

## LEGAL NOTICE

Dear State Agent,

This letter constitutes a formal notification to you that if, as an agent of state government, you “*subject[] ... any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,*” while acting “*under color of any statute, ordinance, regulation, custom, or usage, of any State,*” you can be held personally liable for damages in federal court pursuant to 42 USC § 1983.

You are required to know the law, and if you take actions which “*violate clearly established statutory or constitutional rights of which a reasonable person would have known*” (Harlow v. Fitzgerald, 457 U.S. 800 (1982)), you are not entitled to any legal immunity for your actions. If you issue commands or fines, carry out arrests, or threaten to do such things, in response to someone exercising a constitutionally-protected fundamental right, that makes *you—not* your department or agency—liable for damages in federal court. Simply assuming that you have unlimited power, or saying that you were “just following orders” or “just doing your job,” will not shield you from the consequences of such violations. The U.S. Supreme Court has clearly ruled that “*when a state officer acts under a state law in a manner violative of the Federal Constitution, he ‘comes into conflict with the superior authority of that Constitution, and he is, in that case, stripped of his official or representative character, and is subjected in his person to the consequences of his individual conduct’*” (Scheuer v. Rhodes, 416 U.S. 232 (1974)).

This would include violating an individual’s right to travel<sup>(1)</sup>, his right to work, his right to peacefully assemble<sup>(2)</sup>, his right to practice his religion of choice<sup>(3)</sup>, his right to engage in business, and so on. No one, including a state governor, can supersede or undo such constitutional rights. Indeed, in *Scheuer* the U.S. Supreme Court stated that 42 USC § 1983 “*would be drained of meaning were we to hold that the acts of a governor or other high executive officer have ‘the quality of a supreme and unchangeable edict, overriding all conflicting rights of property and unreviewable through the judicial power of the Federal Government.’*” (See also *Sterling v. Constantin*, 287 U.S. 378.)

A plea of “the governor told me to” will not shield you from personal liability. Indeed, even the governors of many states have already rendered themselves personally liable under 42 USC § 1983 suits, and such suits are already being prepared against a number of them. Neither your badge nor your office, nor baseless assertions of legal authority, can shield you from similar liability. Indeed, pretending that such actions are backed by law, when they are not, *creates* the violation. “*Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken ‘under color of’ state law*” (United States v. Classic, 313 U.S. 299).

**Therefore, before you continue in your attempts to enforce unconstitutional orders, I highly suggest that you consult with your attorneys, or the attorneys of your agency or department, to familiarize yourself with the provisions and application of 42 USC § 1983. You have been warned.**

---

(1) “*The right to travel is a part of the ‘liberty’ of which the citizen cannot be deprived without due process of law under the Fifth Amendment.*” - Kent v. Dulles (357 U.S. 116)

(2) “*Congress shall make no law ... abridging right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*” - First Amendment, U.S. Constitution (made applicable to state governments by the Fourteenth Amendment)

(3) “*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.*” - First Amendment, U.S. Constitution (made applicable to state governments by the Fourteenth Amendment)