



**CITY OF YPSILANTI**  
**POLICE ADVISORY COMMISSION MEETING**  
**Thursday, August 27, 2020 @ 7:00 PM**  
**Council Chambers**  
**One South Huron, Ypsilanti, MI 48197**

Page

**I. CALL TO ORDER**

**II. ROLL CALL**

**COMMISSIONERS:**

Andy Fanta  
Heather Berkovitz  
Kathleen McCormick  
Herman Humes  
Gail Wolkoff

**STAFF LIASION:**

Police Chief Tony DeGuisti

**III. AGENDA APPROVAL**

**IV. APPROVAL OF MINUTES**

**3 - 4**

- A. Approving the minutes of July 23, 2020  
[POLICE ADVISORY COMMISSION - 23 Jul 2020 - Minutes](#)

**V. PUBLIC COMMENT (3 MINUTES)**

**VI. RESOLUTIONS/MOTIONS/DISCUSSIONS**

- A. Monthly statistical report - Chief DeGiusti

**5**

- B. Approval of the 2021 Police Advisory Meeting Schedule  
[2021 PAC Meeting Schedule](#)

**7**

- C. Qualified Immunity Doctrine  
[Vince Colella Article](#)

**9 - 10**

- D. Cops Don't Need Army Fatigues  
[NY Times Article](#)

**11**

- E. Dream Deferred  
[Langston Hughes](#)

**VII. OLD BUSINESS**

**VIII. NEXT MEETING DATE**

**IX. ADJOURNMENT**



# Draft MINUTES POLICE ADVISORY COMMISSION Meeting

7:00 PM - Thursday, July 23, 2020  
Zoom Meeting

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The POLICE ADVISORY COMMISSION of the City of Ypsilanti was called to order on Thursday, July 23, 2020, at 7:00 PM, in the Zoom Meeting, with the following members present:

**PRESENT:**

**ABSENT:**

## **I CALL TO ORDER**

The meeting was called to order at 7:03 pm

## **II ROLL CALL**

### **COMMISSIONERS:**

PRESENT: Andy Fanta, Heather Berkovitz, Kathleen McCormick, Herman Humes, Gail Wolkoff

## **III AGENDA APPROVAL**

The agenda was approved as submitted

## **IV APPROVAL OF MINUTES**

a) Approval of the minutes of July 2, 2020

Commissioner Humes moved, seconded by Commissioner Wolkoff to approve the minutes

Approved: Yes - 5; No - 0; Absent - 0

## **V PUBLIC COMMENT (3 MINUTES)**

## **VI RESOLUTIONS/MOTIONS/DISCUSSIONS**

- a) Spring and Summer report - Chief DeGiusti
- b) Community Policing Presentation - Chief DeGiusti
- c) Discussion regarding complaint
- d) Commissioner Wolkoff items for Discussion
  - a-Community Action Team (CAT)
  - b-City Council liaison: Remove Chief of Police
  - c-Reschedule City Council & Y - PAC meeting

d-Y-PAC membership: National Association for Civilian Oversight of Law Enforcement (NACOLE).

e-Officers for Y-PAC. Ward 3 Representatives

- e) Discussion of "Re-fund the Police Smarter" - David Hughes

**VII OLD BUSINESS**

**VIII NEXT MEETING DATE**

- a) August 27, 2020

**IX ADJOURNMENT**

**The meeting adjourned at 9:27 pm**



**City of Ypsilanti**  
**POLICE ADVISORY COMMISSION**  
**One South Huron Street**  
**Ypsilanti, Michigan 48197**

**2021 Calendar of Meetings**

The regular meetings of the City of Ypsilanti **Police Advisory Commission** for 2021 will generally be held on the **fourth Thursday** of each month, at 7:00 p.m. in the City Hall Council Chambers (first floor) at One South Huron Street, Ypsilanti, Michigan. Dates for 2021 **Commission** meetings are as follows:

January 28  
February 25  
March 25  
April 22  
May 27  
June 24  
July 22  
August 26  
September 23  
October 28  
November 18  
December 23

The City of Ypsilanti encourages persons with disabilities to participate and will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired, Limited English Proficiency (LEP) services, and audios of printed materials being considered at the meeting. Individuals requiring auxiliary aids or services should provide two (2) days' notice to the City, and contact the City by writing or calling the following:

City Clerk's Office  
One South Huron Street  
Ypsilanti, Michigan 48197-5420  
(734) 483-1100

All persons are welcome to attend. For further information on the Police Advisory Commission, contact the Office of the Chief of Police at 505 W. Michigan, or 734-483-8590, or <http://cityofypsilanti.com/671/Police-Advisory-Commission>



# Colella In Context

A. VINCE COLELLA



ASH LEGAL NEWS *Would ending qualified immunity figure prominently in stopping police brutality?*

The killing of George Floyd has led to a watershed moment in the storied evolution of the modern Civil Rights Era. What was once thought to be isolated incidents of bad judgment by police officers is now recognized as widespread and systemic failure. As the nation's collective cry for reform rages on, Congress is searching for a solution. Earlier this month, two bills were introduced and passed in Congress. De-militarization of law enforcement and re-training were the focal points of a Senate bill that failed to obtain House approval. The House took a more aggressive approach to police reform by passing a bill ("Justice in Policing") that abolishes qualified immunity for law enforcement.

Political lines have been drawn while the protests and civil unrest continue to fester. Preceding this battle between the House and Senate over legislation to repeal qualified immunity, the issue was presented to the U.S. Supreme Court in the case of *Baxter v Bracey*, No. 18-287, 2020 U.S. LEXIS 3249 (June 15, 2020). Baxter centered around a man who was bitten by a police dog that was unleashed on him while he was sitting with his hands in the air, having sur-

rendered to the police. In its Petition for a Writ of Certiorari, the ACLU questioned the usefulness of the qualified immunity doctrine in serving its purported goals. It claimed, "[t]he doctrine nullifies the development of constitutional law and leaves the contours of constitutional rights undefined, by encouraging judges to avoid constitutional questions even when they are sharply presented." Adding, that immunity has "evaded consistent application" because the "clearly established" requirement is essentially a moving target. The ACLU also argued that qualified immunity is a judge-made doctrine that was not rooted in the common law predating the enactment of 42 U.S.C. 1983, nor did the statute itself provide for immunity as a defense. In terms of public policy, the ACLU applied pointed out that the notion of officers being in fear of personal liability for reasonable mistakes and having to pay damages is debunked by the universal practice of indemnification, citing a study that found only one-half of a percent of all verdicts and settlements resulted in an officer having to pay out of their own pocket.

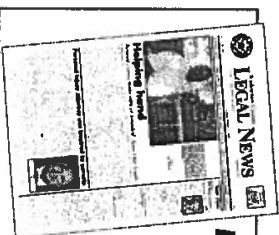
The scholarly arguments for

abolishment were compelling in and of themselves; however, a scathing concurrence in *Ziglar v Abbasi*, 137 S. Ct. 1843 (2017) by Clarence Thomas — the high court's most conservative jurist — put Baxter followers on high alert. Thomas opined, "until we shift the focus of our inquiry to whether immunity existed at common law, we will continue to substitute our own policy preferences for the mandates of Congress." Id at 1872. And Thomas was not alone. Justices Sotomayor and Ginsburg also expressed concern about the doctrine, arguing that immunity "sends an alarming signal" to police officers that they can "shoot first and think later." *Kisela v Hughes*, 138 S. Ct. 1148, 1162 (2018) Having one-third of the Supreme Court, including its most ardent right winger, casting aspersions on qualified immunity and protests raging across the country, the stage was set for a revolutionary decision from the Supreme Court. However, on June 15, 2020 shortly after the Court decisively ruled in favor of equal employment rights for gay and transgender people, the high court surreptitiously denied cert in *Baxter* (receiving only three votes in favor of hearing the petition).

In a fiery dissent, Thomas stated he had "strong doubts" in the immunity doctrine and downplayed the need to make the defense available to officers based upon practical considerations that no longer exist. Absent a ruling from the Supreme Court, qualified immunity will continue to prevent victims of unlawful deadly force from reaching the trial court — where jurors can decide the "objective reasonableness" of the officers' conduct. In fact, from a statistical perspective, the protections afforded to law enforcement have been found to shield officers from liability in 57 percent of the cases filed between 2015 and 2019 [Reuters, May 8, 2020]. Moreover, if you consider that a singular percentage of police officers have been charged, and even less convicted

during this time period (despite the staggering number of shootings), it is clear the balance of justice largely in favor of the officers. The culmination of these protections from criminal prosecution and civil liability has led to an impunity for officers that is likely to be shaping their conduct in the field. Therefore, while angry protests may generate media attention and shape our own conversations, true change can only be accomplished by a repeal of qualified immunity or a decision from the high court finding it unconstitutional.

*A. Vince Colella is a founding partner of Moss & Colella P.C., a Southfield-based law firm specializing in personal injury and civil rights. He can be reached at vcolella@mosscolella.com.*



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- Call 734-477-0201 for rates or information.**





EDITORIAL

NYT 81-20PA-10

# Cops Don't Need Army Fatigues

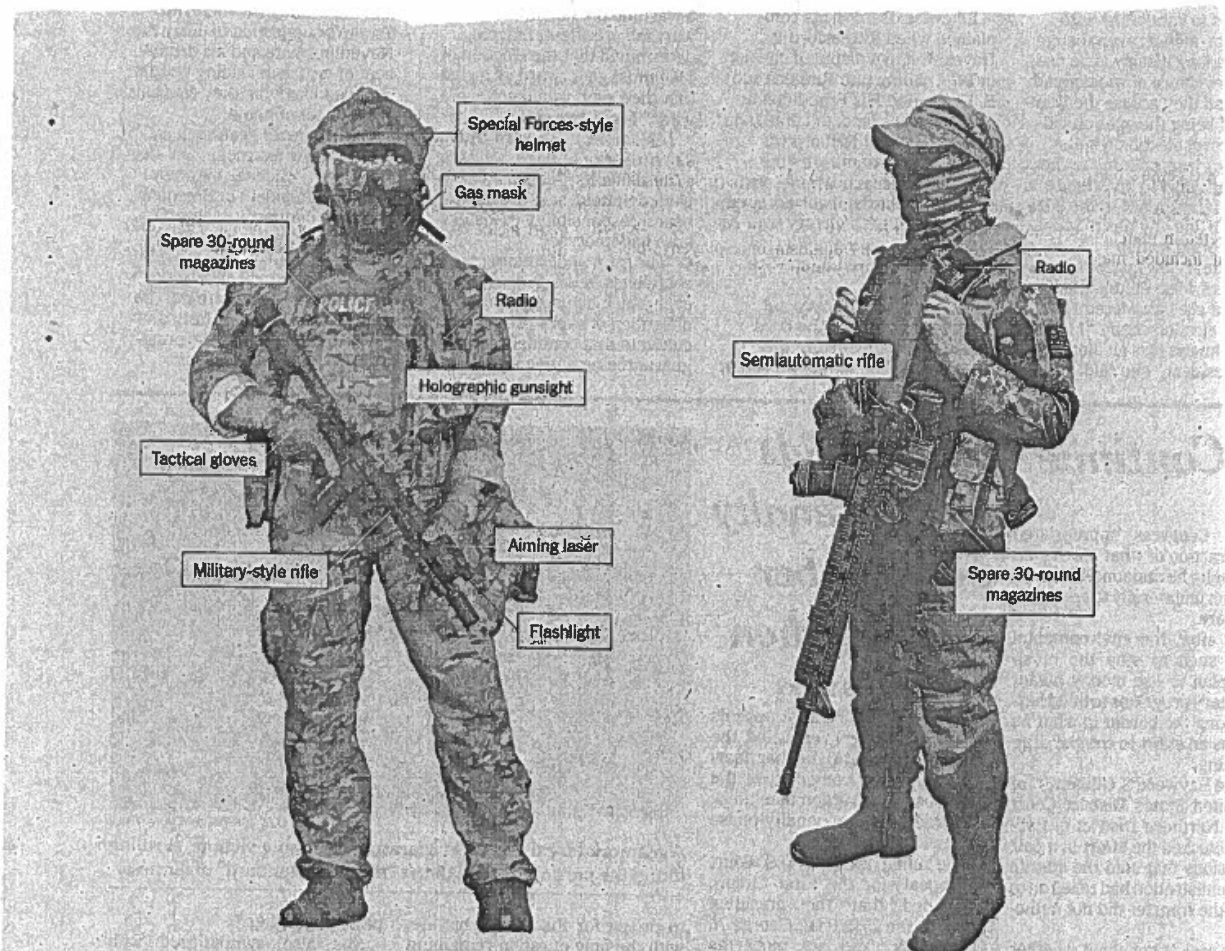


### 'BOOGALOO BOY'

Anti-government group—often seen wearing Alpha shirts—at a demonstration in New Hampshire.

### 'MILITIA' MEMBER

Self-described "militia" member during a Black Lives Matter protest in Oakdale, Calif.



Special Forces-style helmet

Gas mask

Spare 30-round magazines

POLICE

Radio

Holographic gunsight

Tactical gloves

Military-style rifle

Aiming laser

Flashlight

Radio

Semiautomatic rifle

Spare 30-round magazines

**FEDERAL AGENT**  
Unmarked federal agent  
in Portland, Ore.

**ANTI-LOCKDOWN PROTESTER**  
Americans opposed to  
government public health measures,  
seen here in Ohio.

## **Dream Deferred**

### **Poem by Langston Hughes**

What happens to a dream deferred?  
Does it dry up  
Like a raisin in the sun?  
Or fester like a sore--  
And then run?  
Does it stink like rotten meat?  
Or crust and sugar over--  
like a syrupy sweet?  
Maybe it just sags  
like a heavy load.  
Or does it explode?

Langston Hughes