

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

NATIONAL LAWYERS GUILD,
SAN FRANCISCO BAY AREA
CHAPTER,

Plaintiff and Respondent,

v.

CITY OF HAYWARD, et al.,

Defendants and Appellants.

No. S252445

Court of Appeal No. A149328

Alameda County Superior Court,
No. RG15-785743
(Hon. Evelio Grillo)

AFTER A DECISION OF THE COURT OF APPEAL
FIRST APPELLATE DISTRICT, DIVISION THREE

**APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND
PROPOSED *AMICI* BRIEF OF THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS AND 33 MEDIA
ORGANIZATIONS IN SUPPORT OF PLAINTIFF AND
RESPONDENT**

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APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF
TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE STATE OF
CALIFORNIA:

Pursuant to California Rule of Court 8.520(f), the Reporters Committee for Freedom of the Press, American Society of News Editors, The Associated Press, Associated Press Media Editors, Association of Alternative Newsmedia, Bay Area News Group, Berkeleyside Inc., Californians Aware, CALmatters, The E.W. Scripps Company, Embarcadero Media, Gannett Co., Inc., International Documentary Assn., Investigative Reporting Workshop at American University, KPBS, KQED Inc., Los Angeles Times Communications LLC, The McClatchy Company, The Media Institute, MPA – The Association of Magazine Media, National Press Photographers Association, Nexstar Media Group, Inc., Online News Association, POLITICO LLC, Radio Television Digital News Association, The San Diego Union-Tribune LLC, Society of Environmental Journalists, Society of Professional Journalists, Sonoma Media Investments, LLC, Southern California Public Radio, TEGNA Inc., Tully Center for Free Speech, Voice of OC, and Voice of San Diego (collectively, “*amici*”) respectfully request leave to file the attached brief as *amici curiae* in support of Plaintiff National Lawyers Guild, San Francisco Bay Area Chapter (“NLG”). *Amici* are news media organizations or organizations

who advocate on behalf of journalists and the press. Lead *amicus* the Reporters Committee for Freedom of the Press provides *amicus curiae* support in public records litigation across the country and in California, as do many of the other *amici*. (See, e.g., *National Lawyers Guild v. City of Hayward* (2018) 27 Cal.App.5th 937 [238 Cal.Rptr.3d 505]; *Food Media Institute v. Argus Leader Media, d/b/a/ Argus Leader* (U.S. 2019) No. 18-481; *ACLU v. CIA* (2d Cir. 2018) No. 18-2265, ECF No. 80.)

INTEREST OF *AMICI CURIAE*

As members of the news media, *amici* rely on access to public records to keep the public informed as to how the government is conducting the people's business. Over the years, the number of public records created and stored electronically has increased, requiring agencies to make increasing numbers of public records available in electronic format. Ready public access to records created by and stored in new technologies is essential to proper government oversight, particularly as agencies integrate more (and new) technology into the work they perform on behalf of the public.

Amici write to urge this Court to reverse the Court of Appeal, whose opinion, if upheld, threatens to create an unprecedented fee barrier to public access for most of California's public records. The Court of Appeal's rationale for allowing agencies to collect thousands of dollars for redacting body-worn camera footage threatens *all* electronic records, as the redaction

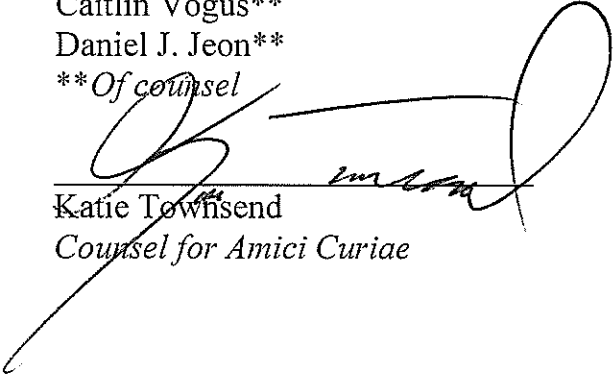
process described can apply not only to body-worn camera footage, but also to, for example, PDF documents, audio files, or any other electronic record held by a government agency. In allowing such exorbitant fees, the Court of Appeal ignored the strong mandates in favor of disclosure of public records in the California Constitution and California Public Records Act (“CPRA” or the “Act”)—which the Legislature has reaffirmed in its recent amendments to the CPRA—and this Court’s precedent.

Amici respectfully request that the Court accept and file the attached *amici* brief. No party or counsel for any party, other than counsel for *amici*, authored this brief in whole or in part or funded its preparation.

Respectfully Submitted,

REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
Katie Townsend (SBN 254321)
Bruce D. Brown**
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TABLE OF CONTENTS

TABLE OF AUTHORITIES3

INTRODUCTION.....5

ARGUMENT 7

 I. The Court of Appeal erred in failing to interpret Code § 6253.9(b) consistently with the California Constitution..... 7

 II. Increasing numbers of public records are created and stored electronically, and the ability to charge fees for the cost of redacting them will curtail public access.9

 III. The Court of Appeal’s decision, if upheld, will particularly hinder public access to police BWC videos. 14

 A. Access to BWC footage is essential to the public’s ability to monitor law enforcement. 14

 B. The Court of Appeal’s decision will inhibit public access to BWC videos. 16

 IV. Requiring CPRA requesters to pay the costs of redacting electronic records will mean fewer records are available to the public. 17

CONCLUSION20

CERTIFICATE OF WORD COUNT21

APPENDIX A: DESCRIPTION OF AMICI22

APPENDIX B: ADDITIONAL COUNSEL33

PROOF OF SERVICE36

TABLE OF AUTHORITIES

Cases

<i>City of San Jose v. Superior Court</i> (2017) 2 Cal.5th 608 [214 Cal.Rptr.3d 274]	9, 11
<i>Comm’n on Peace Officer Standards & Training v. Superior Court</i> (2007) 42 Cal.4th 278	7
<i>Cox Broadcasting Corp. v. Cohn</i> (1975) 420 U.S. 469	19
<i>Estate of Griswold</i> (2001) 25 Cal.4th 904 [108 Cal.Rptr.2d 165]	9
<i>Grosjean v. American Press Co.</i> (1936) 297 U.S. 233	19
<i>Int’l Fed’n of Prof’l & Tech. Eng’rs, Local 21, AFL-CIO v. Superior Court</i> (2007) 42 Cal.4th 319.....	7
<i>Nat’l Lawyers Guild v. City of Hayward</i> (2018) 27 Cal.App.5th 937	8
<i>Richmond Newspapers, Inc. v. Virginia</i> (1980) 448 U.S. 555	19

Statutes

Cal. Const., art. I § 3, subd. (b)	8
Gov. Code § 6250.....	7
Gov. Code § 6252.....	9
Gov. Code § 6253(b).....	9
Gov. Code § 6254(f)(4).....	16
Gov. Code § 6253.9(b).....	<i>passim</i>
Sen. Bill No. 1421 (2017–2018 Reg. Sess.) § 1	16

Other Authorities

Alana Semuels, <i>Is There Hope for Local News?</i> , Atlantic (Nov. 10, 2014), https://perma.cc/WW33-87ZE	18
California Records and Information Management Program, <i>Electronic Records Guidebook</i> (Oct. 20, 2015), https://perma.cc/4TY4-HNYT	10
Jane Wester & Lavendrick Smith, <i>After Keith Scott Shooting, CMPD is Reviewing Its Use of Force Policy</i> , Charlotte Observer (Sept. 15, 2017), http://bit.ly/2DCARYr	15
Joe Marusak & Mark Washburn, <i>CMPD Releases Full Video of Fatal Keith Lamont Scott Shooting</i> , Charlotte Observer (Oct. 4, 2016), http://bit.ly/2z6xmFQ	14

Nausheen Husain, *Laquan McDonald Timeline: The Shooting, the Video, the Verdict and the Sentencing*, Chi. Tribune (Jan. 18, 2019), <http://bit.ly/2YukZOh>..... 14

NBC 7 San Diego, *SDPD Releases Body Camera and Helicopter Footage in Response to Excessive Force Accusations Made After Arrest Video Circulates on Social Media*, NBC 7 San Diego (May 8, 2019), <http://bit.ly/2Vn1a9A> 15

PoliceOne Staff, PoliceOne (Jan. 21, 2016), <http://bit.ly/2DooBd6> 15

ProjectWord, *Untold Stories: A Survey of Freelance Investigative Reporters 15–18 (2015)*..... 18

Property Document, Orange County Clerk Recorder, <https://perma.cc/N8VA-LW87> 10

Sacramento Bee Staff, *City, County Government Salary Database for the Sacramento CA Region*, Sacramento Bee (Aug. 17, 2016), <http://bit.ly/2QaV3UV>..... 10

Steve Friess, *Police Turn Body Cams Into Tools For Public Relations, Not Accountability*, Colum. Journalism Rev. (Oct. 23, 2017), <https://perma.cc/QMS8-2FMT> 18

Violent Protests Break Out at UC Berkeley, ABC News (Feb. 2, 2017), <https://abcn.ws/2zaE2D1> 14

INTRODUCTION

This case arises from a request under the California Public Records Act (“CPRA” or the “Act”) by the Plaintiff and Respondent National Lawyers Guild, San Francisco Bay Area Chapter (“NLG”) for certain electronic records from the City of Hayward (“Hayward”). Specifically, NLG requested written and electronic records related to certain protests of police shootings in 2014. Hayward identified certain police body-worn camera (“BWC”) footage as responsive to that request. However, before it would turn over the videos, Hayward demanded that NLG pay a fee of more than \$3000, purportedly to cover the cost of staff time related to identifying the responsive videos and redacting them. The trial court determined that the CPRA did not permit Hayward to charge these costs to NLG. The Court of Appeal, however, reversed and upheld the fee under Government Code § 6253.9(b) (hereinafter, “Code § 6253.9(b)”).

Amici are news media organizations who frequently rely on the CPRA to inform the public about the activities of California’s government and public officials.¹ *Amici* urge this Court to reverse the Court of

¹ A full description of *amici* is provided in Appendix A.

Appeal's decision because it is contrary to the purpose of the CPRA to provide broad access to public records.²

The California Constitution reflects the strong public policy of this State in favor of broad access to public records, a policy that has been repeatedly reaffirmed by the Legislature. Permitting public agencies to charge CPRA requesters fees for the redaction of electronic public records will stymie public access to vast swaths of public records, including, but by no means limited to, police BWC videos. In the digital age, public records are increasingly in electronic form. Most public records requesters, including many members of the news media, cannot afford to pay burdensome fees for access to electronic records. If public agencies are permitted to charge such fees to requesters, many public records may never see the light of day, contrary to the very purpose of the Act. For these reasons, the Court of Appeal's decision threatens to sharply limit the role of the CPRA in facilitating an informed public.

² *Amici* focus this brief on the importance of public access to electronic records, including police BWC footage, and the impact of the Court of Appeal's decision on such access. *Amici* agree with NLG and *amicus curiae* the California News Publishers Association ("CNPA") and First Amendment Coalition ("FAC") that neither the language of the CPRA nor its legislative history demonstrate that Hayward may charge any fees for the redaction of electronic records. Those grounds for reversal are addressed at length in the brief of NLG and the *amici* brief of CNPA and FAC and are not repeated here.

For the reasons set forth herein, *amici* respectfully urge this Court to reverse the Court of Appeal’s decision and hold that, just as with non-electronic records, the CPRA does not permit public agencies to charge requesters costs for redacting them.

ARGUMENT

I. The Court of Appeal erred in failing to interpret Code § 6253.9(b) consistently with the California Constitution.

This Court has long recognized that “[o]penness in government is essential to the functioning of a democracy,” and that “access permits checks against the arbitrary exercise of official power and secrecy in the political process.” (*Int’l Fed’n of Prof’l & Tech. Eng’rs, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 328–29 (citation omitted).) Accordingly, the Act recognizes that public access to government records is a “fundamental and necessary right.” (Gov. Code § 6250). This is particularly so in the context of law enforcement officials, who “carry upon their shoulders the cloak of authority to enforce the laws of the state.” (*Comm’n on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 297 [165 P.3d 462].)

The California Constitution specifically declares that “[t]he people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”

(Cal. Const., art. I § 3, subd. (b)(1).) In furtherance of this right, the California Constitution mandates that statutes be “broadly construed” in favor of public access. (Cal. Const., art. I, § 3, subd. (b)(2).)

The Court of Appeal found the statutory language of Code § 6253.9(b)(2) ambiguous. (*Nat’l Lawyers Guild v. City of Hayward* (2018) 27 Cal.App.5th 937, 948–49 [238 Cal.Rptr.3d 505].) It thus looked to the legislative history of that provision to conclude that Hayward was permitted to charge NLG the fees at issue. (*Id.* at 949–51.) However, not only did the Court of Appeal erroneously construe that legislative history, Op. Br. 51–54; Reply Br. 20–23, but it also erred in failing to consider the California Constitution’s mandate that the CPRA be broadly construed in favor of access.

Even assuming, *arguendo*, that Code § 6253.9(b) is ambiguous,³ the Court of Appeal should have turned to the California Constitution and the wealth of case law applying it and interpreting the CPRA in favor of public access, rather than relying on a flawed interpretation of legislative history. (*Estate of Griswold* (2001) 25 Cal.4th 904, 911 (interpreting ambiguous statutes with a view “to promoting rather than defeating the general purpose

³ *Amici* agree with NLG that it is not; the plain language of Code § 6253.9 does not permit Hayward to charge a requester for the cost of redacting an electronic record. Op. Br. 51–54; Reply Br. 20–32.

of the statute” and to “avoid an interpretation that would lead to absurd consequences”) [108 Cal.Rptr.2d 165].) The Court of Appeal’s construction of Code § 6253.9(b) does not favor public access. To the contrary, by permitting public agencies to charge requesters fees for the cost of redacting electronic records, the Court of Appeal’s decision will prevent broad swaths of public records from being disclosed. Because this interpretation is inconsistent with the California Constitution and this Court’s precedent, it must be reversed.

II. Increasing numbers of public records are created and stored electronically, and the ability to charge fees for the cost of redacting them will curtail public access.

Under the Act, both paper and electronic records are open to the public. (*See* Gov. Code § 6252(e) (defining “public records” as any “writing” containing information retained by an agency “regardless of physical form or characteristics”); *id.* § 6252(g) (defining “writing” as any recording upon “any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored”); *see generally* *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617 [214 Cal.Rptr.3d 274].) Agencies must respond to CPRA requests by making the records “promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable.” (Gov. Code § 6253(b).)

Access to records under the CPRA is a vital tool that allows the news media and the public to monitor the conduct of government. As electronic records play an increasingly prominent role in the daily activities of government, the importance of public access to electronic records, in particular, has grown. Public agencies have begun to digitize and store more records electronically, and new technologies have revolutionized how government agencies communicate and store information. (See California Records and Information Management Program, *Electronic Records Guidebook* at 1 (Oct. 20, 2015), <https://perma.cc/4TY4-HNYT> (“CalRIM”) (“[T]oday’s highly technical environment means that more records will be created and stored electronically.”).)

Public agencies now maintain “complex records such as data spreadsheets, geospatial files, and digital video” all in electronic format. (*Id.*) For example, California counties maintain digital repositories for property records. (See Property Document, Orange County Clerk Recorder, <https://perma.cc/N8VA-LW87>.) State employee salary data is likewise available electronically. (See Sacramento Bee Staff, *City, County Government Salary Database for the Sacramento CA Region*, Sacramento Bee (Aug. 17, 2016), <http://bit.ly/2QaV3UV>.) In addition, as email has displaced the telephone and paper mail, public agencies’ routine communications are increasingly captured in electronic format, see CalRIM, *supra* at 8, and most state agencies now “operate one or more

social media accounts,” to communicate with the public. (*Id.* at 14; *see also City of San Jose*, 2 Cal.5th at 617–18 (discussing the changes to a “writing” by public agencies under the CPRA from 1968 to the present).)

As public agencies’ records are increasingly created and maintained in electronic format, more CPRA requests, necessarily, will involve electronic records. Accordingly, if Code § 6253.9 permits a public agency to charge a requester fees that exceed the cost of duplication when responding to a CPRA request for an electronic record if the agency redacts that record before it is released, as Hayward urges here,⁴ vast numbers of CPRA requests for all types of public records will soon be subject to significantly increased fees.

Hayward attempts to distinguish between the fees that agencies may charge for “text-based electronic records” and other electronic records like videos under CPRA. (Answering Br. 35–36 (arguing that agencies must

⁴ Hayward argues not only that public agencies may charge requesters the cost of redacting electronic records, but also the cost of “searching for and gathering responsive electronic records,” which Hayward attempts to redefine as “data compilation.” (Answering Br. 28–31.) *Amici* agree with NLG that the activities that Hayward claims are “data compilation” are merely an ordinary search for records, for which the CPRA does not permit requesters to be charged. (Reply Br. 35–37.) Hayward’s expansive interpretation of “data compilation” will serve only to increase the cost burden on public records requesters and exacerbate the problems associated with imposing high fees for public records described in this *amici* brief. *See* Section IV, *infra*.

bear all costs other than the “direct costs of duplication” for text-based electronic records, but may charge additional fees for videos).) While *amici* agree that agencies may not charge any costs beyond duplication for text-based electronic records, nothing in the CPRA supports Hayward’s claims that agencies are permitted to charge different fees for videos than those permitted for text-based electronic records. Hayward’s concession that the Act does not permit fees beyond the direct costs of duplication for text-based electronic records underscores the fact that the Legislature never intended to permit agencies to charge more than the direct costs of duplication for *all* electronic public records.

Moreover, some public agencies have cited the same provision relied on by Hayward to charge fees beyond the cost of duplication even for text-based electronic records. For example, the Los Angeles Sheriff’s Department (“LASD”) cited this provision in a case currently pending before the Court of Appeal, Second Appellate Division, involving two CPRA requests for emails made by the *Los Angeles Times*. Pointing to Code § 6253.9, the LASD refused to produce the emails until the newspaper paid for staff time to search for and redact the requested records. (*See County of Los Angeles v. Superior Court of Los Angeles County*, Verified First Am. and Suppl. Pet. for Writ of Mandate, Injunctive & Declaratory Relief for Violations of the California Public Records Act with Exs. A Through I at ¶¶ 9–13, 15–18, Los Angeles Superior Court,

BS162607 (May 20, 2016) (Court of Appeals No. B294212.) In response to one CPRA request, the LASD attempted to charge the *Los Angeles Times* \$888.25 under Code § 6253.9(b)(2), claiming it would take “approximately 25 hours to review and redact information” from the emails requested. (*Id.* ¶ 13.) In response to the second CRPA request, the LASD attempted to charge the *Los Angeles Times* \$6,900 under Code § 6253.9(b)(2) before it would provide the emails requested. (*Id.* ¶ 18.). The trial court ultimately held that the LASD could not charge the *Los Angeles Times* any costs for reviewing and redacting records under Code § 6253.9, but could charge the *Los Angeles Times* for the search fees charged by an outside vendor LASD hired to respond to the second CPRA request. Both the *Los Angeles Times* and the County of Los Angeles have appealed the trial court’s determination to the Court of Appeal, Second Appellate Division. (See *Los Angeles Times Communications LLC Pet. for Extraordinary Writ; Memo. in Support of Pet., County of Los Angeles v. Superior Court of Los Angeles County* (Cal. Ct. App. 2018) B294212; *County of Los Angeles Pet. for Extraordinary Writ; Memo. of Points and Authorities in Support Thereof., County of Los Angeles v. Superior Court of Los Angeles County* (Cal. Ct. App. 2018) B294212.)

III. The Court of Appeal’s decision, if upheld, will particularly hinder public access to police BWC videos.

- A. Access to BWC footage is essential to the public’s ability to monitor law enforcement.

The news media relies on access to police video, including BWC footage, to inform the public. Sometimes, these videos shed light on the activities of members of the public, such as during public protests. (*See, e.g., Violent Protests Break Out at UC Berkeley*, ABC News (Feb. 2, 2017), <https://abcn.ws/2zaE2D1> (showing video footage from helicopters and from the ground).) Other times, such footage reveals the conduct of law enforcement officers, including misconduct. For example, BWC videos have been essential to the public’s understanding of police use-of-force incidents, including police shootings. (*See, e.g., Nausheen Husain, Laquan McDonald Timeline: The Shooting, the Video, the Verdict and the Sentencing*, Chi. Tribune (Jan. 18, 2019), <http://bit.ly/2YukZOOh>.)

Public access to such footage has in some cases prompted reform. For instance, after the Charlotte-Mecklenburg Police Department (“CMPD”) released footage of the 2016 shooting and death of Keith Lamont Scott, the public reaction prompted CMPD to reevaluate its use-of-force policy. (*See Joe Marusak & Mark Washburn, CMPD Releases Full Video of Fatal Keith Lamont Scott Shooting*, Charlotte Observer (Oct. 4, 2016), <http://bit.ly/2z6xmFQ>; Jane Wester & Lavendrick Smith, *After Keith*

Scott Shooting, CMPD is Reviewing Its Use of Force Policy, Charlotte Observer (Sept. 15, 2017), <http://bit.ly/2DCARYr>.)

At the same time, BWC footage has helped clear officers of accusations of misconduct or provided more context to controversial encounters. For example, a video of San Diego Police Department officers repeatedly punching a civilian during an arrest was posted to Twitter by a bystander to the arrest. (NBC 7 San Diego, *SDPD Releases Body Camera and Helicopter Footage in Response to Excessive Force Accusations Made After Arrest Video Circulates on Social Media*, NBC 7 San Diego (May 8, 2019), <http://bit.ly/2Vn1a9A>.) Shortly after the video was made public, the San Diego Police Department released BWC footage from the incident that appeared to show that the arrestee had knocked an officer to the ground before his arrest, providing more context for why officers stated that they had felt threatened. (*Id.*) Similarly, a Georgia police officer faced a complaint by two firefighters for creating a “sense of fear,” cursing at them, and being belligerent. (PoliceOne Staff, *PoliceOne* (Jan. 21, 2016), <http://bit.ly/2DooBd6>.) However, the accusers changed their story after BWC footage revealed that the officer used no profanity. (*Id.*)

The Legislature has recently reiterated the importance of public access to police BWC videos. Assembly Bill 748, which is solely dedicated to ensuring that BWC footage remains accessible to the public, amends the CPRA to require police departments to disclose video and

audio footage of “critical incidents,” which are defined as any use of force incidents that result in death or great bodily injury or incidents where a law enforcement official discharges a firearm, within 45 days. (Gov. Code § 6254(f)(4).) In passing AB 748—which was signed the same day as Senate Bill 1421, which ensures that the public can access incidents, complaints, and investigations involving peace officers and custodial officers—the Legislature recognized the broad public interest in disclosure of BWC footage and other records held by law enforcement entities. (*See* Sen. Bill No. 1421 (2017–2018 Reg. Sess.) § 1 (approved by the Governor and filed with the Secretary of State on Sept. 30, 2018) (stating that “[t]he public has a right to know all about serious police misconduct.”).)

B. The Court of Appeal’s decision will inhibit public access to BWC videos.

The Court of Appeal’s conclusion that Code § 6253.9 permits a public agency to charge requesters for the costs of redacting BWC videos will result in prohibitive fees, stymying public access. Indeed, the Court of Appeal upheld a fee of more than \$3000 in this case for only 232 minutes of video. Op. Br. 19. Even if an agency were to redact only a few minutes or seconds of footage in response to a CPRA request for BWC footage, the Court of Appeal decision allows an agency to charge the requester at least the cost of having a government official review the requested footage twice: Once to determine which video records are responsive, and again to

determine whether the redactions were done properly. (*See id.*; Reply Br. 35–37; *see also* Answering Br. 28–31.) Passing these fees on to the requester, regardless of how inefficiently the responsive record is produced, runs counter to the purposes of the Act.

These prohibitive fees will discourage requests for BWC footage of events where public interest in disclosure may be highest. For example, the footage at issue here is of a public demonstration in the City of Berkeley, which led to numerous injuries and arrests. (*See* Op. Br. 17–18.) Newsrooms have faced similarly prohibitive fees for a variety of types of electronic records from law enforcement. (*See* Op. Br. 60 n.26 (citing examples of news reports of law enforcement agencies charging tens or hundreds of thousands of dollars to respond to CPRA requests for electronic records about use of force incidents, sexual assaults by officers, and other officer misconduct, based on fees to redact audio, video and other electronic files).)

IV. Requiring CPRA requesters to pay the costs of redacting electronic records will mean fewer records are available to the public.

Hayward claims that this case is not about whether the records NLG requests should be disclosed to the public. (*See* Answering Br. 8). While it is true that Hayward has not alleged that the BWC footage at issue is exempt from disclosure, Hayward’s argument ignores the fact that allowing government agencies to charge requesters for the costs of redaction of

electronic records will mean fewer requesters, including members of the news media, can afford public records.

Particularly for freelance journalists, nonprofit news organizations, and smaller newsrooms, the costs of redacting electronic records may be prohibitive. (See Alana Semuels, *Is There Hope for Local News?*, Atlantic (Nov. 10, 2014), <https://perma.cc/WW33-87ZE> (explaining that for financial reasons, a local San Francisco paper had one full-time employee and otherwise hires freelancers); ProjectWord, *Untold Stories: A Survey of Freelance Investigative Reporters 15–18* (2015) (explaining that freelancer reporters are often hindered by lack of access because of expensive tools).) Even for more resourced newsrooms, reporting often relies on *numerous* public records requests; as a result, higher fees for electronic records quickly becomes an impassable barrier to access.

In addition, the Court of Appeal’s decision, if left to stand, could allow public agencies to manipulate public perception by conditioning the release of unfavorable electronic records on the payment of thousands of dollars of fees, while waiving fees for any electronic records that reflect positively on them. Public agencies should not be permitted to use the CPRA’s fee requirements to manipulate their own public image. (See, e.g., Steve Friess, *Police Turn Body Cams Into Tools For Public Relations, Not Accountability*, Colum. Journalism Rev. (Oct. 23, 2017), <https://perma.cc/QMS8-2FMT> (describing voluntary release of BWC

videos by law enforcement for public relations purposes and noting that some police departments have fulfilling public records requests for unedited BWC videos “prohibitively expensive”).)

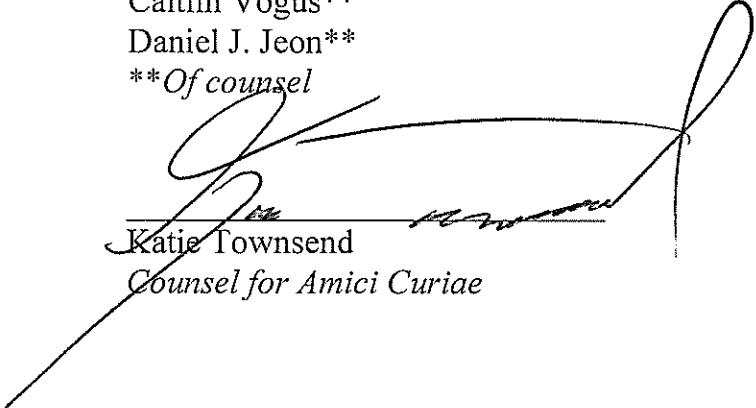
When journalists and news organizations cannot afford public records, it is the public that is hurt the most. The press is the primary means for the public to learn about government activities. (*See Grosjean v. American Press Co.* (1936) 297 U.S. 233, 250 (stating that an “untrammelled press [is] a vital source of public information”); *Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 573 (“Instead of acquiring information about trials by firsthand observation or by word of mouth from those who attended, people now acquire it chiefly through the print and electronic media. In a sense, this validates the media claim of functioning as surrogates for the public.”).) Public records are critical for the press to “fully and accurately” inform members of the public about government conduct so that they can “vote intelligently” and “register opinions on the administration of government generally.” (*See Cox Broadcasting Corp. v. Cohn* (1975) 420 U.S. 469, 492.) Allowing agencies to create insurmountable fee barriers to public records strips the public of any opportunity to meaningfully participate in a democratic system of government, which the California Constitution and CPRA were designed to protect.

CONCLUSION

For the foregoing reasons, *amici* urge this Court to reverse the Court of Appeal with directions to affirm the judgment of the Superior Court.

Respectfully Submitted,

REPORTERS COMMITTEE FOR
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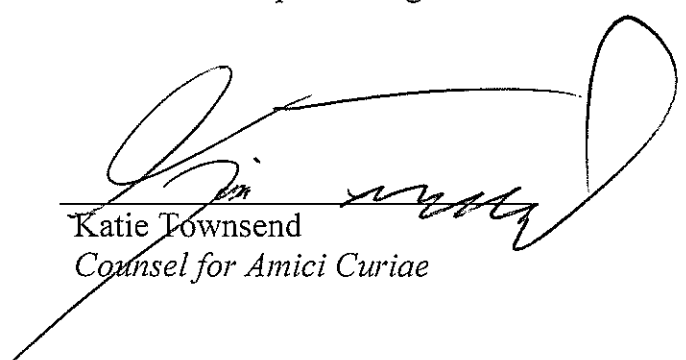


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CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204(c) of the California Rules of Court, I hereby certify that the attached *amicus curiae* brief was produced using 13-point Roman type, including footnotes, and contains 3,491 words. I have relied on the word-count function of the Microsoft Word word-processing program used to prepare this brief.

Dated: May 31, 2019



Katie Townsend
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APPENDIX A: DESCRIPTION OF *AMICI*

The Reporters Committee for Freedom of the Press was 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 it provides pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

With some 500 members, **American Society of News Editors** ("ASNE") is an organization that includes directing editors of daily newspapers throughout the Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers.

The **Associated Press** ("AP") is a news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP's members and subscribers include the nation's newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 280 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

The **Associated Press Media Editors** is a nonprofit, tax-exempt organization of newsroom leaders and journalism educators that works closely with The Associated Press to promote journalism excellence. APME advances the principles and practices of responsible journalism; supports and mentors a diverse network of current and emerging newsroom leaders; and champions the First Amendment and promotes freedom of information.

Association of Alternative Newsmedia (“AAN”) is a not-for-profit trade association for approximately 110 alternative newspapers in North America. AAN newspapers and their websites provide an editorial alternative to the mainstream press. AAN members have a total weekly circulation of seven million and a reach of over 25 million readers.

Bay Area News Group is operated by MediaNews Group, one of the largest newspaper companies in the United States with newspapers throughout California and the nation. The Bay Area News Group includes *The Oakland Tribune*, *The Daily Review*, *The Argus*, *San Jose Mercury News*, *Contra Costa Times*, *Marin Independent Journal*, *West County Times*, *Valley Times*, *East County Times*, *Tri-Valley Herald*, *Santa Cruz Sentinel*, *San Mateo County Times*, *Vallejo Times-Herald* and *Vacaville Reporter*, all in California.

Berkeleyside Inc. publishes Berkeleyside, one of the leading independent, online news sites in the country. For 10 years, Berkeleyside has provided in-depth civic and accountability journalism on Berkeley, CA.

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.

CALmatters is a nonpartisan, nonprofit journalism organization based in Sacramento, California. It covers state policy and politics, helping Californians to better understand how their government works while serving the traditional journalistic mission of bringing accountability and transparency to the state's Capitol. The work of its veteran journalists is shared, at no cost, with more than 180 media partners throughout the state.

The **E.W. Scripps Company** serves audiences and businesses through local television, with 52 television stations in 36 markets, including KGTV in San Diego, KERO in Bakersfield, and KSBY in San Luis Obispo/Santa Barbara. Scripps also owns Newsy, the next-generation national news network; podcast industry leader Stitcher; national broadcast

networks Bounce, Grit, Escape, Laff and Court TV; and Triton, the global leader in digital audio technology and measurement services.

Embarcadero Media is a Palo Alto-based 40-year-old independent and locally-owned media company that publishes the Palo Alto Weekly, Pleasanton Weekly, Mountain View Voice and Menlo Park Almanac, as well as associated websites. Its reporters regularly rely on the California Public Records Act to obtain documents from local agencies.

Gannett Co., Inc. is a leading news and information company which publishes USA TODAY and more than 100 local media properties. Each month more than 125 million unique visitors access content from USA TODAY and Gannett's local media organizations, putting the company squarely in the Top 10 U.S. news and information category.

The **International Documentary Association (IDA)** is dedicated to building and serving the needs of a thriving documentary culture. Through its programs, the IDA provides resources, creates community, and defends rights and freedoms for documentary artists, activists, and journalists.

The Investigative Reporting Workshop, a project of the School of Communication (SOC) at American University, is a nonprofit, professional newsroom. The Workshop publishes in-depth stories at investigativereportingworkshop.org about government and corporate accountability, ranging widely from the environment and health to national security and the economy.

KPBS news serves the people of the San Diego and Imperial County region with trustworthy, in-depth information that allows the community to hold its leaders accountable. KPBS reaches more than 1 million people across television, radio, and digital platforms. The outlet is a non-profit department of San Diego State University. KPBS follows the Public Media Code of Integrity and the NPR Ethics Guidelines.

KQED Inc. is a nonprofit public benefit corporation organized under the laws of California and engaged in dissemination of news and information since its founding as a public broadcasting station in 1953. At all times relevant to this proceeding, KQED's core mission has been the pursuit and publication/broadcast of information in the public's interest. KQED has advanced this purpose not only through its consistent San Francisco Bay Area and statewide news reporting, which relies heavily on the use of the California Public Records Act, but also as a champion of public access to some of the most serious information maintained by government: law enforcement use of deadly force, police misconduct and the broader operations of our state's criminal justice system.

Los Angeles Times Communications LLC and **The San Diego Union-Tribune, LLC** are two of the largest daily newspapers in the United States. Their popular news and information websites, www.latimes.com and www.sduiontribune.com, attract audiences throughout California and across the nation.

The McClatchy Company is a 21st century news and information leader, publisher of iconic brands such as the Miami Herald, The Kansas City Star, The Sacramento Bee, The Charlotte Observer, The (Raleigh) News and Observer, and the (Fort Worth) Star-Telegram. McClatchy operates media companies in 28 U.S. markets in 14 states, providing each of its communities with high-quality news and advertising services in a wide array of digital and print formats. McClatchy is headquartered in Sacramento, Calif., and listed on the New York Stock Exchange under the symbol MNI.

The Media Institute is a nonprofit foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in journalism. Its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

MPA – The Association of Magazine Media, (“MPA”) is the largest industry association for magazine publishers. The MPA, established in 1919, represents over 175 domestic magazine media companies with more than 900 magazine titles. The MPA represents the interests of weekly, monthly and quarterly publications that produce titles on topics that cover news, culture, sports, lifestyle and virtually every other interest, avocation

or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues.

The **National Press Photographers Association** (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA’s members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

Nexstar Media Group, Inc. (“Nexstar”) is a leading diversified media company that leverages localism to bring new services and value to consumers and advertisers through its traditional media, digital and mobile media platforms. Nexstar owns, operates, programs or provides sales and other services to 169 television stations and related digital multicast signals reaching 100 markets or approximately 39% of all U.S. television households. In California, Nexstar owns KGPE-TV and KSEE, Fresno and KGET-TV, Bakersfield.

The **Online News Association** is the world’s largest association of digital journalists. ONA’s mission is to inspire innovation and excellence among journalists to better serve the public. Membership includes

journalists, technologists, executives, academics and students who produce news for and support digital delivery systems. ONA also hosts the annual Online News Association conference and administers the Online Journalism Awards.

POLITICO is a global news and information company at the intersection of politics and policy. Since its launch in 2007, POLITICO has grown to more than 350 reporters, editors and producers. It distributes 30,000 copies of its Washington newspaper on each publishing day, publishes POLITICO Magazine, with a circulation of 33,000 six times a year, and maintains a U.S. website with an average of 26 million unique visitors per month.

Radio Television Digital News Association (“RTDNA”) is the world’s largest and only professional organization devoted exclusively to electronic journalism. RTDNA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries. RTDNA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms.

The Society of Environmental Journalists is the only North-American membership association of professional journalists dedicated to more and better coverage of environment-related issues.

Society of Professional Journalists (“SPJ”) is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

Sonoma Media Investments (SMI) is an independent, privately-owned multimedia company based in Santa Rosa, Calif. Formed in 2012 by a consortium of local investors who recognize the value of quality local journalism, SMI is home to the most-read publications and websites in the affluent San Francisco North Bay. Each week, seven out of 10 North Bay adults – more than 376,000 in total – engage with the many SMI publications and their corresponding websites, including: The Press Democrat (the flagship daily), The Sonoma Index-Tribune, Petaluma Argus-Courier, The North Bay Business Journal, Sonoma Magazine and La Prensa Sonoma (the region’s premier Spanish-language newspaper and website).

Southern California Public Radio is a non-profit, public media organization. We operate KPCC, L.A.’s largest NPR station. Our signal stretches north to Santa Barbara County, south to Orange County and east

to the Inland Empire. We also operate LAist.com, a local news site. Our mission is to strengthen the civic and cultural bonds that unite Southern California's diverse communities by providing the highest quality news and information service.

TEGNA Inc. owns or services (through shared service agreements or other similar agreements) 49 television stations in 41 markets.

The **Tully Center for Free Speech** began in Fall, 2006, at Syracuse University's S.I. Newhouse School of Public Communications, one of the nation's premier schools of mass communications.

Voice of OC is an online, nonprofit and non-partisan newsroom founded in 2009 and based in Santa Ana, California that reaches more than 150,000 informed and active residents across the region every month through a daily news website, www.voiceofoc.org. The newsroom, which produces daily civic coverage and investigation of local government agencies and elected officials, focuses on quality of life issues such as transportation, the environment, health, public safety, housing and homelessness and is primarily financed through small and large donors as well as foundations.

Launched in 2005, **Voice of San Diego** was the first digital, nonprofit news organization in the country to serve a local community. VOSD is widely regarded as a pioneer in the nonprofit news industry that has built a sustainable business model based on the support of individual

members, sponsors and the investment of local and national foundations. The mission of the organization is to consistently deliver ground-breaking investigative journalism for the San Diego region. And to increase civic participation by giving residents the knowledge and in-depth analysis necessary to become advocates for good government and social progress.

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PROOF OF SERVICE

I, Daniel J. Jeon, do hereby affirm that I am, and was at the time of service mentioned hereafter, at least 18 years of age and not a party to the above-captioned action. My business address is 1156 15th St. NW, Suite 1020, Washington, DC 20005. I am a citizen of the United States and am employed in Washington, District of Columbia.

On May 30, 2019, I served the foregoing documents: **Application for Leave to File *Amici Curiae* Brief and *Amici Curiae* Brief of The Reporters Committee for Freedom of the Press and 3 Media Organizations in Support of Plaintiff and Respondent** as follows:

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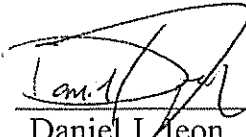
*Counsel for Defendants and
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[x] By mail:

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I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

Executed on the 30th of May 2019, at Washington, D.C.

By: 
Daniel J. Jeon
djeon@rcfp.org