CASE NO.: B310585

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

LOS ANGELES TIMES COMMUNICATIONS LLC,
THE ASSOCIATED PRESS, and SCRIPPS NP OPERATING, LLC,
publisher of the VENTURA COUNTY STAR,
Appellants,

v.

ARIK HOUSLEY, et al.,
Respondents,

COUNTY OF VENTURA
Real Parties in Interest.

Appeal of Preliminary Injunction
Preventing Disclosure of Public Records
Superior Court No. 56-2019-00523492-CU-WM-VTA
The Superior Court for the County of Ventura
Hon. Henry Walsh, Judge

APPELLANTS' OPENING BRIEF

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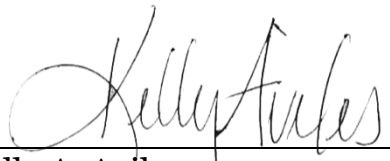
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

PURSUANT TO CALIFORNIA RULES OF COURT, RULE 8.208

Appellants Los Angeles Times Communications LLC, The Associated Press, and Scripps NP Operating, LLC, Publisher Of The Ventura County Star, are not aware of any other entity or person that has a financial or other interest in the outcome of the proceedings that Appellants reasonably believes the justices should consider in determining whether to disqualify themselves under canon 3E of the Code of Judicial Ethics.

DATED: May 17, 2021

LAW OFFICES OF KELLY A. AVILES



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TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION SIX:

Los Angeles Times Communications LLC, The Associated Press, and Scripps NP Operating, LLC, Publisher Of The Ventura County Star (collectively, the "Appellants") respectfully request that this Court immediately vacate a preliminary injunction issued by the Ventura County Superior Court ("trial court"), which improperly prohibits the County of Ventura ("County") from producing disclosable public records, on the mere hope that the California Legislature *might* change the law to limit disclosure of autopsy reports.

I. INTRODUCTION

As part of their reporting on the mass shooting that took place November 7, 2018, at the Borderline Bar and Grill in Thousand Oaks, Appellants filed various requests for records under the California Public Records Act (CPRA).[1] (AA 731, 746.) Respondents are seeking to stop Ventura County ("County") from disclosing autopsy reports to Appellants, but California law does not provide for such wholesale secrecy.

Coroners[2] in California are required to issue autopsy reports inquiring into the circumstances, manner, and causes of violent

[1] Gov. Code § 6250, *et seq*. All further statutory references are to the California Government Code, unless otherwise indicated.

[2] The term coroner and medical examiner are used interchangeably but have essentially the same meaning. A coroner is provided for by statute, but a board of supervisors may instead provide for the office of a medical examiner, who must "exercise the powers and perform the duties of the coroner." (§ 24010.)

deaths such as those that occurred at the Borderline. (§ 27491.) Because coroners must create and maintain autopsy records as part of their official duties, California courts repeatedly have stated that autopsy reports are public records. (*See People v. Dungo* (2012) 55 Cal.4th 608, 627; *People v. Wardlow* (1981) 118 Cal.App.3d 375, 388, citing *People v. Williams* (1959) 174 Cal.App.2d 364, 390; *accord Walker v. Superior Court* (1957) 155 Cal.App.2d 134, 138-139 ["[a]n autopsy report is a record that the coroner is required to keep and is therefore a public record which any citizen may inspect"]; *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271, 1278 ("*Dixon*") [noting that autopsy reports are public records subject to disclosure, but allowing withholding of reports that pertained to open homicide investigation].)

In the face of these authorities, Respondents urged the trial court to prevent Ventura County from disclosing the autopsy reports on the hope that the Legislature would change the law. (RT 13 ["I'm asking the Court to maintain the status quo. It will not be long before we have a law that the courts won't have to weigh these interests and find in favor of the families. It will be statutory that the courts will have no choice but to only allow autopsy reports to next of kin and to law enforcement…"].) Over Appellants' strenuous objections, the trial court agreed and issued the preliminary injunction solely on the basis of the proposed legislation and the chance that the law might change in the future. (AA 764.) Neither the trial court nor Respondents cited any case law supporting a preliminary injunction on the hope that the Legislature might change the law. Appellants know of no such case.

Respondents also cited no case law in support of their claims that disclosure of the autopsy reports would violate their right to

privacy. The cases relied on by Respondents concern death scene and autopsy photos, but Appellants are ***not*** asking for access to any such photos.[3] (AA 732.) These cases do not apply to the records at issue here: writings or graphics concerning the manner, circumstances, and causes of violent, unnatural deaths, which the coroner is required to create and maintain as part of a statutory duty to establish how someone perished in such situations.

Respondents cannot establish that release of the autopsy reports amounts to an unwarranted invasion of personal privacy. They cannot show an established norm justifying *per se* withholding of autopsy reports. (*Int'l Federation of Prof. & Tech. Engineers Local 21 v. Superior Court* (2007) 42 Cal.4th 319, 331 ("*Int'l Federation*") ["A 'reasonable' expectation of privacy is an objective entitlement founded on broadly based and widely accepted community norms"].) Coroners in California and elsewhere routinely release to the public autopsy reports or information about autopsies, including after mass shootings such as the killings of five people in Santa Monica in 2013, the deaths of 34 people in 2019 aboard the Conception boat off the coast of Santa Cruz Island, the drowning of actress Naya Rivera last year at a lake in Ventura County, the homicides of six University of California, Santa Barbara students in 2014, the murders of 49 people at the Orlando Pulse nightclub in 2016, and the shooting of 18-year-old Andres Guardado near Gardena this past June. (AA 733, 737-739, 744-745.) Respondents do not have any greater interests in privacy than did the victims in

[3] Ventura County has also stated that it will not release any autopsy photos to anyone pursuant to Code Civ. Proc. § 129. (AA 358.)

all these other cases where public agencies released information and records on the manner, circumstances and causes of death.

Proponents of secrecy in California also bear the burden to prove that any asserted privacy interests clearly outweigh the public's interest in disclosure of the information or records. (§§ 6254(c), 6255.) They cannot do so here where the press and the public have a strong interest in learning how the mass shooting at the Borderline unfolded and how the Ventura County coroner investigated the circumstances, nature, and causes of death.

The trial court ruling implicitly acknowledges that current law does not support withholding of the autopsy reports. By finding that a change in the law would establish a right of privacy, it follows that the trial court understands that no such privacy right currently exists. As the trial court was aware, Ventura County tried to change the law and make autopsy reports confidential last year. (AA 365, 509-512.) Ventura County did not succeed – the Legislature did not change the law. (AA 514.) The Respondents cannot ask this Court to legislate secrecy of autopsy records, especially when the Legislature has not supported such confidentiality. To the contrary, the Legislature enacted SB 1421 just two years ago, which included requiring release of autopsy reports in officer-involved shootings and where officers inflicted great bodily injury. (*See* Penal Code § 832.7(b)(2).)

Because the trial court did not have a valid, legal basis to issue the preliminary injunction, Appellants respectfully request that this Court reverse the trial court's order and immediately dissolve the injunction.

II. STATEMENT OF THE CASE

A. Statement of Facts

On November 7, 2018, Ian David Long engaged in a mass shooting at the Borderline Bar and Grill in Thousand Oaks. (AA 043.) Thirteen people were killed, including Long, who died of a self-inflicted gunshot wound, and a Sergeant with the Ventura County Sheriff's Office. (AA 076-077.) Even more were injured. (AA 076-077.) It was not until a month after the shooting that the Sheriff's Office disclosed that the Sergeant, who was shot multiple times, died after being shot accidentally by another officer amid the chaos. (AA 043, 081, 202.)

The Borderline shooting is one of many mass shootings that have plagued this country in recent years. These shootings have fueled debate on how to best prevent and respond to such attacks. The public has a strong interest in fully evaluating how these incidents unfold and scrutinizing the investigations that follow.

As part of their reporting on the shootings, Appellants made public records requests for records about the Borderline shooting, including 911 recordings, dispatch calls and logs, body and dash camera footage, and information regarding the incident. (AA 047-048.) The sought records and information would have improved the press' and the public's understanding of how the shootings unfolded, and how emergency personnel responded to the critical incidents, but the County repeatedly refused to disclose most of the responsive records. (AA 048-049.)[4]

[4] The County has recently agreed to release certain audio and video records relating to the Borderline shooting.

Appellants also made CPRA requests for the autopsy reports of those people who died in the incident. (AA 731, 746.) While the County refused to disclose the reports, claiming that the investigation of the incident was ongoing, it later admitted that autopsy reports are disclosable public records and agreed to release them. (AA 356 ["[a]utopsy reports are public records within the meaning of the…CPRA"].) Appellants' CPRA requests sought all 13 autopsy reports of people who died during the Borderline shooting, but the County has only released the autopsy reports of Sergeant Helus and the shooter. (AA 731.) The outstanding requests are for the autopsy records of the 11 victims of the mass shooting. (AA 331, 731.)

B. Procedural History

On April 4, 2019, Appellants filed a verified petition for writ of mandate and declaratory relief for violations of the CPRA against the County, seeking access to the public records about the Borderline shootings that the County had refused to release. (*Los Angeles Times, et al. v. County of Ventura*, Case No.: 56-2019-00527063 (the "CPRA Case").) (AA 042.)

More than a year later, on June 22, 2020, Respondents, who are families of the victims of the mass shooting, filed a complaint for preliminary and permanent injunctive relief. (*Arik Housley, et al. v. County of Ventura*, Case No.: 56-2020-00542567 (the "Reverse-CPRA Case").) (AA 211.) The Reverse-CPRA Case seeks unprecedent relief, demanding that the County keep nearly all records about this very public incident secret, including "[a]ll reports regarding the Borderline shooting; [a]ll images, including but not limited to video footage, from inside the Borderline depicting any of

the victims; [a]ll coroner and/or autopsy reports for each victim; [a]ll audio recordings, including 911 and dispatch tapes, involving the Borderline" and a permanent order enjoining the County from publicly disclosing "[a]ll reports regarding the Borderline shooting; [a]ll images, including but not limited to video footage, from inside the Borderline depicting any of the victims; [a]ll coroner and/or autopsy reports for each victim; [a]ll audio recordings, including 911 and dispatch tapes, involving the Borderline." (AA 215-216.) While the parties have been meeting and conferring on Respondents' objections to disclosure to determine the extent of the disagreement, the preliminary injunction at issue here concerns the autopsy reports of the 11 victims killed by the mass shooter.

The County filed a notice of related case regarding the CPRA case, the Reverse-CPRA Case, and *Ventura County Deputy Sheriffs Association v. County of Ventura* (Ventura Superior Court Case No. 56-2019-00523492-CU-WM-VTA, Second District Court of Appeal, Division Six, Case No. B300006.)[5] In response, and without notice, the trial court consolidated all three cases, for all purposes. (AA 225.)

On December 28, 2020, the trial court issued an *ex parte* temporary restraining order prohibiting the County from releasing to the public or media the autopsy reports of the victims in the

[5] *Ventura County Deputy Sheriffs Association v. County of Ventura* was another reverse-CPRA case, in which the trial court, ignoring precedent, issued a permanent injunction prohibiting the disclosure of pre-2019 SB 1421 records on police misconduct and shootings, a decision later overturned by this Court. (*See Ventura County Deputy Sheriffs' Association v. County of Ventura* (2021) 61 Cal.App.5th 585.)

Borderline shooting, citing the privacy rights of the victims' families. (AA 304.)

On February 9, 2021, the trial court granted a preliminary injunction, enjoining the County "from releasing the autopsy reports of the civilian victims of the Borderline shooting," on the sole basis of pending legislation that had been introduced in the Assembly just days earlier. (AA 764.)

> This is a preliminary injunction only. Counsel for plaintiffs has represented that Assemblywoman Irwin has introduced legislation that would amend Government Code 6250, et. seq., so as to provide plaintiffs with the relief they are seeking here. If that were to occur, it would provide plaintiffs with a more secure form of the relief they are seeking than would a judicial interpretation of the Government Code in its present form. Furthermore, if the court were to find against plaintiffs and allow the release of the autopsy reports, and then the legislature were to act in their favor, the damage would be done. Privacy once invaded cannot retroactively be again made private.
>
> If the legislature does not act to enact the Irwin legislation, the court will issue a ruling on the merits of the dispute. Legislation enacted by the legislature expresses a legislative intent. Failure to enact legislation does not necessarily express a legislative intent. That, however, is a discussion for another day.

Respondents never submitted, and thus, the trial court never actually signed, a formal preliminary injunction. Nevertheless, the County has refused to disclose the autopsy reports based on the trial court's minute order.

On February 22, 2021, Appellants timely filed their notice of appeal to the trial court's February 9, 2021 minute order granting the preliminary injunction. (AA 766.)

C. Statement of Appealability

The issuance of a preliminary injunction is immediately appealable under Code of Civil Procedure, section 904.1(a)(6). The trial court issued its order granting Respondents' motion for a preliminary injunction on February 9, 2021. (AA 764.) Appellants timely filed notice of appeal on February 22, 2021. (AA 766.)

D. Standard of Review

Matters dependent on questions of law, like those in this case, are reviewed *de novo*. (*Jamison v. Department of Transp.* (2016) 4 Cal.App.5th 356, 362; *Garamendi v. Executive Life Ins. Co.* (1993) 17 Cal.App.4th 504, 512.) Additionally, *de novo* review is also appropriate as to whether an injunction passes constitutional muster. (*Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1226-1227.)

III. ARGUMENT

When ruling on Respondents' motion for a preliminary injunction, the trial court was required to balance two factors: (1) how likely it is that the moving party will prevail on the merits; and (2) the relative harm the parties will suffer in the interim due to the issuance of the injunction. (*Dodge, Warren & Peters Ins. Services, Inc. v. Riley* (2003) 105 Cal.App.4th 1414, 1420.)

Where there is no likelihood of success on the merits, the court must deny the preliminary injunction, regardless of the potential harm. (*See O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1463 ["trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some

possibility that the plaintiff would ultimately prevail on the merits of the claim"]; *Beehan v. Lido Isle Community Assn.* (1977) 70 Cal.App.3d 858, 866, quoting *Continental Baking Co.* v. *Katz* (1968) 68 Cal.2d 512, 528 [motion for preliminary injunction should be denied "unless there is a reasonable probability that the plaintiff will be successful on the merits"]; *see also Teachers Ins. & Annuity Ass'n v. Furlotti* (1999) 70 Cal.App.4th 1487 [trial court incorrectly granted mandatory preliminary injunction where opposing party had no probability of success on merits]; *Nelson v. Avondale Homeowners Ass'n* (2009) 172 Cal.App.4th 857, 861 [because plaintiff could not establish probability of success on merits, the court did not find a need to consider whether irreparable injury would result].)

The trial court entirely disregarded these requirements and improperly issued the preliminary injunction only on the chance the law could change in the future. (AA 764.)

A. There Was No Likelihood That Respondents Could Prevail On The Merits Because Autopsy Reports Are Disclosable Public Records.

The CPRA "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.'" (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 616 (quoting *Sander v. State Bar of California* (2013) 58 Cal.4th 300, 323) (emphasis in original).) Nondisclosure is defensible only if the requested records "come within a specific disclosure exemption," and these exemptions "are construed narrowly." (*Dixon,* 170 Cal.App.4th at 1275-1276; Cal. Const. Art. I, § 3(b)(2).) In other words, "all public records are

subject to disclosure unless the Legislature has expressly provided to the contrary." (*Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1418; *see also Sander,* 58 Cal.4th at 323 [every record "must be disclosed unless a statutory exception is shown"].)

More than a half century ago, in a case brought by a defendant being prosecuted for attempted rape and murder, the court relied on Code of Civil Procedure, sections 1888 and 1892 (the precursors to the CPRA) and concluded that autopsy reports were disclosable public records. (*Walker v. Superior Court*, 155 Cal.App.2d at 138-139.) "An autopsy report is a record that the coroner is required to keep and is therefore a public record which any citizen may inspect. None of the statutory exceptions is present here. ... There is no reason why the report should be withheld from the public." (*Id.* at 139.) Similarly, the court ruled in *People v. Wardlow* that autopsy reports are public records because "one of the duties of the coroner's office is to inquire into and determine the circumstances and causes of violent deaths, after which the coroner or a deputy must personally sign a death certificate...." (118 Cal.App.3d at 387-388 (citing *People v. Williams*, 174 Cal.App.2d at 390 and § 27491.) The California Supreme Court has followed these principles, noting in 2012 that autopsy reports are public records because coroners have a statutory duty to conduct autopsies for unnatural deaths and to report their findings. (*People v. Dungo*, 55

Cal.4th at 627 (citing *United States v. Feliz* (2d Cir. 2006) 467 F.3d 227, 237.)[6]

Later, in *Dixon,* 170 Cal.App.4th 1271, the court confirmed that autopsy reports are public records subject to disclosure, except for limited circumstances, not applicable here. (*Id*. at 1278 ["The question is not whether coroner/autopsy investigatory reports are public records, but whether, in certain circumstances, they are exempt from public disclosure under a particular CPRA exemption provision."]) Ultimately, the court found that autopsy reports were disclosable unless the agency could demonstrate that the record was compiled "for law enforcement" purposes and that is "a concrete and definite prospect" of "criminal law enforcement" proceedings. (*Id*. at 1276-1277.)

Such is not the case here, as the shooter died at the scene. Therefore, no "concrete and definite prospect" of "criminal law enforcement" proceedings exists in relation to the autopsy reports at issue here. Because the shooter died at the scene, there was and is no chance of criminal law enforcement proceedings against him. Beyond that, no criminal law enforcement proceedings have been brought, and any that could occur are merely speculative and do not meet the "concrete and definite" standard created in *Dixon*. Thus, the limited exemption applicable in *Dixon* does not apply here.

"It is a generally accepted principle that in adopting legislation the Legislature is presumed to have had knowledge of existing domestic judicial decisions and to have enacted and

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[6] *See also* § 27491.6, which allows a coroner's inquest, including one involving investigations into the cause of death in criminally related cases, and requires it to be open to the public.

amended statutes in the light of such decisions as have a direct bearing upon them." (*People v. Casarez* (2012) 203 Cal.App.4th 1173, 1182; *see also Estate of McDill* (1975) 14 Cal.3d 831, 837-838. ["The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other respects are made is indicative of an intent to leave the law as it stands in the aspects not amended"]; *Sterling v. City of Oakland* (1962) 208 Cal.App.2d 1, 6 ["the failure of the Legislature to enact the proposed bill, in one form or another, is some evidence that the Legislature does not consider it necessary or proper or expedient to enact such legislation"].)

Here, the Legislature is presumed to have had knowledge that autopsy reports are disclosable public records. If the Legislature wanted to overturn that precedent, it had numerous opportunities to respond to these authorities and change the law. For example, in 2017, the Legislature passed Civil Code section 129 to ensure that autopsy ***photographs*** were confidential. The Legislature ***did not*** include autopsy records in that legislation.

More recently, in 2019, the Legislature enacted Senate Bill 1421 (2018-2019) ("SB 1421") to ensure the public had access to various types of police misconduct and uses of force by law enforcement officers in California. SB 1421 mandates that the public must have access to all records related to four categories of information as of January 1, 2019, including incidents involving the discharge of a firearm at a person by a peace officer. (Pen. Code § 832.7(b)(1).) The records "that shall be released" under this section specifically include all autopsy reports. (Pen. Code § 832.7(b)(1)(C).)

The Borderline shooting involved the discharge of firearms by officers responding to the scene. Thus, SB 1421 specifically mandates disclosure of the autopsy reports in contradiction to the trial court's ruling.

Last year, when given the opportunity, the Legislature declined to enact Assembly Bill 2372, legislation which would have made autopsy reports confidential.[7] (AA 365, 509-512.) The Legislature's failure to enact such legislation only serves to confirm the Legislature's intent that adult autopsy reports and other records related to the official duties of coroners and medical examiners must be disclosed.

Because California law provides for disclosure of public records such as the requested autopsy records, it was highly improper for the trial court to restrain the release of records when the law ***requires*** disclosure of them. (*Dammann v. Hydraulic Clutch Co.* (1920) 45 Cal.App. 511, 513 ["A court of equity will not restrain any person from doing that which the law authorizes that person to do"]; *see also Wolfe v. State Farm Fire & Casualty Ins. Co.* (1996) 46 Cal.App.4th 554, 568 [where the Legislature has enacted statutes expressly intended to address issues of public policy raised in litigation, judicial restraint is called for, and courts should "decline the invitation to undo what the Legislature has done" by issuing injunctive relief].)

[7] *See* https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201920200AB2372.

B. Pending Legislation Cannot Form The Basis For The Issuance Of A Preliminary Injunction.

Instead of applying the law as it currently exists, the trial court focused on what might happen in the future in order to grant the preliminary injunction at issue here. "Counsel for plaintiffs has represented that Assemblywoman Irwin has introduced legislation[8] that would amend Government Code 6250, et. seq., so as to provide plaintiffs with the relief they are seeking here. If that were to occur, it would provide plaintiffs with a more secure form of the relief they are seeking than would a judicial interpretation of the Government Code in its present form…" (AA 764.)

The Court's ruling is not a proper basis on which to issue an injunction. It is "well settled that on [cases] involving injunction decrees, the law in effect when the…court renders its opinion must be applied." (*Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.*

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[8] The legislation relied on by Respondents and the trial court is AB 268 (2021-2022), introduced by Assemblymember Jackie Irwin on January 15, 2021. The current version purports to require courts to seal autopsy reports of certain criminal acts, upon the request of any family member. There are serious concerns about the constitutionality of mandating the sealing of records that the Court has no jurisdiction over and ignoring the constitutional standards for sealing of court records. (See *NBC Subsidiary (KNBC-TV) Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1218-19; California Rules of Court 2.550 and 2.551 [records cannot be sealed unless the court expressly finds that: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and, (5) No less restrictive means exist to achieve the overriding interest]; see also Assembly Privacy and Consumer Protection Analysis of AB 268, as amended February 25, 2021, pp. 4-7, available at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB268#.)

(1935) 3 Cal.2d 489, 527–528; *see also People ex rel. City of Bellflower v. Bellflower County Water Dist.* (1966) 247 Cal.App.2d 344, 350 ["…a court must dispose of the case in accordance with the law existing at the time of its decision…"].) "It has been uniformly held in this state that a statute has no force whatever until it goes into effect pursuant to the law relating to legislative enactments. It speaks from the date it takes effect and not before. Until that time it is not a law and has no force for any purpose." (*People v. Righthouse* (1937) 10 Cal.2d 86, 88. *See also DeWoody v. Superior Court* (1970) 8 Cal.App.3d 52, 56 ["[A] statute has no force whatever until it goes into effect pursuant to the law relating to legislative enactments. It speaks from the date it takes effect and not before. Until that time it is not a law and has no force for any purpose"]; *Hersh v. State Bar of California* (1972) 7 Cal.3d 241, 245 [same]; *People v. Hinojosa* (1980) 103 Cal.App.3d 57, 62 [same].) If a statute has no force until its enactment, it certainly has no force when merely introduced. Therefore "all acts purporting to have been done under it prior to its effective date are void." (*Kennelly v. Lowery* (1944) 64 Cal.App.2d 903, 905.)

Moreover, by ruling that the law might change to give the Respondents some right to seal autopsy reports, the trial court tacitly conceded that the current law does not support Respondent's requested relief. The trial court was duty bound to follow the law. By ignoring the fact that the Respondents cannot currently prevail on the merits, and basing its ruling on the mere hope that the law might change in the future, the trial court abused its discretion. (*People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1144 ["trial court's discretion is limited by the applicable legal principles"]; *In re Complex Asbestos*

Litigation (1991) 232 Cal.App.3d 572, 585 ["trial court's exercise of this discretion is limited by the applicable legal principles and is subject to reversal when there is no reasonable basis for the action"].)

C. The Alleged Privacy Interest Claimed by the Respondents Has Never Been Recognized as Extending to Autopsy Reports.

Respondents argued that disclosure of the autopsy reports would violate their right of privacy. However, no published decision in California confers such a right. "California law clearly provides that surviving family members have no right of privacy in the context of written media discussing, or pictorial media portraying, the life of a decedent. Any cause of action for invasion of privacy in that context belongs to the decedent and expires along with him or her." (*Catsouras v. Department of California Highway Patrol* (2010) 181 Cal.App.4th 856, 863-864, citing *Flynn v. Higham* (1983) 149 Cal.App.3d 677; *see also Hendrickson v. California Newspapers, Inc.* (1975) 48 Cal.App.3d 59, 62 ["It is well settled that the right of privacy is purely a personal one...."])

California does, however, recognize a very limited exception to the general rule that the right of privacy expires with the decedent. This exception grants a narrow right to family members to prevent the disclosure of post-mortem photographs, none of which have been requested or are at risk of disclosure. (*Catsouras,* 181 Cal.App.4th at 896.) But death scene and autopsy photographs are treated differently under California law from written reports. (*Id.* [contrasting the lack of right that surviving family members have generally with limited right to prevent the publication of death images].)

In the trial court, Respondents relied on a number of cases, but each was inapposite and failed to demonstrate that the limited right of family to control post-mortem photos had ever been extended.

Marsh v. County of San Diego (9th Cir. 2012) 680 F.3d 1148, 1156 is about the dissemination of autopsy photos, not autopsy reports. The court specifically recognizes that dissemination of autopsy photos violates Code of Civil Procedure, section 129, thus giving rise to a procedural due process claim. Autopsy reports have no similar statutory bar to disclosure.

The same is true for *NARA v. Favish* (2004) 541 U.S. 157, 170-171, where a requester filed a FOIA request for death scene photographs of Vincent Foster, deputy counsel to President Clinton, because he was skeptical of the government's conclusions that Foster committed suicide. The court held that "FOIA recognizes surviving family members' right to personal privacy with respect to their close relative's death-scene images." (*Id.* at 170.)

Respondents cited *New York Times Co. v. NASA* (D.D.C. 1991) 782 F.Supp. 628, 631. But that case recognized the inherent difference at issue here. The underlying facts were disclosable, and NASA had released the transcript of the audio recording at issue, while refusing to disclose the actual recording. (*Id.*) Applying a similar distinction in this case supports the disclosure of the autopsy reports, while leaving the actual photos private.

Badhwar v. United States Dep't of Air Force (D.C. Cir. 1986) 829 F.2d 182, 186, the only actual case about autopsy reports, does not reach this question. Instead, the court simply remanded the case, with no legal analysis, to determine whether disclosure of the

report would constitute a "clearly unwarranted invasion of personal privacy."

Thus, Respondents cannot show that any case confers such a right of privacy, nor can they show any objectively reasonable expectation of privacy in the autopsy reports or overcome the strong public interest in disclosure of autopsy reports.

1. The Respondents Do Not Have An Objectively Reasonable Expectation of Privacy In The Autopsy Records.

To establish a privacy right, Respondents would first need to establish that release of each item of information in the autopsy reports would cause an unwarranted invasion of privacy. (§§ 6254(c), 6255.) To show an unwarranted invasion of privacy, Respondents first have to prove an objectively reasonable expectation of privacy in the records. (*Int'l Federation*, 42 Cal.4th at 331.) The privacy interest must be "an objective entitlement founded on broadly based and widely accepted community norms." (*Id.* at 331.) Where public disclosure is the norm, as is the case with autopsies, a plaintiff cannot establish an objectively reasonable expectation of privacy in the records. (*Id.*)

Coroner's records and information about autopsies are routinely released in California and across the country, including after mass shootings and other catastrophic events. For example, when John Zawahri killed five people in Santa Monica in 2013, the Los Angeles coroner's office released detailed information on the causes of death of the five victims. (AA 411, 737.) Similarly, when Elliot Roger killed six individuals in 2014 on Isla Vista near the campus of the University of California, Santa Barbara, the Santa Barbara sheriff coroner's office released the autopsy information for

the six homicide victims, including detailed summaries on the causes of the deaths and the circumstances surrounding the deaths. (AA 416, 533-534, 737-738.) After the San Bernardino terrorism attacks in 2016, the San Bernardino coroner's department released autopsy reports, with limited redactions, for the 14 victims. (AA 420, 738.) And after the killings of 49 people in 2016 at the Pulse Nightclub in Orlando, the Orange County, Florida medical examiner's office released detailed autopsy reports of the 49 victims, providing some answers on what happened during the siege of the nightclub. (AA 425, 430, 646.)

In other deadly situations, public agencies in California have released autopsy reports containing newsworthy matters. For example, after the 2019 Conception boat fire disaster, the Santa Barbara sheriff coroner's office released autopsy reports for the 34 victims that raised questions about whether all were asleep below deck when they died – at least six victims were wearing shoes, boots or some kind of footwear, according to the records released by the sheriff coroner. (AA 435, 738.) A few months ago, Ventura County released the autopsy report on actress Naya Rivera, which indicated she had small amounts of prescription medication and alcohol in her system when she drowned while on a small boat with her son on Lake Piru. (AA 440, 443, 652, 738-739, 745.) And public releases of coroner's records have shed light on controversial police shootings such as the killing of Ezell Ford in 2014 and this past year's shooting of Andres Guardado, who was hit five times in the back. (AA 466, 723, 739.)

Respondents are not entitled to greater privacy and confidentiality rights than the deceased passengers and crew member in the Conception fire, the individuals killed in the San

Bernardino terrorism attack, the students killed near UC Santa Barbara, or Ms. Rivera. Because Respondents cannot establish a community norm of secrecy with regard to autopsy reports, Respondents do not have an objectively reasonable expectation of privacy in those reports. Absent this demonstration, the exemption for unwarranted invasions of personal privacy does not apply to these records.

The routine disclosure of autopsy reports in many other states further undermines the claim that Respondents have an objectively reasonable expectation of privacy in the reports. For example, in *Swickard v. Wayne County Medical Examiner* (1991) 438 Mich. 536, 545, 557-558, 75 N.W.2d 304, the Michigan Supreme Court held that because the medical examiner's office prepared autopsy and toxicology reports on a deceased judge as part of the examiner's official functions, the reports were public records under Michigan's freedom of information law. The court rejected the privacy claims of the families:

> The findings of the medical examiner relate solely to the deceased, not the family. No private facts concerning the family would be revealed by the release of the information. Even if the toxicology results were to disclose an illegal narcotic in the blood stream of Judge Quinn at the time of death, the disclosure would not reveal any information personal to the family of the deceased. It would be at best a comment on the lifestyle of the deceased and in no way would reflect on the lifestyle of any family member.

(*See id.*)

Likewise, a New Jersey appellate court upheld a trial court's conclusion that release of an autopsy report on a person who died in custody served the public interest. (*Shuttleworth v. City of Camden*

(N.J. Super. Ct. App. Div. 1992) 610 A.2d 903, 914.) And in *Star Publishing Co. v. Parks* (Ariz. Ct. App. 1993) 178 Ariz. 604, 605, the court rejected Pima County's effort to delay disclosure of autopsy records under Arizona's public records law to give relatives 15 days to object and an additional 20 days to file suit to stop disclosure. The court held that the autopsy reports are public records and stated that Pima County did not have grounds to delay so that third parties could bring lawsuits to enjoin disclosure: "[t]he public entity must point to specific risks with respect to a specific disclosure; it is insufficient to hypothesize cases where secrecy might prevail and then contend that the hypothetical controls all cases." (*Id.*) Pima County's failure to provide such evidence meant that the County was required to make timely disclosures of the autopsy reports. (*Id.*)[9]

Finally, during the *ex parte* hearing on the temporary restraining order, counsel for Respondents argued that there could be information in the autopsy reports that could constitute an invasion of privacy. Counsel cited a possible example of confirmation of an unknown or undisclosed pregnancy. However,

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[9] *See also Burroughs v. Thomas* (Ct. App. Kan. 1997) 937 P.2d 12, 15 ["In determining which public records are exempt from public disclosure, the legislature has chosen not to include a coroner's report. Courts may only apply and enforce legislation. These public policy arguments are better made to the legislature." (internal citations omitted)]; *State ex rel. Findlay Publishing Co. v. Schroeder* (Ohio 1996) 669 N.E.2d 835, 839; *Kilgore v. R. W. Page Corp.* (Ga. 1989) 385 S.E.2d 406, 407; *Everett v. Southern Transplant Service Inc.* (La. 1998) 709 So.2d 764; Op. Att'y Gen. Ala. No. 2007-015, 2006 Ala. AG LEXIS 142 (Dec. 4, 2006); Ark. Op. Att'y Gen. Nos. 97-294 and 87-135; Op. Att'y Gen. Fla. 78-23 (1978); Ky. Rev. Stat. 61.878(1)(h); La. Rev. Stat. Ann. § 13:5713; 63 Op. Att'y Gen. 659 (Maryland 1978); North Carolina G. S. § 130a-389; Tex. Att'y Gen. ORD-7790 (2004); Oklahoma 63 O.S. § 945.D.

the California Supreme Court has rejected these types of speculative claims as insufficient to establish an unwarranted invasion of privacy. (See *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 652) [rejecting conjecture about what would happen if agencies released names of licensees of concealed weapons]; *Int'l Federation*, 42 Cal. 4th at 336-337 [rejecting extremely speculative declarations]; *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 302 [denying privacy and security claims of officers and their families as "purely speculative"]; *Long Beach Police Officers Assoc. v. City of Long Beach* (2014) 59 Cal.4th 59, 74-75 [rejecting generalized and speculative declarations about harm to officers if names disclosed in connection with shootings]; *ACLU Foundation v. Superior Court* (2017) 3 Cal.5th 1032, 1045 [rejecting speculative declaration by agency in CPRA case].)

Instead, the proponent of nondisclosure must proffer a reasonable evidentiary basis for its position and cannot "manufacture" privacy concerns or dangers because "[u]nsupported statements constitute nothing more than speculative, self-serving opinions designed to preclude the dissemination of information to which the public is entitled." (*Cal State Univ. v. Superior Court* (2001) 90 Cal.App.4th 810, 835.)

Respondents offered no such factual basis for their claims and, thus, the claims are insufficient to support their requested injunction.

2. The Asserted Privacy Interests Do Not Clearly Outweigh The Strong Public Interest In Accessing Autopsy Reports.

Even if Respondents could establish a cognizable privacy interest, they still could not prevail because they cannot demonstrate

that such an interest clearly outweighs the public's right to inspect autopsy records. (*Int'l Federation*, 42 Cal.4th at 329-331; §§ 6254(c), 6255.)[10] The public has a strong interest in reviewing autopsy reports, both generally and in this case.

Coroners and medical examiners are bound by a statutory duty to inquire into and determine the "circumstances, manner, and cause of all violent, sudden, or unusual deaths…." (§ 27491; *see also Benson v. Superior Court* (2010) 185 Cal.App.4th 1179, 1185 ["[o]ne of the coroner's principal duties is of course to inquire into and determine the cause of death in appropriate cases"]; Ventura County Medical Examiner website at https://meo.ventura.org/mission-and-purpose/ [recognizing duty to investigate "suspicious, unexpected, sudden and unattended" deaths and to "determine the cause and manner of death"].) The CPRA provides the public a right to records used to oversee the conduct of public officials, like the medical examiner. (*Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 617 ["while [a state officer] may assert the public has no interest in these records because she is performing her task properly…, this is akin to asking that we allow her 'to exercise absolute discretion, shielded from public accountability' in the operations of her office…. However, the public interest demands the ability to verify"].) Autopsy reports provide the press and the public with the ability to

[10] Sections 6254(c) and 6255 require the same balancing of interests to justify withholding records. (*Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 345 ["the weighing process under section 6254, subdivision (c) to determine whether disclosure would constitute an unwarranted invasion of privacy requires consideration of almost exactly the same elements that should be considered under section 6255"]; *Cal. State Univ., Fresno Ass'n*, 90 Cal.App.4th at 832 [because court addressed agency's Section 6255 exemption, it need not separately address agency's privacy arguments].)

inspect how a medical examiner is performing the examiner's duties. They also often lead to extremely newsworthy disclosures and are used often by the press to report activities of significant public concern. (AA 737, 739, 743, 747.)

For example, a 2019 series published by the Los Angeles Times on "how companies that harvest body parties upend death investigations" relied heavily on autopsy reports. (AA 455, 739.) News organizations use information from coroners about causes of death, including autopsy reports, to detail how citizens have died and to raise questions about those who died in police shootings or while in police custody. (AA 739, 743, 746; *see also* G.D. Dukes, et al., Encyclopedia of Forensic and Legal Medicine (Second Edition), 2016 ["in-custody deaths almost invariably raise questions and allegations that can only be addressed by a complete autopsy, including toxicologic analysis, appropriate chemical studies, and histologic confirmation of gross impressions"].) Disclosure of autopsy reports in Ventura County led to disclosure of how the former medical examiner had certified the cause of death for people he had never examined, which led to changes in law and policy. (AA 743-744.) Autopsy reports are also utilized in scientific reporting, with detailed medical information being used to help identify ways to better treat victims. (AA 643, 646, 649.) There is even a television series that relies on autopsy reports to shed light on the various autopsy reports of celebrities to help explain their causes of death. (*See* https://www.reelz.com/autopsy/.)

In this case, there is a particularized concern about the law enforcement response, and Ventura County has refused to disclose many requested records that would help explain the events of the

Borderline shooting.[11] (AA 746-747.) It was not until almost a month after the shooting that authorities announced that Sergeant Helus was not killed by the shooter, but by a bullet from another responding officer. (AA 677-679, 746.) While the District Attorney's report, released more than two years later, claims that none of the other victims were shot by law enforcement (AA 666), the public is entitled to disclosable records, such as autopsy reports, which would confirm or refute this claim. (*CBS v. Block*, 42 Cal.3d at 651-652 ["Maximum disclosure of the conduct of governmental operations was to be promoted" by the CPRA]; *Cal State Univ*, 90 Cal.App.4th at 823-824 [broad definition of public records "is designed to protect the public's need to be informed regarding the actions of government .... Indeed, secrecy is 'antithetical to a democratic system of government of the people'"].)

The District Attorney's report confirms 47 minutes passed between the first attempt by officers on the scene to get inside the bar and a second attempt. (AA 677-679, 747.) By the time officers got inside the second time, the shooter had killed 11 people, as well as himself. (AA 677-679, 747.) The public has a great interest in understanding the timeline during those 47 minutes with an eye toward whether the lives of any of the victims could have been saved and accountability as to exactly what transpired. (AA 747.) [12]

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[11] Appellants filed the instant lawsuit to force the disclosure of information that is required to be disclosed by law (*See* § 6254(f)(2) [requiring disclosure of the substance of all complaints and requests for assistance"]); Pen. Code § 832.7(b) [requiring disclosure of all records, including autopsy reports, regarding officer involved shooting].)

[12] The families cannot state an effective privacy claim in this case given the widespread disclosures that the victims died in the mass shootings. (*Sipple v. Chronicle Publishing Co.* (1984) 154 Cal.App.3d

Disclosure of the records at issue here will serve to better inform the public about how the tragic event unfolded. They will help shed light on the timeline of events, leading to public discourse about how to save lives in the future. The important details help substantiate or refute the District Attorney's account of the incident. Regardless of what the records ultimately show, the public loses the opportunity to make any assessment, be it positive, negative, or inconclusive, if this court prohibits disclosure.

While Appellants understand the scope of this tragedy and the personal loss many have been forced to endure, it is for these exact reasons that scrutiny is warranted. This tragedy demands an exacting analysis of the events as they unfolded.

D. Public Records Must Be Redacted, Not Withheld, Where They Contain Some Non-Disclosable Information.

Preliminary injunctions must be narrowly tailored (*Butt v. State of California* (1992) 4 Cal. 4th 668, 695 ["A judicial remedy must be tailored to the harm at issue"]; *Zepeda v. INS* (9th Cir. 1983) 753 F.2d 719, 728, fn. 1 [A preliminary injunction must be "narrowly tailored to remedy the specific harms shown by plaintiffs rather than to 'enjoin all possible breaches of the law'"]), but this

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1040, 1047 [rejecting invasion of privacy claim where it was already known in San Francisco that Oliver Sipple, who saved President Ford from an assassination attempt, was gay even though his family did not know]. *See also* https://www.latimes.com/local/lanow/la-me-ln-thousand-oaks-victims-20181108-story.html; https://www.latimes.com/local/lanow/la-me-ln-thousand-oaks-memorial-20181117-story.html.) While the families had the DA not include the victims' names in the report, the victims already had been identified in news coverage, and the families had filed this public lawsuit naming each victim. (*See id.*; AA 211, 666.)

preliminary injunction is overbroad. Even in cases where the requested records contain some non-disclosable information, a showing not made by Respondents in this case, California requires that the agency redact such information and make the remainder of the document public. "Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law." (§ 6253(a).) The Supreme Court has held that this duty requires "public agencies to use the equivalent of a surgical scalpel to separate those portions of a record subject to disclosure from privileged portions." (*Los Angeles County Board of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 292.) The failure to require redaction in lieu of blanket withholding in all but the rarest cases constitutes reversible error. (*N. Cal. Police Practices Project v. Craig*, 90 Cal.App.3d at 124, citing *Cook v. Craig* (1976) 55 Cal.App.3d 773, 783 ["where non-exempt materials are not inextricably intertwined with exempt materials and are otherwise reasonably segregable therefrom, segregation is required to serve the object of the PRA to make public records available for public inspection and copying unless a particular statute makes them exempt"].)

E. Separation Of Powers Principles Prevent A Court From Controlling The Discretion Of A Public Agency.

Pursuant to separation of powers principles, courts cannot compel other branches of government to exercise their discretion in any particular manner. (See, e.g., *Nickerson v. San Bernardino County* (1918) 179 Cal. 518, 522 ["[w]hen the Legislature has committed ... to [a municipal body] judgment or discretion as to matters upon which it is authorized to act, courts of equity have no power to interfere with such a body in the exercise of its legislative

or discretionary functions"; *Walsh v. Kirby* (1974) 13 Cal.3d 95, 103 ["the discretion legally vested in an administrative body, such as the department, is broad and inclusive and is not subject to judicial control when exercised within its legal limits"].)

Even assuming *arguendo* that any exception to disclosure applied, it does not generally bar the agency from releasing the record. This is because the vast majority of the CPRA's exemptions are "permissive, not mandatory; they permit nondisclosure but do not prohibit disclosure." (*Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 656.*)* The CPRA's "exemptions do not prevent an agency from opening its records to public inspection (unless some other statute forbids it)" and the "legislative scheme, endows the agency with discretionary authority to override any of the…statutory exemptions when some dominating public interest favors disclosure." (*Id.*)

Since an agency has discretion to release any information not forbidden by statute, this discretion cannot be controlled by mandamus.[13] (*Berkeley Police Association v. City of Berkeley* (1977) 76 Cal.App.3d 931, 941 ["Clearly, disclosure of a public agency's administrative records is not prohibited unless the agency itself asserts a privilege under the act. … Nor do appellants, who are only employees of the department, have standing to assert a

[13] Because "[m]andamus, rather than mandatory injunction, is the traditional remedy for the failure of a public official to perform a legal duty….the legal principles governing judicial compulsion of official acts have developed under the rubric of mandamus rather than injunction. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442.) Therefore, requests for injunctive relief directed to public officials can be viewed in light of the legal principles governing mandamus actions. (*Id.*)

privilege against disclosure…. Since no privilege against disclosure has been asserted by the agencies involved, the exemptions provided for in section 6254 simply do not come into play."]) Mandamus is only appropriate "to compel the performance of an act which the law specifically enjoins." (CCP §1085; *see also Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 501-502.) Mandamus will not lie to control an exercise of discretion, i.e., to compel an official to exercise discretion in a particular manner. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432; *Squire v County of Los Angeles* (2018) 22 Cal.App.5th 16, 22; see also § 6253.3 ["agency may not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this chapter"].)

Because an agency has discretion to release records, even where they are subject to a CPRA exemption, a court order attempting to force the exercise of this discretion is inappropriate. Therefore, a reverse-CPRA case may only be used to "prevent a public agency from acting in an unlawful manner by releasing information the disclosure of which is prohibited by law." (*Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal.App.4th 1250, 1266.) Here, nothing about disclosure of the requested records is unlawful, and it is within Ventura County's discretion to decide whether to release the records or to assert one of Section 6254's exemptions (if it can justify the application of such an exemption). Therefore, a preliminary injunction is improper.

F. The Court's Order To Stop The County From Producing Records Constitutes An Unconstitutional Prior Restraint.

Where a public agency has a right and duty to disclose public records, a restraining order that prevents it from doing so constitutes an unconstitutional prior restraint.

The First Amendment and the California Constitution protect not only the right to ***convey*** information but also the right to ***receive*** it. "Freedom of speech presupposes a willing speaker. But where a speaker exists, as is the case here, the protection afforded is to the communication, to its source ***and to its recipients*** both." (*Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council* (1976) 425 U.S. 748, 756 [emphasis added]; *accord Pines v. Tomson* (1984) 160 Cal.App.3d 370, 398 ["'[The] protection afforded is to the communication, to its source and to its recipients both…[This] Court has referred to a First Amendment right to "receive information and ideas,' and that freedom of speech 'necessarily protects the right to receive.'"].)

The restraining order prevents the County from conveying information of immense public concern to the press that it is willing to disclose. This is an unconstitutional prior restraint. (*In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416, 1427 ["The term prior restraint is used 'to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur'"]; *Hurvitz v. Hoefflin* (2000) 84 Cal.App.4th 1232, 1241; *Steiner v. Superior Court* (2013) 220 Cal.App.4th 1479, 1486.) The United States Supreme Court has held that prior restraints constitute "the most serious and least tolerable infringement on First Amendment rights," and are "'presumptively unconstitutional.'" (*Nebraska Press*

Ass'n v. Stuart (1976) 427 U.S. 539, 558-559. Accord *Vance v. Universal Amusement Co., Inc.*(1980) 445 U.S. 308, 317.) Indeed, "the Supreme Court has never upheld a prior restraint, even when faced with the competing interest of national security or the Sixth Amendment right to a fair trial." (*Procter & Gamble Co. v. Bankers Trust Co.* (6th Cir. 1996) 78 F.3d 219, 227.)

This is true even though the restraining order and injunction are directed to the agencies rather than the press. For example, orders prohibiting trial participants from communicating with the press have been held to be prior restraints when challenged by the press. (*See*, e.g., *Journal Pub. Co. v. Mechem* (10th Cir. 1986) 801 F.2d 1233, 1235-1237 [court order prohibiting the press from interviewing former jurors was a prior restraint]; *CBS Inc. v. Young* (6th Cir. 1975) 522 F.2d 234, 238-239; *Levine v. United States Dist. Court for Cent. Dist.* (9th Cir. 1985) 764 F.2d 590, 595, cert. denied, 476 U.S. 1158 (1986).)

The requested restraining order would have a serious impact limiting the press' right and ability to obtain and report on matters concerning matters of great public concern, which are in our First Amendment and California Constitution (Article I, section (3)(b) [public has a constitutional right of access to the writings of public officials under California Constitution]). The delay in disclosure caused by the improper injunction constitutes irreparable harm and, thus, the injunction should be immediately dissolved. (*See Powers v. City of Richmond* (1995) 10 Cal.4th 85, 118 (George, J. concurring) [CPRA was designed to promote "disclosure of public information at a time when the material still was newsworthy or of particular importance to the plaintiff"]; *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal.4th at 1211 [delaying public access is

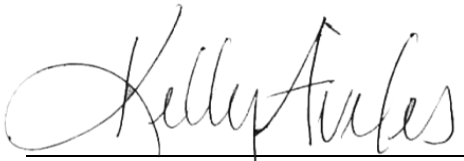
inconsistent with "utilitarian values"]; *Freedom Communications v. Superior Court* (2008) 167 Cal.App.4th 150, 153 ["[e]very moment's continuance of [such an order] amounts to a flagrant, indefensible, and continuing violation of the First Amendment"].)

IV. CONCLUSION

For all of the foregoing reasons, Appellants request that this Court overturn the trial court's ruling, and direct the trial court to deny Respondents' motion for a preliminary injunction.

DATED: May 17, 2021

LAW OFFICES OF KELLY A. AVILES



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CERTIFICATE OF WORD COUNT

I, Kelly A. Aviles, am counsel in this matter and I hereby certify, that this Writ Petition contains 8,878 words, including footnotes, excluding tables, the cover information, the Certificate of Interested Entities or Persons, this Certificate of Word Count, and the attached orders, according to the computer program count used to produce this brief. Therefore, the number of words in the Petition complies with California Rules of Court, Rules 8.204(c)(1) and 8.486(a)(6).

DATED: May 17, 2021

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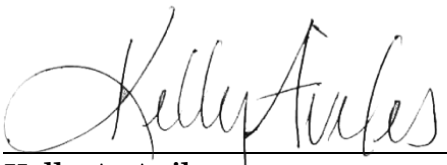

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PROOF OF SERVICE

I reside or work within 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 1502 Foothill Blvd., Suite 103-140, La Verne, CA 91750.

On **May 17, 2021**, I served the foregoing documents described as **APPELLANTS' OPENING BRIEF** on the parties in this action as listed in the attached service list by the following means:

Service List

SEE ATTACHED

Electronic Service

In accordance with Code of Civil Procedure sections 1010.6 and 1013, California Rules of Court, Rule 2.251, an order of the court, and/or an agreement of the parties, I caused the documents to be sent to the person at the email address listed below via email or via an electronic filing provider. After transmission, I did not receive, within a reasonable period of time, any electronic message or other indication that the transmission was unsuccessful.

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

Date: May 17, 2021

/s/ Albert D. Aviles
Albert D. Aviles

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