



INSTITUTE FOR JUSTICE

**Testimony in Support of HB 7202  
Rhode Island House Committee on Judiciary**

March 4, 2026

Dear Chair, Vice Chairs, and Members of the House Committee on Judiciary:

Thank you for the opportunity to submit testimony in support of HB 7202. My name is Courtney Fontaine, and I am the 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, as opposed to state or local officials, there is no meaningful legal remedy in either 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, federal law has greatly limited the ability of people to recover damages when federal officials act unconstitutionally.<sup>i</sup> This bill restores a basic accountability mechanism that was once available at common law and under U.S. Supreme Court precedent but that now has been largely gutted.<sup>ii</sup>

Federal supremacy is not threatened by this bill. The Westfall Act explicitly allows this kind of state action. In 1988, the Westfall Act was enacted to protect federal employees from personal liability for torts committed within the scope of their employment. It allows suits against the federal government in federal court and makes the Federal Tort Claims Act the exclusive remedy available for people when federal actors commit torts. However, the Westfall Act has an important exception: It “does not extend or apply to a civil action against an employee of the Government— . . . which is brought for a violation of the Constitution of the United States . . . .”<sup>iii</sup> This bill is therefore consistent with the Westfall Act and furthers federal law by upholding the Constitution.

HB 7202 is also consistent with history and founding-era practices in our nation. For most of the country’s history, constitutional violations by federal officials were handled at common law in state courts.<sup>iv</sup> And while framed as torts, they often involved constitutional claims, such as a trespass suit challenging the legality of a search under the Fourth Amendment.

In 1971, the U.S. Supreme Court also recognized a federal cause of action against federal agents for constitutional violations in *Bivens v. Six Unknown Federal Narcotics Agents*.<sup>v</sup> It was



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clear in this case that the cause of action was supplemental and not intended to replace what states had allowed at common law. However, over a series of subsequent cases, the Supreme Court has severely limited what can be brought as a *Bivens* action in federal court, but again, *Bivens* itself was not intended to foreclose state action. Therefore, federal jurisprudence does not create a problem here.

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.<sup>vi</sup>

These laws help maintain law and order. Research shows that a lack of accountability causes unrest and even harms law enforcement officers.<sup>vii</sup> Trust is a critical part of law enforcement. When people think government agents can act with impunity, it breaks down trust. State and local officers are also held to a higher standard in the law, though the public may not know it. When federal officers abuse the law with no accountability, it affects the public's perception of all law enforcement officers. This makes law enforcement encounters more confrontational and less effective. It also affects the professional reputation of officers and increases risks to officers and the public.

In closing, the Constitution matters. It is essential for maintaining the rule of law, preventing government abuse, and protecting the everyday freedoms we have and enjoy.

We encourage the committee to stand with the Constitution and state rights with this bill. Thank you for your time, and I'm happy to answer any questions you may have.

Sincerely,

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<sup>i</sup> Harrison Stark, *Explainer: State-Created Damages Remedies Against Federal Officials*, State Research Democracy Initiative, p. 1 (Aug. 1, 2025), <https://statedemocracy.law.wisc.edu/featured/2025/explainer-state-created-damages-remedies-against-federal-officials/>.

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

<sup>iii</sup> 28 U.S.C. sec. 2679(b)(2)(A).

<sup>iv</sup> Jennifer L. Mascott, *Egbert v. Boule: Federal Officer Suits by Common Law*, Cato Supreme Court Review, p. 112 (2022), [https://scholarship.law.edu/cgi/viewcontent.cgi?article=2162&context=scholar#:~:text=For%20many%20decades%](https://scholarship.law.edu/cgi/viewcontent.cgi?article=2162&context=scholar#:~:text=For%20many%20decades%20)



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20after%20the.remained%20available%20against%20federal%20officers (explaining that “[f]or many decades after the ratification of the U.S. Constitution, federal officers faced lawsuits for damages under state common law when they allegedly engaged in unlawful acts, as multiple scholars have explained. A not-uncommon fact pattern included an individual suing a federal officer for trespass connected with a search, seizure, or arrest, to which the officer would plead the defense of lawful federal authority connected with a federally authorized act. Constitutional questions sometimes arose because the contours of the federal officer's defense were subject to the constraint that the federal officer carrying out a search could not do so unreasonably under the Constitution's Fourth Amendment.”).

<sup>v</sup> *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971).

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

<sup>vii</sup> James Craven, Jay Schweikert, and Clark Neily, *How Qualified Immunity Hurts Law Enforcement*, Cato Institute, (Feb. 15, 2022), <https://www.cato.org/study/how-qualified-immunity-hurts-law-enforcement>.