

MEMORANDUM

Date: July 21, 2021
 To: The Anti-Defamation League
 Re: ADL Summer Associate Research Program 2021
 One-Page Summary for Question #7: Law Enforcement
 Connections to Violent Racist and White Supremacist Groups

ADL remains extremely concerned about known connections of law enforcement officers to violent racist and white supremacist groups. Committed extremists could cause severe and irreparable harm in these positions, from mishandling or covering up incidents to declining to intervene when armed domestic groups threaten elected officials or government institutions.

SUMMARY OF ANALYSIS

Section A: To what extent does the law permit a refusal to hire a person desiring government employment who embraces white supremacist and/or violent extremist beliefs? The Supreme Court has striven to protect the right of free speech under the First Amendment, but has also recognized the goal of government employers to hire only those job candidates who will contribute to the effective and efficient completion of the employers’ duties. Therefore, a government employer may refuse to hire a person who embraces white supremacist and violent extremist beliefs as long as (i) the employment is not expressly conditioned on the candidate’s not embracing white supremacist or violent extremist beliefs, and (ii) the government employer can demonstrate that such beliefs will hinder the candidate’s ability to effectively perform their job duties.

Section B: To what extent does the law permit a decision to fire a government employee who is determined to have embraced white supremacist and/or violent extremist beliefs? People do not lose their First Amendment protections of free speech and free assembly when they become government employees. However, the government has an interest in providing effective services to the public, and can take action to protect that interest by firing employees for their First Amendment-protected beliefs. Though police officers may seek refuge from being fired through “Law Enforcement Officers Bill of Rights” statutes, once a police department decides to fire an officer for behavior inconsistent with the department’s public duties, that decision is often upheld by courts.

Section C: How have states addressed the issue of law enforcement officers with connections to extremist groups? Are these proposals sound from a constitutional and policy perspective? Do they have unintended consequences? Lawmakers face difficulty addressing the issue of racist police, and will struggle to define what an improper “hate group” is or what constitutes an improper association between an officer and a hate group. Legislation falls into three categories: (i) implementing robust background checks to prevent hiring racist police; (ii) terminating officers harboring allegiance to hate groups; and (iii) devoting resources to studying the problem with the goal of eventually recommending substantive changes to policy. Each of these proposals, if drafted correctly, is sound from a constitutional and policy perspective, but all face downstream impacts policymakers should consider.