



February 10, 2021

Honorable Tani Gorre Cantil-Sakauye, Chief Justice
and the Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Voice of San Diego et al. v. Superior Court for the County of San Diego*, Supreme Court No. S266836 (Ct. of Appeal No. D078415)

Dear Chief Justice Cantil-Sakauye and Associate Justices of the Court,

Pursuant to Rule 8.500(g) of the California Rules of Court, the First Amendment Coalition (“FAC”) submits this letter urging the Court to grant review of the Court of Appeal’s decision in *Voice of San Diego et al. v. Superior Court for the County of San Diego*, or, if this Court is not inclined to review this matter itself, to transfer the case to the Court of Appeal for a decision on the merits. (C.R.C. 8.500(b)(4), 8.528(d); see, e.g., *Washington Mut. Bank v. Superior Court* (2001) 24 Cal.4th 906, 913.)

FAC is a California non-profit corporation dedicated to freedom of speech and government transparency. FAC provides legal information and consultations to journalists, academics, bloggers, and ordinary citizens regarding access rights under the Freedom of Information Act and California’s various open government laws. FAC files amicus briefs in important appeals, both in state and federal courts, including the United States Supreme Court. In addition, FAC files litigation to defend and expand the rights of the public and press under access laws, including the California Public Records Act (“CPRA” or the “Act”).

At a time when access to information can very well be a matter of life or death, this case affords the Court the chance to compel government agencies to fulfill their obligation to comply with the CPRA, especially during a crisis. The County of San Diego (“San Diego”) is likely sitting on a mountain of potentially life-saving data about the locations of COVID-19 outbreaks in the community. Yet, inexplicably, San Diego refuses to proactively provide this data to the public, even as other municipalities like Los Angeles, San Bernardino, and Merced counties regularly volunteer the same information on their public websites. The states of Colorado and Kansas do the same.

The California State Legislature, stressing the importance of making outbreak location data widely available as COVID-19 continues to ravage this state, has already mandated the release of much of this information to the public. As of this year, the State Department of Public Health must “make workplace industry information received from local public health departments . . . available on its internet website in a manner that allows the public to track the number and frequency of COVID-19 outbreaks and the number of COVID-19 cases and outbreaks by industry reported by any workplace. . . .” (Lab. Code, § 6409.6(g).) That obligation includes the duty to disclose the number of cases within each outbreak location. (Lab. Code, § 6409.6(b), (g).)

As the Legislature has recognized, disclosure of COVID-19 outbreak data, without personally identifiable information, is clearly in the public interest. But so too is the integrity of the CPRA, a law that public agencies cannot single-handedly decide no longer applies whenever compliance is inconvenient. The Act was passed to “increas[e] freedom of information” by giving the public “access to information in possession of public agencies.” (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651.) In this vein, the provisions that set forth the writ procedure for seeking review were enacted to “to speed appellate review, *not to preclude review on the merits.*” (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1336.) Summarily denying review of a matter of such grave public interest like this one is antithetical to the Act’s very purpose.

The Court should grant review in this case to preserve the integrity of the CPRA. In reviewing this case, the Court has the opportunity to remind public agencies that the right of access to information is a matter of law, not whim. Even and especially in times of crisis, public agencies must uphold California’s commitment to open governance and the public’s right to know.

Sincerely,

/s/ Sherene Tagharobi

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