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February 10, 2026

TO: The Honorable Will Smith
Chair, Judicial Proceedings Committee

FROM: Tiffany Clark
Director, Legislative Affairs, Office of the Attorney General

RE: Senate Bill 346 - Civil Actions - Violation of Constitutional Rights (No Kings Act)(Letter of Information)

The Office of the Attorney General (OAG) respectfully submits this letter to provide information to the Committee regarding Senate Bill 346, “Civil Actions – Violation of Constitutional Rights (No Kings Act).” Senate Bill 346 would create a civil cause of action against individuals “who, under color of law, deprives the aggrieved party of a right, a privilege, or an immunity secured by the U.S. Constitution,” and allows for recovery of attorneys’ fees by a prevailing plaintiff.

As the Committee considers this legislation, we want to ensure you have complete information regarding the proposed law’s impact on OAG in defending state employees and officials against whom claims are asserted and in defending the law against constitutional challenges. We also want to inform you about the potential adverse fiscal consequences to the State and state employees and officials and OAG’s concerns as to the constitutionality of the proposed law as applied to federal employees and officials.

We understand and appreciate the reason for this bill. We have seen federal officials committing horrific and terrifying acts against individuals exercising their constitutional rights and standing up for their neighbors. SB 346, however, will have an unintended consequence of primarily increasing liability for State and local officials but not as likely to be a successful vehicle for holding federal bad actors responsible. Taking State and local actors out of the bill, however, would raise constitutional issues. Federal law, (specifically, 42 U.S.C. § 1983), already provides a cause of action for civil damages against state actors for constitutional violations. Actions brought under

§ 1983 are typically adjudicated in federal court, either because lawsuits are filed in that forum or are removed to federal court from state court. In contrast, lawsuits bringing only claims under the proposed state law against State actors arguably could not be removed to federal court and, therefore, would have to be adjudicated in state court. Actions against federal actors would be removed to federal court.

SB 346 would likely result in an increased volume of lawsuits against state employees. An increased volume of lawsuits against state employees and officials would strain OAG resources required to defend such lawsuits and adversely impact State financial resources due to an increased number of jury verdicts.

Section 1983 does not apply to federal employees and officials. Generally, claims against federal actors for violating rights under the U.S. Constitution must be asserted under the Federal Employees Liability Reform and Tort Compensation Act of 1988, commonly referred to as the “Westfall Act.” See 28 U.S.C § 2679. The Westfall Act has been interpreted by courts to bar most civil actions for money damages to redress injury caused by unlawful acts of federal employees unless a plaintiff proceeds through an administrative process pursuant to which the United States is substituted as a defendant in litigation if the accused federal employee was acting within the scope of his or her duties. Based on federal jurisprudence, there is significant risk that a court would determine that Senate Bill 346 is preempted by federal law to the extent it authorizes claims against federal actors. At minimum, challenges to Senate Bill 346 would require significant OAG resources to defend such challenges.

We appreciate the Committee's work on this issue and remain available to provide additional information or technical assistance as this legislation advances.

Cc: Members of the Committee