

CARDOZO LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

ALEXANDER A. REINERT
Max Freund Professor of Litigation & Advocacy
Director, Center for Rights and Justice

646.592.6543
Fax: 212.790.0805
E-MAIL: areinert@yu.edu

By electronic mail

April 26, 2021

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

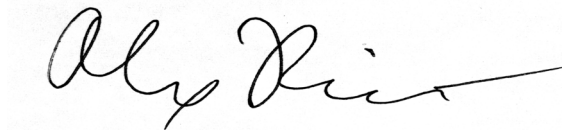
Honorable Andrea Stewart-Cousins
Temporary President and Majority Leader, New York State Senate
Legislative Office Building, Room 310
Albany, NY 12247

RE: S1991/A4331

Dear Speaker Heastie and Temporary President and Majority Leader Stewart-Cousins:

Attached please find a letter in support of S1991/A4331, signed by more than 150 law professors teaching across all disciplines at New York State's fifteen law schools. I very much appreciate your time and attention to this extremely important legislation.

Very truly yours,



Alexander A. Reinert
Max Freund Professor of Litigation & Advocacy
(institutional affiliation provided for purposes of identification only)

Enc.

cc: Assembly Member Pamela J. Hunter
Senator Robert Jackson

By electronic mail

April 26, 2021

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

Honorable Andrea Stewart-Cousins
Temporary President and Majority Leader, New York State Senate
Legislative Office Building, Room 310
Albany, NY 12247

Dear Speaker Heastie and Temporary President and Majority Leader Stewart-Cousins:

This is an unprecedented moment in the history of our country, and decisive action must be taken to restore faith in government and public officials. To this end, the undersigned, more than 150 law professors teaching across all disciplines at New York State's fifteen law schools, write in support of New York Senate Bill S1991/A4331, introduced by Senator Robert Jackson and Assembly Member Pamela J. Hunter. Among its many important provisions, S1991/A4331 creates a state law cause of action for violations of the federal and state constitutions, abolishes qualified immunity, and creates vicarious liability for government entities whose officers violate constitutional rights. These reforms are one critical step towards improving accountability for civil rights violations in New York State.

State law reforms are necessary because the federal law used to enforce civil rights, 42 U.S.C. § 1983, has been watered down over time by the United States Supreme Court. Section 1983, enacted originally in 1871 as the Ku Klux Klan Act, was intended to provide a civil remedy under federal law for persons whose constitutional rights have been violated by state and local actors. In theory, the law provides a vehicle for such persons to seek redress from both public officials as well as the local governments that employ them. But the operative words are "in theory," because the Supreme Court has drained the life from this statute in two significant ways.

First, the Court has created a defense of "qualified immunity." This defense makes recovery against state and local officials very difficult, even when the officer has violated a person's constitutional rights. The Court requires a showing that the right violated is one that was "clearly established," such that every reasonable officer would understand that the conduct amounted to a constitutional violation. Many courts require a plaintiff to produce a case in which the Supreme Court or Court of Appeals has held unconstitutional conduct involving virtually identical facts. The requirement places a significant burden on plaintiffs. Furthermore, the Court has compounded the injury by allowing courts to grant qualified immunity without ruling on the merits of plaintiffs' claims, thus ensuring that no law becomes clearly established.

Second, the Supreme Court has created similarly high barriers to plaintiffs who want to sue a local government employer for an officer's unconstitutional conduct. Although the entity is not

able to raise qualified immunity, the Supreme Court held in a 1978 case, *Monell v. Department of Social Services*, that to recover from a local government under Section 1983, the plaintiff must show that the wrongdoing was caused by an official policy or custom. In most cases, a plaintiff would have to demonstrate a pattern of very similar constitutional violations and show that policymakers had knowledge of such incidents and failed to address the problem.

The defense of qualified immunity for the individual officers, combined with the heavy burden of proving an official policy or custom in order to recover from the government employer, often results in no redress for persons whose constitutional rights have been violated. While we believe that the United States Congress should amend Section 1983 to address these challenges (and many of us have urged Congress to take this step), state lawmakers have the power and responsibility to enhance accountability by enacting legislation like S1991/A4331. The legislation will create a state law analogue to Section 1983, but without the barriers to recovery under federal law created by the United States Supreme Court. While there are many other measures state lawmakers can adopt to enhance accountability and prevent constitutional violations, S1991/A4331 is a concrete first step that deserves immediate attention and support. Legislators in Colorado, New Mexico, and Connecticut already have recognized the importance of action by enacting similar legislation, as have New York City's lawmakers.

Those who support qualified immunity argue that eliminating the defense will threaten to bankrupt state and local officials for making reasonable mistakes while doing their jobs. But substantive constitutional doctrine already imposes significant hurdles for civil rights plaintiffs to overcome. For example, the Supreme Court's Fourth Amendment doctrine already recognizes that officers often must take decisive action under quickly changing circumstances, and already protects officers from liability when they make reasonable mistakes. And the Court's Eighth Amendment doctrine imposes even more significant barriers for incarcerated people to prove that their rights have been violated. Moreover, even when officers are found liable, they are almost certain not to have to pay any damages out of their own pockets. New York State and local government employers almost always agree to pay settlements and judgments against their officers through indemnification agreements. The proposed legislation would require that state and local entities indemnify individual defendants unless they are criminally convicted for the same conduct.

The current state of civil rights enforcement fails to provide adequate remedies for significant constitutional violations. The proposed legislation is an important step towards improving accountability and ensuring respect for the rule of law. For all of these reasons, we strongly support immediate passage of S1991/A4331.

Very truly yours,

(institutional affiliations provided for identification purposes only)

Heather Abraham
Associate Professor
University at Buffalo School of Law

Susan Abraham
Professor of Law
New York Law School

Claudia Angelos
Clinical Professor of Law
New York University School of Law

Anna Arons
Acting Assistant Professor of Lawyering
New York University School of Law

Barbara L. Atwell
Associate Professor of Law; Director of Diversity, Equity and Inclusion
Elisabeth Haub School of Law at Pace University

Sandra Babcock
Clinical Professor of Law
Cornell Law School

Cheryl G. Bader
Associate Clinical Professor of Law
Fordham University School of Law

Mark Bartholomew
Professor of Law
University at Buffalo School of Law

Edith Beerdsen
Acting Assistant Professor of Lawyering
New York University School of Law

Peter A. Bell
Emeritus Professor of Law
Syracuse University College of Law

Briana Beltran
Lecturer, Farmworker Legal Assistance Clinic
Cornell Law School

Lenni Benson
Distinguished Chair in Immigration and Human Rights Law
New York Law School

Anya Bernstein
Professor of Law
University at Buffalo School of Law

Guyora Binder
Distinguished Professor of Law
University at Buffalo School of Law

Vincent Blasi
Corliss Lamont Professor of Civil Liberties
Columbia Law School

Beryl Blaustone
Professor of Law
City University of New York School of Law

John Blume
Samuel F. Leibowitz Professor of Trial Techniques
Cornell Law School

Vincent Bonventre
Justice Robert Jackson Distinguished Professor
Albany Law School

Michael Boucai
Professor
University at Buffalo School of Law

Cynthia G. Bowman
Dorothea S. Clarke Professor of Law
Cornell Law School

Rebecca Bratspies
Professor of Law
City University of New York School of Law

Ray Brescia
Professor of Law
Albany Law School

William Brooks
Professor of Law
Touro College Jacob D. Fuchsberg Law Center

Elizabeth Brundige
Clinical Professor of Law
Cornell Law School

Jessica Bulman-Pozen
Betts Professor of Law
Columbia Law School

Ann Cammett
Professor of Law
City University of New York School of Law

Bennett Capers
Professor of Law and Director of the Center of Race, Law, and Justice
Fordham University School of Law

Stacy Caplow
Professor of Law
Brooklyn Law School

Susan H. Chase
Adjunct Professor & Supervising Attorney
New York Law School

Nina Chernoff
Professor of Law
City University of New York School of Law

Natalie Chin
Associate Professor of Law, Co-director, Disability and Aging Justice Clinic
City University of New York School of Law

J. Stephen Clark
Professor of Law and Chair of the Tenured Faculty
Albany Law School

Anna Cominsky
Visiting Associate Professor of Law
New York Law School

Angela Cornell
Clinical Professor of Law
Cornell Law School

Lisa Davis
Associate Professor of Law and Co-Director, Human Rights and Gender Justice Clinic
City University of New York School of Law

Frank Deale
Professor of Law
City University of New York School of Law

Brett Dignam
Clinical Professor of Law
Columbia Law School

Rebekah Diller
Clinical Professor of Law
Benjamin N. Cardozo School of Law

David N. Dorfman
Professor of Law
Elisabeth Haub School of Law at Pace University

Robin Effron
Professor of Law
Brooklyn Law School

Jeffrey Fagan
Isidor and Seville Sulzbacher Professor of Law
Columbia Law School

Lucinda Finley
Frank Raichle Professor of Law
University at Buffalo School of Law

Martin Flaherty
Leitner Family Professor of International Human Rights Law
Fordham University School of Law

Kris Franklin
Professor of Law
New York Law School

Eric M. Freedman
Siggi B. Wilzig Distinguished Professor of Constitutional Rights
Maurice A. Deane School of Law at Hofstra University

Barry Friedman
Jacob D. Fuchsberg Professor of Law and Faculty Director, Policing Project
New York University School of Law

Kellen Funk
Associate Professor of Law
Columbia Law School

James Gardner
Bridget and Thomas Black SUNY Distinguished Professor
University at Buffalo School of Law

Bennett L. Gershman
Professor of Law
Elisabeth Haub School of Law at Pace University

Jocelyn Getgen Kestenbaum
Associate Professor of Clinical Law
Benjamin N. Cardozo School of Law

Myriam Gilles
Professor of Law
Benjamin N. Cardozo School of Law

Betsy Ginsberg
Clinical Professor of Law
Benjamin N. Cardozo School of Law

Brian Glick
Clinical Associate Professor
Fordham University School of Law

Cynthia Godsoe
Professor of Law
Brooklyn Law School

Julie Goldscheid
Professor of Law
City University of New York School of Law

Abner Greene
Leonard F. Manning Professor of Law
Fordham University School of Law

Lissa Griffin
Professor of Law
Elisabeth Haub School of Law at Pace University

Martin Guggenheim
Fiorello LaGuardia Professor of Clinical Law
New York University School of Law

Alexandra Harrington
Associate Professor of Law; Director, Criminal Justice Advocacy Clinic
University at Buffalo School of Law

Melina Healey
Assistant Clinical Professor
Touro College Jacob D. Fuchsberg Law Center

Susan N. Herman
Ruth Bader Ginsburg Professor of Law
Brooklyn Law School

Julia Hernandez
Associate Professor of Law
City University of New York School of Law

Helen Hershkoff
Herbert M. and Svetlana Wachtell Professor of Constitutional Law and Civil Liberties
New York University School of Law

Robert Heverly
Associate Professor of Law
Albany Law School

Michael F. Higgins
Assistant Director, Civil Rights and Transparency Clinic
University at Buffalo School of Law

Leah A. Hill
Clinical Associate Professor
Fordham University School of Law

Keith Hirokawa
Professor of Law
Albany Law School

Alexis Hoag
Assistant Professor of Law
Brooklyn Law School

Babe Howell
Professor of Law
City University of New York School of Law

Tarek Z. Ismail
Associate Professor of Law
City University of New York School of Law

Sheri Johnson
James and Mark Flanagan Professor of Law
Cornell Law School

Arlene Kanter
Professor of Law
Syracuse University College of Law

Minna Kotkin
Professor of Law
Brooklyn Law School

Stefan Krieger
Richard J. Cardali Distinguished Professor of Trial Advocacy
Maurice A. Deane School of Law at Hofstra University

Justin R. La Mort
Adjunct Professor
Brooklyn Law School

Sylvia A. Law
Elizabeth K Dillard Professor of Law, Medicine & Psychiatry
New York University School of Law

Donna Lee
Professor of Law
City University of New York School of Law

Arthur S. Leonard
Robert F. Wagner Professor of Labor and Employment Law
New York Law School

Kate Levine
Associate Professor of Law
Benjamin N. Cardozo School of Law

Theo Liebmann
Clinical Professor of Law
Maurice A. Deane School of Law at Hofstra University

Odette Lienau
Professor of Law & Associate Dean for Faculty Research and Intellectual Life
Cornell Law School

Stephen Loffredo
Professor of Law
City University of New York School of Law

Sarah Lorr
Assistant Professor & Co-Director of the Disability and Civil Rights Clinic
Brooklyn Law School

Shirley Lung
Professor of Law
City University of New York School of Law

Peter Markowitz
Professor of Law
Benjamin N. Cardozo School of Law

Michael Martin
Associate Dean for Experiential Learning and Clinical Professor of Law
Fordham University School of Law

Ingrid Mattson
Associate Dean for Library Services & Professor of Legal Research
Benjamin N. Cardozo School of Law

Nancy Maurer
Professor of Law
Albany Law School

Andrea McArdle
Professor of Law
City University of New York School of Law

Thomas McDonnell
Professor of Law
Elisabeth Haub School of Law at Pace University

Estelle McKee
Clinical Professor
Cornell Law School

Tara Melish
Professor of Law
University at Buffalo School of Law

Carlin Meyer
Professor Emeritus
New York Law School

Kathryn E. Miller
Clinical Assistant Professor of Law
Benjamin N. Cardozo School of Law

James G. Milles
Professor of Law
University at Buffalo School of Law

Elora Mukherjee
Jerome L. Greene Clinical Professor of Law
Columbia Law School

Frank Munger
John Marshall Harlan II Professor of Law
New York Law School

Erin Murphy
Norman Dorsen Professor of Civil Liberties
New York University School of Law

Justin Murray
Associate Professor of Law
New York Law School

Michael Mushlin
Professor of Law
Elisabeth Haub School of Law at Pace University

Athena Mutua
Professor of law
University at Buffalo School of Law

Lindsay Nash
Assistant Clinical Professor of Law
Benjamin N. Cardozo School of Law

Elizabeth Nevins
Clinical Professor of Law
Maurice A. Deane School of Law at Hofstra University

Jonathan Oberman
Clinical Professor of Law
Benjamin N. Cardozo School of Law

Ngozi Okidegbe
Assistant Professor of Law
Benjamin N. Cardozo School of Law

Anthony O'Rourke
Joseph W. Belluck & Laura L. Aswad Professor of Law
University at Buffalo School of Law

Richard Ottinger
Dean Emeritus
Elisabeth Haub School of Law at Pace University

Lynnise Pantin
Clinical Professor of Law
Columbia Law School

Jason Parkin
Professor of Law
City University of New York School of Law

G. Michael Parsons
Acting Assistant Professor of Lawyering
New York University School of Law

Russell G. Pearce
Professor of Law
Fordham University School of Law

Talia Peleg
Associate Professor of Law
City University of New York School of Law

Edward A. Purcell, Jr.
Joseph Solomon Distinguished Professor
New York Law School

Aziz Rana
Richard and Lois Cole Professor of Law
Cornell Law School

Martha Rayner
Clinical Associate Professor
Fordham University School of Law

Alexander A. Reinert
Max Freund Professor of Litigation and Advocacy
Benjamin N. Cardozo School of Law

Patricia Reyhan
Distinguished Professor of Law
Albany Law School

Allie Robbins
Associate Professor of Law
City University of New York School of Law

Ruthann Robson
Professor of Law & University Distinguished Professor
City University of New York School of Law

Sarah Rogerson
Professor of Law
Albany Law School

Gabor Rona
Professor of Practice
Benjamin N. Cardozo School of Law

Joseph Rosenberg
Professor of Law
City University of New York School of Law

Rick Rossein
Professor of Law
City University of New York School of Law

David Rudenstine
Sheldon H. Solow Professor of Law
Benjamin N. Cardozo School of Law

Leslie Salzman
Clinical Professor of Law
Benjamin N. Cardozo School of Law

James Sample
Professor of Law
Maurice A. Deane School of Law at Hofstra University

Barbara A. Schatz
Clinical Professor Emerita of Law
Columbia Law School

Andrew Scherer
Visiting Associate Professor and Policy Director, Impact Center for Public Interest Law
New York Law School

Elizabeth M. Schneider
Rose L. Hoffer Professor of Law
Brooklyn Law School

Beth G. Schwartz
Clinical Professor of Law
Fordham University School of Law

Anthony Sebok
Professor of Law and Co-Director, Jacob Burns Center for Ethics in the Practice of Law
Benjamin N. Cardozo School of Law

Laurie Shanks
Clinical Professor Emerita of Law
Albany Law School

Franklin Siegel
Distinguished Lecturer
City University of New York School of Law

Jocelyn Simonson
Professor of Law
Brooklyn Law School

Charisa Smith
Associate Professor of Law
City University of New York School of Law

Yasmin Sokkar Harker
Law Library Professor
City University of New York School of Law

Gemma Solimene
Clinical Associate Professor of Law
Fordham University School of Law

Jane M. Spinak
Edward Ross Aranow Clinical Professor of Law
Columbia Law School

Matthew Steilen
Professor of Law
University at Buffalo School of Law

Edward Stein
Professor of Law
Benjamin N. Cardozo School of Law

Martin J. Stone
Professor of Law
Benjamin N. Cardozo School of Law

Richard Storrow
Professor of Law
City University of New York School of Law

Mateo Taussig-Rubbo
Professor of Law
University at Buffalo School of Law

Ruti Teitel
Ernst C. Stiefel Professor of Comparative Law
New York Law School

Chantal Thomas
Radice Family Professor of Law
Cornell Law School

Naveen Thomas
Director, Business Transactions Clinic
New York University School of Law

Daniel Warshawsky
Professor of Law
New York Law School

Ian Weinstein
Professor of Law
Fordham University School of Law

Keir M. Weyble
Clinical Professor of Law
Cornell Law School

Andrew Williams
Director, Lawyering Program
New York University School of Law

Ekow Yankah
Professor of Law
Benjamin N. Cardozo School of Law

Ellen Yaroshefsky
Professor of Law
Maurice A. Deane School of Law at Hofstra University

Steven Zeidman
Professor of Law and Co-Director of the Defenders Clinic
City University of New York School of Law

Benjamin C. Zipursky
Professor & James H. Quinn '49 Chair in Legal Ethics
Fordham University School of Law

Mary Marsh Zulack
Clinical Professor Emerita of Law
Columbia Law School