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5 **A RESOLUTION**
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7 Calling for the State of Wisconsin and Federal Government to legally end qualified
8 immunity, enabling civil lawsuits against law enforcers for misconduct and malpractice
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11 WHEREAS, the United States Supreme Court created the doctrine of “qualified
12 immunity” in *Pierson et al. v. Ray et al.* (1967), based on an interpretation of 42 United
13 States Code § 1983, created by the 1871 Ku Klux Klan Act, where the Supreme Court
14 majority interpreted § 1983 as, “A policeman’s lot is not so unhappy that he must
15 choose between being charged with dereliction of duty if he does not arrest when he
16 has probable cause, and being mulcted in damages if he does.”; and
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18 WHEREAS, the current standard of qualified immunity stems from the US
19 Supreme Court case *Bryce Harlow et al. v. A. Ernest Fitzgerald* (1982), in which the
20 majority decided “government officials performing discretionary functions, generally are
21 shielded from liability for civil damages insofar as their conduct does not violate ‘clearly
22 established’ statutory or constitutional rights of which a reasonable person would have
23 known.”; meaning that unless a specific action is deemed illegal or unconstitutional by
24 the courts, that action is covered under qualified immunity; and
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26 WHEREAS, legal scholar Katherine Mims Crocker, writing for the *Michigan Law*
27 *Review* in May 2019, noted that since *Harlow*, the United States Supreme Court has
28 steadily expanded the doctrine’s umbrella to where “the standard for denying qualified
29 immunity from whether ‘a’ reasonable person would have known of the right in question
30 to whether ‘every’ reasonable person would have known. . . And the Court has
31 repeatedly stated that the doctrine shields ‘all but the plainly incompetent or those who
32 knowingly violate the law.’. . . And the Court has strictly limited the sources of law that
33 can render a right clearly established, making qualified immunity increasingly easy to
34 obtain.”; and
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36 WHEREAS, in the United States Supreme Court case, *Andrew Kisela v. Amy*
37 *Hughes* (2018), Justice Sonia Sotomayor dissented against qualified immunity by
38 arguing, “It tells officers that they can shoot first and think later, and it tells the public
39 that palpably unreasonable conduct will go unpunished.”; and
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41 WHEREAS, qualified immunity has been used to defend law enforcers who have,
42 for example:

- 43 • Lowered a police dog over a wall into a trailer park without warning while chasing
44 a burglary suspect whereby the dog subsequently bit an uninvolved 89-year-old
45 senior who required amputation and died the following month (*McKay et al. v.*
46 *City of Hayward et al.*, 2013 (949 F. Supp.2d 971))
- 47 • Without warning shot a woman who was nonthreateningly holding a kitchen knife
48 at her side while standing next to her roommate (*Kisela v. Hughes*, 2018)

49
50 ; and

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52 WHEREAS, organizations across the political spectrum support curbing qualified
53 immunity, including the American Civil Liberties Union (ACLU), Americans for
54 Prosperity, the Cato Institute, the Institute for Justice, and the National Association for
55 the Advancement of Colored People (NAACP); and

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57 WHEREAS, according to the Marshall Project, from approximately 2010 to 2019,
58 these cities, among others, had to pay approximately the following in civil claims against
59 police misconduct:

- 60 • Milwaukee, \$40 million
- 61 • Detroit, \$57.7 million
- 62 • Philadelphia, \$116 Million
- 63 • Chicago, \$467.5 million
- 64 • New York, \$1.7 billion

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67 ; and

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69 WHEREAS, while local governments await a fair deal for local government
70 finance from the State of Wisconsin, an October 25, 2017 *Milwaukee Journal Sentinel*
71 article titled, “The cost of police misconduct in Milwaukee: \$21 million – and growing,”
72 from 2015 to 2017, the City of Milwaukee was forced to debt-finance a total of \$17.5
73 million in legal claims for police misconduct, amounting to \$21.4 million for damages,
74 legal fees, and interest; and

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76 WHEREAS, legally enabling police officers’ subjection to civil lawsuits for
77 egregious behavior and malpractice would require officers to carry liability insurance,
78 effectively having the insurance industry regulate and curb police excesses similar to
79 insurance held by healthcare providers for medical malpractice, thereby forcing the

80 burden of police malpractice onto delinquent police officers rather than the taxpayers
81 they serve; and

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83 WHEREAS, Assembly Bill 186 and its companion, Senate Bill 295, would make
84 “immunity granted to public officials under current law. . .not apply and. . .not [be] a
85 defense to civil liability claimed against a law enforcement officer for any act or failure to
86 act by the officer done in an official capacity or in the course of his or her employment,”
87 according to the Wisconsin Legislative Reference Bureau; and

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89 WHEREAS, the murder of George Floyd through the actions of a Minneapolis
90 Police Officer in April 2020 renewed national conversation on racial inequity and law
91 enforcement excesses, and spurred Milwaukee County to pass several resolutions
92 including:

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- 94 • The condemnation of racial injustice in Milwaukee County and across the United
95 States (File No. 20-464)
- 96 • Proposing the State of Wisconsin modify hate crimes statutes relating to giving
97 false information to police officers on the basis of race, religion, color, sexual
98 orientation, national origin, or ancestry of a person and guidelines for the
99 National Neighborhood Watch Program (File No. 20-527)
- 100 • Supporting State of Wisconsin legislation which would address policing
101 accountability and transparency (File No. 20-681)
- 102 • Amendment 1A043 to the 2021 Adopted Budget which tasked the Office of
103 Corporation Counsel and Department of Administrative Services to report prior
104 and current year settlements and judgements from departments and liability
105 insurance premiums and an explanation for any insurance premium changes
106 (File No. 20-733)

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108 ; and

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110 WHEREAS, ending qualified immunity may be the best way to mitigate law
111 enforcement abuses and reduce taxpayer lawsuit expenditures; and

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113 WHEREAS, the Committee on Intergovernmental Relations, at its meeting of
114 June 10, 2021, recommended adoption of File No. 21-462 (vote 3-1); now, therefore,

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116 BE IT RESOLVED, Milwaukee County hereby supports Wisconsin Assembly Bill
117 186 and Senate Bill 295 and similar State or Federal legislation which would remove
118 qualified immunity as a defense against law enforcement misconduct at all levels of
119 government; and

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121 BE IT FURTHER RESOLVED, the Office of Government Affairs staff is
122 authorized and requested to communicate the contents of this resolution to the
123 Wisconsin Governor, State and Federal policymakers, and Wisconsin Counties
124 Association, and support legislation that achieves the criteria outlined in this resolution;
125 and

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127 BE IT FURTHER RESOLVED, Milwaukee County requests the County Clerk
128 provide this resolution to State and Federal policymakers who represent any part of
129 Milwaukee County and to the Wisconsin Counties Association.

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06/10/21

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