

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT, DIVISION THREE

RICHARD SANDER and THE FIRST  
AMENDMENT COALITION,

Petitioners and Appellants,

v.

THE STATE BAR OF CALIFORNIA  
and THE BOARD OF GOVERNORS  
OF THE STATE BAR,

Defendants and  
Respondents,

DWIGHT AARONS, et al.,

Intervenors.

1st Civ. No. A150625

San Francisco Superior Court  
Case No. CPF-08-508880

Hon. Mary E. Wiss,  
Presiding

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**APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF  
AND PROPOSED *AMICI* BRIEF OF THE REPORTERS  
COMMITTEE FOR FREEDOM OF THE PRESS AND 13 MEDIA  
ORGANIZATIONS IN SUPPORT OF APPELLANTS**

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**APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF**  
**TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE**  
**JUSTICES OF THE COURT OF APPEAL FOR THE STATE OF**  
**CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION 3:**

Pursuant to California Rule of Court 8.200(c), the Reporters Committee for Freedom of the Press, American Society of News Editors, Associated Press Media Editors, Association of Alternative Newsmedia, Bay Area News Group, The California News Publishers Association, Californians Aware, The Center for Investigative Reporting, Los Angeles Times Communications LLC, The McClatchy Company, MPA – The Association of Magazine Media, 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 Appellants Richard Sander and The First Amendment Coalition. Appellants, Respondents, and Intervenors have consented to the filing of the attached *amici* brief.

**I. INTEREST OF *AMICI CURIAE***

Members of the news media frequently make requests for public records under the California Public Records Act (the “CPRA” or “Act”) as a means of gathering news. Accordingly, this case presents issues of significant concern to *amici*. In particular, *amici* are concerned about the

impact of the Superior Court’s holding that anonymization of data in a government database constitutes the creation of a “new record,” and thus that a public agency may withhold such data under the Act. Additionally, *amici* write to emphasize that the Superior Court failed to give sufficient weight to the public interest served by disclosure of the information sought by Appellants.

The Superior Court’s ruling, if affirmed, would hamper journalists’ ability to obtain information maintained in government databases to report on matters of public concern—something that numerous reporters and media organizations have done in recent years for the benefit of the public. For example, as described in the attached *amici* brief, journalists have analyzed large, anonymized government databases obtained through public records requests to bring to light systemic problems in public schools and hospitals. Accordingly, *amici* write to highlight the negative consequences that flow from the Superior Court’s cramped interpretation of the CPRA, which would permit agencies to characterize the process of anonymizing existing data as the creation of a new record in order to avoid the requirements of the Act.

*Amici* respectfully request that this 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.

/s/ Katie Townsend

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## **CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

Pursuant to California Rule of Court 8.208(e)(1) and (2), *amici* The Reporters Committee for Freedom of the Press, American Society of News Editors, Associated Press Media Editors, Association of Alternative Newsmedia, Bay Area News Group, The California News Publishers Association, Californians Aware, The Center for Investigative Reporting, Los Angeles Times Communications LLC, The McClatchy Company, MPA – The Association of Magazine Media, National Press Photographers Association, Online News Association, and Society of Professional Journalists by and through their undersigned counsel, certify that the following entities or persons have either (1) an ownership interest of 10 percent or more in the party or parties filing this certificate or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves:

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

American Society of News Editors is a private, non-stock corporation that has no parent.

The Associated Press Media Editors has no parent corporation and does not issue any stock.

Association of Alternative Newsmedia has no parent corporation and does not issue any stock.

Bay Area News Group is owned and operated by California Newspapers Partnership, a subsidiary of the privately-held Media NewsGroup.

California News Publishers Association is a mutual benefit corporation organized under state law for the purpose of promoting and preserving the newspaper industry in California.

Californians Aware is a nonprofit organization with no parent corporation and no stock.

The Center for Investigative Reporting is a California non-profit public benefit corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. It has no statutory members and no stock.

Los Angeles Times Communications LLC is a subsidiary of tronc, Inc., which is publicly held. Merrick Venture Management Holdings, LLC, California Capital Equity, LLC, and PRIMECAP Management Company each own 10 percent or more of tronc, Inc.'s stock.

The McClatchy Company is publicly traded on the New York Stock Exchange under the ticker symbol MNI. Contrarius Investment Management Limited and Royce & Associates, LLC both own 10% or more of the common stock of The McClatchy Company.

MPA – The Association of Magazine Media has no parent companies, and no publicly held company owns more than 10% of its stock.

National Press Photographers Association is a 501(c)(6) nonprofit organization with no parent company. It issues no stock and does not own any of the party's or amicus' stock.

Online News Association is a not-for-profit organization. It has no parent corporation, and no publicly traded corporation owns 10% or more of its stock.

Society of Professional Journalists is a non-stock corporation with no parent company.

Dated: January 31, 2018

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## I. INTRODUCTION

This case involves requests made under the California Public Records Act (the “CPRA” or “Act”) for certain records from a database maintained by the State Bar of California (the “State Bar”). Specifically, Appellants seek access to records relating to applicants for admission to the California bar in an anonymized form; they proposed four protocols that could be used by the State Bar to anonymize the requested data.

In denying Appellants’ CPRA requests in their entirety, the Superior Court concluded that anonymizing the existing information in the database would amount to the creation of “new records,” and that the CPRA does not require agencies “to create new records in order to respond to a records request.” (*Sander et al. v. State Bar of Cal. et al.*, Order Denying Pet. for Writ of Mandate, Super. Ct. San Francisco County, Nov. 7, 2016, No. CPF-08-508880 at p. 8:11–21, 9:26–27 (“Order”).). This holding undermines the purpose of the CPRA and, if affirmed by this Court, could make large swaths of government records off limits for journalists and citizen-records requesters alike. Journalists frequently rely on access to anonymized government data maintained in agency databases to report on issues of significant public interest and concern. The Superior Court’s conclusion that Appellants, by seeking de-identified existing data from the State Bar, seek the creation of “new records,” and thus that the requested data does

not have to be disclosed under the Act, turns the public's presumptive right to access records of public agencies on its head.

In addition, the Superior Court gave short shrift to the public interest served by disclosure when balancing it against the asserted private interest in nondisclosure pursuant to Government Code section 6254(c), and against the asserted public interest in nondisclosure for purposes of its analysis under Government Code section 6255. The public has a significant interest in access to records concerning standardized testing, generally, and to the specific records sought by Appellants. Access to these records will inform ongoing discussions about important public issues, including, *inter alia*, diversity within the State Bar's membership.

For the reasons set forth herein, *amici*<sup>1</sup> respectfully urge this Court to reverse.<sup>2</sup>

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<sup>1</sup> A full description of *amici* is provided in Appendix A.

<sup>2</sup> By focusing their brief on the Superior Court's ruling on these issues, *amici* do not intend to suggest that the other grounds for reversal of the Superior Court's order raised by Appellants are without merit. Those grounds for reversal are addressed at length in Appellants' briefs.

## II. ARGUMENT

### A. Journalists depend on access to information maintained in government databases to gather news and report on matters of public interest and concern.

Advances in technology have led in recent years to the rise of what has been dubbed “data journalism.” (See Yu, *Booming Market for Data-Driven Journalism*, USA Today (Mar. 16, 2014), <https://perma.cc/88M4-AC96>.) Data journalists use computer programs to analyze large sets of data to report and enhance news stories. The use of computing to assist in the analysis of government records is not new, but these programs have become more powerful in the last decade, allowing journalists to find meaningful patterns in ever-larger data sets. (*Id.*; see also McGregor, *CAR Hits the Mainstream*, Columbia Journalism Review (Mar. 18, 2013), <https://perma.cc/6QTX-7CGM> (“Computational journalism represents a new step in what you can do—use of computers, and the processing power of computers and programming, to do types of reporting that were unimaginable even a few years ago.”).) As a result, journalists are increasingly seeking access to large government datasets through public records requests to gather news and inform the public.

News organizations now routinely publish articles on matters of public concern that could not have been written were it not for access to anonymized data from government agencies. For example, in California, reporters at California Watch analyzed millions of anonymized Medicare

patient records to uncover fraudulent Medicare reimbursements by the state's Prime Healthcare chain in a series of articles that won a George Polk Award. (See, e.g. Williams, *Prime Hospital Bills for Malnutrition, but Patient Says She Wasn't Treated*, California Watch (Dec. 16, 2011), <https://perma.cc/AR5L-GMLZ>.) Using the anonymized records, California Watch found "thousands of cases where Prime has aggressively billed for treating unusual conditions," such as more than a thousand instances of treatment for "kwashiorkor," which is "a dangerous form of malnutrition usually seen among starving children during African famines." (*Id.*) These treatments triggered inflated Medicare reimbursements when compared to a more run-of-the-mill diagnosis. (*Id.*) An article describing California Watch's reporting process noted how data journalism tools allowed reporters to find "the telltale patterns [of fraud] in a mountain of documents"—"the kind of evidence [that] would be impossible to gather from a warehouse full of file drawers filled with millions of pieces of paper." (Rabaino, *28 GB of Raw Data Went Into California Watch's Award-Winning "Decoding Prime" Series*, AdWeek (Feb. 24, 2012), <http://bit.ly/2jdcZ53>.)

In other parts of the country, news reporters have similarly relied on anonymized records from government databases to shed light on flaws in government programs. For example, California-based Reveal from the Center for Investigative Reporting analyzed thousands of anonymized

records from child abuse cases in Prince William County, Virginia, to determine how many children were being sexually assaulted, and to track the results of their cases through the State’s court system. (Watson, *Justice Isn’t Always Done for Child Sex Abuse—I Know Firsthand*, Reveal from the Center for investigative Reporting (Aug. 11, 2016), <https://perma.cc/WDE3-ENXM>.) The analysis showed that discrepancies in how Virginia courts file cases make it “impossible to track each case all the way through the system,” obscuring the performance of the state’s criminal justice system when it comes to cases of child sex abuse. (*Id.*)

When reporters at the *Raleigh News & Observer* and the *Charlotte Observer* analyzed anonymized data showing state math exam test scores and class placement for more than one million middle- and high-school students in North Carolina, they found that low-income students were disproportionately excluded from advanced classes for gifted children. (Neff et al. *Why have Thousands of Smart, Low-Income NC Students Been Excluded from Advanced Classes?* News & Observer/Charlotte Observer (May 19, 2017), <https://perma.cc/Q4KB-X54T>.) The story reported that unequal treatment of low-income, high-scoring students from 2009 to 2015 “resulted in 9,000 low-income children in North Carolina being counted out of classes that could have opened a new academic world to them.” (*Id.*)

The *Las Vegas Sun* analyzed anonymized records from a government database that showed that Las Vegas-area hospitals were more

dangerous on average than hospitals across the country in terms of preventable injuries including “accidental punctures and lacerations, blood clots and deadly blood infections.” (Allen & Richards, *Health Care Can Hurt You*, Las Vegas Sun (June 27, 2010), <https://perma.cc/VEM2-DNS9>.) The de-identified records from the database, which the *Sun* obtained via public records requests, also indicated that hospitals in Nevada had significantly underreported instances where a patient’s bed sore developed into “an advanced stage decubitus ulcer—a bedsore that becomes a crater surrounded by dead flesh” as well as instances where “a foreign object was accidentally left in a patient’s body.” (*Id.*)

On several occasions, reporting using anonymized data has been the catalyst for reform. For example, the *Milwaukee Journal Sentinel* analyzed hospital data from 31 states obtained through public records requests and discovered widespread delays in the nation’s system of screening newborn babies for genetic disorders. (Gabler, *Deadly Delays*, Milwaukee Journal Sentinel (Nov. 16, 2013), <https://perma.cc/8AUE-ETey>.) Based on its analysis, the newspaper conservatively estimated that, in 2012, 160,000 blood samples from newborn babies arrived late in labs across the country, causing delays in diagnoses that are intended to limit brain damage, disability, or even death. (*Id.*) When reporters contacted hospitals about these delays, “[f]rom major hospital chains to rural facilities, they promised to fix the problems.” (Gabler, Fauber & Johnson, *Wisconsin Hospitals Sent*

*Newborn Blood Samples Late; State Fought to Keep Their Performance Hidden*, Milwaukee Journal Sentinel (Nov. 16, 2013), <https://perma.cc/N4PN-35CL> (quoting one hospital executive who said, “We are grateful to now have this information. We are committed to fixing the process to deliver better results to our patients.”).)

**B. Anonymization of an existing record is not the creation of a new record.**

The CPRA establishes the public’s right of access to information concerning the conduct of the people’s business. While “mindful of the right of individuals to privacy,” the Act “declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” (Gov. Code § 6250.) Describing the CPRA’s purpose, the Supreme Court of California has stated that “[o]penness in government is essential to the functioning of a democracy. Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files.” (*City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608, 615 [389 P.3d 848, 852] (internal quotations omitted).)

The Superior Court held that disclosure of the records Appellants requested pursuant to the four anonymization protocols they proposed “requires the creation of new records,” which the Superior Court noted is

not required under the CPRA. (*See* Order at p. 8:24–10:12.) As discussed above, journalists have harnessed large, anonymized datasets to inform the public about a wide range of important issues. The Superior Court’s ruling, if permitted to stand, would hamstring similar reporting about government activity that relies on the use of anonymized records from government databases in the future, undermining the purpose of the CPRA.

Further, the Superior Court’s holding that the anonymization of existing records maintained in a State Bar database requires the creation of “new records”—and, thus, that the existing data need not be released under the CPRA—is contrary to the language of the Act. When a record contains both exempt and non-exempt information, the Act requires “deletion” of portions of the record that are exempt and that the public be afforded access to non-exempt portions of the record. (Gov. Code § 6253.) The four anonymization protocols Appellants proposed are designed to delete or obscure information exempt under the CPRA while still providing the public access to non-exempt information. (Appellant’s Opening Br. at 23 (filed July 31, 2017).)

Under Protocol One, the government would create an “enclave” where researchers could access data after agreeing to certain procedures designed to safeguard privacy. (*Id.*) The remaining protocols involve using computer codes to remove certain identifying information from the State Bar database. (*Id.*) *Amici* agree with Appellants that the CPRA

specifically anticipates this type of anonymization: the Act provides that an agency may charge for the costs of disclosing electronic records, including the “cost to construct a record, and the cost of programming and computer services necessary to produce a copy” if “[t]he request would require data compilation, extraction, or programming to produce the record.” (Gov. Code § 6253.9, subd. (b); *Santa Clara County v. Superior Court* (2009) 170 Cal.App.4th 1301, 1336 [89 Cal. Rptr. 3d 374, 400–401.]) It further provides that “the need to compile data, write programming language or a computer program or to construct a computer report to extract data” may justify a lengthier period of time for an agency to respond to a request. (Gov. Code § 6253(c)(4); *see also Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 229 [182 Cal. Rptr. 3d 526, 539] (discussing how the CPRA grants an agency extra time to produce public records when computer programming is needed to extract the data and allows the agency to recover costs associated with “extraction, or programming to produce the record.”) (internal quotation marks omitted).) These provisions make clear that the use of computer programs to compile or extract non-exempt data in response to a CPRA request is not the creation of a new record; it is simply a means for an agency to fulfill its obligation to disclose non-exempt portions of existing records that are required to be disclosed under the Act.

The Superior Court’s holding will, as a practical matter, put many government databases beyond the reach of the CPRA. A number of

California government entities subject to the CPRA collect large amounts of data that may include private information that could necessitate redaction or deletion before disclosure under the Act. For example, California law enforcement agencies may collect data from automated license plate readers (“ALPRs”) that show the movements of individuals whose license plates are scanned. (Mendelson, *License Plate Readers Capture Loads of Data, How Long Do Cops Keep It*, KPPC (Apr. 18, 2016), <https://perma.cc/QS3S-MBM3>.) Members of the public may want access to anonymized ALPR data to understand the magnitude and implications of a new program of government data-collection. (*See Am. Civil Liberties Union Found. of S. California v. Superior Court* (2017) 3 Cal. 5th 1032 [400 P.3d 432].) In fact, the Supreme Court of California recently remanded to the trial court a case concerning a CPRA request for ALPR data to consider the feasibility of anonymization methods suggested by the records requesters and to “explore other methods of anonymization and redaction as well.” (*Id.* at 1044, [439–40].) Under the State Bar’s theory, the Supreme Court could have determined that anonymization amounted to the creation of a new record and rejected the appellant’s request to obtain anonymized information. (*See Id.* at p. 1037.) The Court did not; instead it remanded back to the trial court “for further consideration of whether the raw data may reasonably be anonymized or redacted.” (*Id.*)

In short, the Superior Court’s decision that the anonymization of the records Appellants seek is tantamount to the creation of a new record jeopardizes the public’s ability to access anonymized data from government databases, a vital source of information about the workings of government. Preventing access to these records undermines journalists and the news consuming public’s efforts to better understand, analyze, and monitor actions of government, contrary to the purposes of the CPRA.

**C. The Superior Court gave insufficient weight to the public’s interest in access to the requested records when balancing the interests for and against disclosure under the CPRA.**

Appellants seek access to anonymized data about individuals who have taken the California bar exam for research purposes. (*See* Order at p. 3:14–16.) Such data is of significant public interest, which must be considered when balancing the public interest in disclosure against the private interest in nondisclosure under Government Code section 6254(c) and against the public interest in nondisclosure under Government Code section 6255(a). The Superior Court, while acknowledging this interest, (Order at pp. 12:13–23, 14:11–12.), did not give it sufficient weight.

Disclosure of the records at issue in this appeal serves a significant public interest, as does broader access to standardized testing data generally. Standardized test results directly influence the educational and professional opportunities available to individuals, and their fairness and value as a merit-based measure of aptitude or ability are thus profoundly

important not only to test-takers but also to institutions of higher education and employers that rely in part on test results to make hiring decisions. For these reasons, standardized testing is an area that requires the scrutiny of journalists and the public.

Indeed, reporting has already brought to light issues relating to the use of standardized tests, enabling informed public debate about the merits of such tests and the testing process. For example, a recent report by *inewssource* and *The Hechinger Report* showed that placement tests used by California community colleges relegated black and Hispanic students to remedial-level math and English classes at a disproportionate rate.

(Kolodner, *The Community College “Segregation Machine”*, *inewssource* & *The Hechinger Report* (Dec. 13, 2017), <https://perma.cc/2WME-SCQD>.)

The report analyzed community college data from 2014 showing that when assigned to the lowest level of remedial math classes, the vast majority of black and Hispanic students (99 percent and 98 percent) never finished and, as a result, were unable to earn class credits for math coursework that could go toward earning a bachelor’s degree. (*Id.*)

In another example, a 2016 Reuters report highlighted how the College Board’s use of “wordier” questions on the redesigned math section of the SAT disadvantaged lower-income students and students who are not native English speakers. (Dudley, *Despite Warnings, College Board Redesigned SAT in Way That May Hurt Neediest Students*, Reuters (Sept.

21, 2016), <https://perma.cc/KVL6-UF9Q>.) This type of reporting, which necessarily relies on de-identified information about individual test-takers and their performance on standardized tests, benefits all members of the public—including students, teachers, parents and employers.

As to the specific records sought by Appellants, the California Supreme Court has recognized that the public has a “legitimate interest in the activities of the State Bar in administering the bar exam and the admissions process.” (*Sander v. State Bar of Cal.* (2013) 58 Cal.4th 300, 324 [314 P.3d 488, 505.]) And access to the records at issue is important to inform ongoing debates on matters of public concern. The State Bar’s own recent research demonstrates that bar-exam data of the sort sought by Appellants relates to important public policy concerns in California, including the diversity of attorneys licensed to practice in the state. (See *Final Report on the 2017 California Bar Exam Standard Setting Study*, State Bar of California (Sept. 12, 2017), p. 39, <http://bit.ly/2GBLeKj> (stating that lowering the threshold to pass the bar exam “will clearly impact the demographic mix of the legal profession”); see also Salian, *Lowering the Bar? California Considers New Bar Exam Passing Score*, San Francisco Chronicle (Aug. 1, 2017), <http://bit.ly/2DvF64o>.) If implemented, proposals to change the bar examination or to influence its passage rate could affect how many attorneys are licensed to practice law in California and, ultimately, the public’s access to legal services. Increased

public access to information maintained by the State Bar, like the data sought by Appellants, would allow outside researchers and members of the media to contribute needed information to the ongoing public debate surrounding these proposals.

The Superior Court's analysis did not adequately take into account these vital public interests served by access to the anonymized records Appellants seek. When fully considered, the public interest in disclosure outweighs the private and public interests in nondisclosure identified by the Superior Court.

### III. CONCLUSION

For the foregoing reasons, *amici* urge this Court to reverse the trial court's ruling denying plaintiffs' access to the State Bar records sought by Appellants.

*/s/ Katie Townsend*

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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 3,048 words. I have relied on the word-count function of the Microsoft Word word-processing program used to prepare this brief.

Dated: January 31, 2018

*/s/ Katie Townsend*  
\_\_\_\_\_  
*Counsel of Record*

## **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 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 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.

**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.

**The California News Publishers Association** (“CNPA”) is a nonprofit trade association representing the interests of over 1300 daily, weekly and student newspapers and news websites throughout California.

**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)**, founded in 1977, is the nation's first nonprofit investigative journalism organization. CIR produces investigative journalism for its <https://www.revealnews.org/> website, the Reveal national public radio show and podcast, and various documentary projects—often in collaboration with other newsrooms across the country.

**Los Angeles Times Communications LLC** is one of the largest daily newspapers in the United States. Its popular news and information websites, [www.latimes.com](http://www.latimes.com), attracts 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.

**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 politics, religion, sports, industry, 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 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.

## APPENDIX B: ADDITIONAL COUNSEL

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## PROOF OF SERVICE

I, Michael Shapiro, 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 1250, Washington, DC 20005. I am a citizen of the United States and am employed in Washington, District of Columbia.

On January 31, 2018, 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 13 Media Organizations in Support of Appellants Richard Sander and the First Amendment Coalition.**

as follows:

**[x] By email or electronic delivery:**

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**[x] By United States mail:** I served the attached documents by enclosing true copies of the documents in a sealed envelope with postage fully prepaid thereon. I then placed the envelope in a U.S. Postal Service mailbox in Washington, D.C., addressed as follows

Hon. Mary Wiss, Judge  
San Francisco Superior Court, Dep't 305  
400 McAllister St.  
San Francisco, CA 94102

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 31st of January 2018, at Washington, D.C.

By: /s/ Michael Shapiro  
Michael Shapiro