

# H.849

## Civil action for damages for deprivation of constitutional rights

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February 20, 2026

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# The Plan

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1. What is a cause of action?
2. What's in existing law?
3. What does H.849 propose doing?
4. What about other states?
5. Can states do this?

# What is a cause of action?

Permission to go to court.

## Basic parts of a cause of action:

- Who can sue?
- Who can be sued for doing what?
- To get what?

## Damages

- compensate someone for harm that happened in the past
- deter future unlawful conduct

## Where do causes of action come from?

- common law
- legislatures
- courts (\*but rarely)

# What's in existing law?

No Vermont state or federal statute creating a cause of action for damages against federal officials for violating the U.S. Constitution.

- Federal statute – 42 U.S.C. § 1983
  - Cause of action for damages against state and local officials for violating the U.S. Constitution
- Judge-made (U.S. Supreme Court) cause of action for damages against certain federal officials who violate certain constitutional rights
  - Only in a limited number of very specific factual scenarios
  - Court can overrule prior cases

# What does H.849 propose doing?

To create a cause of  
action for damages  
against a state,  
local, or federal  
official who  
violates the U.S.  
Constitution

- Who can sue?
  - any citizen of the State of Vermont or other person within the jurisdiction of the State of Vermont
- Who can be sued for doing what?
  - every person who,
    - under color of any statute, ordinance, regulation, custom, or usage
      - “under color” means when acting in an official capacity
    - subjects or causes to be subjected any person in Vermont to the deprivation of any rights, privileges, or immunities secured by the U.S. Constitution
- To get what?
  - damages or equitable relief

## What about other states?

Some states have existing laws that allow suits against private persons and/or state and federal officials for certain constitutional violations.

Other states are considering bills like H.849.

- Existing laws in several states create causes of action for interfering or attempting to interfere with state or federal constitutional or statutory rights by use of threats, intimidation, or coercion
  - California, Massachusetts, Maine, New Jersey, others
- Other states are considering bills similar to H.849
  - California, New York, others
- Illinois also passed a version of this kind of law last year

# Can states do this?

Unsettled question of law with respect to federal officials.

Two likely issues:

- intergovernmental immunity
  - State laws can't directly regulate or discriminate against the federal government
- federal preemption
  - Has Congress, in a federal statute explicitly said or suggested that federal law does not allow a state to create a cause of action like H.849?
    - Federal Tort Claims Act
    - Westfall Act

Questions?

