

March 26, 2015

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for purposes of identification.*

Acting Presiding Justice Jeffrey W. Johnson  
and Associate Justices  
Court of Appeal of the State of California  
Second Appellate District, Division One  
300 S. Spring Street  
2nd Floor, North Tower  
Los Angeles CA 90013

Re: *Pasadena Police Officers Ass'n v. L.A. Cnty. Superior Court*,  
Case No. B 260332

**Application for Leave to File Amicus Letter Brief and Amicus Letter  
Brief in Support of Intervenor Los Angeles Times Corporation LLC's  
Emergency Relief Request**

To the Honorable Presiding Justice and Associate Justices:

The Reporters Committee for Freedom of the Press (the “Reporters Committee”); the Associated Press; the California Newspaper Publishers Association; Californians Aware; Dow Jones & Company, Inc.; the First Amendment Coalition; Hearst Corporation; The New York Times Company; the Pasadena Star-News, a publication of the Los Angeles News Group; The Sacramento Bee; and The Washington Post (collectively, “*amici*”) seek leave to file this letter brief in support of the Los Angeles Times Corporation LLC (“L.A. Times”) and the Cross-Petitioners’ emergency relief request, to address the serious First Amendment implications of the Court’s sealing and prior restraint order, dated March 25, 2015.

The order, which sealed the Petitioners’ reply brief—filed nine days prior on the public docket—and directed the L.A. Times to return the unredacted brief to the Clerk of Court, amounts to an unconstitutional prior restraint because it dictates what information the L.A. Times may possess in the course of its reporting. *Amici* respectfully urge the Court to vacate the March 25 order.

No party or counsel for any party, other than counsel for *amici*, has authored this letter in whole or in part or funded the preparation of this letter brief.

**Interests of *Amici***

The Reporters Committee is an association of reporters and editors dedicated to defending and preserving the First Amendment’s guarantee of a free press. The Reporters Committee has provided representation, guidance,

and research in First Amendment litigation since 1970. As a representative of the news media and an advocate for press freedom, the Reporters Committee brings a broad, national perspective to this issue and has a strong interest in challenging prior restraints on publication.

The Associated Press (“AP”) is a news cooperative organized under the Not-for-Profit Corporation Law of New York, and owned by its 1,500 U.S. newspaper members. The AP’s members and subscribers include the nation’s newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 300 locations in more than 100 countries. On any given day, AP’s content can reach more than half of the world’s population.

The California Newspaper Publishers Association (“CNPA”) is a nonprofit trade association representing the interests of nearly 850 daily, weekly and student newspapers throughout California. For over 130 years, CNPA has worked to protect and enhance the freedom of speech guaranteed to all citizens and to the press by the First Amendment of the United States Constitution and Article 1, Section 2 of the California Constitution. CNPA has dedicated its efforts to protect the free flow of information concerning government institutions in order for newspapers to fulfill their constitutional role in our democratic society and to advance the interest of all Californians in the transparency of government operations.

Californians Aware is a nonpartisan nonprofit corporation organized under the laws of California and eligible for tax exempt contributions as a 501(c)(3) charity pursuant to the Internal Revenue Code. Its mission is to foster the improvement of, compliance with and public understanding and use of, the California Public Records Act and other guarantees of the public’s rights to find out what citizens need to know to be truly self-governing, and to share what they know and believe without fear or loss.

Dow Jones & Company, Inc., a global provider of news and business information, is the publisher of The Wall Street Journal, Barron’s, MarketWatch, Dow Jones Newswires, and other publications. Dow Jones maintains one of the world’s largest newsgathering operations, with more than 1,800 journalists in nearly fifty countries publishing news in several different languages. Dow Jones also provides information services, including Dow Jones Factiva, Dow Jones Risk & Compliance, and Dow Jones VentureSource. Dow Jones is a News Corporation company.

First Amendment Coalition is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order to make government, at all levels, more accountable to the people. The Coalition’s mission assumes that government transparency and an informed electorate are essential to a self-governing democracy. To that end, the Coalition resists excessive government secrecy (while recognizing the need to protect legitimate state secrets) and censorship of all kinds.

Hearst Corporation is one of the nation's largest diversified media companies. Its major interests include the following: ownership of 15 daily and 38 weekly newspapers, including the *San Francisco Chronicle*; nearly 300 magazines around the world; 29 television stations, including two in Monterey and Sacramento, Calif.; ownership in leading cable networks, including Lifetime, A&E and ESPN; business publishing, including a joint venture interest in Fitch Ratings; and Internet businesses, television production, newspaper features distribution and real estate.

The New York Times Company is the publisher of *The New York Times* and *The International Times*, and operates the news website nytimes.com.

The Pasadena Star-News is a daily newspaper of general circulation published by the Los Angeles News Group.

The Sacramento Bee is a division of McClatchy Newspapers, Inc., a wholly-owned subsidiary of The McClatchy Company. The flagship newspaper of The McClatchy Company and the largest paper in the region, The Sacramento Bee was awarded its first Pulitzer Prize in 1935 for Public Service. Since that time, The Bee has won numerous awards, including four more Pulitzer Prizes, the most recent for feature photography in 2007.

WP Company LLC (d/b/a The Washington Post) publishes one of the nation's most prominent daily newspapers, as well as a website, www.washingtonpost.com, that is read by an average of more than 20 million unique visitors per month.

*Amici* strongly object to the March 25 order, as it amounts to an unconstitutional prior restraint. Because prior restraints affect the news media everywhere, the undersigned respectfully seeks permission to appear as *amici* in support of the L.A. Times and the Cross-Petitioners to emphasize why prior restraints are intolerable.

## Discussion

An order to seal an already viewed document and return copies of that document to the court, with the implicit understanding that the party cannot retain or publicize that information, functions as a prior restraint on speech.

There is no greater threat to free expression than government censorship. See *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553 (1975) (“Our distaste for censorship — reflecting the natural distaste of a free people — is deep-written in our law”). The U.S. Supreme Court has long recognized that “prior restraints on speech and publication are the most serious and least tolerable infringement on first amendment rights.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). A prior restraint is particularly injurious to a free press because the order is an absolute, “immediate and irreversible sanction.” *Id.* If post-publication liability can be said to chill speech, a prior restraint “‘freezes’ it.” *Id.* at 559. Accordingly, prior restraints are “disfavored in this

nation nearly to the point of extinction.” *United States v. Brown*, 250 F.3d 907, 915 (5th Cir. 2001).

The “chief purpose” of the First Amendment is to prevent “previous restraint upon publication” by the government. *Near v. Minnesota*, 283 U.S. 697, 713 (1931). As Justice White explained in his concurring opinion in *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 259 (1974), “[r]egardless of how beneficent-sounding the purposes of controlling the press might be, we . . . remain intensely skeptical about those measures that would allow government to insinuate itself into the editorial rooms of this Nation’s press.”

Courts must not condone a prior restraint, no matter how innocuous or well-intended a particular order may seem, because a system of prior restraint encourages the government to scrutinize and suppress ever more speech than a system based on post-publication remedies. The dynamics of a prior restraint “system drive toward excesses, as the history of all censorship shows.” *Nebraska Press Association*, 427 U.S. at 589 (Brennan, J., concurring) (internal quotation marks omitted); *see also id.* at 594–95 (“there are compelling reasons for not carving out a new exception to the rule against prior censorship of publication”).

The First Amendment protects the media’s right to publish information of public concern that the media obtains legally—even if the trial court or the government generally has the power to restrict dissemination of information at issue in the first instance. *See Oklahoma Publishing*, 430 U.S. at 311–12 (reversing a prior restraint prohibiting the press from publishing the name of a juvenile defendant, which the journalist had learned by attending a court proceeding, even though courts generally may generally protect the identity of juveniles); *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971) (holding that a newspaper cannot be restrained from publishing classified documents and that had been obtained by the newspaper’s source without authorization); *see also Landmark Commc’ns, Inc. v. Virginia*, 435 U.S. 829, 849 (1978) (Stewart, J., concurring) (“Though government may deny access to information and punish its theft, government *may not prohibit* or punish *the publication* of that information once it falls into the hands of the press, unless the need for secrecy is manifestly overwhelming.”) (emphasis added).

Courts have held that even when material is properly filed under seal and obtained lawfully by the press, prior restraints on publication are unconstitutional. *See Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 227 (6th Cir. 1996) (vacating a prior restraint on publishing the contents of a document filed with the court under seal, which had been provided to the media inadvertently).

Permitting the March 25 order to stand would set a dangerous precedent of restricting publication of lawfully obtained information, in contravention of U.S. Supreme Court precedent. The order removes information of public concern from the hands of the media, preventing the press everywhere from reporting on issues of intense

public interest. For these reasons, *amici* respectfully urge the Court to vacate the March 25 order.

Very truly yours,

Bruce D. Brown  
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Tom Isler

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