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May 8, 2014

## ***VIA FEDERAL EXPRESS***

Chief Justice Tani Cantil-Sakauye  
and Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

*Re: A.L. v. Los Angeles County Department of Children and Family Services (Los Angeles Times Communications LLC, Real Party in Interest),  
Case No. S217779  
Amici Curiae Letter in Support of Petition for Review, Cal. R. Ct. 8.500(g)*

Dear Chief Justice Cantil-Sakauye and Associate Justices:

*Amici Curiae* Bay Area News Group, California Newspaper Publishers Association, Californians Aware, The Center for Investigative Reporting, The E.W. Scripps Company, First Amendment Coalition, Los Angeles News Group, National Press Photographers Association and Reporters Committee for Freedom of the Press (collectively, “*Media Amici*”) support the Petition for Review (the “Petition”) filed by Los Angeles Times Communications LLC in the above-referenced matter. Review should be granted “to secure uniformity of decision” and “to settle an important question of law.” Cal. R. Ct. 8.500(b)(1); *see also* Petition at 10-29.<sup>1</sup>

On April 18, 2014, just one week after The Times filed its Petition, the Blue Ribbon Commission on Child Protection, organized by the Los Angeles County Board of Supervisors, issued its Final Report on the state of child protective services in Los Angeles County

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<sup>1</sup> *Media Amici* are a group of concerned media and citizen organizations committed to learning about and reporting on the functioning of government bodies in California, including the juvenile courts and agencies charged with caring for juvenile dependants. A more complete description of *Amici* and their interests can be found at the end of this letter. Cal. R. Ct. 8.500(g)(2).

(“Commission Report”).<sup>2</sup> As part of its review, the Commission “conducted 15 public hearings, interviewed more than 300 stakeholders across all program areas related to child-safety, examined 28 child fatality cases, and researched promising practices across the country.” *Id.* at i. The Commission “**unanimously concluded that a State of Emergency exists, which requires a fundamental transformation of the current child protection system,**” and that “[t]he greatest obstacle to reform is the County system itself.” *Id.* at ii (emphasis in original) (noting, in particular, the need for the Dependency Court to work with pertinent agencies and commissions). Significantly, the Commission recommended “increase[d] transparency” because it is “virtually impossible for the public ... to understand the planning process” of dependency services. *Id.* at v. The Commission determined that “[s]ustainable accountability and reform require greater disclosure, clarity, and inclusion.” *Id.* The Commission was disturbed that “[p]roblems within the system remain hidden and often uncorrected because of secrecy around decision-making and other recurring failures.” *Id.* at 4.

This theme is not new, and there can be no doubt that the work of juvenile dependency courts is extremely important. The United States Supreme Court has held unanimously that “few consequences of judicial action are so grave as the severance of natural family ties.” *M.L.B. v. S.L.J.*, 519 U.S. 102, 119 (1996) (internal quotation marks and citation omitted). The courts of California recognize the critical role the press can play in facilitating and improving the juvenile courts and the dependency system. Over 35 years ago, this Court held that “the press can assist juvenile courts in becoming effective instruments of social rehabilitation by providing the public with greater knowledge of juvenile court processes, procedures, and unmet needs.” *Brian W. v. Superior Court*, 20 Cal.3d 618, 623 (1978). To maximize such benefits, this Court “urge[d] juvenile courts to *actively encourage greater participation by the press.*” *Id.* (emphasis in original). Consistent with this Court’s directive, the Fourth Appellate District of the Court of Appeal determined that, after considering various factors, “the court *should* allow press access unless there is a reasonable likelihood that such access will be harmful to the child or children’s best interest[.]” *San Bernardino County Dep’t of Pub. Soc. Svcs. v. Superior Court*, 232 Cal. App. 3d 188, 208 (1991) (emphasis added); *see also People v. Dixon*, 148 Cal. App. 4th 414, 426 (2007) (in the context of access to juvenile dependency proceedings, “[r]ather than having to fashion an order that is narrowly tailored to achieve a compelling interest, the court may limit access where there is a reasonable likelihood of prejudice”).

The decision from the Court of Appeal in this matter contravenes this Court’s decision in *Brian W.* and it conflicts with the holding in *San Bernardino* on an important question of law. The court below held that Welfare and Institutions Code § 346 (“Section 346”) “creates a presumption that dependency proceedings are closed to the press and public.” *Op.* at 15. Section 346 closes “a juvenile court hearing,” but allows judges to “admit such persons as he deems to have a direct and legitimate interest in the particular case or the work of the court.” *Welf. & Inst. C.* § 346. In *Brian W.*, this Court held with respect to Welfare and Institutions Code § 676, the predecessor statute to Section 346, that by “vesting the judge with discretion to admit to juvenile court proceedings persons having a ‘direct and legitimate interest in the particular work of the

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<sup>2</sup> The Commission Report can be found at:  
[http://ceo.lacounty.gov/pdf/brc/BRCCP\\_Final\\_Report\\_April\\_18\\_2014.pdf](http://ceo.lacounty.gov/pdf/brc/BRCCP_Final_Report_April_18_2014.pdf).

court,' *it was the purpose of the Legislature to allow press attendance at juvenile hearings.*" 20 Cal.3d at 623 (emphasis added). In other words, this Court already has held – contrary to the majority opinion of the court below – that the press has a “direct and legitimate interest” in the work of juvenile courts. *Id.*<sup>3</sup> Moreover, the court in *San Bernardino* held that juvenile dependency courts “*should* allow press access unless there is a reasonable likelihood that such access will be harmful to the child or children’s best interest[.]” 232 Cal. App. 3d at 208. These decisions cannot be reconciled with the majority opinion in the court below. Thus, review should be granted.

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<sup>3</sup> Many other states open proceedings involving juveniles to the press, either as a matter of constitutional, codified or common law. *See, e.g.,* Ari. Rev. Stat., Juv. Ct. Rules of Proc., Rule 41 (2014) (under Arizona law, juvenile dependency proceedings are presumptively open to the public, and good cause is required for closure); Colo. Rev. Stat. Ann. § 19-1-106 (2012) (general public may be excluded from juvenile dependency proceedings in Colorado only if “the court determines that it is in the best interest of the child or the community to exclude” them); Fla. Stat. § 39.507(2) (2013) (under Florida law, hearings involving custody and permanent placement of children and other dependency proceedings are presumed open except upon special order of the presiding judge); Ga. Code Ann. § 15-11-78 (juvenile dependency proceedings are presumptively open); Iowa Code Ann. §§ 232.39, 232.92 (2012) (juvenile dependency proceedings are presumptively open, and closure requires a judicial determination that “the possibility of damage or harm to the child outweighs the public’s interest in having an open hearing”); Kan. Stat. Ann. § 38-2247 (Kansas law allows “attendance by any person unless the court determines that closed proceedings or the exclusion of that person would be in the best interests of the child or is necessary to protect the privacy rights of the parents”); Minn. Stat. § 260C.163, subd. 1(c) (2013) (under Minnesota law, “absent exceptional circumstances,” court hearings relating to the termination of parental rights and various other child protection matters are open to the public); N.Y. Fam. Ct. Act § 741 (2012) (juvenile dependency proceedings are presumptively open in New York); N.C. Gen. Stat. § 7B-2402 (in North Carolina, juvenile hearings “shall be open to the public unless the court closes the hearing or part of the hearing for good cause, upon motion of a party or its own motion”); *State ex rel. Oregonian Publ’g Co. v. Deiz*, 613 P.2d 23, 27 (Or. 1980) (under Oregon Constitution, juvenile proceedings are open to the public); *New Jersey Div. of Youth and Fam. Svcs. v. J.B.*, 576 A.2d 261 (N.J. 1990) (New Jersey case applying right of access to dependency hearing); *Anonymous v. Anonymous*, 550 N.Y.S.2d 704 (N.Y. App. Div. 1990) (in New York custody case, finding constitutional presumption in favor of access); *Matter of Chase*, 446 N.Y.S.2d 1000 (N.Y. Fam. Ct. 1982) (presuming openness of juvenile delinquency proceeding in New York court); *Taylor v. State*, 438 N.E.2d 275 (Ind. 1982) (recognizing constitutional press rights and affirming access to media in juvenile case in Indiana). *Accord* Samuel Broderick Sokol, *Trying Dependency Cases in Public: A First Amendment Inquiry*, 45 UCLA L. Rev. 881 (1998) (advocating for a First Amendment right of access to juvenile dependency proceedings); Mary Mcdevitt Gofen, Comment, *The Right of Access to Child Custody and Dependency Cases*, 62 U. Chi. L. Rev. 857 (1995) (historical and legal analysis advocating a right of access to dependency proceedings); Jan L. Trasen, *Privacy v. Public Access to Juvenile Court Proceedings: Do Closed Hearings Protect the Child or the System?*, 15 B.C. Third World L.J. 359, 362 (1995) (advocating for a qualified right of media and public access to juvenile court proceedings).

The court in *San Bernardino* recognized several reasons to open juvenile dependency proceedings to the press. First, “public access may as well improve juvenile court practice[.]” *Id.* at 202. Second, “[p]ublic access does serve as a check against judicial and government abuse or misuse of power[.]” *Id.* Third, “public access serves an important educative function which is no less compelling in the context of the juvenile court. The public’s ability to understand how the system operates and, in turn, its ability to make informed decisions regarding the need for positive changes to the system will be enhanced by allowing access to the proceedings.” *Id.* at 203. Fourth, open juvenile court proceedings can “serve the twin goals of assuring fairness and giving the appearance of fairness.” *Id.* at 201. Fifth, “[p]ublic access to juvenile dependency proceedings can serve ‘an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion.’” *Id.* at 203. These justifications for openness are compelling, especially in light of the Blue Ribbon Commission’s conclusion that the current child protection system is in a “State of Emergency.”

The benefits of media access to juvenile dependency proceedings are not merely salutary. They are meaningful. Where access is denied, the public remains in the dark, reforms lag and children suffer. Where access is granted, however, important stories are told, serving the goals so well articulated by the court in *San Bernardino* and the Blue Ribbon Commission in Los Angeles County.

A few examples illustrate the powerful impact of news reporting on the juvenile courts. For instance, in February 2008, the *San Jose Mercury News*, a publication of Amicus Bay Area News Group, published a gripping three-part series entitled, “Broken Families, Broken Courts,” which was the culmination of a yearlong investigation of California’s dependency courts.<sup>4</sup> The series could not have been done without access to the dependency courts granted by individual judges. Not a single child or parent whose case was observed in the courtrooms throughout Northern California had their identity revealed in the subsequent newspaper articles, even when the reporter was granted complete access to case files, in addition to observing the proceedings. The series shed important light on the quality of justice for children and parents in the dependency courts, and resulted in a state law signed by former Governor Arnold Schwarzenegger.<sup>5</sup>

In 2011, the *Ventura County Star*, a publication of Amicus The E.W. Scripps Company, published a story about a child who was sexually abused by her guardian, a local school board member, despite nine separate incidents where she reached out for help and Ventura County Child

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<sup>4</sup> The three *San Jose Mercury News* articles, all by reporter Karen de Sá, are: “How Rushed Justice Fails Our Kids,” [http://www.mercurynews.com/localnewsheadlines/ci\\_8222816](http://www.mercurynews.com/localnewsheadlines/ci_8222816); “A Timid Advocate for Parents’ Rights,” [http://www.mercurynews.com/dependency/ci\\_8228513](http://www.mercurynews.com/dependency/ci_8228513); and “If it was about me, why didn’t they ask me?,” [http://www.mercurynews.com/ci\\_8237949](http://www.mercurynews.com/ci_8237949).

<sup>5</sup> See Karen de Sá, “Governor signs bill to improve rights for foster children in court,” *San Jose Mercury News*, July 22, 2008.

& Family Services was notified and supposedly investigated.<sup>6</sup> The story was possible because a Ventura Superior Court judge took the rare step of granting access to juvenile court proceedings and records over the objections of the child's counsel, Child Protective Services and the District Attorney. Months later, after a review of the case reported on by the *Ventura County Star*, the County instituted changes in its Child Protective Services division.<sup>7</sup>

The issues presented for review directly touch the lives of tens of thousands of the most vulnerable Californians, and they are undoubtedly important to all of us.<sup>8</sup> The Petition should be granted.

Very truly yours,



Jean-Paul Jassy  
JASSY VICK CAROLAN LLP

Counsel for Media *Amici*

**Interests of Media Amici** (Cal. R. Ct. 8.500(g)(2))

Bay Area News Group (BANG) is a division of Digital First Media. BANG is the largest newspaper publisher in the San Francisco Bay Area, publishing the *San Jose Mercury News*, *Oakland Tribune*, *Contra Costa Times*, *Santa Cruz Sentinel*, *The Argus (Fremont)*, *The Daily Review (Hayward)*, *Marin Independent Journal*, *The Reporter (Vacaville)* and *Times-Herald (Vallejo)* among other newspapers. BANG's publications routinely report on the juvenile dependency system.

The California Newspaper Publishers Association (CNPA), which represents 886 daily and weekly newspapers statewide, is a mutual benefit corporation organized under state law for

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<sup>6</sup> See Cheri Carlson, "Repeated reports and multiple investigations weren't enough to stop abuse of adolescent girl," *Ventura County Star*, Jan. 29, 2011 (<http://www.vcstar.com/news/2011/jan/29/nxxFCabuse30/>).

<sup>7</sup> See Cheri Carlson, "Outside review calls for changes in child protection efforts," *Ventura County Star*, May 21, 2011 (<http://www.vcstar.com/news/2011/may/21/outside-review-calls-for-changes-in-child/>).

<sup>8</sup> In 2008, the *San Jose Mercury News* estimated that there were over 75,000 children in California's dependency system. Karen de Sá, "How Rushed Justice Fails Our Kids," *San Jose Mercury News*, Feb. 10, 2008. In 2013, there were 14,344 new petitions in the Dependency Court of Los Angeles County *alone*. Commission Report at 8.

the purpose of promoting and preserving the newspaper industry in California. CNPA's efforts in the Legislature have ensured that Californians have one of the strongest protections in the nation when they engage in expressive activities.

Californians Aware is a 501(c)(3) charity. The primary purpose of Californians Aware is to foster the improvement of, compliance with and public understanding and use of, public forum law, which deals with people'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.

The Center for Investigative Reporting (CIR) is an award-winning nonprofit, independent newsroom based in the San Francisco Bay Area. Since 1977, CIR has relentlessly pursued and revealed injustices that otherwise would remain hidden from the public eye. Our stories arm the public with the facts needed to spark federal and state legislation, policy changes at all levels of government, public interest lawsuits, reforms in corporate practices and more. CIR investigations are at the center of news reports and community conversations. CIR has reported on the juvenile justice system, including an investigation into solitary confinement in county juvenile halls throughout California.

The E.W. Scripps Company (Scripps) serves audiences and businesses through a growing portfolio of television, print and digital media brands. In California, Scripps publishes the *Ventura County Star* and *Redding Record Searchlight* and broadcasts ABC affiliates, KCTV in San Diego and KERO-TV in Bakersfield. Scripps' publishers and broadcasters routinely report on the juvenile dependency system.

The First Amendment Coalition is a nonprofit organization (incorporated under California's nonprofit law and tax exempt under Section 501(c)(3) of the Internal Revenue Code) that is dedicated to freedom of expression, resisting censorship of all kinds, and to promotion of the "people's right to know" about their government so that they may hold it accountable. The Coalition is supported mainly by grants from foundations and individuals, but receives some of its funding from for-profit news media, law firms organized as corporations, and other for-profit companies.

Los Angeles News Group (LANG) is a division of Digital First Media. Its nine daily newspapers reach communities throughout Southern California from Long Beach to San Fernando and San Gabriel valleys to the vast Inland Empire. It publishes the *Daily News*, the *Daily Breeze*, *Press-Telegram*, *Pasadena Star-News*, *The Sun*, *Inland Valley Daily Bulletin*, *Whittier Daily News*, *San Gabriel Valley Tribune* and *Redlands Daily Facts*, in addition to several weekly newspapers and on-line news websites, including LA.com and ImpactoUSA.com. LANG's publications routinely report on the juvenile dependency system.

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 approximately 7,000 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 and defended the rights of

photographers and journalists, including intellectual property rights and 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. The National Press Photographers Association does not have a parent company. The National Press Photographers Association does not own any of the party's or amicus' stock

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970. The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock

cc: Attached Service List

**PROOF OF SERVICE**

The undersigned hereby states under the penalty of perjury under the laws of the State of California:

I am employed in Los Angeles County; I am over the age of eighteen years and not a party to the within cause; and my business address is 6605 Hollywood Blvd., Suite 100, Los Angeles, CA 90028.

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*Amici Curiae* Letter in Support of Petition for Review, Cal. R. Ct. 8.500(g)  
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I enclosed and sealed in said envelopes a copy of the following document:

*Amici Curiae* Letter in Support of Petition for Review, Cal. R. Ct. 8.500(g)

I deposited said envelopes, postage prepaid fully thereon, in a U.S. mail depository in Los Angeles, CA on this day.

Date: May 8, 2014



ELIZABETH LENAIRE