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August 15, 2023

Chief Justice Patricia Guerrero and Associate Justices
California Supreme Court
350 McAllister Street San Francisco, CA 94102-4797

RE: HOUSLEY v. LOS ANGELES TIMES COMMUNICATIONS (COUNTY OF VENTURA), Case No. S281005

**Assembly Member Jacqui Irwin's Letter in Support of
Appellants' Petition for Review (Cal. Rules of Court, rule 8.500(g))**

Dear Chief Justice and Associate Justices of the California Supreme Court:

Under Rule 8.500(g) of the California Rules of Court, I submit this letter as amicus curiae in support of the petition for review of Plaintiffs-Appellants. I am a Member of the California State Assembly who represents Plaintiffs-Appellants, and who has authored legislation concerning the issues in this case. As set forth below, review in this case is important to define the scope the privacy right enshrined in Article I, Section 1, of the California Constitution, and to clarify how this right applies in the context of autopsy records.

I. Interest of Amicus Curiae

I am a Member of the California State Assembly. My district, Assembly District 42, includes the City of Thousand Oaks, where twelve people were murdered at the Borderline Bar and Grill. The victims and their families, known as the Borderline Families, are my constituents. I have been deeply involved in the response to the mass shooting, visiting the scene and the Borderline Families the morning after the tragedy, and keeping in close contact with them as they navigated their grief and various forms of suffering inflicted upon them. I brought the Borderline Families to visit the State Capitol to meet with Governor Newsom and be present for adjourning a session of the State Assembly in the twelve victims' memories.

As a Member of the Legislature, I have authored legislation involving the matters at issue in this case, including Assembly Bill 268 of the 2021–22 Regular Session of the California Legislature. This bill was discussed at length in the trial court and the first opinion of the Court of Appeal. As described in greater detail below, the Court of Appeal opinions in this case require clarification regarding the interplay between statutes regarding privacy and autopsy records and the constitutional right to privacy.

II. Review is necessary to settle important questions involving the scope of the right to privacy under the California Constitution and the muddled authorities governing disclosure of autopsy records.

This case presents an opportunity for the Court to clarify the contours of the constitutional privacy right in Article I, Section 1, of the California Constitution. As the Plaintiffs-Appellants set forth in their petition, federal courts have recognized a more robust privacy right that encompasses the autopsy reports at issue in the present matter, and the Court has previously recognized that California’s right to privacy is broader than the federal right, which suggests that the privacy rights asserted by the Plaintiffs-Appellants are protected under the California Constitution here. In determining that the autopsy reports at issue were not prohibited from disclosure as a matter of law, the Court of Appeal relied on the fact that the Legislature has, at times, crafted specific statutory schemes regarding the nondisclosure of similar records that implicate privacy interests. However, as commentators have pointed out, the constitutional right to privacy coexists with, and supplements, privacy rights created by statute. (Carrillo et al, California Constitutional Law: Privacy, 59 San Diego L. Rev. 119, 172 – 175 (2022).) The Court of Appeal’s opinion omits any discussion of how the constitutional right to privacy can serve as a backstop for new statutory privacy schemes. Review by this Court will help clarify the scope of the constitutional privacy right and help inform future legislation in this important area.

Review by this Court also will clarify the treatment of autopsy records, which is disjointed and unevenly addressed by statute. Referring to the Legislature’s creation of certain statutory exemptions applying to postmortem and autopsy photos, the Court of Appeal stated that “we know of no comparable statute protecting [non-photographic] documents” and cautioned “the trial court correctly declined to expand these statutory prohibitions by judicial fiat to non-photographic elements of autopsy reports when the legislature has declined to do so as well.” However, the court’s citations for this characterization of legislative intent do not contain the full context.

For example, Section 832.7 of the Penal Code, amended by Senate Bill 1421, Chapter 988 of the Statutes of 2018, expressly authorized the release of autopsy records in the narrow circumstance of investigations into a peace officer discharging their firearm at a person. This could suggest that the Legislature intended for autopsy records to remain private otherwise, but the court does not consider this implication. Moreover, the court did not discuss Section 130 of the Code of Civil Procedure, which authorizes family members to seal the autopsy records of children under the age of 18 who are killed as a result of a criminal act, and which demonstrates that the Legislature not only declines to extend privacy rights in some cases, but also expands privacy rights in others. Even if one agrees with the Court of Appeal's observation that the Legislature has not created a specific statute governing the records at issue in this matter, the lack of any specific statute does not create any limitation on this Court with respect to construed general statutes and constitutional provisions protecting privacy. A duty remains for this Court to provide clear standards on how to enforce constitutional rights, including the Borderline Families' right to privacy.

For the above reasons, I respectfully urge the Court to grant review in this matter and settle these questions about the scope of the right to privacy under the California Constitution and the various authorities governing disclosure of autopsy records.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Jacquie Irwin". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

Assembly Member Jacquie Irwin