Fifth Civil Number F089987

In the Court of Appeal of the State of California

FIFTH APPELLATE DISTRICT

CITY OF FRESNO,

Defendant and Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF FRESNO,

Respondent,

AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA,

Plaintiff and Real Party in Interest.

From the Superior Court of the State of California
For the County of Fresno, B.F. Sisk Courthouse
Case No. 24CECG01635
The Hon. W. Kent Hamlin, Dept. 53, Tel.: (559) 457-6348

REPLY TO RETURN TO PETITION FOR WRIT OF MANDATE OR OTHER APPROPRIATE RELIEF

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INTRODUCTION

Petitioner City of Fresno ("Defendant" or "City") seeks relief from Respondent Court's order granting Plaintiff and Real Party in Interest American Civil Liberties Union of Southern California's ("Plaintiff" or "ACLU") peremptory writ of mandate and directing disclosure of records requested by Plaintiff via the California Public Records Act ("CPRA").

In their Return, ACLU fails to make a plain text reading of Penal Code § 832.7 to support their definition of GBI that would

expand disclosability of otherwise-exempt police investigatory records to effectively include uses of force causing *any* physical injury, including mere physical pain; and, while doing so ACLU cites to case law that does not support ACLU's method of interpretation. Notably, such case law instead favors an ordinary interpretation of GBI consistent with the police case law narrowly construing GBI to be a life-threatening or permanently disabling injury of the kind that could justify the use of deadly force, as detailed herein below. Additionally, ACLU continues to rely on a sentencing statute wholly unrelated to the CPRA so as to define GBI in the context of CPRA disclosures, rather than more appropriate statutes and case law that define GBI based specifically on the subject of the disclosures sought here: police uses of force. Moreover, even if GBI is defined pursuant to Penal Code § 12022.7, other Courts have properly determined that – in the context of police use of force, a "substantial or serious injury" does not include mere physical pain or damages, such as abrasions, lacerations, punctures, and/or bruising from non-deadly uses of force like TASERs and (thus) K-9s.

Further, contrary to the ACLU's statements, the Superior Court *did* determine that the at-issue records were subject to the investigatory records *exemption*: which is why the Superior Court proceeded to address the issue of whether the Penal Code § 832.7 *exception* to that exemption applied.

Accordingly, the City properly redacted and withheld canine use of force and bite reports pursuant to the proper

definitions of GBI because no exception to the applicable investigatory records exemption of the CPRA applied.

LEGAL ARGUMENT

I. Like the Superior Court, ACLU Fails to Conduct a Plain Text Reading of Penal Code § 832.7.

While claiming to do the opposite, ACLU's Return[1] utterly ignores that, in a plain text reading (wherein courts look to the statute itself), if the statutory language is clear and unambiguous, there is no need for judicial construction. [*See* Pet. Writ of Mandate at p. 31 (citing *Environmental Health Advocates, Inc. v. Sream, Inc.* (2022) 83 Cal.App.5th 721, 729).] Instead, while claiming to embrace a plain text reading, ACLU then invites judicial construction and invites courts to conclude that the governing standard in Penal Code § 832.7 for "great bodily injury" can be found in the case law and legislative history to support ACLU's improper definition of the same, rather than giving the term its *ordinary* meaning (as a plain text analysis requires). ACLU engages in this argumentative goalpost-shifting because the ordinary, plain text definition of GBI is undisputedly a physical injury that causes a substantial risk of death, extended loss or impairment of a body part or function, or permanent disfigurement. [*Id.* at p. 33 (quoting Merriam-Webster Legal Dict. Online, "great bodily injury"

[1] Of note, the majority of the arguments in ACLU's Return are verbatim arguments from ACLU's Informal Response, which were already addressed in the City's Reply. For the Court's ease, the City addresses these repeated arguments again in full.

<http://www.merriam-webster.com/legal/great%20bodily%20injury> [as of June 5, 2025]).] Thus, if as ACLU claims, they were conducting a plain text reading, they would be embracing this *narrower* scope of GBI thereunder, and this is where the inquiry should and does stop. [*Id.* at p. 33 (discussing the steps of a proper plain text reading).]

In fact, in its attempt to accomplish by litigation what ACLU was unable to achieve by legislation, by looking improperly to case law and legislative history – where GBI already has an unambiguous, ordinary meaning under a plain text reading – ACLU ties itself in knots: creating a contradictory argument about their very own proffered definition of GBI.

Specifically, ACLU first suggests that "[b]y adopting the GBI standard, the Legislature struck a deliberate balance—mandating disclosure of records concerning force that caused significant or substantial injury, while excluding incidents involving minor or trivial harm"; however, it then also states that "GBIs include lacerations, bruises, abrasions, deep punctures, muscle and bone damage, disfigurement, and nerve damage." [Return at pp. 19-20, 23; Informal Response at pp. 5-6 (stating same, but referring to "*permanent* nerve damage") (emphasis added).]

ACLU tries to assert that their definition does *not* include physical pain in an attempt to make their improper definition more "narrow," but the record demonstrates that courts *have* considered that physical pain was sufficient to constitute GBI

under the sentencing enhancement case law interpreting Penal Code § 12022.7(f)'s definition of GBI – which ACLU proposes should govern police use of force. (*People v. Quinonez* (2020) 46 Cal.App.5th 457, 464 ("Some physical pain *or* damage, such as abrasions, lacerations, and bruising can constitute great bodily injury.") (emphasis added) (cleaned up) (quoting *People v. Jung* (1999) 71 Cal.App.4th 1036, 1042; *People v. Washington* (2012) 210 Cal.App.4th 1042, 1047-1048); *see also* 6 App., Exh. 18, p. 1620 ("California courts have held that some physical pain *or* damages, such as lacerations, bruises, or abrasions constitutes GBI") (emphasis added).

Thus, ACLU's proffered definition does not strike a "deliberate" balance because it elevates bruises, scrapes, and pain into the kind of significant or substantial injury that contradicts GBI's plain and ordinary meaning under both a plain text reading, and (as explained below) as the term is construed in the context of police use of force case law.

A. ACLU's Own Case Law Supports the Narrow Definition of GBI Based on its Ordinary Meaning & Because GBI Is A Higher Level Of Injury Than SBI.

ACLU correctly points out that, where a term is clear and unambiguous, there is "no need to resort to legislative analysis: GBI means GBI." (Return at p. 18; Informal Response at p. 6.) However, ACLU then erroneously defines GBI outside of its plain and ordinary meaning. To support this erroneous definition, ACLU relies on *In re Cabrera* (2023) 14 Cal.5th 476 ("*Cabrera*"),

to distinguish "serious bodily injury" from "great bodily injury"; however, that case *also* supports the City's narrow definition of GBI based on its ordinary and unambiguous meaning.

In *Cabrera*, the California Supreme Court addressed a scenario where a "jury returned a guilty verdict on the count of battery with serious bodily injury [as defined by Penal Code § 243(f)(4)], but it struggled to decide whether Cabrera had inflicted great bodily injury [as defined by Penal Code § 12022.7]." (*Cabrera*, 14 Cal.5th at p. 480.) The Attorney General argued that the "jury's finding of serious bodily injury necessarily establishes great bodily injury," asserting "that the two require the same severity of injury, with great bodily injury covering a wider range of injury." (*Id.* at p. 483.)

In analyzing the relationship between "serious bodily injury" and "great bodily injury" to address the Attorney General's argument, the California Supreme Court stated:

> Great bodily injury and serious bodily injury are similar terms; we have more than once called them "essentially equivalent." But we have also acknowledged that there are some differences in the statutory definitions. Notwithstanding their substantial overlap, the terms in fact have separate and distinct statutory definitions. That much is apparent from the Penal Code's language: The statutory definition of great bodily injury does not include a list of qualifying injuries like the statutory definition of serious bodily injury does. For that reason, we have held that when great bodily injury is an element of an offense, a jury instruction that the crime requires serious bodily injury is erroneous.

(*Id.* at p. 484 [cleaned up].) The California Supreme Court further noted that it had "declined invitations to decide whether a particular type of injury amounts to great bodily injury as a matter of law" because "[w]hat meets the statutory standard is a factual question for the jury." (*Id.* [internal citations omitted].)

In looking at the history of the enactment of the great bodily injury definition in Penal Code § 12022.7(f), the California Supreme Court found that there was no support for the Attorney General's assertion that a finding of serious bodily injury necessarily establishes great bodily injury, because "a jury could reasonably apply the statutory definitions of great bodily injury and serious bodily injury and find that injury was serious but *not* great bodily injury." (*Id.* at pp. 486-487 (emphasis added).)

It thus logically follows that the definition of "serious bodily injury" must be *broader* than the definition of GBI, under *Cabrera*; *not* the other way around. (*See id.* at p. 489 [discussing that most juries may find most, but not all, serious bodily injuries to be great bodily injuries], p. 491 ["Our statement in [*People v. Sloan* (2007) 42 Cal.4th 110] rested on the assumption that all great bodily injuries are serious bodily injuries. Here we are considering the converse question of whether all serious bodily injuries are great bodily injuries. If anything, we would seem to cast doubt on our dicta in *Sloan* if we were to agree with the Attorney General that serious bodily injury necessarily establishes great bodily injury."].)

Thus, even assuming that ACLU and the Superior Court's definition of GBI based on Penal Code § 12022.7 is accurate (which it is not), and that such Penal Code definition should define GBI for CPRA purposes (which it should not), the Superior Court erred in finding that "[t]he substitution of the words 'great bodily injury' in place of 'serious bodily injury,' *with a specific reference to the code section defining that term*, can only be interpreted as an intent to expand the exemption and increase the public's right of access." [6 App., Exh. 18, pp. 1622-23.]

Rather, the opposite is true: under *Cabrera*, such substitution can only be interpreted as an intent to *narrow* the exemption, because all great bodily injuries are serious bodily injuries, but *not* all serious bodily injuries ("SBI") are great bodily injuries ("GBI").[2] In other words, if ACLU and the Superior Court were correct, because (under *Cabrera*) great bodily injuries are *greater* injuries than serious bodily injuries (requiring more proof), the Legislature's switch from permitting disclosure of police uses of force causing SBI to only permitting such

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[2] The Superior Court decisions that ACLU relies upon to support is overbroad GBI definition also run afoul of *Cabrera*. (*Richmond Police Officers' Assn. v. City of Richmond* (Super. Ct. Contra Costa County, 2020, No. MSN19-0169 at 25 [discussing that the Legislature consciously chose "great bodily injury" in lieu of "serious bodily injury" but improperly interpreting GBI to cover a significantly broader range of injuries than "serious bodily injury"]; *The Sacramento Bee v. Sacramento County Sheriff's Dept.* (Super. Ct. Sacramento County, 2019, No. 34-2019-80003062 at 7 [also assuming that GBI covers a significantly broader range of injuries than "serious bodily injury"].

disclosures where the force caused GBI can *only* be construed as reducing or narrowing the scope of disclosability; *not* broadening or expanding such scope. *See id*.

Significantly then, if *Cabrera* were to control the outcome here, as ACLU contends (it does not), GBI must be construed to *narrower* than serious bodily injury ("SBI"), which has a far more specific plain text definition under California statutory law. Namely, SBI is defined as "a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ." (*See* Gov. Code § 12525.2(d) (dictating when police uses of force shall be reported to the California Attorney General).) In other words, if *Cabrera* and Penal Code § 12022.7 control, then force-caused injuries like contusions (bruises), abrasions (scrapes), punctures (bites), lacerations, and mere physical pain – such as those typically associated with K-9 force – would *not* be CPRA-disclosable under such GBI definition because such force-caused injuries would fail to satisfy the lesser-included threshold of first constituting SBI.

As a result, even if ACLU's erroneous interpretation of GBI were adopted here, they would still remain *un*entitled to the police records disputed.

B. ACLU Relies on a *Sentencing* Enhancement Statute to Define GBI, Yet Erroneously Critiques City of Fresno For Applying Police Use of Force Law to CPRA Disclosure of Police Use of Force Reports.

There is cognitive dissonance between ACLU relying on a Penal Code § 12022.7 – a sentencing enhancement statute that has nothing to do with police use of force, or reporting thereof, or the CPRA – to define GBI under the CPRA, while ACLU also critiques the City for using Penal Code § 835a, a statute governing police officers' uses of force, to demonstrate how ACLU's erroneous/broad definition of GBI leads to absurd results in the realm of use of force where *both* Penal Code § 835a and Penal Code § 832.7 deal with police officers' uses of force – one regarding uses of force in the field and the other regarding disclosure of records relating to that use of force. [*See* Pet. Writ of Mandate at p. 34 (noting that Penal Code § 12022.7 has nothing to do with the CPRA or any disclosure of public records, so it was improper to use it to define GBI in the context of the CPRA statutory scheme).]

ACLU attempts to create a false equivalency by stating that, "[g]reat or serious bodily injuries are defined by injuries that *result* from use of force, while 'deadly force' is determined by the *amount* and *type* of force applied." [Return at p. 28; Informal Response at p. 7.] Yet, this is patently untrue under the law.

Deadly force is legally defined as force that "creates a substantial risk of causing death or serious bodily injury."

(*Thompson v. Cty. of Los Angeles* (2006) 142 Cal.App.4th 154, 165; *see* Cal. Penal Code § 835a.) Thus, just like GBI is defined by injuries that *result* from uses of force, "deadly force" is defined by the injuries that are *foreseeably likely to result* from such force – death or serious bodily injury. [*See* Pet. Writ of Mandate at p. 43.] As discussed at length in the City's Writ Petition, deadly force and GBI are equivalent issues whose definitions have bearing upon one another: which is why defining GBI broadly, as ACLU demands, and applying such erroneous GBI definition to police use of force and CPRA disclosure thereof, creates the absurd result that officers would be authorized to shoot/kill for nothing more than a reasonable belief that they were about to face a painful bruise. [Pet. Writ of Mandate at pp. 42-44.]

In sum, by trying to argue the issue both ways, ACLU underscores the illogical nature of their contentions here and the unreasonableness of their position.

C. Even If GBI Was Defined By the Penal Code, CPRA Police Record Cases Have Applied A Higher Threshold For What Constitutes "Significant or Substantial Injury" In The Police Use of Force Context.

Even for courts that have embraced and/or considered that GBI as used in Penal Code § 832.7 means "a significant or substantial physical injury" as defined in Penal Code § 12022.7, such court have nonetheless declined to hold that GBI in the CPRA police record disclosure context includes mere physical

pain or the contusions, abrasions, or punctures associated with TASERs and/or K-9 bites.

As discussed in the City's petition, the *Howey* court determined that, no matter which GBI definition the court embraced, "The world is not so upside down a non-lethal device used to prevent injury to a suspect actively resisting detention would now be identified as a weapon which causes great bodily injury," and require the disclose of documents related to such incident under the CPRA. (*Howey v. City of Fresno, et al.* (Nov. 1, 2023) Case No. 23 CECG01468, Decision Denying Petitioner's Request for Writ of Mandate at p. 7.)

Similarly, in *American Civil Liberties Union of Southern California v. Chula Vista Police Department*, notwithstanding the fact that the Superior Court also found that GBI as used in Penal Code § 832.7 was defined by Penal Code § 12202.7 to mean "a significant or substantial physical injury," the *Chula Vista P.D.* Court still found that the injuries "consist[ing] of five taser dart punctures on his chest, abdomen and thigh, multiple contusions on his abdomen and hands[,] and abrasions on his wrists," did not rise to the level of a significant or substantial physical injury. (*American Civil Liberties Union of Southern California v. Chula Vista Police Department* (Nov. 21, 2025) Case No. 37-2024-00020320-CU-WM-CTL at p. 9.)

In other words, even those trial courts who have embraced ACLU's erroneous interpretation of CPRA's GBI, and even where such courts have found the case law to construe such GBI all the

way down to mere physical pain, by denying use of force record disclosures where the only resulting injuries were abrasions, contusions, punctures, lacerations, or mere physical pain, such courts have effectively concluded that even if GBI means the *statutory* Penal Code § 12202.7 definition of "a significant or substantial physical injury," in the context of CPRA disclosure of police use of force, the *case law* Penal Code § 12202.7 definition of GBI is inapplicable.

Accordingly, in the context of police use of force, even when using the improper definition of GBI, courts have properly found that mere lacerations, bruises, punctures, and abrasions – such as those that are often the result of K-9 uses of force – are *not* GBI. [*See* Petition at pp. 39, 45-46 (discussing cases determining that K-9 bites caused lacerations and punctures and were not deadly force).] As a result, even if ACLU's GBI statutory approach were embraced, under the trial court precedent (if adopted here), the disputed police records would remain *exempt* from disclosure.

D. The Narrower Construction of GBI Is Consistent with the Legislative History.

Additionally, as explained at length in the City's petition and related briefing, this construction of GBI away from the Penal Code § 12202.7 case law – which includes some physical pain or damages, such as lacerations, bruises, or abrasions – is more consistent with the legislative history here because the revision from SBI to GBI still followed the narrowing of the scope

of disclosable records by removing reference to specific uses of force like TASERs and impact weapons. (*See* Pen. Code § 832.7; *accord* AB 748 [amended on August 17, 2018 to include incidents involving TASERs and impact weapons, but final language of Gov. Code § 6354(f) (2019) removed such language].)

Also, as detailed in such prior briefing, such narrow GBI definition is also more consistent with the canons of statutory construction: which would tend to render absurd results under ACLU's construction – such that the definition of the injury resulting in disclosure of records of police uses of force should be found in a sentencing enhancement statute unrelated to CPRA or police use of force/police records, rather than in the broad body of case law and statutory law defining specific levels of injury (including reportable uses of force based on statutorily specified injuries) in the police use of force context. [Pet. Writ of Mandate at pp. 41-48.]

II. The Superior Court Determined ACLU's Requested Records Were Subject to the Investigatory Record Exemption.

ACLU erroneously states that "the Superior Court did not reach the issue of whether the records were investigatory or whether Fresno had conducted an appropriately individualized review." (Return at p. 14; Informal Response at p. 3, fn.7.) This ignores what ACLU admits is true: (1) "The court identified the central dispute as 'parties' disagreement[] on whether the requested records are investigatory reports exempt from disclosure under Government Code section 7923.600' and, if so,

whether they 'are nevertheless required to be produced pursuant to Penal Code Section 832.7, subdivision (b)'", (Informal Response at p. 3 (quoting 6 App., Exh. 18, p. 1618), and (2) "[t]he Superior Court's statement of decision focused entirely on whether Fresno could replace the clearly-defined and understood term GBI in section 832.7 with its preferred alternative and concluded that it could not." (Return at p. 14 (quoting 6 App., Exh. 18 at pp. 1631, 1636-37).)

If, as ACLU claims, the requested records were *not* subject to the police investigatory records exemption under Government Code § 7923.600, then there was no reason for the Superior Court to proceed to evaluate the Penal Code § 832.7 exception to that exemption: because the records would have been disclosable from the outset without any applicable exemption. In fact, the Superior Court's Order specified that the City was directed to provide records "in incidents where great bodily injury was inflicted, redacted only to protected personal identifying information of any victim or officer involved": and such thus demonstrates that the requested records were *only* disclosable if they were about incidents where GBI inflicted and were otherwise subject to an exception to the otherwise-applicable investigatory records exemption. [6 App., Exh. 18, p. 1624; *see id.* (citing Pen. Code § 832.7(b)(1)(A)(iii) as the basis for the ordered disclosure).]

A. ACLU's Contentions About Lack Of Specific Records Review For Determination of Applicable Exemptions Are Baseless.

The Superior Court's Order also further supports that the City's review of potentially responsive records to ACLU's CPRA Request was appropriately individualized. This is true because the Court recognized that the City did not turn over certain records based on their asserted definition of GBI, not based on a uniform decision that *all* K-9 deployment records were not subject to the Penal Code § 832.7 exception to the investigatory records exemption: because, if it was true that the City's withholding was based on the records' membership in a broad class, rather than specific records' membership in that protected class, then the City would not have turned over *any records – where, here, it did disclose some records*. [*See id.* at pp. 1622 (recognizing "FRESNO concedes that it relies on that [narrow] interpretation [of GBI] in its limited response to ACLU's CPRA Request.").]

Thus, contrary to ACLU's statements, the Superior Court *did* reach these issues; and it rendered its Order based on such determination that (1) the requested records were subject to the police investigatory records exemption; and (2) the City conducted an individualized review in determining which records were subject to the Penal Code § 832.7 exception to such exemption.

Moreover, even if the Superior Court did not reach the issue of whether ACLU's requested records were subject to the investigatory record exemption or not (though it did), it is undisputed in the record in this matter that such requested records *were* investigatory. Contrary to ACLU's assertions, the disputed records were about police uses of force in the context of police investigations: they were thus clearly police investigatory records. (5 App., Exh. 11, pp. 1282-1286; *id.*, Exh. 13, pp. 1386-87.) Thus, it was only proper for the Superior Court to proceed to the question at-issue here: did the Penal Code § 832.7 exception regarding incidents involving GBI apply to the exempted police investigatory records sought by the ACLU?

III. City of Fresno Properly Redacted/Withheld its Canine Use of Force and Bite Reports Pursuant to the Proper Definition of GBI.

ACLU erroneously states that the City "categorically redacted all canine use of force and accidental bite reports, claiming that police canines are incapable of causing GBI under its improperly narrowed definition. That position fails because GBI means exactly what the statute says—not 'seriously bodily injury'—and police canines can, and often do, cause GBI." (Return at p. 26; Informal Response at p. 5.) That claim is also contrary to the unrefuted evidence in this case.

Rather, in determining that all responsive records to the categories in ACLU's CPRA request regarding K-9 Use of Force Reports and Accidental Bite Reports were exempt from disclosure, the City evaluated such records on a case-by-case,

particularized basis. [5 App., Exh. 11, at p. 1297.] Specifically, each responsive incident was analyzed to determine if the K-9 use of force or accidental bite resulted in GBI (per its proper, ordinary, narrow meaning) or death. [*Id.*] During this *individualized* analysis, the City determined that no responsive records dealt with an incident where police force caused GBI or death; and, thus, the City specifically confirmed that all such potentially responsive records were exempt from disclosure – because the ACLU-claimed exception to the exemption did *not* apply. [*Id.*]

The City never claimed that K-9s cannot ever cause GBI: only that the kinds of punctures, lacerations, abrasions, and bruises *typically* associated with K-9 uses of force were *not* GBI, as properly defined. [*See id.* at p. 1290.] If the City had found a report relating to a K-9 use of force or accidental bite that resulted in narrowly-defined GBI or death, it would have been properly produced/disclosed under Penal Code § 832.7. However, such was not the case here: so the City properly withheld such records because no exception to the applicable investigatory records exemption applied for the ACLU-requested records.

IV. Even If Analysis Other Than Plain Text Was Applied, The Legislative History Still Supports The City's Narrower Construction of GBI for CPRA Purposes.

As detailed more extensively in the City's Writ Petition [Pet. Writ of Mandate at pp. 41-56], *if* one were to determine that GBI under the CPRA *cannot* be defined using a plain text reading of a sentencing enhancement statute, ACLU's broad definition

would still fail to conform to controlling law because such would thus trigger canons of statutory construction that support the City's narrow construction of GBI as the correct legal interpretation regarding records of police use of force. [*Id.* at p. 41 (citing *People v. O'Bannon* (2024) 105 Cal.App.5th 974, 980; *In re Williamson* (1954) 43 Cal.2d 651, 654.)]

As explained more fully in the City's Writ Petition, the legislative history of the exception that the Penal Code § 832.7 carves into the exemptions of the Government Code's CPRA [Gov. Code § 7920.000, et seq.] shows that, through amendments to S.B. 1421, the Legislature intended to *narrow*, not broaden, the scope of disclosable police use of force investigative records from prior versions of the bill: so as to limit the disclosable police investigatory records to only the most "serious" police uses of force. [1 App., Exh. 7, p. 247.] Indeed, broader bill versions that would have made TASER deployments (which typically cause puncture, abrasions, some contusions, and pain) and baton-type strikes (which typically cause contusions, fractures, and pain) were revised down to only force that caused death or "GBI": with the goal of narrowing the scope of disclosures. [1 App., Exh. 7, pp. 255, 263.]

While ACLU points to a change of the disclosure scope of SBI to GBI, ACLU ignores the case law that: (a) SBI was broader (more significant/higher) than GBI; (b) for police uses of force, SBI and GBI are interchangeable and fungible; and (c) SBI does not include the kind of injuries that ACLU now claims would be

disclosable if caused by police force. [*See* Pet. Writ of Mandate at pp. 41-56 (GBI/SBI in the CPRA context regarding records of police use of force limit disclosures only to records of police force causing death or causing life-threatening or permanently disabling injury).]

Along related lines, given the case law that holds that SBI and GBI mean the same thing in the police use of force context, the doctrine of statutory construction – that mandates that interpretations leading to absurd results must be rejected – also prevents adoption of ACLU's broad construction of GBI. [*O'Bannon*, *supra*, 105 Cal.App.5th at p. 980; *People v. Arnett* (2006) 129 Cal.App.4th 1609, 1613; *People v. Knoller* (2007) 41 Cal.4th 139, 143 n. 2.)] This is because, if SBI essentially equals GBI relative to police uses of force, and GBI/SBI now stretches out to the ACLU definition of pain and bruises, since officers in California may lawfully use deadly force when confronted with the immediate threat of death or SBI, ACLU's broad definition would lead to the absurd result that officers could kill when confronted with nothing more than an immediately deadly threat of a painful bruise. [Pet. Writ of Mandate at p. 44 (citing *People v. Washington* (2012) 210 Cal.App.4th 1042, 1047-48; *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1105-06).]

Also, as noted above, another absurd result would be to construe a sentencing enhancement statute as controlling the disclosure of records of police use of force based on a specific type of resulting injury, rather than statutes and case law controlling

the use of police force, or the reporting thereof, based on specified types of resulting injury.

Additionally, as noted in the City's Writ Petition, the law that governs *reporting* for *police uses of force* (not unrelated sentencing enhancements) defines SBI in a manner more consistently with what the Penal Code exception to CPRA's police investigation records exemption must have meant GBI to mean. (*See* Gov. Code § 12525.2(d).)

In sum, even if ACLU were correct that a plain text reading should be discarded, the alternative legal analysis then required – following the canons of statutory construction and evaluation of the legislative history – would defeat ACLU's position and leave the City-embraced narrow GBI construction as controlling law here; as should be the case. Thus, even if the Court abandons a plain text reading here, the disputed police records remain exempt from CPRA disclosure.

V. ACLU's Broad Construction Ignores The Crushing Policy Implications.

It is common knowledge that, since S.B. 1421 and A.B. 732 were enacted in 2019, municipalities throughout California have been flooded with CPRA requests seeking voluminous records. (Industry Insider, "Counties Push for Public Records Act Reforms Amid Mounting Workloads," Aug. 19, 2025 <https://insider.govtech.com/california/news/counties-push-for-public-records-act-reforms-amid-mounting-workloads> [as of Dec. 3, 2025].) Like courts and state governments, municipal

governments have only so many resources available to fulfill their duties. The more records that become disclosable under the CPRA, the more resources that law enforcement agencies must necessarily devote to the processing and document-production in response to CPRA requests. Inevitably, in the zero-sum world that is government service, this necessarily forces law enforcement agencies to divert resources away from core functions – like protecting the public and policing crime – to examining CPRA requests, and delving through even more records to determine what is responsive and what is disclosable, and then producing/disclosing such to the requester.

It is already a burdensome process that drains police resources from law enforcement. ACLU's broad definition would just make that problem logarithmically worse: and without the benefit of any specific mandate by the California Legislature. By allowing ACLU to succeed in their end-run here, to achieve by litigation what ACLU could not achieve by legislation, courts would necessarily further burden municipalities in ways that would only further erode their ability to provide services to those most in need within their communities. Such a result and construction should thus be avoided.

CONCLUSION

For all of the above reasons and those stated in the City's Writ Petition, all roads lead to the proper narrow definition of GBI based on its ordinary meaning and this Court should issue a writ directing Respondent Court to vacate its judgment granting

peremptory writ of mandate and to enter a new order denying such peremptory writ and ACLU's request for attorney fees and costs.

Respectfully Submitted,

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Attorneys for Defendant and Petitioner
CITY OF FRESNO

CERTIFICATE OF COMPLIANCE WITH RULE 8.204

I, the undersigned, Abigail J.R. McLaughlin, declare that:

1. I am a partner of the firm of Lewis, Brisbois, Bisgaard & Smith LLP, counsel of record for defendant and petitioner City of Fresno.

2. This certificate of compliance is submitted in accordance with rule 8.204 of the California Rules of Court.

3. This informal reply to the informal response to the petition for writ of mandate was produced with a computer. It is proportionately spaced in 13-point Century Schoolbook typeface. The petition contains 5,191 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 Los Angeles, California, on December 5, 2025.

/s/ Abigail J.R. McLaughlin
Abigail J.R. McLaughlin

PROOF OF SERVICE

City of Fresno v. Superior Court of the State of California, County of Fresno
Fifth Civil Number F089987
Superior Court Number: 24CECG01635

I, Corinne Taylor, state:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, California 90071.

On December 5, 2025, I served the following document described as **REPLY TO RETURN TO PETITION FOR WRIT OF MANDATE OR OTHER APPROPRIATE RELIEF** on all interested parties in this action through TrueFiling, addressed to all parties appearing on the electronic service list for the above-titled case. The service transmission was reported as complete and a copy of the TrueFiling Receipt/Confirmation will be filed, deposited or maintained with the original document in this office.

On December 5, 2025, I served the following document described as **REPLY TO RETURN TO PETITION FOR WRIT OF MANDATE OR OTHER APPROPRIATE RELIEF** by placing a true copy enclosed in a sealed envelope addressed as stated on the attached service list. I am readily familiar with the firm's practice for collection and processing correspondence for regular and overnight mailing. Under that practice, this document will be deposited with the Overnight Mail provider and/or U.S. Postal Service on this date with postage thereon fully

prepaid at Los Angeles, California to addresses listed below in the ordinary course of business.

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

Executed on December 5, 2025, at Los Angeles, California.

/s/ Corinne Taylor
Corinne Taylor

SERVICE LIST

City of Fresno v. Superior Court of the State of California, County of Fresno.
Fifth Civil Number F089987
Superior Court Number: 24CECG01635

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(*Via TrueFiling*)

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