

PACIFIC JUSTICE INSTITUTE –
Center for Public Policy

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April 1, 2021

COMMITTEE ON BUSINESS AND PROFESSIONS
CALIFORNIA STATE ASSEMBLY
1020 N St., Room 379
Sacramento, CA 95831

Re: Assembly Bill 1084 – Oppose as Amended

Dear Honorable Committee Members,

Pacific Justice Institute – Center for Public Policy has carefully reviewed Assembly Bill 1084 as introduced by Assemblymember Low on February 16, 2021, and as amended on March 30, 2021. While we certainly agree that no child should be bullied or harassed for any reason, it is our legal opinion that this legislation would not achieve that goal but would instead both chill and compel speech to an unacceptable degree. As an organization dedicated to the defense of constitutional liberties, we must therefore register our opposition.

AB 1084 takes a similarly ill-advised path to prior legislation that has been invalidated by the U.S. Supreme Court. Our sister organization, Pacific Justice Institute, was counsel of record in *A Woman's Friend v. Becerra*, companion case to *Nat'l Inst. of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018), which struck down Assembly Bill 775 on First Amendment grounds. AB 775, not unlike the present proposed legislation, attempted to mandate signage related to the availability of abortion.

As with abortion, Californians hold strong and divergent views on the concepts of gender identity and expression. AB 1084 pursues the misguided course of fines and mandates over persuasion and consumer demand on these controversial topics. By mandating the allocation of gender-neutral areas within toy departments, the legislation creates a content-based imposition on expression. As the Supreme Court has made clear in recent years, such distinctions are presumptively unconstitutional. *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015) (siding with church challenging sign ordinance); *see also, NIFLA, supra* (invalidating signage requirements for pregnancy clinics).

The author appears to have belatedly recognized that the legislation as introduced was facially unconstitutional with its signage mandates. But the legislation as amended fares little better, since it remains abundantly clear that the author's intent is to impose a de-gendered ideology and viewpoint on retailers. This approach is both paternalistic and also communicates to Californians a disconnect with the real-world challenges of parenting in an increasingly dangerous and less free society. AB 101 commits much the same fallacy as the legislation that attempted to keep violent video games away from children but was struck down in *Brown v. Ent. Merchants Ass'n*, 564 U.S. 768 (2011). As was true in that debate, parents do not need politicians' help to pick out appropriate toys for their children.

AB 1084 also conveys an astonishing degree of tone-deafness to the economic realities faced by the people of California, which have been exacerbated by this State's draconian policies that have not produced better health outcomes than comparable, less-restrictive states. With retailers of all sizes struggling for survival through the past year of restrictions, the last thing they need is another mandate from the Legislature as to how they can advertise and direct customers to their products. It will put both consumers and retailers in California at a competitive

disadvantage, since merchants in most if not all of the rest of the country are not so restricted. And it will redirect the resources of the Attorney General—tasked with enforcing the new mandates—away from serious threats to the lives, safety, and health of the populace.

The notion embodied in AB 1084 that it is somehow wrong to market toys by the sex or gender that primarily use them is without limiting principle, constitutional support, or common sense. We therefore urge its rejection.

Respectfully submitted,



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