



Steve Lebsock &lt;stevelebsock@gmail.com&gt;

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**HB18-1110**

2 messages

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**David Kopel** <david@i2i.org>  
To: Steve Lebsock <stevelebsock@gmail.com>

Wed, Jan 31, 2018 at 4:08 PM

Dear Rep. Lebsock:

I am writing this letter regarding HB18-1110. The analysis is based on my experience teaching a variety of constitutional law course at Sturm College of Law, University of Denver, since 2010.

First, the bill is commendably narrow. It only applies when a government employee *knows* that an activity would violate the Colorado Constitution. This is a much higher standard of proof than is typically applied in federal civil rights lawsuits against government employees for alleged violations of constitutional rights.

Nor does the bill impose any punishment for violations. Again, this is much milder than standard civil rights law. In civil rights lawsuits brought under 42 U.S. Code section 1983, an individual employee can be held personally liable for money damages if he or she *should* have know that his or her actions violated civil rights.

HB18-1110, however, imposes no sanctions. It simply expects that state and local government employees will comply in good faith with all Colorado statutes, including this one.

The bill is compliant with the U.S. Constitution. As the U.S. Supreme Court held in the 1997 case *Printz v. United States*, the federal government may not "commandeer" state or local officials into enforcing federal statutes.

HB18-1110 provides helpful guidance for state and local employees. For example, consider a local police officer who is a member of a joint state-federal drug task force. The task force is investigating someone who is suspected of cultivating marijuana for export to other states. During the investigation, it is discovered that the suspect is merely engaged in lawful intrastate cultivation, and is complying with all Colorado statutes. The federal employees on the task force, though, want to proceed with the case, for potential prosecution under federal marijuana statutes.

HB18-1110 tells the local officer what to do. The officer does not need to take any steps to attempt to thwart the federal prosecution. Instead, the officer must simply stop personally participating in this particular case.