

# Protecting Everyone's Constitutional Rights Act (PECRA)

## A STATE LEGISLATIVE SOLUTION TO FEDERAL QUALIFIED IMMUNITY

Qualified immunity is a judge-made doctrine that shields government officials from personal accountability when they violate the U.S. Constitution. Created by the U.S. Supreme Court in 1982, qualified immunity is at the center of calls for police reform. However, 2024 research from the Institute for Justice (IJ), a national public interest law firm, shows that the doctrine shields a much wider range of government defendants and constitutional violations than many realize.

Because qualified immunity is a federal judicial creation, only the U.S. Supreme Court or Congress can end the doctrine for federal constitutional challenges. But state legislators can address accountability in another way. Legislators can open the doors to state courthouses.



Scan the QR code to read the IJ study.

### HOW DOES QUALIFIED IMMUNITY CLOSE FEDERAL COURTHOUSE DOORS?

Titled *Unaccountable*, IJ's study of more than 5,500 federal qualified immunity appeals found that only 23% involved police officers accused of excessive force. In fact, social workers, university deans, mayors, and many other types of government officials frequently claimed qualified immunity. And while policing-related violations were most commonly alleged, First Amendment violations weren't far behind. In fact, they appeared in nearly a fifth of appeals, and most of these First Amendment appeals alleged premeditated retaliation for protected speech or activity that government officials didn't like.

IJ's analysis also found that the doctrine puts victims of government abuse at a distinct disadvantage, clogs the courts with lengthy litigation, and often makes the law more confusing, undermining some of the very goals its supporters claim it's needed to achieve.

Taken together, these findings make it clear that qualified immunity is about far more than police misconduct. These findings strengthen the case for ending the unbounded impunity allowed by the current doctrine of qualified immunity.

### WHAT CAN STATE LEGISLATORS DO?

IJ advocates for legislative reforms that provide the process necessary to protect every American's constitutional rights. We believe that every right must have a remedy. Without access to courts, the constitution is just parchment.

We offer state legislators the "Protecting Everyone's Constitutional Rights Act" (PECRA) — state legislation that ensures that every person has their day in state court.



**A Constitutional Right Without a Remedy Is Worthless.**

## WHAT ARE PECRA'S BENEFITS? IT IS:

### WHAT ELSE DOES PECRA DO?

PECRA takes the longstanding legal doctrine of respondeat superior and applies it to state and municipal government employers. This doctrine ensures that private employers take responsibility for their employees' actions. When private employees commit wrongs within the scope of their employment, victims can sue their employers. For example, someone injured by a pizza company's delivery driver can sue the restaurant for damages.

PECRA applies this same vicarious liability to state and municipal government employers. If government employees violate constitutional rights, the government would be responsible for the employees' actions. This helps ensure that governments take the same level of responsibility for hiring, training, managing, and disciplining employees that private employers do.



Scan the QR code to view PECRA online.

### JUST

Ensures a remedy for individuals whose rights are violated.

### FOCUSED

Makes governments responsible for training and managing all its employees, not just cops.

### RESPONSIVE

Requires government employers to address "bad apples."

### REALISTIC

Does not create personal liability for government employees.

### PRAGMATIC

Respects split-second decisions that are objectively reasonable.

### EQUITABLE

Treats government and private employers similarly.

### NARROW

Does not affect criminal prosecution.

### EFFICIENT

Does not require a new legal framework.

### TESTED

Applies a doctrine developed through centuries of common law.

### TARGETED

Does not burden well-run governments with new requirements, oversight, reporting, or costs.

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