



REMOVING HATE FROM POLICING: A PRACTICAL GUIDE FOR LAW ENFORCEMENT AGENCIES

The prevalence of hate group affiliations in police departments has been well-documented by research organizations and governmental agencies for years.¹ Despite knowledge of this persistent threat growing within their ranks, police departments continue to hire officers without conducting thorough checks for ties to hate groups, fail to create policies that prohibit officers from affiliating with hate groups, and only discipline or terminate officers if their affiliation with a hate group becomes public. Officers who are not formally affiliated with a hate group but who express homophobia, transphobia, Islamophobia, anti-Semitism, racism, or other explicit biases similarly manage to get hired and retained by departments and often avoid discipline once their views become known within the department.²

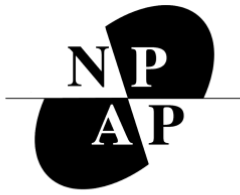
Left unchecked, officers affiliated with hate groups—some of which have committed acts of domestic terrorism or pose domestic terrorist threats³—and officers who have expressed explicit bias will continue, under the color of law, to harm communities that are already overpoliced and underserved: people of color, immigrants, religious minorities, LGBTQ+ people, and people with disabilities.⁴ Allowing individuals who hold these biases to join and remain on police forces threatens public safety, undermines the legitimacy of policing, and further erodes what little trust some communities have in the police and the criminal legal system. Further, it sends the message to officers who are concerned about this threat that it would be futile to report a fellow officer’s affiliation with a hate group or their biased views because the department has not taken any action to address the issue.

¹ Michael German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement*, Brennan Center for Justice (Aug. 27, 2020), available at <https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law>; Vida B. Johnson, *KKK in the PD: White Supremacist Police and What To Do About It*, 23 LEWIS & CLARK L. REV. 205, 214-221 (2019) (discussing the FBI’s warning about white supremacist groups infiltrating police departments and listing instances of police officers found to be affiliated with hate groups).

² Police officers who are not affiliated with a hate group may still harbor racist beliefs that harm the community. See Johnson, *supra* note 1, at 221 (“Of course, not only those with memberships in an organized hate group are racist. Racist beliefs are held by members of the police departments not affiliated with hate groups. Those can be just as dangerous.”).

³ Robert O’Harrow Jr., Andrew Ba Tran & Derek Hawkins, *The rise of domestic extremism in America*, The Washington Post (April 12, 2021), available at <https://www.washingtonpost.com/investigations/interactive/2021/domestic-terrorism-data/> (“Since 2015, right-wing extremists have been involved in 267 plots or attacks and 91 fatalities, the data shows.”); Joanna Walters & Alvin Chang, *Far-right terror poses bigger threat to US than Islamist extremism post-9/11*, The Guardian (Sept. 8, 2021), available at <https://www.theguardian.com/us-news/2021/sep/08/post-911-domestic-terror> (“[A]n intelligence report warned that racially-motivated extremists posed the most lethal domestic terrorism threat.”).

⁴ German, *supra* note 1.



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NPAP urges police departments to consider the below best practices for rooting out explicit bias and hate group affiliations (1) during recruitment, by identifying hate groups and screening out officers with explicit biases, and (2) throughout the course of an officer’s employment, by strengthening anti-discrimination policies, improving police department culture around reporting, monitoring officer performance, and investigating discriminatory misconduct and taking appropriate disciplinary action.

BEST PRACTICES

Identify Active Hate Groups

A “hate group” is defined as an organization that has “beliefs or practices that attack or malign an entire class of people, typically for their immutable characteristics” such as race, ethnicity, religion, disability, sexual orientation, gender, or gender identity.⁵ Although some political organizations may have bigoted members or hold beliefs that members of hate groups support, a group “must have some hate-based orientation/purpose” in order to qualify as a hate group.⁶ If it is unclear whether an organization is a hate group or a political organization, departments can consult the group’s statements or principles, the statements of its leaders and spokespersons, and its activities to see whether they are attacking particular groups of people.⁷

Departments should regularly consult hate group databases to determine which groups are most active in their area or growing in membership.⁸ To identify affiliations with hate groups even when they are not explicitly named, departments should become familiar with the markers and symbols hate groups use to identify themselves as well as the terminology they use.⁹ Departments should also crowdsource information about active hate groups from the community by holding townhalls, focus groups, and online forums.¹⁰ Once active hate groups have been identified, departments should clearly communicate to officers that affiliating with these groups violates the Code of Conduct and municipal and departmental policies.

⁵ Southern Poverty Law Center, *What is a Hate Group?*, available at <https://www.splcenter.org/20200318/frequently-asked-questions-about-hate-groups#hate%20group>; see also FBI, *Hate Crimes, Defining a Hate Crime*, available at <https://www.fbi.gov/investigate/civil-rights/hate-crimes>.

⁶ Anti-Defamation League, *Hate Group*, available at <https://www.adl.org/resources/glossary-terms/hate-group>.

⁷ Southern Poverty Law Center, *supra* note 5.

⁸ See, e.g., Anti-Defamation League’s H.E.A.T. Map, available at <https://www.adl.org/education-and-resources/resource-knowledge-base/adl-heat-map>; Southern Poverty Law Center’s Hate Map, available at <https://www.splcenter.org/hate-map>.

⁹ See, e.g., Anti-Defamation League’s Hate Symbols Database, available at <https://www.adl.org/hate-symbols>.

¹⁰ Center for Policing Equity, *White Supremacy in Policing: How Law Enforcement Agencies Can Respond* (April 1, 2021), p. 15, available at <https://policingequity.org/images/pdfs-doc/CPE-WhiteSupremacy.pdf>.



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Screen Out Candidates Affiliated with Hate Groups or Who Express Explicit Bias

Departments should avoid hiring practices that will attract candidates who are primarily interested in controlling, rather than serving, the community. Management should consider whether the candidate is primarily interested in the role because of the opportunity to be confrontational and the potential for violence. Departments should avoid depicting SWAT teams, car chases, weapons, and other imagery that glorifies confrontation and violence in their recruiting materials,¹¹ and instead use language and imagery related to building positive community relationships, protecting the community, and engaging in community service.

To ensure that hiring practices will produce candidates who can connect with the community, management should keep the following questions in mind when considering a candidate: (1) Does the candidate have experience navigating, or the aptitude to navigate, challenging social situations? (2) Does the candidate have any ties to advocacy organizations with causes that are important to the community (e.g., racial justice, LGBTQ+ rights, disability rights)? (3) Is an otherwise qualified candidate being screened out due to outdated hiring criteria (e.g., credit check, physical fitness test, juvenile record, minor drug use)?¹²

Background checks should include not only a candidate's criminal history, but their history of professional misconduct, including complaints, investigations, and their reason for leaving prior employers. When considering candidates who have prior experience working in law enforcement, departments should consult available databases tracking officer misconduct, such as the National Decertification Index (NDI).¹³ Before being hired, candidates should undergo a psychological exam administered by a licensed psychiatrist to determine fitness for duty.

Departments should conduct a thorough inquiry into whether a candidate has any past or current affiliations with hate groups or whether they have publicly expressed explicit biases. The inquiry should include a comprehensive review of the candidate's social media accounts.¹⁴ Social media reviews should flag: (1) racial

¹¹ *Id.* at 14.

¹² *Id.* (Using such criteria to screen out candidates “could disqualify otherwise-suitable candidates who may have perspectives and experiences that enable them to relate especially well to the communities they police.”).

¹³ About NDI, International Association of Directors of Law Enforcement Standards and Training, available at <https://www.iadlest.org/our-services/ndi/about-ndi> (The NDI “serve[s] as a national registry of certificate or license revocation actions relating to officer misconduct.”).

¹⁴ Over the years, current and former officers have posted content on social media platforms that endorse bigoted views, violence, and violent policing. *See e.g.*, The Plain View Project, available at <https://www.plainviewproject.org/> (database of public Facebook posts and comments made by current and former police officers).



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epithets; (2) racist and other discriminatory language, jokes, statements, and gestures; (3) racist and other discriminatory imagery or symbols; (4) displays of pins, patches, tattoos, symbols, and insignia of hate groups; (5) “likes,” retweets, and any other sharing or endorsement of photos, memes, or statements that advocate racism, violence, misogyny, homophobia, or other kinds of hate or discrimination.¹⁵ Candidates should be required to disclose any relationships that would make contact with prohibited hate groups unavoidable (e.g., a household member is affiliated with a hate group).¹⁶

Revise the Code of Conduct, Policies and Procedures, and Collective Bargaining Agreements

The Code of Conduct should clearly communicate to officers that the department has an interest in, and commitment to, public safety, community trust, and fair treatment of everyone in the community. It should be clear to officers that any discriminatory action or conduct—both on duty and off—that jeopardizes public safety, community trust, or confidence in fair treatment will not be tolerated and will be subject to an internal investigation and disciplinary action. Specifically, the Code should prohibit any act or conduct that (1) brings the department into disrepute; (2) discredits the individual as an officer; (3) hinders the effective and efficient operation of the department; or (4) disrupts the harmony or working relationships within the department.¹⁷ As a catch-all, the Code should also prohibit officers from engaging in any conduct that fails to meet ethical or professional standards or demonstrates an inability or unwillingness to uphold their sworn oath.

One way to improve uniformity in conduct across law enforcement agencies is to create a statewide Code of Conduct. For instance, the state legislature in Maine empowered the Criminal Justice Academy—an entity within the Maine Department of Public Safety tasked with training and certifying law enforcement officers—to create a statewide Code of Conduct and to act in cases involving officer misconduct.¹⁸ Without a statewide Code of Conduct, each law enforcement agency has the discretion to set its own standards, which results in disparate treatment for officers engaged in the same discriminatory misconduct.

¹⁵ Center for Policing Equity, *supra* note 10, at pp. 8-10.

¹⁶ *Id.* at 6.

¹⁷ *See, e.g., Eaton v. Harsha*, 505 F. Supp. 2d 948, 954-957 (D. Kan. 2007) (citing provisions of the Topeka Police Department’s Code of Conduct and General Orders, City of Topeka Personnel Code, and Fraternal Order of Police Contract that prohibit similar acts and conduct).

¹⁸ Me. Rev. Stat. tit. 25, § 2803-A (LexisNexis); Maine Criminal Justice Academy, Criminal Justice Organizations and Associations, *Law Enforcement Code of Ethics*, available at https://www.maine.gov/dps/mcja/docs/law_enforcement_code_of_ethics.pdf; *see also* Matt Byrne, *Legislation would create Maine police code of conduct and expand public disclosure*, Portland Press Herald (April 27, 2021), available at <https://www.pressherald.com/2021/04/26/legislation-would-create-new-power-to-address-more-police-misconduct-cases/>.



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Departments should enact specific policies that prohibit discrimination, including the use of abusive, profane, degrading, or insulting language and discriminatory actions and inferences as well as policies to prohibit the inappropriate use of government technology and equipment, including the creation, sharing, or storage of discriminatory material. Departments should have social media policies that prohibit racial, gendered, homophobic, and other discriminatory slurs, jokes, or remarks, whether they are on or off duty.¹⁹ Departments should also explicitly prohibit affiliating with hate groups and ban any pins, patches, tattoos, symbols, or insignia of hate groups.

The collective bargaining agreement should make it clear that department management and the municipality have the right to discipline officers for conduct that violates policies and procedures.²⁰

Improve Department Culture, Tone from the Top, and Training

Some departments may require a change in leadership to transform the department culture from one of ignoring—or even tacitly endorsing—discriminatory misconduct to one of actively seeking to prevent discriminatory misconduct, thoroughly investigating allegations of misconduct, and taking appropriate action to discipline officers. In these cases, municipalities must be willing to replace department management and supervising officers who have created an environment of intolerance with individuals who are committed to anti-discrimination efforts.

Department management and supervising officers should consistently affirm the department's commitment to anti-discrimination practices, both verbally (e.g., meetings, trainings) and in writing (e.g., policies, memos). For instance, management and supervisors should (1) clearly state their support for anti-discrimination policies and practices and condemn any violations, (2) remind officers of their duty to report discriminatory conduct and explain the mechanism for reporting, and (3) reassure officers that they will not face retaliation for reporting fellow officers.²¹ If possible, departments should try to coordinate statements supporting anti-discrimination policies with union leadership.²²

Departments should conduct training on their policies and procedures that includes reviewing the Code of Conduct and officers should be required to confirm their understanding by signing it. In some instances, departments can integrate their messaging on anti-discrimination policies and procedures and the reporting of

¹⁹ Center for Policing Equity, *supra* note 10, at p. 10.

²⁰ *Eaton*, *supra* note 17, at 954-55, 962-63.

²¹ Center for Policing Equity, *supra* note 10, at pp. 11-13.

²² *Id.* at 11.



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discriminatory conduct into established training programs. For example, when training officers on active bystandership and peer intervention, departments can provide guidance on how officers can intervene when they believe a fellow officer is expressing an explicit bias or being recruited into a hate group.²³ In addition to the training provided to all officers, officers in supervisory roles should receive specialized training on how to monitor officer performance for signs of discriminatory misconduct as well as compliance with the department's anti-discrimination policies and procedures and the Code of Conduct.²⁴ One factor that should be considered when an officer is up for a promotion is their commitment to anti-discrimination efforts through leadership, training, reporting, or other actions.

Collect New Information and Monitor Officer Performance

Departments should conduct periodic checks on officers to identify new information, including criminal convictions, complaints from the community, complaints from fellow officers, and social media activity that reflects explicit biases or affiliations with hate groups. For instance, the Houston Police Department reviews employee criminal history and driving records on an annual basis.²⁵ During the review, the department also verifies if undercover officers are in compliance with the department's social media policy.²⁶ The department's social media policy—which applies to all employees, not just undercover officers—states that employees who post online “shall be subject to appropriate review and possible disciplinary action,” although it does not specify that social media is reviewed on a regular basis for all employees.²⁷ Departments should periodically check to confirm all officers are in compliance with social media policies.

Supervising officers should monitor and evaluate officer performance in order to detect behaviors that may violate the Code of Conduct and anti-discrimination policies. One way to monitor performance is to track the frequency of all incidents using software designed for tracking officer behaviors and flagging patterns of

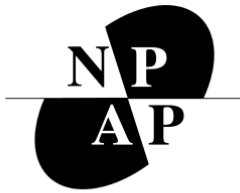
²³ See, e.g., Jonathan Aronie and Christy E. Lopez, *Keeping Each Other Safe: An Assessment of The Use of Peer Intervention Programs to Prevent Police Officer Mistakes and Misconduct, Using New Orleans' EPIC Program As A Potential National Model*, Police Quarterly (2017); Active Bystandership for Law Enforcement (ABLE) Project, available at <https://www.law.georgetown.edu/cics/able/>; Ethical Policing is Courageous (EPIC), available at <http://epic.nola.gov/home/#what>.

²⁴ Center for Policing Equity, *supra* note 10, at 13.

²⁵ Houston Police Department General Order 200-11, *Employee Integrity and Verifications Program*, p. 3, available at https://www.houstontx.gov/police/general_orders/200/200-11%20Employee%20Integrity%20and%20Verifications%20Program.pdf.

²⁶ *Id.* at p. 5.

²⁷ Houston Police Department General Order 200-41, *Department Presence on Social Media and the Internet*, p. 2, available at https://www.houstontx.gov/police/general_orders/200/200-41%20Department%20Presence%20on%20Social%20Media%20and%20the%20Internet.pdf.



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misconduct.²⁸ Officers with multiple or frequent incidents can be targeted for additional supervision, counseling, training, or other corrective action.²⁹ If an officer's violation of the Code of Conduct or an anti-discrimination policy calls an officer's credibility into question, departments should submit those officers to the local prosecutor's office to be added to a *Brady* list to prevent them from testifying at trial.³⁰ These officers should also be added to any other lists tracking officers with credibility issues (e.g., officers whose testimony requires corroborating evidence).³¹

Investigate Complaints and Allegations and Take Appropriate Action

Departments should ensure that the mechanism for community members to file complaints against officers is accessible and easy to navigate and that the mechanism for officers to report other officers is secure and anonymous.

All allegations of discriminatory misconduct, including anonymous reports, should be taken seriously and thoroughly investigated, especially allegations of an officer's affiliation with a hate group, allegations involving the use of racial epithets or other discriminatory language and gestures, and allegations of profiling, discriminating against, or harassing individuals based on race or any other protected status.

Where possible, investigations should be conducted by individuals outside of the chain of command.³² Civilian review boards are one way for individuals outside of departments to conduct unbiased investigations of police misconduct. Civilian review boards typically consist of non-law enforcement community members and, in some cases, professional investigators, tasked with investigating cases of police misconduct, providing input on department operations such as internal investigations, and tracking patterns of police misconduct.³³ However, if a civilian

²⁸ See, e.g., Benchmark Analytics' Benchmark Blueprint, available at <https://www.benchmarkanalytics.com/police-force-management-blueprint/> (The Benchmark Blueprint enables departments to “[s]tore and view all officer performance data in one place[,]” “[a]nalyze data for ‘first signs’ of need for *preventative* early intervention[,]” and “[p]rovide customized officer support with specific-case action steps.”) (emphasis in original).

²⁹ Center for Policing Equity, *supra* note 10, at p. 13.

³⁰ See, e.g., Ryan Briggs, *Philly judge tosses conviction after testifying officer's Facebook post flagged in database*, WHYY (Sept. 24, 2019), available at <https://whyy.org/articles/philly-judge-tosses-conviction-after-testifying-officers-facebook-post-flagged-in-database/> (explaining how an officer's credibility as a witness was called into question after he posted on Facebook about other officers lying under oath and shared racist articles, leading to a conviction being overturned).

³¹ *Id.*

³² Center for Policing Equity, *supra* note 10, at p. 13.

³³ Olugbenga Ajilore, *How Civilian Review Boards Can Further Police Accountability and Improve Community Relations*, Scholars Strategy Network (June 25, 2018), available at <https://scholars.org/brief/how-civilian-review-boards-can-further-police-accountability-and-improve-community-relations>; see also Vanessa Taylor, *Civilian review boards are touted as an essential piece of police reform. Are they?*, MIC (Oct. 12, 2021), available at <https://www.mic.com/impact/what-are-civilian-review-boards-and-can-they-actually-fix-policing> (“The boards also need to have the power to discipline police officers: ABC News reported that a 2016 NACOLE report stated



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review board does not have the authority to discipline officers and the department ignores their recommendations for discipline, they are a wasted tool for addressing discriminatory misconduct. Departments should provide civilian review boards with the information they need to make informed recommendations and they should take those recommendations seriously.

Where allegations are substantiated, department management should take appropriate disciplinary measures, including suspension without pay, remedial training, additional supervision, change in assignment to reduce contact with the public, demotion and loss of rank, probation, and dismissal.

Be Prepared for Union Involvement and Legal Action

Departments seeking to hold officers accountable for their discriminatory misconduct—and municipalities seeking to hold department management and supervising officers accountable for fostering an environment of intolerance—must be prepared to handle pushback from police unions and officers. For instance, there may be limitations on how internal investigations can be conducted due to Law Enforcement Officers' Bills of Rights (LEOBR) laws, officers may be able to appeal disciplinary decisions to third-party arbitrators if doing so is guaranteed in their union contract, and officers disciplined for discriminatory misconduct may sue the municipality, department, and/or supervising officers, claiming their First Amendment rights were violated.

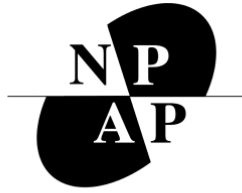
One of the greatest barriers to police accountability is overcoming the procedural and substantive protections guaranteed to law enforcement officers by LEOBR laws.³⁴ The protections in LEOBR laws can delay internal inquiries into misconduct, permit officers to discuss their misconduct with other officers before being interrogated, prevent civilians from investigating misconduct or recommending disciplinary action, and destroy complaints against officers after a certain amount of time has passed.³⁵ Even in states without LEOBR laws, similar protections for officers can be found in their union contracts—another barrier to holding officers accountable.³⁶

only 6% of civilian review boards are able to do so. It's kind of useless to put together boards to seemingly hold police accountable, if they aren't actually able to take any action to do that.”).

³⁴ National Police Accountability Project, *Law Enforcement Bill of Rights Statutes: How State Law Limitations Contribute to Police Harm and Community Distrust*, available at <https://www.nlg-npap.org/wp-content/uploads/2021/12/LEOBOR-White-Paper-Final-Paper.pdf>.

³⁵ *Id.*; see also Rebecca Tan, *There's a reason it's hard to discipline police. It starts with a bill of rights 47 years ago.*, The Washington Post (Aug. 29, 2020), available at <https://www.washingtonpost.com/history/2020/08/29/police-bill-of-rights-officers-discipline-maryland/>.

³⁶ National Police Accountability Project, *supra* note 34.



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Courts have found that government agencies may place reasonable conditions on employment for public employees, including law enforcement officers, that limit their First Amendment rights.³⁷ In fact, courts have found that police departments have a heightened interest in maintaining discipline in the workplace³⁸ and preserving the public's trust.³⁹ When officers express explicit biases that promote resentment and distrust within the department and damage the department's relationship with the public, "an individual police officer's right to express his personal opinions must yield to the public good."⁴⁰

As such, courts have upheld the termination of police officers who were affiliated with hate groups despite claims by the dismissed officers that their right to association was violated.⁴¹ Similarly, courts have upheld as constitutional municipal regulations and department policies limiting officers' right to free speech.⁴² Courts have also upheld the termination of officers who post on social media in violation of the department's social media policies.⁴³ However, social media policies must be specific about the types of posts that are prohibited as policies that broadly prohibit officers from commenting on department policies or about certain topics, rather than specifically prohibiting discrimination in order to maintain public trust, may be held unconstitutional.⁴⁴

³⁷ *Brown v. Glines*, 444 U.S. 348, 356 n.13 (1980) ("[A] governmental employer may subject its employees to such special restrictions on free expression as are reasonably necessary to promote effective government.").

³⁸ *Breuer v. Hart*, 909 F.2d 1035, 1041 (7th Cir. 1990) ("Speech that might not interfere with work in an environment less dependent on order, discipline, and *esprit de corps* could be debilitating to a police force. Such considerations are permissible in weighing constitutional violations.").

³⁹ *Pappas v. Giuliani*, 290 F.3d 143, 146 (2d Cir. 2002) ("The effectiveness of a city's police department depends importantly on the respect and trust of the community and on the perception in the community that it enforces the law fairly, even-handedly, and without bias.").

⁴⁰ *Id.* at 147 (holding officer's termination for publicly distributing bigoted racist anti-Black and anti-Semitic materials did not violate his First Amendment rights).

⁴¹ *German*, *supra* note 1; *see also State v. Henderson*, 277 Neb. 240, 264-65 (2009) (affirming district court's decision to vacate an arbitrator's reinstatement of a state trooper terminated for joining a KKK-affiliated organization and participating in its online forum and finding reinstatement would undermine public confidence in law enforcement due to the KKK's history of violence and terrorism).

⁴² *See, e.g., Eaton*, *supra* note 17 (holding officers disciplined for making discriminatory remarks in emails and letters to the editor in violation of provisions in city and police department policies and union contract did not have their First Amendment rights violated); *Inturri v. City of Hartford*, 165 F. App'x 66, 68-69 (2d Cir. 2006) (affirming lower court's decision that municipality and police chief did not violate the First Amendment rights of officers ordered to cover up spiderweb tattoos that were considered symbols of racist violence); *McAuliffe v. Mayor, etc., of New Bedford*, 155 Mass. 216 (1892) (holding officer terminated for soliciting money for a political purpose did not have his First Amendment rights violated and that he had "a constitutional right to talk politics, but [] no constitutional right to be a policeman").

⁴³ *J.R. v. City of Jersey City*, No. A-3200-19, 2021 N.J. Super. Unpub. LEXIS 1206, at *33 (Super. Ct. App. Div. June 21, 2021) (affirming lower court's decision that officer's termination for violating the department's social media policy by posting picture of himself in his uniform, brandishing weapons, and using racist, derogatory, and threatening language did not violate his First Amendment rights).

⁴⁴ *See e.g., Liverman v. City of Petersburg*, 844 F.3d 400, 408 (4th Cir. 2016) (holding social media policy that "prohibit[ed] the dissemination of any information on social media 'that would tend to discredit or reflect



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CONCLUSION

The need to screen out and remove officers affiliated with hate groups and officers who have expressed explicit bias from police departments is urgent. Currently, law enforcement agencies and municipalities across the nation are trying to create, revise, and strengthen policies and procedures to identify hate groups, screen out officers with explicit biases, improve department culture around reporting, monitor officer performance, and investigate discriminatory conduct and take appropriate disciplinary action. NPAP is eager to assist with these efforts. Please do not hesitate to contact us at legal.npap@nlg.org if you are interested in NPAP's support.

unfavorably upon the [Department]" unconstitutional and overbroad as it effectively prohibited any public criticism of the police department).