

Orozco, Norma

From: Bulmaro Vicente <boomer@chispaoc.org>
Sent: Monday, September 18, 2023 7:13 PM
To: eComment
Subject: Chispa's Letter of Opposition Item 20: Lexipol Contract
Attachments: Chispa Letter of Opposition Item 20 - 9.19. Santa Ana CC.docx.pdf

Hello,

Please see Chispa's Letter of Opposition on Item 20 and our response to the false and misleading claims made in Lexipol's letter addressed to the City Council last week.

In Solidarity,

Boomer
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September 18, 2023

Mayor Amezcua and City Councilmembers
20 Civic Center Plaza
Santa Ana, CA 92701
ecomment@santa-ana.org

Via Email

RE: **OPPOSE** ITEM 20: Approve Master Service Agreement with Lexipol, LLC

Dear Mayor Amezcua and City Councilmembers,

We are writing in response to the false and misleading claims made in Lexipol's letter addressed to the City Council last week, which disputed various Councilmembers' statements during the Special City Council meeting on August 29, 2023. We want to set the record straight and urge the Council to vote NO on Item 20, to Approve the Master Service Agreement with Lexipol, LLC. The City should continue to lead in police reform efforts by rejecting the Lexipol Contract and instead allocate additional resources to the City Manager's office for maintaining and updating the Department's policies. Additionally, we recommend that the City work in collaboration with the Police Oversight Commission (Commission) to oversee and monitor these policies effectively.

Addressing the specific claims Lexipol presented in its letter:

- *"Lexipol is a police consulting firm."* – **FACT**

Lexipol is indeed a police consulting firm, founded by former law enforcement officers Bruce Praet and Gordon Graham, that sells boilerplate off the shelf policies to police departments to shield officers from accountability.¹ Since its establishment in 2004, Lexipol has expanded its influence to over 3,500 agencies across 35 states. Notably, Lexipol proudly highlights that 95% of law enforcement agencies in California subscribe to their services.²

¹ Pauly, Madison, Meet the Company That Writes the Policies That Protect Cops, Mother Jones (September/October 2020 Issue), <https://www.motherjones.com/crime-justice/2020/08/lexipol-police-policy-company/>

² Eagly, Ingrid V., Schwartz, Joanna C., Lexipol: The Privatization of Police Policymaking. UCLA Public Law & Legal Theory Series (2018), <https://escholarship.org/uc/item/3wf3z6nn>

- *“Contracting with Lexipol removes community involvement in Santa Ana Police Department policies.” – FACT*

Lexipol has a track record of diminishing community involvement in various cities throughout the state. For instance, in Berkeley, the City Council replaced decades of general orders that were jointly developed alongside the City of Berkeley’s Police Oversight Commission with Lexipol’s boilerplate standards.³ Similar situations have arisen in other cities, where Lexipol has resisted implementing AB 392, a new law that raises the standard for police use of deadly force from “reasonable” to “necessary,” necessitating the intervention of community activists to get local law enforcement to comply with the law. For example:

- Pacifica Social Justice successfully urged its city leaders to discontinue the use of Lexipol’s materials, arguing that “Lexipol’s attempts to obscure the legal significance of the bill undermine” the purpose of AB 392, and noted that “Lexipol ensures that your officers act on outdated standards and your use of force review is inconsistent with the law” and advocated for changes in the police department’s use-of-force policy to align with AB 392. See their full [letter](#).
- In Santa Ana, Chispa and the ACLU SoCal pressed the City to follow suit. After reviewing Lexipol’s use-of-force policy, Santa Ana’s city attorney notified Lexipol of the policy’s legal deficiencies and its noncompliance with AB 392. [See letter](#)
- In San Luis Obispo, members of Bend the Arc - Jewish Action raised concerns about Lexipol’s use-of-force policy, which failed to align with state law by continuing to use the term “reasonable” instead of “necessary” force. In response, the city revised its use-of-force policy.⁴

- *“Lexipol policies cost the city of Santa Ana millions of dollars in lawsuits.” - POTENTIALLY FACT*

Lexipol advertises its policies’ primary utility as preventing costly litigation. Lexipol has not yet lived up to this promise, and there is no reason to believe that it will in the future. Indeed, in order to comply with AB 392, Santa Ana had to abandon Lexipol’s policy, which would have exposed the City to liability under state law.

Santa Ana thereby narrowly avoided Pomona’s fate: the City was recently sued by ACLU SoCal after they implemented a Lexipol unlawful use of force policy for the Pomona Police Department, which failed to comply with AB 392’s mandates.⁵

³ Morris, Scott, Police Policy For Sale, The Appeal (Feb. 13, 2019), <https://theappeal.org/lexipol-police-policy-company/>

⁴ Axelroth, Elie, et. al., Use of Force: Making Our Community Safer One Step At a Time, New Times (May 5, 2022), <https://www.newtimeslo.com/opinion/use-of-force-12447263>

⁵ Speri, Alice, Private Company Moves To Profit From New York’s Police Reforms, The Intercept (August 9, 2020), <https://theintercept.com/2020/08/09/new-york-police-reform-lexipol/>

In addition a number of departments relying on Lexipol policies have been sued when those policies were found to violate constitutional standards or other laws. The company's terms and conditions specify that Lexipol is not liable for its policies, leaving its clients responsible if the policies are challenged in court. Civil rights advocates have particularly taken issue with Lexipol's policies regulating the cooperation between local law enforcement and U.S. Immigration and Customs Enforcement, and Lexipol has also been challenged in Illinois for promoting policies that illegally discriminate against pregnant officers.⁶

- *“Lexipol opposes police reform.” – FACT*

Lexipol actively opposes police reform and legislation aimed at improving police practices and accountability. Lexipol's flagrantly dismissive approach to AB 392 implementation exemplifies its attitude toward such legislation in general. Even after the law's passage, Lexipol disseminated an outdated policy that violated AB 392 to their clients, including nearly 95% of California law enforcement agencies. As mentioned in the examples above, their policy removed AB 392's requirement to use alternatives to deadly force whenever possible and entirely omitted the “necessary” standard from the section addressing deadly force. Lexipol lobbied to kill AB 392's predecessor bill, AB 931, and has likewise used its platform to oppose other, similar reforms. In workshops, promotional materials, and policies provided to police departments, Lexipol has consistently opposed de-escalation policies, the regulation of use of force, and the prohibition of police shooting into moving vehicles.⁷

- *“There are other organizations that provide the services Lexipol provides.” – FACT*

Numerous nonprofit organizations have developed their own policy guides for law enforcement agencies interested in reform. For example, Campaign Zero, affiliated with Black Lives Matter, has crafted a model use-of-force policy that draws from major police departments' established best practices. The Immigrant Legal Resource Center has also published a guide featuring policies from jurisdictions that protect immigrants from federal immigration enforcement. Likewise, the Policing Project at New York University School of Law publishes policies based on input from community members, social scientists, and other experts.⁸

“Bruce Praet is the owner/board member/CEO of Lexipol and his comments reflect Lexipol's approach to policing and to police policy.” PARTIALLY TRUE

While Bruce Praet co-founded Lexipol, and while he does not currently serve as a board member, his comments and actions reflect the ethos of the company, as well as its current

⁶ *Id.*

⁷ *Id.*

⁸ Morris, *supra* n. 3.

approach to policing and police policy. Praet built his legal career on representing police officers and departments accused of breaking the law, including cases involving fatal shootings.⁹ He notably authored a legal analysis of AB 392 that sought to undermine the new law by asserting that it had minimal impact on how officers perform their duties, suggesting no substantial change in the use of force when police apprehend individuals fleeing from the scene. Praet's legal analysis mirrors Lexipol's approach to the law, which seems to have been to ignore it. See his full [memo](#).

Praet has a laser-focus on defending police officers from liability. According to Praet, he “do[esn’t] care if you... choke him out, tase him, bite him, shoot him. One question: Was it objectively reasonable...?”.¹⁰ This is the reasoning that underlies Lexipol's whole model; but it is not the attitude, philosophy, or approach that Santa Ana should adopt in creating its own police policies.

For these reasons, we urge you to **vote NO on Item 20**. It's time for the City to end the contract with Lexipol and transition towards a community-oriented approach to monitoring and updating the Department's Policy. In order to achieve that, the City should allocate additional resources to the City Manager's office for maintaining and updating the Department's policies. Additionally, the City should collaborate with the Police Oversight Commission (Commission) to oversee and monitor these policies effectively.

Sincerely,



Bulmaro Vicente

Policy and Political Director, Chispa

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⁹ Pinsky I. Mark, Former Officer Defends Police in Courtroom: Bruce D. Praet faces what may be the challenge of his legal career in the Newport police sexual harassment case, LA Times (Dec. 28, 1992), <https://www.latimes.com/archives/la-xpm-1992-12-28-me-2115-story.html>

¹⁰ Berkowitz, Bill, Lexipol at Twenty: The Most Powerful Police Policymaking Agency You Never Heard Of, Daily Kos (Jun. 1, 2023), <https://www.dailykos.com/stories/2023/6/1/2172647/-Lexipol-at-Twenty-The-Most-Powerful-Police-Policymaking-Agency-You-Never-Heard-Of>