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Supreme Court Number S269672

In the Supreme Court of the State of California

DORA LEON,

Plaintiff and Appellant,

v.

COUNTY OF RIVERSIDE,

Defendant and Respondent.

After a Decision by the Court of Appeal
Fourth Appellate District, Division Two
Case No. E073781
Riverside County Superior Court
Case No. RIC1722990
The Honorable Daniel Ottolia

RESPONDENT'S RESPONSE TO AMICUS CURIAE BRIEF OF ALI TAHERIPOUR AND LESLIE T. ZADOR

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES 3

INTRODUCTION 4

DISCUSSION...5

I. Extending Government Code Section 821.6 Immunity to Investigatory Conduct Is Consistent with This Court's Reasoning Pre-*Sullivan* and Post-*Sullivan*..............5

II. Government Code Section 820.4 Qualified Immunity Does Not Supplant Section 821.6 Absolute Immunity.. 11

CONCLUSION... 12

CERTIFICATE OF COMPLIANCE WITH RULE 8.520............ 13

TABLE OF AUTHORITIES

Page(s)

Cases

Amylou R. v. County of Riverside
(1994) 28 Cal.App.4th 1205 9

Baughman v. State of California
(1995) 38 Cal.App.4th 182 10

Connerly v. State Personnel Bd.
(2006) 37 Cal.4th 1169 4

Doe v. State of California
(2017) 8 Cal.App.5th 832 9–10

Farnham v. State of California
(2000) 84 Cal.App.4th 1448 10

Leon v. County of Riverside
(2021) 64 Cal.App.5th 837 10

Ryan v. Commodity Futures Trading Commission
(7th Cir. 1997) 125 F.3d 1062 5

Sullivan v. County of Los Angeles
(1974) 12 Cal.3d 710 .... 5–10, 12

White v. Towers
(1951) 37 Cal.2d 727 7–10

Statutes

Gov. Code, § 820.4 .... 6, 11

Gov. Code, § 821.6 5–12

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INTRODUCTION

As this court has explained, in theory, "[a]mici curiae, literally 'friends of the court,' perform a valuable role for the judiciary precisely because they are nonparties who often have a different perspective from the principal litigants." (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1177.) In reality, as is the case here, amicus briefs are often merely duplicative of arguments made in the supported party's briefs. Here, plaintiff's amici—two California plaintiff's attorneys—provide nothing more than a "me too" brief that rehashes plaintiff's analysis with slightly varied phraseology. Amici advance no new perspective,

no new data, and no new insights with respect to the issue raised in this case. The practice of filing amicus curiae briefs that are duplicative of party briefing has been condemned as "an abuse." (*Ryan v. Commodity Futures Trading Commission* (7th Cir. 1997) 125 F.3d 1062, 1063.) As Chief Judge Posner explained, "[t]he term 'amicus curiae' means friend of the court, not friend of a party." (*Ibid.*)

Defendant/respondent the County of Riverside ("the County") submits this response to amici's brief to briefly clarify mischaracterizations of the law and relevant statutes.

DISCUSSION

I. Extending Government Code Section 821.6 Immunity to Investigatory Conduct Is Consistent with This Court's Reasoning Pre-*Sullivan* and Post-*Sullivan.*

Amici offer no analysis of *Sullivan v. County of Los Angeles* (1974) 12 Cal.3d 710 (*Sullivan*), not already addressed in plaintiff's briefs. In *Sullivan,* this court held that "[n]o immunity provision in the California Tort Claims Act insulates the county from liability for false imprisonment." (*Id.* at p. 715.) This court rejected the defendant's argument that the sheriff enjoyed immunity under section 821.6[1] because that immunity was "sufficiently broad to encompass retaining a person in jail although no criminal proceedings remain pending against him."

---

[1] All undesignated statutory references are to the Government Code.

(*Id.* at p. 719.) This court explained that this argument erroneously interprets the scope of section 821.6. (*Ibid.*)

In evaluating whether section 821.6 immunity for malicious prosecution could extend to false imprisonment, this court reasoned that literally, the statutory term "instituting" in section 821.6 means "to originate and get established" and the term "prosecute" means "to accuse of some crime" or "to pursue for redress or punishment of a crime or violation of law. . . ." (*Sullivan, supra*, 12 Cal.3d at p. 719.) "Thus, viewed literally, the language of the section does not reach the act of holding a person in jail beyond his term." (*Ibid.*)

Further, this court reasoned "the history of section 821.6 demonstrates that the Legislature intended the section to protect public employees from liability only for *malicious prosecution* and not for *false imprisonment*." (*Sullivan, supra*, 12 Cal.3d at p. 719, original italics.) The court described the test for malicious prosecution as "whether the defendant was actively instrumental in causing the prosecution," which was entirely different from holding a person in jail beyond his term. (*Id.* at p. 720.)

Finally, in determining section 821.6 immunity for malicious prosecution did not extend to false arrest or false imprisonment, this court considered the preservation of liability for false arrest or false imprisonment in section 820.4:

> The preservation of liability for false imprisonment in this corollary section [820.4] demonstrates that

> the California Torts Claims Act distinguishes false imprisonment and malicious prosecution. It recognizes the previously existing immunity of public employees from liability for malicious prosecution but saves the existing liability for false imprisonment.

(*Sullivan, supra*, 12 Cal.3d at p. 721.)

As discussed in the merits briefs and conceded by amici, in the almost 50 years since *Sullivan* was decided, an unbroken line of intermediate appellate court cases have interpreted the immunity provided in section 821.6 to extend to conduct occurring during official investigations that precede the institution or prosecution of any judicial or administrative proceeding. (Amicus Brief, p. 13.) Amici's and plaintiff's arguments to limit section 821.6 immunity to *only* malicious prosecution actions based on the *Sullivan* decision is unsupported by that decision and is at odds with a half-century of contrary judicial interpretation, the statutory text, and the public policies that support affording immunity to public employees investigating crime.

In *Sullivan,* this court cited an earlier Supreme Court case—*White v. Towers* (1951) 37 Cal.2d 727 (*White*)—in its analysis of whether section 821.6 immunity applies to a false imprisonment claim. This court in *White* explained the important policies behind extending immunity to law enforcement officers charged with the duty to investigate and to institute proceedings as in the best interests of the community:

> When the duty to ***investigate*** crime and to institute criminal proceedings is lodged with any public officer, it is for the best interests of the community as a whole that he be protected from harassment in the performance of that duty. The efficient functioning of our system of law enforcement is dependent largely upon the ***investigation*** of crime and the accusation of offenders by properly trained officers. A breakdown of this system at the ***investigative*** or accusatory level would wreak untold harm.

(*White, supra,* 37 Cal.2d at pp. 729–730, bold and italics added.)

Puzzlingly, despite this court's description of the policy supporting application of section 821.6 immunity as including *investigations* as well as prosecutions, amici describe *White* as containing "no language . . . supporting the proposition that the immunity should extend to the tortious behavior of law enforcement perpetrated during the course of the investigation itself. . . ." (Amicus Brief, pp. 18–19.) The plain language of the court's opinion demonstrates that amici's effort to limit the policy reasons for applying immunity as expressed in *White* to "prosecutorial immunity and that alone" is unsupportable. (*Id.* at p. 18.)

As the *White* decision illustrates, investigation is an integral part of the function of "instituting" proceedings that the *Sullivan* court described as the defining aspect of a malicious prosecution claim. As this court stated in *Sullivan,* the statutory term "instituting" in section 821.6 means "to

originate and get established" and the term "prosecute" means "to accuse of some crime" or "to pursue for redress or punishment of a crime or violation of law. . . ." (*Sullivan, supra*, 12 Cal.3d at p. 719.) *Sullivan*'s test for malicious prosecution—"whether the defendant was actively instrumental in causing the prosecution" (*id.* at p. 720)—encompasses the act of investigating a crime before instituting or causing the prosecution of that crime.

Post-*Sullivan* decisions that apply the immunity for malicious prosecution to investigations that are precursors to instituting or prosecuting a judicial or administrative proceeding are consistent with *Sullivan's* reasoning. Indeed, post-*Sullivan* cases continue to affirm application of section 821.6 immunity to investigations for the same policy reasons articulated in *White.* As amici note, the court in *Amylou R. v. County of Riverside* (1994) 28 Cal.App.4th 1205, 1213, cited *White* in affording section 821.6 immunity to law enforcement officers' conduct during the investigation of a crime. According to *White*, law enforcement officers must be "'free to act in the exercise of honest judgment uninfluenced by fear of consequences personal to themselves'" so that they are not subjected "'to the constant dread of retaliation.'" (Amicus Brief, p. 20.)

Reliance on that sound policy reason for extending immunity to investigations, not just prosecutions has continued for decades. (See, e.g., *Doe v. State of California* (2017)

8 Cal.App.5th 832, 844 [state agents' conduct in the course of an investigation immunized under section 821.6 even if no proceeding ultimately instituted "in furtherance of its purpose to protect public employees . . . from the threat of harassment through civil suits"]; *Farnham v. State of California* (2000) 84 Cal.App.4th 1448, 1458 [section 821.6 immunity "is intended to protect the ability of law enforcement officers to make judgment calls"]; *Baughman v. State of California* (1995) 38 Cal.App.4th 182, 193 [section 821.6 "frees investigative officers from the fear of retaliation for errors they commit in the line of duty"].)

Here, the Court of Appeal properly applied this court's important articulation in *White* regarding the significant public policy of freeing law enforcement personnel from the fear of personal consequences in performing their duties to investigatory conduct. (*Leon v. County of Riverside* (2021) 64 Cal.App.5th 837, 856.) *Sullivan* recognized that immunity of law enforcement officers from malicious prosecution actions was codified in section 821.6 to "prevent interference with their discretionary and quasi-judicial responsibility for institution and prosecution of enforcement proceedings." (*Sullivan, supra,* 12 Cal.3d at p. 722.) Applying section 821.6 immunity to investigation of a crime is consistent with *Sullivan* and should be affirmed.

II. Government Code Section 820.4 Qualified Immunity Does Not Supplant Section 821.6 Absolute Immunity.

Amici argue applying section 821.6 immunity to official investigations creates a disharmony between that section and section 820.4, which provides qualified immunity to public employees exercising due care, in *executing or enforcing any law*, except for false arrest or false imprisonment. (Amicus Brief, p. 27.) According to amici, it is "unnecessary" to construe section 821.6's "absolute" immunity as applying to investigations when "qualified" immunity is "the more reasonable course[.]" (*Id.* at p. 28.)

Amici's contention fails for several reasons. First, amici cite no cases applying section 820.4 qualified immunity to law enforcement investigations of a crime. Second, amici do not explain why section 820.4 should apply other than to say there have been a number of "unfair results." (Amicus Brief, p. 28.) Third, amici characterize the plaintiffs in those "unfair" cases as "victims of overzealous law enforcement." (*Ibid.*) However, *if* law enforcement had been "overzealous," the qualified immunity of section 820.4, which is dependent on the exercise of due care, would arguably not apply at all.

The application of absolute immunity under section 821.6 to law enforcement investigations of a crime is a logically sound application of the liability protections offered under the California Tort Claims Act to promote the free and vigorous

pursuit of justice in the interests of the common good. The Court of Appeal's judgment should be affirmed.

CONCLUSION

The amicus brief submitted by two plaintiff's attorneys is in reality a "friend of plaintiff" brief that simply repeats plaintiff's merits arguments. The Court of Appeal's decision in this case is not contrary to this court's *Sullivan* decision. The Court of Appeal—along with scores of other intermediate appellate courts—correctly applied section 821.6 immunity to investigatory conduct, as has been the case for almost 50 years. This court should confirm the long-standing judicial interpretation litigants have relied on and affirm the judgment of the Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 8.520

I, the undersigned, Jeffry A. Miller, declare that:

1. I am an attorney and partner in the firm of Lewis, Brisbois Bisgaard & Smith LLP, counsel of record for defendant and respondent County of Riverside.

2. This certificate of compliance is submitted in accordance with rule 8.520 of the California Rules of Court.

3. This brief was produced with a computer. It is proportionately spaced in 13-point Century Schoolbook typeface. The brief contains 1,732 words, including footnotes.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Diego, California, on July 25, 2022.

/s/ Jeffry A. Miller
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Supreme Court No. S269672

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/s/ *Janis Kent*
Janis Kent

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STATE OF CALIFORNIA
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