Office of Senate Floor Analyses
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THIRD READING

Bill No: SB 747
Author: Wiener (D) and Wahab (D), et al.
Amended: 1/22/26
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-0, 4/23/25
AYES: Smallwood-Cuevas, Cortese, Durazo, Laird
NO VOTE RECORDED: Strickland

SENATE JUDICIARY COMMITTEE: 9-2, 4/29/25
AYES: Umberg, Allen, Ashby, Caballero, Durazo, Laird, Stern, Wahab, Wiener
NOES: Niello, Valladares
NO VOTE RECORDED: Arreguín, Weber Pierson

SENATE APPROPRIATIONS COMMITTEE: 5-1, 5/23/25
AYES: Caballero, Cabaldon, Grayson, Richardson, Wahab
NOES: Seyarto
NO VOTE RECORDED: Dahle

SENATE JUDICIARY COMMITTEE: 11-2, 1/13/26
AYES: Umberg, Allen, Ashby, Caballero, Durazo, Laird, Reyes, Stern, Wahab, Weber Pierson, Wiener
NOES: Niello, Valladares

SENATE APPROPRIATIONS COMMITTEE: 5-2, 1/22/26
AYES: Caballero, Cabaldon, Grayson, Richardson, Wahab
NOES: Seyarto, Dahle

SUBJECT: Civil rights: deprivation of federal constitutional rights, privileges, and immunities

SOURCE: Inland Coalition for Immigrant Justice
Prosecutors Alliance Action
Protect Democracy United

DIGEST: This bill provides a cause of action for violations of one's constitutional rights by government officials, and fees and costs, to be applied retroactively.

ANALYSIS:

Existing federal law:

1) Provides that the U.S. Constitution (Const.), and the Laws of the United States, are the supreme law of the land. (U.S. Const., art. VI, cl. 2.)

2) Provides that 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 as provided. (42 United States Code (U.S.C.) § 1983 ("Section 1983").)

3) Establishes the Federal Tort Claims Act (FTCA), which authorizes injured parties to bring certain tort suits against the United States, in the same manner and to the same extent as a private individual under like circumstances, except as provided. (28 U.S.C. §§ 1346, 2671 et seq.)

4) Provides that the above remedies are exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred. (28 U.S.C. § 2679 ("Westfall Act").)

Existing state law establishes the Tom Bane Civil Rights Act (Tom Bane Act), which provides that if a person, whether or not acting under color of law, interferes by threat, intimidation, or coercion, or attempts to so interfere, with the exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, or any district attorney or city attorney, or the person whose exercise or enjoyment of rights was interfered with, or attempted to be interfered with, may institute a civil action for damages. (Civil (Civ.) Code § 52.1.)

This bill:

1) Establishes the No Kings Act.

2) Provides that every person who, under color of any law, statute, ordinance, regulation, custom, or usage, subjects, or causes to be subjected, any citizen of this state or any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the United States Constitution, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except as provided.

3) Provides that "color of any law, statute, ordinance, regulation, custom, or usage" includes color of any statute, ordinance, regulation, custom, or usage, of the United States and of any state or territory or the District of Columbia.

4) Establishes proper venue for actions brought hereto. This bill permits the court in such actions to award a prevailing plaintiff reasonable attorney's fees and costs and expert fees, except as provided. A civil action brought hereto shall not be commenced later than two years after the date that the cause of action accrues.

5) Preserves the defense of absolute or qualified immunity to the same extent as a person sued under Section 1983 under like circumstances. Nothing herein shall be construed to waive or abrogate any defense of sovereign immunity otherwise available to a party. However, these provisions do not alter, amend, create, or support a qualified or absolute immunity defense or a sovereign immunity defense in any other action or proceeding brought under any other provision of California law.

6) Includes a severability clause.

7) Applies retroactively to March 1, 2025, provided that, for any claim for a violation of the United States Constitution that occurred between March 1, 2025, and the effective date of this law, the only monetary damages that shall be available pursuant hereto for that constitutional violation are nominal and compensatory damages.

Background

Under federal law, specifically Section 1983, a cause of action is provided to those whose rights are violated under color of law. However, this does not afford a cause of action where the defendants are federal officials. Historically, plaintiffs have relied on a court-made doctrine to bring such actions, however courts have recently

been increasingly resistant to inferring a right of action against federal defendants. Additionally, existing statutory paths to seeking remedies, at both the state and federal levels, are onerous and provided only limited relief.

This bill establishes the "No Kings Act." It creates a state level analog of Section 1983, allowing for a cause of action against governmental officials when their constitutional rights have been violated. It does not bestow individuals with any additional substantive rights, rather a more explicit cause of action to vindicate their constitutional rights. This bill imports the same immunities currently afforded governmental defendants under existing law. Given the recent incidents in which federal officials are alleged to have unlawfully intruded on Californians' rights, this bill applies retroactively to March 1, 2025, as provided.

This bill is sponsored by Protect Democracy United, the Prosecutors Alliance Action, and the Inland Coalition for Immigrant Justice. It is supported by legal services organizations and Sonoma County. It is opposed by a coalition of law enforcement groups, including the California State Sheriffs' Association. For a more thorough discussion of this bill and overview of the relevant existing law, please see the Senate Judiciary Committee analysis of this bill, which is incorporated herein by reference.

Comments

According to the author:

> Senate Bill 747 provides a clear statutory pathway to sue any official — federal, state, or local — who violates a Californian's federal rights under the United States Constitution. This bill affirms that the United States Constitution is the supreme law of the United States.
>
> Currently, federal law allows citizens to sue state and local officials for constitutional violations, however, there is no statutory equivalent for federal officials. Historically, courts relied on an implied right to sue, but the Supreme Court has severely curtailed this doctrine. This has created a dangerous double standard where federal agents effectively cannot be sued for damages, even for willful violations of constitutional rights. SB 747 creates a legal claim in state court for anyone injured by a government official's unconstitutional acts. This replaces blind trust in executive good faith with an enforceable remedy before an independent tribunal.

> Californians need a way to stand up to this Administration's unprecedented disregard for their Constitutional rights. Our rights mean little if government agents can violate Constitutional rights of Californians without consequences. By providing for a universal remedy for violations of the United States Constitution, SB 747 ensures that Californians can exercise their constitutional rights knowing they are enforceable rights, not just hollow promises.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

According to the Senate Appropriations Committee:

- Unknown, potentially significant costs to the state funded trial court system (Trial Court Trust Fund, General Fund) to adjudicate civil actions. Creating a new cause of action that allows for the recovery of attorney's fees may lead to additional case filings that otherwise would not have been commenced. Creating new causes of action could lead to lengthier and more complex court proceedings with attendant workload and resource costs to the court. The fiscal impact of this bill to the courts will depend on many unknowns, including the number of cases filed and the factors unique to each case. An eight-hour court day costs approximately $10,500 in staff in workload. This is a conservative estimate, based on the hourly rate of court personnel including at minimum the judge, clerk, bailiff, court reporter, jury administrator, administrative staff, and jury per-diems. If court days exceed 10, costs to the trial courts could reach hundreds of thousands of dollars. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations. The proposed fiscal year 2026–27 Governor's provides for $70 million ongoing General Fund to help the trial courts address increases in operational costs (e.g.: salaries and benefits, supplies, equipment, and other services necessary for the courts to operate) and mitigate potential reductions to core program and services.

- Unknown, potentially significant costs to state and local government officials (General Fund, special funds, local funds) for increased exposure to civil liability. Agencies may also incur higher liability insurance costs due to increased litigation exposure.

SUPPORT: (Verified 1/23/26)

Inland Coalition for Immigrant Justice (co-source)

Prosecutors Alliance Action (co-source)
Protect Democracy United (co-source)
ACLU California Action
California Alliance for Retired Americans
California Federation of Labor Unions, AFL-CIO
California Onecare
California Rural Legal Assistance Foundation, Inc.
County of Sonoma
Courage California
Health Care for All - California
Healthy California Now
NASW California
National Union of Healthcare Workers
Public Counsel
Supervisor Vicente Sarmiento, Orange County Board of Supervisors
Unite Here International Union, AFL-CIO

OPPOSITION: (Verified 1/23/26)

America's Physician Groups
Arcadia Police Officers' Association
Association for Los Angeles Deputy Sheriffs
Antelope Valley Economic Development & Growth Enterprise
Brea Police Association
Burbank Police Officers' Association
Cal Asian Chamber of Commerce
California African American Chamber of Commerce
California Asian Pacific Chamber of Commerce
California Association of Health Plans
California Association of Highway Patrolmen
California Association of School Police Chiefs
California Chamber of Commerce
California Coalition of School Safety Professionals
California District Attorneys Association
California Hispanic Chambers of Commerce
California Hospital Association
California Medical Association
California Narcotic Officers' Association
California Peace Officers Association
California Police Chiefs Association
California Reserve Peace Officers Association

California State Sheriffs' Association
Chino Valley Chamber of Commerce
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Garden Grove Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Hollywood Chamber of Commerce
Inland Empire Economic Partnership
Kaiser Permanente
Los Angeles Area Chamber of Commerce
Los Angeles Police Protective League
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
North Bay Leadership Council
Oakland Chamber of Commerce
Orange County Business Council
Orange County Sheriff's Department
Palos Verdes Police Officers Association
Peace Officers Research Association of California
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside County Sheriff's Office
Riverside Police Officers Association
Riverside Sheriffs' Association
Sacramento Hispanic Chamber of Commerce
Sacramento Metro Chamber of Commerce
San Francisco Chamber of Commerce
The Greater Coachella Valley Chamber of Commerce
West Ventura County Business Alliance
Westside Council of Chambers of Commerce

ARGUMENTS IN SUPPORT: The sponsors of this bill, Protect Democracy United, the Inland Coalition for Immigrant Justice, and Prosecutors Alliance Action argue:

> SB 747 is necessary to correct an imbalance in how federal, state, and local officials are held accountable to the Constitution. While a federal law, 42

U.S.C. § 1983, allows people to sue state and local officials for constitutional violations, no equivalent federal law exists for suing federal officials. Instead, people injured by federal officials have historically relied on a "*Bivens* action"—a limited, implied right to sue directly under the Constitution.

Making matters worse, the Supreme Court has sharply curtailed the availability of Bivens actions in recent years. And as *Bivens* has been narrowed, a dangerous gap has emerged: federal officers often have *de facto* immunity and cannot be sued for damages, even for willful violations of constitutional rights. This disparity—where federal officers operate without the same accountability as state and local actors—violates the longstanding and foundational legal principle that "every right, when withheld, must have a remedy, and every injury its proper redress." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 147 (1803).

Senate Bill 747 closes that accountability gap. By providing for a clear statutory pathway to sue any official—federal, state, or local—who violates the Constitution, it affirms that the United States Constitution (and not the whims of any governmental official) is the supreme law of the United States. Most importantly, by providing for a universal remedy for violations of the United States Constitution, SB 747 will ensure that Californians can exercise their constitutional rights knowing they are enforceable rights, not just hollow promises.

ARGUMENTS IN OPPOSITION: The Peace Officers' Research Association of California argues:

Existing California law provides robust remedies for constitutional violations. SB 747 is not needed to enable suits against federal officers over immigration enforcement, as that ability exists in the Bane Act. "The elements of a Bane Act claim are essentially identical to the elements of a § 1983 claim." Hughes v. Rodriguez, 31 F.4th 1211, 1224 (9th Cir. 2022) This bill is not only superfluous, but by placing qualified immunity in statute rather than leaving it as a federal judicial doctrine, the bill makes that defense vulnerable to future legislative amendment or repeal. Subjecting qualified immunity to future jeopardy also undermines the compromises reached during the amendments to Senate Bill 2.

Moreover, Supremacy Clause defenses exist regardless of whether constitutional claims are brought under the existing Bane Act or the bill's new cause of action. Bane Act claims can be brought against federal officers

in their individual capacity. Cal. Civ. Code § 52.1(b)("whether or not acting under color of law.") Before enacting new legislation with the potential to disturb careful balances struck between liability and accountability, proponents should first challenge the federal overreaches through the Bane Act.

SB 747 adds duplicative causes of action and uncertainty while offering no additional relief where the Supremacy Clause already bars suits against federal officers acting within their authority.

Prepared by: Christian Kurpiewski / JUD / (916) 651-4113
1/26/26 13:22:04

****** END ******