

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



DENNIS J. HERRERA
City Attorney

PETER J. KEITH
Deputy City Attorney

DIRECT DIAL: (415) 554-3908
E-MAIL: peter.keith@sfgov.org

March 27, 2013

Molly C. Dwyer, Clerk of Court
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Electronically Filed

Re: *Ford v. City of Yakima*, et al., Case No. 11-35319
Opinion Filed February 13, 2013 (Judges Hug, Nelson, and Callahan)
Petition For Rehearing Pending
Letter Joining City of Yakima's Arguments For Rehearing (Ninth Circuit Rule 29-1)

Dear Ms. Dwyer:

We write on behalf of the California State Association of Counties and the League of California Cities. Pursuant to Rule 29-1, Advisory Committee note, we write to support the petition for rehearing filed by the City of Yakima *et al.* concerning the above opinion.

The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The League of California Cities is an association of 469 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

This opinion concerns whether a police officer can be sued under section 1983 based on his or her decision to book an arrestee rather than cite and release him, where booking is permitted under state law but the officer is alleged to have booked the suspect in retaliation for the suspect's exercise of First Amendment rights. We join in the arguments for rehearing made by the City of Yakima.

In particular, California cities and counties share the City of Yakima's concern that the prospect of section 1983 liability for a booking decision will adversely affect officer safety and public safety. Like the State of Washington, the State of California provides for citing and releasing misdemeanor suspects, but under certain circumstances officers may book those suspects instead. Cal. Penal Code § 853.6(i). Significantly, officers are authorized to book misdemeanor suspects when citing and releasing the suspect would threaten public safety or

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officer safety, or when the suspect is unable to care for his own safety. *Id.* § 853.6(i)(1),(2),(7). We are concerned that this decision authorizes section 1983 liability even when citing and releasing a suspect poses a bona fide safety concern. Officers and their public entity employers should not face liability under those circumstances.

We thank the Court for its consideration of our views.

Very truly yours,

DENNIS J. HERRERA, City Attorney

/s/ Peter J. Keith

PETER J. KEITH, Deputy City Attorney

(Served on all counsel via ECF.)