2ND CIVIL 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 Party 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

APPLICATION FOR PERMISSION TO FILE BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLANTS

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Pursuant to Rule 8.200, subdivision (c) of the California Rules of Court, proposed amici curiae First Amendment Coalition ("FAC"), Reporters Committee for Freedom of the Press ("RCFP") and California News Publishers Association ("CNPA") (collectively, "Amici") respectfully submit the enclosed brief in support of Appellants the Los Angeles Times Communications LLC, The Associated Press, and Scripps NP Operating, LLC, Publisher of the Ventura County Star. This brief offers a unique perspective on the issues presented by this case. For the reasons set forth below, Amici respectfully urgers the Court to reverse the Superior Court's decision in this case.

I. INTEREST OF AMICI

FAC is a California-based nonprofit committed to defending free speech, free press, and open and accountable government at all levels. Founded in 1988, one of FAC's primary purposes is the advancement of the public's right to access information regarding the conduct of the people's business. 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. In addition, FAC continues to pursue access to records available to the public under the California Public Records Act in cases such as *Becerra v. Superior Court (First Amendment Coalition)* (2020) 44 Cal.App.5th 897 and *Sander v. State Bar of California* (2013) 58 Cal.4th 300.

RCFP is an unincorporated nonprofit association 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, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

CNPA is a nonprofit trade association representing more than 800 daily, weekly and student newspapers in California. Its members regularly use the CPRA in reporting on government agencies, public employees and the expenditure of public funds throughout the state. CNPA has appeared as *amicus curiae* in several important public access decisions before this Court, most recently in *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157.

Accordingly, Amici are uniquely situated to provide insight into the California Public Records Act and its importance.

II. ISSUES IN NEED OF FURTHER CLARIFICATION

Amici support the arguments submitted by Appellants, but do not seek to merely repeat those arguments. Rather, Amici's amicus brief presents additional arguments and clarifications that will assist the Court in evaluating the legal issues presented by this difficult case.

This appeal concerns whether autopsy records must be disclosed under the California Public Records Act. Respondents argue that privacy interests should prevent Ventura County from releasing the autopsy records. There is no law that allows Ventura County to refuse to release autopsy records, which are public records disclosable under the California Public Records Act. Indeed, the court below based their injunction on pending legislation, which did not pass.

The enclosed brief sets forth additional authorities and analysis regarding the following issues: (1) there is no legal basis for the injunction, as an injunction cannot be based on proposed legislation and the legislation did not pass before the legislative session ended on September 10, 2021; (2) the injunction did not follow the required procedure and should therefore be dissolved and remanded to the Superior Court; (3) autopsy reports have long been recognized as public records subject to disclosure in California; and (4) there is a strong public interest in disclosure of autopsy reports, which is not clearly outweighed by the asserted privacy interests.

As explained above, Amici are in a unique position to provide this amicus curiae brief because they provide guidance on the California Public Records Act on a daily basis

and, as to RCFP and FAC, are frequently involved in litigation to enforce the Act's numerous provisions. As subject matter experts in the California Public Records Act, Amici welcome the opportunity to provide additional guidance on this extremely complicated set of statutes.

III. CONCLUSION

For the aforementioned reasons, Amici respectfully request that the Court accept the enclosed brief for filing and consideration.

Dated: October 5, 2021

FIRST AMENDMENT COALITION

By: _____

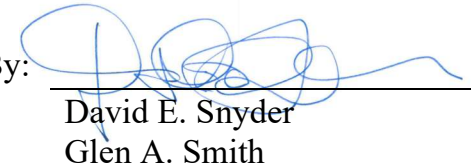
David E. Snyder
Glen A. Smith
Monica N. Price

CERTIFICATE OF COMPLIANCE PURSUANT TO CALIFORNIA RULES OF COURT RULE 8.200(c)(3)

First Amendment Coalition hereby certifies under California Rules of Court, Rule 8.200(c)(3)(A) that no party or counsel for any party authored the proposed brief in whole or in part or made any monetary contributions intended to fund the preparation or submission of the brief. Amicus further certifies under California Rule of Court, Rule 8.200(c)(3)(B) that no person or entity other than Amicus, its members, and its counsel made any monetary contribution intended to find the preparation or submission of the brief.

Dated: October 5, 2021

FIRST AMENDMENT COALITION

By: 

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BRIEF OF AMICI CURIAE FIRST AMENDMENT COALITION, REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, and CALIFORNIA NEWS PUBLISHERS ASSOCIATION IN SUPPORT OF APPELLANTS

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I. INTRODUCTION

The injunction entered below was based on a mirage—proposed legislation that, if enacted, would have changed the law in Respondents' favor. But the bill did not pass, and the Legislature is now out of session for the rest of the year. The Court thus has a simple task before it: vacate an injunction that for the better part of a year has prevented public access to records that under longstanding California law should be public.

This Court can vacate the injunction based solely on the Superior Court's reliance on a statute that never existed and still does not exist. However, the injunction should be vacated for several other reasons as well. First, the Superior Court erred by failing to address the underlying merits of the case—an essential component of the required analysis for a preliminary injunction. Second, even if the lower court had addressed the merits and undertaken the proper weighing of interests, it could not have properly found a likelihood that Respondents would prevail on the merits for a simple reason: Respondents failed to demonstrate a concrete, personal privacy interest in the disputed records because the right they assert does not exist under California law. Finally, even if such a right did exist, Respondents would need to prove with admissible evidence, under Penal Code section 832.7, that it "clearly outweighs" the public interest in disclosure. They failed to provide such evidence.

For all of these reasons, the Court can vacate the injunction and remand without reaching the underlying merits. However, if the Court does analyze the merits it should hold, consistent with California law, that autopsy reports at issue are public records and that the privacy interests asserted by Respondents are insufficient to overcome the clear public interest in disclosure.

II. THE INJUNCTION SHOULD BE DISSOLVED BECAUSE IT WAS IMPROPERLY BASED ON PROPOSED LEGISLATION AND DID NOT ADDRESS, MUCH LESS CONDUCT, THE REQUISITE ANALYSIS FOR A PRELIMINARY INJUNCTION

A. Proposed Legislation is Not a Proper Basis for an Injunction

Injunctions must be based on current law. (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 999 (citations omitted) (*Hunt*) ["The injunction is reviewed under the law in effect at the time the appellate court renders its opinion"].) Neither the Superior Court nor Respondents cited any relevant case law that supports the issuance of a preliminary injunction based on the hope that the Legislature might change the law. (AOB 12.) To the contrary, Appellants state that they "know of no such case" in which an injunction was based on proposed legislation and Respondents cited only non-binding, trial court-level cases from outside California. (AOB at 12, RB at 44-45.) In any event, the bill that formed the basis of the minute order injunction in this case, Assembly Bill 268, did not pass and the Legislative Session is over. Assembly Bill 268 was pulled at the request of its author, Assemblywoman Irwin on June 29, 2021. (Assembly Bill No. 268 (2021-2022 Reg. Sess.); *Official California Legislation Information [Legislative Counsel of California]*, AB-268 Courts: sealing records: autopsy reports; <https://perma.cc/RZ2V-5NMX> [as of Sep. 30, 2021]; California State Senate <https://www.senate.ca.gov/legdeadlines> [as of Sep. 30, 2021].) Even if an injunction could be based on proposed legislation, the legislation is no longer "proposed." A court certainly cannot base an injunction on a withdrawn bill.

Each year, the Legislature considers many bills that never become law. During the 2019-2020 Legislative session, California Legislators proposed 4,848 bills and only 1,242 of these bills actually became law. (Micheli, *By the numbers: The 2019-2020 legislative session* (Oct. 1, 2020) Capitol Weekly <https://perma.cc/GHK2-626D> [as of Sep. 30, 2021].) Permitting courts to base injunctions on legislation that has merely been proposed would put our legal system in a constant state of limbo and would frequently result in years of unnecessary delay, review, and litigation. Injunctions should not stand

or fall on the whims of the Legislature, expiring and requiring remand at the end of each legislative session.

Simply put, proposed legislation is not current law. It has not gone through the rigorous process of amendment, re-readings and negotiations that occur during the legislative process, and it has not been signed by the governor. An injunction based on one day's version of a bill could be rendered invalid by an amendment the very next day. This does not provide the stability that the law and judicial institutions require. In this case, Assembly Bill 268 did not pass during the legislative session, leaving the current law undisturbed. The law in effect at the time of the injunction, which is still in effect today, mandates disclosure of autopsy reports as public records.

B. The Superior Court Did Not Follow the Required Procedure for Issuing an Injunction Because It Did Not Consider the Merits, Much Less the "Likelihood of Success on the Merits"

The trial court erred in issuing the injunction without addressing the merits of the case. "In deciding whether to issue a preliminary injunction, a trial court weighs two interrelated factors: the likelihood the moving party ultimately will prevail on the merits, and the relative interim harm to the parties from the issuance or nonissuance of the injunction." (*Hunt, supra,* 21 Cal.4th at p. 999, citing *Butt v. State of California*, 4 Cal.4th 668, 677-678 (1992) (*Butt*).) This is a "well-established" standard. (*Hunt, supra,* 21 Cal.4th at p. 999.) "The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction." (*Butt, supra,* 4 Cal.4th at p. 678.) Ultimately, a trial court cannot issue an injunction, regardless of the balance of harm, "unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim." (*Hunt, supra,* 21 Cal.4th at p. 999, citing *Butt,* 4 Cal.4th at p. 678; and see *Common Cause v. Bd. of Supervisors* (1989) 49 Cal.3d 432, 438.)

In this case, the Superior Court not only failed to address the merits but expressly noted that it was not doing so, stating in its minute order that it would address the merits only "[i]f the legislature does not enact the Irwin legislation." (AA 764.) Thus, despite

failing to address either of the required prongs of the preliminary-injunction analysis noted above, the court enjoined the County from "releasing the autopsy reports of the civilian victims of the Borderline shooting." Even setting aside the Superior Court's improper reliance on proposed legislation, the injunction should be vacated based on this error alone.

C. The Court Can Dispose of this Case Without Reaching the Privacy and Reverse-CPRA Issues Raised by Respondents

The legal foundation of Respondents' asserted "right to privacy" is elusive and often points to non-binding, non-California decisions discussing both statutory and constitutional privacy rights. Given the lower court's clear procedural errors, however, resolving these issue is not necessary to resolving the instant appeal. (See *Hunt, supra,* 21 Cal.4th at p. 999.)

1. The Court's Review of a Preliminary Injunction is Limited to the Propriety of the Preliminary Relief Granted

Upon reviewing an order granting a preliminary injunction, this Court's analysis "is limited to the propriety of the preliminary relief granted to the plaintiffs." (*Hunt, supra,* 21 Cal.4th at p. 999.) Indeed, it is the appellate court's role "to review the trial court's exercise of its discretion in applying and weighing [the preliminary injunction standard], rather than to exercise discretion in the first instance." (*Right Site Coalition v. Unified School District* (2008) 160 Cal.App.4th 336, 345 (*Right Site*).)

The Superior Court in *Right Site*, like the lower court here, failed to consider the likelihood of success on the merits at all. Instead, it entered an injunction based on the balance-of-harms factor alone. (*Id*. at pp. 338-339.) The Court of Appeal reversed and remanded to the Superior Court to fully address the merits, noting that there is "no need for this court to usurp the function of the trial court by ruling on the merits in the first instance, and that 'an appellate decision discussing the Coalition's likelihood of success on the merits inevitably would influence the outcome of the ultimate trial on the merits.'" (*Id*. at pp. 345-346.)

For this same reason, this Court can dissolve the injunction below without opining on the underlying merits.

2. This Court Avoids Constitutional Questions When Not Necessary to the Resolution of an Appeal

It is well-established that this Court should avoid constitutional questions when they need not be decided to resolve the appeal. (*Santa Clara Cty. Local Transp. Auth. v. Guardino* (1995) 11 Cal.4th 220, 230 [courts "will not decide constitutional questions where other grounds are available and dispositive of the issues of the case" (citations omitted)]). This principle is an application of judicial self-restraint. (*Id*. at pp. 230-231, citing *Northwest Indian Cemetery Prot. Assn*. (1988) 485 U.S. 439, 445.) Here, Appellants' asserted right of access has a constitutional dimension (see California Constitution, article I, section 3, section (b), subdivision (2); AOB 41) and, for that reason too, the Court can decline to reach the merits.

Even when a case has no constitutional dimension, courts should still exercise restraint and only decide issues necessary to the disposition of the case. In *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 845 (*Benach*), Benach sued for breach of a prior settlement regarding job training and violations of the Public Safety Officers Procedural Bill of Rights ("POBR") due to an involuntary demotion. The Supreme Court based its decision on the prior settlement and stated that it was "unnecessary to resolve the parties' alternative arguments," because "appellate courts will not address issues whose resolution is unnecessary to disposition of the appeal." (*Id*. at p. 845, n. 5, citing *Palermo v. Stockton Theatres, Inc*. (1948) 32 Cal.2d 53, 65.)

The Court of Appeal reached a similar conclusion in *Moua*, a legal malpractice case in which a client sued her divorce attorney. (*Moua v. Pittullo, Howington, Barker, Abernathy, LLP* (2014) 228 Cal.App.4th 107.) The Court of Appeal resolved the case in favor of Moua's attorney, stating that the proximate cause of Moua's damages was her failure to accept a settlement, not the attorney's advice. (*Id*. at p. 118.) Citing *Benach*, the Court declined to address a statute of limitations issue because "appellate courts will

not address issues whose resolution is unnecessary to the disposition of the appeal." (*Id*., citing *Benach* at p. 845, n. 5.)

Here, all that is required of the Court of Appeal at this time is a review of the Superior Court's February 9, 2021 minute order preliminary injunction, which is improperly based on pending legislation and did not follow the required two-step analysis for entry of a preliminary injunction and, for those reasons, should be reversed.

III. RESPONDENTS HAVE NOT ESTABLISHED THE EXISTENCE OF A PRIVACY RIGHT SUFFICIENT TO BLOCK ACCESS TO PUBLIC RECORDS

If the Court does reach the underlying merits, it should hold, consistent with California law, that Respondents have failed to identify a personal privacy interest sufficient to block access to the autopsy reports. In fact, on the occasions when the Legislature has considered the public nature of autopsy reports, it has only limited public access to photographs of the deceased, and it has specifically mandated the release of autopsy reports in situations involving a police officer's discharge of a firearm. (See Code Civ. Proc. § 129; Pen. Code § 832.7.) Accordingly, California law is clear that Respondents have not, and cannot, articulate a privacy right sufficient to overcome the public's right of access to the contested autopsy reports.

A. Respondents Must Show a Vested Personal Privacy Interest in the Records in Order to Prevail in a Reverse-CPRA Action

California courts have allowed so-called "reverse-California Public Records Act" (CPRA) actions in situations where the plaintiff has demonstrated a definitive, vested privacy interest in the disputed records, or where the records were protected by a privilege. In *Marken v. Santa Monica School District* (2012) 202 Cal.App.4th 1250 (*Marken*), a public employee wanted to block the release of his own personnel records. The CPRA specifically states that personnel records may be withheld from disclosure under certain circumstances. (See Government Code § 6254(c).) And the court observed that "[t]here is no doubt that Marken, even though a public employee, has a significant privacy interest in the information at issue." (*Marken*, *supra*, 202 Cal.App.4th at

p. 1271.) However, this privacy interest was ultimately not strong enough to outweigh the public's interest in disclosure. (*Id.* at p. 1275.)

Other reverse-CPRA actions follow the same pattern. In *National Conference of Black Mayors v. Chico Community Publishing* (2018) 25 Cal.App.5th 570, some of the disputed records were covered by the attorney-client privilege and were exempt from disclosure under Government Code section 6254, subdivision (k). In *Pasadena Police Officers Assn. v. Superior Court* (2015) 240 Cal.App.4th 268, some of the police officer personnel records were specifically exempt from disclosure under Penal Code section 832.7.[1] (See also *Amgen v. Ca. Correctional Health Care Services* (2020) 47 Cal.App.5th 716, 732 [reverse-CPRA actions are based on constitutional or specific statutory rights].)

As discussed herein, Respondents' reverse-CPRA action depends on the recognition of a newfound privacy right, beyond anything endorsed by the Legislature, the California Supreme Court, the Ninth Circuit, or the U.S. Supreme Court. There can be no probability of success based on law that simply does not exist.

B. Autopsy Reports Have Long Been Recognized as Public Records Subject to Disclosure in California

For several decades, California courts have ruled that autopsy reports are public records, routinely subject to disclosure. (*Walker v. Superior Court* (1957) 155 Cal.App.2d 134; *People v. Williams* (1959) 174 Cal.App.2d 364.) The dates of these cases are significant because in 1968, against this backdrop of public access, the Legislature enacted California Code of Civil Procedure section 129 (section 129), which explicitly limits public access to photographs or video recordings of the deceased taken for or by the coroner. The statute does not otherwise limit public access to official autopsies or coroner's reports. The Legislature is presumed to know the status of existing law when it enacts a new statute. (*Mosser Companies v. San Francisco Rent*

[1] As this Court is aware, that statue was reformed by SB 1421 in 2018.

Stabilization Board (2015) 233 Cal.App.4th 505, 514.) Section 129 was significantly amended in 2013 but the focus remained on photographs and video images.

Section 129 draws a bright line around photographs and subsequent decisions have adhered to it. *Catsouras v. Department of California Highway Patrol* (2010), 181 Cal.App.4th 856, dealt only with photographs of the deceased from a horrific car crash. *Marsh v. County of San Diego* (9th Cir. 2012) 680 F.3d 1148 is similarly limited. The opinion reaches into the legislative history of section 129 where, again, the focus is solely on photographs. (*Id* at p. 1156.) It is safe to assume that the Legislature knew there is more to an autopsy report than the photographs. *National Archives & Records Administration v. Favish* (2003) 541 U.S. 157, decided under the federal Freedom of Information Act (FOIA), 18 U.S.C. § 552 *et seq*., is also limited to photographs. In that case, the contents of the autopsy report were a matter of public record. (See Labaton, *Autopsy on Counsel to the President Points to Suicide* (Aug. 6, 1993) New York Times <https://perma.cc/PWT8-6GXZ> [as of Sep. 30, 2021].)

The California Legislature returned to the issue of public access to autopsy reports in 2018, when it passed Senate Bill 1421, which significantly increased public access to records related to "an incident involving the discharge of a firearm at a person by a police officer…." (Pen. Code § 832.7, subd. (b)(A)(i).) Because the Borderline shooting involved the discharge of an officer's firearm at a person, it qualifies as an incident subject to Penal Code section 832.7. This Court recently ruled that the public access requirements under section 832.7 must be broadly construed. (*Ventura County Deputy Sheriffs' v. County of Ventura* (2021) 61 Cal.App.5th 585, 592-593.) Autopsy reports are among the documents singled out for disclosure under section 832.7(b)(2). To the extent there is any privacy interest in the records, portions of the record may be redacted (but not withheld entirely) only if release of the information "would cause an unwarranted invasion of personal privacy that clearly outweighs the public interest in disclosure." (Pen. Code § 832.7, subds. (b)(5)(c) & (b)(6).) This is a much higher burden of proof than exists under Government Code section 6253, subdivision (c), which Respondents cite, that requires only "an unwarranted invasion of privacy."

Against this backdrop of routine disclosure of autopsy reports, and existing law that specifically and carefully addresses public access to these records, Respondents cannot establish a personal privacy interest in the autopsy reports that is sufficient to support the issuance of the injunction or the maintenance of a reverse-CPRA action.

C. The Cases and Statutes from Other States Cited by Respondents Do Not Establish a Private Right of Action Under California Law

The cases and statues from outside of California that Respondents point to do not establish a personal privacy right in the autopsy reports sufficient to support a reverse-CPRA action. The statutes are not helpful to Respondents' position because the California Legislature has already addressed public access rights in California Code of Civil Procedure section 129 and Penal Code section 832.7. The cases also are based on different statutory frameworks, or are based on legal principles that are foreign to California's Public Records Act jurisprudence.

One case cited by the parties, in particular, demonstrates how these decisions are not germane. The Columbine case, *Bodelson v. Denver Publ. Co.* (Colo. Court of Appeal 2000) 5 P.3d 373 (*Bodelson*), may have some surface appeal because of the roughly analogous facts. But that decision turns on a concept not found in the California Public Records Act or related jurisprudence. Under Colorado law, records may be withheld if they "would cause substantial injury to the public interest." (*Id*. at p. 380.) The "substantial injury" analysis only comes into play in "extraordinary circumstances," and only where the custodian of records petitions to restrict access. (*Id*. at p. 377.) No such "substantial injury to the public interest" analysis exists under California law, and to the extent California courts may consider the public interest in non-disclosure, they must conclude that such an interest "clearly outweighs" the public interest in disclosure—a thumb on the scale of disclosure not present under Colorado law. (See Gov. Code § 6255; *Bodelson*, *supra*, 5 P.3d at p. 379-380.)

D. There is Significant Public Interest in Access to Official Autopsy Reports

Public access to autopsy reports and coroner's records have been essential elements of press coverage of important though tragic events. Appellants' Request for Judicial Notice contains many examples of relevant articles. An exhaustive investigative report by ProPublica, a Pulitzer prize-winning online news organization, also demonstrates the importance of public access to these records. The series, parts of which were done in collaboration with PBS "Frontline" and National Public Radio (NPR), was published in 2011 under the headline "Post Mortem, Death Investigation in America." (ProPublica <https://perma.cc/8RYB-BTHX> [as of Sep. 30, 2021].) The multi-part series concludes that "[a] year-long investigation into the nation's 2,300 coroner and medical examiner offices uncovered a deeply dysfunctional system that quite literally buries its mistakes." *Ibid.*

Allowing families of the deceased to block access to these important records would have enormous implications. Deaths in custody or at the hands of the police, mass shootings, industrial accidents, airplane crashes and other disasters involving public transportation, overdose deaths or those caused by drunk driving, deaths of individuals who were, or should have been, wards of the state and those caused by medical malpractice or domestic abuse are all matters of legitimate public concern. The privacy rights asserted by Respondents—which have no basis in California law—do not and cannot outweigh this strong public interest in disclosure.

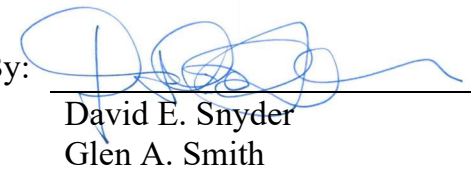
IV. CONCLUSION

The Court should vacate the Superior Court's injunction because the lower court did not follow the required analysis for granting a preliminary injunction, instead basing the injunction on a bill that did not become law. Should the Court reach the merits, it should hold that under California law, autopsy reports are public records and the Respondent's asserted privacy rights do not clearly outweigh the public interest in

disclosure. For the foregoing reasons, the Court should reverse the Superior Court's injunction.

Dated: October 5, 2021

FIRST AMENDMENT COALITION

By: 

David E. Snyder
Glen A. Smith
Monica N. Price

CERTIFICATE OF COMPLIANCE PURSUANT TO CALIFORNIA RULES OF COURT RULE 8.204(c)(1)

Pursuant to California Rules of Court Rule 8.204(c)(1) I certify that according to Microsoft Word the attached brief is proportionally spaced, has a typeface of 13 points and contains 3,393 words.

Dated: October 5, 2021

FIRST AMENDMENT COALITION

By: _____

David E. Snyder
Glen A. Smith
Monica N. Price

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF MARIN

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Marin, State of California. My business address is 534 4th Street, Suite B, San Rafael, CA 94901-3334.

On October 5, 2021, I served true copies of the following document(s) described as **APPLICATION FOR PERMISSION TO FILE BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLANTS** on the interested parties in this action as follows:

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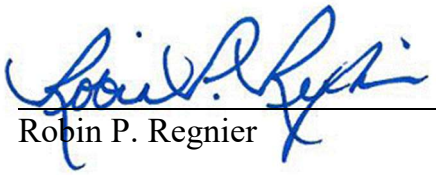
☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling), I provided the document(s) listed above electronically on the TRUE FILING Website to the parties on the Service List maintained on the TRUE FILING Website for this case, or on the attached Service List. TRUE FILING is the on-line e-service provider designated in this case. Participants in the case who are not registered TRUE FILING users will be served by mail or by other means permitted by the court rules.

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

Executed on October 5, 2021, at East Palo Alto, California.



Robin P. Regnier