



August 5, 2022

The Hon. Chief Justice and Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, California 94102  
*Filed and Served via TrueFiling*

*Re: Public.Resource.Org v. California Office of Administrative Law*  
*Supreme Court Case No. S275575*  
*Court of Appeal Case No. C096317 (Summary Denial)*  
*Superior Court Case No. 34-2021-80003612-CU-WM-GDS*

**AMICUS CURIAE LETTER IN SUPPORT OF PETITION FOR REVIEW**

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rule of Court 8.500(g), Freedom of the Press Foundation (“FPF”) submits this letter in support of the Petition for Review filed by Public.Resource.Org (“PRO”).

The California Public Records Act (“PRA”) is explicit that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”<sup>1</sup> Few aspects of California government are more fundamental than its laws and regulations, including the California Code of Regulations (“CCR”), which govern Californians daily. Free access to this information is a fundamental right for all, but is particularly critical to journalists, who require this access to exercise their First Amendment rights and inform the public.

The decision below permits the California Office of Administrative Law (“OAL”) to decline to produce state regulations in response to a PRA request. If the OAL and other governmental bodies are allowed to dodge their legal obligations in this way, the ability of the press to report on, analyze, and inform the public about California’s regulations will be impermissibly hampered. The Court should therefore grant review to resolve this important question of law, protect the public’s access, and help ensure a robust free press.

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<sup>1</sup> Gov Code § 6520.

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## **STATEMENT OF INTEREST**

Freedom of the Press Foundation is a non-profit organization established under the laws of the State of California, with its primary office in New York City, New York. The mission of FPF is to protect and defend public interest journalism in the 21<sup>st</sup> century. FPF advocates for government transparency and accountability by preserving the rights guaranteed to the press under the First Amendment and fortifying the public's right to know. As a core part of that mission, FPF educates the public about government protocols and procedures involving the press and uses public records laws to obtain and publish documents detailing government activities that impinge on press freedom.

This case affects both the ability of journalists to access and analyze the CCR specifically and, in future cases, other government documents that are maintained with the assistance of private parties. FPF has a strong interest in ensuring the public and journalists' access to this information and the public's access to the analysis that journalists can provide.

## **JOURNALISM REQUIRES FREE ACCESS TO THE CCR**

The CCR is vast. The 26 titles at issue in this case cover everything from Education to Businesses to Housing to Military Affairs. It is hard to imagine any beat in any newsroom covering California whose stories or subjects wouldn't be influenced by these regulations.

The CCR is also expensive. If a journalist wants a copy to “own”—to access in places without internet or without revealing the journalists' research to a private party—the cost is prohibitive. Printed copies are available by subscription from the same company as the “free” online version, but they are enormous and expensive. Most titles comprise one or two full books and cost anywhere from \$200 to \$1,600 *per year*; the index alone is a separate book that is over 7,000 pages long and costs \$1,553 per year.<sup>2</sup> The journalism industry has had well-documented financial difficulty for years. News organizations are shrinking in size and reporters are being laid off at an alarming pace.<sup>3</sup> In particular, local journalism, the kind which so many Californians rely on to stay informed, is struggling to survive.<sup>4</sup> Requiring journalists to spend tens of thousands of dollars per year to own a copy of the regulations is simply untenable.

Neither of the grounds relied on by the Superior Court justify denying the public access to state regulations. The Administrative Procedure Act should not be used as a cudgel against the free, public dissemination of regulations *created by the government*. And the PRA must not be interpreted so narrowly as to deny access to state regulations where the state has opted to partner with a private party in managing its data.

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<sup>2</sup> Thomson Reuters, Catalog Page for *Barclays Official California Code of Regulations (CCR) Master Index*, <https://perma.cc/56Y7-KRHJ>.

<sup>3</sup> Gabby Miller, *More Than 6,150 News Workers Were Laid Off Amid the Covid-19 Pandemic*, Columbia Journalism Review (Dec. 10, 2021) <https://perma.cc/E2FS-3KBG>.

<sup>4</sup> Margaret Sullivan, *Every Week, Two More Newspapers Close—and ‘News Deserts’ Grow Larger*, Washington Post (June 29, 2022), <https://perma.cc/5YTR-29CJ>.

### **DATA JOURNALISM REQUIRES MACHINE-READABLE SOURCES**

Data journalism is a rapidly growing approach in which journalists gather and analyze large data sets in service of reporting on issues of public concern.<sup>5</sup> Data journalists do not examine each piece of data directly. With the growth of the internet as both a source of data and a focus of journalism, there is simply too much data to analyze it by hand in any meaningful way. Instead, data journalists use technical tools to analyze the data and tell important stories based on what they find. For this reason, data journalism relies on access to data in machine-readable form—that is, digital data structured in such a way that a machine can analyze it without significant human assistance.

The public-facing website offered by West does not provide the text in such a format. OAL’s refusal to provide a machine-readable version of this data to the public therefore means that data journalists cannot effectively investigate or report on the CCR. As noted above, the 26 titles at issue in this case could fill one or more bookshelves (if one could afford them). Without machine-readable copies, journalists cannot analyze its internal structure, compare the titles with each other, or integrate the OAL into broader analyses that could look at changes to the CCR over time or compare regulations across multiple states. In the end, the public is less informed.

### **UNDERMINING THE PRA HARMS JOURNALISM**

Reporters also rely heavily on the PRA for much of their work unrelated to regulations, both for data-focused journalism and traditional investigative reporting. The decision below could potentially interfere with journalism on many other types of governmental records. Other courts may look to that decision as persuasive authority, and if its reasoning is adopted, it may leave open a permanent loophole: government agencies will be able to contractually redesignate documents as non-custodial by placing them in a database held by a third party. This could be true even where, as here, the government retains ownership and is explicitly permitted to disclose third-party enhancements to respond to PRA requests.<sup>6</sup>

If this method can be used to disavow providing actual state regulations, what other quintessentially government records could be “hidden” from the PRA? The Court should grant this petition to ensure that there are limiting principles that ensure the public’s unfettered access to the law.

### **CONCLUSION**

For the foregoing reasons, FPF respectfully requests this Court grant review to resolve these critical questions affecting the First Amendment rights of journalists and the public’s ability to access to state regulations and other public records.

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<sup>5</sup> See, e.g., Victoria Baranetsky, *Data Journalism and the Law*, *Columbia Journalism Review* (Dec. 19, 2018), <https://perma.cc/WG89-Y9ZZ>.

<sup>6</sup> See Petition at 11.

Respectfully Submitted,



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**PROOF OF SERVICE**

I, Jef Pearlman, declare under penalty of perjury under the laws of the State of California that the following is true and correct.

I am over the age of eighteen years and not a party to this action. My business address is 699 Exposition Blvd., Los Angeles, CA 90089-0071. On August 5, 2022, I served the following document via TrueFiling:

**Amicus Curiae Letter in Support of Petition for Review**  
*Public.Resource.Org v. California Office of Administrative Law*  
Supreme Court Case No. S275575

on the parties, through their attorneys of record, as listed below:

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Executed August 5, 2022, in Los Angeles, California.

  
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Jef Pearlman

*Attorney for Amicus Curiae  
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