



INSTITUTE FOR JUSTICE

**Testimony in Support of SB 346
Maryland Senate Committee on Judicial Proceedings**

February 10, 2026

Dear Chair Smith and Members of the Committee:

Thank you for the opportunity to testify today in support of SB 346. My name is Courtney Fontaine, and I am a legislative policy associate at the Institute for Justice. The Institute for Justice is a nonprofit, public interest law firm that works to protect civil liberties and to increase government accountability. This bill responds to a serious problem: When a person's constitutional rights are violated by federal officials, meaningful legal remedies are unavailable in state or federal courts.

This bill supports the Constitution. Under our legal system, constitutional rights are supposed to come with enforcement mechanisms. If a right does not have a remedy, it is not much of a right at all.

Over the last several decades, legal doctrines have greatly limited the ability of people to recover damages for constitutional violations committed by federal officials.ⁱ This bill restores a basic accountability mechanism that was once available at common law and under U.S. Supreme Court precedent but has since been largely gutted.ⁱⁱ It does not expand rights; it simply enforces the Constitution.

SB 346 is also consistent with history and founding-era practices in our nation. Historically, people could seek redress when federal officials exceeded their lawful authority, including through actions brought in state courts at common law. Providing a clear state-based cause of action for constitutional violations reflects that tradition and reinforces the principle that government power must be exercised within constitutional bounds.

The state plays an important role in safeguarding constitutional rights. States have a responsibility to protect their citizens and should not wait for changes in federal law to act. A few states already have state causes of action authorizing suits for damages for violations of the U.S. Constitution, including California, Illinois, Maine, Massachusetts, and New Jersey.ⁱⁱⁱ

These laws help maintain law and order. In the United States, no one should be above the law. Research shows that a lack of accountability causes unrest and even harms law enforcement officers.^{iv} Trust is a critical part of law enforcement. When people think government agents can act with impunity, it breaks down trust. This makes law enforcement encounters more



INSTITUTE FOR JUSTICE

confrontational and less effective. It also affects the professional reputation of officers and increases risks to officers and the public.

We support the core purpose of SB 346 and believe it would strengthen constitutional accountability in Maryland, but we also urge the committee to consider removing provisions in the bill that codify immunity defenses. These provisions reduce accountability and risk limiting the practical availability of the remedy SB 346 is intended to provide.

In closing, we encourage the committee to stand with the Constitution and the state's right to enforce it by supporting this important bill.

Sincerely,

Courtney Fontaine
Legislative Policy Associate
Institute for Justice
cfontaine@ij.org

ⁱ Stark, H. (2025, Aug. 1). *Explainer: State-created damages remedies against federal officials*. State Democracy Research Initiative. <https://statedemocracy.law.wisc.edu/featured/2025/explainer-state-created-damages-remedies-against-federal-officials/>

ⁱⁱ See *Hernandez v. Mesa*, 589 U.S. 93, 115-16 (2020) (Thomas, J., concurring).

ⁱⁱⁱ See Cal. Civ. Code § 52.1 (enacted in 1987); *Illinois Bivens Act*, Ill. Public Act 104-0440 (enacted in 2025); Me. Stat. tit. 5, § 4682 (enacted in 1991); Mass. Gen. Laws ch. 12, § 11I (enacted in 1979); and N.J. Stat. Ann. § 10:6-2.

^{iv} Craven, J., Schweikert, J., & Neily, C. (2022, Feb. 15). *How qualified immunity hurts law enforcement*. Cato Institute. <https://www.cato.org/study/how-qualified-immunity-hurts-law-enforcement>