



## Senator Scott Wiener, 11<sup>th</sup> Senate District

### Senate Bill 747 – No Kings Act

#### SUMMARY

Senate Bill 747 ensures that all Californians have an effective remedy when their constitutional rights are violated and that no officer — federal or state — is above the law. Specifically, SB 747 mirrors existing federal law that allows citizens to sue local and state officials for constitutional violations. This bill applies to all violations of the United States Constitution committed under color of federal *or* state law.

#### BACKGROUND/EXISTING LAW

The Tom Bane Civil Rights Act — also known as the Bane Act — creates civil legal remedies under California law for, among other things, certain federal constitutional violations using “threat, intimidation, or coercion.”<sup>1</sup>

Likewise, existing federal law creates a civil legal remedy for federal constitutional violations committed by individuals acting under color of state law (*e.g.*, state and local officials).<sup>2</sup>

#### PROBLEM

While federal courts can provide a remedy for unconstitutional actions by state and local officials in lawsuits brought under current federal law, **there is no similar federal civil statutory cause of action for constitutional violations committed by federal officials.** Instead, injured citizens may only bring actions against federal officials for violating the U.S. Constitution when they have a “*Bivens* action,” as the U.S. Supreme Court has previously permitted for certain Fourth Amendment violations.

Unfortunately, the Supreme Court has also sharply curtailed the availability of *Bivens* actions in recent years. Thus, with *Bivens* narrowed and potentially soon-to-be-overturned, federal officers have *de facto* immunity for even willful and intentional violations of constitutional rights.

State law could fill that gap. State law *can* prohibit federal constitutional violations by federal officers because “all the officers of the government, from the highest to the lowest, are” supposed “to obey” the Constitution as “the only supreme power in our system of government.”<sup>3</sup>

Under the Constitution, an employee of the United States does not secure general immunity from state law while acting in the course of their employment. Instead, federal officials are protected from state law only if their acts were authorized by federal law.<sup>4</sup> **By definition, unconstitutional acts cannot be authorized by federal law and accordingly do not preempt state law.** Instead, the Supremacy Clause only shields federal officers from state law when they take action pursuant to the Constitution. Thus, for example, in *United States v. Lee*, the U.S. Supreme Court approved a state court lawsuit brought under state law against federal officers for unconstitutional acts.<sup>5</sup>

However, while leading constitutional scholars have recognized the permissibility of certain state law prohibitions against unconstitutional acts by federal officers,<sup>6</sup> the Bane Act does not presently provide a sufficient alternative remedy to federal law for constitutional violations by

<sup>1</sup> Cal. Civ. Code § 52.1(b)-(c)

<sup>2</sup> 42 U.S.C. § 1983.

<sup>3</sup> *United States v. Lee*, 106 U.S. 196, 220 (1882).

<sup>4</sup> *Butz v. Economou*, 438 U.S. 478, 490 (1978).

<sup>5</sup> 106 U.S. at 197, 220.

<sup>6</sup> Akhil Reed Amar, *Of Sovereignty and Federalism*, 96 Yale L.J. 1425, 1512-17 (1987).

state actors, both because the Bane Act (1) prohibits only a subset of federal constitutional violations (namely those that are committed by “threat, intimidation, or coercion,” as opposed to *all* constitutional violations) and (2) does not include a clear and unequivocal indication that it applies to federal officers. Accordingly, by adding a subdivision to the Bane Act clearly prohibiting *all* constitutional violations by both state and federal officers (*e.g.*, individuals action under color of either federal or state law), SB 747 is a constitutionally appropriate solution designed to ensure that all Californians have an effective remedy when their constitutional rights are violated and that no officer — federal or state — is above the law.

### **SOLUTION**

Senate Bill 747 closes the gap in existing law by creating a civil cause of action against *any* officer — federal or state — that violates the United States Constitution. In so doing, SB 747 addresses the U.S. Supreme Court’s recent gutting of *Bivens* actions and ensures relief for those unconstitutionally injured by federal officers.<sup>7</sup> SB 747 applies retroactively to March 1, 2025.

SB 747 does not expand the liability of state and local officials and explicitly includes the broad immunity defenses that state and local officials already have under federal law.

### **SUPPORT**

- Protect Democracy United (co-sponsor)
- Inland Coalition for Immigrant Justice (IC4IJ) (Co-sponsor)
- Prosecutors Alliance Action (co-sponsor)
- ACLU California Action
- California Rural Legal Assistance Foundation (CRLAF)
- County of Sonoma
- Courage California
- Erwin Chemerinsky, Dean of UC Berkeley Law School

- National Union of Healthcare Workers (NUHW)
- Public Counsel
- Supervisor Vicente Sarmiento, Orange County Board of Supervisors

### **FOR MORE INFORMATION**

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<sup>7</sup> *Buchanan v. Barr*, 71 F.4th 1003, 1013 (D.C. Cir. 2023) (Walker, J., concurring).