

SUPREME COURT
OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

FEB 22 2019

Jorge Navarrete Clerk

Deputy

ASSOCIATION FOR LOS ANGELES
DEPUTY SHERIFFS, a non-profit,
public benefit corporation,

Petitioner/Appellant

vs.

SUPERIOR COURT OF THE COUNTY
OF LOS ANGELES,

Respondent/Appellee

LOS ANGELES COUNTY SHERIFF'S
DEPARTMENT,

Real Party in Interest

Case No. S243855

Second District Court of
Appeal Case No. B 280676

Los Angeles County Superior
Court Case No. BS166063,
Hon. James C. Chalfant,
Judge

**SUPPLEMENTAL
AMICUS CURIAE BRIEF OF
LEAGUE OF CALIFORNIA CITIES**

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SUPPLEMENTAL AMICUS CURIAE BRIEF

I. QUESTION PRESENTED

IN ORDER FOR SUPPLEMENTAL BRIEFING

What bearing, if any, does SB 1421 have on the Court's examination of the question presented for review in this case?

II. BRIEF ANSWER

SB 1421 amended Penal Code section 832.7 in a manner that addresses some, but not all, of the situations that would require disclosure under *Brady*. Therefore, SB 1421 is not wholly dispositive of this case, and the Court must still determine whether the constitutional protections set forth in *Brady* authorize a police department to disclose instances of a police officer's dishonesty in administrative matters, such as falsification of time cards.

III. PROCEDURAL HISTORY

This Court granted review of this case on October 11, 2017. The parties completed briefing on April 4, 2018, and the Court granted the amicus curiae application of the League of California Cities ("League"), and ordered the League's amicus brief filed, on June 22, 2018. Subsequently, in September 2018, the Legislature passed and the Governor signed SB 1421, which amended certain provisions of Penal Code section 832.7 and 832.8 that are at issue in this case. On January 2, 2019, this Court directed the parties to serve and file supplemental briefs addressing the following question: "What bearing, if any, does SB 1421, signed into law on September 30, 2018, have on this court's examination of the question presented for review in the above-titled case?" The January 2 Order also

authorized amici to file supplemental briefs on this issue. Consistent with the January 2 Order, the League submits the following supplemental brief.

IV. ANALYSIS

In its brief on the merits, the League urged this Court to confirm that the *Pitchess* statutes allow law enforcement agencies that are aware of the existence of *Brady* materials in an officer's confidential personnel file to disclose that fact to the prosecution.

Through its enactment of SB 1421, the Legislature required disclosure of sustained findings of officer dishonesty in certain situations, which addresses a subset – but not all – of the potential *Brady* materials in an officer's file. Among other things, the amendments to Penal Code section 832.7 specifically require a law enforcement agency to disclose, in response to a Public Records Act request, peace officer personnel records "relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence." *Ibid.* at (b)(1)(C). However, these amendments qualify the type of information about that is subject to disclosure: the "sustained finding . . . of dishonesty" must be directly related to the reporting, investigation, or prosecution of either a crime or misconduct by another peace officer.

Other types of incidents in which a sustained finding of dishonesty has been made remain exempt from disclosure. For example, none of the AB 1421 amendments to Penal Code section 832.7 authorize disclosure of sustained findings when an officer's dishonesty was related to an administrative matter rather than "directly relating to" the investigation of a crime. However, when a police department sustains a finding that an officer has been dishonest in an administrative matter, and that officer will be called as a witness in a criminal proceeding and will be expected to testify under oath, the prior finding of dishonesty relates to the officer's veracity. Under *Brady*, the police department should not be prohibited from disclosing the prior finding of dishonesty in an administrative matter even though this disclosure would not be within the scope of Penal Code section 832.7.

Under SB 1421's amendments to the Penal Code, the majority of the contents of the police officer's personnel records remain confidential – even though they may contain sustained findings of dishonesty in administrative matters. The amendments specifically reaffirm that they "do[] not affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code" and do not "supersede or affect the criminal discovery process outlined in Chapter 10 (commencing with Section 1054) of Title 6 of Part 2, or the admissibility of personnel records pursuant to subdivision (a), which codifies the court decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531." *Id.* at (g), (h). Although SB 1421 addressed some of the situations where an officer's dishonesty is at issue in criminal proceedings, it did not wholly occupy the field. This Court must still

determine whether the *Pitchess* statutes prohibit police departments from disclosing *Brady* information that is outside the scope of the amendments to Penal Code section 832.7. Amicus League of California Cities urges the Court to find that they do not.


V. CONCLUSION

For all the reasons set forth above and its prior brief on the merits, amicus League of California Cities urges the Court to reject the argument that the *Pitchess* statutes preclude law enforcement agencies from disclosing the existence of *Brady* material in an officer's confidential personnel file except as expressly authorized by the SB 1421 amendments to Penal Code section 832.7. Rather, this Court should hold that the *Pitchess* statutes do not prohibit police departments from disclosing *Brady* information that is outside the scope of the amendments to Penal Code section 832.7.

Dated: February 21, 2019

Respectfully submitted,

BARTKIEWICZ, KRONICK & SHANAHAN,
A Professional Corporation

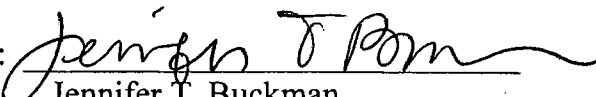
By: 
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Attorneys for *Amicus Curiae* League of
California Cities

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.520 of the California Rules of Court, counsel for amicus curiae the League of California Cities hereby certifies that she caused the computer program used to produce the brief, Microsoft Word, to count the words in the proposed amicus brief, and the program calculated that the brief contains 1,622 words.

BARTKIEWICZ, KRONICK & SHANAHAN,
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PROOF OF SERVICE

I, Jennifer Buckman, declare as follows:

I am a resident of the State of California, and employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 1011 22nd Street, Sacramento, California 95816. On May 4, 2018, I served a copy of the foregoing document(s) entitled:

**SUPPLEMENTAL
AMICUS CURIAE BRIEF OF
LEAGUE OF CALIFORNIA CITIES**



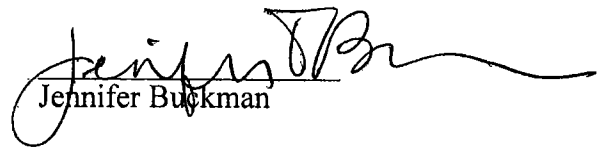
I served the documents by enclosing them in an envelope and depositing the sealed envelope with the postage fully prepaid for deposit with the United States Postal Service in accordance with the firm's normal business practices.

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I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed February 21, 2019 at Sacramento, California.


Jennifer Buckman