Case No. S227106

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA and ELECTRONIC FRONTIER FOUNDATION,

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

Respondent,

COUNT OF LOS ANGELES, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, CITY OF LOS ANGELES, LOS ANGELES POLICE DEPARTMENT,

Real Parties in Interest

After a Decision by the Court of Appeal,
Second Appellate District, Division Three, Case No. B259392
Los Angeles County Superior Court, Case No. BS143004
(Hon. James C. Chalfant)

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND *AMICI CURIAE* BRIEF OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 12 MEDIA ORGANIZATIONS IN SUPPORT OF PETITIONERS

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TO THE HONORABLE CHIEF JUSTICE AND HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Pursuant to rule 8.520, subdivision (f), of the California Rules of Court, the Reporters Committee for Freedom of the Press (the "Reporters Committee"), American Society of News Editors, Association of Alternative Newsmedia, California Newspaper Publishers Association, Californians Aware, The Center for Investigative Reporting, First Amendment Coalition, Los Angeles Times Communications LLC, The McClatchy Company, The National Press Club, National Press Photographers Association, Online News Association, and Society of Professional Journalists (collectively, "*Amici*") respectfully request leave to file the attached brief as *amici curiae* in support of Petitioners.

I. INTEREST OF *AMICI CURIAE*

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association of reporters and editors that works to safeguard the First Amendment's guarantee of a free and unfettered press, and the public's right to be informed, through the news media, about the government. The Reporters Committee has provided guidance and research in First Amendment and freedom of information litigation since 1970.

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.

Association of Alternative Newsmedia ("AAN") is a not-for-profit trade association for 130 alternative newspapers in North America, including weekly papers like The Village Voice and Washington City Paper. 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.

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.

The Center for Investigative Reporting (CIR) believes journalism that moves citizens to action is an essential pillar of democracy. Since 1977, CIR has relentlessly pursued and revealed injustices that otherwise would remain hidden from the public eye. Today, we're upholding this legacy and looking forward, working at the forefront of journalistic innovation to produce important stories that make a difference and engage you, our audience, across the aisle, coast to coast and worldwide.

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, we resist excessive government secrecy (while recognizing the need to protect legitimate state secrets) and censorship of all kinds.

Los Angeles Times Communications LLC publishes the Los Angeles Times, the largest metropolitan daily newspaper in the country. The Los Angeles Times operates the website www.latimes.com, a leading source of national and international news.

The McClatchy Company, through its affiliates, is the third-largest newspaper publisher in the United States with 29 daily newspapers and related websites as well as numerous community newspapers and niche publications.

The National Press Club is the world's leading professional organization for journalists. Founded in 1908, the Club has 3,100 members representing most major news organizations. The Club defends a free press worldwide. Each year, the Club holds over

2,000 events, including news conferences, luncheons and panels, and more than 250,000 guests come through its doors.

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 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.

Online News Association ("ONA") is the world's largest association of online journalists. ONA's mission is to inspire innovation and excellence among journalists to better serve the public. ONA's more than 2,000 members include news writers, producers, designers, editors, bloggers, technologists, photographers, academics, students and others who produce news for the Internet or other digital delivery systems. ONA hosts the annual Online News Association conference and administers the Online Journalism Awards. ONA is dedicated to advancing the interests of digital journalists and the public generally by encouraging editorial integrity and independence, journalistic excellence and freedom of expression and access.

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.

This case is of significant interest to *Amici* because the decision of the Court of Appeal, Second Appellate District, Division Three, undermines core provisions of the California Public Records Act, Government Code § 6250, *et seq*. (hereinafter, the "PRA") that ensure meaningful public access to police records that are not gathered in connection with a criminal investigation. In *Haynie v. Superior Ct.* (2001) 26 Cal.4th 1061, 1071 ("*Haynie*"), this Court held that the "records of investigation exempted under section 6254(f) encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred." Until now, this Court has not been called upon to decide whether records generated by an automated data-collection process may constitute records of an "investigation" that are exempt from disclosure under Section 6254, subdivision (f), of the PRA.

Amici agree with Petitioners' position that the decision below improperly expands the scope of the so-called investigatory records exemption found in Section 6254, subdivision (f), and impermissibly disregards the California Constitution's mandate to construe the PRA broadly in order to "further[] the people's right of access." (Cal. Const. Art. I, § 3(b)(2).) *Amici*, as representatives and members of the news media who frequently rely upon public records statutes like the PRA to gather and report news of

vital public concern, have a substantial interest in ensuring that the PRA remains a strong and effective tool for obtaining information about law enforcement activities.

Accordingly, *Amici* respectfully request that this Court accept and file the attached *amici curiae* brief.

/s/ Katie Townsend

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AMICI CURIAE BRIEF OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 12 MEDIA ORGANIZATIONS IN SUPPORT OF PETITIONERS

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INTRODUCTION

In California, "access to information concerning the conduct of the people's business is a fundamental and necessary right" guaranteed by statute and by California's Constitution. *See* Gov't Code, §6250; Cal. Const., art. I, § 3 subd. (b). California's Public Records Act (the "PRA"), Gov't Code, § 6250, *et seq*., is the means by which the press and the public exercise that fundamental right, which is rooted in the recognition that a functioning democratic government must be open to public scrutiny. The PRA is thus a powerful mechanism for ensuring "the accountability of government to the public." (*Register Div. of Freedom Newspapers Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 901 ("*Freedom Newspapers*").)

This case, which concerns the interpretation of the PRA's statutory exemption for law enforcement "records of investigation," will have significant ramifications for the ability of the press and the public to access information about how state and local law enforcement agencies conduct "the people's business." (Gov't Code, § 6250.) As the Court of Appeal, below, acknowledged, no prior case "has considered whether records generated by an automated process, like that performed by" the Automatic License Plate Reader ("ALPR") technology at issue here, "qualify for exemption under subdivision (f)." (*American Civil Liberties Union Foundation of Southern California et al. v. Superior Court of Los Angeles County* (2015) 236 Cal.App.4th 673, 680 ("*ACLU*").) And, if the Court of Appeal's decision is permitted to stand, *Amici* have grave concerns that it will embolden law enforcement agencies to invoke Section 6250, subdivision (f), to withhold all records generated by other forms of new technology as they are adopted

by law enforcement for similarly routine use. For the reasons set forth herein, this Court should reject the statutory interpretation advanced by Real Parties in Interest that would shield such records from public view even when they bear no relationship to a specific investigation, and adopt instead Petitioners' interpretation, requiring that the term "investigation" correspond to a "targeted inquiry." (*See* Cal. Const., art. I, § 3, subd. (b)(2) [expressly requiring that the right of access in the PRA be "broadly construed," and any limitation on access be "narrowly construed"].)

Amici write separately to emphasize the impact upon the press of any decision holding that records collected and thereafter maintained within a police database are exempt from disclosure under Section 6254, subdivision (f), of the PRA, even when the records are not gathered for or used in connection with a specific criminal investigation. Journalists regularly and necessarily rely on requests for information made under the PRA to report on the actions of state and local government officials and agencies, including law enforcement agencies. Any ruling that exempts from disclosure law enforcement records unrelated to any investigation of a specific crime on the ground that the records are "investigatory" is a novel construction that flies in the face of the constitutional and statutory obligation to construe exemptions to public disclosure narrowly. Such an interpretation of the PRA would prevent journalists from obtaining information about how law enforcement agencies collect and aggregate information about citizens, and undercut the vital purposes that the statute is intended to serve.

For the reasons herein, *Amici* urge this Court to reverse and vacate the decision of the Court of Appeal.

ARGUMENT

The Court of Appeal, below, concluded that the data generated when Real Parties in Interest the City and County of Los Angeles use ALPR technology is exempt from disclosure under the PRA on the grounds that such data is "investigatory" in nature, and falls within Government Code section 6254, subdivision (f)—the PRA's so-called investigatory records exemption. ALPR systems automatically and comprehensively, without suspicion, scan the license plates of all nearby cars and cross-reference them against a "hot list" of license plates that correspond to stolen vehicles. The Court of Appeal's application of Section 6254, subdivision (f), to the ALPR data requested by Petitioners rests on a flawed, overly broad interpretation of that provision, and a novel construction of the PRA that runs counter to both the statutory language and this Court's precedent. The Court of Appeal's decision stretches the PRA's investigatory records exemption beyond recognition and, if affirmed by this Court, will impede the efforts of journalists and news organizations who regularly rely on the PRA to gather news and keep the public informed about how state and local law enforcement agencies operate within their communities.[1]

As discussed in more detail herein, the California Constitution expressly mandates that the investigatory records exemption—like all exemptions to disclosure under the PRA—be interpreted narrowly. (Cal. Const., art. I, § 3 subd. (b)(2).) Section 6254, subdivision (f), provides that the "records of investigation" of a local police force may be

[1] All statutory citations herein are to the California Government Code, unless otherwise stated.

withheld from disclosure. While the PRA does not explicitly define "records of investigation," this Court has previously held that the "records of investigation exempted under section 6254(f) encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred." (*Haynie v. Superior Ct.* (2001) 26 Cal.4th 1061, 1071 ("*Haynie*").) Notwithstanding the requirements of the California Constitution, and the guidance given it by this Court in *Haynie*, the Court of Appeal concluded that data collected by "the ALPR system"—a system that automatically scans "every license plate within view," regardless of investigatory value—are records of "an investigation to locate automobiles associated with specific suspected crimes." (*Ibid*. at p. 684.) As a result, the Court of Appeal erroneously determined that records generated by an ALPR system, regardless of whether or not those records are associated with any crime, are investigatory records exempt from disclosure under the PRA.

The Court of Appeal's decision could have broad ramifications for journalists and reporters seeking to obtain information about routine law enforcement practices that are independent of any prior or current investigation. For that reason, and all the reasons set forth herein, *Amici* urge this Court to reverse and vacate the Court of Appeal's decision.

I. The Court of Appeal's decision construing "records of investigation" under Section 6254, subdivision (f), to exempt ALPR data from disclosure, if affirmed, will impair the ability of the press to keep the public informed.

The Court of Appeal's decision limits the ability of the press and the public to access ALPR data collected by law enforcement and has the potential to significantly damage the ability of the press to perform its fundamental and constitutionally recognized

duty to gather the news and keep citizens informed about the actions of their government. Reporters in California, like reporters around the nation, routinely rely on freedom of information laws like the PRA to access governmental records and information in order to bring important issues to the attention of the public. Journalists are increasingly relying on freedom of information laws to gain access to government datasets in order to identify trends and systemic issues. This is particularly true when it comes to reporting on the activities of law enforcement. Exempting ALPR data from disclosure under the PRA will impede California journalists' ability to report on important matters of public interest and concern. Moreover, permitting Real Parties in Interest to withhold records, regardless of investigatory value, under Section 6254, subdivision (f), merely because of the type of technology that generated them raises the possibility that law enforcement agencies will attempt to expand the Court of Appeal's reasoning to withhold records generated by other forms of new technology—like body-worn camera technology—that are being adopted for routine use by law enforcement agencies across the State.

As Petitioners detail, extensive reporting on law enforcement use of ALPR systems, specifically, has provoked public debate nationwide, and prompted some jurisdictions to establish new or different rules governing the retention of such data. (Petitioners' Br., 37–38.) For instance, in 2013, Cyrus Farivar, a journalist in the San Francisco Bay Area, filed PRA requests in multiple counties throughout California seeking ALPR data pertaining to his own vehicle. (Cyrus Farivar, *The cops are tracking my car—and yours*, Ars Technica (July 18, 2013, 9:00 A.M.), arstechnica.com/tech-policy/2013/07/the-cops-are-tracking-my-car-and-yours/1/.) The responses Farivar

received to the fourteen PRA requests he submitted varied widely. While some law enforcement agencies responded by producing the requested data, Farivar reported that the LAPD and the Los Angeles County Sheriff's Department—Real Parties in Interest in this case—claimed the requested records were exempt from disclosure. (*Id.*) Farivar wrote: "It's a bit hard to understand how as a law-abiding citizen, asking for my own data constitutes either an 'investigation,' a 'record of intelligence information or security procedure,' or an 'investigatory or security file.'" (*Id.*)

In 2015, the Oakland Police Department provided eight days of ALPR data in response to another PRA request by EFF. (Jeremy Gillula and Dave Maass, *What You Can Learn from Oakland's Raw ALPR Data*, Electronic Frontier Foundation (Jan. 21, 2015), http://bit.ly/1BIowul.) Reporters analyzing that data observed that vehicles were more likely to be photographed in low-income areas, raising concerns over potentially discriminatory law enforcement practices. (Darwin BondGraham, *Drive a Car in Oakland? Your Movements Are Being Tracked by the Oakland Police, Especially if You're in a Low-Income Area*, East Bay Express (Jan. 23, 2015), http://bit.ly/1II1w2w.) And press coverage has also focused on the sheer amount of data collected by law enforcement through the use of ALPR systems. In response to a PRA request by the Sacramento News & Review, the Sacramento Police Department reported that its ALPR system made 32.1 million "detections" in 2015, "more than four times the 7.8 million detections made in 2014." (Raheem F. Hosseini, *Cops' license-plate readers keep their eye on you, Sacramento*, Sacramento News & Review (Apr. 7, 2016), http://bit.ly/26rW0ut.) In addition, police may also access "commercially-gathered

license plate scans" through platforms like Vigilant, further raising concerns about socioeconomic and racial profiling using license plate data. (Kaveh Waddell, *How License-Plate Readers Have Helped Police and Lenders Target the Poor*, The Atlantic (Apr. 22, 2016), http://theatln.tc/1NoZmYH.)

These reports have prompted calls for appropriate retention and dissemination policies relating to ALPR data. (*See, e.g.*, Colin Wood, *How Are Police Departments Using License Plate Reader Data?* Government Technology (Jan. 23, 2015), http://bit.ly/1DdKFzP.) Indeed, California law now requires agencies that operate ALPR systems to implement and make public a "usage and privacy policy in order to ensure that the collection, use, maintenance, sharing, and dissemination of ALPR information is consistent with respect for individuals' privacy and civil liberties." (Civ. Code, § 1798.90.51(b)(1).) The Los Angeles Police Department has reportedly failed to publish its ALPR policy. (Aaron Mendelson, *License plate readers capture loads of data. How long do cops keep it?* 89.3 KPCC Southern California Public Radio (Apr. 18, 2016), http://bit.ly/1Tv2Fgi.)

The potential implications of this case, however, extend beyond any one law enforcement tool or method. Exempting records not associated with any specific investigation from disclosure under the PRA on the grounds that they are "investigative records" would work an unwarranted expansion of that exemption that could encourage law enforcement agencies to refuse disclosure in other contexts as well, particularly where new technology is being utilized by law enforcement to automatically generate records, including large datasets. Because journalists rely on the PRA to gain access to

public records and information in connection with day-to-day reporting, as well as more in-depth and investigative stories, the Court of Appeal's ruling is deeply troubling.

There are numerous examples of powerful, important news stories that were possible only because of journalists' access to large datasets maintained by state and local law enforcement agencies in California. In August 2014, the *Los Angeles Times* reported that the LAPD had misclassified over 1,000 violent crimes over a one-year period between 2012 and 2013, resulting in inaccurate information being presented to the public regarding the crime rate in Los Angeles. (Ben Poston & Joel Rubin, *LAPD Misclassified Nearly 1,200 Violent Crimes as Minor Offenses*, L.A. Times (Aug. 9, 2014, 6:04 PM), http://lat.ms/1lT9MBW.) The investigative journalism that exposed these errors was only possible because of "the California Public Records Act, [through which the *Los Angeles Times*] obtained computerized crime data for more than 94,000 incidents recorded by the Los Angeles Police Department in the year ending Sept. 30, 2013." (Ben Poston & Joel Rubin, *LAPD's Misclassified Incidents: How We Reported This Story*, L.A. Times (Aug. 9, 2014, 6:04 PM), http://lat.ms/1ul6ucf.)

In subsequent months, the *Los Angeles Times* expanded the scope of its initial investigation to cover an even broader time period, again analyzing data obtained through the PRA. It reported in October, 2015 that the LAPD had "misclassified an estimated 14,000 serious assaults as minor offenses in a recent eight-year period, artificially lowering the city's crime levels." (Ben Poston, Joel Rubin & Anthony Pesce, *LAPD underreported serious assaults, skewing crime stats for 8 years*, L.A. Times (Oct. 15, 2015, 4:47 AM), http://www.latimes.com/local/cityhall/la-me-crime-stats-20151015-

story.html.). Prompted by the *Los Angeles Times'* reporting, Inspector General Alex Bustamante conducted an audit of LAPD crime reports and estimated that the LAPD had misclassified tens of thousands of aggravated assaults as minor incidents from 2008 to 2014, finding that "[t]he errors meant the number of serious attacks would have been 36% higher than what the LAPD reported during that time." (Ben Poston & Joel Rubin, *LAPD Misclassified More Than 25,000 Serious Crimes as Minor, Audit Finds*, L.A. Times (Dec. 5, 2015, 7:43 PM), http://fw.to/GbojrAW.)

Los Angeles school police also came under public scrutiny as a result of data obtained under the PRA that was analyzed and reported by researchers and journalists. This data, "obtained as a result of a public records request," showed that Los Angeles school police issued more than 33,500 court summonses to youths between the ages of 10 and 18 over a three-year period from 2009–2011. (Susan Ferriss, *School discipline debate reignited by new Los Angeles Data*, The Center for Public Integrity, (Apr. 24, 2012, 3:56 PM), http://bit.ly/1osjI19; Vanessa Romo, *LA School Police ticket more than 33,000 students, many are middle schoolers*, 89.3 KPCC Southern California Public Radio, (Apr. 27, 2012), http://bit.ly/1qEDkn7.) Almost a quarter of those citations were issued to middle school students, with some being issued to students as young as seven years old. The data obtained under the PRA also showed that black and Latino students were given a disproportionate number of tickets compared to white students, and that the citations were concentrated in low-income areas. (Susan Ferriss, *Los Angeles school police citations draw federal scrutiny*, The Center for Public Integrity, (May 21, 2012, 6:00 AM), http://bit.ly/1lTalf9.) This data shined a light on a growing trend of police and

court involvement in minor disciplinary events that used to be handled by school officials, which, in turn, sparked protests by students and parents, and eventually led to dialogue between police and the community, as well as policy reform. (*See id*; *see also* Jennifer Medina, *Los Angeles to Reduce Arrest Rate in Schools*, The New York Times (Aug. 18, 2014), http://nyti.ms/1wfTJ1S.)

Finally, another California media organization recently obtained and analyzed information under the PRA to report on the relationship between police stops in San Francisco and race. "[I]n response to a public records request," a reporter was able to obtain information on the race of persons stopped by the San Francisco police from January to December of 2013, a 12 month period. (Vivian Ho, *Police rarely analyze*, *share racial data on stops*, SFGate (Aug. 19, 2014, 8:04 AM), http://bit.ly/1nL9jgO.) The story showed that while San Francisco police were collecting stop data, they did not have the resources to analyze it. *Id.* It was up to the reporter who requested the data to scrutinize the numbers and inform the public that African American drivers made up 17% of stops, while only comprising 6% of the city's population. *Id.*

These are but a handful of examples of the powerful reporting that journalists and news organizations in California are able to accomplish by obtaining data from law enforcement agencies under the PRA. If law enforcement agencies are encouraged to invoke Section 6254, subdivision (f), to withhold records like ALPR data in response to PRA requests, many important stories like these may go unreported. Such a result runs contrary to the very purpose of the PRA, which is to ensure "the accountability of

government to the public." (*Register Div. of Freedom Newspapers Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 901.)

II. The Court of Appeal's broad interpretation of the scope of the PRA's exemption for "records of investigation" ignores constitutional mandates.

In 2004, California voters overwhelmingly approved Proposition 59, enshrining the public's right of access in California's Constitution, and mandating—as a matter of state constitutional law—that access to government information afforded under the PRA be construed "broadly." (*See* Cal. Const., art. I, § 3 subd. (b)(2).) Accordingly, an exemption under the PRA must be "narrowly construed if it limits the right of access." (*Id*.; *see also International Federation of Professional & Technical Engineers, Local 21, AFL–CIO v. Superior Court* (2007) 42 Cal.4th 319, 348 (conc. & dis. opn of Kennard, J.).) Yet, in concluding that a broad swath of data automatically collected by law enforcement agencies—the vast majority of which has no connection, whatsoever, to any crime or criminal activity—are exempt from disclosure under the PRA, the Court of Appeal ignored these constitutional requirements.

Real Parties in Interest argue that Proposition 59 should have no effect on this Court's construction of the investigatory records exemption because, they assert, its enactment "did not change any rules of law applicable to construction of the CPRA." (County Ans. at 24.) Yet this argument ignores the unambiguous text of Proposition 59, which unquestionably imposes a rule of construction applicable to the PRA. It added to the California Constitution an explicit requirement that courts adopt a "narrow[]" construction of any provision limiting public access, "*including* those in effect on the

effective date of this subdivision." (Cal. Const., art. I, § 3 subd. (b)(2) (emphasis added).) And no court considering Proposition 59 has found it to be ambiguous. (*Savaglio v. Wal-Mart Stores, Inc.* (2007) 149 Cal.App.4th 588, 600 ("Lest there be any question, Proposition 59 *requires us to broadly construe a statute or court rule* 'if it furthers the people's right of access' and to narrowly construe the same 'if it limits the right of access.'" Emphasis in original.) While Proposition 59 "did not change existing law *except as can be gleaned from its language*," *Sutter's Place, Inc. v. Superior Court* (2008) 161 Cal.App.4th 1370, 1382 (emphasis added), the language of Proposition 59 could not be more clear. There is no basis for the argument of Real Parties in Interest that the investigatory records exemption should be construed broadly in the face of the unambiguous constitutional requirement that it be interpreted, like all of the PRA's exemptions, narrowly.[2]

The Court of Appeal thus erred in taking an exceedingly broad view of the PRA's investigatory records exemption. It concluded that because the ALPR system automatically cross-references scanned license plates with a database of license plates corresponding with stolen vehicles, "the plate scans performed by the ALPR system are precipitated by specific criminal investigations—namely, the investigations that produced the 'hot list' of license plate numbers associated with suspected crimes." (*ACLU* at p. 684.) This rationale—which, among other things, adopts the illogical premise that all

[2] Certain of *Amici*, including the California Newspaper Publishers Association, Californians Aware, and the First Amendment Coalition, were among Proposition 59's sponsors.

vehicles in Los Angeles may at all times be considered the target of a criminal investigation—unreasonably and impermissibly expands the scope of the PRA's narrow exemption for "records of investigation."

As a general matter, many police activities relating, for example, to crime prevention may have generally been "precipitated by specific criminal investigations," in the same manner described by the Court of Appeal. Records relating to those activities, however, are not shielded from public scrutiny by Section 6254, subdivision (f). For example, the Los Angeles Police Department ("LAPD") routinely uses so-called "DUI checkpoints" and "saturation patrols" in an effort to deter, prevent, and arrest individuals for the crime of driving under the influence. (*See, e.g.*, *LAPD Targets Impaired Drivers with DUI Checkpoints and DUI Saturation Patrols NA16076ti*, Los Angeles Police Department (Apr. 21, 2016), http://bit.ly/24munAX.) DUI checkpoints are undoubtedly a "crime prevention" activity, but they are also "precipitated" by incidents of drunk driving. Not only is it undisputed that records related to DUI checkpoints are subject to disclosure under the PRA, but the LAPD itself frequently publicizes information regarding this crime prevention activity (including the location and time of the checkpoints). (*Ibid.*)

Like DUI checkpoints, license plate scans performed by the ALPR system, as the Court of Appeal acknowledged, are done comprehensively, without suspicion, and on a routine basis. They are not targeted at vehicles that are the subject of investigation, and the data generated by the ALPR system is not tied to any particular investigation of any specific crime. The fact that a "hot list" of license plate numbers also exists and is later

cross-referenced with the data collected by the ALPR system does not transform all ALPR data that is gathered by law enforcement into a "record of investigation" within the meaning of the PRA.

Indeed, this Court recently rejected a similarly expansive view of exemptions from disclosure under the PRA in the context of law enforcement records. In 2014, this Court considered a request for disclosure under the PRA of the names of Long Beach police officers involved in shootings over a five-year period. Both the police union and the City of Long Beach argued that the names of officers were categorically exempt from disclosure under the PRA. They argued, in part, that "because *every* on-duty shooting is *routinely investigated* by the employing agency, the details of *every such incident* (including the names of the officers involved)" are confidential personnel records related to officer appraisal or discipline, and covered by California's *Pitchess* statutes. (*Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal. 4th 59, 71 (emphasis added) ("*Long Beach*").) This Court, however, declined to "read the phrase 'records relating to employee appraisal or discipline' so broadly as to include every record that might be considered for purposes of an officer's appraisal or discipline, for such a broad reading of the statute would sweep virtually all law enforcement records into the protected category of 'personnel records.'" (*Ibid.* at pp. 71–72 (citations and quotation marks omitted).) This Court also rejected the City of Long Beach's argument that Section 6254, subdivision (f), permitted it "to withhold the names of officers involved in on-duty shootings," finding the exemption "inapplicable" because it "exempts from disclosure '[r]ecords of investigations conducted by . . . any state or local police agency'"

and the request did not seek "the records of any administrative or criminal investigation . . . ." (*Ibid*. at p. 74.)

As in *Long Beach*, the Real Parties in Interest here argue for an extraordinarily broad interpretation of a statutory exemption from disclosure under the PRA that would sweep all records generated by a law enforcement agency's use of an ALPR system under the label "records of investigation." However, in order to "narrowly" construe the exemption set forth in Section 6254, subdivision (f), as required by the California Constitution, the Court of Appeal was obligated to interpret the terms "investigation" and "record of investigation" narrowly, and consistently with this Court's prior decisions. It failed to do so.

III. The Court of Appeal's decision is inconsistent with the prior decisions of this Court and with the statutory language of Section 6254, subdivision (f).

a. The interpretation of Section 6254, subdivision (f), adopted by the Court of Appeal cannot be reconciled with prior case law.

In *Haynie*, this Court distinguished records that are exempt under Section 6254, subdivision (f)—which "encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred"—from non-exempt records concerning "related to crime prevention and public safety that are unrelated to either civil or criminal investigations." (*Haynie*, *supra*, 26 Cal.4th at p. 1071.) In repudiating the notion that a record may be exempt from disclosure simply because it is related to "crime prevention and public safety," this Court in *Haynie* recognized that "to shield everything law enforcement officers do from disclosure" would defeat the purpose of the PRA. (*Ibid*.)

Other decisions that preceded *Haynie* also support a narrow construction of Section 6254, subdivision (f). In *Uribe*, the Court of Appeal, Fourth Appellate District, considered the exemption for "investigatory files." (*Uribe v. Howie* (1971) 19 Cal.App.3d 194, 212–13 ("*Uribe*").) It concluded that under Section 6254, subdivision (f), "investigatory files" could be exempt from disclosure "*only* when the prospect of enforcement proceedings is *concrete and definite*." (*Ibid*. at p. 212, emphasis added.) Although the investigatory files exemption is distinct from the investigatory records exemption, the logic of *Uribe* is applicable here. Section 6254, subdivision (f), should not be read so as "to create a virtual carte blanche for the denial of public access to public records," because such a perverse result "could not have been the intent of the Legislature." (*Ibid*. at p. 213.)

Eleven years later, this Court rejected a similarly expansive reading of the "intelligence information" exemption in Section 6254, subdivision (f). (*See American Civil Liberties Union v. Deukmejian* (1982) 32 Cal.3d 440, 449 ("*Deukmejian*").) In *Deukmejian*, this Court refused to interpret that exemption to apply to "all information which is reasonably related to criminal activity," reasoning that such a broad construction of that exemption would "effectively exclude the law enforcement function of state and local governments from any public scrutiny under the [PRA], a result inconsistent with its fundamental purpose." (*Id*., quotation marks omitted.) *Haynie*, *Deukmejian*, and *Uribe* all make clear that an expansive reading of Section 6254, subdivision (f), like the one adopted by the Court of Appeal, below, conflicts with legislative intent and the language and purpose of the PRA.

Real Parties in Interest urge this Court, in essence, to disavow its prior decisions in *Haynie* and *Deukmejian* and unsettle this area of law by approving a definition of "records of investigation" that would exempt from public disclosure records of law enforcement activities and practices that are, in fact, untethered to any specific criminal investigation. The City of Los Angeles, for example, argues that the term "investigation" recognizes "no distinction between inquiries into a specific complaint and observation of a public place." (City Ans. at 15). Similarly, it claims that all observations of patrol officers walking the beat are "records of investigation" if those officers have been told to be on the lookout for a stolen vehicle. (*Ibid.*) In addition to obliterating the distinction between investigative work and the crime prevention and public safety work performed by law enforcement that was recognized by this Court in *Haynie*, *supra*, 26 Cal.4th at p. 1071, these arguments ignore the plain meaning of the word "investigation." Indeed, even Real Parties in Interest are unable to reconcile their exceptionally broad reading of the PRA's investigatory records exemption with the ordinary understanding of what constitutes an "investigation": a probe or inquiry into a specific crime to identify, for example, those who may be responsible, or of a specific incident to determine if a crime has occurred. The City asserts, for example, that an "investigation" exists when police scrutinize individuals who may have been present at a particular crime scene. (*Ibid.* at 3.) *Amici* agree that would qualify as an "investigation." And it is entirely distinguishable

from the City's routine, automatic, and comprehensive collection of license plate data using an ALPR system.[3]

b. A broad definition of "investigation" contravenes the statutory language of Section 6254, subdivision (f).

The statutory language of Section 6254, subdivision (f), on its face, also supports a definition of "investigation" that is far narrower than the one adopted by the Court of Appeal. State and local law enforcement agencies must make public, among other things, the following information about records that are exempt from disclosure under that provision—"except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation":

> [T]o the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. . . .

(Gov't Code, § 6254(f)(2).)

Any interpretation of the term "investigation" for purposes of construing the scope of the PRA's exemption for "records of investigation" should take into account the

[3] Notably, Real Parties in Interest have not supplied basic information concerning how frequently ALPR data is used to provide "investigative leads" that "help" law enforcement "solve" particular crimes like those cited as examples in their brief. (*Ibid.* at 6 n.9.) In fact, Petitioners argue—and Real Parties in Interest do not dispute—that only a tiny fraction, reportedly less than one percent, of all ALPR scans result in "hits." Thus, not only is the data at issue here not generated in connection with an investigation into any specific crime, it is also undisputed that such data is only seldom used later in connection with a criminal investigation.

specific characteristics of an "investigation" that are outlined in Section 6254, subdivision (f)(2). Specifically, this provision anticipates the "completion of the investigation or a related investigation," an objective that cannot reasonably be fulfilled if the definition of "investigation" encompasses ongoing, general efforts by law enforcement to "scan[] every car in view." (*ACLU*, *supra*, at p. 684.) In addition, the PRA's reference to specific information about "crimes alleged or committed or any other incident investigated" further supports interpreting the term "investigation" to mean the targeted investigation of a specific crime or reported incident. (Gov't Code, § 6254(f)(2).) In sum, the statutory language does not support the expansive, vague definition of "investigation" urged by Real Parties in Interest, and relied upon by the Court of Appeal, below.

CONCLUSION

For the foregoing reasons, *Amici* urge this Court to reverse and vacate the decision of the Court of Appeal.

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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 is produced using 13-point Roman type, including footnotes, and contains 5,041 words. I have relied on the word count function of the computer program used to prepare this brief.

Dated: May 4, 2016

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DECLARATION OF SERVICE

I, Hannah Bloch-Wehba, 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 Street NW, Suite 1250, Washington, D.C. 20005. I am a citizen of the United States and am employed in Washington, District of Columbia.

On May 4, 2016, 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 12 Media Organizations in Support of Petitioners,** upon the parties in this action by placing true and correct copies thereof in sealed envelopes addressed to the following persons:

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I declare under penalty of perjury that the foregoing is true and correct and that this document was executed on May 4, 2016.

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