



March 5, 2019

The Honorable Ash Kalra  
 California State Assembly  
 State Capitol Building, Room 2196  
 Sacramento, CA 95814

**RE: AB 418 (Kalra) Evidentiary Privileges: Union Agent-Represented Worker Privilege. Notice of Opposition (As Introduced)**

Dear Assembly Member Kalra:

The League of California Cities and the organizations listed below must respectfully oppose your Assembly Bill (AB) 418, which expands the current evidentiary privilege against disclosure of communications to also include union agent-represented worker communications. The evidentiary privilege is by design narrow in scope to protect the confidentiality and integrity of relationships, both professional and familiar in nature, where highly sensitive and deeply personal information is exchanged. Examples include: spousal privilege; confidential marital communications privilege; physician-patient privilege; psychotherapist-patient privilege; clergyman-penitent privilege; sexual assault counselor-victim privilege; domestic violence counselor-victim privilege; human trafficking caseworker-victim privilege; and attorney-client privilege.

The notion that the relationship between an organized union representative and a union member is similar in nature to the examples above is misguided. Additionally, this measure creates legal and operational challenges for public agencies while establishing a new, one-sided level of evidentiary privilege for union employees. Specifically, AB 418:

**Will Inhibit Agencies' Ability to Conduct Timely and Thorough Investigations into Allegations of Misconduct**

The issue of workplace discrimination and harassment has been significantly elevated as a concern throughout California since occurrences and allegations of sexual harassment and discrimination – some long-standing and widespread – have been made public. Now more than ever, local government employers must judiciously investigate allegations of workplace misconduct including sexual harassment

and discrimination. To investigate properly, it is imperative that a public employer have the ability to interview all potential parties and witnesses to ascertain the facts and understand the matter fully. Such investigations are needed to uphold the public's trust and to ensure the safety and well-being of both public employees and the public.

AB 418 interferes with the ability to interview witnesses because it adds Article 9.5, Section 3 to Evidence Code Section, which provides:

***“A represented employee or represented former employee also has a privilege to prevent another from disclosing a confidential communication between the employee and a union agent that is privileged pursuant to this section.”***

This expands the scope of evidentiary privilege beyond what is contemplated by current provisions and permits the silencing of employees who wish to voluntarily report an incident or testify. Such an expansion provides an opportunity for employees of an agency to put a roadblock in front of necessary employer investigations into misconduct and could limit the ability of employers to conduct investigations into workplace safety, harassment and other allegations.

#### **Creates One-Sided Evidentiary Standards**

Unlike other privileges that apply to both sides of the litigation or proceedings such as the attorney-client privilege, AB 418 only protects the union agent and represented worker communication. It does not equally protect the management-employee communication, or communications between members of management regarding labor union disputes or grievance issues. Consequently, in labor related proceedings such as PERB hearings, an employer would be forced to disclose all related communications, while the union agent or employee could pick and choose which communications they wanted to disclose which may result in unjust rulings or decisions made against the public agency regarding labor related proceedings.

#### **Fails to Create Minimum Education or Licensing Qualifications for Privilege**

For all non-familial forms of evidentiary privilege, minimum qualifications based on education levels and licensure (such as those required for members of the State Bar, physicians and other health professionals, and licensed counselors) are required in order for the privilege to apply. AB 418 fails to recognize this well-established threshold and instead applies this privilege unilaterally to any recognized union agent.

For these reasons, the League of California Cities and the organizations listed below must oppose AB 418. If you have any questions regarding the League's position on this bill, please do not hesitate to contact me or the other organization representatives directly.

Sincerely,

Dane Hutchings, League of California Cities,

Contact 916-658-8210

Geoff Neill, California State Association of Counties

Contact: 916-650-8133

Paul Smith, the Rural County Representatives of California (RCRC)

Contact: 916-447-4806

Faith Lane Borges, the California Association of Joint Power Authorities

Contact: 916-441-5050

Sara C. Bachez, California Association of School Business Officials

Contact: 916-447-3783

Laura Preston, Association of California School Administrators

Contact: 916-444-3216

Derick S. Lennox, School Employers Association of California

Contact: 916-557-9745

Amber King, Association of California Healthcare Districts

Contact: 916-266-5207

Dillon Gibbons, California Special District Association

Contact: 916-442-7887

Jean Kinney Hurst, Urban Counties of California

Contact: 916-272-0010

cc: The Honorable Mark Stone, Chair, Assembly Judiciary Committee  
Members, Assembly Judiciary Committee  
Nicholas Liedtke, Staff Counsel, Assembly Judiciary Committee  
Paul Dress, Consultant, Republican Caucus