

# The Ultimate Backup

A Client News Bulletin

RAINS, LUCIA & WILKINSON LLP

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## CALIFORNIA SUPREME COURT OVERRULED

### The Ninth Circuit Gives First Amendment Protection To False Accusations Made Against the Police

*By: Alison Berry Wilkinson*

Nearly three years ago, this office helped persuade the California Supreme Court to uphold the constitutionality of Penal Code section 148.6, which makes it a misdemeanor to file a knowingly false complaint against a peace officer. See *People v. Stanistreet* (2002) 29 Cal. 4<sup>th</sup> 497. But despite the continued intensive efforts by this office on behalf of the PORAC Legal Defense Fund, and the additional support of the various Associations representing police chiefs, sheriffs and district attorneys, the Ninth Circuit nonetheless overruled the California Supreme Court in *Chaker v. Crogan* (Filed: November 3, 2005).

Darren Chaker was convicted in 1999 of making a false complaint against an El Cajon police officer. After having his appeals rejected by California's courts and the federal district court, he took the issue to the Ninth Circuit, where he finally found a friendly forum for his argument that the statute impermissibly singled out speech critical of peace officers for criminal sanction.

The Ninth Circuit acknowledged that California has a legitimate interest in prohibiting knowingly false complaints against peace officers, because such speech causes valuable state resources to be expended investigating false claims instead of valid claims. The court also acknowledged that such false complaints "may lead to unwarranted sanctions against the officer"

and that the state has an interest "in preventing potential discipline against innocent peace officers." Despite these acknowledgements, the Ninth Circuit nonetheless struck down Penal Code section 148.6 as unconstitutional, finding that it was not "viewpoint neutral" since it criminalized only false statements made by the complainant, but not false statements made by other individuals during the investigation process, such as the subject officer or witnesses. The court concluded: "The imbalance generated by section 148.6 – i.e., only individuals *critical* of peace officers are subject to liability and not those who are supportive – therefore turns the First Amendment on its head."

The Ninth Circuit suggested that the California Legislature could easily cure the constitutional deficiencies of section 148.6 by making all parties to an investigation of peace officer misconduct subject to sanction for knowingly making false statements.

*Alison Berry Wilkinson, the managing partner at Rains, Lucia & Wilkinson LLP, wrote the amicus briefs in support of Penal Code section 148.6's constitutionality in both People v. Stanistreet and Chaker v. Crogan. Alison routinely uses her extensive trial court and appellate experience to help secure and maintain many of the important rights given to peace officers by the California Legislature. This issue of the Ultimate Backup Newsletter, along with past issues and other important information, can be found on our website at [www.RLWlaw.com](http://www.RLWlaw.com).*

1

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