superior; so too, must employers of law enforcement officers be held accountable for an officer's actions. Congress must ensure that the promises of the 14th Amendment are truly available and can be realized by all Americans.

#### Qualified immunity and AAJ State Affairs

Many states are using the 2021 legislative sessions to enhance accountability. The tragic murder of George Floyd put a spotlight on qualified immunity. As of March 5, 2021, AAJ's State Affairs Department is tracking 70 bills that address, in some way, police brutality or misconduct in the states, including efforts to end qualified immunity.

AAJ State Affairs is tracking these issues, and others, and is working with the TLAs to protect your practices. If you have any questions about specific legislation, please reach out to state.affairs@justice.org.

#### Forced arbitration

Another bill introduced in the last Congress and reintroduced in the current session – as was the GFJPA – is the Forced Arbitration Injustice Repeal Act (FAIR Act).

Senator Richard Blumenthal (D-CT) introduced the FAIR Act on March 1, 2021, in the Senate. The bill has 39 original cosponsors. The House bill was introduced in February with 155 original co-sponsors. In addition, on February 11, the U.S. House Judiciary Committee held a hearing on forced arbitration called "Justice Restored: Ending Forced Arbitration and Protecting Fundamental Rights." Witnesses included Professor Myriam Gilles and Gretchen Carlson in support of enacting the FAIR Act.

Forced arbitration and qualified immunity are just two issues in a legislative and regulatory portfolio that

covers dozens more. AAJ tracks and reads several hundred bills each congressional session.

#### Legal Affairs: 2020 amicus curiae briefs recap

AAJ's amicus curiae program did not slow down in 2020, despite case delays and other challenges posed by the pandemic. AAJ filed a total of 16 amicus curiae briefs in 2020, focused on 11 different issue areas important to AAJ and state TLA members' practices. The most frequent topics covered were arbitration and preemption, with three amicus briefs filed on each.

Six briefs were filed in the U.S. Supreme Court, five in the U.S. Courts of Appeals, and five in state supreme courts (MA, FL, CT, UT, and GA). AAJ partnered with outside groups on 12 of the briefs, including Public Justice and the ACLU. AAJ is grateful to have also partnered with the following TLAs on amicus briefs throughout the year: Florida Justice Association, Massachusetts Academy of Trial Attorneys, Georgia Trial Lawyers Association, and the Utah Association for Justice. Two amicus briefs have already been filed in 2021, and it is anticipated that four more will be filed in the next few weeks. AAJ is awaiting the Supreme Court's ruling in an important personal jurisdiction case, *Ford Motor Co. v. Montana 8th Judicial Dist. Court* and *Ford Motor Co. v. Bandemer* (U.S. 19-368; cases consolidated).

AAJ amicus briefs are available at: [www.justice.org/amicusbriefs](http://www.justice.org/amicusbriefs). For more information about AAJ's amicus curiae program, please contact [legalaffairs@justice.org](mailto:legalaffairs@justice.org).

#### Fighting for you and your clients

Thank you for your continued support. Despite these difficult times, AAJ continues to fight all attempts to deny access to justice. We will keep you informed about important developments and welcome your input. You can reach me at [advocacy@justice.org](mailto:advocacy@justice.org).