

February 2, 2022

Senate Committee on the Judiciary
Vermont General Assembly
115 State Street
Montpelier, VT 05633-5301

Re: *S. 254, an act relating to creating a private right of action against law enforcement officers for violating rights established under Vermont law*

Dear Senate Committee on the Judiciary:

I just had a chance to complete my review of the recording from the January 26, 2022, hearing on S.254. I testified at the hearing but left before the hearing concluded because I was also scheduled to testify in the Senate Committee on Health & Welfare.

Upon reviewing the recording, I discovered that Attorney Jay Diaz, ACLU General Counsel, made the following *ad hominem* remarks about me:

“I want to respond to some and some of that was referenced this morning, with with Wilda’s testimony and you know, I’m sorry to say like with all due respect to so Wilda I don’t know if it’s because she hasn’t practiced law in Vermont, or or just hasn’t associated with the bar very much, but just a lot of what she says about about legal practice in Vermont and about the how rights are adjudicated here and what our courts are like, just is not accurate. Based on my my 10 years of experience practicing law in this state.”

He went on to state:

I also want to talk about this idea that intentional torts are not covered by insurance. That’s just a myth. That is not accurate. There are plenty of intentional torts are covered in insurance policies. It can depend on the insurance policy but they can be covered and and are covered. It’s also

important to recognize that when police officers are convicted of crimes which as we all I think know is exceedingly rare circumstance. I can't think of any time in Vermont where a police officer was convicted for a crime within the scope of their employment in my 10 years being here. Even when they are charged and convicted, which as I said, are rare occurrences, they're typically charged with lesser crimes, crimes and crimes that don't involve intent. Like you know, if it was a murder, it would be more likely to be charged with manslaughter or be pled down to that. If it was, you know, beating somebody up, it will be simple assault. These are not intentional. These are not crimes with specific intent. So, they would not equate to intentional torts. So, this might just be a misunderstanding, but I think it's important to recognize that the what what was being talked about there was just simply not accurate and somewhat misleading.

Before I address Mr. Diaz's attack on my integrity and aspersions on my legal skills, I want to be clear about my testimony, by which I stand.

My testimony was that if a law enforcement officer is convicted of a crime and is subsequently sued in civil court for the same conduct, there would not be coverage to pay a civil court judgment under a law enforcement insurance policy currently written in the State of Vermont because such policies exclude coverage for criminal conduct.

For example, a typical policy excludes "criminal, dishonest, fraudulent or malicious acts." You can view for yourself a representative, sample law enforcement liability insurance policy at this [link](#). On page two, under Exclusions, you will find the following policy language:

Exclusions

This insurance does not apply to any "claim" or "suit":

c. Criminal, Dishonest, Fraudulent or Malicious Acts

For "bodily injury", "property damage", or "personal injury" arising out of any actual or alleged criminal, fraudulent, malicious, dishonest, act, error or omission by an insured, or willful violation of any federal, state, or local statute, rule or regulation committed by or with the consent or knowledge of an insured. However, we shall provide an insured with reasonable and necessary "defense expenses" arising out of such "suit" until it has been admitted or determined in a legal proceeding that such act, error or omission or knowing violation was committed by that insured or with the knowledge or consent of such insured.

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The issue is not whether the law enforcement officer's conduct constitutes an intentional tort. The point is that criminal conduct is typically excluded from coverage in law enforcement insurance policies currently written in the State of Vermont. Thus, if a law enforcement officer is convicted of a crime and a civil lawsuit is successfully pursued, there would be no insurance coverage available to pay a judgment or settlement. Under S.254, as currently written, the law enforcement agency would be compelled to pay the judgment out of the public treasury.

In the earliest years of my 38-year legal career, I specialized in suing insurance companies for bad faith failure to pay claims. In my practice, I reviewed countless insurance policies. Excluding insurance coverage for criminal acts is not unique and one need not be a Vermont attorney to be privy to this knowledge.

And while it is the case that I do not practice law in Vermont, I have practiced law in state and federal courts in New York, Massachusetts, and California where I was a name partner in a San Francisco, plaintiff's civil trial law firm handling, among other cases, civil rights litigation. I was also a director of the San Francisco Trial Lawyer's Association, recognized as a top attorney in the State of California, and was a full-time faculty member at the University of California Berkeley School of Law from which I graduated. Since returning to Vermont seven years ago, I've also served as a consultant for Vermont attorneys in civil rights litigation.

While I don't support S.254, I would never stoop to misleading this Committee or impugning the integrity of an adversary simply to get my way.

Respectfully submitted,



Wilda L. White