

SENATE THIRD READING
SB 747 (Wiener and Wahab)
As Amended August 13, 2026
2/3 vote. Urgency

SUMMARY

Authorizes a cause of action to be brought against a government official that violates a person's constitutional rights.

Major Provisions

- 1) Provides that every natural 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, is to 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 the officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.
- 2) Provides that a defendant in an action brought pursuant to 1) may assert, and must receive, a defense of absolute or qualified immunity to the same extent as a person sued under Section 1983 of Title 42 of the United States Code under like circumstances.
- 3) Provides that nothing in 2) is to be construed to broaden or narrow a defense as it would be applied in a case filed under Section 1983 of Title 42 of the United States Code.
- 4) Provides that nothing in this bill is to be construed to waive or abrogate any defense of sovereign immunity otherwise available to a party, as specified.
- 5) Provides that in any action or proceeding brought pursuant to 1) the court, in its discretion, may award a prevailing plaintiff reasonable attorney's fees and costs, except that in any action brought against a judicial officer for an act or omission taken in the officer's judicial capacity, the officer is not to be held liable for any fees or costs, except if the officer's action was clearly in excess of the officer's jurisdiction.
- 6) Requires any action brought pursuant to 1) to be brought within two years of the cause of action accruing.
- 7) Provides that an action brought pursuant to 1) may be brought for conduct occurring after March 1, 2025 unless a court of competent jurisdiction entered a final judgment on the merits in the manner, as specified.
- 8) Defines the following:
 - a) "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; and

- b) "Natural person" does not include a federal, state, or local official who is sued in their official capacity for monetary relief.
- 9) Applies the provision of the bill to any claim that occurred starting on March 1, 2025.
- 10) Provides that the provisions of the bill may be cited as the "No Kings Act."
- 11) Adopts findings and declarations.
- 12) Adopts a severability clause.
- 13) Adopts an urgency clause.

COMMENTS

Both state and federal law provide a means of relief for persons who have their constitutional rights violated by government officials acting under the color of law. However, the California statute, the Tom Bane Civil Rights Act, does not apply to federal government officials. While caselaw interpreting the federal statute, Section 1983 of Title 28 of the United States Code, does permit actions against federal officials, recent Supreme Court precedent is limiting the applicability of that law to federal law enforcement. This bill would adopt a state-level analogue to Section 1983 and apply it to all government officials at the local, state, and federal level.

Existing laws that aim to protect against the violation of one's civil rights, however, make it difficult to hold federal officials accountable for civil rights violations. Existing federal law, dating back to 1871, permits a private party to file a lawsuit against a state actor who violates their rights under the Constitution and laws of the United States. Now found in Section 1983 of Title 28 of the United States Code, the law is frequently utilized to hold law enforcement and other government actors to account when they violate a person's civil rights. Although originally only applicable to state and local government actors, in 1971, the United States Supreme Court held that federal officials can be held accountable under Section 1983 actions. (*Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics* (1971) 403 U.S. 388.) In *Bivens*, the Supreme Court noted that a violation of a person's Fourth Amendment rights could give rise to a civil action for monetary damages even though the Amendment itself does not explicitly authorize such an award. The court rooted this holding in its review of longstanding case law and noted that, "the very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." (*Id.* at 396 citing *Marbury v. Madison* (1803) 1 Cranch 137, 163.)

However, in 2022, the United States Supreme Court held that "recognizing a cause of action under *Bivens* is a disfavored judicial activity." (*Egbert v. Boule* (2022) 596 U.S. 482, 490-492.) The court in *Egbert* further noted that courts must look to Congressional intent when determining if a right to sue exists under various federal law. This poses additional challenges to persons facing civil rights violations as many federal statutes waiving federal immunities impose strict standing requirements. For example, when seeking to prevent immigration official's indiscriminate patrols that detained persons of (apparently) Latin American descent, the Supreme Court refused to enjoin the federal governments conduct. (*Perdomo v. Noem* (2025) 146 S.Ct. 1.) In part of the concurrence to the *Perdomo* decision, Justice Kavanaugh argued that, based on the court's prior decision in *Los Angeles v. Lyons* (1983) 461 U.S. 95, the "plaintiffs likely lack Article III standing to seek a broad injunction restricting immigration officers from making these

investigative stops. In *Lyons*, the Court held that standing to obtain future injunctive relief does not exist merely because plaintiffs experienced past harm and fear its recurrence. What matters is the 'reality of the threat of repeated injury,' not 'subjective apprehensions.' So too here." (*Perdomo, supra*, at 2.)

Although California's Bane Act provides remedies for civil rights violations, it does not apply to federal officials. For California residents who have their civil rights violated, in addition to filing a Section 1983 claim, an action can be maintained under the Tom Bane Civil Rights Act. Although the Bane Act is silent as to the scope of its applicability, the law is violated anytime, "a person, whether or not acting under color of law, interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals 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..." (Civil Code Section 52.1.) However, federal courts have essentially limited the applicability of the law to local or state law enforcement only.

Although the courts have provided some leeway for Bane Act claims when a plaintiff can show that a defendant violated an underlying federal statute, the Ninth Circuit has refused to recognize the validity of, "Bane Act claims deriving from constitutional violations." (*Lewis v. Mossbrooks* (2019) 788 Fed. Appx. 455, 460.) Several federal trial courts in California have gone further arguing that Bane Act claims against individual defendants are precluded because the Bane Act, "is a 'state law cause of action sounding in tort even predicated on violations of the constitution and other statutes,'" (*Quinonez v. United States* (2023) 2023 U.S. Dist. LEXIS 153482), and that "a Bane Act claim against a federal employee fails as a matter of law." (*Haynes v. Hanson* (2014) U.S. Dist. LEXIS 58773.)

This bill would adopt a California analogue to the federal Section 1983. Recognizing that the right to seek redress against harms caused by federal officials is based solely on an implied, and shrinking, reading of federal law, this bill would codify a state analogue to the federal Section 1983 and provide Californians a cause of action to remedy constitutional violations committed by federal officials. The bill states that "every natural 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" may be liable for damages to the aggrieved person. This phrasing largely mirrors federal law, except it omits reference to "state" law thereby seeking to apply to persons acting under laws adopted at all levels of government.

Recognizing the suspect legality of some of the federal government's actions in this state during the summer of 2025, the bill applies retroactively to March 2025, and explicitly authorizes courts to award prevailing plaintiffs in such actions with reasonable attorney's fees and costs and expert fees. The bill also makes clear that it does not curtail the ability of defendants to assert sovereign immunity or absolute or qualified immunity as can be asserted under Section 1983 claims. Finally, recognizing that federal law enforcement may be redeployed to California in large numbers in the run-up to the 2026 midterms, this bill seeks to adopt an urgency clause and makes necessary and related findings.

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.

Arguments in Support

This bill is jointly sponsored by Protect Democracy United, Prosecutor's Alliance Action, the Inland Coalition for Immigration Justice, and the California PTA. The bill enjoys support from several other civil liberties organizations. In support of the bill, the co-sponsors write:

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. Section 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

This bill is opposed by a litany of local law enforcement agencies, their labor representatives, and the local governments that maintain police forces. Representative of the opposition, the California League of Cities writes:

Although SB 747 is intended to expand remedies for alleged constitutional violations by federal agents, the bill raises serious legal and practical concerns for local employees and governments.

First, the bill largely duplicates existing civil-rights remedies, including claims already available under 42 U.S.C. Section 1983. Rather than addressing a true remedial gap, SB 747 would create an overlapping state-law pathway for claims that can already be asserted against local public employees and entities. That duplication would encourage parallel pleadings and forum shopping, and generate threshold litigation over removal, preemption, immunity, and claim-splitting, thereby increasing local defense costs.

Second, the bill also appears to create uncertainty regarding applicable defenses. Proposed section 53.8(d) directs courts to evaluate immunities to the same extent as in a 42 U.S.C. Section 1983 action. That approach risks conflict or, at minimum, confusion when the bill is read alongside other California statutes reflecting different policy choices about immunity and defenses. The result would be additional motion practice, inconsistent rulings, and delayed resolution for all parties.

Third, SB 747 would necessarily place additional burdens on California's already strained judicial system. By creating a parallel state law cause of action overlapping with existing federal remedies, the bill would generate duplicative filings and procedural disputes in both state and federal court, without producing corresponding benefits for claimants.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Cost pressures (Trial Court Trust Fund, General Fund) to the trial courts to adjudicate a new category of civil action. Because the bill creates a new cause of action and authorizes recovery of attorney's fees, costs, and expert fees, it may prompt filings that would not otherwise be brought and produce lengthier, more complex proceedings. It generally costs approximately \$1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The state budget provides annual General Fund backfills to the Trial Court Trust Fund to offset revenue reductions, totaling approximately \$117.3 million in 2025-26.
- 2) Costs of an unknown but potentially significant amount for litigation defense exposure (General Fund, special funds, local funds) to state and local officials newly subject to suit under this cause of action, plus possible increases in liability insurance costs. Because 42 U.S.C. Section 1983 and the Bane Act already permit constitutional-tort actions against state and local actors, this exposure may be limited in practice, but the additional state pathway could increase filings, motion practice, and defense costs.

- 3) Costs of an unknown but potentially significant amount for litigation defense costs (General Fund) to the Department of Justice. To the extent the statute is challenged in court, any costs to defend its constitutionality would be borne by the Department of Justice.

VOTES

SENATE FLOOR: 30-10-0

YES: Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Durazo, Gonzalez, Grayson, Hurtado, Laird, Limón, McGuire, McNerney, Menjivar, Padilla, Pérez, Reyes, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener

NO: Alvarado-Gil, Choi, Dahle, Grove, Jones, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares

ASM JUDICIARY: 9-3-0

YES: Kalra, Bauer-Kahan, Bryan, Connolly, Harabedian, Pacheco, Papan, Stefani, Zbur

NO: Macedo, Dixon, Sanchez

ASM APPROPRIATIONS: 11-4-0

YES: Wicks, Arambula, Calderon, Caloza, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache

NO: Hoover, Dixon, Ta, Tangipa

UPDATED

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