



March 31, 2026

Senator Nader Hashim  
Chair, Senate Judiciary Committee  
Vermont General Assembly

BY EMAIL

Dear Chairman Hashim and Members of the Senate Judiciary Committee:

I am executive director of Democratism Action, a non-partisan organization working to equip state and local governments with tools to resist federal lawlessness and restore constitutional governance. Two of our Vermont volunteers, Molly and Tom Roland, testified at the March 26 hearing on H.849. Thank you for the opportunity to testify.

I write to propose an amendment to H.849 and to explain why it is needed.

The United States is in the midst of an authoritarian takeover. State legislators are looking for ways to respond, in order to protect their residents and protect American democracy, which it is every state official's sworn duty, under the Constitution, to do.

This admirable and appropriate urge to respond has produced a resurgence of interest in an old and previously obscure variety of civil rights legislation, known as a converse § 1983, of which H.849 is an example.

Unfortunately, a traditional converse § 1983, written like H.849, can do nothing to address the present crisis that has animated all this new interest.

Whether or not it might succeed in creating a usable cause of action for a narrow category of what one might call “normal times Constitutional violations” by federal officers, it will do nothing whatsoever to impede the consolidation of power by the authoritarian executive.

Democratism Action proposes an amendment (attached) that, without deleting anything from H.849, would strengthen the right of action it creates to turn it into a powerful tool for defending Vermont and constitutional democracy.

The problem with the current H.849 is that it is written to fit into the tiny box where state action appears potentially acceptable to our compromised federal judiciary. For fear that a federal court will otherwise strike it, H.849 ties its own hands in two crucial respects:

1. It expressly imports all the defenses that federal courts have invented to limit federal § 1983 liability, qualified immunity among them.
2. It implicitly limits the wrongful conduct that the bill reaches to the narrow class of constitutional violations that federal courts have accepted in federal § 1983 actions.

A few examples of the kinds of attacks on the Constitution that Vermont should make actionable but that H.849, as written, does not:

- Federal agencies illegally cancel research grants to a Vermont university to coerce changes to curriculum or admissions policies. The school or the individual grantees, or the people who lost their jobs as a result, would like to sue the federal officials who made and carried out those decisions.
- A thousand immigration officers arrive in a Vermont community based on a fabricated claim of a national security emergency. The real purpose is to terrorize and subdue local residents. Innocent people are afraid to leave home. They lose wages, and their kids miss school. They would like to sue the people who lied to justify the operation, the people who planned it, and the agents who carried it out, whether or not anyone was physically brutalized.
- The Department of Justice opens bogus investigations of Vermont public officials who offended the administration and of businesses that have worked with the administration's opponents. The targeted Vermont officials and business owners would like to sue the government lawyers and agents who know what they're doing is illegal political retaliation.

These are all examples of unconstitutional misuse of federal power, causing harm in Vermont, but there is no realistic action for them under H.849, as written, because of the tiny box the bill puts itself in.

And there is no other avenue to accountability, either.

But if H.849 could reach these harms, then all those potentially liable federal officials would think twice when instructed to violate the law to aid the administration in consolidating power.

In other words, to defend Vermont and the republic, you must get out of that tiny box.

The amendment we propose gets the bill out of the box, by adding a new subsection (e) to H.849. The existing cause of action stays intact for the ordinary constitutional violations it was designed for. What the amendment adds is a second layer, only for the duration of the current crisis.

The new subsection (e) begins with findings that identify what is happening: a sustained assault on the constitutional order across multiple fronts simultaneously. Those findings do important legal work, in two ways:

First, they define the category of conduct that the subsection reaches. Any act that violates the Constitution or federal law and furthers that unlawful consolidation of power as defined by the findings is a per se constitutional violation, actionable under H.849's existing right of action.

Second, the findings are the legal basis for the way out of the tiny box: As they set out, federal supremacy principles do not protect illegal federal directives that are part of a sustained attack on the constitutional order; and when the other federal branches have proven unable or unwilling to defend the Constitution, state officials are obligated to use all their power to do so.

On that basis, subsection (e) provides that for claims in its category:

- the qualified immunity defense and the instruction to follow federal court doctrine do not apply;
- defendants cannot escape liability by claiming they were following orders, if a reasonable person in their position would have known the directive was illegal;
- cases stay in Vermont courts and cannot be removed;
- rulings by courts that decline to give effect to the statute are nonbinding within Vermont; and
- if the federal government interferes with claims brought under the law, the statute of limitations is tolled for the period of the interference.

Because the basis for these provisions is the extraordinary circumstances described in the findings, the new subsection provides that they all sunset when the Vermont legislature determines that the crisis has ended. After that, the law becomes an ordinary converse § 1983, as appropriate for normal times.

Some will ask whether this amendment is a form of nullification, whether Vermont would be claiming the right to override federal law or to decide for itself which federal laws are constitutional and which not, and to follow only the former.

It is not nullification. The claim made in the proposed amendment is simply that when the entire constitutional system is under sustained attack by the federal executive, through repeated abuses that no honest and informed person can claim are legal, and the other federal branches are not fulfilling their constitutional duty to restrain the executive, then state officials, who

themselves are oath-bound to support the Constitution, may, and must, act to defend their state and the republic.

Others may ask whether this amendment will lead to a confrontation between the state and the authoritarian federal power. The answer to this question is Yes, it will. It stands up to the administration. It refuses to allow federal courts to play interference. The authoritarians will be angry. But accommodation does not stop an authoritarian takeover.

I am grateful for the committee's time and welcome any questions.

Respectfully,

/s/

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**ATTACHMENT: PROPOSED AMENDMENT**  
in markup format

H.849

Introduced by Representative LaLonde of South Burlington

Subject: Court procedure; civil action for damages; constitutional rights

Statement of purpose of bill as introduced: This bill proposes to authorize any person to bring a civil action for damages against a federal, State, or local government official for interference with or violations of State or federal constitutional rights.

An act relating to a civil action for damages for deprivation of federal constitutional rights by any government official

It is hereby enacted by the General Assembly of the State of Vermont:

**Sec. 1.** 12 V.S.A. chapter 205 is added to read:

**CHAPTER 205. DEPRIVATION OF CONSTITUTIONAL RIGHTS**

**§ 5797. CIVIL ACTION**

(a) Every person who, under color of any statute, ordinance, regulation, custom, or usage, subjects or causes to be subjected any citizen of the State of Vermont or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States shall 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.

(b) For purposes of this section, "color of any statute, ordinance, regulation, custom, or usage" includes color of any statute, ordinance, regulation, custom, or usage of the United States and of any U.S. state or territory or the District of Columbia.

(c) Except as provided in subsection (e)(iii)(A) of this section, Any defense available to a defendant under 42 U.S.C. Section 1983 is likewise and to the same extent available to any defendant in an action brought under subsection (a) of this section. This subsection does not alter, amend, create, or support a qualified or absolute immunity defense in any other action or proceeding brought under any other provision of Vermont law.

(d) Except as provided in subsection (e)(iii)(B) of this section, it is the intent of the General Assembly that, in construing this section, the courts of this State will be guided by the construction of 42 U.S.C. Section 1983, as amended, as interpreted by the courts of the United States.

(e)

**(i) Findings.** The General Assembly finds that:

(A) The executive branch of the federal government has undertaken a sustained, systematic assault on the constitutional order of the United States. This assault operates across multiple dimensions simultaneously: the executive has claimed authority to make, suspend, and disregard law rather than faithfully execute it; used governmental power to punish political opponents and reward compliance and submission; dismantled the institutional safeguards, including oversight bodies, independent agencies, and prosecutorial structures, through which democratic government protects itself and corrects abuses of power; interfered with election administration, certification processes, and the mechanisms through which democratic governance is transferred and maintained; conducted enforcement operations that are illegal in design and purpose; stripped rights from and discriminated against disfavored populations; sought to control public knowledge, historical memory, and official truth; and invoked military, security, and emergency powers for unlawful and anti-democratic ends, including to detain people, conduct operations within the United States, and override ordinary legal constraints.

(B) These actions, taken together, constitute not ordinary federal overreach but an authoritarian consolidation of power that threatens the permanent loss of constitutional self-government in the United States. The risk is not to any single right or policy but to the foundations on which all rights and democratic governance depend.

(C) The federal judiciary and Congress have proven unwilling or unable to arrest this consolidation. Ordinary legal remedies premised on deference to federal institutions are inadequate when those institutions are themselves instruments of the assault.

(D) The Constitution of the United States and the laws of the United States made in pursuance thereof are the supreme law of the land under Article VI, Clause 2. When the federal executive is engaged in a sustained assault on the constitutional order, its

illegal directives and actions in furtherance of that assault are not laws made in pursuance of the Constitution and do not acquire constitutional supremacy. State officials are not required to defer to such actions.

(E) Every member of the General Assembly has sworn an oath under Article VI of the Constitution to support the Constitution of the United States. When the constitutional order itself is under assault by the federal executive, that oath requires state officials to act in its defense. Passivity or deference in the face of an authoritarian consolidation of power is not a constitutionally neutral position; it is a failure of the obligation the oath imposes.

(F) The measures adopted in this subsection are undertaken in partial fulfillment of the obligation described in (i)(E) and in the exercise of Vermont's duty to defend and restore constitutional governance in the United States and to protect the people of Vermont from the harms of authoritarian rule and its consequences.

**(ii) Per Se Deprivation of Constitutional Rights.** Any act that violates the Constitution or laws of the United States and furthers the unlawful consolidation of executive power described in subsection (i) of this section is a deprivation of rights, privileges, or immunities secured by the Constitution of the United States within the meaning of subsection (a) of this section.

**(iii) Framework Applicable to Claims Under Subsection (ii).**

(A) Subsections (c) and (d) of this section do not apply to claims arising under subsection (ii). Nothing in federal law that would not otherwise apply under Vermont law shall apply to such claims.

(B) The courts of this State shall have original jurisdiction over any action arising under subsection (ii). No such action may be transferred to, removed to, or otherwise heard by any court that declines to give effect to subsection (e).

(C) Any ruling, judgment, or order issued by any court that declines to give effect to subsection (e) shall be nonbinding and without legal effect within the State of Vermont.

(D) It shall be no defense to an action under subsection (ii) that the defendant acted under orders of a superior if a reasonable person in the same position would have known that the act or directive was illegal.

(E) Any statute of limitations applicable to a claim arising under subsection (ii) shall be tolled for the duration of any period in which enforcement was materially obstructed by federal interference or other action in conflict with this section, as determined by the courts of this State on findings of fact and law.

**(iv) Sunset.**

Upon a determination by the General Assembly, by resolution or statute, that the constitutional crisis described in subsection (i) has ended, this subsection shall cease to have effect. No other event, including a judicial ruling or executive declaration, shall operate to terminate this subsection. The expiration of this subsection shall not affect the enforceability of any obligation, liability, or protection that accrued under its provisions prior to such expiration.

**SEC. 2. EFFECTIVE DATE**

This act shall take effect on July 1, 2026.