

**GOVERNOR'S PROGRAM BILL**

**2026**

**MEMORANDUM**

An act to amend the civil rights law, in relation to enacting the "New York state Bivens act"

**Purpose:**

This bill would establish a right to sue federal officers for constitutional violations mirroring the exact same legal standards, legal defenses, and immunities that are provided to State and Local officials for causes of actions brought under 42 U.S.C. § 1983.

**Summary of Provisions:**

Section 1 of the bill would name the act the New York State Bivens Act.

Section 2 would amend the Civil Rights Law by adding a new Article 8-A to create a private right of action for the deprivation of constitutional rights by federal officials acting under the color of any law. This section would provide that any federal official who, under color of any law, statute, ordinance, regulation, custom, or usage, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. This section further would provide that a defendant in an action under this section may assert any immunity defense to the same extent as a defendant may raise in response to a claim brought under 42 U.S.C. § 1983. This section would additionally provide that in any such action, a court may award compensatory damages, punitive damages, injunctive and declaratory relief, and reasonable attorneys fees and costs to a prevailing plaintiff. This section would further direct that if 42 U.S.C. § 1983 is repealed or amended such that it removes or otherwise further limits liability against State and/or Local officials for constitutional violations, the Article will automatically apply to State and Local officials in the same manner in which it applies to Federal officials. This section also would instruct courts to construe the Article such that any legal standard, including a standard relating to liability, defense, or immunity, that is applicable in a case brought against a state or local official under 42 U.S.C. § 1983 applies in a like action brought against a federal official under this Article. Finally, this section would add a severability clause relating to any clause, sentence, paragraph, section, or part of this bill.

Section 3 would add the effective date.

**Existing Law:**

42 U.S.C. § 1983.

**Justification:**

The people of the State of New York must be guaranteed meaningful remedies, including but not limited to those provided through the courts, when their constitutional rights are violated by federal officials. Recent United States Supreme Court decisions have curtailed the availability of such remedies against federal officials under *Bivens v. Six Unknown Named Agents*, 408 U.S. 388 (1971). The Supreme Court has repeatedly declined to extend damages actions to new contexts and thereby left many victims of constitutional violations without recourse.

Federal civil rights law, 42 U.S.C. § 1983, provides a private right of action to recover damages and seek injunctive relief against state and/or local officials when they violate an individual's constitutional right while acting under color of law subject to available defenses including qualified immunity. With respect to federal officers, the Federal Tort Claims Act (FTCA), as amended by the Westfall Act, provides the exclusive avenue for many common law damages actions against federal officers acting within the scope of their employment. The Westfall Act explicitly carves out from the FTCA's exclusive purview "a civil action against an employee of the [federal] government . . . which is brought for a violation of the constitution of the United States." 28 U.S.C. § 2679(b)(2)(a). The plain text of this provision contains no limitation on the scope of constitutional violations carved out from the FTCA's exclusive purview, recognizing the well-established principle that government agents act outside of the scope of their offices when they violate the constitution.

While New Yorkers can seek remedies against state and local officials for constitutional violations, there remains a significant remedial void for New Yorkers injured by unconstitutional conduct by federal officials. Therefore, this bill provides an avenue for claims for damages against any federal official, who, acting under color of any law, statute, ordinance, regulation, custom, or usage, deprives a person of rights secured by the United States Constitution. This bill falls squarely within the provision of the Westfall Act that carves out FTCA claims against federal officials for violations of constitutional rights.

This bill would not, nor would it intend to, usurp federal authority, nor would it discriminate against federal officials, and instead, it would underscore the supremacy of the federal constitution by ensuring that its guarantees remain enforceable for all New Yorkers against all persons acting under color of any law. From the founding era through the nineteenth century, courts regularly adjudicated state lawsuits against federal officers who exceeded lawful authority. Nothing in the constitution, federal statutes, or United States Supreme Court precedent forecloses such actions today.

The intent of this bill would be to restore a meaningful avenue of accountability consistent with federal supremacy, sovereignty, and the long-standing principle that rights must be paired with remedies, as such remedies already exist for unconstitutional actions taken by State and Local officials.

This bill would provide parity between Federal officials and State and Local officials such that claims brought under this Article against Federal Officials shall be subject to the exact same legal standards, legal defenses, and immunities that are provided to State and Local officials for causes of actions brought under 42 U.S.C. § 1983.

**Legislative History:**

None.

**Budget Implications:**

None.

**Effective Date:**

Immediate.