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ACLU OF RI POSITION: SUPPORT

TESTIMONY ON 26-H 7202, RELATING TO THE RHODE ISLAND FEDERAL CONSTITUTION DEFENSE ACT March 4, 2026

As a result of a series of troubling U.S. Supreme Court decisions over the decades, federal officials and the U.S. government are almost completely immune from liability in federal court even when engaging in egregious violations of residents' constitutional and civil rights. While those of us who work routinely on issues of civil liberties have long been aware of this troublesome state of affairs, it has come to the fore in the public's eye as the result of the egregious tactics of ICE agents that people have seen unfold across the country, including here in Rhode Island.

The ACLU of Rhode Island therefore supports this legislation which would provide a private cause of action in state court to sue federal officials for violations of civil rights and obtain monetary damages. The problem was recently cogently explained and encapsulated this way:

To offer meaningful protection, rights need remedies. Litigants can often pursue an injunction when trying to stop ongoing or prevent future harm. But for harms that have already occurred, including constitutional harms, money damages are primarily how the U.S. legal system rights a wrong. In fact, they are sometimes the *only* way; as Justice John Marshall Harlan II wrote, for many victims of unconstitutional conduct, their recourse is frequently "damages or nothing."

Unfortunately, it has never been harder to sue federal officials for damages for violating your constitutional rights.

The best known mechanism for litigating constitutional torts is 42 U.S.C. § 1983. But that 1871 law provides a cause of action for damages against state and local actors only. There is no parallel federal statute authorizing suits against federal officials—and while Congress could fill that gap with a simple fix, it hasn't.¹

It is because of this situation that passage of a bill like this is of such critical importance. The ACLU of Rhode Island urges the committee's support of this approach.

¹ "Can State Law Remedy Constitutional Violations by Federal Officers?" by Harrison Stark, 2/27/2026. <https://www.lawfaremedia.org/article/can-state-law-remedy-constitutional-violations-by-federal-officers>