1st Civil No. A150625

In the Court of Appeal of the State of California

First Appellate District, Division Three

RICHARD SANDER and THE FIRST AMENDMENT COALITION, a California non-profit corporation,	)
Petitioners and Appellants,	)
v.	)
STATE BAR OF CALIFORNIA and BOARD OF GOVERNORS OF THE STATE BAR,	)
Defendants and Respondents,	)
DWIGHT AARONS, et al., *Intervenor and Respondent.*	)

Appeal from the San Francisco Superior Court,
Honorable Mary E. Wiss, Judge
Case No CPF-08-508880

BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF SCHOLARS IN SUPPORT OF APPELLANTS

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INTRODUCTION

The public good often depends on social science research that employs personal data. Volumes of scientific breakthroughs based on data accumulated through access to public information demonstrate the importance and feasibility of enabling research in the public interest while still respecting data privacy. For decades, reliable and routine technical methods have ensured protection for personal privacy by de-identifying personal data.

Social science research into legal education and admission to the bar is presently a matter of urgent public interest and importance, requiring solid empirical analysis of anonymized personal data that government authorities possess. Social science research of the very kind proposed by Appellants Sander and The First Amendment Coalition represents standard, indeed commonplace, research practice furthering the public interest, while employing established methodologies that minimize the risk to privacy.

ARGUMENT

I. THE PUBLIC INTEREST DEPENDS ON SOCIAL SCIENCE RESEARCH EMPLOYING GOVERNMENT DATA SETS, AND TECHNICAL METHODS ENSURE APT PROTECTION FOR PERSONAL PRIVACY.

To state the obvious, science is the advancement of human knowledge. For centuries, the scientific method, which involves the careful observation and collection of data, has been the established method for evaluating the world. Quite simply, the scientific method requires that a hypothesis be tested and proved through data before it is accepted as true. In this way, science distinguishes itself from theory, belief, dogma, and speculation.

Laying the groundwork for what would become our constitutional democratic republic, Aristotle regarded science as a means by which the

polity determines the common good of the people. In this way, he described how science and the public interest are integrally correlated. Modern governments collect and maintain vast stores of data about people. The census is one well-known example. These data are vital to social scientists, who employ the scientific method to test hypotheses and create a body of evidence in support of public policy choices. Only informed by this social science can the polity make rules of law and policy that are demonstrably in the public interest, rather than rules predicated upon guesswork or, worse, corrupt aims.

In the contemporary information age, our capacity to observe, collect, and analyze data about people has advanced exponentially. As a result, "big data" have a potential dramatically to advance human knowledge, and therefore to advance the public good, in a way that is unprecedented in the history of human civilization. At the same time, these data stores raise novel problems concerning the integrity of individuals, that is, in personal privacy. Scientists have responded to this problem with sophisticated methods and tools that facilitate remarkably well the study of social data while ensuring that the integrity of individuals is respected.

For example, collaborative scientific organizations such as the Inter-university Consortium for Political and Social Research (ICPSR) have demonstrated expertise in facilitating big data social science while also preserving privacy. Based at the University of Michigan, the ICPSR is a consortium of more than 750 academic and research organizations on every populated continent. In cooperation with researchers and governmental statistical agencies, such as the Bureau of Justice Statistics, the ICPSR is the largest social science data archive in the world. ICPSR hosts and makes available to researchers data in such sensitive areas as healthcare, disability, addiction, fertility, child education, sexual orientation, and race.

These data educate the public and inform policymakers: A 2016 study of ICPSR-curated data debunked popular misconceptions about collegiate athletes. Kurt J. Beron & Alex R. Piquero, *Studying the Determinants of Student-Athlete Grade Point Average*, 97 Soc. Sci. Q. 142 (2016). Examining school affiliation, grade point average, and gender in survey data, Beron and Piquero determined that athletes in the competitive NCAA Division 1 perform as well academically as their counterparts in less competitive divisions, and moreover that male athletes perform as well academically as their female counterparts. *Id.* These conclusions have implications for persistent public policy debates such as whether collegiate athletes should be compensated like employees and whether Title IX has been effective in creating equality of opportunity in higher education.

Scientists and legislators alike understand the importance of scientific analysis to informed policymaking, even when data implicate personal privacy. For example, one ICPSR database comprises Federal Bureau of Investigation data about hate crimes, incidents of violent victimization on the basis of race, religion, sexual orientation, or ethnicity. ICPSR, Uniform Crime Reporting Program Data, https://perma.cc/YYH9-PMS9 (last accessed Jan. 15, 2018). These data comprise unique combinations of victim demographics and the dates and locations of crimes. *Id*. Nevertheless, these data are available to the general public to use; no ICPSR affiliation is required. *Id*. The importance of these data to informed policymaking outweighs the risk to personal privacy. Even when privacy protection is imperative, ICPSR supports a range of protocols to de-identify data and to safeguard against the re-identification of data subjects. These commonly followed protocols include training for staff and researchers, minimally necessary modification of data, secure online access with electronic protection mechanisms, restricted use agreements, and electronic enclave environments. ICPSR, Data Management & Curation,

https://perma.cc/S9BR-UQEA. Moreover, research in universities, in both natural and social sciences, is subject widely to oversight by institutional review boards (IRBs), driven by U.S. Department of Health and Human Service regulations, promulgated pursuant to 42 U.S.C. § 289. Appropriate privacy protection is an IRB priority. 45 C.F.R. § 46.111(a)(1)(7).

Further, researchers and data curators are informed by a plethora of professional standards, such as the statement of the American Statistical Association (ASA), *Data Access and Personal Privacy: Appropriate Methods of Disclosure Control* (approved Dec. 6, 2008). The ASA statement, among others, highlights principal data protection protocols, such as: the blurring or disguising of data to obscure individual profiles; the extrapolation of "synthetic data sets" that exhibit the same statistical properties as underlying source data without disclosing underlying profiles; licensing agreements with trustworthy researchers; virtual and real access restrictions, such as enclaves; and disclosure avoidance review of research results. *Id.* Access restrictions protect one ICPSR archive, for example, which collects intimate information about northern California families of Mexican origin. Funded by subdivisions of the National Institutes of Health, the California Families Project surveys children and their parents to analyze youth drug abuse risk and the relative impact of economic disadvantage and cultural traditions. Richard Robins & Rand Conger, California Families Project, Mar. 8, 2017, https://doi.org/10.3886/ICPSR35476.v1. ICPSR requires that researchers wishing to use these data apply for access, demonstrate institutional review board approval, and sign a restricted use agreement that eschews personal identification as a legitimate research objective. *Id.*

Every day, social science researchers around the world publish thousands of reports, articles, and books that vitally advance the human

condition by informing policymakers and fortifying the rule of law. These researchers routinely employ established technical methods in a search for truth that transcends geography, politics, and culture while expertly devising and implementing strategies to ensure that people and their privacy remain respected in the conduct of research.

II. LONG EXPERIENCE WITH ACCESS TO PUBLIC INFORMATION DEMONSTRATES THE IMPORTANCE AND FEASIBILITY OF ENABLING RESEARCH IN THE PUBLIC INTEREST WHILE STILL RESPECTING PERSONAL PRIVACY.

The importance of research in the public interest is a well-established norm in access to information law. As such, the law strives to protect and maximize access to information, even beyond customary transparency, for research in the public interest, while balancing the public interest against personal privacy. Contrary to conventional wisdom, access and privacy are complementary, not competitive, norms. Research for social and economic advancement often implicates interests of the same people on both sides of the equation; that is, persons whose private data is subject to research also reap the benefits of research. Accordingly, access and privacy are not locked in a zero-sum game. Established research methodologies adapt personal data to afford the benefits of access while minimizing risk to privacy.

Even beyond the usual effort to balance access and privacy in state and federal freedom-of-information laws, which provides for significant access to public data, *e.g.*, 5 U.S.C. § 552(b)(6), many access laws afford special access to researchers, recognizing the vital public interest beyond customary transparency in academic/scientific research and the trustworthiness of the professional researcher. Information practices law in California, for example, specifically permits agency disclosure of redacted

personal data for statistical research. Cal. Civ. Code § 1798.24. Similarly, the Maryland Public Information Act contemplates the disclosure of personal data in public records for research purposes, subject to official review of the research proposal and agreement on identity protection. Md. Gen. Provis. § 4-501(e). Also, the Hawaii Information Practices Act authorizes rules in the same vein. Haw. Rev. Stat. § 92F-42(15). These are but a few examples.

Even in specific areas in which intimate personal information is maintained in public records, state laws generally prize research access over hyper-protective confidentiality. Thus, many state laws contemplate researcher access to personal health records. *See, e.g.*, Alaska Stat. Ann. § 47.30.845 (mental health); Colo. Rev. Stat. § 27-81-113(2) (alcoholism); Iowa Code § 235A.15(2)(e)(1) (child abuse); Mo. Ann. Stat. § 210.150 (child abuse); N.C. Gen. Stat. Ann. § 130A-374(a) (medical); R.I. Gen. Laws Ann. § 23-1.10-13 (alcoholism). States including California contemplate research on crime and justice, even when the personal data of children are disclosed. Cal. Gov't Code § 6254(f)(3) (arrestees and crime victims); *e.g.*, Utah Code Ann. § 53-10-204(5) (missing persons), § 78A-6-209 (juvenile court); Wash. Rev. Code Ann. § 13.50.010(8) (juvenile justice). California also contemplates researcher access to voter registration records. Cal. Elec. Code § 2194(a)(3). Some states expressly authorize research into vital records. *See* Mo. Ann. Stat. § 193.245; Va. Code Ann. § 32.1-271(B). Arkansas and Oregon permit the use of vital records upon confidentiality agreement, and Louisiana upon researcher qualification. Ark. Code Ann. § 20-18-304(b)(3); La. Rev. Stat. Ann. § 40:41(D); Or. Rev. Stat. Ann. § 432.350.

Similarly, in the early years of electronic access to court records, the influential policy guidance of the National Center for State Courts (NCSC) contemplated access to bulk and compiled court records—even those not

accessible to the public—"for scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose." Martha Wade Steketee & Alan Carlson, *Developing* CCJ/COSCA Guidelines *for Public Access to Court Records* 29, 34-35 (2002), https://perma.cc/PG6V-7NDY. While acknowledging some potential risk to personal privacy, the guidelines recognized that research of court records is critical because it can vindicate important public interests, including judicial accountability, public education, and fair and consistent application of the law. *Id.* at 31, 35. Today NCSC best practices continue to support access to "non-public data … for public purposes," as well as exceptional access to closed court records upon request, provided a court employs restrictions that balance values such as accountability, transparency, and protection of individuals from harm. Thomas M. Clarke et al., *Best Practices for Court Privacy Policy Formulation* 10-13 (2017), https://perma.cc/LRH3-U28H. For the protection of personal data, NCSC best practices reference guidance from the National Institute of Standards and Technology (NIST) in Erika McCallister et al., *Guide to Protecting the Confidentiality of Personally Identifiable Information* (2010), https://perma.cc/WWU2-SUZ6. The NIST counsels a range of detailed standards and procedures to facilitate research while protecting privacy through techniques of de-identification and anonymization—techniques that suffice also to comply with the stringent privacy requirements of the Health Insurance Portability and Accountability Act (HIPAA), Pub.L. 104-191, 110 Stat. 1936 (1996). McCallister et al., *supra*, at 4-4 to 4-6.

The above demonstrates that the law routinely privileges research in recognition of its role in furthering public interest. State laws dealing with even the most sensitive personal information often provide an additional avenue for researchers to have special access to data, subject to protection. Court guidelines grounded in common law and reiterated in rules for the

electronic era always similarly have recognized that public interest lies on both sides of a record access claim, and that as a result, public interest can be furthered best by reconciling access and privacy. Best practices have been well developed and tested over time to effect this balance of complementary public interests.

III. SOCIAL SCIENCE RESEARCH INTO LEGAL EDUCATION AND ADMISSION TO THE BAR IS PRESENTLY A MATTER OF URGENT PUBLIC INTEREST AND IMPORTANCE, REQUIRING SOLID EMPIRICAL ANALYSIS OF PERSONAL DATA IN GOVERNMENT POSSESSION.

Catalyzed by the 2008 financial crisis and defying previous trends in hard economic times, legal education has spiraled into an unprecedented recession that largely persists today. In chicken-and-egg cycle with this fundamental breakdown in how American lawyers are educated, the legal profession in the United States and around the world is transforming how legal services are provided and paid for. Admission to the bar and the bar exam sit at the junction of these changes, rippling ramifications through overwhelmed legal aid, downsized law firms, and outsourced legal services. In this climate, social science research is critical to ensure that the legal practitioner survives as principled professional rather than devolving into snake-oil seller.

Amid the financial crisis, applications to law school plummeted by roughly half in a decade, hitting a 30-year nationwide low in 2013 and a 32-year low in California in 2016. James E. Moliterno, *And Now a Crisis in Legal Education*, 44 Seton Hall L. Rev. 1069, 1108 (2014); Amy Yarbrough, *Bar Exam Pass Rate Dips to 32-Year Low*, Cal. B.J., Dec. 2016, https://perma.cc/LET4-ZKCX. The soaring cost of legal education and evaporating lawyer jobs have meant that law school is no longer a smart bargain for many college graduates. Paul Campos, *The Crisis of the*

American Law School, 46 U. Mich. J. Law Reform, 177, 197-215 (2012); William D. Henderson, *A Blueprint for Change*, 40 Pepp. L. Rev. 461, 466-90 (2013). Under-enrolled, law schools have cut budgets, limiting or eliminating courses, personnel, and services. *E.g.*, Victor Fleischer, *The Unseen Costs of Cutting Law School Faculty*, N.Y. Times, July 9, 2013, https://perma.cc/KT6C-SBYA.

Struggling to maintain financial stability amid falling enrollments, many law schools, controversially, have dug deeply into applicant pools. Bar-pass rates have declined, at least in part a result of desperate admission standards. Mark Hansen, *Bar Fight*, ABA J., Sept. 2016, at 48. Worse might have been the impact of lower admission standards on rising attrition. That link raises the ugly specter, no less reality, of students being exploited for tuition money when law schools know that their application data portend significant disappointment. Brian Z. Tamanaha, *Failing Law Schools* 165-66 (2012). Further, with law schools simultaneously under pressure to enhance diversity and access to legal education, the risk of the afore-described exploitation is compounded by its discriminatory impact. *See* Mark Hansen, *Deeper Data*, ABA J., May 2015, at 67.

Indeed, amid this upheaval, and as the American Bar Association (ABA) accreditation process has come under fire, the ABA aptly has cracked down on enforcement of bar pass and attrition standards. James G. Milles, *Legal Education in Crisis, and Why Law Libraries Are Doomed*, 106 Law Libr. J. 507, 513-14 (2014); Marilyn Odendahl, *ABA Watches Law Schools' Attrition, Bar Pass Rates*, Ind. Law., Feb. 2, 2017, https://perma.cc/PV3G-MUG7. The ABA crackdown led directly to the failure of Whittier Law School. Sonali Kohli et al., *Whittier Law School is Closing, in Part Due to Low Student Achievement*, L.A. Times, Apr. 20, 2017, https://perma.cc/8Y55-XMLV (reporting 20% 1L attrition and 22% summer 2017 bar pass); *cf.* Stephanie Francis Ward, *ABA Places Thomas*

Jefferson School of Law in Probation, ABA J., Nov. 15, 2017, https://perma.cc/RWG2-434J.

Perversely, the public need for legal services has swelled, even while under-employed lawyers glut the job market. This disconnect adversely affects the economically disadvantaged, who usually go without vital legal services and sometimes muddle the work of trial courts with *pro se* claims. Tamanaha, *supra*, at 170-71. Tamanaha reported, for example, that 90% of California defendants in eviction cases were unrepresented. *Id.* Examining reform proposals, one scholar lamented that the party forgotten in the discussion is the *client*, who is suffering from a "mismatch" between need and affordable legal services. Paul Horwitz, *What Ails the Law School?*, 111 Mich. L. Rev. 955, 958 (2013).

Seeking a way out of this quagmire, the ABA, the Association of American Law Schools (AALS), and legal scholars have resorted to intensive empirical research. The ABA in April 2017 formed a Commission on the Future of Legal Education to study issues including nationwide falling bar pass rates. Karen Sloan, *Problems Facing Law Schools are Focus of New ABA President*, Law.com, Aug. 16, 2017, https://perma.cc/9RZ7-3UVS (PDF). ABA President Hilarie Bass said that the commission will seek data from the National Conference on Bar Examiners, "so an independent group can do an analysis." *Id.* The AALS in November 2017 formed a new section, Empirical Study of Legal Education and the Legal Profession, to provide a platform for researchers to collaborate on issues including bar pass. Barbra Elenbaas, *Spotlight on Sections*, AALS News, Fall 2017, at 9, https://perma.cc/W8DP-Q7PX. The section soundly aims to foster legal scholars in conducting qualitative and quantitative empirical research, incorporating related disciplines such as cognitive science, and linking with researchers at the Law School Admission Council (LSAC) and AccessLex (both nonprofits committed to

overcoming barriers to legal education especially for historically disadvantaged groups such as racial and ethnic minorities). *Id.*; *see infra* part IV (citing LSAC research).

The public interest in research into legal education and admission to the bar is therefore no less than the public interest in equal protection under law. It is incumbent on public entities, such as state and national bar organizations, that amass data about law students, bar candidates, and practicing lawyers to cooperate with independent researchers. The scientific method must be brought to bear to understand how best to equip lawyers to meet the overwhelming public need for legal services. Data are needed to promote access to opportunity for persons who would be lawyers, prevent exploitation of under-qualified applicants, and increase access to legal services for ordinary people to protect their rights.

IV. SOCIAL SCIENCE RESEARCH OF THE VERY KIND PROPOSED BY APPELLANTS SANDER AND THE FIRST AMENDMENT COALITION REPRESENTS STANDARD RESEARCH PRACTICE IN FURTHERANCE OF VITAL PUBLIC INTERESTS AND HAS BEEN CONDUCTED SUCCESSFULLY WITHOUT ANY COGNIZABLE HARM RESULTING.

Notwithstanding parades of horribles imagined by opponents of even customary transparency, redacted records of educational test performance are commonplace as source data for social science research in the public interest. The Law School Admission Council (LSAC) itself employs professional researchers to assess the reliability of Law School Admission Test (LSAT) scores as predictors of success, placing particular emphasis on access to educational opportunity for historically disadvantaged groups such as women and racial and ethnic minorities. *See*, *e.g.*, Nazia Rahman & Tammy J. Trierweiler, *Analysis of Differential Prediction of Law School Performance by Race/Ethnicity Based on 2011-2014 Entering Law School*

Classes (2017), https://perma.cc/XY55-9H5D; Tammy J. Trierweiler & Nazia Rahman, *Analysis of Differential Prediction of Law School Performance by Gender Based on 2011-2014 Entering Law School Classes* (2017), https://perma.cc/2MK7-5RKL. Academic researchers conduct similar research independently of the LSAC. *See, e.g.*, Katherine A. Austin et al., *Will I Pass the Bar Exam?: Predicting Student Success Using LSAT Scores and Law School Performance*, 45 Hofstra L. Rev. 753 (2017); John Nussbaumer, *Misuse of the LSAT, Racial Discrimination, and the De Facto Quota System for Restricting African-American Access to the Legal Profession*, 80 St. John's L. Rev. 167, 176 (2006); Robert Steinbuch & Kim Love, *Color-Blind-Spot: The Intersection of Freedom of Information Law and Affirmative Action in Law School Admissions*, 20 Tex. Rev. L. & Pol. 181 (2016); Ranko Shiraki Oliver, Report (2009), https://perma.cc/4M4K-9BX5; Nicholas L. Georgakopoulos, *Bar Passage: GPA and LSAT, Not Bar Reviews* (rev. Nov. 26, 2014), https://ssrn.com/abstract=2308341. Despite the use of personal data with sensitive identifiers such as race and gender, none of these studies has resulted in any report of cognizable harm.

The privacy interest asserted in the instant case may be analogized to the privacy of educational records under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. FERPA is famously stringent in its protection of privacy in educational records. Even so, in promulgating regulations under FERPA, federal officials have made plain that privacy does *not* bar legitimate research, and that the mere possibility—*i.e.*, greater than zero risk—of re-identification does *not* preclude the disclosure of properly de-identified student records.

In advising schools, the Family Policy Compliance Office (FPCO) of the Department of Education has stressed the overriding public interest in research. The FPCO stated in a guidance letter that while lawmakers devised FERPA to protect privacy, they

> also recognized that scientifically valid educational research, including applied research, basic research, and field-initiated research, can provide parents, educators, students, researchers, policymakers, and the general public with reliable information about educational practices that improve academic achievement. … [H]igh-quality research is one of the ways to show whether the achievement gap is closing. A key component of such research is the use of longitudinal studies in which individual student performance is evaluated over a period of time.

FPCO, Letter re: Disclosure of Anonymous Data Under FERPA, Nov. 18, 2004, https://perma.cc/R4T2-UKXJ.

Accordingly, FERPA regulations contemplate the disclosure of student records with personally identifying information *reasonably* redacted. The standard for sufficient redaction rightly does not require that the risk of re-identification be reduced to zero, because that is actually an unattainable standard. A record is sufficiently de-identified when data points "linked or linkable to a specific student" cannot be used by "a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty." 34 C.F.R. § 99.3. FPCO guidance posits a range of data-anonymizing strategies to attain sufficient de-identification, including "minimum cell size," controlled rounding, blurring, masking, perturbation, coding, redaction, and suppression. Privacy Tech. Assistance Ctr. (PTAC), *De-Identification: An Overview of Basic Terms* 2-6 (last upd. Oct. 2012), https://perma.cc/6TWD-6F6C. These strategies are consistent moreover with more detailed scientific recommendations of the Office of Management and Budget. *See* Fed. Comm. Stat. Method., Stat. Pol. Working Paper No. 22, *Report on Statistical Disclosure Limitation Methodology* 57-98 (2d ver. 2005), https://perma.cc/W9SZ-6UQM. The FPCO reiterated that zero risk of re-identification, were that even possible, is simply not the requisite standard. Rather, "de-identification is considered

successful when there is no *reasonable* basis to believe that the remaining information in the records can be used to identify an individual." PTAC, *supra*, at 3. Successfully de-identified records may be disclosed regardless of the consent of the data subject, because the record data are no longer considered personally identifying. *Id.*

Courts have accumulated experience with the reasonable-redaction requirement of FERPA in tandem with the disclosure requirements of other laws, most commonly, freedom of information acts. For example, the Sixth Circuit posited redaction of campus crime records to reconcile the Ohio Public Records Act with the FERPA. *U.S. v. Miami Univ*., 294 F.3d 797, 824 (6th Cir. 2002). In a claim of fraud by a student dismissed from medical school, the court reconciled plaintiff's discovery of student exam and transfer records with FERPA, holding that the defendant university was free to disclose data "in statistical, summary form, listing, e.g. the number of transferees, the exams which they took for transfer purposes, the schools which sponsored them, etc." *Naglak v. Pa. St. Univ*., 133 F.R.D. 18, 24 (M.D. Pa. 1990). Similarly, the Illinois Supreme Court compelled a school district to comply with a state open records request for student test scores, including race and gender data, after applying de-identification strategies of masking and scrambling. *Bowie v. Evanston Cmty. Consol. Sch. Dist. No. 65*, 538 N.E.2d 557, 561 (Ill. 1989). The court held moreover "that the masking and scrambling of the test score record would not constitute the creation of a new record" under the open records law. *Id.*

Perhaps most informingly, on facts much like the instant case, the Wisconsin Supreme Court ruled in favor of educational researchers to access data in the public interest after de-identification sufficient to protect personal privacy. In *Osborne v. Board of Regents*, Osborne filed a state open records request with the University of Wisconsin, directed in part to the law school, seeking five years' applicant data, specifically including

"test scores, class rank, grade point average, race, gender, ethnicity, and socio-economic background." 647 N.W.2d 158, 170 (Wis. 2002). The court unanimously rejected university resistance on student privacy grounds. The court reasoned "that Osborn's list of minimal necessary information is not a list of personal characteristics that would make a student's identity easily traceable." *Id.* at 171. Risk of re-identification could be managed by redaction. *Id.* Even acknowledging that "in a small number of situations the requested information could possibly create a list of characteristics that would make an individual personally identifiable," the court concluded, critically, that that small risk did not preclude disclosure. *Id.*

Like research in education, social science inquiry into the process of admission to the bar can provide attorneys, educators, students, researchers, policymakers, and the general public with reliable information about a vital public service. Researchers have devised and employed standard methodologies of de-identification to ensure that data can be analyzed to further the public interest while minimizing (but never entirely eliminating) the risk of harm to data subjects. Standards of science and law do not require that the risk of re-identification be reduced to zero, but that de-identification reasonably safeguard against invasion of privacy. Ample experience with privacy regimes such as the federal policy on educational records demonstrates that the public interest in access can be, and for some time already has been, exonerated, all along while privacy interests are respected.

CONCLUSION

Social scientists are expert and overwhelmingly successful at devising and implementing strategies to ensure that people and their privacy remain respected in the conduct of research. Social science

research employing established technical methods must be brought to bear to understand how best to license and equip lawyers to serve the public, especially to meet the overwhelming public need for legal services. The law privileges research in recognition of its role in furthering public interest, and best practices in the social sciences have been developed and tested over time to balance the complementary demands of access and privacy. Standard, well-established methods of de-identification ensure that data can be analyzed to further the public interest while minimizing the risk of harm to data subjects. Through these methods, the public interest in research can be exonerated while also respecting the personal privacy of individuals.

Dated: January 26, 2018

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

The National Association of Scholars is a tax-exempt nonprofit organization headquartered in New York. It has no parent corporation and no stock.

Dated: January 26, 2018

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c) of the California Rules of Court, we certify that this brief contains 6,155 words, including footnotes. In making this certification, we have relied on the word count function of the Microsoft Office 365 Word computer program used to prepare the brief.

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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is UCLA School of Law, 405 Hilgard Ave., Los Angeles, CA 90095.

On January 26, 2018, I served true copies of the BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF SCHOLARS IN SUPPORT OF APPELLANTS on the interested parties in this action and courts electronically via TrueFiling, except by causing it to be sent in a sealed envelope and mailed, first class, postage prepaid to the Superior Court, all addresses as listed below.

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For: Hon. Mary E. Wiss
[service by mail]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 26, 2018, at Los Angeles, California.

s/ Eugene Volokh