



MSBA Mailing Address
520 West Fayette Street
Baltimore, MD 21201

Canton Office
3700 O'Donnell Street
Baltimore, MD 21224

Annapolis Office
200 Duke of Gloucester Street
Annapolis, MD 21401

Bill: SB 346 - Civil Actions - Violation of Constitutional Rights (No Kings Act)

Committee: Senate Judicial Proceedings Committee

Position: Favorable With Amendment

Date: February 6, 2026

The Maryland State Bar Association (MSBA) **supports with amendment** Senate Bill 346 - Civil Actions - Violation of Constitutional Rights (No Kings Act), establishing certain civil liability for an individual who, under color of law, deprives another of a right, a privilege, or an immunity secured by the U.S. Constitution. Through its advocacy committees and various practice-specific sections, MSBA monitors and takes positions on legislation that protects the legal profession, preserves the integrity of the judicial system, and ensures access to justice for Marylanders.

MSBA is committed to supporting the U.S. Constitution and the fair administration of justice. All federal actions must be executed in a manner consistent with the protections of the U.S. Constitution and the rule of law. Respect for due process protections, judicial oversight, and the separation of powers is the cornerstone of a predictable and fair society.

MSBA supports SB 346 with amendment for the following reasons:

1. While Title 42, Section 1983 of the U.S. Code provides a cause of action to sue state and local law enforcement officers who violate an individual's rights under the U.S. Constitution, the U.S. Congress has not enacted legislation authorizing individuals to sue federal law enforcement officers for damages caused by those officers' violation of the U.S. Constitution.
2. The U.S. Supreme Court, in *Bivens vs. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), held that individuals had a right to sue federal law enforcement officers for damages caused by those officers' violation of the U.S. Constitution as a matter of "federal common law."
3. However, in fifty-five years since, and particularly in the 21st century, the U.S. Supreme Court has significantly constricted that "common law right" and repeatedly emphasized that it is the role of legislators, not courts, to create new causes of action. See *Ziglar v. Abbasi*, 582 U.S. 120 (2017) and *Egbert v. Boule*, 596 U.S. 482 (2022). There is reason to believe that the U.S. Supreme Court as currently constituted may overrule *Bivens* entirely in future cases.

Marisa A. Trasatti
President

Natasha Dartigue
President-Elect

Randolph S. Sergent
Secretary

Natasha M. Nazareth
Treasurer

Anna S. Sholl
Executive Director

4. Because Congress has not acted on this issue, it is important for state legislators to do so to bring accountability to and deter violations of Constitutional rights by U.S. law enforcement officers, and to enable those who are harmed by such violations to have access to justice.

MSBA requests amendments of the bill on the following issues:

- A. MSBA is concerned that the provisions in Sections (A)(3) and (C)(2) undermine immunity of judicial officers in these matters.¹ Therefore, we request the following amendments:
 1. Deleting “against a judicial officer” in subsection (A)(3).
 2. Deleting subsection (C)(2) entirely and any other provision that refers to an action against a judicial officer.
- B. MSBA is concerned that the words on page 2, line 6 “individual who, under color of law” may be considered too vague to be enforceable. Therefore, we recommend an amendment to say “individual employed by or performing services for a federal, state or local agency, body or instrumentality who.”

MSBA supports SB 346 with amendment and urges a favorable report.

Contact: Shaoli Sarkar, Advocacy Director (shaoli@msba.org, 410-387-5606)

¹ Judge Eldridge's opinion in *Parker v. State*, 337 Md. 251 (1995) thoroughly discusses the historical antecedents of the judicial immunity doctrine. For more recent decisions discussing or applying the doctrine, see *Keller-Bee v. State*, 448 Md. 300 (2016); *D'Aoust v. Diamond*, 424 Md. 549 (2012); and *Campbell v. McCally*, 2024 WL 3462112 (Md. App. July 17, 2024).