



## GOVERNANCE, TRANSPARENCY & LABOR RELATIONS POLICY COMMITTEE

Tuesday, September 29<sup>th</sup>

9:30 am – 11:30 am

### Register for this meeting:

[https://zoom.us/meeting/register/tJcpf-iurTIsE9CLa\\_evyyJSw23MXvBWIakZ](https://zoom.us/meeting/register/tJcpf-iurTIsE9CLa_evyyJSw23MXvBWIakZ)

Immediately after registering, you will receive a link and confirmation email to join the meeting.

### AGENDA

- I. Welcome and Introductions
- II. Public Comment
- III. Annual Conference Resolution *Action*  
**Resolution No. 1: Amendment to Section 230 of the Communications Decency Act of 1996 (Attachment A)**  
Speaker: Bruce Barrows, Council Member, Cerritos
- IV. **Proposition 16: Allows Diversity as a Factor in Public Employment, Education, and Contracting Decisions. Legislative Constitutional Amendment. (Attachment B) Action**
- V. Adjourn

#### 2021 Policy Committee Appointments

**REMINDER:** The 2020 policy committee appointments will end at the close of the Annual Conference; appointments for 2021 can be requested thereafter. Members seeking appointments for 2021 will need to contact their incoming department, division, or affiliate president immediately following the Annual Conference to request reappointment. A presidential appointment from the League's incoming president may also be requested, but must first exhaust appointment opportunities through their division or department presidents.

*Brown Act Reminder: The League of California Cities' Board of Directors has a policy of complying with the spirit of open meeting laws. Generally, off-agenda items may be taken up only if:*

- 1) Two-thirds of the policy committee members find a need for immediate action exists and the need to take action came to the attention of the policy committee after the agenda was prepared (Note: If fewer than two-thirds of policy committee members are present, taking up an off-agenda item requires a unanimous vote); or*
- 2) A majority of the policy committee finds an emergency (for example: work stoppage or disaster) exists.*

*A majority of a city council may not, consistent with the Brown Act, discuss specific substantive issues among themselves at League meetings. Any such discussion is subject to the Brown Act and must occur in a meeting that complies with its requirements.*



***Annual Conference  
Resolutions Packet***

***2020 Annual Conference Resolutions***



***October 7 – 9, 2020***

## INFORMATION AND PROCEDURES

**RESOLUTIONS CONTAINED IN THIS PACKET:** The League bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, one resolution has been introduced for consideration at the Annual Conference and referred to League policy committees.

**POLICY COMMITTEES:** Two policy committees will meet virtually at the Annual Conference to consider and take action on the resolution referred to them. The committees are: Governance, Transparency & Labor Relations and Public Safety. These committees will meet virtually on Tuesday, September 29, with the Governance, Transparency and Labor Relations Policy Committee meeting from 9:30 – 11:30 a.m. and the Public Safety Policy Committee meeting from 1:00 – 3:00 p.m. The sponsor of the resolution has been notified of the time and location of the meeting.

**GENERAL RESOLUTIONS COMMITTEE:** This committee will meet virtually at 1:00 p.m. on Thursday, October 8, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of the League's regional divisions, functional departments and standing policy committees, as well as other individuals appointed by the League president.

**GENERAL ASSEMBLY:** This meeting will be held virtually at 11:00 a.m. on Friday, October 9.

**PETITIONED RESOLUTIONS:** For those issues that develop after the normal 60-day deadline, a resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Annual Business Meeting of the General Assembly. This year, that deadline is 12:30 p.m., Thursday, October 8.

Any questions concerning the resolutions procedures may be directed to Meg Desmond at the League office: [mdesmond@cacities.org](mailto:mdesmond@cacities.org) or (916) 658-8224

## **GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS**

Policy development is a vital and ongoing process within the League. The principal means for deciding policy on the important issues facing cities is through the League's seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop League policy. Resolutions should adhere to the following criteria.

### **Guidelines for Annual Conference Resolutions**

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing League policy.
4. The resolution should be directed at achieving one of the following objectives:
  - (a) Focus public or media attention on an issue of major importance to cities.
  - (b) Establish a new direction for League policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.
  - (c) Consider important issues not adequately addressed by the policy committees and board of directors.
  - (d) Amend the League bylaws (requires 2/3 vote at General Assembly).

## KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned.

Number	Key Word Index	Reviewing Body Action		
		1	2	3
		1 - Policy Committee Recommendation to General Resolutions Committee 2 - General Resolutions Committee 3 - General Assembly		

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### GOVERNANCE, TRANSPARENCY & LABOR RELATIONS POLICY COMMITTEE

		1	2	3
1	Amendment to Section 230 of The Communications Decency Act of 1996			

### PUBLIC SAFETY POLICY COMMITTEE

		1	2	3
1	Amendment to Section 230 of The Communications Decency Act of 1996			

## KEY TO ACTIONS TAKEN ON RESOLUTIONS *(Continued)*

Resolutions have been grouped by policy committees to which they have been assigned.

### **KEY TO REVIEWING BODIES**

1. Policy Committee
2. General Resolutions Committee
3. General Assembly

### **KEY TO ACTIONS TAKEN**

- |     |   |
|-----|---|
| A   | Approve   |
| D   | Disapprove  |
| N   | No Action   |
| R   | Refer to appropriate policy committee for study             |
| a   | Amend+  |
| Aa  | Approve as amended+   |
| Aaa | Approve with additional amendment(s)+                       |
| Ra  | Refer as amended to appropriate policy committee for study+ |
| Raa | Additional amendments and refer+                            |
| Da  | Amend (for clarity or brevity) and Disapprove+              |
| Na  | Amend (for clarity or brevity) and take No Action+          |
| W   | Withdrawn by Sponsor  |

### **ACTION FOOTNOTES**

- \* Subject matter covered in another resolution
- \*\* Existing League policy
- \*\*\* Local authority presently exists

### **Procedural Note:**

The League of California Cities resolution process at the Annual Conference is guided by the League Bylaws. A helpful explanation of this process can be found on the League's website by clicking on this link: [Resolution Process](#).

**1. A RESOLUTION OF THE GENERAL ASSEMBLY OF THE LEAGUE OF CALIFORNIA CITIES CALLING FOR AN AMENDMENT OF SECTION 230 OF THE COMMUNICATIONS DECENCY ACT OF 1996 TO REQUIRE SOCIAL MEDIA COMPANIES TO REMOVE MATERIALS WHICH PROMOTE CRIMINAL ACTIVITIES**

Source: City of Cerritos

Concurrence of five or more cities/city officials

Cities: City of Hawaiian Gardens, City of Lakewood, City of Ontario, City of Rancho Cucamonga, City of Roseville

Referred to: Governance, Transparency and Labor Relations and Public Safety Policy Committees

**WHEREAS**, local law enforcement agencies seek to protect their communities' residents, businesses, and property owners from crime; and

**WHEREAS**, increasingly, criminals use social media platforms to post notices of places, dates and times for their followers to meet to commit crimes; and

**WHEREAS**, Section 230 of the Communications Decency Act of 1996 currently provides online platforms (including social media platforms) immunity from civil liability based on third-party content and for the removal of content; and

**WHEREAS**, in the 25 years since Section 230's enactment, online platforms no longer function simply as forums for the posting of third-party content but rather use sophisticated algorithms to promote content and to connect users; and

**WHEREAS**, the United States Department of Justice, in its June 2020 report, "Section 230 — Nurturing Innovation or Fostering Unaccountability?," concluded the expansive interpretation courts have given Section 230 has left online platforms immune from a wide array of illicit activity on their services, with little transparency or accountability, noting it "makes little sense" to immunize from civil liability an online platform that purposefully facilitates or solicits third-party content or activity that violates federal criminal law; and

**WHEREAS**, current court precedent interpreting Section 230 also precludes state and local jurisdictions from enforcing criminal laws against such online platforms that, while not actually performing unlawful activities, facilitate them; and

**WHEREAS**, amendment of Section 230 is necessary to clarify that online platforms are not immune from civil liability for promoting criminal activities; and

**NOW, THEREFORE, BE IT RESOLVED** at the League General Assembly, assembled at the League Annual Conference on October 9, 2020 in Long Beach, California, that the League calls upon the U.S. Congress to amend Section 230 of the Communications Decency Act of 1996 to condition immunity from civil liability on the following:

1. Online platforms must establish and implement a reasonable program to identify and take down content which solicits criminal activity; and
2. Online platforms must provide to law enforcement information which will assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity; and
3. An online platform that willfully or negligently fails in either of these duties is not immune from enforcement of state and local laws which impose criminal or civil liability for such failure.



## **Background Information to Resolution**

**Source:** City of Cerritos

### **Background:**

Social media platforms are now used as a primary means of communication, including by criminals who use them to advertise locations, dates, and times where the criminal acts will take place. Such communications, because they occur online, render the online platform immune from any civil liability for the costs incurred by law enforcement agencies that respond under Section 230 of the Communications Decency Act of 1996. Immunity from civil liability extends even to injunctive relief, thus preventing local governments from merely seeking an injunction against the online platform to have such a post removed.

The City of Cerritos supports the rights of free speech and assembly guaranteed under the First Amendment, but believes cities should have the ability to hold social media companies liable for their role in promoting criminal acts. Recently, the City suffered thousands of dollars in damages to respond to online threats that the Cerritos Mall would be looted. Anonymous posts on Instagram.com invited followers to “work together to loot Cerritos [M]all” only several days after the Lakewood Mall had been looted, causing thousands of dollars in damages. The posts were made under the names “cerritosmalllooting” and “cantstopusall,” among others. The City of Cerritos had no choice but to initiate response to protect the Mall and the public from this credible threat.

At the same time local governments face historic shortfalls owing to the economic effects of COVID-19, the nation’s social media platforms are seeing a record rise in profits. The broad immunity provided by Section 230 is completely untenable. Online platforms should be held responsible—and liable—for the direct harm they facilitate. Local governments are in no position to bear the costs of the crimes facilitated by these companies alone.

Congress is currently reviewing antitrust legislation and by extension, Section 230’s immunity provisions. The League urges Congress to amend Section 230 to limit the immunity provided to online platforms when they promote criminal activity to provide local governments some measurable form of relief.

## **League of California Cities Staff Analysis on Resolution No. 1**

Staff: Charles Harvey, Legislative Representative  
Bijan Mehryar, Legislative Representative  
Caroline Cirrincione, Policy Analyst  
Johnnie Piña, Policy Analyst

Committees: Governance, Transparency and Labor Relations  
Public Safety

### **Summary:**

This resolution states that the League of California Cities should urge Congress to amend Section 230 of the federal Communications Decency Act of 1996 (CDA) to limit the immunity provided to online platforms where their forums enable criminal activity to be promoted.

Ultimately, the policy objectives proposed under this resolution, if enacted, would incentivize social media companies to establish and implement a reasonable program to identify and remove content that solicits criminal activity.

### **Background:**

The City of Cerritos is sponsoring this resolution in reaction to events whereby persons, using social media platforms to coordinate locations, dates, and times for their planned criminal activity, have committed acts of looting and vandalism resulting in both actual economic harm for targeted businesses, and pecuniary loss to cities who used resources to prevent such acts from occurring when such plans are discovered.

For example, just days after the Lakewood Mall had been looted, the City of Cerritos uncovered online communications via social media that persons were planning to target the nearby Cerritos Mall. Consequently, the city felt compelled to undertake measures to protect the Cerritos Mall, costing the city thousands of dollars to guard against what officials believed to be a credible threat.

### **Staff Comments:**

#### **Overview:**

While there is certainly an argument to substantiate concerns around censorship, the use of social media as a tool for organizing violence is equally disturbing.

Throughout much of the 2020 Summer, there have been many reports of looting happening across the country during what were otherwise mostly peaceful demonstrations. Combined with the speculation of who is really behind the looting and why, the mayhem has usurped the message of peaceful protestors, causing a great deal of property damage in the process. Likewise, these criminal actions have upended the livelihood of some small business owners, many of whom were already reeling in the wake of the COVID-19 pandemic.

While social media allows people to connect in real time with others all over the world, organized illegal activity using social media is made easier by the anonymous nature of virtual interactions.

#### Nation's Reaction to the Murder of George Floyd:

Shortly after the senseless killing of George Floyd by law enforcement on May 26, 2020, civil unrest began as local protests in the Minneapolis–Saint Paul metropolitan area of Minnesota before quickly spreading nationwide to more than 2,000 cities and towns across the United States, and in approximately 60 countries in support of the Black Lives Matter movement. Protests unfolded across the country throughout the entire month of June and into July, and persisted in a handful of cities such as Portland and Seattle into the month of August.

Although the majority of protests were peaceful, some demonstrations in cities escalated into riots, looting, and street skirmishes with police. While much of the nation's focus has been on addressing police misconduct, police brutality, and systemic racism, some have used demonstrators' peaceful protests on these topics as opportunities to loot and/or vandalize businesses, almost exclusively under the guise of the "Black Lives Matter" movement. It has been uncovered that these "flash robs"<sup>1</sup> were coordinated through the use of social media. The spontaneity and speed of the attacks enabled by social media make it challenging for the police to stop these criminal events as they are occurring, let alone prevent them from commencing altogether.

As these events started occurring across the country, investigators quickly began combing through Facebook, Twitter, and Instagram seeking to identify potentially violent extremists, looters, and vandals and finding ways to charge them after — and in some cases before — they sow chaos. While this technique has alarmed civil liberties advocates, who argue the strategy could negatively impact online speech, law enforcement officials claim it aligns with investigation strategies employed in the past.

#### Section 230 and other Constitutional Concerns

At its core, Section 230(c)(1) of the CDA provides immunity from liability for providers and users of an "interactive computer service" who publish information provided by third-party users. Essentially, this protects websites from lawsuits if a user posts something illegal, although there are exceptions for copyright violations, sex work-related material, and violations of federal criminal law.

Protections from Section 230 have come under more recent scrutiny on issues related to hate speech and ideological biases in relation to the influence technology companies can hold on political discussions.

Setting aside Section 230, there are some potential constitutional issues one could raise, should there be an attempt to implement such a resolution into statute.

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<sup>1</sup> The "flash robs" phenomenon—where social media is used to organize groups of teens and young adults to quickly ransack and loot various retail stores—began to occur sporadically throughout the United States over the past ten years.

In the United States, the First Amendment prohibits the government from restricting most forms of speech, which would include many proposals to force tech companies to moderate content. While “illegal” types of speech enjoy limited or no First Amendment protection, the line for delineating between “legal” and “illegal” speech is very difficult to determine. Consequently, one would expect online platforms to push back on whether there is a constitutionally feasible way for them to “identify” protected speech versus unprotected speech, or whether there is a feasible way to define “content which solicits criminal activity.” A law requiring companies to moderate content based on the political viewpoint it expresses, for example, would likely be struck down as unconstitutional.

Nonetheless, private companies can create rules to restrict speech if they so choose. Online platforms sometimes argue they have constitutionally-protected First Amendment rights in their “editorial activity,” and therefore, it violates their constitutional rights to require them to monitor (i.e., “identify and take down”) content that may be protected under the First Amendment. They may also argue, along the same lines, that the government may not condition the granting of a privilege (i.e., immunity) on doing things that amount to a violation of their first amendment rights. This is why Facebook and Twitter ban hate speech and other verifiably false information, for example, even though such speech is permitted under the First Amendment.

With respect to privacy and the Fourth Amendment, online platforms may argue that requiring them to “provide to law enforcement information that will assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity,” turns them into government actors that search users’ accounts without a warrant based on probable cause, in violation of the Fourth Amendment.

### Industry Perspective

Unsurprisingly, industry stakeholders have strong opinions for what such changes could mean for their respective business models.

For instance, a Facebook spokesperson recently noted in a Fortune article that, “By exposing companies to potential liability for everything that billions of people around the world say, this would penalize companies that choose to allow controversial speech and encourage platforms to censor anything that might offend anyone.”

The article acknowledges that in recent years, both political parties have put social media companies under increased scrutiny, but they are not unified in their stated concerns. While Republicans accuse the companies of unfairly censoring their post, Democrats complain that these companies fail to do enough to block misinformation, violent content, and hate speech.

The article concludes that there is no way companies like Facebook and Twitter could operate without Section 230, and that the removal of this section would thereby “eliminate social media as we know it.”

### Recent Federal Action on Social Media

The President recently issued an *Executive Order on Preventing Online Censorship*. In it, he notes the following:

“The growth of online platforms in recent years raises important questions about applying the ideals of the First Amendment to modern communications technology. Today, many Americans follow the news, stay in touch with friends and family, and share their views on current events through social media and other online platforms. As a result, these platforms function in many ways as a 21st century equivalent of the public square.

Twitter, Facebook, Instagram, and YouTube wield immense, if not unprecedented, power to shape the interpretation of public events; to censor, delete, or disappear information; and to control what people see or do not see.”

Ultimately the President implores the U.S. Attorney General to develop a proposal for federal legislation that “would be useful to promote the policy objectives of this order.” The President is not subtle in communicating his desire to ultimately see legislation heavily slanted toward the preservation of free speech on social media, which some interpret as a maneuver to preempt Twitter and Facebook from regulating speech they otherwise deem as hateful or demonstrably false.

#### Considerations for Congress

Courts have generally construed Section 230 to grant internet service providers broad immunity for hosting others’ content. Many have claimed that Section 230’s immunity provisions were critical to the development of the modern internet, and some continue to defend Section 230’s broad scope. But simultaneously, a variety of commentators and legislators have questioned whether those immunity provisions should now be narrowed, given that the internet looks much different today than it did in 1996 when Section 230 was first enacted.

One way for Congress to narrow Section 230’s liability shield would be to create additional exceptions, as it did with FOSTA and SESTA<sup>2</sup>. If a lawsuit does not fall into one of the express exceptions contained in Section 230(e)<sup>3</sup>, courts may have to engage in a highly fact-specific inquiry to determine whether Section 230 immunity applies: Section 230(c)(1) immunity will be inapplicable if the provider itself has developed or helped to develop the disputed content, while Section 230(c)(2) immunity may not apply if a service provider’s decision to restrict access to content was not made in good faith.

#### Date Storage and Usage Considerations for Cities

Section 2 of the conditions the resolution applies to civil immunity requires that online platforms provide relevant information to law enforcement to assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity. This section would most likely require the development of new procedures and protocols that govern law enforcements usage and retention of such information. Those new policies and procedures would undoubtedly raise privacy concerns depending on how wide the latitude is for law

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<sup>2</sup> The Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA) create an exception to Section 230 that means website publishers *would* be responsible if third parties are found to be posting ads for prostitution — including consensual sex work — on their platforms.

<sup>3</sup> Section 230(e) says that Section 230 will not apply to: (1) federal criminal laws; (2) intellectual property laws; (3) any state law that is “consistent with” Section 230; (4) the Electronic Communications Privacy Act of 1986; and (5) civil actions or state prosecutions where the underlying conduct violates federal law prohibiting sex trafficking.

enforcement to request such information. In those circumstances cities could end up themselves incurring new liability for the governance of data that could either violate certain privacy rules or increase their data governance costs.

### **Fiscal Impact:**

Unlike the costly resources needed to support or oppose a ballot measure, a federal resolution from the League of California Cities that simply urges Congress to undertake certain action should have a negligible fiscal impact, if any monetary impact at all.

Regarding cities, if social media had no immunity for its failure to police content that solicits criminal activity, then an individual city could theoretically save thousands if not millions of dollars, depending on its size and other subjective circumstances. Collectively, cities across the country could potentially save at least hundreds of millions between redress for actual economic harm suffered and/or the cost of preventative measures taken to stop criminal activity from occurring in the first place.

Conversely, if social media platforms were to shut down, due to an inability to comply with a policy requirement to regulate speech on the internet, it is unclear on how cities might be impacted from a fiscal standpoint.

### **Existing League Policy:**

#### **Public Safety:**

##### *Law Enforcement*

The League supports the promotion of public safety through:

- Stiffer penalties for violent offenders, and
- Protecting state Citizens' Option for Public Safety (COPS) and federal Community Oriented Police Services (COPS) funding and advocating for additional funding for local agencies to recoup the costs of crime and increase community safety.

##### *Violence*

The League supports the reduction of violence through strategies that address gang violence, domestic violence, and youth access to tools of violence, including but not limited to firearms, knives, etc.

The League supports the use of local, state, and federal collaborative prevention and intervention methods to reduce youth and gang violence.

### **Governance, Transparency & Labor Relations:**

#### *Private Sector Liability*

The League will work closely with private sector representatives to evaluate the potential for League support of civil justice reform measures designed to improve the business climate in California. These measures should be evaluated on a case-by-case basis through the League police process.

**Questions to Consider:**

Many cities obviously believe that creating civil liability for social media platforms—due to their role in providing the communication mediums for those who organize looting attacks— is key to deterring this organized criminal activity.

If such a change was actually passed by Congress, it would force social media to essentially police every conversation on stakeholders' respective platforms, putting immense pressure on the industry to make subjective determinations about what conversations are appropriate and what are unacceptable.

At the end of the day, there are a few questions to consider in assessing this proposed resolution:

- 1) *What would this resolution's impact be on free speech and government censorship?*
- 2) *What are the expectations for cities when they receive information from a social media platform about a potentially credible threat in their respective communities? Does a city become liable for having information from a social media platform and the threat occurs?*
- 3) *What would the costs be to develop and maintain new data governance policies, including data infrastructure, to store this information?*
- 4) *What is the role of the League in engaging in issues relating to someone's privacy?*

**Support:**

The following letters of concurrence were received:

City of Hawaiian Gardens

City of Lakewood

City of Ontario

City of Rancho Cucamonga

City of Roseville

# **LETTERS OF CONCURRENCE**

## **Resolution No. 1**

Amendment to Section 230 of the Communications  
Decency Act of 1996





# CITY OF HAWAIIAN GARDENS

*"Our Youth - Our Future"*

August 7, 2020

John Dunbar, President  
[jdunbar@yville.com](mailto:jdunbar@yville.com)  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

This proposed resolution with the required background information will be submitted to the League of California Cities for consideration by the General Assembly at the Annual Conference on October 9, 2020. (Attachments 1 and 2) The intent of the resolution is to address the use of social medial platforms for posting information that leads followers to meet and commit crimes and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

The public safety efforts in the City of Hawaiian Gardens would certainly benefit from such legislation. This letter serves to support the City of Cerritos in their efforts to submit of the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,



Ernie Hernandez  
City Manager

cc Blanca Pacheco, President, LA County Division/League of California Cities - [bpacheco@downeyca.org](mailto:bpacheco@downeyca.org)  
Meg Desmond, League of California Cities - [mdesmond@cacities.org](mailto:mdesmond@cacities.org)  
Kristine Guerrero, LA County Division/League of California Cities - [kguerrero@cacities.org](mailto:kguerrero@cacities.org)  
Kathy Matsumoto, Assistant City Manager, City of Cerritos - [kmatsumoto@cerritos.us](mailto:kmatsumoto@cerritos.us)

Jeff Wood  
Vice Mayor

Steve Craft  
Council Member



Todd Rogers  
Mayor

Ariel Pe  
Council Member

Diane DuBois  
Council Member

August 5, 2020

John Dunbar, President  
[jdunbar@yville.com](mailto:jdunbar@yville.com)  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Dunbar:

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This letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

Todd Rogers  
Mayor

cc: Blanca Pacheco, President, LA County Division/League of California Cities - [bpacheco@downeyca.org](mailto:bpacheco@downeyca.org)  
Meg Desmond, League of California Cities - [mdesmond@cacities.org](mailto:mdesmond@cacities.org)  
Kristine Guerrero, LA County Division/League of California Cities - [kguerrero@cacities.org](mailto:kguerrero@cacities.org)  
Kathy Matsumoto, Assistant City Manager, City of Cerritos - [kmatsumoto@cerritos.us](mailto:kmatsumoto@cerritos.us)

# Lakewood

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CITY OF

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COUNCIL MEMBERS

SCOTT OCHOA  
CITY MANAGER

SHEILA MAUTZ  
CITY CLERK

JAMES R. MILHISER  
TREASURER

August 6, 2020

John Dunbar, President  
[jdunbar@yville.com](mailto:jdunbar@yville.com)  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Dunbar:

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This letter serves to support the City of Cerritos in their efforts to submit the above-mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

Alan D. Wapner  
Council Member  
League of California Cities Board Member

c: Blanca Pacheco, President, LA County Division/League of California Cities - [bpacheco@downeyca.org](mailto:bpacheco@downeyca.org)  
Meg Desmond, League of California Cities - [mdesmond@cacities.org](mailto:mdesmond@cacities.org)  
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Kathy Matsumoto, Assistant City Manager, City of Cerritos – [kmatsumoto@cerritos.us](mailto:kmatsumoto@cerritos.us)



## CITY OF RANCHO CUCAMONGA

10500 Civic Center Drive | Rancho Cucamonga, CA 91730 | 909.477.2700 | [www.CityofRC.us](http://www.CityofRC.us)

August 6, 2020

John Dunbar, President  
[jdunbar@yville.com](mailto:jdunbar@yville.com)  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

This proposed resolution with the required background information will be submitted to the League of California Cities for consideration by the General Assembly at the Annual Conference on October 9, 2020. (Attachments 1 and 2) The intent of the resolution is to address the use of social medial platforms for posting information that leads followers to meet and commit crimes and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

On behalf of the City of Rancho Cucamonga, this letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

L. Dennis Michael  
Mayor

cc: Blanca Pacheco, President, LA County Division/League of California Cities - [bpacheco@downeyca.org](mailto:bpacheco@downeyca.org)  
Meg Desmond, League of California Cities - [mdesmond@cacities.org](mailto:mdesmond@cacities.org)  
Kristine Guerrero, LA County Division/League of California Cities - [kguerrero@cacities.org](mailto:kguerrero@cacities.org)  
Kathy Matsumoto, Assistant City Manager, City of Cerritos - [kmatsumoto@cerritos.us](mailto:kmatsumoto@cerritos.us)



City Council  
311 Vernon Street  
Roseville, California 95678

August 7, 2020

John Dunbar, President  
[jdunbar@yville.com](mailto:jdunbar@yville.com)  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

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On behalf of the City of Roseville, this letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

John B. Allard II,  
Mayor

Cc: Blanca Pacheco, President, LA County Division/League of California Cities - [bpacheco@downeyca.org](mailto:bpacheco@downeyca.org)  
Meg Desmond, League of California Cities - [mdesmond@cacities.org](mailto:mdesmond@cacities.org)  
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Kathy Matsumoto, Assistant City Manager, City of Cerritos - [kmatsumoto@cerritos.us](mailto:kmatsumoto@cerritos.us)  
Jason Gonsalves, Joe A. Gonsalves and Son



**GOVERNANCE, TRANSPARENCY AND LABOR RELATIONS POLICY COMMITTEE**  
**Ballot Proposition Agenda**  
**September 29, 2020**

**Staff:** Bijan Mehryar, Legislative Representative  
Johnnie Pina, Legislative Policy Analyst

1. **Proposition 16: ALLOWS DIVERSITY AS A FACTOR IN PUBLIC EMPLOYMENT, EDUCATION, AND CONTRACTING DECISIONS. LEGISLATIVE CONSTITUTIONAL AMENDMENT.**

**Previous League Action:**

The League's Governance, Transparency and Labor Relations Policy Committee and the League Board of Directors voted to support Assembly Constitutional Amendment (ACA) 5 (Weber). On June 25, ACA 5 was chaptered and is now on the ballot as Proposition 16. Given that ACA 5 is now Proposition 16, the ballot proposition must now go through the League's policy committee and Board process to determine a position. As a reminder, for the League to take a position on a ballot proposition the Board of Directors must approve the decision by a two-thirds vote.

**Ballot Proposition Summary:**

This ballot proposition proposes to the people of the State of California an amendment to the Constitution of the State by repealing Section 31 of Article I of the Constitution relating to government preferences. There is no difference between ACA 5 that the League supported and Proposition 16.

**Bill Description:**

Proposition 16 is a proposed constitutional amendment on the November 2020 ballot that, if approved by the voters, would repeal Section 31 of Article I of the California Constitution, which was added by Proposition 209 of 1996. This particular section of the California Constitution prohibits the state, cities, counties, community college districts, public university systems, and special districts from discriminating or giving preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin with regard to public employment, public contracting or public education.

**Existing Law:**

Prior to the passage of Proposition 209, the primary limitation on state and local governments' use of affirmative action in public contracting was the Fourteenth Amendment of the U.S. Constitution. The equal protection clause contained therein as interpreted in *City of Richmond v. J.A. Croson Company* (1989) requires the application of "strict scrutiny", the most demanding standard under equal protection jurisprudence, when evaluating programs that discriminate or provide preferential treatment on the basis of race or gender. Effectively, prior to the passage of Proposition 209 the only restriction on the state or city's use of these types of programs were (1) the demonstration of a compelling government interest in pursuing the program and (2) narrowly tailoring the program to specifically remedy to prior discrimination that is found to have occurred.

**Background:**

Proposition 209 was passed where there were concerns about the distribution of resources and how government programs may have been privileging certain individuals or groups.

Proponents of the proposition contended that the proposition was necessary to counter the “reverse discrimination” based on race that had become from their perspective rampant in the public sector. It was their goal to institute public employment, education, and contracting practices that were “fair, color-blind, race-blind, [and] gender-blind....”

The proposition’s opponents argued that the broad language of the initiative would eliminate a wide variety of programs that had been created to remedy the challenges faced by women and minorities particularly in the educational space. The proposition was opposed by a coalition of pro-affirmative action and feminist groups. Summarizing their opinion, former Secretary of State, General (Ret.) Colin Powell commented in 1996 that, “Efforts such as the California Civil Rights Initiative which poses as an equal opportunities initiative, but which puts at risk every outreach program, sets back the gains made by women and puts the brakes on expanding opportunities for people in need.”

The issue of what types of programs and what type of people they served and benefited was keenly at the heart of the public debate over Proposition 209. After the initiative passed and its constitutionality was validated by the courts several tests of the new constitutional section’s provisions were entertained by the courts, those decisions all reinforced the strong plain text prohibitions of Proposition 209. For example, the City of San Jose had a robust Minority and Women Owned Business Enterprise (MWBE) program that attempted to remedy prior discrimination in large city contracts by requiring prime contractors to demonstrate either utilization of MWBE subcontractors at specified percentages, or good faith efforts to do so. This program, both its participation and outreach components were found to violate the new law in *Hi-Voltage Wire Works v. City of San Jose*.

**Fiscal Impact:**

If the proposition were to be passed by the voters, the fiscal impact to cities would be the staff time and contracting costs associated with the types of studies necessary to substantiate the legal requirements of the *Croson* case.

According to the [Legislative Analyst’s Office \(LAO\) Analysis of Proposition 16](#):

**No Direct Fiscal Effects on Public Entities.**

The proposition would have no direct fiscal effect on state and local entities because the proposition would not require any change to current policies or programs. Instead, any fiscal effects would depend on future choices by state and local entities to implement policies or programs that consider race, sex, color, ethnicity, or national origin in public education, public employment, and public contracting.

**Potential Fiscal Effects of Implementing Programs Highly Uncertain.**

State and local entities could make any number of decisions about policies and programs that consider race, sex, color, ethnicity, or national origin. Because the specific choices state and local entities would make if voters approved this proposition are unknown, the potential fiscal effects are highly uncertain.

**Existing League Policy:**

The League currently does not have explicit existing policy relating to this topic. The only policy relating to this topic is stated in the League’s mission statement.

The League believes:

- Local self-governance is the cornerstone of democracy.
- Our strength lies in the unity of our diverse communities of interest.
- In the involvement of all stakeholders in establishing goals and in solving problems.

**Staff Comments/Policy Considerations:**

This ballot proposition presents California voters the option, for the first time since Proposition 209's passage in 1996, to revisit the question about the limitations placed on programs designed to remedy previous inequities and discrimination in public employment, public education, and public contracting.

This proposition is fundamentally a local control issue in so far as its passage and approval by the voters would allow cities the flexibility, if they choose, to craft programs that could meet the employment and contracting needs of their communities.

**Support-Opposition:**

Support

U.S. Senator Kamala Harris, California

U.S. Senator Dianne Feinstein, California

Governor Gavin Newsom

Lt. Governor Eleni Kounalakis

California Secretary of State Alex Padilla

Senate President Pro Tempore Toni Atkins, SD39- San Diego

Eric Garcetti, Mayor of Los Angeles

Sam Liccardo, Mayor of San Jose

London Breed, Mayor of San Francisco

Libby Schaff, Mayor of Oakland

Darrell Steinberg, Mayor of Sacramento

Michael Tubbs, Mayor of Stockton

A complete list of supporters can be found on [the Yes on 16 website](#).

Opposition

80-20 Educational Foundation, Inc. (80-20)

80-20 DC Chapter

Aborn Institute

American Civil Rights Institute (ACRI)

American Coalition for Equality

American Freedom Alliance (AFA)

Asian American Coalition for Education (AACE)

Asian Americans for Equal Rights (AAER)

Asian American Legal Foundation (AALF)

Asian Industry B2B (AIB2B)

Asians not Brainwashed by Media (ANBM)

Association for Education Fairness (AFEF)

Bay Area Homeowners Network (BAHN)

Better Milpitas (BM)

California Association of Scholars (CAS)

Central California Chinese Cultural Association (CCCCA)



A complete list can be found on the [Californians For Equal Rights website](#).

**Other Resources:**

[Proposition 16 Voter Guide](#)

[Proposition 16 LAO Report](#)

[Proposition 16: Restoring affirmative action CalMatters Summary](#)

[Prop 16 CalMatters Summary Video](#)

**Staff Recommendation:**

Staff recommends the committee discuss Proposition 16 and make a recommendation to the Board.

**Committee Recommendation:**

**Board Action:**