

Date of Hearing: July 5, 2023

ASSEMBLY COMMITTEE ON JUDICIARY
Brian Maienschein, Chair
SB 403 (Wahab) – As Amended June 15, 2023

SENATE VOTE: 34-1

SUBJECT: DISCRIMINATION ON THE BASIS OF CASTE

KEY ISSUE: IN ORDER TO CLARIFY EXISTING LAW, SHOULD “CASTE” BE ADDED TO THE LIST OF PROTECTED CHARACTERISTICS IN THE STATE’S ANTI-DISCRIMINATION STATUTES?

SYNOPSIS

California’s Unruh Civil Rights Act, the Fair Employment and Housing Act (FEHA), and provisions of the Education Code prohibit discrimination on the basis of certain “protected characteristics.” This bill would add the word “caste,” as defined, to the list of protected characteristics in each statute. The bill defines “caste” to mean “an individual’s perceived position in a system of social stratification on the basis of inherited status,” specifying further that “a system of social stratification on the basis of inherited status” may be characterized by factors that include inability to alter inherited status; socially enforced restrictions on marriage, private and public segregation, and discrimination; and social exclusion on the basis of perceived status. Finally, the bill declares that its provisions are “declarative and clarifying” of existing law because the Civil Rights Department already assumes that “caste” is embraced within other protected characteristics and the court confirmed that interpretation.

This bill is supported by dozens of civil rights and social justice advocates, including several groups representing South Asian Americans. The bill is opposed by dozens of groups also representing South Asian Americans. Both sides agree that caste discrimination should be unlawful, but agreement ends there. The supporters contend that caste-based oppression, while often hidden, is nonetheless pervasive; therefore, “caste” should be a protected characteristic in California’s anti-discrimination laws. Opponents discount the pervasiveness of caste discrimination in California and, moreover, believe that inserting the word “caste” into statute will perpetuate cultural stereotypes and unconstitutionally single out South Asian Americans.

Given that both supporters and opponents agree that caste discrimination is covered by existing law – and in light of the genuinely felt concerns of many members of the South Asian community – the Committee proposes an amendment that will clarify that caste discrimination is prohibited by existing law that makes it illegal to discriminate on the basis of ancestry (and list discrimination on the basis of “caste” as a form of discrimination on the basis of “ancestry”). Consistent with past efforts to add new protected characteristics, the proposed amendment will incorporate caste by definition. Incorporating “caste” by definition will have the same legal effect as making “caste” a new and separate protected characteristic, as explained in the analysis. The bill as proposed to be amended by the Committee would be stronger than the bill in print by (1) clarifying that a complaint may allege discrimination based upon multiple, intersecting protected characteristics; and (2) defining “ancestry” a more expansive way to include caste as well as other forms of inherited social status.

SUMMARY: Makes “caste” a protected characteristic under the state’s anti-discrimination laws and defines caste and certain elements of caste. Specifically **this bill:**

- 1) Adds “caste” to the existing lists of protected characteristics in the Unruh Civil Rights Act, The Fair Employment and Housing Act, and anti-discrimination provisions of the Education Code.
- 2) Defines caste to mean an individual’s perceived position in a system of social stratification on the basis of inherited status.
- 3) Specifies that “a system of social stratification on the basis of inherited status,” for purposes of the above, may be characterized by factors that may include, but are not limited to, inability or restricted ability to alter inherited status; socially enforced restrictions on marriage, private and public segregation, and discrimination; and social exclusion on the basis of perceived status.

EXISTING LAW:

- 1) Provides, under the Unruh Civil Rights Act, that all persons within this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of any kind. (Civil Code Section 51.)
- 2) Defines “sex,” for purposes of 1) above, to include pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. Specifies that “sex” also includes, but is not limited to, a person’s gender. Specifies that “gender,” means “sex,” and includes a person’s gender identity and gender expression. Specifies that “gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth. (Civil Code Section 51 (e)(5).)
- 3) Prohibits the unlawful denial of full and equal access to the benefits of, or the unlawful discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, that is funded directly by the state, or that receives any financial assistance from the state, for a person on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation. (Government Code Section 11135.)
- 4) Prohibits the owner of any housing accommodation from discriminating against any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information of that person. (Government Code Section 12955.)
- 5) Makes it an unlawful employment practice for an employer to discriminate against any applicant or employee because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision-making, medical condition, genetic information, marital status, sex, gender, gender identity, gender

expression, age, sexual orientation, or veteran or military status of any person. (Government Code Section 12940.)

- 6) Specifies, for purposes of the anti-discrimination provisions of the Fair Employment and Housing Act, that race and any other protected characteristic includes a perception that the person has any of the protected characteristics or is associated with a person who has, or is perceived to have, any of those characteristics. (Government Code Section 12926 (o).)
- 7) Prohibits discrimination based on disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or immigration status in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid. (Education Code Sections 200-220.)
- 8) Provides, under the constitutions of both California and the United States, that no person shall be denied equal protection of the law. (California Constitution, Article 1, Section 7; United States Constitution, Amendment XIV.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: According to the author:

Caste systems exist across the globe and have a long-standing existence in California that predates the waves of migration from South Asia. In my district, I continue to hear about caste discrimination experienced by Dalit women which affirms the importance of this bill. Adding caste to existing protections increases access to resources, cultural competency for agencies and organizations, and empowers individuals experiencing caste discrimination. Depending on an individual's primary language and cultural background, they may use a word other than caste to describe their experience, however the word we use in the English-language to describe a system of social stratification is caste. That is why the inclusion of that word is important; it has a meaning.

Existing anti-discrimination laws are inclusive of caste discrimination, however there is an inequitable application of the law because caste is not expressly stated in our laws. When someone has a claim of caste discrimination, the strength of their evidence may not be sufficient if the presiding judge decides current laws are not inclusive of caste discrimination. This is why we must expressly state caste discrimination is prohibited in California.

Existing anti-discrimination laws. California's Unruh Civil Rights Act, the Fair Employment and Housing Act (FEHA), and provisions of the Education Code prohibit discrimination on the basis of enumerated "protected characteristics." While the lists of protected characteristics are not identical, they are quite similar, including, among other things, "sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status." (*See e.g.* Civil Code Section 51.) Provisions of the Government Code, which includes FEHA, prohibit a similar list of protected characteristics in different sections prohibiting discrimination in employment, housing, and participation in state-funded programs. (See Government Code Sections 11135, 12940, and 12955.) Finally, provisions of the Education Code prohibit discrimination in any program or activity conducted by an educational institution that receives, or benefits from, state financial

assistance, or enrolls pupils who receive state student financial aid. (See especially Education Code Section 200 *et seq.*)

This bill would add the word “caste,” as defined, to the list of protected characteristics in the relevant provisions of the Civil, Government, and Education codes. The bill defines “caste” to mean “an individual’s perceived position in a system of social stratification on the basis of inherited status,” specifying further that “a system of social stratification on the basis of inherited status” may be characterized by factors that include inability to alter inherited status; socially enforced restrictions on marriage, private and public segregation, and discrimination; and social exclusion on the basis of perceived status. Finally, the bill declares that its provisions are “declarative and clarifying” of existing law, because the Civil Rights Department already assumes that “caste” is included within other protected characteristics and the court confirmed that interpretation.

Evidence of “caste” discrimination in California. Equality Labs, the bill’s primary sponsor, conducted a survey of Americans of South Asian descent and their experience with caste discrimination. Based on interviews with Americans of South Asian descent, the survey found that 25% of caste-oppressed Dalits (the lowest caste once referred to as “untouchables”) experienced verbal or physical assault because of their caste, and one-third of Dalit students have experienced caste-based discrimination during the course of their education. “Even more alarming,” according to the co-sponsors of this bill, two-thirds of Dalits reported experiencing discrimination in the workplace. Although workplace discrimination apparently exists across the occupational spectrum, many of the letters submitted by supporters point in particular to Silicon Valley and the “tech industry.” For example, the Tech-Equity Collaborative, a co-sponsor, claims that perhaps “no industry has shown the most complaints related to caste than the tech industry.” Tech-Equity cites several articles that appear to reinforce this claim.

Some high-technology companies – but apparently not all – have admitted that a problem exists and have begun to take corrective steps. Indeed, a recent report by the Reuters news organization began by stating that “America’s tech giants are taking a modern-day crash course in India’s ancient caste system, with Apple emerging as an early leader in policies to rid Silicon Valley of a rigid hierarchy that’s segregated Indians for generations.” According to the report, Apple updated its general employee conduct policy in 2020 to explicitly prohibit discrimination on the basis of caste, adding it to existing categories, including race, religion, gender, age, and ancestry. The report claimed that India has become the technology sector’s “top source of skilled foreign workers,” implying that Indian workers bring ideas about caste with them (a claim the opponents of this bill dispute, as discussed below). Reuters spoke to “about two dozen Dalit tech workers in the United States who said discrimination had followed them overseas.” The workers reported that “caste cues,” including last names, hometowns, diets and religious practices, “had led to colleagues bypassing them in hiring, promotions and social activities.” (“Caste in California: Tech giants confront ancient Indian hierarchy,” *Reuters.com* August 15, 2022.)

The Cisco Case. In October of 2020, the then-named California Department of Fair Employment and Housing (DFEH) brought an action in Santa Clara County Superior Court against Cisco Systems, Inc. (Cisco), and two of its supervising engineers, for engaging in unlawful employment practices. Specifically, the complaint alleged that the two supervisors discriminated against complainant “John Doe” because he was a Dalit, “a population once known as the ‘Untouchables’ who are the most disadvantaged people under India’s century-old caste system.” DFEH’s action against Cisco cited its failure to take remedial actions once it learned of the

violations. (See DFEH “Complaint,” *Dept. of Fair Employment and Housing v. Cisco Systems, Inc. et.al.*, Santa Clara County Superior Court, Case No. 20CV372366, Filed Oct. 16, 2020.)

The case dragged on for another two years as parties wrangled over various motions (including whether Doe could proceed under a fictitious name). In January of 2023, the supervisors filed a motion for sanctions against DFEH (which by this time had been renamed the Civil Rights Department-CRD). The motion for sanctions alleged a variety of abuses, including allegations that DFEH made false or unwarranted assumptions about the caste status of the supervisors and other employees; failed to consider that a position for which John Doe had been passed over went to another Dalit; relied on questionable evidence regarding the extent of caste discrimination; and failed to bring an action against a white, non-Indian supervisor who had allegedly ordered some of the work tasks that Doe claimed were discriminatory. (“Motion for Sanctions,” *Dept. of Fair Employment and Housing v. Cisco Systems, Inc. et.al.*, Santa Clara County Superior Court, Case No. 20CV372366.) It is unclear if the court ever ruled on the sanctions, but in any event, in April of 2023, CRD moved to dismiss the action against the two supervisors. (“Request for Dismissal,” *Dept. of Fair Employment and Housing v. Cisco Systems, Inc. et.al.*, Santa Clara County Superior Court, Case No. 20CV372366.) CRD has continued its action against Cisco for its failure to take required remedial actions. According to CRD, the case against Cisco is now in mediation.

Both the supporters and opponents of this bill cite the *Cisco* case to support their respective positions. Supporters cite the case as evidence of caste discrimination in the tech industry and the fact that Cisco originally demurred on the grounds that, “caste” discrimination was not covered by existing law. To supporters, therefore, the case clearly shows the need to clarify existing law so as to prevent future defendants from making this claim. To opponents, the case shows that caste is already covered by existing law, as DFEH argued that caste was covered under existing characteristics and the court apparently agreed, for it did not dismiss the case. Opponents also cite the defendants’ motion for sanctions to show that the state’s lead enforcement agency made biased and unwarranted assumptions about the supervisor’s caste and the Hindu caste system more generally. The opponents also point to the allegation in the motion for sanctions that DFEH never named the white, non-Indian supervisor, even though he allegedly ordered Doe to perform some of the tasks that Doe deemed discriminatory and harassing. The opponents believe this was because DFEH assumed that the other supervisor, because he was not South Asian, could not have engaged in caste discrimination.

Objections to the inclusion of “caste” in California statutes. Opponents of the bill contend that inserting “caste” in state law unfairly singles out South Asians and reinforces stereotypes about Hinduism, which opponents claim are no longer warranted, or at least not to the extent suggested by the supporters. Opponents are unpersuaded by claims that the definition of “caste” in the bill is facially neutral and could be applied to any caste system in many parts of the world. Even if the word “caste” may be used to describe other forms of social stratification and oppression, the opponents argue, caste is historically associated with South Asians, and Hindus in particular. Popular dictionary definitions, encyclopedia entries, and even the California social science standards, opponents claim, routinely associate caste primarily with South Asians and Hindus. Indeed, however broadly the bill in print might define the term, the letters and background information provided to the Committee by the author and supporters reinforce the association of caste and South Asians. The Equality Labs survey, according to its own description, interviewed persons of South Asian descent. The executive summary of the survey posted on the Equality Labs website states that as members of “the South Asian American community [Equality Labs

is] uniquely situated to redeem the errors of history” around caste. The website that introduces the survey asserts that there are “four main caste groups,” and then proceeds to list the four castes associated with Hinduism. It defines caste as “a system of religiously codified exclusion that was established in Hindu scripture.” Even when noting that caste is not limited to the Indian subcontinent, it states that “caste has been found wherever South Asian migrants go.” If the opponents are wrongly associating the bill’s use of “caste” with South Asians, then some of the supporters own statements may be providing grist for the mill.

Opponents “Equal Protection” concerns seem overstated. The opposition claim that inserting “caste” in the state’s antidiscrimination laws violates the equal protection clause of the 14th Amendment, seem questionable. Opponents point to an online article by Professor Vikram Amar, the Dean of the College of Law at the University of Illinois. Significantly, Amar does *not* conclude that SB 403 violates the 14th Amendment; rather, he argues that SB 403 “potentially” raises an equal protection issue *if* it is found that the bill singles out South Asians to such an extent that “caste discrimination itself is something that, definitionally, can be practiced only by people of certain ethnicities.” Amar acknowledges the author’s statements stressing that caste systems exist in parts of the world other than South Asia. The question posed by Amar is whether these general statements are sufficient to overcome an “illicit motive challenge.” That is, even facially neutral statutes are “invalid if they have uneven, or disparate, effects along racial or ethnic lines, and are motivated by a desire to hurt or demean a particular racial or ethnic group.”

Amar concludes that SB 403, while likely well-intentioned, “seems hurriedly conceived and unartfully crafted in its current form.” Amar would “tone down” the focus on South Asians (both in the bill and in statements supporting it) and would clarify that the bill is “largely” declarative of existing law. For if it is entirely declarative of existing law, a court might ask *why* the bill was needed at this particular time? Amar reaches no certain conclusion on the bill’s constitutionality, and he concedes that his article amounts to “preliminary thoughts” about the “potential” constitutional flaws in SB 403. (Vikram Amar, “Preliminary Thoughts on Potential Constitutional Flaws in SB 403, a California Proposal to Prohibit Caste Discrimination,” *Verdict: Legal Analysis and Commentary at Justia*, May 16, 2023, at <https://verdict.justia.com/2023/05/16/preliminary-thoughts-on-potential-constitutional-flaws-in-sb-403-a-california-proposal-to-prohibit-caste-discrimination>.) If Amar is correct, and a court would look to the motive behind a facially neutral statute, it would be difficult to argue that the author and supporters, and the legislators who voted for the bill, were “motivated by a desire to hurt or demean a particular racial or ethnic group.” To the contrary, it appears that the author and supporters genuinely seek to protect South Asians, and others, from caste discrimination.

More compelling, perhaps, are the opposition’s *non*-legal arguments. They argue that a bill targeting “caste” discrimination – when caste is so closely associated with South Asian Americans in popular understanding – reinforces harmful stereotypes that the opponents wish to banish. During the dozens of hours that Committee staff spent meeting and talking with opponents of the bill, one theme regularly surfaced: when the opponents left India and other places in South Asia, they also thought that they had left behind ideas about caste. Opponents find especially galling the assumption that South Asian immigrants must necessarily bring ideas historically associated with their place of birth with them to their new homes. Interestingly, this aspect of the opposition arguments is captured quite poignantly in Thenmozhi Soundararajan’s moving book, *The Trauma of Caste*, a series of “mediations” on the experience of a Dalit feminist in modern America. In one passage, Soundararajan writes of an experience with her mother:

My parents' generation was so naïve. They thought they had left caste behind when they came to the United States. They were steeped in a desperate optimism, being among the first generation to benefit from affirmative action programs that enabled Dalits to access higher education and pursue professions abroad as part of a new wave of South Asian immigrants to the US in the 1970s. After all they had endured to become educated, my parents genuinely believed caste was in the rearview mirror; in truth they also needed to push down the demons that had terrorized them at home. When I asked my mom about our caste, however, she recognized that we had not left it behind. (Soundararajan, *The Trauma of Class* (2022), p. 22.)

Like Soundararajan's parents' generation, the opponents of this bill – some of whom also identify as Dalits – do not endorse the idea of a caste system or support caste discrimination; rather, they want to leave those aspects of their ancestry behind. Supporters, however, just as compellingly contend that it is impossible to leave caste behind, and the better approach is to confront it.

Proposed Committee Amendments: Given that both supporters and opponents agree that caste discrimination is covered by existing law – and in light of the genuinely felt concerns of many members of the South Asian community and at least one well respected legal scholar – the Committee proposes amendments to the bill that will clarify that caste discrimination is prohibited, while at the same time not singling it out, or at least not singling it out in statute so prominently. Consistent with recent past efforts to add new protected characteristics to the state's anti-discrimination laws, the proposed amendment would incorporate caste by definition into the law's existing prohibition on discrimination on the basis of ancestry.

Specifically the Committee recommends the following:

- Remove “caste” from the list of protected characteristics where it has been added by the bill in print.
- Provide a definition of “ancestry” that includes, but is not restricted to caste, which would read as follows:

“Ancestry” includes, but is not limited to, lineal descent, heritage, parentage, caste, or any inherited social status. Nothing precludes a person from alleging discrimination on the basis of ancestry in combination with discrimination based upon other protected characteristics.

- Because “caste” would still appear in the definition of “ancestry,” the Committee proposes to ***maintain the definition of “caste” as it appears in the bill in print.***

Incorporating “caste” by definition will have the same legal effect as making “caste” a new protected characteristic, as explained below. In addition, one could argue that the bill, as proposed to be amended by the Committee, would offer stronger protection against discrimination than the bill in print by (1) clarifying that a complaint may allege discrimination based upon multiple, intersecting characteristics and (2) defining “ancestry” to include caste *as well as* other forms of inherited social status.

Precedents for, and the legal effect of, incorporation by definition. As noted above, the list of protected characteristics in California's various anti-discrimination laws differ slightly from

statute to statute. Many of these differences are mitigated, however, by the fact that many of the characteristics added in recent years have been incorporated by definition rather than added directly to a list of protected characteristics. For example, “gender identity” and “gender expression” were added directly to the list of protected characteristics in FEHA statutes. However, in the Unruh Civil Rights Act these very same terms were incorporated by definition into “sex.” Specifically, AB 887 (Chap. 719, Stats. 2011) defined “sex” to include “gender identity” and “gender expression,” rather than adding those terms to the list of protected characteristics in the substantive part of the statute.

It is unclear why the Legislature chose to add “gender expression” and “gender identity” to the list of protected characteristics in FEHA and instead incorporated those same terms by definition into the Unruh Act. One of the supporters of this bill makes the interesting argument that characteristics added directly to the list of protected characteristics are “relational,” while those incorporated by definition are more “personal.” For example, the supporter claims that “sexual orientation” was made a new characteristic in the Unruh Act because it was “relational,” while “gender identity” and “gender expression” supposedly are not “relational.” It is unclear why “gender expression,” which involves how one chooses to express oneself to *others*, is less “relational” than sexual orientation. Whatever the merits of the relational/personal distinction, it apparently was not on the minds of legislators who voted to place those supposedly non-relational terms directly in the list of protected characteristics in FEHA given that the theory is absent from the legislative record.

More important, regardless of the Legislature’s rationale for the different approaches to the Unruh Act and FEHA – assuming there was, in fact, a rationale – “gender expression” and “gender identity” are no less protected by the Unruh Act than they are by FEHA. For example, an appellate court held that a Catholic hospital’s refusal to perform a hysterectomy on a transgender male violated the Unruh Act because it discriminated on the basis of the plaintiff’s gender identity. The fact that gender identity only appeared in the definition of “sex” and not in Unruh’s list of characteristics, apparently had no significance to the court. Indeed, even the defendant hospital in that case conceded that “gender identity” was protected by the Unruh Act. (*Minton v. Dignity Health* (2019) 39 Cal. App. 5th 1155.) In other cases arising under the Unruh Act, the courts have treated gender identity as a fully protected characteristic, regardless of its placement in the statute. (See *Ryan v. Prof'l Disc. Golf Ass'n*, 2023 U.S. Dist. LEXIS 82987, and the cases cited therein.)

Is “ancestry” the appropriate category in which to include “caste?” Even if incorporation by definition has the same legal effect as being listed as a separate protected category, the author and supporters still question whether “ancestry” is the proper form of discrimination in which to include “caste.” The author’s office has informed the Committee that incorporating caste through the definition of ancestry is not “appropriate” because caste is distinct from ancestry. The Committee’s definition, however, does not deny that caste is “distinct” from ancestry. Obviously the terms have different meanings. The author’s office and one of the bill’s supporters claim that ancestry would not take into account the ways that caste intersects with other characteristics, such as race, color, or religion. The Committee disagrees. First, the definition proposed by the Committee does not *equate* ancestry with caste; that is, it does not say that ancestry *means* caste, it says that discrimination on the basis of ancestry *includes* discrimination on the basis of caste. Most legal dictionaries define ancestry as a more general category that includes under its umbrella other characteristics, such as race, ethnicity, color, or nationality. Black’s Law Dictionary defines “ancestry” in terms of “lineal descent,” the online Law.Com Legal Dictionary

stresses the movement from great-grandparent, to grandparent, to parent, to child. (See e.g. Law. Com Dictionary.)

The author's apparent resistance to the use of "ancestry" is somewhat perplexing. None of the support letters and related background material submitted to the Committee suggests that caste is *not* a part of one's ancestry, and some seem to expressly understand caste to be part of ancestry. The co-sponsors make it clear that caste is something that one is born into. Indeed the flier entitled "Vote Yes on SB 403: Ending Caste Discrimination in California," prepared by Equality Labs, states that "Caste is inherited. If your parents, grandparents, and so on are of a particular caste, you are as well." That sounds a great deal like the Law.Com definition. Moreover, as Equality Labs notes in its survey of caste: "At birth, every child inherits her *ancestor's caste*." (<https://www.equalitylabs.org/castesurvey>.) Thus, the bill's primary sponsor use of the possessive certainly suggests that caste is a subset of ancestry. Even if there is some "official" definition of "ancestry" that is inconsistent with "caste," it does not matter for purposes of drafting a statute. Statutory definitions typically define terms for the limited purpose of that statute. They make no claim to universality and do not claim a monopoly on the "true" meaning of terms. If the Legislature declares "for purposes of this statute" that discrimination on the basis of ancestry includes discrimination on the basis of caste, then for purposes of the statute discrimination on the basis of caste is prohibited.

Second, the definition of "ancestry" in the Committee's proposed amendment not only does not preclude possible "intersections" between caste and other protected characteristics, as the author and some supporters have suggested, but in fact explicitly allows it. First, nothing prevents a complainant under the Unruh Act or FEHA from alleging discrimination on the basis of more than one characteristic, as DFEH did in the *Cisco* case, and which the court accepted. Second, in order to make this even clearer, the Committee's definition of ancestry expressly states that, "*Nothing precludes a person from alleging discrimination on the basis of ancestry in combination with discrimination based upon other protected characteristics.*" In addition, the bill as proposed to be amended by the Committee leaves in place the author's definition of "caste," which makes it clear that caste includes, and may intersect with, other systems of social stratification based on inherited status. [On the "dilemma of intersectionality," see Delgado and Stefancic, *Critical Race Theory*, pp. 10-11, 58-70; for the classic application of the concept of intersectionality to a concrete legal issue, see Kimberle Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics," *University of Chicago Legal Forum* (1989).]

Other California institutions that have made "caste" a protected characteristic. Many supporters of this bill point out that the California State University system recently updated their internal anti-discrimination policies by adding "caste" to the policies. However, CSU did not make "caste" a stand-alone protected characteristic. Rather, CSU quite literally included it parenthetically by noting that the existing "Race or Ethnicity" characteristic included "color, caste, and ancestry." (See *CSU Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Dating Violence, Stalking, and Retaliation (Nondiscrimination Policy)*, Article I and Article II (A), available at <https://calstate.policystat.com/policy/12891658/latest>.) Similarly, the University of California at Davis, in 2021, added "caste," in the same parenthetical manner suggested by the Committee, to its "national origins" characteristics. (Available at <https://hdapp.ucdavis.edu/discrimination>.) These examples are not offered as evidence of why the Legislature should incorporate "caste" by definition. The divergent choices do, however,

speak to the malleable, sometimes interchangeable, intersectional, and socially constructed nature of such contested terms as race, ethnicity, color, national origin, and, indeed, caste.

In sum, based on the Committee’s understanding of existing case rule and rules of statutory construction, including “caste” within the ambit of “ancestry” would have the same *legal effect* as adding caste to the list of protected characteristics. This is especially clear when we compare the effect of incorporating “gender expression” and “gender identity” by definition into the Unruh Act, with FEHA’s approach of adding the terms as new protected characteristics in FEHA. Under both statutes, as discussed above, the courts treat them as protected characteristics regardless of their placement in the statute. The courts will presumably do the same with “caste” if it is included within “ancestry.” In addition, the proposed definition of “ancestry” not only makes it clear that ancestry includes “caste.” The definition also expressly states that nothing precludes combining an allegation of discrimination based upon caste with one or more allegations based on other protected characteristics. Defining “ancestry” to include caste, as well as other forms of inherited social status, provides additional protection for systems of social stratification not historically associated with caste.

Finally, in keeping with the author’s definition of caste in the bill, the proposed amendment will cover all of the nuanced and complex social relations anticipated by the bill in print. The proposed Committee amendment may not remove all of the opposition, but it addresses the opposition’s legitimate concerns about singling out caste as a new and distinct form of discrimination. Not only is caste incorporated by definition, the definition of “ancestry” makes it clear that “caste” is only one of multiple forms of discrimination based upon one’s inherited social status.

ARGUMENTS IN SUPPORT: The California Labor Federation (CLF) supports SB 403 because it is a “historic effort to end caste discrimination in the State of California.” CLF elaborates:

Caste-oppressed South Asians experience some of the highest rates of discrimination in the United States. Working class and undocumented caste-oppressed Californians are in even more precarious positions, as they struggle with exclusion from immigrant networks and the post-traumatic stress of leaving their homelands behind as they settle in California to escape caste violence.

Freedom from caste discrimination is inextricably tied to workers’ rights. In California, caste discrimination occurs across industries, including technology, education, construction, restaurants, domestic work, and medicine. Caste discrimination against Dalits—people referred to as “untouchables” by dominant castes—has included bullying, harassment, bias, wage theft, sexual harassment, and even trafficking. A 2018 survey by Dalit civil rights organization Equality Labs found that 1 in 4 Dalit Americans experienced verbal or physical assault because of their caste, and 1 in 3 Dalit students reported experiencing discrimination during the course of their education. Even more alarming was that 2 out of 3 Dalits reported experiencing caste discrimination in their workplaces.

SB 403 states that individuals are protected from discrimination based on their caste or perceived caste. By taking action to clarify existing protections for caste oppressed Californians, SB 403 will be a positive step forward to end caste discrimination and will send a message that everyone deserves to be treated with dignity and respect.

The California Labor Federation views caste equity as one of the many issues we must address for workers to achieve equal rights and justice alongside all Californians.

ARGUMENTS IN OPPOSITION: The Hindu American Foundation opposes this bill “both its legislative intent and impact will result in an unconstitutional denial of equal protection and due process to South Asians (the vast majority of whom are of Indian origin) and other vulnerable ethnic communities. SB-403 unfairly maligns, targets and racially profiles select communities on the basis of their national origin, ethnicity and ancestry for disparate treatment, thereby violating the very laws it seeks to amend, the Unruh Civil Rights Act. It further violates Title VII of the Civil Rights Act of 1964 and the US and California State Constitutions.”

The Ambedkar-Phule Network of American Dalits and Bahujans (APNA) contends that SB 403 is a “misinformed bill [that] is pushing hate in the name of stopping hate.” APNA, an organization of Dalits and Bahujans, contends, as a preliminary matter, that the supporters of the bill “do not speak for us — the Dalits and Bahujans, the alleged victims,” claiming that the bill was introduced without any “community consultation” and without gathering “reliable data” on the subject. “It is,” APNA writes, “merely a rush to legislate, carried by a marketing campaign fueled by emotional rhetoric.” Finally, APNA contends that “SB 403 unfairly maligns, targets and racially profiles all South Asians . . . on the basis of our national origin, ethnicity and ancestry for disparate treatment, thereby violating the very laws it seeks to amend, the Unruh Civil Rights Act.”

ARGUMENTS OF CONCERN: The Jewish Institute for Liberal Values (JILV) writes to register its “profound reservations” about SB 403:

We are concerned about SB-403 because both its legislative intent and impact will result in an unconstitutional denial of equal protection and due process to South Asians (the vast majority of whom are of Indian origin) and other vulnerable ethnic communities. SB-403A unfairly maligns, targets and racially profiles select communities on the basis of their national origin, ethnicity and ancestry for disparate treatment, thereby violating the very laws it seeks to amend, the Unruh Civil Rights Act. It further violates Title VII of the Civil Rights Act of 1964 and the US and California State Constitutions. As Jewish Americans, we are well aware of the negative impact legalized discrimination has on minority communities.

The Jewish Institute for Liberal Values shares the admirable goals of standing up for civil rights and eliminating all forms of prejudice and discrimination, including those based on caste. So, the question is not whether we should deal with any allegations of caste discrimination, but how. As such, if and when incidents of caste discrimination occur, they should be brought to light, thoroughly investigated and rectified under existing law in its current form. Not through separate laws that only apply to South Asians and other select communities of color.

Today, it would be inconceivable that California would consider such blatantly discriminatory laws as in the past due to the state’s commitment to policies that prioritize diversity and inclusion. SB-403 stands out as a striking, historic departure from the California legislature’s commitment to policies that protect and celebrate the state’s pluralistic ethos.

REGISTERED SUPPORT / OPPOSITION:

Support

Ad Dharm Brotherhood USA
Alphabet Workers Union - Communication Workers of America
Ambedkar Association of North America
Ambedkar Buddhist Association of Texas
Ambedkar International Co-ordination Society (AICS)
Ambedkar International Mission Center Houston, USA (AIM)
Ambedkarite Buddhist Association of Texas
American Gurdwara Parbandhak Committee
Anti-racism Task Force At First United Methodist Church of Redding
Asian Americans Advancing Justice - Asian Law Caucus
Asian Pacific American Labor Alliance
Begumpura Cultural Society of New York
Bhim International Foundation
Boston South Asian Coalition
Boston Study Group
California Asian Pacific American Bar Association
California Environmental Voters (formerly Clcv)
California Labor Federation, Afl-cio
Caste Equity Legal Task Force
Center for Empowering Refugees and Immigrants
Coalition of Americans for Pluralism in India
Coalition of Seattle Indian Americans
Contra Costa Asian American Pacific Islander Coalition
Council on American Islamic Relations
Desh Doaba
DFW Shri Guru Ravidass Organization, Mesquite, Tx
East Bay Yimby
Equality Labs
Friends for Education International
Global Bahujan Group
Global Nri Forum
Gurdwara Sahib Fremont
Gurdwara Shri Guru Ravidass Sahib Ji Selma, California
Guru Granth Sahib Foundation, INC.
International Bahujan Organization
International Bodhisattva Guru Ravidass Organization INC
Jakara Movement
Korean Community Center of The East Bay
Love Never Fails
NAACP Hayward South Alameda County Branch
National Academic Coalition for Caste Equity
Nibbana Healthcare INC.
Periyar Ambedkar Study Circle
Periyar International, USA
Saman Sangh

Sanford Heisler Sharp Llp
Sarab Sanjha Gurdwara
Shasta County Citizens Advocating Respect
Shri Guru Ravidas Sabha Bay Area
Shri Guru Ravidas Temple, Pittsburg, CA
Shri Guru Ravidass Sabha Sacramento
Shri Guru Ravidass Sabha, Fresno, CA
Shri Guru Ravidass Sabha, New York
Shri Guru Ravidass Temple, Rio Linda, CA
Shri Guru Ravidass Temple, Union City, CA
Sikh American Legal Defense and Education Fund (SALDEF)
Sikh Center of Pacific Coast
Sikh Coalition
Sikh Youth of America
South Asian Bar Association of North America
South Asian Network
Sri Guru Ravidass Sabha
Techequity Collaborative
The Sikh Coalition
Several individuals

Oppose

Ambedkar-phule Network of American Dalits and Bahujans
American Hindu Federation
Americans for Equality
Arsha Vidya Pitham
Bangladeshi Minorities in Usa
Bay Area Vaishnav Parivar
Bihar Up Jharkhand United of North America
Californiaforjustice.com
Cascade Park Democratic Values Coalition
Chinmaya Mission San Jose
Coalition of Hindus of N. America (COHNA)
Dalit Samaj of North America
Dharma Civilization Foundation
Drishtikone
Durga Temple of Virginia
Evergreen Desi Group
Evergreen Spiritual Singing Group
Federation of Hindu Mandirs
Fia of Northern California
Folsom Hindu Temple and Cultural Center
Foothills Desi Sports Association
Fremont Hindu Temple
Genupgenz&beyond
Global Kashmiri Pandit Diaspora
Gujaratis of North America
Guru Nanak Sikh Society of Yuba City

Gurudwara Sant Sagar
Hero Life Sciences INC
Hindu American Foundation, INC.
Hindu American Political Action Committee
Hindu Community Center
Hindu Community of Springfield
Hindu Speakers Bureau
Hindu Teens Association of Roseville
Hindu Temple Dayton
Hindu Temple of Greater Chicago
Hindu Temple of New Hampshire
Hindus for Harmony
Humansense.ai INC.
India Association of Los Angeles
India Awareness Foundation
Indiafacts
Indian American Interfaith Leaders
Indic Press
Indo American Social Association LLC
Indo-American Community Federation (IACF-USA)
Interfaith Dialogue Association
Interfaithshaadi
Iron Horse Health and Wellness Group
Jain Foundation, India Community Center, Simi Valley Mandir
Jain Society of Greater Cleveland
Jaya Hanuman Temple and Cultural Center
Jewish Institute for Liberal Values
Knowyourroots Foundation
Mcanally Desi Youth Sports Community
Metropolitan Asian Family Services, INC.
Minority Parents Association, Livermore
Moms, Homemakers & Dogooders Syndicate
Mothers Against Bullying
Motwani Jadeja Family Foundation
Nithyananda Dhyanapectam Temple and Cultural Center
Organization of Hindu Malayalees INC
Palo Alto for Religious Freedom
Reiki Group
Rutgers Hindu Yuva
Sanskrita Bharati
Sanskritabharati USA - NJ Chapter
San Ramon Health for Humanity Group
Sankara Eye Foundation USA
Shanti Mandir
Shanti Om
Shiva Vishnu Temple of Cleveland
Showing Up for Racial Justice North County San Diego
Shree Swaminarayan Satsang Mandal
Shri Guru Ravidass Temple, Yuba City, CA

Shri Yoga Vedanta Ashram
Smap Foundation INC.
Social Justice Coalition, Livermore
Sri Ashtalakshmi Temple
Sri Guru Nanak Sikh Temple
Sri Saibaba Mandir
Sri Satya Narayana Swamy Devasthanam (veda Temple)
Stand With US
Step2stepup INC.
Temple Volunteers of Centerville, Fremont
Tri-devi Sanatan Mandir INC
United Indians Association
United States-India Relationship Council
University of Toronto - Hindu Student's Council
Uttar Pradesh Mantal
Vaishnav Samaj of Southern California
Vasavi Seva Foundation
Vedic Cultural & Spiritual Center of San Diego
Vedic Education and Devotional Academy (VEDA)
Vinay Kruttiventi Foundation
Vivaankika
Washington State and India Trade Relations Action Committee
World Hindu Coalition
Yoga Ascent North America
Several individual letters and emails

Oppose Unless Amended

Go Beyond Labels
South Asians for Inclusive Progress

Concerns

Jewish Institute for Liberal Values

Analysis Prepared by: Tom Clark / JUD. / (916) 319-2334