

SB346

Uploaded by: Calvin Ball

Position: FAV



HOWARD COUNTY OFFICE OF COUNTY EXECUTIVE

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February 25, 2026

The Honorable William C. Smith Jr., Chair
2 East Miller Senate Office Building
2 East Miller Senate Office Building
Annapolis, Maryland 21401

Re: **TESTIMONY IN SUPPORT of Senate Bill 0346:** Civil Actions – Violations of Constitutional Rights (No Kings Act)

Dear Chair Smith, Vice Chair Waldstreicher, and Members of the Committee:

I am writing in support of **Senate Bill 0346**, which would establish civil liability for a federal law enforcement officer, who, under color of law, deprives another of a right, a privilege, or an immunity secured by the United States Constitution. In recent months, this issue has taken on a new urgency as individuals are encountering what can be interpreted as unconstitutional abuses of federal power. And as immigration enforcement and detention expands, significant encounters with federal law enforcement officials may become even more commonplace.

No matter what agency they serve, accountability to our United States Constitution should be upheld by any government officer-federal, state, or local. This legislation, which allows victims meaningful recourse in the case of a violation of their inalienable rights, is an essential step in closing a dangerous loophole that leaves our residents vulnerable to unconstitutional abuses perpetrated by federal officers. While this bill rightly retains protection for officers when acting with lawful federal authority, it recognizes that accountability is crucial in maintaining public trust, and that actions that violate core rights protected by the Constitution can never be lawful.

This legislation also offers a potential pathway for pursuing compensation for our most vulnerable neighbors, those whom we have seen increasingly targeted by federal law enforcement officers due to their perceived race, ethnicity, or national origin. It also protects those for whom a violation of their civil liberties which leads to arrest or detainment could incur financial consequences that could have catastrophic impacts on their lives and families. For those in the nearly 15% of households in Howard County which maintain an annual median income of under \$50,000, a disruption of this nature could carry the potential for lost wages, lost jobs, or other lasting consequences which threaten the continued stability of our residents, neighborhoods, and communities.

I again urge the Committee's support for **SB 346**, which enshrines a path to justice for Maryland residents who experience willful violations of their constitutional rights.

Respectfully,

Calvin Ball



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Howard County Executive

Testimony on Senate Bill – Favorable SB 245 – Publ

Uploaded by: Carolyn Matthews

Position: FAV

Testimony on Senate Bill – Favorable SB 0346 - Civil Actions - Violation of Constitutional Rights (No Kings Act)

Judicial Proceedings hearing 2/10/26

Dear members of the Judicial Proceedings Committee,

My name is Carolyn Matthews, and I am a resident of Anne Arundel County, Maryland. I am writing in support of **SB 0346 - Violation of Constitutional Rights**

Thank you to the Chair and Vice-Chair for co-sponsoring this important legislation.

As we have seen over the past several months, federal agencies nationwide are using all manner of questionable (at best) actions to carry out detention, data seizures, and searches of people and property. Citizens and residents are claiming their rights during these actions to no avail. The perpetrators are under the impression that working for an agency and following its directives makes their actions permissible.

It is shameful and disheartening that a bill such as this needs to be put forth in our State government, but it is important that Maryland explicitly establishes a path to justice for the victims of those individuals who do not respect rights or laws while carrying out their duties. We need to make it clear that no one, under anyone's authority, is above the laws of our State or the Constitution of the USA.

I respectfully urge the committee to issue a **favorable report** on SB 0346

Thank you for your time and consideration.

SB0346 – Civil Actions – Violation of Constitution

Uploaded by: Cecilia Plante

Position: FAV



TESTIMONY FOR SB0346
Civil Actions – Violation of Constitutional Rights (No Kings Act)

Bill Sponsor: Senators Waldstreicher

Committee: Senate Judicial Proceedings

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Aileen Alex, Cochair

Position: FAVORABLE

Chair, Vice Chair, and Members of the Committee,

I am submitting this testimony in support of SB0346 on behalf of the Maryland Legislative Coalition. We are an association of unpaid citizen advocates—individuals and grassroots groups in every district across the state—representing and supporting more than 30,000 Marylanders.

SB0346 creates a clear civil cause of action for individuals whose constitutional rights are violated by someone acting in an official capacity. Marylanders should not lose their ability to seek justice simply because a violation occurs at the state or local level rather than under federal jurisdiction. This bill closes that gap and ensures that constitutional protections are meaningful and enforceable.

We support SB0346 because it:

- **Expands Legal Recourse:** The bill defines “law” broadly to include the U.S. Constitution, the Maryland Declaration of Rights, and the Maryland Constitution, ensuring that no loophole exists for state-level violations of fundamental rights.
- **Enables Meaningful Justice:** By authorizing damages, declaratory relief, and injunctive relief, SB0346 provides real remedies—not symbolic ones—for people whose rights have been infringed.
- **Removes Financial Barriers:** The bill allows courts to award reasonable attorney’s fees and expert witness fees to a prevailing plaintiff. Without this provision, most Marylanders would never be able to hold powerful officials accountable, no matter how serious the violation.

In the current environment, I personally feel an increasing need to exercise my First Amendment rights—to speak openly, to advocate, and to participate fully in civic life. I would feel more secure doing so knowing that the protections in this bill are in place. SB0346 ensures that when Marylanders engage in constitutionally protected activity, they can do so without fear that a violation of their rights will leave them without recourse.

This bill directly supports the mission of the Maryland Legislative Coalition. Our work is grounded in transparency, equity, and civic empowerment. Ensuring that residents can defend their constitutional rights—and that government actors are held accountable when they violate them—strengthens democratic integrity and protects the civil liberties of all Marylanders. SB0346 reinforces the principle that government must serve the people, not stand above them.

For these reasons, we respectfully urge a **FAVORABLE** report on SB0346.

SEIU Local 500 - Testimony in Support of SB 346 20

Uploaded by: Christopher Cano

Position: FAV



Testimony - SB 346, Civil Actions - Violation of Constitutional Rights (No Kings Act)
Favorable
Senate Judicial Proceedings Committee
February 10, 2026
Christopher C. Cano, MPA
Director of Political & Legislative Affairs on Behalf of SEIU Local 500

Honorable Chairman Smith & Members of the Senate Judicial Proceedings Committee:

SEIU Local 500, which represents thousands of public sector and nonprofit workers across Maryland. We strongly support Senate Bill 346.

SEIU Local 500 supports SB 346 because it recognizes an urgent reality: constitutional rights that working people have long relied upon are increasingly under attack, weakened, or rendered unenforceable at the federal level. As federal courts narrow access to justice, weaken remedies under federal civil rights law, and expand doctrines that shield officials from accountability, states must act affirmatively to protect the rights of their residents.

SB 346 does exactly that. By creating a clear State cause of action when an individual acting under color of law deprives someone of rights secured by the U.S. Constitution, this bill ensures that constitutional protections are not merely theoretical, but enforceable in Maryland courts. At a moment when federal enforcement is increasingly inconsistent—and, in some cases, openly hostile to civil rights—Maryland cannot afford to leave workers without meaningful remedies.

For working people, constitutional violations are not abstract. Our members experience the real-world consequences of unlawful searches and seizures, retaliation for protected speech or association, denial of due process, and discriminatory treatment by those

wielding government power. When accountability mechanisms fail, workers are left exposed, chilled from exercising their rights, and forced to absorb the harm personally.

SB 346 affirms a basic democratic principle: no one acting under color of law is above the Constitution. The bill preserves appropriate defenses and immunities consistent with existing federal standards, while ensuring that individuals whose rights are violated still have access to damages and injunctive relief where warranted. This balance is critical—it deters misconduct without impeding legitimate government functions.

The need for this legislation is especially pressing given the broader national context. Across the country, we are seeing increased suppression of protests, rollbacks of voting and civil liberties protections, attacks on immigrants and marginalized communities, and an erosion of trust that the government will respect constitutional limits. Maryland has both the authority and the responsibility to set a higher standard.

SB 346 sends a clear message: in Maryland, constitutional rights are real, enforceable, and not dependent on the shifting priorities of federal courts or administrations. Workers, residents, and communities deserve nothing less.

SEIU Local 500 respectfully urges a favorable report on Senate Bill 346 and a special thank you to Senator Waldstreicher and Senator Smith for leading on this important issue.

Thank you for your time and consideration.

Christopher C. Cano, MPA
Director of Political & Legislative Affairs
SEIU Local 500

SB346

Uploaded by: Courtney Fontaine

Position: FAV



INSTITUTE FOR JUSTICE

Testimony in Support of SB 346
Maryland Senate Committee on Judicial Proceedings

February 10, 2026

Dear Chair Smith and Members of the Committee:

Thank you for the opportunity to testify today in support of SB 346. My name is Courtney Fontaine, and I am a legislative policy associate at the Institute for Justice. The Institute for Justice is a nonprofit, public interest law firm that works to protect civil liberties and to increase government accountability. This bill responds to a serious problem: When a person's constitutional rights are violated by federal officials, meaningful legal remedies are unavailable in state or federal courts.

This bill supports the Constitution. Under our legal system, constitutional rights are supposed to come with enforcement mechanisms. If a right does not have a remedy, it is not much of a right at all.

Over the last several decades, legal doctrines have greatly limited the ability of people to recover damages for constitutional violations committed by federal officials.ⁱ This bill restores a basic accountability mechanism that was once available at common law and under U.S. Supreme Court precedent but has since been largely gutted.ⁱⁱ It does not expand rights; it simply enforces the Constitution.

SB 346 is also consistent with history and founding-era practices in our nation. Historically, people could seek redress when federal officials exceeded their lawful authority, including through actions brought in state courts at common law. Providing a clear state-based cause of action for constitutional violations reflects that tradition and reinforces the principle that government power must be exercised within constitutional bounds.

The state plays an important role in safeguarding constitutional rights. States have a responsibility to protect their citizens and should not wait for changes in federal law to act. A few states already have state causes of action authorizing suits for damages for violations of the U.S. Constitution, including California, Illinois, Maine, Massachusetts, and New Jersey.ⁱⁱⁱ

These laws help maintain law and order. In the United States, no one should be above the law. Research shows that a lack of accountability causes unrest and even harms law enforcement officers.^{iv} Trust is a critical part of law enforcement. When people think government agents can act with impunity, it breaks down trust. This makes law enforcement encounters more



INSTITUTE FOR JUSTICE

confrontational and less effective. It also affects the professional reputation of officers and increases risks to officers and the public.

We support the core purpose of SB 346 and believe it would strengthen constitutional accountability in Maryland, but we also urge the committee to consider removing provisions in the bill that codify immunity defenses. These provisions reduce accountability and risk limiting the practical availability of the remedy SB 346 is intended to provide.

In closing, we encourage the committee to stand with the Constitution and the state's right to enforce it by supporting this important bill.

Sincerely,

Courtney Fontaine
Legislative Policy Associate
Institute for Justice
cfontaine@ij.org

ⁱ Stark, H. (2025, Aug. 1). *Explainer: State-created damages remedies against federal officials*. State Democracy Research Initiative. <https://statedemocracy.law.wisc.edu/featured/2025/explainer-state-created-damages-remedies-against-federal-officials/>

ⁱⁱ See *Hernandez v. Mesa*, 589 U.S. 93, 115-16 (2020) (Thomas, J., concurring).

ⁱⁱⁱ See Cal. Civ. Code § 52.1 (enacted in 1987); *Illinois Bivens Act*, Ill. Public Act 104-0440 (enacted in 2025); Me. Stat. tit. 5, § 4682 (enacted in 1991); Mass. Gen. Laws ch. 12, § 11I (enacted in 1979); and N.J. Stat. Ann. § 10:6-2.

^{iv} Craven, J., Schweikert, J., & Neily, C. (2022, Feb. 15). *How qualified immunity hurts law enforcement*. Cato Institute. <https://www.cato.org/study/how-qualified-immunity-hurts-law-enforcement>

SB346 Favorable 2026.pdf

Uploaded by: Debi Jasen

Position: FAV

Judicial Proceedings
Senate Bill 346
Favorable

Honorable Chair, Vice Chair, and Members of the Judicial Proceedings Committee;

Please give Senate Bill 346 a favorable report.

The Constitutional rights of the people are being violated by federal agents on a regular basis. I support any legislation that would hold those agents, and anyone who ordered them to violate our rights or stood by and let it happen, accountable. Our Constitutional rights are supposed to be sacrosanct.

I urge a favorable vote on SB 346. Thank you.

Sincerely,
Debi Jasen
Pasadena, MD

SB 346 - Jane Bentrout, Protect Democracy United -

Uploaded by: Jane Bentrout

Position: FAV

Committee: Judicial Proceedings**Testimony on: SB 346 Civil Actions - Violations of Constitutional Rights (No Kings Act)****Position: Favorable****Hearing Date: February 10, 2026**

Chair Smith, Vice Chair Waldstreicher, and distinguished Members of this Committee, thank you for the opportunity to submit written testimony for your hearing today.

My name is Jane Bentrott, I am a Counsel at Protect Democracy United, a nonpartisan organization dedicated to protecting our freedom and confronting threats to our democracy. We encourage you to issue a favorable report on SB 346, the No Kings Act.

This legislation stands for a simple proposition. If any governmental officer violates your clearly established constitutional rights, you should have a remedy. That's feeling especially urgent in recent weeks.

That is already the law for Maryland's state and local officials. If they violate clearly established constitutional rights, they can be sued for money damages under federal Section 1983. But there is no similar law for federal officials. And the Supreme Court has all but eliminated *Bivens* actions, the judge-made remedy for federal officials' violations. Accordingly, Marylanders cannot sue federal officials—like ICE or FBI agents—for past harms that violated their constitutional rights.

The No Kings Act solves that problem by allowing Marylanders to sue any governmental officer—federal, state, or local—who violates their constitutional rights. For those rights to have meaning, there must be consequences for any government officer who violates them. That is why it is especially important that SB 346 is drafted to withstand federal judicial scrutiny. By treating all officers acting under color of law equally (while not singling out federal officials alone in the bill text), creating a procedural cause of action solely for the deprivation of U.S. constitutional rights, and maintaining defenses already enshrined in federal law, the bill is drafted to be legally resilient and withstand judicial challenges.

The very recent killings of Renee Good and Alex Pretti in Minnesota demonstrated in chilling detail why this accountability is so necessary. Whether their families should have a remedy for the loss of their loved ones

should turn on whether their constitutional rights were violated, not what badge the officers were carrying when they pulled the trigger.

But the No Kings Act can protect Marylanders' constitutional rights in many more contexts, as well. For example:

- if universities are subjected to pretextual funding cuts to punish behavior protected under the First Amendment;
- if businesses face weaponized regulatory scrutiny to influence corporate decision-making for corrupt or partisan objectives;
- if nonprofits are audited for clearly pretextual and retaliatory reasons; and
- if regular people are confronted with warrantless searches, vindictive prosecutions, or the use of excessive force,

they will be able to sue federal enforcement officers personally – no matter the badge of the officer who violated their rights.

Therefore, Protect Democracy United asks you to approve SB 346 so that no officer is above the law and the United States Constitution remains the supreme law of the land. Thank you.

For more information, contact:

Jane Bentrrott

Counsel

jane.bentrrott@protectdemocracy.org

ABOUT US

Protect Democracy United is a nonpartisan, nonprofit group working to prevent American democracy from declining into a more authoritarian form of government.

MD SB 346_NPAP_FAV.pdf

Uploaded by: Keisha James

Position: FAV



FAVORABLE - SB 346

Written Testimony of National Lawyers Guild-National Police Accountability Project, Keisha James, Staff Attorney

Senate Judicial Proceedings Committee – Tuesday, February 10, 2026

Dear Chair Smith, Vice Chair Waldstreicher, and Members of the Committee,

The National Lawyers Guild National Police Accountability Project (“NPAP”) is a nonprofit organization dedicated to holding law enforcement officers accountable to constitutional and professional standards. NPAP has approximately 550 attorney members practicing in every region of the United States, including a dozen in Maryland. Because of our work, we have a first-hand understanding of how difficult it is to sue federal law enforcement officers when they violate the Constitution. That is why we urge a favorable review on SB 346. This bill will create a path for victims of government abuse—particularly those committed by agents enforcing the Trump administration’s reign of terror against immigrant communities—to hold officers accountable in state court by eliminating the unjustifiable restrictions created by federal case law and statutes.

1. Federal Court Remedies for Victims of ICE Violence Are Inadequate.

Currently, there are two ways that people injured by federal law enforcement violence can pursue civil claims in federal court. First, by filing what is called a *Bivens* action.¹ Second, by filing a lawsuit under the Federal Tort Claims Act (“FTCA”).² Unfortunately, both *Bivens* and FTCA cases are riddled with barriers that block many plaintiffs from seeking justice even if their rights were clearly violated.

***Bivens* Suits**

A *Bivens* action allows people to sue individual federal officers under 42 USC §1983 for violating the Constitution. The action is named after *Bivens v. Six Unknown Fed. Narcotics Agents*,³ the Supreme Court case that first recognized the right of a person to sue federal law enforcement officers under Section 1983. However, a plaintiff cannot sue federal law

¹ Michael Avery, et al., *Police Misconduct Law and Litigation*: 3d. Edition, § 5:1.

² *Id.*

³ 408 U.S. 388 (1971).



enforcement officers for any constitutional violation. Since originally deciding *Bivens*, the Supreme Court has imposed a number of restrictions on when a plaintiff can sue, disfavoring a remedy in cases that involve “new contexts” and creating broad special factors like national security interests that counsel against permitting a case.⁴ In 2022, the Supreme Court decided *Egbert v. Boule*. The *Egbert* case severely limited the availability of *Bivens* actions by declining to allow the plaintiff to sue for his First Amendment retaliation and Fourth Amendment excessive force claims and holding “if we were called to decide *Bivens* today, we would decline to discover any implied causes of action in the Constitution.”⁵ Since *Egbert*, experts have found that the vast majority of *Bivens* claims are quickly dismissed at the earliest stage of the litigation (i.e., motion to dismiss) with one scholar declaring that “*Bivens* is effectively dead.”⁶

FTCA Suits

The FTCA allows people to sue the United States government for torts committed by its employees.⁷ Plaintiffs can sue the government for specific law enforcement intentional torts but some lawsuits brought under the FTCA are often thwarted by courts applying overbroad interpretations of the statute’s exceptions.⁸ The FTCA also has a number of procedural hurdles, including the requirement that plaintiffs file an administrative claim and statutory caps on attorney’s fees, that can make the cases more difficult to pursue.⁹

2. SB 346 Will Ensure That People Harmed by Federal Law Enforcement Violence Can Sue for Their Injuries.

The bill will create an important accountability mechanism for federal law enforcement officers to deter future misconduct and compensate victims for their injuries. Courts have recognized that civil legal liability serves two important functions: deterrence and making the wronged party whole.¹⁰ By creating a private cause of action to sue federal law

⁴ See, e.g., *Ziglar v. Abassi*, 582 U.S. 120, 166 (2017).

⁵ 596 U.S. 482, 502 (2022).

⁶ Danielle Jeffries, *RIP Bivens*, 103 Neb. L. Rev. 1, 11 (2024); see also James E. Pfander & Rex Alley, *Federal Tort Liability After Egbert v. Boule: A Textual Case for Restoring the Officer Suit at Common Law*, 138 HARV. L. REV. 985, 989 (2025) (explaining the current state of *Bivens* actions).

⁷ 28 U.S.C. §2680 et. seq.

⁸ See, e.g., *S.R.P. v. United States*, 676 F.3d 329, 336-38 (3d Cir. 2012) (recognizing courts often apply overbroad construction of discretionary function exception).

⁹ 28 USCA §2678.

¹⁰ See, e.g., *Cary v. Phipps*, 435 U.S. 247 (1978).



enforcement officers for constitutional violations in state court—without the unjustifiable hurdles created by federal *Bivens* jurisprudence—SB 346 increases the likelihood that ICE agents and other federal law enforcement agents will face legal consequences for their misconduct. Raising the legal stakes of misconduct for agents will hopefully have the effect of increasing their prudence in carrying out their duties. The bill will also ensure that Maryland residents harmed by misconduct can be compensated for their injuries.

3. SB 346 Would Not Violate the Supremacy Clause.

States can unquestionably enact legislation that permit individuals to sue federal officers in state court for conduct that also violates federal law.¹¹ While the Supremacy Clause could arguably prohibit a state from creating a private cause of action to sue federal officers for state law violations that do not match existing federal laws, a law that allows people to sue federal officers for violations of the Constitution in state court would be permissible under the Supremacy Clause.

We urge you to give SB 346 a favorable review and enable Maryland residents whose civil rights have been violated by ICE agents and other federal law enforcement agents to hold those officers accountable in court for their misconduct. I am happy to answer questions. You can contact me at keisha.npap@nlg.org.

Sincerely,

Keisha James

National Police Accountability Project

¹¹ Vikram David Amar, *Absent Federal Consent, California Cannot Regulate California's Use of Masks* Verdict, Sept. 24, 2025, <https://verdict.justia.com/2025/09/24/absent-federal-consent-california-cannot-regulate-ices-use-of-masks> (analyzing *Maryland v. McCulloch* to conclude that alleged misconduct outside the bounds of the federal constitution is prosecutable under state law); see also Harrison Stark, *State Created Damages Remedies*, State Democracy Research Institute, Aug. 1, 2025, <https://statedemocracy.law.wisc.edu/featured/2025/explainer-state-created-damages-remedies-against-federal-officials/> (explaining that state laws that do not create new obligations for federal officers and simply “enforce[] the federal Constitution against individuals already duty-bound to follow it” do not run afoul of the Supremacy Clause).

2026 - SB 346 - No Kings Act.pdf

Uploaded by: Ken Phelps Jr

Position: FAV



THE EPISCOPAL DIOCESE OF MARYLAND

**Testimony on Senate Bill 346 – Favorable
SB346 – Civil Rights – Violation of Constitutional Rights (No Kings Act)
Judicial Proceedings
February 10, 2026**

TO: Senator William C. Smith, Jr., Chair; Senator Jeff Waldstreicher, Vice Chair; and members of the Judicial Proceedings Committee

FROM: Rev. Kenneth O. Phelps, Jr., Member – Maryland Public Policy Network

DATE: February 10, 2026

The 79th General Convention of the Episcopal Church proclaimed that the Episcopal branch of the Jesus Movement repudiates all ‘political appeals and language rooted in the sin of scapegoating groups of human beings on the basis of race, language, culture, belief, economic and physical condition, immigration status, gender identification, and sexual orientation’ and condemns the violation of basic human rights that result from said practices.

It is the Church’s observation that such violations have escalated alarmingly in the current political climate, including, but not limited to, the targeting of people of African descent in our cities—blamed for crime; non-white immigrants and asylum seekers from Latin America and the Southern Hemisphere—blamed for stealing jobs; visitors and U.S. citizens from Arab Muslim countries—blamed for terrorism; indigenous peoples—blamed for a wide range of social ills and for thwarting energy independence; women and LGBTQ+ people—blamed for the de-masculinization and disintegration of society and families; the economically disadvantaged—blamed for being a burden on the wealthy and comfortable; the incarcerated and formerly incarcerated—condemned as irredeemable; and persons with disabilities—ridiculed, as in Jesus’s time, as outcasts.

The Church holds the violation of constitutional rights to be abhorrent to the heart of Christ and the soul of democracy. It offends against the rootedness of the best ideals of our government in the ethics respecting the dignity of individuals to which Christianity and all great faiths are pledged. It degrades politics by basing appeals for votes on fear and hate instead of hope and love. It invites comparisons to the darkest moments in human history.



THE EPISCOPAL DIOCESE OF MARYLAND

The Episcopal Church has a stated goal of uniting people of faith and like mind and spirit behind a consolidated, comprehensive, and coordinated witness against an ungodly practice that pollutes and strains our common life.

The Diocese of Maryland requests a favorable report.

SB346_MSEA_Lamb_FAV.pdf

Uploaded by: Lauren Lamb

Position: FAV

FAVORABLE
Senate Bill 346
Civil Actions – Violation of Constitutional Rights (No Kings Act)

Senate Judicial Proceedings Committee
February 10, 2026

Lauren Lamb
Government Relations

The Maryland State Education Association supports Senate Bill 346, which would establish 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.

MSEA represents 76,000 educators and school employees who work in Maryland's public schools, teaching and preparing our almost 900,000 students so they can pursue their dreams. MSEA also represents 44 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3-million-member National Education Association (NEA).

In this moment, we must underscore our commitment to safeguarding democratic governance, accountability, and human rights. This bill offers a meaningful tool to resist authoritarian practices, including the expansion of unchecked law enforcement powers and the erosion of due process and civil liberties. Marylanders are facing local and nationwide escalations in dangerous immigration enforcement practices and the targeting of residents based on identity, status, or political expression. As educators, we have a moral and professional duty to stand up for the civil rights and safety of our students and communities.

We urge the committee to issue a favorable report on Senate Bill 346.

SB0346 - Civil Actions - Violation of Constitution

Uploaded by: Maryland Legislative Latino Caucus

Position: FAV



MARYLAND LEGISLATIVE LATINO CAUCUS

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ASHANTI MARTINEZ, CHAIR

GABRIEL ACEVERO, VICE-CHAIR

DENI TAVERAS, TREASURER

JOE VOGEL, SECRETARY

JASON A. AVILA GARCIA, EXECUTIVE DIRECTOR

TO: Senator William C. Smith, Jr., Chair
Senator Jeff Waldstreicher, Vice Chair
Judicial Proceedings Committee Members

FROM: Maryland Legislative Latino Caucus

DATE: 2/10/2026

RE: SB0346 - Civil Actions - Violation of Constitutional Rights
(No Kings Act)

The MLLC supports SB0346 - Civil Actions - Violation of Constitutional Rights (No Kings Act)

The MLLC is a bipartisan group of Senators and Delegates committed to supporting legislation that improves the lives of Latinos throughout our state. The MLLC is a crucial voice in the development of public policy that uplifts the Latino community and benefits the state of Maryland. Thank you for allowing us the opportunity to express our support of SB0346.

Over the past year, immigrant communities, particularly Latino and Hispanic communities, have been increasingly subject to constitutional violations by federal immigration officials, including unlawful searches and seizures, excessive use of force, and the constitutional guarantees of due process and equal protection from discrimination.¹ Specific examples of these violations by ICE agents include: the warrantless searches of the homes of individuals, representation as general police officers or probation officers, and detention of individuals without probable cause.² As of now, it is very difficult to hold these federal agents accountable for such violations as they enjoy a level of federal immunity.

The No Kings Act would establish certain civil liabilities for individuals who, under the color of law, deprive another of a right, a privilege, or an immunity secured by the U.S. Constitution. This bill would allow individuals who have their constitutional rights violated to seek monetary damages, and declaratory and injunctive relief which would order the violator to stop whatever violation they are engaging in. All in all, this comprehensive piece of legislation would allow immigrants who have been wronged by federal law enforcement to have their day in court and potentially recover damages or obtain a court order issuing the violator to stop.

For these reasons, the Maryland Legislative Latino Caucus respectfully requests a favorable report on SB0346.

¹ [ICE and Border Patrol Abuses | American Civil Liberties Union](#)

² [This Deceptive ICE Tactic Violates the Fourth Amendment | American Civil Liberties Union](#)

SB0346- LWVMD-FAV-Civil Actions- Violation of Cons

Uploaded by: Nora Miller Smith

Position: FAV



TESTIMONY TO THE SENATE JUDICIAL PROCEEDINGS COMMITTEE

SB0346: Civil Actions- Violation of Constitutional Rights (No Kings Act)

POSITION: Support

BY: Linda Kohn, President

DATE: February 10, 2026

The League of Women Voters of Maryland strongly believes in the individual liberties guaranteed by the Constitution of the United States, and thus supports Senate Bill 346: The No Kings Act. The protection and defense of individual liberties is a long-standing League Principle.

Marylanders possess civil rights safeguarded in the Constitution, including the right to peaceful protest, free speech, and due process; they possess protections against unlawful search and seizure and against excessive force used to disperse peaceful protests or carry out an arrest. The Constitution also prohibits violations against due process and the Equal Protection Clause, such as unlawfully targeting people on the basis of race or national origin.

Under U.S. Code Section 1983, if those constitutionally protected civil rights are violated by a state or local official, that agent can be sued in civil court. Per the statute: "Every person who, under color of [law]...subjects 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 and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."¹

But due to a loophole, this law does not apply to federal agents. At present, federal law enforcement officers, including U.S. Immigration and Customs Enforcement (ICE) agents who violate Marylanders' constitutional rights, cannot be sued in civil court.

Passage of SB 346 would grant a right of redress to those Marylanders who are victims of illegal acts by federal law enforcement officers. It would affirm that, in Maryland, no one is above the law, and that the constitutional rights of all individuals must be protected, regardless of who was responsible for the violations.

The League of Women Voters of Maryland and its 2,000 members urge a favorable report on Senate Bill 346.

¹ <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section1983&num=0&edition=prelim>

CASA_FAV_SB346.pdf

Uploaded by: Shana Khader

Position: FAV



Testimony in **SUPPORT** of Senate Bill 346

SB 346 – Civil Actions – Violation of Constitutional Rights (No Kings Act)

Senate Judicial Proceedings Committee

Dear Honorable Chair Smith, Vice-Chair Waldstreicher, and Members of the Committee,

We Are Casa (formerly, “CASA”) is pleased to offer **favorable testimony in support of SB 346 - Civil Actions – Violation of Constitutional Rights (No Kings Act).**

We Are CASA is a national organization building power and improving the quality of life in working-class Black, Latino/a/e, Afro-descendent, Indigenous, and Immigrant communities.

With a membership of over 189,000 members, We Are CASA creates change with its power-building model blending human services, community organizing, and advocacy to serve the full spectrum of the needs, dreams, and aspirations of members. For nearly forty years, We Are CASA has employed grassroots community organizing to bring our communities closer together and fight for justice, while simultaneously providing vital services to communities across the state and beyond.

ICE is violently assaulting our communities here in Maryland. In Glen Burnie on Christmas Eve, ICE agents shot a man in his work van multiple times, including his chest and thigh, causing his lung to collapse and sending him to the emergency room.¹ In Baltimore, ICE is holding our loved ones in crowded and inhumane conditions, with minimal access to food, water, and medication – not to mention lawyers.² Through We Are CASA's hotline, on which community members can report ICE enforcement actions they have witnessed or experienced, we regularly hear stories of ICE's brutality: just last month, a U.S. citizen teen told us his father's story. In Salisbury, ICE tackled his dad when they arrested him, seriously injuring both of his dad's legs. In detention, he was not receiving medical care.

¹ See Karina Tsui, “Department of Homeland Security changes story of Maryland ICE shooting after local police release contradicting details,” CNN Jan. 13, 2026, <https://www.cnn.com/2026/01/13/us/ice-shooting-maryland-immigration-hnk>.

² See Dennis Valera, “ICE blames weather after viral video allegedly shows dozens packed inside Baltimore holding rooms,” CBS Baltimore Jan. 30, 2026, <https://www.cbsnews.com/baltimore/news/ice-weather-video-holding-room-immigration/>.

The violence and disregard for the law that we are seeing at home in Maryland is part of a wave of violence across the nation. Gerald Lunas Campos died in ICE detention in Texas last month. A medical examiner ruled his death a homicide, describing the cause of his death as “asphyxia due to neck and torso compression.”³

Keith Porter, Silverio Villegas Gonzalez, Renee Good, and Alex Pretti are just a few more of the people who ICE has killed or seriously injured. There has been a rash of deaths in ICE custody: 2025 was ICE’s deadliest year.⁴

ICE must be held accountable to the community for its actions. SB 346 provides a crucial mechanism to do so. We Are CASA’s members demand ICE be held accountable for the deep harms that it is causing our communities. SB 346 is one powerful step toward that accountability.

The U.S. Constitution grants all of us who live here rights against the use of excessive force by law enforcement, cruel and unusual punishment by the government, lack of due process, and more. But right now, there is no law on the books giving Marylanders a way to enforce those rights when federal officers, like ICE, trample them.⁵ This means that when ICE brutally beats a community member or denies them life-saving medical treatment, there may be no way to hold them accountable in court.

Without any law allowing community members to take federal agents to court when they violate the U.S. Constitution, ICE continues to act with impunity and its violence will only escalate. SB 346 helps fix that. Maryland can begin to chip away at ICE’s reign of terror by joining the other states – including California, Illinois, Massachusetts, Maine, and New Jersey – that have already enacted similar legislation to protect their citizens.

SB 346 could be made a stronger tool if it guaranteed reasonable attorneys’ fees for community members who win in court, by replacing the word “may” with the word “shall” on page 2, line 21.

Passing SB 346 will put a powerful tool in the community’s hands to combat ICE’s abuses. And while it is just one of the many steps necessary to protect our communities at this critical time, it is a crucial one. **For these reasons, We Are CASA strongly urges the committee to provide a favorable report on SB 346.**

³ Michael Biesecker, “Cuban immigrant in ICE custody died of homicide due to asphyxia, autopsy finds,” PBS Jan. 22, 2025, <https://www.pbs.org/newshour/nation/cuban-immigrant-in-ice-custody-died-of-homicide-due-to-asphyxia-a-utopsy-finds>.

⁴ Maanvi Singh *et al.*, “2025 was ICE’s deadliest year in two decades. Here are the 32 people who died in custody,” THE GUARDIAN, Jan. 4, 2026, <https://www.theguardian.com/us-news/ng-interactive/2026/jan/04/ice-2025-deaths-timeline>.

⁵ Erwin Chemerinsky & Burt Neuborne, “Renee Good’s Family Should Be Able to Sue the Officer Who Killed Her,” NY TIMES Jan. 14, 2026, <https://www.nytimes.com/2026/01/14/opinion/renee-good-civil-rights-constitution.html>.

SB0346 FAV - WDC Testimony - 10 Feb 2026.pdf

Uploaded by: Shelby Harper

Position: FAV



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

www.womensdemocraticclub.org

SB 0346 Civil Actions – Violation of Constitutional Rights (No Kings Act)
Judiciary Proceedings Committee, February 10, 2026
SUPPORT

Thank you for the opportunity to submit written testimony concerning an important priority of the **Montgomery County Women's Democratic Club (WDC)** for the 2026 legislative session. Founded in 1956, WDC is one of Maryland's largest and most active Democratic clubs with hundreds of politically active members, including many elected officials. WDC is known for its advocacy for law and policy to improve the lives of women and their families.

WDC urges swift passage of **SB 0346 Civil Actions - Violation of Constitutional Rights (No Kings Act)**. We support its establishment of 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.

Accountability is essential in a society based on the rule of law. Currently, when a federal government actor violates the constitutional rights of an individual, it can be difficult for the injured person to obtain recourse because there is no cause of action allowing victims to bring civil suit. In contrast, if a state or local officer violates someone's constitutional rights, the victim can sue for damages.

The No Kings Act would close this legal loophole by enforcing existing constitutional guarantees on federal officials. It would incentivize federal officials to respect an individual's constitutional rights. It would strengthen the ability of Marylanders to hold government actors accountable.

As federal immigration operations have escalated across the country, so, too, have reports of Constitutional violations. In January, we as a country witnessed a masked ICE officer and masked Border Patrol agents kill two U.S. citizens who were trying to protect their neighbors. Masked federal law enforcement have also [tear gassed](#) peaceful protestors, detained individuals – including U.S. citizens – in [horrific conditions](#), arrested [children](#), assaulted the [elderly](#), and threatened bystanders exercising basic First Amendment rights. Reports indicate that ICE believes it should be [unconstrained by the Fourth Amendment](#).

The escalation in Maryland has been devastating. [ICE arrests in Maryland nearly tripled in 2025](#), with [more than 3300 people detained](#). Residents have reported that they've been targeted by immigration enforcement because of their [race, national origin, and their political beliefs](#). Education officials attribute the sharp decrease in 2025 graduation rates to [anxiety over immigration enforcement](#) among Hispanic and multilingual learners.

Accountability is the best deterrent in the protection of our Constitutional rights, and it should not depend on the badge an officer wears.

WDC applauds the sponsors of SB 0346. We ask for your support for SB 0346 and strongly urge swift passage.

Cynthia Rubenstein
WDC President

Shelby Settles Harper
WDC Immigration Subcommittee

Kate Stein
WDC Advocacy Chair

SB346HB332 - 2026 - Written Testimony.pdf

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Position: FWA



2026 WRITTEN TESTIMONY

CIVIL ACTIONS - VIOLATION OF CONSTITUTIONAL RIGHTS
(NO KINGS ACT)

SB 346 / HB 332 - FAVORABLE WITH AMENDMENTS

These bills are meant to allow civil rights lawyers like us to protect Marylanders from ICE atrocities by permitting the type of remedy in State law that the US Supreme Court has recently denied in federal courts. With a few small changes, we can achieve this lofty and important goal, but the bills as worded will unintentionally strike an unbearable blow to Maryland civil rights law.

For the first time in the history of Maryland (or any other state so far as we are aware), these bills – as currently worded – would enshrine the federal “qualified immunity” doctrine in the state code. “Qualified immunity” is an odious doctrine borne of racism; it was first adopted to deny relief to Freedom Riders during the civil rights movement. This doctrine, which has never been recognized or adopted by the Maryland General Assembly, immunizes even the most vile unconstitutional misconduct unless a plaintiff can show that virtually the exact wrongdoing has been previously ruled unconstitutional.

The diverse, bipartisan coalition of organizations opposed to qualified immunity includes the American Civil Liberties Union, the NAACP, the Civil Rights Corps, the Drug Policy Alliance, the Leadership Conference on Civil and Human Rights, the Cato Institute, the Institute for Justice, Americans for Prosperity, the Constitutional Accountability Center and the Law Enforcement Action Partnership. Even Ben and Jerry, of ice cream fame, have campaigned tirelessly against qualified immunity (QI).

Enshrining QI in Maryland law is particularly dangerous because new scholarship and research has revealed that federal civil rights statutes were never intended to permit immunity. This Harvard journal article published just this month demonstrates why qualified immunity should be struck down in federal court: mdforjustice.com/harvardlawarticle. If the new effort to strike down QI based on this scholarship is successful, but Maryland has statutorily adopts QI in the meantime, we will have set civil rights remedies in the State back by decades.

The fix is simple: replace any reference to qualified immunity with language reserving “any defense of immunity otherwise applicable at the time the action hereunder accrues.” This way, when we win the fight against qualified immunity at the federal level, it will not linger in Maryland. Equally importantly, Maryland should avoid giving any credence to this racist doctrine.



2026 WRITTEN TESTIMONY

SB 346 / HB 322 - FAVORABLE WITH AMENDMENTS

There are a few other technical fixes to better marry the bills to existing Maryland law. These include: 1) exempting these claims from the damages cap in Courts and Judicial Proceedings Article 11-108 (this change keeps the claim in line with federal law where there is no such cap and is necessary for the deterrent effect of the bills to be truly realized); 2) clarifying that these bills do not alter or amend the existing statutory schemes for governmental liability under the state and local government tort claims acts; and 3) a severability clause to strengthen the statute against any challenges.

All of these changes, which we urge the General Assembly to please adopt, are reflected in the edited bill draft below. Thank you for continuing the crucial fight for our rights and our Constitution!

The Maryland Association for Justice urges a FAVORABLE Report WITH AMENDMENTS on SB 346 / HB 332.

About Maryland Association for Justice

The Maryland Association for Justice (MAJ) represents over 1,250 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system, the protection of the rights of consumers and the education and professional development of its members.

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Article – Courts and Judicial Proceedings

16 SUBTITLE 27. ACTION FOR DEPRIVATION OF CONSTITUTIONAL RIGHTS.

17 3–2701.

18 IN THIS SUBTITLE, “LAW” INCLUDES:

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9 (2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, IN AN ACTION

10 UNDER THIS SECTION, AN AGGRIEVED PARTY MAY SEEK DAMAGES AND

11 DECLARATORY AND INJUNCTIVE RELIEF.

12 (3) IN AN ACTION UNDER THIS SECTION AGAINST A JUDICIAL

13 OFFICER, INJUNCTIVE RELIEF IS AVAILABLE ONLY IF A DECLARATORY JUDGMENT

14 IS VIOLATED OR DECLARATORY RELIEF IS UNAVAILABLE.

15 ~~(B) (1) A DEFENDANT IN AN ACTION UNDER THIS SECTION MAY ASSERT A~~

16 ~~DEFENSE OF ABSOLUTE OR QUALIFIED IMMUNITY TO THE SAME EXTENT AS A~~

17 ~~PERSON SUED UNDER 42 U.S.C. § 1983 UNDER LIKE CIRCUMSTANCES.~~

18 ~~(B2)~~ THIS SECTION MAY NOT BE CONSTRUED TO WAIVE OR ABROGATE

19 ANY DEFENSE OF ~~SOVEREIGN~~ IMMUNITY OTHERWISE APPLICABLE AT THE TIME THE ACTION
HEREUNDER ACCRUES AVAILABLE.

(C) THIS SECTION MAY NOT BE CONSTRUED TO ABROGATE: (1) ANY LOCAL GOVERNMENT
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26 ~~(F)~~ AN ACTION UNDER THIS SECTION SHALL BE FILED WITHIN 3 YEARS

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GREATEST EXTENT PERMITTED UNDER THE UNITED STATES CONSTITUTION BUT IF ANY PROVISION
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HELD INVALID, THE REMAINDER OF THIS SECTION AND THE APPLICATION OF THE PROVISION TO
ANY OTHER PERSON OR CIRCUMSTANCE SHALL NOT BE AFFECTED BY THAT INVALIDATION.

No Kings Act Position Paper.pdf

Uploaded by: Cary Hansel

Position: FWA

MARYLAND CIVIL RIGHTS LAWYERS' COALITION

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The Prisoner Rights Information System of Maryland, Inc.

Malcolm Ruff, Murphy, Falcon & Murphy, P.A.
Timothy Maloney, Joseph, Greenwald & Laake, P.A.
Hannah Ernstberger, Saller, Ernstberger & McElroy
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C. William Michaels
Victoria Devore, Castelli + Devore, LLC
Lauren Castelli, Castelli + Devore, LLC

NO KINGS ACT (SB0346/HB0332) POSITION PAPER: FAVORABLE *WITH AMENDMENTS*

These bills are meant to allow civil rights lawyers like us to protect Marylanders from ICE atrocities by permitting the type of remedy in State law that the US Supreme Court has recently denied in federal courts. With a few small changes, we can achieve this lofty and important goal, but ***the bills as worded will unintentionally strike an unbearable blow to Maryland civil rights law.***

For the first time in the history of Maryland (or any other state so far as we are aware), these bills – as currently worded – would enshrine the federal “qualified immunity” doctrine in the state code. “Qualified immunity” is an odious doctrine borne of racism; it was first adopted to deny relief to Freedom Riders during the civil rights movement. This doctrine, which has never been recognized or adopted by the Maryland General Assembly, immunizes even the most vile unconstitutional misconduct unless a plaintiff can show that virtually the exact wrongdoing has been previously ruled unconstitutional.

The diverse, bipartisan coalition of organizations opposed to qualified immunity includes the American Civil Liberties Union, the NAACP, the Civil Rights Corps, the Drug Policy Alliance, the Leadership Conference on Civil and Human Rights, the Cato Institute, the Institute for Justice, Americans for Prosperity, the Constitutional Accountability Center and the Law Enforcement Action Partnership. Even Ben and Jerry, of ice cream fame, have campaigned tirelessly against qualified immunity (QI).

Enshrining QI in Maryland law is particularly dangerous because new scholarship and research has revealed that federal civil rights statutes were never intended to permit immunity. This Harvard journal article published just this month demonstrates why qualified immunity should be struck down in federal court: https://journals.law.harvard.edu/jlpp/wp-content/uploads/sites/90/2026/01/49.Nelson_Jaicomio.pdf. If the new effort to strike down QI based on this scholarship is successful, but Maryland has statutorily adopted QI in the meantime, we will have set civil rights remedies in the State back by decades.

The fix is simple: replace any reference to qualified immunity with language reserving “any defense of immunity otherwise applicable at the time the action hereunder accrues.” This amended language preserves the current status quo, while permitting future challenges to qualified immunity in state and federal courts. Equally importantly, Maryland should avoid giving any credence to this racist doctrine.

There are a few other technical fixes to better marry the bills to existing Maryland law. These include: 1) exempting these claims from the damages cap in Courts and Judicial Proceedings Article 11-108 (this change keeps the claim in line with federal law where there is no such cap and is necessary for the deterrent effect of the bills to be truly realized); 2) clarifying that these bills do not alter or amend the existing statutory schemes for governmental liability under the state and local government tort claims acts; and 3) a severability clause to strengthen the statute against any challenges.

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No Kings Position Paper.pdf

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INVALIDATION.

Very truly yours,
HANSEL LAW, PC



Kristen M. Mack

MSI Testimony on SB 346 and HB 332.pdf

Uploaded by: Mark Pennak

Position: FWA



President
Mark W. Pennak

February 10, 2026

**WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT,
MARYLAND SHALL ISSUE,
IN OPPOSITION TO SB 346 and HB 332**

I am the President of Maryland Shall Issue (“MSI”). Maryland Shall Issue is a Section 501(c)(4), all-volunteer, non-partisan, non-profit organization dedicated to the preservation and advancement of gun owners’ rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. I am also an attorney and an active member of the Bar of the District of Columbia and the Bar of Maryland. I retired from the United States Department of Justice, where I practiced law for 33 years in the Courts of Appeals of the United States and in the Supreme Court of the United States. I am an expert in Maryland Firearms Law and the law of self-defense. I am also a Maryland State Police certified handgun instructor for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License (“HQL”) and a certified NRA instructor in rifle, pistol and personal protection in the home and outside the home and muzzle loading. I appear today as President of MSI in SUPPORT WITH AMENDMENTS SB 346 and the cross-file, HB 332 (“the Bill”).

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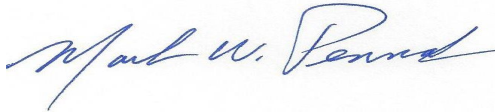
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Sincerely,

A handwritten signature in blue ink, reading "Mark W. Pennak". The signature is fluid and cursive, with the first name "Mark" and last name "Pennak" clearly legible.

Mark W. Pennak
President, Maryland Shall Issue, Inc.
mpennak@marylandshallissue.org

MSI Testimony on SB 346 and HB 332.pdf

Uploaded by: Mark Pennak

Position: FWA



President
Mark W. Pennak

February 10, 2026

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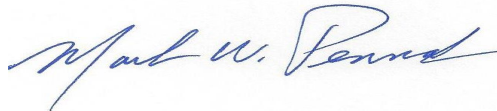
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Uploaded by: Mark Pennak

Position: FWA



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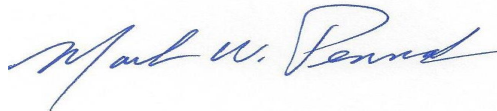
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Uploaded by: Mark Pennak

Position: FWA



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¹ Section 1983 provides:

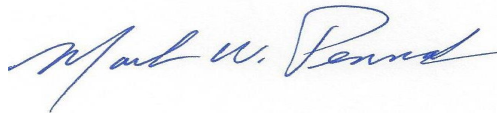
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Maryland Declaration of Rights (and other State and federal law) somehow **less important** than the rights secured by the U.S. Constitution? By limiting the cause of action to violations of the U.S. CONSTITUTION, the General Assembly would make these provisions into second-class rights. Maryland already waives sovereign immunity for common law tort actions under the Maryland Tort Claims Act. See, e.g., *Williams v. Morgan State University*, 484 Md. 534, 551-52 (2023). Such an amendment would be a useful addition to that waiver to include State and federal statutory claims as well. *Id.*

Third, the Bill incorporates the standards for qualified immunity established in the caselaw under 42 U.S.C. § 1983, but that endorsement is unfortunate and ill-advised. See David Rudovsky, *The Qualified Immunity Doctrine in the Supreme Court: Judicial Activism and the Restriction of Constitutional Rights*, 138 U. Pa. L. Rev. 23, 74 (1989); *Baxter v. Bracey*, 140 S.Ct. 1862 (2020) (mem) (Thomas, J., dissenting from the denial of certiorari). Federal qualified immunity often unfairly leaves the victim without any remedy. The officials of the State and its agencies and municipalities who violate the constitutional and statutory rights of the victim should be held fully liable for the consequences of their actions.

Finally, the Bill also authorizes the award of attorneys' fees and costs but does not define any governing standard, such as developed under 42 U.S.C. § 1988, for such awards. That oversight should be corrected. Section 1988 fees have been sharply limited by the Supreme Court to preclude fee awards under the "catalyst theory." See, e.g., *Lackey v. Stinnie*, 604 U.S. 192 (2025). Before the Supreme Court abolished any use of that theory in *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598, 603 (2001), the federal courts routinely awarded Section 1988 fees where the suit acted as a "catalyst" to the relief sought because lawsuit brought about voluntary change in defendant's conduct. 532 U.S. at 605-06. See e.g., *Stanton v. Southern Berkshire Regional School Dist.*, 197 F.3d 574 (1st Cir. 1999). *Buckhannon* abrogated that line of precedent, holding that a person cannot be a prevailing party under Section 1988 without obtaining *court ordered* relief. This Bill provides an opportunity for the State to make clear that a "prevailing party" under this Bill may also include parties who also prevail under the catalyst theory. With that exception, the Bill should cross-reference Section 1988 standards for fee awards under the Bill. These changes would provide important guidance to Maryland courts and minimize the potential for expensive and protracted disputes over fee awards.

Sincerely,



Mark W. Pennak
President, Maryland Shall Issue, Inc.
mpennak@marylandshallissue.org

SB0346-JPR_MACo_SWA.pdf

Uploaded by: Sarah Sample

Position: FWA



Senate Bill 346

Civil Actions - Violation of Constitutional Rights (No Kings Act)

MACo Position: **SUPPORT WITH
AMENDMENTS**

To: Judicial Proceedings Committee

Date: February 10, 2026

From: Sarah Sample

The Maryland Association of Counties (MACo) **SUPPORTS SB 346 WITH AMENDMENTS**. The bill establishes a path toward granting attorney's fees in any case asserting a State constitutional claim. In practice, the bill would likely lead to an increase in litigation and costs for the State and local governments and create an unbalanced system that enriches attorneys at the taxpayer's expense.

Counties take no issue with the central intent, which appears to be an attempt at creating an avenue for state-level legal accountability for a federal agency or actor within the state court system. With the provisions of SB 346 in place, however, an additional avenue would be inadvertently created, allowing plaintiffs to bring constitutional claims against local governments without the wise and intentional framework and caps set forth in the Local Government Tort Claims Act (LGTCa). In this context, trial attorneys would be incentivized to seek more of these cases regardless of a plaintiff's interest in filing or the strength of the case. This sets in motion alarming policy changes that have been considered and rejected by the General Assembly.

However, in consultation with the bill sponsor, MACo believes a modification can easily retain the central tenets of the bill, but avoid this difficult overlay of new laws onto state and local officials.

To that end, counties would offer the following amendment to SB 346:

On page 2, line 27, after the period insert, "**(E) THIS SECTION DOES NOT APPLY TO STATE, LOCAL GOVERNMENTS, OR THEIR PERSONNEL.**"

The current process for these claims to be brought against local governments and resolved appropriately is sufficient to balance justice and taxpayer impact. SB 346 would severely erode the operations and efficiency of current procedures for the benefit of private attorneys. Accordingly, MACo urges a **FAVORABLE WITH AMENDMENTS** report on SB 346.

SB0346– MSBA FWA Letter (2026.02.06 - No Kings).pd

Uploaded by: Shaoli Sarkar

Position: FWA



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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).

SB346

Uploaded by: Yanet Amanuel

Position: FWA



**Testimony for the Senate Judicial Proceedings Committee
February 10, 2026**

**SB 346 - Civil Actions – Violation of Constitutional Rights (No
Kings Act)**

FAVORABLE WITH AMENDMENT

YANET AMANUEL
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SHELLEY
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

The ACLU of Maryland supports, with an amendment, SB 346 (No Kings Act), which seeks to create state authorization for individuals to sue government officials who violate their federal constitutional rights. Federal law enforcement officers operating in the state of Maryland should be held to the same legal standard as state and local law enforcement officers and subjected to the same consequences for unconstitutional conduct. We support the bill on the condition of an amendment to remove references to “qualified immunity.”

The Maryland General Assembly can and should create a state cause of action to enforce the U.S. Constitution.

An aggressive immigration enforcement agenda has had deadly consequences across the country, including the recent murders of Keith Porter Jr., Renee Good, and Alex Pretti by federal agents. Maryland parents, children, neighbors, workers, and students are suffering as federal officers stop, arrest, and jail people throughout our communities, indiscriminately and without consequence. The recent purchase of a warehouse in Hagerstown indicates their intention to continue these operations despite public demands to leave us alone. The Maryland General Assembly can and should urgently limit what these agents do to the people of Maryland, in the state of Maryland, and create state law to hold them legally liable for their unconstitutional conduct.

There is little legal recourse for an individual to sue a federal law enforcement agent for violating their rights as guaranteed by the United States Constitution. While 42 U.S.C. § 1983 provides a federal remedy for constitutional violations by state and local government officials, there is no comparable statutory remedy for such violations by federal government officials. For most of our nation’s history, state laws were the primary way to enforce constitutional rights against federal officers.

After the Supreme Court’s recognition of the federal Bivens¹ remedy in 1971, state-law claims for constitutional violations were rarely invoked. Since then, the scope of judicial remedies via “Bivens” actions against federal officials for violations of constitutional rights has been narrowed to a point where there is virtually no pathway for private individuals to sue federal officers for violations of the U.S. constitution. This legal gap is especially alarming amid renewed and amplified abuses of federal power that we have seen in Maryland and throughout the country in recent months. It is essential that the state legislature act to provide this bare minimum protection to the people of Maryland against unconstitutional law enforcement.

SB 346 must be amended to remove any reference to “qualified immunity”

In addition to the absence of a state cause of action for violations of the U.S. constitution, another significant procedural and legal hurdle to a meaningful remedy for constitutional violations is the doctrine of qualified immunity. Qualified immunity is a pernicious legal doctrine, applicable to suits brought under 42 U.S.C. § 1983 challenging violations of federal constitutional rights by local or state officials. It says that it is not enough for a plaintiff to establish that their rights were violated. In order to prevail, they must also establish that the violation was “clearly established” by prior binding decisions. While there is a huge body of scholarship criticizing the Supreme Court’s creation of qualified immunity, from across the political spectrum², this bill does not seek to tackle that issue. However, qualified immunity does not currently exist in Maryland law and has never been adopted or recognized by the Maryland General Assembly. It should not be explicitly incorporated into state law for the first time here, in remedial legislation intended to create a remedy for federal constitutional violations. Doing so would risk further expanding this doctrine into cases raising purely state law claims and would have the effect of permanently enshrining the doctrine in state law even if the Supreme Court or Congress later eliminate it. This problem is easily fixed, without changing the meaning or intent of this legislation, by striking lines 15-17 on p.2, replacing (2) with (B) in line 18, deleting “sovereign” in line 19, deleting “available” in line 19,

¹ Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971)

² E.g. ACLU, Ending Qualified Immunity Once and For All is the Next Step in Holding Police Accountable, March 23, 2021 (<https://www.aclu.org/news/criminal-law-reform/ending-qualified-immunity-once-and-for-all-is-the-next-step-in-holding-police-accountable>); NAACP, Qualified Immunity FAQ (<https://www.naacpldf.org/qualified-immunity/>); Institute for Justice, Unaccountable, Feb. 7, 2024 (<https://ij.org/report/unaccountable/>); Cato Institute, Qualified Immunity: A Legal, Practical, and Moral Failure, Sep. 14, 2020 (<https://www.cato.org/policy-analysis/qualified-immunity-legal-practical-moral-failure#>).

and adding the following after “otherwise”, APPLICABLE TO SUITS UNDER 42 U.S.C. § 1983 UNDER LIKE CIRCUMSTANCES AT THE TIME THAT THE ACTION HEREUNDER ACCRUES.” Making these edits would preserve the defense of qualified immunity in suits brought under this section, without specifically incorporating it into state law, and without leaving it in state law if it is changed in federal law by Congress or the Supreme Court.

If references to qualified immunity in SB 346 are removed, the bill would fill a crucial gap in the enforcement of constitutional rights for the people of Maryland. For the foregoing reasons, the ACLU of Maryland supports SB 346, with the suggested amendment.

SB346

Uploaded by: Yanet Amanuel

Position: FWA

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February 6, 2026

NO KINGS ACT (SB0346/HB0332) POSITION PAPER: FAVORABLE *WITH AMENDMENTS*

These bills are meant to allow civil rights lawyers like us to protect Marylanders from ICE atrocities by permitting the type of remedy in State law that the US Supreme Court has recently denied in federal courts. With a few small changes, we can achieve this lofty and important goal, but ***the bills as worded will unintentionally strike an unbearable blow to Maryland civil rights law.***

For the first time in the history of Maryland (or any other state so far as we are aware), these bills – as currently worded – would enshrine the federal “qualified immunity” doctrine in the state code. “Qualified immunity” is an odious doctrine borne of racism; it was first adopted to deny relief to Freedom Riders during the civil rights movement. This doctrine, which has never been recognized or adopted by the Maryland General Assembly, immunizes even the most vile unconstitutional misconduct unless a plaintiff can show that virtually the exact wrongdoing has been previously ruled unconstitutional.

The diverse, bipartisan coalition of organizations opposed to qualified immunity includes the American Civil Liberties Union, the NAACP, the Civil Rights Corps, the Drug Policy Alliance, the Leadership Conference on Civil and Human Rights, the Cato Institute, the Institute for Justice, Americans for Prosperity, the Constitutional Accountability Center and the Law Enforcement Action Partnership. Even Ben and Jerry, of ice cream fame, have campaigned tirelessly against qualified immunity (QI).

Enshrining QI in Maryland law is particularly dangerous because new scholarship and research has revealed that federal civil rights statutes were never intended to permit immunity. This Harvard journal article published just this month demonstrates why qualified immunity should be struck down in federal court: https://journals.law.harvard.edu/jlpp/wp-content/uploads/sites/90/2026/01/49.Nelson_Jaicomio.pdf. If the new effort to strike down QI based on this scholarship is successful, but Maryland has statutorily adopted QI in the meantime, we will have set civil rights remedies in the State back by decades.

The fix is simple: replace any reference to qualified immunity with language reserving “any defense of immunity otherwise applicable at the time the action hereunder accrues.” This amended language preserves the current status quo, while permitting future challenges to qualified immunity in state and federal courts. Equally importantly, Maryland should avoid giving any credence to this racist doctrine.

There are a few other technical fixes to better marry the bills to existing Maryland law. These include: 1) exempting these claims from the damages cap in Courts and Judicial Proceedings Article 11-

108 (this change keeps the claim in line with federal law where there is no such cap and is necessary for the deterrent effect of the bills to be truly realized); 2) clarifying that these bills do not alter or amend the existing statutory schemes for governmental liability under the state and local government tort claims acts; and 3) a severability clause to strengthen the statute against any challenges.

All of these changes, which we urge the General Assembly to *please* adopt, are reflected in the edited bill draft below. Thank you for continuing the crucial fight for our rights and our Constitution!

Article – Courts and Judicial Proceedings

16 SUBTITLE 27. ACTION FOR DEPRIVATION OF CONSTITUTIONAL RIGHTS.

17 3–2701.

18 IN THIS SUBTITLE, “LAW” INCLUDES:

19 (1) THE U.S. CONSTITUTION;

20 (2) THE MARYLAND DECLARATION OF RIGHTS;

1 (3) THE MARYLAND CONSTITUTION;

2 (4) THE LAWS OF THE UNITED STATES; AND

3 (5) THE LAWS OF MARYLAND.

4 3–2702.

5 (A) (1) AN AGGRIEVED PARTY MAY BRING AN ACTION AGAINST AN
6 INDIVIDUAL WHO, UNDER COLOR OF LAW, DEPRIVES THE AGGRIEVED PARTY OR
7 CAUSES OR ALLOWS THE AGGRIEVED PARTY TO BE DEPRIVED OF A RIGHT, A
8 PRIVILEGE, OR AN IMMUNITY SECURED BY THE U.S. CONSTITUTION.

9 (2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, IN AN ACTION
10 UNDER THIS SECTION, AN AGGRIEVED PARTY MAY SEEK DAMAGES AND
11 DECLARATORY AND INJUNCTIVE RELIEF.

12 (3) IN AN ACTION UNDER THIS SECTION AGAINST A JUDICIAL
13 OFFICER, INJUNCTIVE RELIEF IS AVAILABLE ONLY IF A DECLARATORY JUDGMENT
14 IS VIOLATED OR DECLARATORY RELIEF IS UNAVAILABLE.

~~15 (B) (1) A DEFENDANT IN AN ACTION UNDER THIS SECTION MAY ASSERT A
16 DEFENSE OF ABSOLUTE OR QUALIFIED IMMUNITY TO THE SAME EXTENT AS A
17 PERSON SUED UNDER 42 U.S.C. § 1983 UNDER LIKE CIRCUMSTANCES.~~

18 (B2) THIS SECTION MAY NOT BE CONSTRUED TO WAIVE OR ABROGATE
19 ANY DEFENSE OF ~~SOVEREIGN~~ IMMUNITY OTHERWISE APPLICABLE AT THE TIME THE ACTION HEREUNDER
ACCRUES AVAILABLE.

(C) THIS SECTION MAY NOT BE CONSTRUED TO ABROGATE: (1) ANY LOCAL GOVERNMENT LIABILITY UNDER
COMMON LAW OR MARYLAND STATUTE FOR THE ACTIONS OF LOCAL GOVERNMENT EMPLOYEES, OR

(2) ANY STATUTORY WAIVER OF ANY DEFENSE, INCLUDING IMMUNITY.

(D) SECTION 11-108 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE SHALL NOT APPLY TO AN ACTION UNDER THIS SECTION.

20 (E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
21 COURT MAY AWARD REASONABLE FEES AND COSTS, INCLUDING ATTORNEY'S FEES
22 AND EXPERT WITNESS FEES, TO A PREVAILING PLAINTIFF UNDER THIS SECTION.

23 (2) A COURT MAY NOT AWARD FEES OR COSTS UNDER THIS SECTION
24 AGAINST A JUDICIAL OFFICER UNLESS THE JUDICIAL OFFICER ACTED CLEARLY IN
25 EXCESS OF THE JUDICIAL OFFICER'S JURISDICTION.

26 (F) AN ACTION UNDER THIS SECTION SHALL BE FILED WITHIN 3 YEARS
27 AFTER THE CAUSE OF ACTION ACCRUES.

– (G) THIS SECTION SHOULD BE INTERPRETED IN FAVOR OF PROVIDING A REMEDY TO THE GREATEST EXTENT PERMITTED UNDER THE UNITED STATES CONSTITUTION BUT IF ANY PROVISION OF THIS SECTION OR THE APPLICATION OF THE PROVISION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE REMAINDER OF THIS SECTION AND THE APPLICATION OF THE PROVISION TO ANY OTHER PERSON OR CIRCUMSTANCE SHALL NOT BE AFFECTED BY THAT INVALIDATION.

Very truly yours,

/s/ Tiana Boardman

Tiana N. Boardman

2026 SB0346 Testimony Against 2026-02-10.pdf

Uploaded by: Alan Lang

Position: UNF

Testimony Against SB0346

Honorable Senators

Please enter an unfavorable decision about SB0346.

I am opposed to 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.

I do not believe that this proposed law is necessary. There are already federal statutes available to bring a civil action if federal officials exceed their authority and deprive someone of their constitutional rights.

Please enter an unfavorable decision about SB0334.

Alan Lang
45 Marys Mount Road
Harwood, Maryland 20776
Legislative District 30B
410-336-9745
Alanlang1@verizon.net

February 6, 2026

SB 346_HB 332_ Civil Actions - Violation of Const

Uploaded by: Trudy Tibbals

Position: UNF

SB 346/HB 332: Civil Actions - Violation of Constitutional Rights (**No Kings Act**):
Please vote **TO OPPOSE** this bill.

Dear Judicial Proceedings & Judiciary Committees:

I am writing to express my **strong opposition to SB 346 / HB 332, the so-called “No Kings Act.”**

While accountability for government action is important, this bill **fundamentally disrupts the constitutional balance of powers** by dramatically expanding civil liability against the State and its officials in a way that is **overbroad, destabilizing, and legally unsound**.

At its core, SB 346/HB 332 **erodes longstanding principles of sovereign immunity** and invites the judiciary to second-guess executive and legislative decision-making through private civil litigation. These policy judgments are properly resolved through **democratic processes and existing oversight mechanisms**, not retroactive lawsuits driven by political disagreement rather than clear constitutional violations.

The bill also raises serious **due-process concerns**. By lowering barriers to civil actions and exposing public officials to personal liability for actions taken in good-faith performance of their duties, the legislation **diminishes lawful governance**, discourages decisive action, and incentivizes excessive risk aversion within state agencies. Public servants should not be forced to govern under constant threat of litigation for unsettled or evolving constitutional claims.

Moreover, this proposal would **flood Maryland courts with speculative lawsuits**, divert taxpayer resources away from essential public services and toward legal defense costs and settlements. The result will not be better governance, but **paralysis, forum-shopping, and policymaking by litigation rather than legislation**.

Maryland already provides remedies for genuine constitutional violations through existing state and federal law. **SB 346/HB 332** does not fill a legal gap—it **creates a new cause of action that upsets separation of powers, weakens effective governance, and ultimately harms the public interest**.

For these reasons, I respectfully urge you to **oppose SB 346 / HB 332**.

Thank you for your time and thoughtful consideration.

Respectfully,

Trudy Tibbals

sb346.pdf

Uploaded by: Will Vormelker

Position: UNF

HON. STACY A. MAYER
CIRCUIT COURT
JUDGE
BALTIMORE COUNTY
CHAIR

HON. RICHARD SANDY
CIRCUIT COURT
JUDGE
FREDERICK COUNTY
VICE-CHAIR



KELLEY O'CONNOR
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MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 346
Civil Actions – Violation of Constitutional Rights (No Kings Act)
DATE: February 4, 2026
(2/10)
POSITION: Oppose, as drafted

The Judiciary respects the principle of separation of powers. The Maryland General Assembly is a policy-making branch of government and, as such, matters of policy fall within your branch's purview. As a neutral and independent arbiter, the Judiciary has no position on the policy aims of the bill and defers to the legislature as to the bill's intention. We write only to request that the phrase "judicial officer" be stricken from the bill. In particular, the Judiciary requests that the language beginning on page 2, lines 12 through 14 be stricken in its entirety as well as striking the language on page 2, lines 23 through 25.

Judicial impartiality requires that judges be free to exercise their duties with independence and without fear of personal consequence. As noted in *Parker v. State*, 337 Md. 271, 286-287 (1995):

Like other public officials, judges might be deterred from conscientious decision making if they were susceptible to civil liability for their official actions. Unlike other public officials, judges are required, on a daily basis, to make numerous decisions in disputes between adverse parties. With respect to each judicial decision, there is a winner and a loser. Furthermore, what is won or lost often has great value to the litigants: the custody of children,

compensation for serious injuries, freedom from physical restraint, or simply large sums of money. With such important issues at stake in an adversarial context, absolute immunity is needed to forestall endless collateral attacks on judgments through civil actions against the judges themselves. Moreover, well-developed, institutionalized mechanisms exist within the judicial system for correcting erroneous decisions made by judges.

cc. Hon. Jeff Waldstreicher
Judicial Council
Legislative Committee
Kelley O'Connor

2026_02_12 SB 346 No Kings Act.pdf

Uploaded by: Tiffany Clark

Position: INFO

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Chief of Staff

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

ANTHONY G. BROWN
Attorney General

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