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Tuesday, March 19, 2019

Senate Public Safety Committee
State Capitol, Room 2031
Sacramento, CA 95814

RE: Opposition to Senate Bill 194 (Nielson)

To the Honorable Committee Members:

I am Nicholas Gonzales of the California Civil Liberties Advocacy (CCLA). The CCLA writes you today to explain why we oppose Senate Bill 194 (SB 194). We feel the bill strikes poorly in two major fields: (1) Its scope is boundless and (2) it shall be used to chill public participation.

SB 194 is written too vague to be just. What constitutes a personal disguise within the language of this bill? What isn't considered a personal disguise? Is a person huddled within their hoodie wearing a personal disguise? Is a hat that blocks the visibility of a portion on one's face, such as a basketball cap, a personal disguise? An individual's personal understanding is too variable and so some objective standard must be created in crafting such a law.

Of course, none of this speaks to the fact that SB 194 itself shall public participation. Anonymity has emboldened those that feel the most persecuted by governmental systems to assemble in protest against those systems.

While it may be true that the U.S. Supreme Court has ruled in favor anti-mask statutes involving hate groups, the Ku Klux Klan for example (*Church of American Knights of the Ku Klux Klan v. Kerik* (2004) 356 F.3d 197), we strongly feel that, as long as the definition of what constitutes a disguise can be narrowed in scope, that anti-mask statutes should only be enforced where there exists a nexus between the disguised person and criminal activity. Merely holding peaceful protest while wearing an article

"Indifference to personal liberty is but the precursor of the state's hostility to it."

— Justice Kennedy, U.S. Supreme Court

that conceals one's identity, whether wholly or partially, should not be the basis for which a law enforcement officer orders someone to reveal themselves. In other words, if an officer lacks probable cause that a crime is being or has been committed, or is about to be committed, then the state has no right to interfere. In *Kerik*, the Court held that masks "that the members of the American Knights seek to wear in public demonstrations does not convey a message independently of the robe and hood. That is, since the robe and hood alone clearly serve to identify the American Knights with the Klan," and that such masks "[do] not communicate any message that the robe and the hood do not. The expressive force of the mask is, therefore, redundant." (See *Kerik, supra.*) This leaves open the question of whether the wearing of a particular mask serves as a device for symbolic speech or if the intent is instead to conceal one's identity.

At a minimum, we feel the scope of such statutes could be limited to a nexus between criminal conduct and the concealment of one's identity. But the absolute limit to which we feel such statutes should be extended is that if the wearing of the mask itself is intended to convey protected speech, then government has no right to interfere.

For all of the abovementioned reasons, the CCLA opposes SB 194.

Yours truly,



Nicholas Gonzales
Legislative Advocate
California Civil Liberties Advocacy