



April 1, 2021

Chairman Reginald Byron Jones-Sawyer Sr.
Vice Chairman Tom Lackey
Assembly Committee on Public Safety
120 N Street, Room 111
Sacramento, CA 95814

Re: AB 268 – Oppose

Dear Chairman Jones-Sawyer and Vice Chairman Tom Lackey,

I write to you on behalf of the First Amendment Coalition to express our strong opposition to AB 268. As a public-interest organization dedicated to advancing free speech, we appreciate the authors' concern for privacy interests, which are frequently a prerequisite for the enjoyment of First Amendment rights. But any law aimed at limiting access to vital public records that keep Californians informed about health and safety issues must be narrowly drawn and include safeguards to prevent unnecessary secrecy. AB 268 fails in this regard.

The bill allows courts and agencies to indefinitely withhold autopsy reports and evidence associated with the examination of decedents killed as a result of criminal act and would therefore shield a vast amount of previously accessible information from public view. Public access to such records ensures that coroners and medical examiners, public servants, adequately discharge their duties and remain accountable to the public. Autopsy reports and related records have been the basis of news stories that have revealed bungled homicide investigations, assessed the effectiveness of law enforcement and other public safety systems, and exposed flaws in physician oversight.¹

Crucially, the bill contains a litany of flaws that run afoul of the First Amendment principles. First, it allows family members who have witnessed or played a role in the decedent's death, but were not prosecuted in the death, to invoke the sealing process. Second, it grants prosecutorial agencies broad and unfettered discretion to make findings that could result in sealing.

¹ See, e.g., *Death Investigation in America*, ProPublica, <https://www.propublica.org/series/post-mortem/p2> (last visited April 1, 2021).

This is especially problematic, as the bill can be interpreted to deny public access without providing a mechanism that would allow members of the public to appeal or be heard on decisions to seal. Both the U.S. and California Supreme Courts have recognized a First Amendment right to court access.

In *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178 (1999), the California Supreme Court held that two things must occur before a court can close a civil or criminal proceeding. “First, a trial court must provide notice to the public of the contemplated closure” by a request made in open court or a public filing “reasonably in advance of the determination.”² “Second, before substantive courtroom proceedings are closed or transcripts are ordered sealed, a trial court must hold a hearing and expressly find that (i) there exists an overriding interest supporting closure and/or sealing; (ii) there is a substantial probability that the interest will be prejudiced absent closure and/or sealing; (iii) the proposed closure and/or sealing is narrowly tailored to serve the overriding interest; and (iv) there is no less restrictive means of achieving the over-riding interest.”³

The judicial council, recognizing the importance of access, has adopted essentially the same requirements to seal a court record.⁴ AB 268, however, would circumvent these safeguard procedures.⁵

The bill, then, amounts to a blanket prohibition on parties with access to autopsy reports and related evidence from disclosing newsworthy information. In other words, it is a prior restraint on speech, “the most serious and least tolerable infringement on First Amendment rights.”⁶

We hope that members Committee of Public Safety will take seriously the harm of cutting off access to these records of intense public interest and will accordingly oppose AB 268.

Sincerely,



David Snyder
Executive Director
First Amendment Coalition

² *Id.* at 1217.

³ *Id.* at 1217-1218.

⁴ Cal. Rules of Court, rule 2.551.

⁵ Cal. Rules of Court, rule 2.550(a)(1).

⁶ *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 559 (1976).