President
Mark W. Pennak

MARYLAND SHALL ISSUE®
SELF DEFENSE IS A CIVIL RIGHT

February 10, 2026

**WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT,
MARYLAND SHALL ISSUE,
IN SUPPORT WITH AMENDMENTS 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").

The Bill: The Bill, dubbed the "No Kings Act," amends MD Code, Courts and Judicial Proceedings, §§ 3-2701, 3-2702, to create a new cause of action for lawsuits in Maryland Courts, providing that AN AGGRIEVED PARTY MAY BRING AN ACTION AGAINST AN INDIVIDUAL WHO, UNDER COLOR OF LAW, DEPRIVES THE AGGRIEVED PARTY OR CAUSES OR ALLOWS THE AGGRIEVED PARTY TO BE DEPRIVED OF A RIGHT, A PRIVILEGE, OR AN IMMUNITY SECURED BY THE U.S. CONSTITUTION. The Bill defines "law" to include (1) THE U.S. CONSTITUTION; (2) THE MARYLAND DECLARATION OF RIGHTS (3) THE MARYLAND CONSTITUTION; (4) THE LAWS OF THE UNITED STATES; AND (5) THE LAWS OF MARYLAND. The Bill provides that AN AGGRIEVED PARTY MAY SEEK DAMAGES AND DECLARATORY AND INJUNCTIVE RELIEF. The Bill further provides that A COURT MAY AWARD REASONABLE FEES AND COSTS, INCLUDING ATTORNEY'S FEES AND EXPERT WITNESS FEES, TO A PREVAILING PLAINTIFF UNDER THIS SECTION. Finally, A DEFENDANT IN AN ACTION UNDER THIS SECTION MAY ASSERT A DEFENSE OF ABSOLUTE OR QUALIFIED IMMUNITY TO THE SAME EXTENT AS A PERSON SUED UNDER 42 U.S.C. § 1983 UNDER LIKE CIRCUMSTANCES.

Discussion: We support this Bill as a valuable addition to the law, but as drafted it suffers from several serious flaws. The Bill should be amended to address those issues.

First the Bill is seriously and inappropriately limited to suits against "AN INDIVIDUAL" for deprivation of A RIGHT, A PRIVILEGE, OR AN IMMUNITY SECURED BY THE U.S. CONSTITUTION. For a Bill grandly dubbed the "No Kings Act," both limitations are wholly unwarranted. It should go without saying that **governments** ("Kings") may violate the constitutional rights of individuals. That includes the governments of Maryland. The Bill should thus be amended to provide that a suit may be brought against AN INDIVIDUAL, THE STATE OF MARYLAND, ITS AGENCIES AND ANY COUNTY, CITY OR MUNICIPALITY OF THE STATE OF MARYLAND. Such language would waive the State's sovereign immunity from suit and open Maryland courts to individuals who have suffered a deprivation of rights because of the actions of the State, its agencies and other Maryland governmental bodies. See, e.g., *Board of Educ. of Baltimore County v. Zimmer-Rubert*, 409 Md. 200 (2009)("'the General Assembly may waive sovereign immunity either directly or by necessary implication'")(citation omitted).

Refusing to permit recovery against the State and its agencies and municipalities for violations of constitutional and rights secured by state and federal law would be hypocritical in the extreme. Federal law, 42 U.S.C. § 1983,[1] already permits **damages** suits and suits in equity against municipalities, including fee recoveries, under *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 690 (1978). See *Uzuegbunam v. Preczewski*, 484 Md. 534, 551 (2021). And while the State and State agencies have sovereign immunity from **damages** awards under Section 1983, they are nonetheless subject to Section 1983 suits in State and federal court seeking declaratory and injunctive relief and fee awards under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908). See, e.g., *Trump v. CASA,* 606 U.S. 831, 846 n.9 (2025) (collecting caselaw). Section 1983 litigation has led to the advancement of federal constitutional and statutory rights since the enactment of Section 1983 on April 20, 1871, as Section 1 of the Civil Rights Act of 1871, also known as the Ku Klux Klan Act. Marylanders are entitled to no less protection under State law.

The Bill authorizes suits only for deprivation of rights SECURED BY THE U.S. CONSTITUTION. One is compelled to wonder why the Bill ignores the rights "secured by" the Maryland Constitution and the Maryland Declaration of Rights and other rights "secured by" federal and State law. The Bill defines "law" to include rights originating from all these sources but unaccountably then **limits** the application of that definition to actions taken by an INDIVIDUAL who acts UNDER COLOR OF LAW. Are the rights secured by the Maryland Constitution and the

[1] Section 1983 provides:

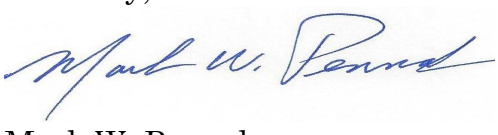
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, 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,



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