

## Civil Action for Deprivation of Speech Rights

Whereas the United States increasingly privatizes censorship, thereby unlawfully evading the First Amendment;

Whereas it does this through agreements, conditions, pressures, inducements, and other mechanisms;

Whereas early English censorship was also carried out partly through private entities, and this was the sort of censorship that the First Amendment most clearly forbade;

Whereas the United States remains constitutionally limited even when it works through cooperating private entities, and there would be no purpose to a Bill of Rights if government could evade it by getting private parties to do its dirty work;

Whereas, the Supreme Court aptly declared in *Frost & Frost Trucking Co. v. Railroad Commission* “It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence” and said in *Norwood v. Harrison* (1973) it is “axiomatic” that the government “may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish”;

Whereas the civil rights statute 42 USC section 1983 provides for private actions to protect federal liberties from deprivations under color of state law but not under color of federal law;

Whereas there consequently are inadequate remedies for federally privatized assaults on the freedom of speech or the press;

Whereas it is the duty of this legislature to pick up the slack in protecting our constitutional freedoms by providing a state remedy for attacks on federal liberties;

Whereas public prosecutions, federal or state, might not be brought when prosecutors are of the same party as those who violate the law, and private actions for damages offer more predictable redress;

Whereas this state civil remedy against federally privatized violations of federal rights is within the power of this legislature;

Therefore, it is hereby enacted that:

(a) Any natural or artificial person resident in this state, doing business in this state, or otherwise within its jurisdiction:

(1) who, under color, justification, or authority of any law, statute, ordinance, rule, regulation, executive order, condition, assurance, contract, agreement, arrangement, conspiracy, interpretation, guidance, direction, recommendation, advice, best practice, policy, scheme, custom, or usage, of the United States, directly or

indirectly subjects, causes to be subjected, or threatens to subject, any citizen of this State or other person within the jurisdiction thereof to the deprivation of any right of speech or of the press secured by the First Amendment to the Constitution of the United States; or

(2) who contracts, agrees, arranges, conspires with, cooperates with, or otherwise works with the United States or any agent or instrumentality of the United States, or any or any officer or employee thereof, in any way that assists or furthers any violation of section (a)(1) or injures, oppresses, threatens, or intimidates any citizen of this State or other person within the jurisdiction thereof in any right of speech or of the press secured by the First Amendment to the Constitution of the United States

shall be liable, without qualified or other immunity, to the party injured in an action at law, suit in equity, or any other proper proceeding for redress in any court of this State, including damages, injunctive and declaratory relief, and costs and reasonable attorneys' fees.

(b) Damages under this statute shall consist of actual damages or, at the election of each plaintiff, statutory damages in the amount of \$100,000 for each violation affecting the plaintiff in his or her right as a speaker and \$1,000 for each violation affecting the plaintiff in his or her right as a reader or viewer.

(c) Nonetheless:

(1) no action shall be brought under this section against the United States, against any agency, officer, or employee of the United States, or against any instrumentality of the United States or any officer or employee of any such instrumentality, to the extent such defendant is protected from such an action by the Constitution or laws of the United States, and

(2) evidence that the defendant could not have reasonably expected the court's interpretation of a right may be introduced at the remedies stage to reduce damages, costs, and attorneys fees.