



INSTITUTE FOR JUSTICE

Public Comment on the 2026 Executive Budget Proposal
Joint Legislative Public Hearing on the Topic of Public Protection
Part M: The New York State Bivens Act
February 12th, 2026

Thank you for the opportunity to submit public comment on the 2026 Executive Budget Proposal, Part M: The New York State Bivens Act.

My name is Ellen Hamlett, and I am submitting this testimony on behalf of Americans Against Qualified Immunity, a grassroots initiative of the Institute for Justice, a national public interest civil liberties law firm that protects constitutional rights and government accountability.

We appreciate the effort to ensure that government officials at all levels of government, whether they are federal, state, or local, are treated consistently when constitutional rights are at stake. Equal accountability under the law is an important principle.

In New York's own legal tradition, our state has long been a leader in protecting civil rights and expanding access to justice. That legacy reflects a basic understanding: Constitutional rights must be enforceable in practice.

As you consider this legislation, we hope New York continues that tradition by ensuring that any pathway to accountability is accessible.

That being said, **we urge you not to codify qualified immunity in this legislation!**

Qualified immunity is not found in the Constitution nor in federal civil rights statutes. It is a judicially created doctrine that shields officials from liability unless a plaintiff can point to a prior case with nearly identical facts showing their right was "clearly established." This means that even if a person's constitutional rights were wrongly violated, their case can (and often will) be dismissed.

In practice, this standard is so extraordinarily difficult to meet that many meritorious claims are never filed in the first place. This prevents courts from ever establishing the precedent needed to hold officials accountable in future cases, creating a vicious cycle of injustice.

If New York is creating or clarifying an accountability pathway, it should ensure that the pathway is real and accessible. Codifying qualified immunity would entrench the very barrier that has made vindicating civil rights so difficult.

We respectfully urge you to remove qualified immunity from this piece of legislation.



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Thank you.

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¹ Qualified immunity is codified in §86 (2): “A defendant in an action under this section may assert any immunity defense to the same extent as a defendant may raise in response to a claim brought under 42 U.S.C. § 1983.”