



# MINNESOTA SHERIFFS' ASSOCIATION

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Senate Judiciary Committee

(BY: Email to [judiciary@senate.mn](mailto:judiciary@senate.mn))

RE: Proposed Bill Number 26-06900

Senators:

As general counsel for the Minnesota Sheriff Association (MSA) I have been directed to submit the MSA opposition to 26-06900, which would enact a new statute that would create a state civil cause of action that is duplicative of 42 U.S.C. 1983. In addition to serving as MSA general counsel since 1987, I have litigated cases under that federal civil rights statute since 1978 and I have taught thousands of public sector staff about 42 U.S.C. 1983. Please consider that experience as part of the MSA position.

Subd. 1 is redundant in terms of giving alleged victims of federal constitutional violations a civil remedy, creates an entirely new set of untested state legal principles, will be ineffective and will impose more costs on state and federal courts. Subd. 2 will likely destroy long-standing law enforcement partnerships that have taken apart major criminal enterprises and caused the capture of some of the most dangerous criminals in Minnesota. **It will devastate federal and state partnerships designed to vigorously pursue social services fraud.**

Subd. 1(a) is literally a verbatim recitation of 42 U.S.C. 1983 except for the addition of a reference to the Minnesota Constitution. That law, enacted in 1871, is known as the Federal Civil Rights. It has been used hundreds of thousands of times by plaintiffs who believe government officials and agencies have violated their constitutional rights for damages and injunctive relief. Defendants can be individuals and government agencies under what is known as a Monell claim, named after a Supreme Court decision holding governments are a "person" for these claims.

This bill is simply not needed to protect from federal constitutional violations because a full remedy is already available in federal court. Because of the long history of federal civil rights suits there is an established body of case law that guides the courts and litigants on how the law is used to protect the constitutional rights of the public and reduce the risk of a violation of those rights. Creating a new state cause of action abandons 150 years of that legal precedent and forces Minnesota Courts to develop its own body of case law, which is a long and expensive process for

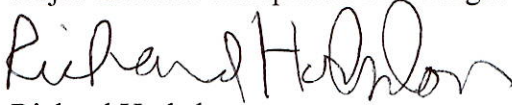
the litigants and the courts. If the advocates contend that exiting federal precedent can be used by our courts to shorten this process, it demonstrates the lack of need for the statute.

Nothing prevents a plaintiff from suing in state courts for a Federal Civil Rights Act violation. Many plaintiffs have done that and I have personally handled cases in state court alleging federal constitutional violations on such topics as property taxes, land use and a variety of other such claims.<sup>1</sup>

Other states like Colorado that enacted a similar state law shows they are needless waste of state and federal court resources. This is because of the doctrine of removal of a federal question. When a defendant is sued in state court for a federal constitutional violation the defendant can remove the federal question to federal court. Experienced civil rights attorneys do that because federal judges are far more knowledgeable in civil rights cases. A case first filed in state court will end up in federal court anyway, but only after needless costs to the litigants and use of scarce judicial resources.

Subd. 2 tries to make federal agencies and staff liable to civil rights suits in state court for any joint operations or task forces. This is likely to destroy all federal, state and local partnerships that have long been used to leverage resources to increase public safety by combining local skills and knowledge with vastly greater federal resources to strike at major criminal enterprises, violent criminals and most recently, major fraud in public sector programs. **Without federal partners cases like Feeding Our Future would probably never have been successfully investigated and prosecuted.** Federal officers can already be sued in federal court for alleged constitutional violations in a Bivens action so there is already a remedy and it is extremely unlikely task forces will continue if this clause is enacted.

**In sum** this proposal will provide no additional protections against alleged constitutional violations, add undue confusion to long-established legal principles, add costs to the courts and litigants and likely destroy federal, state and local partnerships to that combat major fraud, and major criminal enterprises. MSA urges its rejection.

  
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<sup>1</sup> The Committee must realize that subd. 1 is not limited to law enforcement agencies and that all state and local governments and all government officers can be defendants in civil rights cases. For example, the defendant in the Monell case was the New York Department of Social Services.