

No. A171570

**IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT, DIVISION ONE**

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**AMERICAN CIVIL LIBERTIES UNION OF NORTHERN  
CALIFORNIA,**

*Petitioner,*

v.

**THE SUPERIOR COURT OF SOLANO COUNTY,**

*Respondent;*

**CITY OF VALLEJO,**

*Real Party in Interest*

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Review of Order of October 9, 2024, Solano County Superior  
Court (Hon. Stephen Gizzi), Superior Court Case No. FCS059257

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**APPLICATION OF INFORMED CALIFORNIA  
FOUNDATION, INC. (D/B/A OPEN VALLEJO)  
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF  
IN SUPPORT OF PETITIONER AMERICAN CIVIL  
LIBERTIES UNION OF NORTHERN CALIFORNIA**

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Rani Gupta (#296346)  
rgupta@cov.com  
COVINGTON & BURLING LLP  
3000 El Camino Real, 10th Fl.  
Palo Alto, CA 94305  
Telephone: (650) 632-4700  
Facsimile: (650) 632-4800

*Counsel for Amicus Curiae  
Open Vallejo*

**APPLICATION FOR LEAVE TO FILE  
AMICUS CURIAE LETTER**

Pursuant to California Rules of Court 8.487(e) and 8.200(c), Informed California Foundation, Inc. (d/b/a Open Vallejo) respectfully applies for this Court’s permission to file the accompanying *amicus curiae* brief in support of Petitioner American Civil Liberties Union of Northern California’s Petition for Writ of Mandate.

**STATEMENT OF INTEREST OF  
AMICUS CURIAE OPEN VALLEJO**

Open Vallejo has submitted a request under the California Public Records Act (“CPRA”) for the same “Giordano Report” and investigative materials that are the subject of the ACLU’s petition, arguing that the Giordano Report and investigative materials are public records that should be released. (*Informed California Foundation, Inc. v. Solano County District Attorney’s Office* (Solano County Super. Ct., No. CU23-05716.))

Open Vallejo has an interest in this proceeding because the decision below is likely to affect the release of the Giordano Report and investigative materials, including in response to Open Vallejo’s Public Records Act requests, and will affect Open Vallejo’s reporting on areas of public concern. Open Vallejo respectfully seeks to offer this Court factual background and legislative history relevant to the legal issues determining whether the report and materials are public records disclosable under SB 1421. Open Vallejo also seeks to demonstrate the importance of those materials to its reporting and to the

reporting of all newsrooms in California, which counsels in favor of granting the petition.

**OPEN VALLEJO’S *AMICUS CURIAE* BRIEF WILL ASSIST THIS COURT IN DECIDING THIS MATTER**

Open Vallejo submits this *amicus curiae* brief to provide additional context on the history and purpose of SB 1421, The Right to Know Act, to demonstrate why it supports disclosure of the Giordano Report and related investigative materials.

The introduction to SB 1421 recognizes that Californians have vested police with “extraordinary authority – the powers to detain, search, arrest, and use deadly force,” and that “[o]ur society depends on peace officers’ faithful exercise of that authority. (Stats. 2018, ch. 988, § 1.) Since its founding in 2019, Open Vallejo has extensively reported on the Vallejo Police Department’s exercise of that “extraordinary authority,” including by publicly revealing the badge-bending practice in 2020 that prompted the Giordano Report.<sup>1</sup>

As discussed in Open Vallejo’s proposed *amicus* brief, SB 1421 was enacted to expand public access to records regarding police misconduct and use of force. Among the purposes of SB

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<sup>1</sup> (King, *Vallejo Police Bend Badges to Mark Fatal Shootings* (Open Vallejo, July 28, 2020), at <<https://openvallejo.org/2020/07/28/vallejo-police-bend-badge-tips-to-mark-fatal-shootings/>>; Vallejo Police Press Release, *Vallejo Police Department to Launch Third-Party Investigation into Alleged Practice of Badge Bending* (July 31, 2020) at <<https://myemail.constantcontact.com/Vallejo-PD-to-Launch-Third-Party-Investigation-into-Alleged-Practice-of-Badge-Bending.html?soid=1107787334147&aid=DIPIf2U4b3s&>>.)

1421 is to ensure that members of the public and journalists like those at Open Vallejo have access to information about law enforcement actions to “promote better policies and procedures that protect everyone.” (Sen. Com. on Pub. Safety, Analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.)) Another important purpose of SB 1421 is to ensure that “good officers and the public have the information they need to address and prevent abuses and to weed out the bad actors.” (Sen. Com. on Pub. Safety, Analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.)) The Giordano Report was commissioned as an investigation into the violent culture and badge-bending practices of the Vallejo Police Department, on which Open Vallejo has broken stories and reported extensively. (Ex. A, *Amicus* Letter at 5–6.) It is therefore exactly the type of record that should be released under SB 1421.

Open Vallejo’s groundbreaking reporting has relied heavily upon records obtained from CPRA requests under SB 1421: Between 2019 and 2023, Open Vallejo received 14,700 pages and 3,300 minutes of video and audio files from the City of Vallejo.<sup>2</sup> This case is important to ensure that Open Vallejo and other news outlets can continue such important reporting, consistent with the purpose of SB 1421 to “help identify and prevent unjustified use of force, make officer misconduct an even rarer

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<sup>2</sup> Du Sault, *State Senator Says Juvenile Records Laws Shouldn’t Shield Police* (Open Vallejo, July 11, 2023) at <https://openvallejo.org/2023/07/11/state-senator-says-juvenile-confidentiality-laws-shouldnt-shield-police/>.)

occurrence, and build trust in law enforcement.” (Sen. Com. on Pub. Safety, Analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.))

**RULE 8.200(C)(3) DISCLOSURE**

Consistent with California Rule of Court 8.200(c)(3), Open Vallejo states that no party or any counsel for any party authored this *amicus* brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of this brief. No other person or entity made a monetary contribution to fund the preparation or submission of the brief other than the *amicus curiae* and its counsel.

**CONCLUSION**

For the reasons stated above, Open Vallejo respectfully asks the Court to grant this application and permit Open Vallejo to file the accompanying *amicus curiae* brief.

DATE: February 25, 2025    Respectfully submitted,

COVINGTON & BURLING LLP

By: /s/ Rani Gupta  
Rani Gupta

*Counsel for Amicus Curiae*  
*Open Vallejo*

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**[PROPOSED] *AMICUS CURIAE* BRIEF OF INFORMED  
CALIFORNIA FOUNDATION, INC. (D/B/A OPEN  
VALLEJO) IN SUPPORT OF PETITIONER AMERICAN  
CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA**

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Rani Gupta (#296346)  
rgupta@cov.com  
COVINGTON & BURLING LLP  
3000 El Camino Real, 10th Fl.  
Palo Alto, CA 94305  
Telephone: (650) 632-4700  
Facsimile: (650) 632-4800

*Counsel for Amicus Curiae  
Open Vallejo*

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## INTRODUCTION AND SUMMARY OF ARGUMENT

Open Vallejo is an independent, nonpartisan, nonprofit newsroom focused on providing investigative and explanatory public interest reporting in Vallejo, California. As discussed in Open Vallejo’s previous *amicus* letter to the Court, which is attached to this brief as Exhibit A, Open Vallejo first broke the story of the badge-bending ritual that led the City of Vallejo to commission the secret report by Robert Giordano (the “Giordano Report”) that is the subject of the American Civil Liberties Union of Northern California’s (“ACLU”) petition. But government officials have denied Open Vallejo’s requests under the California Public Records Act (“CPRA”) for the Giordano Report and related investigative materials and refused to release any portion of the Giordano Report to the public despite the importance of the report and public outcry about the failure to release it.<sup>3</sup> The decision below prevents newsrooms like Open Vallejo from reporting critical information regarding public accountability and police use of force to their communities.

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<sup>3</sup> (Gase, *Confidential Memorandum on Badge-Bending Report Still Withheld from Public*, (Vallejo Times Herald, May 19, 2022), at <<https://www.timesheraldonline.com/2022/05/19/confidential-memorandum-on-badge-bending-report-still-withheld-from-public/>>.); Keys, *Activists Demand Police Accountability During Vallejo Council Meeting* (Solano NewsNet, July 13, 2022), at <<https://solanonews.substack.com/p/activists-demand-police-accountability>>; St. Clair, *Protestors Disrupt Meeting as Vallejo Council Declines to Vote on Police Station Proposal*, (Local News Matters, Mar. 10, 2022), at <<https://localnewsmatters.org/2022/03/10/protesters-disrupt-meeting-as-vallejo-council-declines-to-vote-on-police-station-proposal/>>).

As detailed in Open Vallejo’s November 21, 2024 *amicus* letter, the Giordano Report and investigative materials are critical to public reporting on police shootings in Vallejo. Open Vallejo directs the Court to that letter for a full explanation as to the history and importance of the public release of the Giordano Report and related materials. Open Vallejo submits this *amicus* brief for the additional purpose of showing that the history and purpose of SB 1421, The Right to Know Act, demonstrate why disclosure of the report is required.

For the reasons set forth below, Open Vallejo urges this Court to grant the petition for writ of mandate filed by the ACLU and order the release of the Giordano Report and the related investigative materials.

### **ARGUMENT**

The State of California has long been committed to fostering transparency in government through public access to records. Under the California Constitution, the “people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.” Cal. Const., art. I, § 3, subd. (b)(1). The CPRA, enacted in 1968, requires government entities to make records available to the public unless the records are subject to a specific exemption. To ensure that access remains the default, the CPRA places the burden on the agency to demonstrate that a record is “exempt under express provisions” of the CPRA or that under the facts of the particular case, the public interest of not disclosing

“clearly outweighs” the public interest of disclosure. (Gov. Code, § 7922.000.)

For more than 40 years, Penal Code sections 832.7 and 832.8 functioned as one of those narrow exceptions that effectively shielded certain peace officer personnel records from public scrutiny. Referred to as the “*Pitchess* statutes,” these penal code provisions were enacted in response to the Supreme Court’s decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, which held that a peace officer’s personnel file was discoverable upon an adequate showing by a party to litigation. *Pitchess* had cascading effects: several law enforcement agencies destroyed records, the California Legislature passed laws requiring law enforcement agencies to maintain records for five years, and law enforcement agencies pushed for, and achieved, confidentiality measures like Penal Code sections 832.7 and 832.8. (Sen. Com. on Pub. Safety, Analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.)) As a result, the *Pitchess* statutes required a showing of “good cause” for a court to conduct an *in camera* inspection of peace officer personnel records, after which the information deemed relevant could be released to the requesting party. (*Ibid.* (citing *City of Santa Cruz v. Municipal Court* (1989) 49 Cal. 3d 74, 81–83).)

Before 2006, courts interpreted Penal Code section 832.7 to prevent access to complaints about police officers held by the officer’s “employing agency,” but left other records open to the public, such as administrative appeals to outside bodies and records from jurisdictions with independent civilian review

boards. (Sen. Com. on Pub. Safety, Analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.)) These limited exceptions provided the public with some transparency after officer-involved shootings and other scandals, including the Rampart scandal.<sup>4</sup> However, in 2006, the California Supreme Court reinterpreted Penal Code section 832.7 in *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272 to apply much more broadly to all personnel records, plunging all police personnel records into total darkness. (Sen. Com. on Pub. Safety, Analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.))

After the *Copley Press* decision, California became “one of the most secretive states in the nation in terms of openness when it comes to officer misconduct and uses of force.” (Sen. Com. on Pub. Safety, Analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.)) State Senator Nancy Skinner introduced SB 1421 to remedy that problem. SB 1421 amended the *Pitchess* statutes to make four

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<sup>4</sup> In the late 1990s, police officers in the Rampart Division of the LAPD framed innocent individuals to gain convictions and innocent individuals pleaded guilty to, and were convicted of, crimes they did not commit. (Chemerinsky, *The Rampart Scandal and the Criminal Justice System in Los Angeles County* (2000) 57 *Guild Practitioner* 121–133, at <[https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2161&context=faculty\\_scholarship](https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2161&context=faculty_scholarship)>.) The LAPD’s Board of Inquiry investigated the officers and published a report titled “Rampart Area Corruption Incident.” (*Id.* at 121.) In addition, the President of the Los Angeles Police Protective League, the official LAPD police union, asked Erwin Chemerinsky, a pre-eminent constitutional scholar and then-professor at USC Gould School of Law, to prepare an independent analysis of the report, which was also released to the public. (*Ibid.*)

types of records available to the public, of which two are potentially implicated here depending on the contents of the report: (1) records “relating to the report, investigation, or findings of ... [a]n incident involving the discharge of a firearm at a person by a peace officer” and (2) records “relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty by a peace officer ... directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer.” (Pen. Code, § 832.7, subd. (b)(1)(A)(i), (b)(1)(C).)

The purpose of SB 1421, Senator Skinner explained, was “to make sure that good officers and the public have the information they need to address and prevent abuses and to weed out the bad actors. SB 1421 will help identify and prevent unjustified use of force, make officer misconduct an even rarer occurrence, and build trust in law enforcement.”<sup>5</sup> Moreover, Senator Skinner noted that SB 1421 is consistent with the goals of enhancing police-community relations as set out in the President’s Task Force on 21st Century Policing, Action Item 1.5.1: “In order to achieve external legitimacy, law enforcement agencies should involve the community in the process of developing and evaluating policies and procedures.” (Sen. Com.

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<sup>5</sup> (Sen. Com. on Pub. Safety, Analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.); Assem. Com. on Pub. Safety, Analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.) as amended June 19, 2018.; Assem. Floor Analysis, 3d Reading analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.) as amended Aug. 23, 2018.)

on Pub. Safety, Analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.).)

Since its passage, Open Vallejo and other newsrooms have relied on SB 1421—enacted as amendments to Penal Code sections 832.7 and 832.8—to unearth previously secret documents and deliver critical news stories to their communities. In 2019, the nonprofit news organization Voice of San Diego worked with dozens of other California news outlets to pursue copies of newly unsealed records; the coalition was ultimately able to gather more than 5,000 audio, visual, and physical files.<sup>6</sup> Similarly, between March of 2019 and July of 2023, Open Vallejo filed 28 requests for public records under SB 1421 and received 14,700 pages of records and 3,300 minutes of video and audio files from the City of Vallejo.<sup>7</sup>

But, as this case demonstrates, and as Open Vallejo has reported, agencies and courts have not always applied SB 1421 properly. For example, the City of Vallejo has withheld records requested under SB 1421 related to the killing by Vallejo police of 17-year-old Jared Huey on the basis that Mr. Huey was a minor, an exception that is nowhere in SB 1421, and two courts have

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<sup>6</sup> (Marx, *Getting Police Records Is Still a Slog, One Year Into New Transparency Law* (Voice of San Diego, Dec. 30, 2019) at <<https://voiceofsandiego.org/2019/12/30/getting-police-records-is-still-a-slog-one-year-into-new-transparency-law/>>.)

<sup>7</sup> (Du Sault, *State Senator Says Juvenile Records Laws Shouldn't Shield Police* (Open Vallejo, July 11, 2023) at <<https://openvallejo.org/2023/07/11/state-senator-says-juvenile-confidentiality-laws-shouldnt-shield-police/>>.)

endorsed that stance.<sup>8</sup> As Open Vallejo has reported, Senator Skinner has stated that while the law enforcement agencies could have redacted the records, SB 1421 does not contain an exemption for records when the victim or witness is a minor, and that “such an exemption would violate the intent of SB 1421 and SB 16, which were enacted to ensure that our communities have public access to records related to any law officer’s misconduct.”<sup>9</sup> Indeed, as David Loy, the legal director of the First Amendment Coalition told Open Vallejo, the “public interest is even more compelling when the police are killing children. ... They should be required to disclose the full story.”<sup>10</sup> In addition, the City of Vallejo changed its records retention policy from 25 years to 5 years just three weeks before SB 1421 went into effect, resulting in the destruction of crucial records.<sup>11</sup>

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<sup>8</sup> (*Ibid*; Du Sault, *‘Twisted to Conceal:’ How Laws Meant to Protect Children Help Police Evade Scrutiny* (Open Vallejo, June 28, 2023), at <<https://openvallejo.org/2023/06/28/twisted-to-conceal-how-laws-meant-to-protect-children-help-police-evade-scrutiny/>>.)

<sup>9</sup> (Du Sault, *State Senator Says Juvenile Records Laws Shouldn’t Shield Police* (Open Vallejo, July 11, 2023) at <<https://openvallejo.org/2023/07/11/state-senator-says-juvenile-confidentiality-laws-shouldnt-shield-police/>>.)

<sup>10</sup> (Du Sault, *‘Twisted to Conceal:’ How Laws Meant to Protect Children Help Police Evade Scrutiny* (Open Vallejo, June 28, 2023), at <<https://openvallejo.org/2023/06/28/twisted-to-conceal-how-laws-meant-to-protect-children-help-police-evade-scrutiny/>>.)

<sup>11</sup> (Ex. A, Application at 4 & fns. 4 & 5; Du Sault and King, *Senior Officials Ordered Destruction of Vallejo Police Shooting Evidence* (Open Vallejo, Feb. 5, 2023), at (continued...))



Here, the history and purpose of SB 1421 directly support disclosure of the Giordano Report. The Legislature recognized that a primary purpose of disclosing police personnel records is to ensure that “good officers and the public have the information they need to *address and prevent abuses* and to *weed out the bad actors*.” (Sen. Com. on Pub. Safety, Analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.), italics added.) The Giordano Report was commissioned as an investigation into such abuses. (Ex. A, *Amicus* Letter at 5–6.) It is therefore exactly the type of record meant to be released under SB 1421.

Another stated purpose of SB 1421 is to disclose personnel records in order to “build trust in law enforcement” and, as Senator Skinner noted, the President’s Task Force on 21st Century Policing recognized that “to achieve external legitimacy, law enforcement agencies should involve the community in the process of developing and evaluating policies and procedures.” (Sen. Com. on Pub. Safety, Analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.)) When the investigation was announced, then-Vallejo Mayor Bob Sampayan worried that badge bending was yet “another black eye—another issue that’s going to make our community distrusting.” (Ex. A, *Amicus* Letter at 5 & fn. 32.) Indeed, the Vallejo community, including previous Mayor Robert McConnell, has overwhelmingly demanded the release of the Giordano Report in order to pursue accountability and reform. (Ex. A, *Amicus* Letter at 5–6; St. Clair, *Protestors Disrupt*

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<https://openvallejo.org/2023/02/05/vallejo-destroyed-evidence-of-police-killings/>.)

*Meeting as Vallejo Council Declines to Vote on Police Station Proposal*, (Local News Matters, Mar. 10, 2022), at <https://localnewsmatters.org/2022/03/10/protesters-disrupt-meeting-as-vallejo-council-declines-to-vote-on-police-station-proposal/>.) Keeping the Giordano Report secret flies in the face of the intended purpose of SB 1421 to allow the community to participate in holding its institutions accountable.

Moreover, as noted during in the Senate Committee on Public Safety’s Analysis of SB 1421, the secrecy with which law enforcement investigatory and disciplinary records are treated stands in stark contrast to those of other public employees and even other professionals like doctors, lawyers, and school officials. (Sen. Com. on Pub. Safety, Analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.)) In other cases, the Committee observed that courts have repeatedly found strong public policy reasons to disclose the disciplinary records of these types of individuals, reasoning that the public has a right to know how decision-making bodies investigate and resolve accusations of misconduct. (Sen. Com. on Pub. Safety, Analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.)) Similarly, the Santa Clara County District Attorney’s Office wrote in support of the passage of SB 1421 that it had moved away from using secret grand juries to prosecute officer-involved shootings because it found that “presenting [its] findings publicly [could] assure the public [it took] any official use of force seriously.” (Assem. Com. on Pub. Safety, Analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.) as amended June 19, 2018.) It went on to note that it had received “letters of thanks from police

officers who are grateful that their name has been cleared. It is a fair system. It is not ‘anti-police.’” (Assem. Com. on Pub. Safety, Analysis of Sen. Bill 1421 (2017 – 2018 Reg. Sess.) as amended June 19, 2018.)

The same analysis applies here. The Vallejo community is entitled under SB 1421 to understand how badge-bending and the workplace culture of the notably violent (and often deadly) Vallejo Police Department was investigated. As noted in Open Vallejo’s previous *amicus* letter, the release of the report is particularly salient because questions have arisen about Robert Giordano’s ability to assess the allegations of violence and badge-bending fairly. (Ex. A, *Amicus* Letter at 5–6.) Keeping the Giordano Report secret contravenes the purpose of SB 1421, which changed the law to require unfettered access to crucial materials of public importance such as the Giordano Report.

### CONCLUSION

The Giordano Report is a critical part of informing the public and holding public institutions accountable, two core principles underlying the promulgation of SB 1421. They are also core purposes of Open Vallejo’s reporting mission. For these and all the reasons stated, Open Vallejo respectfully asks the Court of Appeal to grant the relief requested by Petitioner in *American Civil Liberties Union of Northern California v. The Superior Court of Solano County*.

DATE: February 25, 2025    Respectfully submitted,

COVINGTON & BURLING LLP

By: /s/ Rani Gupta  
Rani Gupta

*Counsel for Amicus Curiae  
Open Vallejo*

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# **EXHIBIT A**

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Rani Gupta (#296346)  
rgupta@cov.com  
COVINGTON & BURLING LLP  
3000 El Camino Real, 10th Fl.  
Palo Alto, CA 94305  
Telephone: (650) 632-4700  
Facsimile: (650) 632-4800

*Attorney for Amicus Curiae  
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**STATEMENT OF INTEREST OF  
AMICUS CURIAE OPEN VALLEJO**

Open Vallejo first broke the story of the badge-bending ritual that led the City of Vallejo to commission the secret report that is the subject of this petition. Like the American Civil Liberties Union of Northern California, Open Vallejo has submitted California Public Records Act (“CPRA”) requests for the report. But the City of Vallejo and other public agencies have refused to release it, preventing the reporting of critical information regarding public accountability and police use of force.

In 2018, the California Legislature passed SB 1421, The Right to Know Act, which expands public access to records regarding police misconduct and use of force. The Legislature explained the reasoning behind the law by stating that Californians have vested police with “extraordinary authority – the powers to detain, search, arrest, and use deadly force,” and that “[o]ur society depends on peace officers’ faithful exercise of that authority. Misuse of that authority can lead to grave

constitutional violations, harms to liberty and the inherent sanctity of human life, as well as significant public unrest.” (Stats. 2018, ch. 988, § 1.) The Legislature also determined that concealing violations of that authority “undercuts the public’s faith in the legitimacy of law enforcement,” makes it harder for police to work, and “endangers public safety.” (*Ibid.*) Accordingly, the Legislature concluded that the “public has a right to know all about serious police misconduct, as well as officer-involved shootings and other serious uses of force.” (*Ibid.*)

Since its founding in 2019, Open Vallejo has extensively reported on the Vallejo Police Department’s exercise of that “extraordinary authority,” including by publicly revealing the badge-bending practice in 2020.<sup>1</sup> Open Vallejo is the first project of the Informed California Foundation, a periodical publication, wire service, and press association that produces and supports impactful, responsive, local accountability journalism in communities across the state.<sup>2</sup> Open Vallejo’s Executive Editor, Geoffrey King, is a Vallejo native. He established the newsroom in 2019 to shine a light on police violence and investigate on behalf of the citizens of Vallejo the often-secret operations of the City’s institutions, including the police force.

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<sup>1</sup> (King, *Vallejo Police Bend Badges to Mark Fatal Shootings* (Open Vallejo, July 28, 2020), at <https://openvallejo.org/2020/07/28/vallejo-police-bend-badge-tips-to-mark-fatal-shootings/>.)

<sup>2</sup> (Open Vallejo, *About Us*, at <https://openvallejo.org/about-us/>.)



**OPEN VALLEJO’S *AMICUS CURIAE* BRIEF WILL ASSIST  
THIS COURT IN DECIDING THIS MATTER**

Open Vallejo’s groundbreaking reporting has relied upon records obtained from the City of Vallejo, including after prevailing in CPRA litigation against the City.<sup>3</sup> For example, Open Vallejo revealed that in 2021, the City of Vallejo intentionally destroyed key evidence in multiple police killings and one non-fatal shooting, records that “were set to be disclosed under California transparency laws.”<sup>4</sup> Two years later, a judge ruled that the destruction of those records violated the CPRA.<sup>5</sup>

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<sup>3</sup> (*Informed California Foundation, Inc. v. City of Vallejo* (Solano County Super. Ct., No. FCS-057109); King, *Solano County District Attorney Unlawfully Withholds Police Shooting Records, Open Vallejo Alleges* (Open Vallejo, Sept. 6, 2023), at <<https://openvallejo.org/2020/12/23/open-vallejo-lawsuit-makes-police-policies-public/>>; Solano County District Attorney unlawfully withholds police shooting records, Open Vallejo alleges; Open Vallejo on X, at <<https://x.com/OpenVallejo/status/1285728780816912392>>; Du Sault, *Vallejo Tolerated Officer’s Mistakes. Then They Killed Again* (Open Vallejo, July 7, 2022), at <<https://openvallejo.org/2022/07/07/vallejo-tolerated-officers-mistakes-then-they-killed-again/>>; DuSault & King, *Footage of Sean Monterrosa’s Killing by Police Was “Overwritten.” Here is What We Know About That Night* (Open Vallejo, Dec. 9, 2021), at <<https://openvallejo.org/2021/12/09/footage-of-sean-monterrosas-killing-was-overwritten-here-is-what-we-know/>>.)

<sup>4</sup> (Du Sault & King, *Senior Officials Ordered Destruction of Vallejo Police Shooting Evidence* (Open Vallejo, Feb. 5, 2023), at <<https://openvallejo.org/2023/02/05/vallejo-destroyed-evidence-of-police-killings/>>.)

<sup>5</sup> (King, *Court Rules Vallejo Illegally Destroyed Evidence in Police Killings* (Open Vallejo, June 27, 2023, at (continued...))

Open Vallejo has submitted CPRA requests for the very same “Giordano Report” and investigative materials that are the subject of the ACLU’s petition, arguing that the Giordano Report and investigative materials are public records that should be released. (*Informed California Foundation, Inc. v. Solano County District Attorney’s Office* (Solano County Super. Ct., No. CU23-05716).)

Open Vallejo has an interest in this proceeding because the decision below is likely to affect the release of the Giordano Report and investigative materials, including in response to Open Vallejo’s CPRA requests, and will affect Open Vallejo’s reporting on areas of public concern. Open Vallejo respectfully seeks to offer this Court factual background relevant to the legal issues whether the report and materials are public records disclosable under SB 1421. Open Vallejo also seeks to demonstrate the importance of those materials to reporting in Vallejo, which counsels in favor of granting the petition.

#### **RULE 8.200(c)(3) DISCLOSURE**

Consistent with California Rule of Court 8.200(c)(3), Open Vallejo states that no party or any counsel for any party authored this amicus letter in whole or in part, or made a monetary contribution intended to fund the preparation or submission of this brief. No other person or entity made a monetary contribution to fund the preparation or submission of the brief other than the *amicus curiae* and its counsel.

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<https://openvallejo.org/2023/06/27/court-rules-vallejo-illegally-destroyed-evidence-in-police-killings/>.)

## CONCLUSION

For the reasons stated above, Open Vallejo respectfully asks the Court to grant this application and permit Open Vallejo to file the accompanying *amicus curiae* letter.

DATE: November 21, 2024    Respectfully submitted,

COVINGTON & BURLING LLP

By: /s/ Rani Gupta  
Rani Gupta

*Attorney for Amicus Curiae*  
*Open Vallejo*

Document received by the CA 1st District Court of Appeal.

# COVINGTON

BEIJING BOSTON BRUSSELS DUBAI FRANKFURT  
JOHANNESBURG LONDON LOS ANGELES NEW YORK  
PALO ALTO SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Rani Gupta

Covington & Burling LLP  
3000 El Camino Real  
5 Palo Alto Square, 10th Floor  
Palo Alto, CA 94306-2112  
T +1 650 632 4727  
rgupta@cov.com

## Via E-Filing

November 21, 2024

Hon. Jim Humes  
Administrative Presiding Justice  
First District Court of Appeal of California  
350 McAllister Street  
San Francisco, CA 94102

Re: **Letter of Open Vallejo in Support of Petitioner American Civil Liberties Union of Northern California in *American Civil Liberties Union of Northern California v. The Superior Court of Solano County*, First Appellate District, Case No. A171570**

To the Hon. Jim Humes and the Associate Justices of the First District Court of Appeal:

This letter is submitted on behalf of Informed California Foundation, Inc. (d/b/a Open Vallejo), an independent, nonpartisan, nonprofit newsroom focused on providing investigative and explanatory public interest reporting in Vallejo.<sup>1</sup> For the reasons set forth below, Open Vallejo urges this Court to grant the petition for writ of mandate filed by the ACLU and ultimately to release the report and investigative materials sought in this case.

As discussed in Open Vallejo's application for leave, Open Vallejo first broke the story of the badge-bending ritual that led the City of Vallejo to commission the secret report that is the subject of this petition. Government officials have denied, however, Open Vallejo's requests under the California Public Records Act for the report. The decision below prevents the reporting of critical information regarding public accountability and police use of force. The Court should grant review.

In 2018, the California Legislature passed SB 1421, The Right to Know Act, which expands public access to records regarding police misconduct and use of force. The Legislature explained the reasoning behind the law by stating that Californians have vested police with "extraordinary authority – the powers to detain, search, arrest, and use deadly force," and that "[o]ur society depends on peace officers' faithful exercise of that authority. Misuse of that authority can lead to grave constitutional violations, harms to liberty and the inherent sanctity of human life, as well as significant public unrest."<sup>2</sup> The Legislature also determined that concealing violations of that authority "undercuts the public's faith in the legitimacy of law

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<sup>1</sup> (Open Vallejo, *About Us*, at <<https://openvallejo.org/about-us/>>.)

<sup>2</sup> (Stats. 2018, ch. 988, § 1.)

## COVINGTON

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enforcement,” makes it harder for police to work, and “endangers public safety.”<sup>3</sup> Accordingly, the Legislature concluded that the “public has a right to know all about serious police misconduct, as well as officer-involved shootings and other serious uses of force.”<sup>4</sup>

Since its founding in 2019, Open Vallejo has extensively reported on the Vallejo Police Department’s exercise of that “extraordinary authority,” including by publicly revealing the badge-bending practice in 2020.<sup>5</sup> In the proceedings below, Open Vallejo has attempted to report on the court hearings, which are required to be open to the public. Though Open Vallejo was initially granted access to photograph the proceedings pursuant to California Rule of Court 1.150, the Superior Court ultimately barred Open Vallejo from attending the hearing in this case without acknowledging Open Vallejo’s objections or holding a hearing, in contravention of *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178 and the First Amendment.<sup>6</sup>

By continuing to withhold the Giordano Report and investigative materials from the public, the City of Vallejo is continuing to obstruct Open Vallejo’s attempts to inform the public of the reasons that Vallejo police shoot so often and kill with impunity. To further the public’s “right to know all about serious police misconduct, as well as officer-involved shootings and other serious uses of force,” Open Vallejo urges this Court to order release the Giordano Report.<sup>7</sup>

Over the last five years, the Vallejo Police Department, which is responsible for law enforcement in a relatively small city of about 125,000 people, has drawn national attention for its lethality. In 2020, following Open Vallejo’s investigative reporting, *The New Yorker* and *The Guardian* published articles chronicling the “crisis” conditions in Vallejo, where “a US police department allows repeat offenders to act with impunity.”<sup>8</sup> One Vallejo officer killed three people in less than five months.<sup>9</sup> Vallejo’s “most lethal officer of the past 20 years,” who has

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<sup>3</sup> (*Ibid.*)

<sup>4</sup> (*Ibid.*)

<sup>5</sup> (King, *Vallejo Police Bend Badges to Mark Fatal Shootings* (Open Vallejo, July 28, 2020), at <<https://openvallejo.org/2020/07/28/vallejo-police-bend-badge-tips-to-mark-fatal-shootings/>>.)

<sup>6</sup> (Bauman, *From a Locked Courtroom, Judge Rules Vallejo Badge Bending Report Will Remain Secret* (Open Vallejo, Oct. 2, 2024), at <<https://openvallejo.org/2024/10/02/from-a-locked-courtroom-judge-rules-vallejo-badge-bending-report-will-remain-secret/>>.)

<sup>7</sup> (See *supra*, fn. 2.)

<sup>8</sup> (Bauer, *How a Deadly Police Force Ruled a City* (The New Yorker, Nov. 16, 2020), at <<https://www.newyorker.com/magazine/2020/11/23/how-a-deadly-police-force-ruled-a-city>>; Levin, *19 Dead in a Decade: The Small American City Where Violent Police Thrive* (The Guardian, June 13, 2020), at <<https://www.theguardian.com/us-news/2020/jun/13/vallejo-california-police-violence-sean-monterrosa>>.)

<sup>9</sup> (Levin, *19 Dead in a Decade: The Small American City Where Violent Police Thrive* (The Guardian, June 13, 2020), at <<https://www.theguardian.com/us-news/2020/jun/13/vallejo-california-police-violence-sean-monterrosa>>; see also King, *Open Vallejo Releases Critical Incident Database to Public* (Open Vallejo (Aug. 7, 2020), at (continued...))

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been in four fatal shootings since 2000, was promoted to lieutenant in February 2020;<sup>10</sup> he wore a bent badge to a police chief swearing-in ceremony.<sup>11</sup> In 2019, NBC Bay Area reported that the Vallejo Police had the highest rate of residents shot per capita in Northern California.<sup>12</sup> One officer described other officers to Open Vallejo as “a bunch of thugs who take pleasure out of hurting people.”<sup>13</sup>

Against this background, Open Vallejo broke a story on July 28, 2020 that reported that a group of officers in the Vallejo Police Department had for decades celebrated and commemorated fatal shootings in the line of duty by bending the points of their badges.<sup>14</sup> Bends were described to Open Vallejo as “notch[es] on the bedpost,” indicating to other officers in on the secret “how many hoodlums they’ve shot.”<sup>15</sup> Not all officers were invited to bend their badges.<sup>16</sup> As Open Vallejo reported, only those who shot, killed, and could be trusted not to talk about it were initiated into the ritual.<sup>17</sup> Nonetheless, Open Vallejo reported that by 2019, the “badge-bending” practice appeared to be an open secret among many in control of the City’s institutions, including the then-Chief of Police, the then-City Manager, and the then-City Attorney.<sup>18</sup>

Sources reported to Open Vallejo that at least seven officers’ badges “have multiple bends” apparently related to repeated officer-involved shootings, including three officers who account for nearly a third of the thirty fatal shootings by Vallejo Police in the last twenty years.<sup>19</sup> Vallejo officer Ryan McMahan “collected his first bend” in 2018 after firing seven rounds at Ronnell Foster, striking him in the back and the head, at “point blank” range as Foster fled, unarmed, after Officer McMahan pulled him over for riding a bicycle at night without a light.<sup>20</sup>

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<<https://openvallejo.org/2020/08/07/open-vallejo-launches-critical-incident-database/>> and *Open Vallejo Research: Vallejo Police Department Shootings and Fatal Incidents, 1995–2020*, at

<[https://docs.google.com/spreadsheets/d/1WfY3Rc9yEysZoyvjSWYwQ\\_o455aCEV4F2iejK77cB10/edit?gid=0#gid=0](https://docs.google.com/spreadsheets/d/1WfY3Rc9yEysZoyvjSWYwQ_o455aCEV4F2iejK77cB10/edit?gid=0#gid=0)>.)

<sup>10</sup> (See *supra*, fn. 5. The officer denies taking part in the badge-bending ritual.)

<sup>11</sup> (*Ibid.*)

<sup>12</sup> (Stock et al., *Vallejo Police Have Highest Rate of Residents Shot Per Capita in Northern California*; NBC Bay Area *Probes Causes*, at

<<https://www.nbcbayarea.com/news/local/vallejo-police-highest-rate-of-residents-shot-per-capita-in-northern-california-nbc-bay-area-probes-causes/190344/>>.)

<sup>13</sup> (See *supra*, fn. 5.)

<sup>14</sup> (*Ibid.*)

<sup>15</sup> (*Ibid.*)

<sup>16</sup> (*Ibid.*)

<sup>17</sup> (*Ibid.*)

<sup>18</sup> (*Ibid.*)

<sup>19</sup> (*Ibid.*)

<sup>20</sup> (*Ibid.*)

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Officer McMahon “collect[ed] his second bend” according to Open Vallejo’s law enforcement sources, when he pulled the trigger again a little over a year later as one of a gang of six officers that fired 55 shots at a young man who had fallen asleep in his car.<sup>21</sup> Another officer that Open Vallejo reported on is Matthew Komoda, who was recently promoted despite having admitted under oath in 2022 to participating in the badge-bending ritual.<sup>22</sup>

A critical part of Open Vallejo’s reporting has concerned the Police Department and City’s response to the shootings. Multiple officers alleged to have been involved with, or who have admitted to involvement in, badge bending are still employed by the Vallejo Police Department, including members of the command staff.<sup>23</sup> Open Vallejo also reported that of 17 fatal shootings between 2011 and 2020, six involved officers still under investigation for a prior killing.<sup>24</sup> In three cases, reviewers noted mistakes by the officers in their reports, but not until after the second killing.<sup>25</sup>

Open Vallejo also reported on the negative effects of the shootings on Vallejo’s ability to provide essential services to its residents. For example, from 2003 to 2019, Vallejo and its insurers paid or approved at least \$10.1 million in “misconduct-related judgments or settlements involving Vallejo police,” leading to the City’s withdrawal from its municipal insurance pool.<sup>26</sup> Since Open Vallejo revealed the badge-bending ritual in 2020, litigation costs related to the Vallejo Police Department have skyrocketed: three recent fatal shooting cases settled for a total of more than \$13 million<sup>27</sup> and a 2020 report by the Vallejo City Attorney’s

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<sup>21</sup> (*Ibid.*)

<sup>22</sup> (King, *Vallejo Officer in Monday Shooting Linked to Badge Bending Ritual* (Open Vallejo, Nov. 22, 2023), at <<https://openvallejo.org/2023/11/22/vallejo-officer-in-monday-shooting-linked-to-badge-bending-ritual/>>; King, *Three Shootings in Vallejo Leave One Dead, Two Injured* (Open Vallejo, Aug. 27, 2024), at <<https://openvallejo.org/2024/08/27/three-shootings-in-vallejo-leave-one-dead-two-injured/>>.)

<sup>23</sup> (King, *Vallejo Officer in Monday Shooting Linked to Badge Bending Ritual* (Open Vallejo, Nov. 22, 2023), at <<https://openvallejo.org/2023/11/22/vallejo-officer-in-monday-shooting-linked-to-badge-bending-ritual/>>; Bauman & King, *Vallejo Police May Swap Stars for Shields Amid Badge-Bending Scandal* (Open Vallejo, Jan. 26, 2024), at <<https://openvallejo.org/2024/01/26/vallejo-police-may-swap-stars-for-shields-amid-badge-bending-scandal/>>.)

<sup>24</sup> (Du Sault, *Vallejo Tolerated Officer’s Mistakes. Then They Killed Again* (Open Vallejo, July 7, 2022), at <<https://openvallejo.org/2022/07/07/vallejo-tolerated-officers-mistakes-then-they-killed-again/>>.)

<sup>25</sup> (*Ibid.*)

<sup>26</sup> (King, *Police Violence Costs Vallejo Millions, Starving City of Essential Services* (Open Vallejo, Feb. 19, 2024), at <<https://openvallejo.org/2019/02/10/how-civil-rights-violations-starve-vallejo-of-essential-services/>>.)

<sup>27</sup> (Arredondo, *Vallejo Officers Could Lose Badges as State Opens Investigation* (Open Vallejo, Oct. 18, 2024), at <<https://openvallejo.org/2024/10/18/vallejo-officers-could-lose-badges-as-state-opens-investigation/>>.)

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Office estimated that the City and its insurer face “\$50 million or more” in legal liability for pending cases of alleged misconduct by Vallejo police.<sup>28</sup>

Days after Open Vallejo broke the badge-bending story, the Vallejo Police Department announced on July 31, 2020 that it would commission an outside investigation into the bending of badges after a fatal shooting, specifically “officers taking part in the act after an officer-involved shooting occurs.”<sup>29</sup> A few months later, the City of Vallejo paid Robert Giordano, ex-Sonoma County Sheriff, and C. Christine Maloney, a labor and employment attorney,<sup>30</sup> \$100,000 to “[c]onduct a workplace investigation in the Vallejo Police Department involving ‘badge bending’ and other alleged, related practices arising from police-related incidents.”<sup>31</sup> When the investigation was announced, then-Vallejo Mayor Bob Sampayan acknowledged that badge bending was yet “another black eye – another issue that’s going to make our community distrusting.”<sup>32</sup> These statements echo the concerns of the California Legislature that “[c]oncealing crucial public safety matters such as ... inquiries into deadly use of force incidents, undercuts the public’s faith in the legitimacy of law enforcement.”<sup>33</sup>

Vallejo Mayor Robert McConnell and others in the community have demanded release of the report, but the City has refused to release any part of the Giordano Report to the public.<sup>34</sup>

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<sup>28</sup> (Open Vallejo on X, at <<https://x.com/OpenVallejo/status/1311889877571522560>>.)

<sup>29</sup> (Gase, *Vallejo Police Department Launches Third-Party Investigation on Alleged Badge Bending* (Vallejo Times Herald, July 31, 2020), at <<https://www.timesheraldonline.com/2020/07/31/vallejo-police-department-launches-third-party-investigation-on-alleged-badge-bending/>>; Vallejo Police Press Release, *Vallejo Police Department to Launch Third-Party Investigation into Alleged Practice of Badge Bending* (July 31, 2020) at <<https://myemail.constantcontact.com/Vallejo-PD-to-Launch-Third-Party-Investigation-into-Alleged-Practice-of-Badge-Bending.html?soid=1107787334147&aid=DIPIf2U4b3s&>>.)

<sup>30</sup> (St. Clair, *Questions Arise About Ex-Sheriff Hired to Investigate Vallejo Police Department Badge-Bending Scandal* (The Mercury News, May 19, 2021) at <<https://www.mercurynews.com/2021/05/19/questions-arise-about-ex-sheriff-hired-to-investigate-vpd-badge-bending-scandal/>>.)

<sup>31</sup> (Consultant and Professional Services Agreement between City of Vallejo and R. Giordano Consulting & Investigations, LLC [“2020-08-14 Badge-Bending Investigation Agreement”] (contributed by Open Vallejo), at <<https://www.documentcloud.org/documents/20701930-2020-08-14-badge-bending-investigation-agreement>>.)

<sup>32</sup> (Gase, *Vallejo Police Department Launches Third-Party Investigation on Alleged Badge Bending* (Vallejo Times Herald, July 31, 2020), at <<https://www.timesheraldonline.com/2020/07/31/vallejo-police-department-launches-third-party-investigation-on-alleged-badge-bending/>>.)

<sup>33</sup> (See *supra*, fn. 2.)

<sup>34</sup> (Gase, *Confidential Memorandum on Badge-Bending Report Still Withheld from Public*, (Vallejo Times Herald, May 19, 2022), at <<https://www.timesheraldonline.com/2022/05/19/confidential-memorandum-on-badge-bending-report-still-withheld-from-public/>>.); *Keys, Activists Demand Police Accountability* (continued...)



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This is particularly troubling given the questions that have arisen about Giordano's ability to assess the allegations of violence and badge bending fairly.<sup>35</sup> He was described by a civil rights attorney as a "career-long apologist for police misconduct," who noted that the Vallejo Police Department will get "exactly what it paid for"—a "propaganda piece rather than an investigation."<sup>36</sup> Another attorney, the then-head of the Independent Office of Law Enforcement Review and Outreach in Sonoma, who worked with Giordano on multiple occasions, stated that as a sheriff, Giordano "wasn't receptive to the independent investigations of [the Sonoma] office" and stated publicly that he wanted the oversight office "eliminated."<sup>37</sup>

No portion of the Giordano Report has been released to the public. The Superior Court's decision below prevents Open Vallejo and other news organizations from reporting on the deaths of Vallejo citizens at the hands of police, police misconduct, and the Vallejo Police Department and City's *response* to Open Vallejo's public interest reporting regarding police shootings. The Giordano Report is a critical part of informing the public and holding public institutions accountable. This is both a core purpose of Open Vallejo's reporting mission and furthers the Legislature's stated purpose when it passed SB 1421, in recognition of the fact that "the public has a right to know all about serious police misconduct, as well as about officer-involved shootings and other serious uses of force."<sup>38</sup>

For all these reasons, Open Vallejo urges the Court of Appeal to grant the relief requested by Petitioner in *American Civil Liberties Union of Northern California v. The Superior Court of Solano County*.

Respectfully submitted,



Rani Gupta

*Counsel for Open Vallejo*

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*During Vallejo Council Meeting* (Solano NewsNet, July 13, 2022), at <<https://solanonews.substack.com/p/activists-demand-police-accountability>>; King, "A Whitewash and a Coverup": *An Interview with Vallejo Police Whistleblower John Whitney* (Open Vallejo, Dec. 6, 2023), at <<https://openvallejo.org/2023/12/06/a-whitewash-and-a-coverup-an-interview-with-vallejo-police-whistleblower-john-whitney/>>.)

<sup>35</sup> (See *supra*, fn. 30.)

<sup>36</sup> (*Ibid.*)

<sup>37</sup> (*Ibid.*)

<sup>38</sup> (See *supra*, fn. 2.)

**PROOF OF SERVICE**

I am employed with the law firm of Covington & Burling LLP, the address of which is 415 Mission Street, Suite 5400, San Francisco, California 94105. My electronic service address is echiulos@cov.com. On February 25, 2025, I caused to be served the foregoing

**Application of Informed California Foundation, Inc. (d/b/a Open Vallejo) for Leave to File  
*Amicus Curiae* Brief In Support of Petitioner American Civil Liberties Union of Northern  
California**

**[Proposed] *Amicus Curiae* Brief of Informed California Foundation, Inc. (d/b/a Open  
Vallejo) In Support of Petitioner American Civil Liberties Union of Northern California**

BY ELECTRONIC TRANSMISSION OR U.S. MAIL: I caused to be transmitted to the following case participants a true electronic copy of the document via this Court's TrueFiling system or a hard copy of the document via U.S. Mail as indicated below:

Emi Young (SBN 311238)  
eyoung@aclunc.org  
Avram Frey (SBN 347885)  
afrey@aclunc.org  
ACLU Foundation of Northern California  
39 Drumm Street  
San Francisco, CA 94111

*Counsel for Petitioner ACLU of Northern California (Served via TrueFiling)*

Katelyn Knight  
Assistant City Attorney  
City of Vallejo, City Hall  
555 Santa Clara Street, 3rd Floor  
Vallejo, CA 94590  
katelyn.knight@cityofvallejo.net

*Counsel for Real Party in Interest City of Vallejo (Served via TrueFiling)*

Solano County Superior Court  
Old Solano Courthouse  
To: Hon. Stephen Gizzi, Dept. 3  
580 Texas St  
Fairfield, CA 94533

*Respondent (Served via U.S. Mail)*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 25, 2025, in San Francisco, California.

A handwritten signature in cursive script that reads "Ellen Chiulos". The signature is written in black ink and is positioned above a horizontal line.

Ellen Chiulos