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June 17, 2022

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

Re: Letter in Support of Petition for Review
Kinney v. Superior Court, No. S274622

Dear Chief Justice Cantil-Sakauye and Associate Justices,

Pursuant to Rule 8.500(g) of the California Rules of Court, the First Amendment Coalition (“FAC”) submits this letter urging the Court to grant review of the decision in *Kinney v. Superior Court* (2022) 77 Cal.App.5th 168, which misstates the law regarding public access to historical arrest data and undermines government transparency and accountability. Joining this letter are Bay Area News Group, California Black Media, California News Publishers Association, Californians Aware, the Center for Investigative Reporting (d/b/a “Reveal”), Ethnic Media Services, Los Angeles Press Club, Northern California Chapter of the Society of Professional Journalists, Reporters Committee for Freedom of the Press, and Adjunct Professor Susan E. Seager with the Press Freedom Project at the University of California, Irvine, School of Law Intellectual Property Clinic.

I. Interests of Amici Curiae

FAC is a California non-profit corporation dedicated to freedom of speech and governmental transparency. FAC provides legal information and consultations to journalists, academics, bloggers, and ordinary citizens regarding access rights under the Freedom of Information Act and California’s various open government laws. FAC files amicus briefs in important appeals, both in state and federal courts, including the United States Supreme Court. In addition, FAC files litigation to defend and expand the rights of the public and press under access laws, including the California Public Records Act (“CPRA”). (See, e.g., *Becerra v. Superior Court (First Amendment Coalition)* (2020) 44 Cal.App.5th 897.)

Bay Area News Group is a media company whose portfolio consists of regional news and advertising products, as well as other well-positioned and growing digital businesses. Bay Area News Group is the single leading source of news and information for the majority of communities throughout the San Francisco Bay Area, with publications including the Mercury News and East Bay Times.

California Black Media is a convener and trusted advocate for more than 30 independent Black-owned-and-operated news publishers, multimedia platforms and broadcasters across California. Our programs are designed to support the work and strengthen the editorial capacity of our local media partners. We provide impartial, fact-based, and data-focused news coverage

to our media partners, covering California politics, governmental affairs and policies that impact the overall health and quality of life of Black Californians.

California News Publishers Association (“CNPA”) is a nonprofit trade association representing more than 800 daily, weekly, digital, and student news publications in California. Its members regularly use the California Public Records Act 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 over the years, including *Sierra Club v. Superior Court*, 57 Cal.4th 157 (2013).

Californians Aware (“CalAware”) is a nonpartisan, non-profit advocacy group with a board comprised of journalists, current and former government officers and employees, and public interest advocates. Its mission is to foster the improvement of, compliance with, and public understanding of open government laws throughout the State of California.

The Center for Investigative Reporting, Inc. (d/b/a “Reveal”), founded in 1977, is the nation’s oldest nonprofit investigative newsroom. Reveal produces investigative journalism for its website <https://www.revealnews.org>, the Reveal national public radio show and podcast, and various documentary projects. Reveal often works in collaboration with other newsrooms across the country.

Ethnic Media Services works to enhance the capacity of ethnic news outlets to inform and engage diverse audiences on broader public issues with the goal of building a more inclusive participatory democracy. Ethnic Media Services aims to build effective advocacy by, for and with ethnic media by convening cross-cultural roundtables, organizing professional training and fellowships, producing, translating and syndicating multilingual, original news stories, and developing communications projects with underserved groups to deepen their engagement with and amplify their voice in the public realm.

Los Angeles Press Club is a 501(c)(3) nonprofit with more than 1,000 member journalists in Southern California. The organization has operated since 1913 to support, promote and defend quality journalism.

The Northern California Chapter of the Society of Professional Journalists (“SPJ NorCal”) is dedicated to improving and protecting journalism. It is a Chapter of the national Society of Professional Journalists, the nation’s most broad-based journalism organization. Founded in 1909 as Sigma Delta Chi, the Society of Professional Journalists promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists, and protects the First Amendment guarantees of freedom of speech and press. SPJ NorCal has a Freedom of Information Committee of journalists and First Amendment lawyers, which assists in its free speech and government transparency advocacy. Also, in collaboration with its Freedom of Information Committee, it hosts the annual James Madison Freedom of Information Awards and offers training to journalists on free press and access issues.

The Reporters Committee for Freedom of the Press 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.

Professor Seager leads the Press Freedom Project at the University of California, Irvine, School of Law, which is a law student clinical program that provides free legal services to independent journalists and government transparency groups. The Press Freedom Project focuses on using the California Public Records Act to obtain police records through requests and litigation on behalf of journalists, who use the records to inform the public about police arrests, shootings, and misconduct.

II. Why Review Should be Granted

This court should grant review to clarify the legal standard for release of arrest data under the CPRA. (Gov. Code, § 6254, subd. (f).) As stated in the Petition for Review, the “contemporaneous” standard articulated by the Court of Appeal is vague and departs from both the language and spirit of the CPRA and California Constitution, and the decision at issue therefore confuses the law. This letter emphasizes why review should be granted due to the importance of this data for reporting, research, and public policy analysis and ultimately the accountability of government to the people guaranteed by the CPRA.

“The Legislature enacted [the CPRA] ... to give the public access to information in possession of public agencies in furtherance of the notion that government should be accountable for its actions and, in order to verify accountability, individuals must have access to government files.” (*Caldecott v. Superior Court* (2015) 243 Cal.App.4th 212, citing *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 750.) “The public benefit is the scrutiny of the records by the public.” (*City of Los Angeles v. Metropolitan Water Dist. of Southern California* (2019) 42 Cal.App.5th 290, 306.) Transparency “benefits law enforcement and the communities they serve by helping build trust.” (*Becerra v. Superior Court*, 44 Cal.App.5th 897, 920, citing legislative history of Senate Bill 1421 (2018).) In addition, “[g]iving the public, journalists, and elected officials access to information about actions by law enforcement will promote better policies and procedures that protect everyone.” (*Id.*)

Access to arrest data is essential for government transparency and accountability. The data helps the public understand how law enforcement interacts with members of the public and facilitates reporting on these interactions, which in turn is essential to fully informed debate on the activities and priorities of law enforcement agencies as revealed by facts on the ground. Painting an accurate picture of the public's interactions with the criminal justice system requires information regarding initial contacts with law enforcement, arrests, charges, and case outcomes. Limiting access to one of these data points and permitting access to others hampers the public's ability to assess whether policies are working correctly and to ask questions about those policies. Removing access to arrest data prevents the press, researchers, and the

broader public from understanding the whole picture of law enforcement activity, in which the public has a compelling interest in transparency and accountability.

Indeed, many stories would not be possible without access to retrospective arrest data over time. For example, a Los Angeles Times analysis of arrest data in Los Angeles revealed that 1 in 6 people arrested in 2016 were homeless, up from 1 in 10 people arrested in 2011. The most common reason for an arrest was failure to appear in court for an unpaid citation. (Gale Holland and Christine Zhang, [Huge increase in arrests of homeless in L.A. – but mostly for minor offenses](#), Los Angeles Times (Feb. 4, 2018).) Similarly, arrest data showed that over half of the people arrested by police in 2017 in Portland, Oregon were homeless, despite being less than 3 percent of the overall population. (Melissa Lewis, [Handcuffed and Unhoused](#), Reveal (Dec. 18, 2021).) The analysis also revealed that “440 homeless people arrested last year were arrested more than 20 times since 1996.” (Rebecca Woolington and Melissa Lewis, [Portland homeless accounted for majority of police arrests in 2017](#), analysis finds, The Oregonian (Jun. 27, 2018).) The names of the arrested individuals are key data points to connect repeated arrests.¹

Court documents and information about which charges are actually filed only tell part of the story. Arrest data often reflects which cases are never charged and can reveal a disconnect between law enforcement officers and prosecutors. Arrest data from one San Francisco neighborhood shows that in a 9-month period in 2021, 337 people were arrested for selling drugs or possession with intent to sell. 85 of those people were arrested multiple times. (Andy Picon, [S.F. police data shows repeated release of suspected drug dealers in the Tenderloin](#), San Francisco Chronicle (Dec. 30, 2021).) Arrest data can also show how many people are arrested for homicides in various counties. The data can reveal important information about departments that make comparatively few arrests. (Nigel Duara, [California crime story: The numbers, explained](#), Cal Matters (Feb. 3, 2022).) It would be difficult if not impossible to trace these cases through the court system without arrest data.

Arrest data informs public policy research as well. For instance, comparing traffic stops and arrests can reveal important information regarding overrepresentation of people of color in arrests. A study on Proposition 47, which reclassified a number of offenses from felonies to misdemeanors, noted that its passage was associated with notable decreases in racial and ethnic disparities in arrests in California. (Lofstorm et. al, [Proposition 47's Impact on Racial Disparity in Criminal Justice Outcomes](#), Public Policy Institute of California (June 2020).) Another study noted that black people are overrepresented both in traffic stops that lead to no warning and traffic stops that lead to an arrest. (Lofstorm et. al, [Racial Disparities in Law Enforcement Stops](#), Public Policy Institute of California (Oct. 2021).) Without access to arrest data, researchers would have been unable to conduct this vital public policy research.

Arrest data provides indispensable context to stories and can lead to policy change. BuzzFeed News covered the story of a high school student who was arrested and sent to jail for

¹ Although important, the anonymized stop data contemplated by the Racial Identity and Profiling Act, Gov. Code, § 12525.5, subd. (d), cannot yield this kind of granular transparency and accountability in reporting on law enforcement.

truancy in Texas. As part of the story, reporters analyzed arrest data in the most populous counties and found that “more than 1,100 students had been ordered to jail for truancy in the past three years.” (Kendall Taggart and Alex Campbell, [She Skipped School And Couldn't Pay Her Fines – So Texas Sent Her To Jail](#), BuzzFeed News (Apr. 22, 2015).) A few months later, the Texas legislature amended the law so that truancy was no longer a criminal offense. The arrest statistics compiled for the first time by BuzzFeed News were read into the record on the Senate floor. (Alex Campbell and Kendall Taggart, [Texas Governor Signs Law To Stop Jailing Kids For Skipping School](#), BuzzFeed News (June 19, 2015); citing House Bill 2398 (2015).) Without access to arrest data, these compelling statistics would not have entered the public’s awareness and the law might not have changed.

While there may be legitimate concerns about how arrest data is ultimately used, prohibiting public access to other than “contemporaneous” arrest data is not the solution. Indeed, the limitation to “contemporaneous” arrest data would not stop, for example, data harvesters from collecting the data on a rolling basis and selling it back to the public at a profit. But it would preclude small news outfits, researchers, and ordinary members of the public from utilizing the CPRA to obtain access to public records essential to reporting, analysis, and robust debate about law enforcement activities.

III. Conclusion

The California Constitution and the CPRA mandate transparency and access to public records unless the records fall under a specific exemption to disclosure. There is simply no exemption that permits withholding of non-contemporaneous arrest data. Secrecy regarding arrest data is antithetical to an informed democracy and the Court of Appeal’s decision here restricts the press, academics, and the broader public from learning about this vital aspect of the criminal justice system. We respectfully urge the California Supreme Court to grant review in this case to protect government transparency in arrests.

Very truly yours,

FIRST AMENDMENT COALITION



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cc: All Counsel via TrueFiling