



**National Police
Accountability Project**

*A Project of the National
Lawyers Guild*

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May 10, 2021

By electronic mail

Honorable Carl E. Heastie
New York State Assembly
Legislative Office Building, Room 932
Albany, NY 12248

Honorable Andrea Stewart-Cousins
New York State Senate
Legislative Office Building, Room 310
Albany, NY 12247

RE: S1991/A4331

Dear Speaker Heastie and Majority Leader Stewart-Cousins:

The National Lawyers Guild National Police Accountability Project (“NPAP”) is a nonprofit organization dedicated to holding law enforcement and corrections officers accountable to constitutional and professional standards.

Far too often, a police officer can violate a person’s rights, and even end their life, without facing any meaningful consequences. While there are many police accountability mechanisms in need of change, ensuring officers at least face civil liability for misconduct is critical to any reform effort. Individuals whose rights have been violated by law enforcement face exceptionally difficult barriers in federal court.

The doctrine of qualified immunity has effectively insulated police officers from individual liability. Qualified immunity requires a victim of police misconduct to not only show that their constitutional rights were violated, but prove that the violation was of “clearly established” law. The Supreme Court has interpreted the “clearly established” law requirement to mean a plaintiff must be able to identify a case from the Second Circuit Court of Appeals or Supreme Court with nearly identical facts in order to recover.¹

¹ *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

This requirement severely undermines civil rights protections by shielding inventive, grossly incompetent, and uniquely egregious officers. There are many cases where an officer's patently unlawful conduct was shielded by qualified immunity because no prior defendant had been sued for similar behavior.

For instance, the Second Circuit recently found a corrections officer who fondled the genitals of an inmate for no legitimate purpose was entitled to qualified immunity.² Even though the Court found that the officer's conduct was repugnant, intolerable, and unconstitutional, there was no prior case in the jurisdiction clearly establishing sexual abuse of an inmate violated the Eighth Amendment.³

Outside of the Second Circuit, a court granted immunity to police officers who stole over \$225,000 in cash and rare coins while executing a search warrant.⁴ The court said that while "the theft [of] personal property by police officers sworn to uphold the law" may be "morally wrong," the officers could not be sued for the theft because the circuit court had never specifically decided "whether the theft of property" violates the Fourth Amendment.⁵ There are hundreds of other equally ludicrous outcomes that have resulted from the doctrine of qualified immunity.

The New York legislature cannot eliminate qualified immunity in federal courts, but it can provide New Yorkers with an alternative method to vindicate their rights in state court. S.1991/A.4331 will create a state cause of action to sue police officers for civil rights violations without the shield of qualified immunity.

New York will not be the first state eliminate to qualified immunity. Montana,⁶ Colorado,⁷ and New Mexico⁸ have all rejected qualified immunity defenses for state constitutional actions. New York City has also recently voted to eliminate qualified immunity and provide its residents with municipal court alternative to sue for search and seizure violations.⁹ The changes contemplated by S.1991/A.4331 are not unprecedented and have already been successfully implemented in other states.

We urge you to pass S.1991/A.4331 and remove the immunities that undermine police accountability. If you have any questions, please do not hesitate to contact Lauren Bonds at legal.npap@nlg.org or (620) 664-8584.

² *Crawford v. Cuomo*, 721 Fed. Appx. 57 (2d Cir. 2018)

³ *Id.* at 59

⁴ *Jessop v. City of Fresno*, 936 F.3d 937, 943 (9th Cir. 2019)

⁵ *Id.*

⁶ *Dorwat v. Caraway*, 58 P.3d 128, 131, 137 (Mont. 2002)

⁷ COLO. REV. STAT. ANN. § 13-21-131

⁸ New Mexico Civil Rights Act, 2021Bill Text NM HB 4

⁹ Press Release, Council Votes to End Qualified Immunity and Seven Other Measures to Reform NYPD (March 25, 2021), <https://council.nyc.gov/press/2021/03/25/2079/>