Case No. S227106

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA and ELECTRONIC FRONTIER FOUNDATION,

Petitioners,

v.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

Respondent,

COUNTY OF LOS ANGELES, and the LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, and the CITY OF LOS ANGELES, and the LOS ANGELES POLICE DEPARTMENT,

Real Parties in Interest.

After a Decision by the Court of Appeal,
Second Appellate District, Division Three, Case No. B259392
Los Angeles County Superior Court, Case No. BS143004
(Hon. James C. Chalfant)

RESPONSE TO AMICUS BRIEF OF THE LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES

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INTRODUCTION

Petitioners file this brief responding narrowly to the arguments in the amicus brief filed by the League of California Cities and the California State Association of Counties (collectively the "League") regarding the impact on this case of the passage of Senate Bill 34.[1] SB 34 does not and was not intended to create a new exemption from the Public Records Act for ALPR data, nor, contrary to the League's position, was it intended to buttress any existing PRA exemption.

ARGUMENT

Senate Bill 34 Does Not Preclude Disclosure of ALPR Data Under the Public Records Act

The League appears to concede that SB 34 cannot lawfully have created a new exemption to the Public Records Act for ALPR data because it lacked the findings to justify a new exemption, as required by Cal. Const., Art. I, § 3(b)(2). (*See* League Br. at p. 21 (citing Pet. Reply at p. 35).) Nevertheless, it argues SB 34's omission of findings somehow demonstrates that the Legislature understood that existing law—specifically Government Code § 6254(f)—already rendered ALPR data exempt from the PRA. (League Br. at p. 22.) The League is incorrect.

Even in the clearest circumstances, "a legislative declaration of an existing statute's meaning is neither binding nor conclusive in construing the statute." (*W. Sec. Bank v. Super. Ct.* (1997) 15 Cal. 4th 232, 244.) As this Court has noted, "there is little logic and some incongruity in the notion that one Legislature may speak authoritatively on the intent of an earlier

[1] Petitioners have reviewed the briefs of other amici and respectfully believe that they require no additional response in briefing.

Legislature's enactment when a gulf of decades separates the two bodies." (*Id.*)

The legislative history of SB 34 provides no reason to believe that the Legislature viewed ALPR data as already exempt under the Public Records Act, much less that the data were exempt specifically under the investigative records exemption at issue here. The Senate Floor Analysis provided as Exhibit B to the League's Motion for Judicial Notice, states that the bill would "not prevent the *authorized* sharing of data." (League Ex. B at p. 5 (emphasis added).) To the extent that the PRA "authorizes" the sharing of public records such as ALPR data, SB 34 is not to the contrary. The Senate Floor Analysis further undermines the League's argument by discussing "existing law" relevant to the bill, including breach notification laws and laws regulating state transportation agencies, without a single mention of the PRA or its application to ALPR data. (*Id.* at p. 2.) Similarly, the "Purpose" section of the Senate Floor Analysis states "the main focus of this bill is to put in place regulations for businesses and agencies, which currently do not have any policies regarding the use of ALPR data" and notes that "this bill is necessary to institute reasonable usage and privacy standards for the operation of ALPR systems." (*Id.* at p. 4.) The bill accomplished this by requiring ALPR operators to "implement and maintain a usage and privacy policy," (*Id.* at p. 3), not by restricting public access to the data pursuant to the PRA.

The Assembly Committee on Privacy and Consumer Protection's analysis is in accord with the Senate Floor Analysis. It states the "purpose" of the bill is "to *bring greater transparency* to the use of ALPR systems by requiring operators and end-users, as defined, to adopt an ALPR usage and privacy policy, and also requiring public agencies to hold a public hearing

before utilizing an ALPR system."[2] The Assembly Committee analysis does not mention restricting public access to ALPR data, which would not align with the goal of bringing greater transparency to the use of ALPR systems. And similar to the Senate Floor Analysis, the Assembly Privacy Committee does not mention the PRA in its discussion of "existing law" relevant to the bill.[3]

CONCLUSION

This Court has concluded that, "[u]ltimately, the interpretation of a statute is an exercise of the judicial power the Constitution assigns to the courts." (*W. Sec. Bank*, 15 Cal. 4th at p. 244.) Given that (1) the goal of the PRA is to promote public disclosure of government records; (2) SB 34 lacks explicit findings required by the constitution to exempt records from the PRA; (3) SB 34's legislative history never references the PRA; and (4) the goal of SB 34 is "to bring greater transparency to the use of ALPR systems," a correct interpretation of the statute should find that SB 34 does not preclude access to ALPR data sought by Petitioners.[4]

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[2] Assembly Committee on Privacy and Consumer Protection, SB 34 Bill Analysis, 4 (July 6, 2015) (emphasis added) *available at* https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB34#.

[3] *Id.* None of the other Senate or Assembly analyses mentions the Public Records Act, much less §6254(f), the specific exemption at issue here. *See generally* Bill Analyses for S.B. 34, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB34.

[4] Even if the Legislature did intend for SB 34 to limit the disclosure of ALPR data, there is no support for the League's argument that the legislature intended the bill would support its exemption as an investigative record under § 6254(f). As the League recognizes, SB 34's legislative history clearly shows a concern with privacy, (*see* League Br. at p. 22), which would be properly addressed under Government Code § 6255, rather than § 6254(f).

Dated: June 16, 2016

Respectfully submitted,

By: _____

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CERTIFICATE OF WORD COUNT

I certify pursuant to California Rules of Court 8.204 and 8.504(d) that this **Response to Amicus Brief of the League of California Cities and California State Association of Counties** is proportionally spaced, has a typeface of 13 points or more, contains 883 words, excluding the cover, the tables, the signature block, verification, and this certificate, which is less than the total number of words permitted by the Rules of Court. Counsel relies on the word count of the Microsoft Word word-processing program used to prepare this brief.

Dated: June 16, 2016

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CERTIFICATE OF SERVICE

I, Madeleine Mulkern, do hereby affirm I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to the within action. My business address is 815 Eddy Street, San Francisco, California 94109. I am employed in the office of a member of the bar of this court at whose direction the service was made.

On June 16, 2015, I served the foregoing document: **Response to Amicus Brief of the League of California Cities and California State Association of Counties** on the parties in this action by placing a true and correct copy of each document thereof, enclosed in a sealed envelope on the persons below as follows:

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By Madeleine Mulkern
Madeleine Mulkern