

No. B322230

COURT OF APPEAL, STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

ARIK HOUSLEY, et al.,
Appellants,

v.

VENTURA COUNTY DEPUTY SHERIFFS ASSOCIATION, et al.,
Respondents,

COUNTY OF VENTURA,
Real Party in Interest.

APPEAL FROM A PRELIMINARY INJUNCTION ORDER
SUPERIOR COURT FOR
THE COUNTY OF VENTURA
Hon. Mark Borrell
Superior Court No. 56-2019-00523492-CU-WM-VTA

**AMICI CURIAE BRIEF OF THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS AND 22 MEDIA ORGANIZATIONS IN
SUPPORT OF RESPONDENTS LOS ANGELES TIMES
COMMUNICATIONS LLC, THE ASSOCIATED PRESS, AND
SCRIPPS NP OPERATING, LLC**

*Katie Townsend (SBN 254321)

**Counsel of Record*

Bruce D. Brown**

Tyler Takemoto**

Reporters Committee for

Freedom of the Press

1156 15th Street NW, Suite 1020

Washington, D.C. 20005

Telephone: (202) 795-9300

Facsimile: (202) 795-9310

ktownsend@rcfp.org

** *Of counsel*

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rule of Court 8.208(e)(1) and (2), amici the Reporters Committee for Freedom of the Press, California News Publishers Association, CalMatters, Embarcadero Media, First Amendment Coalition, International Documentary Association, Investigative Reporting Workshop at American University, Los Angeles Press Club, The Media Institute, Mother Jones, National Freedom of Information Coalition, The National Press Club, National Press Club Journalism Institute, National Press Photographers Association, The News Leaders Association, Online News Association, Open Vallejo, Pro Publica, Inc., Society of Environmental Journalists, Society of Professional Journalists, Southern California Public Radio dba LAist, TEGNA Inc. (including KXTV/Sacramento and KFMB/San Diego), and Tully Center for Free Speech, by and through their undersigned counsel, certify that the following entities or persons have either (1) an ownership interest of 10 percent or more in the party or parties filing this certificate or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves:

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation or stock.

California News Publishers Association (“CNPA”) is a mutual benefit corporation organized under state law for the purpose of promoting and preserving the newspaper industry in California. No entity or person has an ownership interest of ten percent or more in CNPA.

CalMatters is a nonprofit California public benefit corporation recognized under Section 501(c)(3) of the Internal Revenue Code. No entity or person has an ownership interest of 10 percent or more of CalMatters.

Embarcadero Media is an independent and locally-owned media company. No entity or person has an ownership interest of 10 percent or more of Embarcadero Media other than founder William Johnson.

First Amendment Coalition is a nonprofit organization with no parent company. It issues no stock and does not own any of the parties’ or amici’s stock.

The International Documentary Association is a not-for-profit organization with no parent corporation and no stock.

The Investigative Reporting Workshop is a privately funded, nonprofit news organization based at the American University School of Communication in Washington. It issues no stock.

The Los Angeles Press Club is a 1,000 member strong 501c3 nonprofit organization with no parent corporation and no stock.

The Media Institute is a 501(c)(3) non-stock corporation with no parent corporation.

The Foundation for National Progress, d/b/a Mother Jones, is a nonprofit, public benefit corporation. It has no publicly-held shares.

The National Freedom of Information Coalition is a nonprofit organization that has not issued any shares or debt securities to the public, and has no parent companies, subsidiaries, or affiliates that have issued any shares or debt securities to the public.

The National Press Club is a not-for-profit corporation that has no parent company and issues no stock.

The National Press Club Journalism Institute is a not-for-profit corporation that has no parent company and issues no stock.

National Press Photographers Association is a 501(c)(6) nonprofit organization with no parent company. It issues no stock and does not own any of the parties' or amici's stock.

The News Leaders Association has no parent corporation and does not issue any stock.

Online News Association is a not-for-profit organization. It has no parent corporation, and no publicly traded corporation owns 10% or more of its stock.

Informed California Foundation, d/b/a Open Vallejo, is a California nonprofit corporation and an educational public charity organized pursuant

to section 501(c)(3) of the U.S. Code. It has no parent corporation and issues no stock.

Pro Publica, Inc. (“ProPublica”) is a Delaware nonprofit corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. It has no statutory members and no stock.

The Society of Environmental Journalists is a 501(c)(3) non-profit educational organization. It has no parent corporation and issues no stock.

Society of Professional Journalists is a non-stock corporation with no parent company.

Southern California Public Radio, a nonprofit organization, is wholly owned by its nonprofit parent support organization, American Public Media Group, the largest station-based public radio organization in the U.S.

TEGNA Inc. has no parent company, and no publicly-held company has a 10% or greater ownership interest in TEGNA, Inc.

The Tully Center for Free Speech is a subsidiary of Syracuse University.

Dated: April 17, 2023

/s/ Katie Townsend

*Katie Townsend

**Counsel for Amici Curiae*

TABLE OF CONTENTS

| | |
|---|----|
| CERTIFICATE OF INTERESTED ENTITIES OR PERSONS | 2 |
| TABLE OF AUTHORITIES | 7 |
| INTRODUCTION AND SUMMARY OF THE ARGUMENT..... | 12 |
| ARGUMENT | 14 |
| I. There is significant public interest in access to autopsy reports; adopting Appellants’ arguments would severely limit access to this important category of records. | 14 |
| A. Public access to autopsy records can help shed light on deaths that occur in law enforcement custody, contributing to important reforms..... | 15 |
| B. Access to autopsy records can reveal instances of government agency mismanagement..... | 19 |
| C. Access to autopsy records fosters occupational safety and public health. | 21 |
| II. Appellants’ arguments, if accepted, would place California among the least transparent jurisdictions for access to autopsy records. | 23 |
| CONCLUSION..... | 27 |
| CERTIFICATE OF WORD COUNT | 28 |
| APPENDIX A: DESCRIPTION OF AMICI CURIAE | 29 |
| PROOF OF SERVICE | 36 |

TABLE OF AUTHORITIES

Cases

| | |
|--|--------|
| <i>Burroughs v. Thomas</i> , 937 P.2d 12 (Kan. Ct. App. 1997) | 25 |
| <i>Clark Cnty. Off. of Coroner/Med. Exam’r v. Las Vegas Rev.-J.</i> , 458 P.3d 1048 (Nev. 2020) | 25 |
| <i>Denver Publ’g Co. v. Dreyfus</i> , 520 P.2d 104 (Colo. 1974) | 24 |
| <i>Dixon v. Superior Court</i> , 170 Cal. App. 4th 1271 (2009) | 15 |
| <i>Hearst Television, Inc. v. Norris</i> , 54 A.3d 23 (Pa. 2012) | 26 |
| <i>Int’l Fed’n of Pro. & Tech. Eng’rs, Loc. 21 v. Superior Court</i> , 42 Cal. 4th 319 (2007) | 14 |
| <i>Marken v. Santa Monica-Malibu Unified Sch. Dist.</i> , 202 Cal. App. 4th 1250 (2012) | 14 |
| <i>People v. Dungo</i> , 55 Cal. 4th 608 (2012) | 15, 18 |
| <i>Sander v. State Bar of Cal.</i> , 58 Cal. 4th 300 (2013) | 14 |
| <i>Say v. Lehigh Cnty.</i> , No. AP 2019-0123, 2019 WL 1619865 (Pa. Off. Open Recs. Apr. 10, 2019) | 26 |
| <i>Schoeneweis v. Hamner</i> , 221 P.3d 48 (Ariz. Ct. App. 2009) | 24 |
| <i>State ex rel. Cincinnati Enquirer v. Pike Cnty. Coroner’s Off.</i> , 101 N.E.3d 396 (Ohio 2017) | 25 |
| <i>Swickard v. Wayne Cnty. Med. Exam’r</i> , 475 N.W.2d. 304 (Mich. 1991) | 25 |

Statutes

| | |
|--|----|
| Ala. Code § 36-18-2..... | 24 |
| Ariz. Rev. Stat. Ann. § 23-1072..... | 24 |
| Ark. Code Ann. § 14-15-304 | 24 |
| Cal. Gov’t Code § 7921.505 | 14 |
| Cal. Gov’t Code § 7922.530 | 14 |
| California Public Records Act, Cal. Gov’t Code §§ 7920 <i>et seq.</i> | 12 |
| Colo. Rev. Stat. § 24-72-204..... | 24 |
| Ga. Code Ann. § 45-16-27 | 26 |
| Ind. Code § 36-2-14-18..... | 24 |
| La. Stat. Ann. § 44:19 | 25 |
| Md. Code Ann. Gen. Provis. § 4-329..... | 25 |
| N.C. Gen. Stat. § 130A-389 | 25 |
| Ohio Rev. Code Ann. § 313.10..... | 25 |
| Okla. Stat. tit. 63 § 945 | 26 |
| Tex. Code Crim. Proc. Ann. art. 49.25 § 11 | 26 |

Constitutional Provisions

| | |
|-------------------------------|----|
| Cal. Const. art. I, § 3 | 12 |
|-------------------------------|----|

Other Authorities

| | |
|---|----|
| 63 Op. Md. Att’y Gen. 659 (1978) | 25 |
| Allison Sherry, <i>Elijah McClain’s autopsy report changed to death by ketamine</i> , CPR News (Sept. 23, 2022), https://perma.cc/6J36-4PTB | 18 |

Anthony Maenza, *More details emerge in death of Hanover Foods worker who fell into bean hopper*, York Dispatch (Dec. 29, 2022), <https://perma.cc/3JJY-WCFZ> 22

Ark. Op. Att’y Gen. No. 2020-041 (Jan. 27, 2021) 24

Arvind K. Chaturvedi et al., Federal Aviation Administration, *A Fatality Caused by Hydrogen Sulfide Produced From an Accidental Transfer of Sodium Hydrogen Sulfide Into a Tank Containing Dilute Sulfuric Acid* (Nov. 2000), <https://perma.cc/XY53-2TWQ>..... 21

Autopsy Photos Are Often Used to Refute Official Conclusions, News Media & The Law, Spring 2001, <https://perma.cc/ZP99-LZXC> 15

Brandon Kyc, *Autopsy released for Wysox water plant death*, WETM (Sept. 15, 2022), <https://perma.cc/MKX4-U5CW>..... 22

Christopher N. Osher et al., *Colorado Announces Sweeping Reforms to Child Welfare System*, Denver Post (Feb. 6, 2013), <https://perma.cc/DN9F-SAGX>..... 20

Deanna Boyd, *Could the Death of One Abused Child Have Saved the Life of Another?*, Fort Worth Star-Telegram (May 31, 2017), <https://perma.cc/DZ5U-BV8R> 21

Fatal Accident Summaries, West Virginia Office of Miners’ Health Safety & Training (last accessed Mar. 7, 2023), <https://perma.cc/WXA7-V64U> 22

Frank Stoltze & Chris Keller, *2 years later, shooting of Ezell Ford still mired in controversy*, LAist (Aug. 4, 2016), <https://perma.cc/5VYF-7HFV>..... 16

Haw. Off. of Info. Pracs., Policy Op. Ltr. No. F15-01 (Sept. 15, 2014)..... 24

Henry Weinstein, *Families Keep Cornea Rights, Court Decides*, L.A. Times (Apr. 18, 2002), <https://perma.cc/DPQ4-7NZU> 19, 20

Ill. Att’y Gen. Public Access Op. No. 10-003, 2010 WL 4735542 (Oct. 22, 2010)..... 24

| | |
|--|----|
| Iowa Att’y Gen. Op. No. 72-10-13, 1972 WL 262460 (Oct. 20, 1972)..... | 25 |
| James Warren, <i>How the Media Blew Reporting the Chicago Cop’s Shooting of a Teen</i> , Poynter (Nov. 25, 2015), https://perma.cc/47VL-9P2A | 18 |
| Jamie Kalven, <i>Sixteen Shots: Chicago Police Have Told Their Version of How 17-year-old Black Teen Laquan McDonald Died. The Autopsy Tells a Different Story</i> , Slate (Feb. 10, 2015), https://perma.cc/Y5CA-388S | 17 |
| Jennifer Brown et al., <i>Failed to Death: Abused Children’s Cries for Help were Ignored</i> , Denver Post (Nov. 10, 2012), https://dpo.st/2LmoRhX | 20 |
| Jennifer Medina, <i>Los Angeles Police Officers Acted Improperly in Ezell Ford Shooting, Civilian Board Says</i> , N.Y. Times (June 9, 2015), https://perma.cc/4ZC6-PE33 | 17 |
| Kan. Att’y Gen. Op. No. 2002-55 (Dec. 17, 2002)..... | 25 |
| Kate Mather & David Zahniser, <i>L.A. City Council approves \$1.5- million settlement in police killing of Ezell Ford</i> , L.A. Times (Feb. 8, 2017), https://perma.cc/Y99D-3A74 | 17 |
| Kate Mather et al., <i>Ezell Ford autopsy prompts new protests, calls for caution</i> , L.A. Times (Dec. 29, 2014), https://perma.cc/WYL6-6FT5 | 17 |
| Kathryn McNutt, <i>Overdose deaths in Oklahoma up 22%</i> , The Journal Record (Mar. 6, 2023), https://perma.cc/JJ2H-5MTH | 22 |
| Kelly Davis, <i>Protest held after medical examiner rules death of man in jail a homicide</i> , San Diego Union-Trib. (Mar. 4, 2023), https://perma.cc/94JR-8EJM | 16 |
| Kitty Alvarado & Carlos Castillo, <i>Medical Examiner: Inmate who died in custody was a homicide victim</i> , KPBS (Mar. 2, 2023), https://perma.cc/W7U5-QU2T | 16 |

Ltr. from Assistant Attorney General Kathryn M. Rowe to Senator
Leo E. Green (May 30, 2003),
<https://perma.cc/R5YD-C33H>..... 25

Matt Hamilton et al., *Autopsies reveal first confirmed U.S.
coronavirus-related deaths occurred in California in February*,
L.A. Times (Apr. 21, 2020),
<https://perma.cc/XS3B-3HQQ> 23

Pennylynn Webb, *Autopsy ordered in Eagle Railcar industrial
accident*, Palestine Herald-Press (Dec. 13, 2021),
<https://perma.cc/RWV9-UQE6> 22

Ralph Frammolino, *Harvest of Corneas at Morgue Questioned*,
L.A. Times (Nov. 2, 1997),
<https://perma.cc/RWB7-KW4A>..... 19

Richard Winton et al., *Autopsy for LAPD officer rules training death
an accident; sources allege lax oversight*,
L.A. Times (July 27, 2022),
<https://perma.cc/2BTG-V9C2> 22

Stacy Shackelford et al., *Fatalities of the 2008 Los Angeles train
crash: autopsy findings*, Am. J. Disaster Med. (Mar. 2011),
<https://perma.cc/SM4R-GQX7> 22

Tex. Att’y Gen. Op. No. OR-7790 (Sept. 13, 2004),
<https://perma.cc/8NXB-MM46> 26

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Access to public records is essential in a democracy. It prevents the government from operating in secret and allows the public to monitor the actions of government agencies and officials. For this reason, the California Public Records Act, Cal. Gov't Code §§ 7920 *et seq.* (the “CPRA” or “Act”), and the California Constitution establish the public’s “right of access to information concerning the conduct of the people’s business.” Cal. Const. art. I, § 3(b)(1).

Here, Los Angeles Times Communications LLC, The Associated Press, and Scripps NP Operating, LLC (hereinafter the “Media Respondents”) submitted a request under the Act to Ventura County (the “County”) for the autopsy reports of people who died during the tragic 2018 mass shooting at the Borderline Bar and Grill in Thousand Oaks, California. Appellants—families of victims of the shooting—brought this reverse-CPRA action to enjoin disclosure of those records. The Superior Court determined that the autopsy reports are subject to disclosure under the Act and that Appellants are not entitled to a preliminary injunction to block their disclosure. The instant appeal followed.

The Superior Court correctly denied the preliminary injunction. While Appellants argue that their asserted privacy rights in the records may outweigh the mandate of disclosure under the CPRA, as the Superior Court

correctly held, and as Media Respondents correctly argue on appeal, there is no legal basis to enjoin disclosure of the autopsy reports.

This outcome is consistent with the significant public interest in favor of public access to this category of records. Autopsy reports are necessary to ensuring public oversight of government operations when the importance of such oversight is at its zenith: after members of the public have lost their lives. And though the underlying records sought by Media Respondents here concern an undeniably tragic event, access to autopsy records is particularly needed following tragic circumstances. To accept Appellants' argument would block this key mechanism for accountability.

Further, Appellants' argument, if accepted, would position California among the least transparent jurisdictions. Autopsy records are expressly made public in at least 18 jurisdictions, and are impliedly public in numerous more. And in those jurisdictions where a third party's asserted privacy right can bar disclosure of an autopsy record, the legislature has expressly provided for that outcome by statute. Reading a privacy right into the CPRA that could operate to bar disclosure is an exceptional step that would make California an outlier and subvert the Legislature's intent that the Act provide for broad disclosure and transparency.

For these reasons and the arguments advanced in Media Respondents' brief, amici urge the Court to affirm the Superior Court's decision.

ARGUMENT

I. There is significant public interest in access to autopsy reports; adopting Appellants' arguments would severely limit access to this important category of records.

California courts have long recognized that “[o]penness in government is essential to the functioning of a democracy,” and that public “access permits checks against the arbitrary exercise of official power and secrecy in the political process.” *Int’l Fed’n of Pro. & Tech. Eng’rs, Loc. 21 v. Superior Court*, 42 Cal. 4th 319, 328–29 (2007) (citation omitted).

In accordance with these principles, the CPRA imposes a general requirement on state and local agencies to disclose public records upon request. *See* Cal. Gov’t Code § 7922.530. In general, the Act creates “a presumptive right of access to any record created or maintained by a public agency that relates in any way to the business of the public agency.” *Sander v. State Bar of Cal.*, 58 Cal. 4th 300, 323 (2013). Every such record “must be disclosed unless a statutory exception is shown.” *Id.* Thus, the CPRA *mandates* disclosure of public records by a public agency, with a few limited, enumerated exceptions. And, while the CPRA exempts certain records from disclosure, most of its exemptions are permissive, not mandatory. *See Marken v. Santa Monica-Malibu Unified Sch. Dist.*, 202 Cal. App. 4th 1250, 1262 (2012). Indeed, the CPRA expressly contemplates that public agencies may choose to disclose records they are not required to disclose under the Act. *See* Cal. Gov’t Code § 7921.505.

The Act’s broad mandate of disclosure extends to autopsy records. *Dixon v. Superior Court*, 170 Cal. App. 4th 1271, 1278 (2009). While amici recognize the tragedy underlying the autopsy records at issue here, and the anguish that Appellants have expressed over the deaths of their loved ones, access to autopsy records is necessary to informing the public and ensuring accountability about matters of vital public concern, even—indeed, especially—when the records concern tragic events. *See People v. Dungo*, 55 Cal. 4th 608, 621 (2012) (noting that “an autopsy report may satisfy the public’s interest in knowing the cause of death, particularly when . . . the death was reported in the local media”); *see also Autopsy Photos Are Often Used to Refute Official Conclusions*, News Media & The Law, Spring 2001, <https://perma.cc/ZP99-LZXC>. Indeed, numerous examples from California and around the country demonstrate that if this Court adopts Appellants’ interpretation of the CPRA, the ability of the news media to gather and report information of public concern will be impaired, thereby depriving Californians of essential, potentially life-saving information about the functioning of government.

A. Public access to autopsy records can help shed light on deaths that occur in law enforcement custody, contributing to important reforms.

When individuals are killed by law enforcement or otherwise die in carceral settings, autopsy reports aid the public in learning about the circumstances of their deaths and can help spur meaningful reforms. For

example, information released in an autopsy report helped shed light on the recent death of Lonnie Rupard, an inmate at San Diego Central Jail. Kelly Davis, *Protest held after medical examiner rules death of man in jail a homicide*, San Diego Union-Trib. (Mar. 4, 2023), <https://perma.cc/94JR-8EJM>. The report revealed that Rupard’s death was a preventable homicide caused by a lack of care rendered by the jail. Rupard’s death is currently under investigation by the San Diego County Sheriff’s Homicide Unit and will be subject to review by the Civil Rights Unit of the U.S. Attorney’s Office. Kitty Alvarado & Carlos Castillo, *Medical Examiner: Inmate who died in custody was a homicide victim*, KPBS (Mar. 2, 2023), <https://perma.cc/W7U5-QU2T>. And, in response to his death, the executive officer of the county’s Citizens’ Law Enforcement Review Board is seeking access to autopsy records of “nearly two dozen” people who have died in the custody of the San Diego Sheriff’s Department over the past year. *Id.*

In 2014, an autopsy report revealed critical details about the killing of Ezell Ford, an unarmed Black man, by two Los Angeles Police Department (“LAPD”) officers. The LAPD released a statement that the officers shot Ford after he grabbed one of their guns. Frank Stoltze & Chris Keller, *2 years later, shooting of Ezell Ford still mired in controversy*, LAist (Aug. 4, 2016), <https://perma.cc/5VYF-7HFV>. But Ford’s autopsy record revealed that he had suffered several abrasions and had been shot once in the back at close range, prompting public outcry. Kate Mather et

al., *Ezell Ford autopsy prompts new protests, calls for caution*, L.A. Times (Dec. 29, 2014), <https://perma.cc/WYL6-6FT5>. After the report's release, a civilian oversight committee for the LAPD determined that the two officers who killed Ford had violated departmental policy. Jennifer Medina, *Los Angeles Police Officers Acted Improperly in Ezell Ford Shooting, Civilian Board Says*, N.Y. Times (June 9, 2015), <https://perma.cc/4ZC6-PE33>. The L.A. City Council ultimately approved a \$1.5 million settlement in a lawsuit brought against the LAPD by Ford's family. Kate Mather & David Zahniser, *L.A. City Council approves \$1.5-million settlement in police killing of Ezell Ford*, L.A. Times (Feb. 8, 2017), <https://perma.cc/Y99D-3A74>.

News reporting based on autopsy reports in other states has similarly spurred reform efforts. For example, when a Chicago police officer shot and killed 17-year-old Laquan McDonald in 2014, police told the public that McDonald was shot in the chest after he lunged at the officer with a knife. Jamie Kalven, *Sixteen Shots: Chicago Police Have Told Their Version of How 17-year-old Black Teen Laquan McDonald Died. The Autopsy Tells a Different Story*, Slate (Feb. 10, 2015), <https://perma.cc/Y5CA-388S>. However, the autopsy report, obtained by a journalist through a public records request, showed that McDonald was shot by police 16 times, in different areas of the body and from different angles. *Id.* This information not only spurred public concern and debate,

but also was partly responsible for prompting a federal investigation of the Chicago police department. James Warren, *How the Media Blew Reporting the Chicago Cop's Shooting of a Teen*, Poynter (Nov. 25, 2015), <https://perma.cc/47VL-9P2A>.

In Aurora, Colorado, when 23-year-old Elijah McClain died following his forceful detention at the hands of police officers, the initial medical examination was inconclusive as to the cause of his death, complicating calls for accountability and criminal charges against the officers who arrested him. Allison Sherry, *Elijah McClain's autopsy report changed to death by ketamine*, CPR News (Sept. 23, 2022), <https://perma.cc/6J36-4PTB>. The release of an amended autopsy report in 2022 revealed that first responders had administered an improperly large dose of ketamine to McClain during his arrest. *Id.* These findings helped bring clarity to what caused McClain's tragic death, and revealed critical errors that could prevent similar deaths in the future.

The pain experienced by a decedent's loved ones following a death at the hands of police, or in a carceral setting, is undoubtedly immense. But, as these examples illustrate, reporting on information contained in the corresponding autopsy reports can allow the public and policymakers to implement changes to minimize the recurrence of similar tragedies, and can help encourage broader conversations about government accountability and reform. *See Dungo*, 55 Cal. 4th at 625 (Werdegar, J., concurring) (noting

that autopsies “protect[] the public interest and provide[] the information necessary to address legal, public health, and public safety issues in each case” (citation omitted)).

B. Access to autopsy records can reveal instances of government agency mismanagement.

Access to autopsy records also has helped bring to light instances of government agency mismanagement, uncovering, in some cases, tragic instances of public malfeasance. For example, in Los Angeles, reporting based on autopsy records shed light on questionable practices at medical examiners’ and coroners’ offices. A *Los Angeles Times* reporter reviewed autopsy reports and other public records that showed that a local coroner’s office was removing the corneas of large numbers of deceased individuals without seeking the permission of family members. Ralph Frammolino, *Harvest of Corneas at Morgue Questioned*, L.A. Times (Nov. 2, 1997), <https://perma.cc/RWB7-KW4A>. A California state law provided a loophole, where “coroners [we]re allowed to remove corneas in cases targeted for autopsy if there [we]re no known objections from the next of kin.” *Id.* The Los Angeles County coroner’s office sold sets of corneas for between \$215 and \$335 to an eye bank, which then resold them at a 1,400 percent markup. Henry Weinstein, *Families Keep Cornea Rights, Court Decides*, L.A. Times (Apr. 18, 2002), <https://perma.cc/DPQ4-7NZU>. After the *Los Angeles Times* published its article, the California Legislature

changed the law to require coroners to get permission from relatives before removing eye tissue for transplants. *Id.*

Outside of California, access to juvenile autopsy reports has shed light on the efficacy of state child welfare systems. In Colorado, *The Denver Post* and television station KUSA analyzed autopsy reports and other public records from the Colorado child welfare system and found that over a six-year period, more than 40 percent of the Colorado children who had died due to family abuse or neglect “had families or caregivers known to child protection workers who could have saved them.” Jennifer Brown et al., *Failed to Death: Abused Children’s Cries for Help were Ignored*, *Denver Post* (Nov. 10, 2012), <https://dpo.st/2LmoRhX>. The news outlets found that instead of removing children from dangerous homes, overburdened caseworkers conducted incomplete or inadequate investigations or failed to open investigations in response to allegations of abuse. *Id.* The reporting prompted outcry from state legislators, and Colorado’s governor ultimately sought \$20 million to address problems in the state’s child welfare system. Christopher N. Osher et al., *Colorado Announces Sweeping Reforms to Child Welfare System*, *Denver Post* (Feb. 6, 2013), <https://perma.cc/DN9F-SAGX>.

Similarly, in Texas, the *Fort Worth Star-Telegram* reviewed the autopsies conducted on two children who shared a caretaker and died more than two years apart in a strikingly similar manner. Deanna Boyd, *Could*

the Death of One Abused Child Have Saved the Life of Another?, Fort Worth Star-Telegram (May 31, 2017), <https://perma.cc/DZ5U-BV8R>. The paper's analysis, which drew on the expertise of outside forensic pathologists who reviewed the autopsy reports, prompted local authorities to re-examine their initial findings. *Id.*

In each of these examples, the autopsy records in question involved tragic circumstances, including the deaths of young children. But if loved ones had been able to enjoin disclosure of the autopsy records, members of the press and public might never have learned about instances of government agency mismanagement, foreclosing the possibility of those agencies being held accountable.

C. Access to autopsy records fosters occupational safety and public health.

Autopsy reports from tragic industrial and workplace deaths can raise awareness about safety issues, and may ensure that preventable deaths do not recur. *See, e.g.*, Arvind K. Chaturvedi et al., Federal Aviation Administration, *A Fatality Caused by Hydrogen Sulfide Produced From an Accidental Transfer of Sodium Hydrogen Sulfide Into a Tank Containing Dilute Sulfuric Acid* (Nov. 2000), <https://perma.cc/XY53-2TWQ> (concluding from an autopsy report that an individual had died from inhalation of toxic chemicals caused by an accidental chemical reaction in the workplace). For these reasons, investigators routinely generate and

publicly release autopsy records following deaths in factory¹, mining², railway³, and other potentially hazardous occupational settings. Indeed, autopsy reports released after an LAPD officer's fatal injury during a training exercise helped corroborate sources within the department who questioned whether the exercise incorporated adequate safety measures. Richard Winton et al., *Autopsy for LAPD officer rules training death an accident; sources allege lax oversight*, L.A. Times (July 27, 2022), <https://perma.cc/2BTG-V9C2>.

Autopsy records also can reveal key insights about public health issues. They have enabled analysts to observe and bring attention to escalating public health trends, like a surge in overdose deaths amid the nationwide opioid crisis. Kathryn McNutt, *Overdose deaths in Oklahoma up 22%*, The Journal Record (Mar. 6, 2023), <https://perma.cc/JJ2H-5MTH>. And, in April 2020, as policymakers and the public struggled to navigate

¹ See Brandon Kyc, *Autopsy released for Wysox water plant death*, WETM (Sept. 15, 2022), <https://perma.cc/MKX4-U5CW>; Anthony Maenza, *More details emerge in death of Hanover Foods worker who fell into bean hopper*, York Dispatch (Dec. 29, 2022), <https://perma.cc/3JJY-WCFZ>.

² See Fatal Accident Summaries, West Virginia Office of Miners' Health Safety & Training (last accessed Mar. 7, 2023), <https://perma.cc/WXA7-V64U>.

³ See Stacy Shackelford et al., *Fatalities of the 2008 Los Angeles train crash: autopsy findings*, Am. J. Disaster Med. (Mar. 2011), <https://perma.cc/SM4R-GQX7>; Pennylynn Webb, *Autopsy ordered in Eagle Railcar industrial accident*, Palestine Herald-Press (Dec. 13, 2021), <https://perma.cc/RWV9-UQE6>.

the first months of the COVID-19 pandemic, autopsy reports revealed important new findings about the timeline of coronavirus infections in the United States. Matt Hamilton et al., *Autopsies reveal first confirmed U.S. coronavirus-related deaths occurred in California in February*, L.A. Times (Apr. 21, 2020), <https://perma.cc/XS3B-3HQQ>.

Reporting on autopsy records, in California and across the country, provides a vital means of public scrutiny following a tragic loss of life. In some cases, access to such records may be the only countermeasure against abuse or fraud, and may spark important public debate and needed reform. Under Appellants' proposed interpretation of the CPRA, access to this crucial category of records would be stymied, and Californians would be deprived of information about matters of the utmost public concern.

II. Appellants' arguments, if accepted, would place California among the least transparent jurisdictions for access to autopsy records.

As the Media Respondents argue, and the Superior Court correctly recognized, autopsy reports are public records disclosable under the CPRA. This is consistent with the Legislature's intent that the public have broad access to information of public concern. Indeed, in 2020, the Legislature declined the opportunity to enact legislation which would have made autopsy records confidential. Br. of Respondents at 14, 41–42. Appellants' proposed reinterpretation of the CPRA would thus run contrary to legislative intent and, if accepted, would place California among the least

transparent jurisdictions for access to autopsy records. In at least 18 states, medical examiner, coroner, and autopsy records are presumptively public, either by explicit statutory provision, court ruling, or administrative interpretation. These states include Alabama⁴, Arizona⁵, Arkansas⁶, Colorado⁷, Hawaii⁸, Illinois⁹, Indiana¹⁰,

⁴ Ala. Code § 36-18-2 (“The director [of the Department of Forensic Sciences] shall keep photographed or microphotographed reproductions of original reports of all investigations that he conducts in his office. Reproductions of such materials shall be public records and shall be open to public inspection at all reasonable times.”).

⁵ Ariz. Rev. Stat. Ann. § 23-1072 (pathologist’s findings “shall be a public record” when the Industrial Commission of Arizona orders the autopsy); *Schoeneweis v. Hamner*, 221 P.3d 48, 52 (Ariz. Ct. App. 2009) (holding county medical examiner’s report and autopsy photographs are public records).

⁶ Ark. Code Ann. § 14-15-304(a) (“Records gathered and created during the course of a [county] coroner’s investigation shall be confidential and deemed exempt from the [Arkansas Freedom of Information Act], but *only until such time that the coroner issues his or her final report.*” (emphasis added)); *see also* Ark. Op. Att’y Gen. No. 2020-041 (Jan. 27, 2021).

⁷ Colo. Rev. Stat. § 24-72-204(3)(a)(I) (excluding “coroners’ autopsy reports” from certain exemptions to the public records statute); *Denver Publ’g Co. v. Dreyfus*, 520 P.2d 104, 108 (Colo. 1974) (finding “evidence of legislative intent to classify autopsy reports as public records”).

⁸ Haw. Off. of Info. Pracs., Policy Op. Ltr. No. F15-01 (Sept. 15, 2014) (“[T]oxicology reports of the deceased motorists are required to be disclosed upon request, as no exception to disclosure under the [state public records act] applies” (citing prior opinion determining “that autopsy reports would not generally be protected from public disclosure”)).

⁹ Ill. Att’y Gen. Public Access Op. No. 10-003, 2010 WL 4735542, at *5 (Oct. 22, 2010) (coroner’s records “are generally subject to FOIA”).

¹⁰ Ind. Code § 36-2-14-18(a) (making certain autopsy results and records “available for public inspection and copying”).

Iowa¹¹, Kansas¹², Louisiana¹³, Maryland¹⁴, Michigan¹⁵, Nevada¹⁶, North Carolina¹⁷, Ohio¹⁸,

¹¹ Iowa Att’y Gen. Op. No. 72-10-13, 1972 WL 262460, at *1 (Oct. 20, 1972) (finding “there is no confidential privilege accorded to the report of the medical examiner and . . . these reports may lawfully be examined by any citizen” under the state public records law).

¹² *Burroughs v. Thomas*, 937 P.2d 12, 16 (Kan. Ct. App. 1997) (finding “coroner’s records were public records”); *accord* Kan. Att’y Gen. Op. No. 2002-55 (Dec. 17, 2002).

¹³ La. Stat. Ann. § 44:19(E)(3) (“The coroner’s report is a public record, and the coroner or his designee shall release this report to the news media” and “any other person”); *id.* § 44:19(E)(6) (“any [autopsy] report used in the investigation of any criminal activity or death of any person in the custody or control of any law enforcement or corrections entity . . . is a public record” subject to certain exemptions).

¹⁴ Md. Code Ann. Gen. Provis. § 4-329 (excluding an “autopsy report of a medical examiner” from the mandatory exception for “medical or psychological information about an individual”); *see also* Ltr. from Assistant Attorney General Kathryn M. Rowe to Senator Leo E. Green (May 30, 2003), <https://perma.cc/R5YD-C33H>; 63 Op. Md. Att’y Gen. 659 (1978).

¹⁵ *See Swickard v. Wayne Cnty. Med. Exam’r*, 475 N.W.2d. 304 (Mich. 1991).

¹⁶ *Clark Cnty. Off. of Coroner/Med. Exam’r v. Las Vegas Rev.-J.*, 458 P.3d 1048, 1056 (Nev. 2020) (juvenile autopsy reports are not “categorically exempt records”).

¹⁷ N.C. Gen. Stat. § 130A-389 (when autopsy ordered by medical examiner or on request of district attorney or judge, “a copy of the [autopsy] report shall be furnished to any person upon request”).

¹⁸ Ohio Rev. Code Ann. § 313.10(A)(1) (with narrow exceptions, coroner records, “including, but not limited to, the detailed descriptions of the observations written during the progress of an autopsy and the conclusions drawn from those observations . . . are public records”); *id.* § 313.10(D) (coroners “shall grant” a journalist’s written request “to view . . . preliminary autopsy and investigative notes and findings, suicide notes, or photographs of the decedent” made by the coroner); *see also generally State ex rel. Cincinnati Enquirer v. Pike Cnty. Coroner’s Off.*, 101 N.E.3d 396, 410 (Ohio 2017).

Oklahoma¹⁹, Pennsylvania²⁰, and Texas²¹. Further, even in jurisdictions where a third-party privacy right may, in some instances, prohibit disclosure of autopsy records, the jurisdiction’s legislature has expressly provided for that by statute. For example, under Georgia law, autopsy records generally may not be produced by an agency without consent of a decedent’s “next of kin.” Ga. Code Ann. § 45-16-27(d). However, Georgia’s open records statute further enumerates that the privacy right may be overcome, stating that “[a] superior court may, in closed criminal investigations, order the disclosure of [autopsy records] upon findings in writing that disclosure is in the public interest and that it outweighs any privacy interest that may be asserted by the deceased’s next of kin.” *Id.*

Public records laws, such as the CPRA, are intended to ensure that the public has timely access to information about matters of significant importance to their communities, including information that sheds light on tragedies where members of the community have lost their lives.

¹⁹ Okla. Stat. tit. 63 § 945(G) (ten business days after an autopsy report is generated, “the full and complete report shall be made available as a public record,” unless law enforcement seek a delayed release).

²⁰ *Hearst Television, Inc. v. Norris*, 54 A.3d 23, 33 (Pa. 2012) (both the state public records law and the state Coroner’s Act “each provide immediate access to cause and manner of death records”); *see also Say v. Lehigh Cnty.*, No. AP 2019-0123, 2019 WL 1619865 (Pa. Off. Open Recs. Apr. 10, 2019).

²¹ Tex. Code Crim. Proc. Ann. art. 49.25 § 11(a) (“full report and detailed findings of the autopsy, if any, shall be a part of the record” and subject to the state public records law); *see also* Tex. Att’y Gen. Op. No. OR-7790 (Sept. 13, 2004), <https://perma.cc/8NXB-MM46>.

Recognizing these important interests, legislatures in numerous jurisdictions have made them presumptively accessible to the public. Accepting Appellants' argument would place California among the most restrictive jurisdictions and thwart the legislative purpose underlying the CPRA's mandate of disclosure.

CONCLUSION

For the foregoing reasons, amici urge this Court to affirm the Superior Court's decision.

Dated: April 17, 2023

Respectfully submitted,

/s/ Katie Townsend

*Katie Townsend (SBN 254321)

**Counsel for Amici Curiae*

Bruce D. Brown**

Tyler Takemoto**

Reporters Committee for

Freedom of the Press

1156 15th Street NW, Suite 1020

Washington, D.C. 20005

Telephone: (202) 795-9300

Facsimile: (202) 795-9310

ktownsend@rcfp.org

** *Of counsel*

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204 of the California Rules of Court, I hereby certify that the attached amici curiae brief was produced using 13-point Roman type, including footnotes, and contains 5,124 words. I have relied on the word-count function of the Microsoft Word word-processing program used to prepare this brief.

Dated: April 17, 2023

/s/ Katie Townsend

**Katie Townsend*

**Counsel for Amici Curiae*

APPENDIX A: DESCRIPTION OF AMICI CURIAE

The Reporters Committee for Freedom of the Press was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today it provides pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

The California News Publishers Association ("CNPA") is a nonprofit trade association representing the interests of over 400 daily, weekly and student newspapers and news websites throughout California.

CalMatters is a nonpartisan, nonprofit journalism organization based in Sacramento, California. It covers state policy and politics, helping Californians to better understand how their government works while serving the traditional journalistic mission of bringing accountability and transparency to the state's Capitol. The work of its veteran journalists is shared, at no cost, with more than 180 media partners throughout the state.

Embarcadero Media is a Palo Alto-based 40-year-old independent and locally-owned media company that publishes the Palo Alto Weekly, Pleasanton Weekly, Mountain View Voice and Menlo Park Almanac, as well as associated websites. Its reporters regularly rely on the California Public Records Act to obtain documents from local agencies.

First Amendment Coalition (“FAC”) is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order to make government, at all levels, more accountable to the people. The Coalition’s mission assumes that government transparency and an informed electorate are essential to a self-governing democracy. FAC advances this purpose by working to improve governmental compliance with state and federal open government laws. FAC’s activities include free legal consultations on access to public records and First Amendment issues, educational programs, legislative oversight of California bills affecting access to government records and free speech, and public advocacy, including extensive litigation and appellate work. FAC’s members are news organizations, law firms, libraries, civic organizations, academics, freelance journalists, bloggers, activists, and ordinary citizens.

The International Documentary Association (“IDA”) is dedicated to building and serving the needs of a thriving documentary culture. Through its programs, the IDA provides resources, creates community, and defends rights and freedoms for documentary artists, activists, and journalists.

The Investigative Reporting Workshop, based at the School of Communication (SOC) at American University, is a nonprofit, professional newsroom. The Workshop publishes in-depth stories at investigativereportingworkshop.org about government and corporate

accountability, ranging widely from the environment and health to national security and the economy.

The Los Angeles Press Club is a 501(c)(3) nonprofit with over 1,000 member journalists. Established in the early 1900s and incorporated in 1948, the organization's mission is to support, promote and defend quality journalism in Southern California. LAPC serves journalists working in any medium (print, digital, broadcast or otherwise), including freelancers and students.

The Media Institute is a nonprofit foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in journalism. Its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

Mother Jones is a nonprofit, reader-supported news organization known for ground-breaking investigative and in-depth journalism on issues of national and global significance.

The National Freedom of Information Coalition is a national nonprofit, nonpartisan organization of state and regional affiliates representing 45 states and the District of Columbia. Through its programs and services and national member network, NFOIC promotes press freedom, litigation and legislative and administrative reforms that ensure

open, transparent and accessible state and local governments and public institutions.

The National Press Club is the world's leading professional organization for journalists. Founded in 1908, the Club has 3,100 members representing most major news organizations. The Club defends a free press worldwide. Each year, the Club holds over 2,000 events, including news conferences, luncheons and panels, and more than 250,000 guests come through its doors.

The National Press Club Journalism Institute is the non-profit affiliate of the National Press Club, founded to advance journalistic excellence for a transparent society. A free and independent press is the cornerstone of public life, empowering engaged citizens to shape democracy. The Institute promotes and defends press freedom worldwide, while training journalists in best practices, professional standards and ethical conduct to foster credibility and integrity.

The National Press Photographers Association (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA's members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its

forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

The News Leaders Association was formed via the merger of the American Society of News Editors and the Associated Press Media Editors in September 2019. It aims to foster and develop the highest standards of trustworthy, truth-seeking journalism; to advocate for open, honest and transparent government; to fight for free speech and an independent press; and to nurture the next generation of news leaders committed to spreading knowledge that informs democracy.

The Online News Association (“ONA”) is the world’s largest association of digital journalists. ONA’s mission is to inspire innovation and excellence among journalists to better serve the public. Membership includes journalists, technologists, executives, academics and students who produce news for and support digital delivery systems. ONA also hosts the annual Online News Association conference and administers the Online Journalism Awards.

Open Vallejo is an award-winning, independent, non-partisan, nonprofit newsroom serving the public interest. Open Vallejo seeks to illuminate a small city long burdened by police violence, corruption, and neglect. As the first project of the Informed California Foundation, Open Vallejo is also a permanent design laboratory for open source, high-impact,

broadly-accessible frameworks for ensuring local transparency, accountability, and information justice.

Pro Publica, Inc. (“ProPublica”) is an independent, nonprofit newsroom that produces investigative journalism in the public interest. It has won six Pulitzer Prizes, most recently a 2020 prize for national reporting, the 2019 prize for feature writing, and the 2017 gold medal for public service. ProPublica is supported almost entirely by philanthropy and offers its articles for republication, both through its website, propublica.org, and directly to leading news organizations selected for maximum impact. ProPublica has extensive regional and local operations, including ProPublica Illinois, which began publishing in late 2017 and was honored (along with the Chicago Tribune) as a finalist for the 2018 Pulitzer Prize for Local Reporting, an initiative with the Texas Tribune, which launched in March 2020, and a series of Local Reporting Network partnerships.

The Society of Environmental Journalists is the only North-American membership association of professional journalists dedicated to more and better coverage of environment-related issues.

Society of Professional Journalists (“SPJ”) is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of

information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

Southern California Public Radio is a non-profit, public media organization. We operate L.A.'s largest NPR station, KPCC dba LAist. Our signal stretches north to Santa Barbara County, south to Orange County and east to the Inland Empire. We also operate LAist.com, a local news site. Our mission is to strengthen the civic and cultural bonds that unite Southern California's diverse communities by providing the highest quality news and information service.

TEGNA Inc. owns or services (through shared service agreements or other similar agreements) 64 television stations in 52 markets, including KXTV/Sacramento and KFMB/San Diego.

The Tully Center for Free Speech began in Fall, 2006, at Syracuse University's S.I. Newhouse School of Public Communications, one of the nation's premier schools of mass communications.

PROOF OF SERVICE

I, Katie Townsend, do hereby affirm that I am, and was at the time of service mentioned hereafter, at least 18 years of age and not a party to the above-captioned action. My business address is 1156 15th St. NW, Suite 1020, Washington, D.C. 20005. I am a citizen of the United States and am employed in Washington, District of Columbia.

On April 17, 2023, I served the foregoing documents: **Application for Leave to File Amici Curiae Brief and Amici Curiae Brief of The Reporters Committee for Freedom of the Press and 22 Media**

Organizations as follows:

[x] By email or electronic delivery:

Jacob D. Flesher
jdf@fsslawfirm.com
Virginia L. Martucci
vlm@fsslawfirm.com

Counsel for Appellants

Richard Alan Levine
rlevine@rlslawyers.com
Brian P. Ross
bross@rlslawyers.com

*Counsel for Respondent Ventura County
Deputy Sheriffs Association*

Kelly A. Aviles
kaviles@opengovlaw.com
Jeff Glasser
jeff.glasser@latimes.com

*Counsel for Respondents Los Angeles
Times Communications LLC,
The Associated Press, and Scripps NP
Operating, LLC*

Emily Tara Gardner
Emily.Gardner@ventura.org

*Counsel for Real Party in Interest
County of Ventura*

Michael McMahon
writsandappeals@ventura.org

Counsel for Public Defender

[x] By Mail:

Ventura Superior Court
c/o Exec. Officer Superior Court
P.O. Box 6489
Ventura, CA 93006

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

Executed on the 17th of April, 2023, at Washington, D.C.

/s/ Katie Townsend

*Katie Townsend

**Counsel for Amici Curiae*