Law Office of Patrick O. Patterson
414-704-1896 | popatterson@gmail.com
PO Box 2415
Admitted in Wisconsin and California
San Anselmo, California 94979

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Honorable Thomas J. Umberg
Chair, Senate Judiciary Committee
1021 O Street, Room 3240,
Sacramento, CA 95814

Re: [SB-403 – SUPPORT] Caste Equity Legal Task Force Supports SB403: A Bill to End Caste Discrimination

Dear Chairman Umberg, Vice-Chair Wilk and Distinguished Members of the Committee:

I write to support the passage of SB-403, which would amend California's civil rights statutes to expressly prohibit discrimination on the basis of caste.

I am a longtime civil rights lawyer, former Acting Professor of Law at UCLA (where I taught employment discrimination law among other subjects), former Senior Counsel to the Chair of the U.S. Equal Employment Opportunity Commission (2010-2014), and former Deputy Director of the U.S. Department of Labor's Office of Federal Contract Compliance Programs (2014-2017). While I am not authorized to speak for those entities or any other agencies or organizations regarding this matter, the knowledge and experience I have gained in those roles informs my views on this legislation.

Opponents of SB-403 argue that the proposed legislation is unnecessary because "existing [California] law already prohibits caste discrimination." Hindu American Foundation (HAF) Letter to Hon. Aisha Wahab, dated April 18, 2023, at 3. However, I am not aware of any court decision holding that caste discrimination is prohibited by existing California law. To the contrary, in the very case that HAF cites for this proposition, *Department of Fair Employment and Housing (DFEH) v. Cisco Systems, Inc.,* No. 20CV372366 (Santa Clara County Superior Court, filed Oct. 16, 2020), the defendant has consistently taken the position that discrimination on the basis of caste is NOT prohibited by any of the existing provisions of the Fair Employment and Housing Act (FEHA), and that all allegations of caste discrimination should therefore be stricken from DFEH's complaint. *See, e.g.,* Defendant Cisco's Motion To Strike Portions of Plaintiff's Complaint, ¶ I.1 (Nov. 3, 2020) (motion to strike all allegations of caste discrimination and casteism in the complaint "because 'caste' is not a protected class listed in the FEHA"); Defendant Cisco's Memorandum of Points and Authorities in Support of Demurrers, at 12 (Nov. 3, 2020) ("caste is not protected under the FEHA").

In the *Cisco* case, DFEH (now renamed the California Civil Rights Department) contends that discrimination on the basis of caste is covered by the express prohibitions of discrimination on

the basis of race, color, national origin, religion, or ancestry that are enumerated in the FEHA. In its recent decision in *DFEH v. Superior Court and Cisco Systems, Inc.* (Cal. Ct. App., Aug. 5, 2022), No. H048962, https://www.courts.ca.gov/opinions/archive/H048962.PDF, the Sixth District Court of Appeal did not decide whether caste is encompassed by those existing protected categories. That Court, however, reversed a Superior Court decision and held that the lower court was required to consider the risk of harm – including acts of violence and physical harm -- to the complainant's family members in India in deciding whether to grant DFEH's motion to proceed with the litigation using a fictitious name for the complainant. The Court of Appeal remanded the case to the trial court for further proceedings. Those proceedings are ongoing, and they still have not resulted in a decision as to whether caste discrimination is or is not prohibited by the FEHA.

SB-403 would eliminate any uncertainty on this issue by making it clear that California's civil rights laws prohibit discrimination based on caste. The bill would define caste as "an individual's perceived position in a system of social stratification on the basis of inherited status," which may be characterized by factors that 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." SB-403, § 1(a). Contrary to the argument that this definition is too "vague," *see* HAF Letter, at 2-3, it is quite precise and specific compared to other definitions contained in California's anti-discrimination laws. The courts have had no difficulty, for example, in enforcing the FEHA's prohibition of discrimination based on race, even though the term "race" is defined only as "inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles." Govt. Code § 12926(w). Moreover, as is the case with discrimination based on race, and contrary to the objections of the bill's opponents, *see* HAF Letter, at 1-2, the courts will have no difficulty in differentiating between those who are engaging in discrimination and those who are subjected to discrimination on the basis of caste.

SB-403 does not target any particular racial, national origin, religious, or ethnic group. Instead, the bill recognizes that caste systems "exist in regions including, but not limited to, South America, Asia, and Africa," and that caste discrimination is found "across communities of religious practice." SB-403, § 1(b).

As much as we might wish otherwise, caste discrimination, like race discrimination, is a significant societal problem here in California as it is elsewhere in the United States and around the world. The amendments proposed by SB-403 would address the problem of caste discrimination in California by making clear the Legislature's intent to prohibit it. I therefore urge the Senate to vote in favor of this bill.

Respectfully submitted,

/s/ Patrick O. Patterson

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