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VIA ELECTRONIC MAIL ONLY

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Re: Response to Request of Sheriff Christina Corpus to Close Removal Hearing

Dear President Canepa, Vice President Corzo, and Supervisors Speier, Mueller, and Gauthier:

I am writing on behalf of the First Amendment Coalition ("FAC") to urge San Mateo County to overrule Sheriff Christina Corpus's attempt to close her entire removal hearing to the press and public. Under Measure A's authority, the County is scheduled to commence a hearing on August 18 on whether the Sheriff should be removed from office ("Removal Hearing"). The Sheriff has asked the County to hold the Removal Hearing entirely behind closed doors and in total secrecy. The County should decline. Barring the press and public from the Removal Hearing as Sheriff Corpus has requested would violate the First Amendment right of access to public proceedings, undermine a panoply of compelling public interests in administering the Removal Hearing transparently, and needlessly shut San Mateo citizens out of a key phase of a process they voted to begin in Measure A. The County should instead protect the people's interests by making the Removal Hearing public, as the First Amendment right of access requires.[1]

The U.S. Supreme Court and the California Supreme Court have both long held that the press and the public have a First Amendment right of access to certain public records and proceedings. (E.g., *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1207-12, 1226 [civil court records and proceedings]; *Richmond Newspapers, Inc. v. Virginia*

[1] Sheriff Corpus has also waived privilege-based justifications for closure by filing numerous documents related to the removal process and the allegations against her on a public court docket. (See *Seahaus La Jolla Owners Assn. v. Superior Court* (1994) 224 Cal.App.4th 754, 770 [attorney-client privilege waived by disclosure to third party without reasonable expectation of confidentiality]; *Wilson v. Superior Court* (1976) 63 Cal.App.3d 825, 830 [taxpayer privilege waived if privileged material is placed in issue]; cf. Evid. Code § 912(a) [attorney-client privilege "waived if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone"].)

(1980) 448 U.S. 555 [criminal trials]; *Press-Enterprise Co. v. Superior Court* ("*Press-Enterprise I*") (1984) 464 U.S. 501 [*voir dire* in criminal cases]; *Press-Enterprise Co. v. Superior Court* ("*Press-Enterprise II*") (1986) 478 U.S. 1 [preliminary hearings in criminal cases].)

The right of access advances the "core" First Amendment objective of assuring "freedom of communication on matters relating to the functioning of government." (*Richmond Newspapers, Inc.*, *supra*, 448 U.S. at p. 575; see also *Globe Newspaper Co. v. Superior Court* (1982) 457 U.S. 596, 604 ["Underlying the First Amendment right of access to criminal trials is the common understanding that a major purpose of that Amendment was to protect the free discussion of governmental affairs."].) Further, as Justices Brennan and Marshall explained in *Richmond Newspapers*, the First Amendment "embodies more than a commitment to free expression and communicative interchange for their own sakes; it has a structural role to play in securing and fostering our republican system of self-government." (*Richmond Newspapers, Inc.*, *supra*, 448 U.S. at p. 587 [Brennan, J., Marshall, J., concurring].)

"Implicit in this structural role" is not only the principle that debate on public issues should be "uninhibited, robust, and wide open," but also "the antecedent assumption that valuable public debate – as well as other civic behavior – must be informed." (*Ibid*. [internal citations omitted].) The right of access furthers these First Amendment principles and objectives as well. It also effectuates a first principle of government that the California Supreme Court articulated more than a century ago:

> 'In this country it is a first principle that the people have the right to know what is done in their courts. The old theory of government which invested royalty with an assumed perfection, precluding the possibility of wrong and denying the right to discuss its conduct of public affairs, is opposed to the genius of our institutions in which the sovereign will of the people is the paramount idea; and the greatest publicity to the acts of those holding positions of public trust, and the greatest freedom in discussion of the proceedings of public tribunals that is consistent with truth and decency are regarded as essential to the public welfare.'

(*Cal. ex rel. Lockyer v. Safeway, Inc.* (C.D. Cal. 2005) 355 F.Supp.2d 1111, 1124-25 [quoting *In re Shortridge* (1893) 99 Cal.526, 530-31].)[2]

[2] The First Amendment right of access is not limited to the news media, but the news media plays an important role in effectuating it. "[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations." (*Cox Broad. Corp. v. Cohn* (1975) 420 U.S. 469, 490-91.) Indeed, "Without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally. With respect to judicial proceedings in particular, the function of the press serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice." (*Id.* at pp. 491-92.)

The First Amendment right of access applies to records and proceedings when "experience and logic" dictate that it should. (*Press-Enterprise II*, *supra*, 478 U.S. at pp. 8-10.)[3] In making this experience and logic assessment, courts consider (1) "whether the place and process have historically been open to the press and general public" because a tradition of access implies the favorable judgement of experience, *id.* at pp. 7-8, and (2) whether the right of access plays a "significant positive role in the functioning of the particular process in question," *id.* at p. 8. Under the experience and logic test, the First Amendment right of access plainly applies to Sheriff Corpus's Removal Hearing and forecloses her request for blanket secrecy.

First, experience strongly supports recognizing a First Amendment right of access to the Removal Hearing. It is possible that no court has yet specifically addressed whether the First Amendment right of access applies to the precise kind of Removal Hearing at issue here, which appears to be of relatively recent vintage. (See *Penrod v. County of San Bernardino* (2005) 126 Cal.App.4th 185, 192 [considering and approving a similar Board of Supervisors-initiated proceeding similar to the one created by Measure A].) However, for *Press-Enterprise* purposes, a history of openness in an analogous type of proceeding is sufficient. (See *N.Y. Civ. Liberties Union*, *supra*, 652 F.3d at p. 260.) As the Second Circuit Court of Appeals explained in *New York Civil Liberties Union*, the "experience" analysis "looks not to the formal description of the forum" but rather to "the historical 'experience in that *type or kind*' " of record or proceeding. (*Id.* at p. 261 [internal citation omitted, emphasis in original]; *Detroit Free Press*, *supra*, 303 F.3d at p. 696 ["'The distinction between trials and other official proceedings is not necessarily dispositive, or even important, in evaluating First Amendment issues.' *Press-Enterprise I*, *supra*, 464 U.S. at p. 516 (Stevens, J., concurring). Drawing sharp lines between administrative and judicial proceedings would allow the legislature to artfully craft information out of the public eye."].)

Here, a very closely related type of proceeding for removing officials such as an elected sheriff – the grand jury-initiated removal proceeding created by Government Code section 3060 *et seq.* – has existed in California "[s]ince at least 1872." (*People v. Smith* (2024) 100 Cal. App.

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[3] Courts have applied the experience and logic test and recognized a First Amendment right of access in a wide array of circumstances outside of judicial proceedings. (See, e.g., *Index Newspapers, LLC v. U.S. Marshal Serv.* (9th Cir. 2020) 977 F.3d 817, 829-34 [applying experience and logic test to recognize First Amendment right of access to public protests and law enforcement's response on public streets and sidewalks]; *Leigh v. Salazar* (9th Cir. 2012) 677 F.3d 892, 897-901 [holding *Press-Enterprise* experience and logic test applied to photojournalist's request for access to BLM "horse gather" and remanding for further analysis]; *Cal. First Amendment Coal. v. Woodford* (9th Cir. 2002) 299 F.3d 868, 875-77 [applying experience and logic test to recognize First Amendment right of access to executions]; *Cal-Almond, Inc. v. U.S. Dep't of Agric.* (9th Cir. 1992) 960 F.2d 105, 109 [applying experience and logic test to recognize First Amendment right of access to agriculture department's voter lists]; *Detroit Free Press v. Ashcroft* (6th Cir. 2002) 303 F.3d 681, 694-705 [applying experience and logic test to recognize First Amendment right of access to administrative deportation hearings]; *Del. Coalition for Open Gov't v. Strine* (3d Cir. 2013) 733 F.3d 510, 514-21 [applying experience and logic test to recognize First Amendment right of access to Delaware government-sponsored arbitration proceedings]; *N.Y. Civ. Liberties Union v. N.Y. City Transit Auth.* (2d Cir. 2011) 652 F.3d 247, 256-266 [applying experience and logic test to recognize First Amendment right of access to quasi-judicial New York City Transit Authority Transit Adjudication Bureau proceedings].)

5th 741, 750.) As the Court of Appeal explained in *Smith*, which concerned proceedings to remove an elected sheriff:

> Since at least 1872, California law has provided a process for removing local officials for willful or corrupt misconduct in office. (Pen. Code, former §§ 758–772.) This process, which is now in Government Code section 3060 *et seq.*, borrows many elements of criminal procedure. It starts with an "accusation" issued by a grand jury against a district, county, or city officer "for willful or corrupt misconduct in office." (Gov. Code, § 3060.) Unless against the district attorney, the accusation is delivered to the district attorney (*id.*, § 3062), who serves it on the officer charged (*id.*, § 3063), and the officer is required to appear in court to answer the accusation (*id.*, § 3064). If the officer pleads guilty or refuses to answer, the trial court renders a "judgment of conviction" against the officer. (*Id*, § 3069.) If the officer denies the charges, there is a "trial . . . by a jury," which is "conducted in all respects in the same manner as the trial of an indictment." (*Id.*, § 3070.) Finally, "[u]pon a conviction" by the jury, the court pronounces judgment that the officer be removed from office. (*Id.*, § 3072.)

Importantly, as the Court of Appeal in *Smith* stated, a section 3060 *et seq.* removal proceeding must be "*conducted in all respects in the same manner as the trial of an indictment*" – and thus must be just as public as any criminal judicial proceeding. (*Id.*, § 3070 [emphasis added]; *see also* Code Civ. Proc., § 124 [with exceptions not at issue here, "the sittings of every court shall be public"].) The at least 150-year history of publicity in section 3060 *et seq.* removal proceedings and the similarity between the section 3060 *et seq.* procedure and the Measure A Removal Hearing procedure make clear that "experience" supports a First Amendment right of access here. (See also *Del. Coalition for Open Gov't*, *supra*, 733 F.3d at pp. 514-21 [recognizing First Amendment right of access to Delaware government-sponsored arbitration proceedings].)

The quasi-judicial nature of the Removal Hearing process approved by the Board of Supervisors under Measure A further confirms that the "experience" prong favors recognizing a right of access. (E.g., *N.Y. Civ. Liberties Union*, *supra*, 652 F.3d at p. 260; *Detroit Free Press*, *supra*, 303 F.3d at p. 695.) As the Sixth Circuit Court of Appeals put it, like a deportation hearing, the Removal Hearing at issue here " 'walk[s], talk[s], and squawk[s]' very much like a judicial proceeding" – a type of proceeding that has been presumptively open for centuries and is at the heart of the First Amendment right of access. (See *id.* at p. 702 [internal citation omitted].) The long history of openness in state and federal judicial proceedings thus tilts the "experience" analysis further in favor of recognizing a First Amendment right of access here as well. (See *ibid.*)

Second, logic supports recognizing a First Amendment right of access to the County's upcoming Removal Hearing as well. The California Supreme Court has long recognized that, as a general matter, "Openness in government is essential to the functioning of a democracy." (*International Federation of Professional and Technical Engineers, Local 21 v. Superior Court* ("*IFPTE*") (2007) 42 Cal.4th 319, 328.) Further, openness in the Removal Hearing is exceptionally important because the Removal Hearing is intended to adjudicate charges against

and resolve whether to remove from office a high-ranking elected official and law enforcement leader. (See *Comm'n on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278, 297 ["Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. In order to maintain public trust in its police department, the public must be kept fully informed of the activities of its peace officers. . . ."]; *McClatchy Newspapers, Inc. v. Superior Court* (1987) 189 Cal.App.3d 961, [stating that the public's "interest in overseeing the conduct of the prosecutor, the police, and the judiciary is strong indeed"].)

The quasi-judicial nature of the Removal Hearing tilts the logic analysis further in favor of recognizing a First Amendment right of access. (*N.Y. Civ. Liberties Union*, *supra*, 652 F.3d at pp. 263-64.) In quasi-judicial proceedings, "individuals confront the power of their government to judge and penalize their actions." (*Ibid.*) It is therefore particularly important in these proceedings that alleged "corruption, incompetence, inefficiency, prejudice, and favoritism," and any other sort of alleged impropriety or error, be brought to light and addressed rather than concealed – and thus that these proceedings take place in public to the maximum extent possible. (See *Estate of Hearst* (1977) 67 Cal.App.3d 777, 782 ["If public court business is conducted in private, it becomes impossible to expose corruption, incompetence, inefficiency, prejudice, and favoritism."].)

Also, at Sheriff Corpus's Removal Hearing, as in traditional judicial proceedings, recognizing a First Amendment right of access would promote "the appearance of justice," which is "best provided for by allowing people to observe it." (*Richmond Newspapers, Inc.*, *supra*, 448 U.S. at pp. 571-72.) " 'People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.' " (*Press-Enterprise I*, *supra*, 464 U.S. at p. 509 [quoting *Richmond Newspapers, Inc.*, *supra*, 448 U.S. at p. 572].)

Confirming the logic of access, at least one County Supervisor and Sheriff Corpus herself have acknowledged the importance of transparency in Sheriff Corpus's removal proceedings in statements reported by the news media. (See, e.g., Olivia Herbert, *Bay Area county votes to remove first female sheriff from office, citing misconduct* (S.F. Gate June 24, 2025), https://www.sfgate.com/bayarea/article/bay-area-county-removes-female-sheriff-20392228.php.) The press itself has also highlighted the compelling public interest in access. (E.g., Editorial Board, *Editorial: Removal of Sheriff Corpus rife with secrecy, lacks due process* (San Jose Mercury News July 8, 2025), https://www.mercurynews.com/2025/06/27/editorial-removal-sheriff-corpus-secrecy-lacks-due-process-abuse-power-star-chamber/.)[4]

[4] While we will not attempt to restate all of the allegations against Sheriff Corpus here, we note that they are substantial enough, and their subject is high-ranking enough, to tilt the public interest scales even further in favor of access under a line of Public Records Act cases regarding access to records of alleged official misconduct. (See *Am. Fedn. of State, Cnty. and Municipal Employees v. Regents of Univ. of Cal.* ("*AFSCME*") (1978) 80 Cal.App.3d 913, 918; *Bakersfield City Sch. Dist. v. Superior Court* ("*Bakersfield*") (2004) 118 Cal.App.4th 1041, 1046; *BRV, Inc. v. Superior Court* (2006)143 Cal.App.4th 742, 759.) The allegations here have been investigated, considered, and acted upon by the County Board of Supervisors and others, including a grand jury, Keker, Van Nest & Peters LLP, Retired Santa Clara County Superior Court Judge LaDoris Cordell, and Chief San Mateo County Probation Officer John Keene, confirming their substantiality under this case law.

Because the First Amendment right of access applies to Sheriff Corpus's Removal Hearing, blanket sealing or closure is prohibited and Sheriff Corpus's request for blanket closure should be denied. In the words of our Supreme Court, when the First Amendment right of access applies, closure is permitted only in "the rarest of circumstances" – and then only to the limited extent necessary to serve overriding interests.[5] (*NBC Subsidiary, supra*, 20 Cal.4th at p. 1226.) Here, however, Sheriff Corpus has offered no lawful justification for *any* sealing or closure, let alone the extreme, all-encompassing sealing and closure she has requested.

Further, because the First Amendment right of access applies, Sheriff Corpus must make any further argument for closure in public, and must provide public notice and an opportunity for the public to be heard on the matter. (*Ibid.*) Further, to prevail on a closure request, she must prove, and the Hearing Officer must agree in specific, on-the-record findings, that "(1) closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect the compelling interest." (*Phoenix Newspapers, Inc. v. U.S. District Court* (9th Cir. 1998) 156 F.3d 940, 949.) Any sealing or closure must also be narrowly tailored. (See *Press-Enterprise II*, *supra*, 478 U.S. at p. 14 [emphasis added].)

The content of Sheriff Corpus's objection to public access confirms that the objection should be overruled. The objection consists of a single, conclusory paragraph and cites two statutory provisions: Penal Code section 832.7 and Government Code section 6254(f). However, neither justifies sealing or closure. Penal Code section 832.7 does not apply to County records regarding Sheriff Corpus. (See *Essick v. County of Sonoma* (2022) 80 Cal.App.5th 562, 569-75.) And, as to the Government Code provision (section 6254(f) no longer exists; it has been recodified and now appears in Government Code section 7923.600 instead), it does not justify closing the Removal Hearing by its own terms, nor can it justify sealing or closure given the First Amendment right of and public interest in access to the Removal Hearing.[6]

Also, by providing that proceedings to remove an elected official must be open in the same manner as a trial (Gov. Code, § 3070), the Legislature manifested its intent that proceedings to remove an elected sheriff must be open to the public, notwithstanding any

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[5] "[A] necessary corollary" of these rights of access, as the Ninth Circuit recently explicitly recognized, "is a right to timely access." (*Courthouse News Service v. Planet* (9th Cir. 2020) 947 F.3d 581, 594.) Reporting on judicial records "must be timely to be newsworthy and to allow for ample and meaningful public discussion regarding the functioning of our nation's court systems." (*Ibid*.) "In other words, the public interest in obtaining news is an interest in obtaining contemporaneous news." (*Ibid.*) "The newsworthiness of a particular story is often fleeting. To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression." (*Ibid*. [cleaned up].)

[6] We note that, even in the Public Records Act context, Sheriff Corpus does not have the right to compel the County to exercise its discretion to assert the records of investigation exemption she cites. (See *Amgen Inc. v. California Correctional Health Care Services* (2020) 47 Cal.App.5th 716, 732.) It is not conceded that the investigatory records exemption would apply to records related to Sheriff Corpus's removal.

confidentiality protections that might apply to administrative proceedings for discipline or termination of line officers. To hold otherwise would create unnecessary conflict between statutes that the Legislature could not have intended. (*Elk Hills Power, LLC v. Board of Equalization* (2013) 57 Cal.4th 593, 610 [noting "[every] statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect"] [brackets in original].) More fundamentally, neither statute cited by Sheriff Corpus can override the First Amendment right of access that precludes blanket sealing or closure, especially given the total absence of evidence demonstrating a need for either.

Because the First Amendment right of access applies and Sheriff Corpus has offered no constitutionally sufficient justification for sealing or closure, we respectfully – but firmly – request that the County overrule Sheriff Corpus's objection and confirm her Removal Hearing will be public **within seven (7) days**. If the County does not, FAC reserves the right to file a lawsuit seeking an injunction requiring that the Removal Hearing be made public under, *inter alia*, the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. section 1983. Such a lawsuit could expose the County to liability for attorney's fees and costs under 42 U.S.C. section 1988. This could result in substantial liability for the County. For example, in *Courthouse News Serv. v. Planet* (C.D. Cal. Jan 24, 2022) Case No. 2:11-cv-08083-DMG-FFM, 2022 U.S. Dist. LEXIS 104376, at *9, a relatively recent federal case brought to enforce the news media's and the public's First Amendment right of access to official proceedings, the plaintiffs were awarded a total of $2,833,735.04 in attorneys' fees and $52,893.98 in costs due to the protracted nature of the litigation. We hope that, especially given the County's and Sheriff Corpus's stated interest in moving forward as transparently as possible, litigation will not be necessary.

If you wish to discuss this letter, please contact me at afield@firstamendmentcoalition.org or FAC Legal Director David Loy at dloy@firstamendmentcoalition.org. Thank you for your attention to this matter.

Very truly yours,

FIRST AMENDMENT COALITION

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