

H.849

Civil action for damages for deprivation of constitutional rights

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Hillary Chutter-Ames

Office of Legislative Counsel



The Plan

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
- Injunctive Relief
 - an order to do or stop doing something

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 a Vermont resident or any person in Vermont to the deprivation of any rights, privileges, or immunities secured by the U.S. Constitution
- To get what?
 - damages or injunctive 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
 - Does the state law interfere with the policy or objectives of Congress?

Questions?

