

Committee: Senate Committee on Judiciary

Testimony on: HB 4114 A (Protect Your Door Act)

- **Position: Support with Amendments**

Hearing Date: February 23, 2026

Protect Democracy United is a 501(c)(4) nonpartisan organization dedicated to protecting the rule of law. It commends the Oregon Senate for its consideration of a bill that aims to protect Oregonians from unlawful searches. However, Protect Democracy has two main concerns with the bill as written and would recommend amending the bill to strengthen it so as to create a judicially resilient tool that will protect all of Oregonians' constitutional rights.

The Protect Your Door Act narrowly focuses on only one of the many ways the federal government can abuse Oregonians' rights: warrantless searches (which may violate the Fourth Amendment). However, as immigrants and citizens in Oregon face unprecedented threats to their constitutional rights in myriad more ways, they should not have to pick and choose among which of these rights deserve protection and redress. These include, for example, First Amendment free speech and assembly rights, Fourth Amendment rights related to unreasonable and excessive force, and Fifth Amendment due process rights. Protect Democracy recommends that the Committee consider amending this bill to provide an effective remedy when *any* of Oregonians' federal constitutional rights are violated, not solely those related to warrantless searches.

Furthermore, as written, the Protect Your Door Act invites significant risk that it will be struck down by federal courts because of two core problems with its current approach. The present version may be found to violate the Supremacy Clause under the intergovernmental immunity doctrine, and is also likely preempted by the Westfall Act. Each of these concerns would be obviated by amendments whose language would mirror the federal 42 § U.S.C. 1983 (Section 1983). These amendments would also resolve the aforementioned issue, providing broader protection for Oregonians: amending

the bill to mirror Section 1983 would create a remedy when *any of* Oregonians’ federal constitutional rights are violated by *any* government official, so that no officer—federal, state, or local—is above the law.

Our main concern with the Protect Your Door Act is that the present version is likely preempted by the Westfall Act.

The Westfall Act has the effect of preempting all state law causes of actions against federal officers unless they are “brought for a violation of the Constitution of the United States.” 28 U.S.C. § 2679(b)(2)(A). That’s where we believe the challenge with Oregon’s current bill text comes in. **Right now, the Protect Your Door Act includes elements beyond a straightforward violation of the U.S. Constitution (or even the Fourth Amendment of the U.S. Constitution).** These provisions do far more than merely allow for suits for violations of the federal Constitution (or the Fourth Amendment). Rather, they include extra-constitutional considerations to the elements (for example, applying its own definition of “property;” referring to a “reasonable expectation of privacy,” which is not the same under Oregon law as the Fourth Amendment). The bill also prohibits conduct that may amount to a constitutional violation, but is not necessarily one (entering “property” without a judicial warrant where a judicially recognized exception to the warrant requirement – which varies by state – does not apply).

The federal government would argue that these elements would require a court to assess a claim under the Protect Your Door Act differently than it would a straightforward constitutional claim, indicating that the act creates a claim for a violation of state law and thus does not fit within the Westfall Act exception. We believe that creates a substantial risk that existing Oregon law will be preempted by the Westfall Act because those extra elements create a significant risk that the federal courts will conclude the Oregon law proscribes acts and omissions beyond just a constitutional violation.

Given the substantial risk of preemption, we strongly recommend that the Protect Your Door Act be amended to create a procedural remedy for violations of *the United States Constitution* without the additional details and

definitions included in the current bill text. Indeed, “[n]othing . . . stop[s] a state from creating a new cause of action allowing plaintiffs to directly allege federal constitutional violations.” *Buchanan v. Barr*, 71 F.4th 1003, 1016 (D.C. Cir. 2023) (Walker, J., concurring).

To accomplish that, we recommend largely copying federal Section 1983’s cause of action (but, of course, expanding the color of law language in Section 1983 to encompass federal officers). That is because the meaning of Section 1983 statutory language is clear and already recognized by federal courts: “[a]s introduced and enacted, it served only to ensure that an individual had a cause of action for violations of the Constitution[.]” *Chapman v. Houston Welfare Rights Organization*, 441 U.S. 600, 617 (1979). As a result—unlike the present bill text—a new Oregon statute that tracked Section 1983’s operative language would fit more cleanly in the Westfall Act’s constitutional exception because it would only confer a cause of action “for a violation of the Constitution of the United States.” 28 U.S.C. § 2679(b)(2)(A).

Additionally, to withstand judicial scrutiny, any bill passed by the Oregon legislature must comport with the intergovernmental immunity doctrine. This doctrine holds that states may not directly regulate or discriminate against the federal government and its operations. *See United States v. Washington*, 596 U.S. 832, 838 (2022). Thus, any bill must treat federal officers at least as well as it treats a similarly situated state officer. If Oregon violates that rule, the law will likely be ruled unconstitutional for “violat[ing] the Supremacy Clause.” *Washington*, 596 U.S. at 839. **For example, a California anti-masking bill that applied to federal and local but not state officers was just invalidated under the intergovernmental immunity doctrine. *See United States v. California*, No. 2:25-CV-10999-CAS-AJRX, 2026 WL 363346, at *13 (C.D. Cal. Feb. 9, 2026) (“[T]he Act treats federal law enforcement officers differently than similarly situated state law enforcement officers. Accordingly, the Court finds that the United States is likely to succeed on the merits of its claim that [the Act] unlawfully discriminates against the federal government in violation of the intergovernmental immunity doctrine.”).**

The present text of HB 4114A exempts anyone who could be subject to suit for the same injury under Section 1983. As 1983 expressly turns on whether one acts under color of *state* law or not, the federal government is likely to argue that this aspect of the bill violates the intergovernmental immunity doctrine. A cause of action to address federal employees' constitutional violations will face far less litigation risk if the statute treats federal, state, and local government employees the same (to minimize scrutiny under the intergovernmental immunity doctrine).

Presently, there is no robust law that allows people to sue federal officers for damages, even if they violate clearly established constitutional rights. If state and local officials violate constitutional rights, they can be sued under federal Section 1983; but no similar law exists for federal officials. And the Supreme Court has all but eliminated *Bivens* actions, the judge-made remedy for federal officials' violations. Accordingly, Oregonians cannot sue federal officials—like ICE or FBI agents—for past harms that violated their constitutional rights.

Oregon can solve that problem by amending this bill to mirror the language of Section 1983 but to include federal officials in addition to state and local officials. For Oregonians' rights to have meaning, there must be consequences for *any* government officer who violates them. That is why it is especially important that Oregon adopt a bill to hold federal officials accountable that will be legally resilient and withstand judicial challenges.

The very recent killings of Renee Good and Alex Pretti in Minnesota demonstrated in chilling detail why this accountability is so necessary. Government abuses – including immigration officers' abuses – are not limited to warrantless searches. And whether their families should have a remedy for the loss of their loved ones should turn on whether their constitutional rights were violated, not what badge the officers were carrying when they pulled the trigger. Acts that provide a cause of action for the violation of any federal constitutional right by any government official can protect Oregonians in many more contexts, as well. For example:

- if nonprofits are audited for clearly pretextual and retaliatory reasons;
- if universities are subjected to pretextual funding cuts to punish

- behavior protected under the First Amendment;
- if businesses face weaponized regulatory scrutiny to influence corporate decision-making for corrupt or partisan objectives; and
 - if immigrants and citizens alike are confronted with the use of excessive force or stripped of due process rights,

they will be able to sue federal enforcement officers personally – no matter the badge of the officer who violated their rights.

Therefore, Protect Democracy United asks you to amend HB 4114 accordingly, so that no officer is above the law and so that Oregonians have a realistic way to vindicate all of their rights enshrined in the United States Constitution. Thank you.

For more information, contact:

Jane Bentrott

Counsel

jane.bentrott@protectdemocracy.org

ABOUT US

Protect Democracy United is a nonpartisan, nonprofit group working to prevent American democracy from declining into a more authoritarian form of government.