PACIFIC JUSTICE INSTITUTE –
Center for Public Policy

P.O. Box 276600
Sacramento, CA 95827
Telephone: (916) 857-6900

March 8, 2021

COMMITTEE ON PUBLIC SAFETY
CALIFORNIA STATE ASSEMBLY
State Capitol, Room 111
1020 N Street
Sacramento, California 95814

Re: Assembly Bill 655 – Oppose Unless Amended

Dear Honorable Members of the Committee on Public Safety:

On behalf of the Pacific Justice Institute—Center for Public Policy, I am writing to briefly explain our strong opposition to Assembly Bill 655. Instead of targeting actual threats within the law enforcement community, this Bill takes a shotgun approach that would also harm upstanding, honorable men and women in uniform who happen to believe differently than the author. This blatant viewpoint discrimination is anathema to our constitutional values.

The Bill is ostensibly directed toward a serious concern—members of law enforcement belonging to violent police gangs and other dangerous, secretive groups. The insidious presence of such activity within the Los Angeles Police Department has been widely reported.[1] Violence has no constitutional protection, and it should have no place among uniformed officers, the vast majority of whom would repudiate such associations. Were the Bill to narrowly focus on this problem, we would not be opposing it.

Unfortunately, under the guise of addressing police gangs, the Bill at the same time launches an inexplicable, unwarranted, and unprecedented attack on peaceable, conscientious officers who happen to hold conservative political and religious views. Indeed, this is one of the most undisguised and appalling attempts we have ever seen, in more than 20 years of monitoring such legislation, on the freedom of association and freedom to choose minority viewpoints. The Bill does this with extraordinarily sweeping definitions of hate groups and public expression. If enacted, this legislation will almost certainly be struck down as unconstitutional.

After setting forth several definitions, Section 1 of the Bill would add Penal Code Section 13681, subsection (a) of which would require background investigations of law enforcement applicants to include "an inquiry into whether the candidate is currently, or has in the past, engaged in membership in a hate group, participation in hate group activities, or public expressions of hate." Under subsection (b), a finding of such activity, even in the distant past, "shall be grounds for denial of employment as a peace officer." The legislation proceeds to add Section 13682, which would similarly require the investigation of, upon an internal complaint or complaint by any member of the public, a peace officer's past or present membership in a hate group or public expression of hate. The remedy is likewise sobering: "(b) A sustained complaint described in subdivision (a) shall be grounds for termination of a peace officer."

[1] https://www.latimes.com/local/lanow/la-me-fbi-investigating-sheriff-20190711-story.html.

What are these hate groups, and what is this public expression of hate that is so heinous as to disqualify men and women from public service in law enforcement? Returning to the first part of Section 1, key terms are defined in relevant part as follows:

> (b) "Hate group" means an organization that, based upon its official statements or principles, the statements of its leaders, or its activities, supports, advocates for, or practices the denial of *constitutional* rights of, the genocide of, or violence towards, any group of persons based upon race, ethnicity, nationality, religion, gender, gender identity, sexual orientation, or disability. . . .
>
> (f) (1) "Public expression of hate" means any explicit expression, either on duty or off duty and while identifying oneself as, or reasonably identifiable by others as, a peace officer, in a public forum, on social media including in a private discussion forum, in writing, or in speech, as advocating or supporting the denial of *constitutional* rights of, the genocide of, or violence towards, any group of persons based upon race, ethnicity, nationality, religion, gender, gender identity, sexual orientation, or disability.
> (2) "Public expression of hate" also includes the public display of any tattoo, uniform, insignia, flag, or logo that indicates support for the denial of *constitutional* rights of, the genocide of, or violence towards, any group of persons based upon race, ethnicity, nationality, religion, gender, gender identity, sexual orientation, or disability.
> (3) "Public expression of hate" does not include visiting the website of a hate group, or any single, isolated comment posted on an online forum, chatroom, or other electronic or social media operated by a hate group.

The sweeping implications of the above-quoted definitions are readily apparent. A hate group, according to AB 655, is an organization that "supports, advocates for, or practices the denial of *constitutional* rights of . . . any group of persons based upon race, ethnicity, nationality, religion, gender, gender identity, sexual orientation, or disability."

The breadth of this definition raises numerous questions:

- Are the many conservative organizations pejoratively labeled "hate groups" by the discredited Southern Poverty Law Center—because they oppose radical LGBTQ ideology—actual "hate groups" within the meaning of this legislation?
- Is the Catholic Church a "hate group" because it advocates for the sanctity of life and thereby rejects the constitutional rights of women to obtain abortion?
- Are the thousands of churches in California which voiced support for Proposition 8, the traditional definition of marriage, "hate groups" because they opposed LGBTQ constitutional rights to marry?
- Are the careers of Muslim officers in jeopardy if the mosque where they offer prayers has ever spoken out against homosexuality or gender equality?
- Is the Republican Party a "hate group" because it does not endorse gender identity as a constitutional right?

If it is not the author's intent to exclude from law enforcement the millions of Californians who identify as Catholic or conservative evangelical or Republican, this Bill must be substantially rewritten to communicate a very different intent than what currently inheres from its language. Astonishingly, the definitions are so broad that even someone who does not adopt all of the organization's views—such as a pro-choice Catholic—would still be excluded because the Bill targets mere membership in the banal organization.

Worse, AB 655 would exclude past members or associates of such groups, regardless of how much time has passed since that association. Whether the Bill suffers from poor drafting or a view that past associations can never be cured, is impossible to say.

AB 655 would usher in a new era of McCarthyism, this time directed against religiously conservative public servants belonging to conservative or religious groups pejoratively and unfairly labeled "hate groups." Yet public employment cannot be conditioned on divulgence of organizational memberships in a misguided search for subversive activities. *Shelton v. Tucker*, 364 U.S. 479 (1960).

Mere membership in an allegedly subversive organization is not enough to deny public employment. *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967). *See also, Konigsberg v. State Bar of Cal.*, 353 U.S. 252 (1957) (overturning denial of Bar admission to applicant based on alleged Communist activities); *Baird v. State Bar of Ariz.*, 401 U.S. 1 (1971) (unconstitutional for State Bar to require applicant to answer question about membership in Communist Party). In similar fashion, attempts to silence advocacy for workers' rights—seen as allied with Communism—were long ago rejected. *See, e.g., Thomas v. Collins*, 323 U.S. 516 (1945).

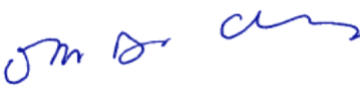
It is noteworthy that investigation of alleged Communists has also been impermissibly used as an attempted backdoor to intimidate civil rights organizations. *Gibson v. Fla. Legislative Investigative Comm'n*, 372 U.S. 539 (1963) (rejecting demand for NAACP membership lists as part of investigation into alleged Communists). This latest campaign launched by AB 655 to purge people of faith and conscience from the ranks of peace officers cannot have any better outcome than did the Red Scare of the 1950s and 1960s.

In addition to the major problems flowing from the attempts to limit officers' involvement with conservative or religious organizations, AB 655 would give law enforcement agencies a false sense of security that they could punish officers for their individual expression, when the First Amendment dictates otherwise. This is already an area of emerging liability for police departments, as indicated most recently by *Moser v. Las Vegas Police Dept.*, No. 19-16511 (9th Cir. Jan. 12, 2021). There, the LVPD had disciplined a SWAT officer for a Facebook post. The Ninth Circuit reversed a judgment in the Department's favor, remanding for further factual findings and warning against undue suppression of officers' online, off-duty speech on matters of public concern.

Indeed, for more than half a century the First Amendment rights of public employees to speak out on matters of public concern have been protected under *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968). This reasoning has been specifically applied to members of law enforcement, even where their speech condones violence. *Rankin v. McPherson*, 483 U.S. 378 (1986). To date, the Ninth Circuit has further drawn a sharp distinction between investigation of a member of law enforcement for allegedly biased religious speech, and punishment of that speech. *Vernon v. City of L.A.*, 27 F.3d 1385 (9th Cir. 1994). AB 655 takes no account of these controlling precedents, and it would do nothing to shield local departments from following its lead into ill-advised, unconstitutional suppression of speech.

We recognize as do most Americans that law enforcement reforms are needed. We have represented both courageous members of law enforcement and victims of mistreatment by law enforcement. We support common-sense reforms that will increase trust between the law enforcement community and the broader community. The Bill's ostensible aim at police gangs, without more, could be an effective means of pursuing such goals. Regrettably, the Bill far exceeds any legitimate bounds of reform. For these reasons, we must staunchly oppose AB 655 in its present form. The Bill must be significantly amended in order to have any chance of passing constitutional muster.

Respectfully submitted,



Matthew McReynolds, Senior Staff Attorney
PACIFIC JUSTICE INSTITUTE – CENTER FOR PUBLIC POLICY
E-mail: mmcreynolds@pji.org