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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

NATIONAL LAWYERS GUILD, SAN FRANCISCO BAY AREA CHAPTER, Plaintiff and Respondent, vs. CITY OF HAYWARD, et al., Defendants and Appellants.	)	No. Court of Appeal No. A149328 Alameda County Superior Court, Case No. RG15-785743 (Hon. Evelio Grillo)

AFTER A DECISION OF THE COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION THREE

PETITION FOR REVIEW

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I. *QUESTIONS PRESENTED FOR REVIEW*

The National Lawyers Guild, San Francisco Bay Area Chapter made California Public Records Act requests to the City of Hayward seeking copies of police camera videos taken at a political demonstration protesting police killings of two unarmed black men.

The City agreed to produce electronic copies of the videos after it redacted out certain portions. It sent the Lawyers Guild a bill for the cost of redaction. The Court of Appeal held that requiring a requester to pay the costs for redacting an electronic record is permitted by the Public Records Act.

The questions presented for review are:

1. Whether a year 2000 amendment to the California Public Records Act (Gov. Code section 6253.9, subd. (b)) allows a public agency to shift the cost of redacting electronic records to a requester, when the cost of redaction cannot be imposed for paper records?

2. If the statutory language of the amendment is ambiguous, as found by the Court of Appeal, does Article I, section 3(b) of the California Constitution compel a construction in this case that does not limit access to redacted electronic records by the ability to pay?

II. *WHY THE COURT SHOULD GRANT REVIEW*

Throughout California, electronic records are replacing and supplementing paper records. This case addresses the price of access to public records in electronic form under the California Public Records Act, Gov. Code sections 6250 et. seq.

The case affects every state and local agency in California because they all keep electronic records. Like several other recent Public Records Act cases decided by this Court, "[t]his case concerns how laws, originally designed to cover paper documents, apply to evolving methods of electronic communication." *City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608, 615 (public access to communications about the conduct of the public's business located on government employees' private devices). *American. Civil Liberties Union Foundation v. Superior Court* (2017) 3 Cal. 5th 1032 (access to automatic license plate reader data); *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157 (access to GIS database).

The case arises from a request for copies of police body worn camera videos that were redacted by the City of Hayward. The decision, however, has much broader implications. Prior to the Court of Appeal's published opinion in this case, persons seeking to inspect and copy paper records could do so knowing that the only costs that could be imposed on them were the direct costs of duplication (*North County Parents Organization For Children with Special Needs v. Department of Education* (1994) 23 Cal.App.4th 144, 148), and that

agencies had to absorb the other expenses such as the labor costs of redacting out exempt portions of the records. This limit on cost shifting was a key factor in the Public Records Act living up to its goal of being a mechanism that all Californians could use to keep government open and transparent.

The case turns on the meaning of Gov. Code section 6253.9, subd. (b) [section 6253.9(b)], a section of the California Public Records Act that was added in year 2000 during the infancy of electronic record keeping and video camera technology and long before police started wearing video cameras.[1]

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[1] Gov. Code section 6253.9 provides in part: (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

> (1) The agency shall make the information available in any electronic format in which it holds the information.
>
> (2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.
>
> (b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the

(continued...)

Although the Public Records Act does not allow an agency to charge for redacting paper records (Gov. Code section 6253(b)), the question here addresses whether electronic records are different when they require redaction in order to fulfill the Public Records Act requirement that reasonably segregable portions of records must be available "after deletion of the portions that are exempted by law." Gov. Code section 6253(a).

The outcome of the case will directly affect access to a particularly important category of electronic records – police camera videos.[2] Access to these electronic records is essential to hold law

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[1](...continued)
cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.
. . . .

[2] In August 2017, a study by the Urban Institute noted that "Police body-worn cameras (BWCs) are being rapidly and widely adopted by law enforcement." Urban Institute, *How Body Cameras Affect Community Members' Perceptions of Police* (August 2017) (https://www.urban.org/sites/default/files/publication/91331/2001307-how-body-cameras-affect-community-members-perceptions-of-polic
(continued...)

enforcement agencies and police officers accountable to the public they serve because police officers "'hold one of the most powerful positions in our society; our dependence on them is high and the potential for abuse of power is far from insignificant.' (*City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1428, 44 Cal.Rptr.2d 532.)" *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal. 4th 278, 299–300.

"Given the authority with which they are entrusted, the need for transparency, accountability and public access to information is particularly acute when the information sought involves the conduct of police officers." *Pasadena Police Officers Association v. Superior Court* (2015) 240 Cal.App.4th 268, 283. As the Legislature recently recognized, when it passed legislation requiring access certain peace office personnel records,

> The public has a strong, compelling interest in law enforcement transparency because it is essential to having a just and democratic society.

Stats. 2018, Chap. 988, Sec. 4, added by Sen. Bill No. 1021, 2017-2018 Reg. Session (amending Pen. Code sections 832.7 and 832.8, effective January 1, 2019). See also, Stats. 2018, Chap. 960, Sec. 1, Assem. Bill 748, 2017-2018 Reg. Session (amending Gov. Code section 6254(f) by requiring access to police camera videos of a "critical incident").

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[2](...continued)
e_4.pdf) (accessed Nov. 2, 2018)

The primary purpose of the legislation adding Gov. Code section 6253.9 to the Public Records Act is to "'to ensure quicker, more useful access to public records.'" *Sierra Club v. Superior Court*, 57 Cal.4th at 174, quoting from Assem. Com. on Governmental Organization, Analysis of Assem. Bill 2799 (1999–2000 Reg. Sess.) as introduced Feb. 28, 2000, p. 2. But in its published opinion the Court of Appeal held in this case that the text of Gov. Code section 6253.9(b) permits an agency to charge labor and other costs of redacting exempt information from an otherwise existing public record, effectively making redacted records less accessible to those who cannot afford the price. Slip Opinion at 14 ["[L]awmakers drafted section 6253.9(b) to expand the circumstances under which a public agency could be reimbursed by a CPRA requester to include, among others, the circumstances present here wherein the agency must incur costs to acquire and utilize special computer programming (e.g. Windows Movie Maker software) to extract exempt material from otherwise disclosable electronic public records."].

The Court of Appeal's broad interpretation of section 6253.9(b) is infinitely expandable because electronic records are by definition the product of computer programming, including word processing software, portable electronic document (pdf) applications, and the like, as well as digitized photos and videos. Unlike paper records, it is usually impossible to redact electronic records manually. Yet the Court of Appeal has effectively given an open ended license to charge for the redaction of electronic records, including videos of police

activity. This will in turn make access to such records unaffordable to all but affluent requesters and provides an indirect means of allowing an agency to "close its doors to all those who do not have a full purse." *Murdock v. Pennsylvania* (1943) 319 U.S. 105, 112. So long as there are portions of an electronic record that can be digitally redacted, the Court of Appeal opinion turns the Public Records Act on its head by making transparency accessible only to those who can afford it. The digital divide that will price out many requesters when it comes to electronic records is a sharp and dramatic break from the core principles of the statute.

Government Code section 6253.9(b) is not nearly as broad as the Court of Appeal's construction. While the California Constitution, Art. I, section 3(b)(2), is intended to "further the right of access" and the preamble to the Public Records Act, expressly says "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 section 6250), the Court of Appeal has regrettably reduced access. It has done so by allowing agencies to impose a price on such rights, a result that was not intended for routine redactions by the addition of section 6253.9 to the Public Records Act.

The Court of Appeal found the text of Gov. Code section 6253.9(b)(2) was "ambiguous" as to whether the Legislature had shifted the costs of redacting exempt material from electronic records to the requester. But Proposition 59, which added Article I, Sec. 3(b) to the California Constitution, must be applied to resolve

any ambiguity: “To the extent [a] standard is ambiguous, the PRA must be construed in ""whichever way will further the people's right of *access.'” Los* Angeles County Board of Supervisors v. Superior Court (2016) 2 Cal.5th 282, 292, quoting *Ardon v. Superior Court* (2016) 62 Cal.4th 1176, 1190. *Sierra Club v. Superior Court*, 57 Cal.4th at 166 (“to the extent that legislative intent is ambiguous, the California Constitution requires us to ‘broadly construe[ ]’ the PRA to the extent ‘it furthers the people's right of access’ and to ‘narrowly construe[ ]’ the PRA to the extent ‘it limits the right of access.’ (Cal. Const., art. I, section 3, subd. (b)(2).)”). Had the Court of Appeal properly applied this constitutional imperative, it would have looked at whether allowing an agency to charge for redacting public records would reduce public access to public records. It never answered this question. In fact, the Court of Appeal never addressed it.

“[C]ase law recognizes that the CPRA should be interpreted in light of modern technological realities.” *American Civil Liberties Union Foundation v. Superior Court*, 3 Cal. 5th at 1041. Inasmuch as government recordkeeping has changed and police technology has advanced over the past several decades, these changes and advances call for examination of the Public Records Act in light of practical realities.

Review should be granted.

III. *STATEMENT OF THE CASE*

A. *Proceedings in the Superior Court*

The National Lawyers Guild, San Francisco Bay Area Chapter [hereafter "Lawyers Guild"] requested records from the City of Hayward related to its police departments' actions in December 2014 while providing mutual aid in the City of Berkeley in connection with public demonstrations against the killing by police officers of Michael Brown in Ferguson, Missouri, and Eric Garner in Staten Island, New York. The killings received national attention, precipitating and renewing increased scrutiny of police conduct. The demonstrations resulted in injuries and arrests. The records requested included video captured by body worn police cameras used by members of the Hayward Police Department.

The records were requested pursuant to the Public Records Act. JA 6, 26. Hayward produced paper records and identified relevant body worn camera videos, which had previously been uploaded to a cloud based storage system known as "Evidence.com." JA 43. The videos were stored in an MP4 digital format. JA 50, 53.

City employee Nathaniel Roush identified the relevant videos. He took 4.9 hours for this task. JA 53-56. The Lawyers Guild then narrowed its request to about six hours of video, covering five police officers and three time periods. JA 7, 15. Adam Perez, the Police Department's records administrator, then edited the videos by redacting portions the City believed were exempt by law from mandatory disclosure. JA 81-148.

Perez used a publicly available computer program known as Microsoft Windows Movie Maker. JA 102-103. After working his way through the project, he ended up with redacted videos with some exempt portions of video and audio removed. JA 22-33. Perez took about 35.3 hours both learning and using Movie Maker to produce the disclosed videos. JA 164. The edited versions totaled 232 minutes. JA 26.

The City charged the Lawyers Guild $2,939.58, using the time spent by Roush and Perez, multiplied by their hourly salaries, plus benefits. JA 164. The Lawyers Guild paid the charges and received the videos. JA 7-8,15-16, 26.

Subsequently, the Lawyers Guild requested additional video footage. JA 26-27. The City edited the responsive footage and made redacted copies available for $308.89. JA 26, 75. While protesting this condition of production, the Lawyers Guild paid the requested charges so that it could promptly obtain the copies. JA 26. The Lawyers Guild paid the charges and received two videos totaling 65 minutes. JA 27.

The Lawyers Guild did not challenge the City's claim that redacted portions of the videos were exempt from mandatory disclosure. However, it filed this case for return of the money. JA 4.[3]

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[3] A requester may pay a challenged fee in order quickly to obtain copies of public records and then file suit under the Public Records Act seeking judicial review of the fee. *North County Parents Organization For Children with Special Needs v. Department of*

(continued...)

In the superior court the City relied on two separate sections of the Public Records Act as the basis for the charges it imposed. First, it relied on Gov. Code section 6253.9(b)(2). Second, it relied on the catch-all test permitted by Gov. Code section 6255(a), which exempts disclosure of records when "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." The superior court addressed both contentions. Relying on the usual statutory restriction governing access to copies of the public records (Gov. Code section 6252(a)), it held that neither provision permitted Hayward to charge for anything other than the actual duplication of the redacted videos. JA 619, 625*, citing* Gov. Code sections 6253(a) and 6253.9(a); *North County Parents Organization For Children with Special Needs v. Department of Education* (1994) 23 Cal.App.4th 144, 147. The superior court said:

> There is no indication in Government Code 6253.9(a) or (b) that the cost provisions concern time spent redacting exempt information from existing public records.

JA 627. The court noted that "if public agencies could routinely charge CPRA requesters for the costs related to the review and redaction of any electronic public records, then the cost of

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[3](...continued)
Education (1994) 23 Cal.App.4th 144, 148.

electronic records exception would swallow the general rule that public agencies can charge only for the direct cost of producing public records." JA 634.

The superior court then issued an order directing the issuance of a writ of mandate requiring the return of the money paid by the Lawyers Guild.

B. *The Court of Appeal Opinion Reversing the Superior Court*

The City confined the appeal to the scope of section 6253.9(b) and whether it permits charges for producing copies of the redacted police videos beyond the direct costs of duplication. It abandoned its contention that section 6255(a) justifies the charges in this case.

The Court of Appeal correctly stated the facts, which are not in dispute. The Court of Appeal correctly stated the issue: "Is the City entitled under section 6253.9, subdivision (b) (section 6253.9(b)) to recoup from the Lawyers Guild certain costs it incurred to edit and redact exempt material on otherwise disclosable police department body camera videos prior to the electronic public records' production?" Slip Opinion at 4. The Court of Appeal agreed that "at bottom, the parties dispute over what costs are recoverable by a public agency under section 6253.9, subdivision (b)(2) hinges on the statutory definition of the term 'extraction.'" Slip Opinion at 9. After finding the term ambiguous, Slip Opinion at 10, the court relied on an interpretation of legislative history that is directly contrary to this Court's finding that the Legislature did not address the cost of

redacting records in section 6253.9. *Sierra Club v. Superior Court*, 57 Cal. 4th at 175. The Court of Appeal reversed.

Following the Lawyers Guild's petition for rehearing the court modified its opinion, stating that the City may charge "to construct a copy of the police body camera video recordings for disclosure purposes, including the cost of special computer services and programming (e.g. Windows Movie Maker software) used to extract exempt material from these recordings in order to produce a copy thereof to the Guild." Order Modifying Opinion and Denying Rehearing; No Change in Judgment at 2. The Court of Appeal remanded to the trial court to determine precisely which costs, among those billed, the City is entitled to recover under section 6253.9(b). *Id.*

III. *DISCUSSION*

A. *The Statutory Framework Governing Production of Electronic Public Records*

The Public Records Act "establishes a presumptive right of access to any record created or maintained by a public agency that relates in any way to the business of the public agency[.]" *Sander v. State Bar* (2013) 58 Cal.4th 300, 323. The Act provides "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 section 6250; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1335.

The Act requires that "[e]xcept with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so." Gov. Code section 6253(b).

Due to the many statutory exemptions, the Act contemplates that some records will need to be redacted to delete exempt information before the records are disclosed. Therefore, "any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law." Gov. Code section 6253(a); *Los Angeles County Board of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 300*; Northern California Police Practices Project v. Craig* (1979) 90 Cal.App.3d 116, 124.

"There is nothing in the Public Records Act to suggest that a records request must impose no burden on the government agency." *State Board of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1190 n. 14. Government Code section 6253(b) restricts an agency from charging for more than direct costs of duplication or a statutory fee for disclosure of records. It is well settled that charges for the direct costs of duplication are limited to "the cost of copying" the records. *North County Parents Organization For Children with*

Special Needs, 23 Cal.App.4th at 147. This restriction on copying costs applies regardless whether a whole record is produced or a redacted (segregated) copy is produced. The Act makes no distinction. Gov. Code section 6253(b). Therefore, government agencies absorb most of the cost, including the cost of segregating out exempt portions of records.

In year 2000 the Legislature added a new section to the Act, governing the production of electronic records. Stats.2000, ch. 982, section 2, p. 7142, added by Assem. Bill No. 2799 (1999–2000 Reg. Sess.) (Assembly Bill 2799). Government Code section 6253.9(a)(2) generally carries this same restriction on charging more than the costs of duplication with respect to electronic records. See n. 1 *supra*. Subdivision (b) carved out a limited exception to the general rule. It says "(b) . . . the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

> (1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.
>
> (2) The request would require data compilation, extraction, or programming to produce the record.
> . . . .

The statutory use of the word "extraction" is the sole basis for Hayward's imposition of labor costs for redaction of exempt

information. The statutory language says, charging the costs of labor is only permitted with regard to information that "is *not* exempt from disclosure" (Gov. Code section 6253.9(a), and "[t]he request would require data compilation, extraction, or programming *to produce the record*." Gov. Code section 6253.9(b)(2)(emphasis added). Charging for production of "information that is not exempt," not redaction of exempt information is supported by the text of sections 6253.9(a) and 6253.9(b)(2). See n. 1 *supra*.

Nothing in the statutory language indicates that the term "extract" means to reduce a record by taking out exempt information. The term "extraction" is used in the context of language concerning "the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record." The key words, here, are "construct" and "produce." Gov. Code section 6253.9(b). An agency can charge for the cost of extraction, i.e. pulling information out, when the extraction constructs a record or it produces a record. The agency cannot charge when the extraction removes information and therefore does not construct or produce a record, that is, when the original record is maintained.

This is consistent with the common usage of the terms "extract" or "extraction." It is true, as the Court of Appeal noted, that "extract" "ordinarily means remove or take something out." Slip Opinion at 9. But that is only the starting point for determining the meaning in the context of section 6253.9(b)(2). An extract is

something taken out of a large set of information, such as an extract from a book, or an extract from a legal opinion, in order to stand by itself. Merriam-Webster Dict ["'Extract - Noun. 1 : a selection from a writing or discourse : excerpt."[4]

For example, one says "he or she extracted a credit card from a wallet," not "he or she redacted a credit card from a wallet." One speaks of extracting information as an extract of something larger, such as an excerpt. We speak of a confession being extracted from a suspect or the essence of a flower extracted to produce perfume. An extraction is used to create, construct, or produce; a redaction, on the other hand, is something that results in reduction.

The language of section 6253.9(b) is consistent with this common usage. The agency may only charge when "The request would require . . . extraction, . . .to produce the record." When Hayward produced the redacted videos in this case it did not generate a record consisting of extractions; it simply copied the videos with segregable portions deleted.

However, the Court of Appeal found the term extraction to include redaction. Slip Opinion at 10, 14. It therefore held that an agency may charge for the cost of redacting an electronic record.

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[4] <https://www.merriam-webster.com/dictionary/extract> (accessed Nov. 2, 2018).

B. *The Implications of the Court of Appeal's Opinion*

The Court of Appeal's resolution of this case has broad implications that directly affect public access to all electronic records, including police videos. The impact of the Court of appeal's decision seriously undermines the core purposes of the Public Records Act. Every time that a requester receives a cost bill for the redaction of electronic records that he or she cannot afford, that means that the requester and the public are deprived of access to records that are not exempt and that belong in the public arena.

In this case the videos were redacted to delete certain information pertaining to medical injuries and information pertaining to police tactics. But there is a whole host of possible reasons why videos may be redacted in the future. Police agencies are obligated to produce "any reasonably segregable" part of the video "after deletion of the portion exempt by law." Gov. Code section 6253(a). In the police context this may include deletion of portions that would invade an individuals' right to privacy, which are exempt pursuant to Gov. Code section 6254(c)), ongoing investigations, which are exempt by section 6254(f); images of undercover officers, section 6254(f), images of victims of human trafficking, Gov. Code section 6245(f)(1)(B), and juveniles taken into custody, Gov. Code section 6254(k), Welf. & Inst. Code section 827.9.

Additionally, a police agency, or any other government agency, may invoke the catch-all exemption, Gov. Code section 6255(a), to assert that on the facts of the particular case the public interest in not

disclosing a portion of an electronic record clearly outweighs the public interest in disclosure. Before disclosing any part of these records the police agency would need to redact them before disclosing them to the public.

The Court of Appeal would allow any agency to charge for the cost of redacting records. Depending on the number of redactions, the number and length of the electronic records, and the process used to make the redactions, the labor cost could make access to obtain the reasonably segregable portions completely unaffordable for the requester, including government accountability associations, the media, and members of the public.

Furthermore, requesters will not even be able to challenge the legal basis of the redactions if they cannot afford access to the unredacted portions in order to see whether the redactions would be worth the legal fight, and whether the redactions appear to be supported by law in the context of the record as a whole. Without payment of the agency charges for the redactions, the requester will in many instances be unable to know whether the redactions were proper, or whether (as in this case) the redactions were not worth challenging.

Prior to this case, it has been settled law that with respect to paper records "an agency may be forced to bear a tangible burden in complying with the Act absent legislative direction to the contrary." *Connell v. Superior Court* (1997) 56 Cal.App. 4th 601, 615. *See e.g.*, *CBS Broadcasting Inc. v. Superior Court* (2001) 91 Cal.App.4th 892,

909 ($43,000 cost of compiling an accurate list of names was not "a valid reason to proscribe disclosure of the identity of such individuals.").

Paper records may well require substantial labor with respect to their disclosure, without or without redactions. As for paper records, the government agency is expressly limited to charging only for the direct costs of duplicating the records. Gov. Code section 6253(b).

If a request becomes excessive then the government agency is not without a remedy. It may invoke the catch-all balancing test of Government Code section 6255(a) to demonstrate that the public interest in nondisclosure clearly outweighs the interest in disclosure due to the labor necessary to make the disclosure. *Connell v. Superior Court,* 56 Cal.App.4th at 615-616*; American Civil Liberties Union Foundation of Northern California v. Deukmejian* (1982) 32 Ca1.3d 440, 452-453 and fn. 13. *See Fredericks v. Superior Court* (2015) 233 Cal.App. 4th 209, 238 (on remand "the trial court [is] to allow such further procedures as will identify the disclosable records within the balancing standards of section 6255, . . . The trial court should reconsider Fredericks's request and the scope of any required disclosures as they are affected by the costs of compliance, based on all the relevant CPRA public interest balancing and policy factors.").

Had the Court of Appeal correctly construed section 6253.9 and held that the statute does not permit a public agency to charge a requester for its time segregating out exempt information from

electronic records, the agency would not be without recourse in extraordinary cases involving voluminous records or voluminous redactions. It could invoke section 6255(a) to demonstrate that the public interest in nondisclosure outweighs the interest in disclosure, unless and until the requester pays all or a portion of the extraordinary labor costs.

C. *The Court Ignored the Imperative Function of the California Constitution to Resolve Ambiguous Statutes Affecting the People's Right to Access to Information*

The Court of Appeal acknowledged the proper framework for the statutory analysis and quoted from the California Constitutional provision giving primacy to public access. Article I section 3(b). However, while the Court acknowledged the existence of the constitutional provision in its recital of black letter Public Records Act principles (Slip Op at 6-7), it failed to include the provision in its legal analysis of the facts of this case. That legal analysis begins at page 7 of the Opinion ("Returning to the matter at hand….") and continues for eight pages. But the "constitutional imperative" is not discussed, mentioned or even cited at any point in that discussion. Rather the opinion discusses the statutory text and framework, and then skips directly to the legislative history. Slip Opinion at 10. And in its modified conclusion to the opinion, the Court also omitted the Constitution from the list of factors it considered. ("Accordingly, we conclude based on the language of the statute, the legislative history

and policy considerations that the costs allowable under section 6253.9 subdivision (b)(2)….")

The Court of Appeal never analyzed the ambiguity it found in the words of the statute by looking to the California Constitution and applying the Constitution's directive to construe the statute in the manner that would further the right of access.

This Court has been explicit that Proposition 59, which added Article I, Sec. 3(b) to the California Constitution, must be applied to resolve ambiguities, unless the resulting construction would be implausible in light of all other indicia of statutory meaning, a situation which is not present in this case.[5] This Court has cited and applied Article I, section 3(b) repeatedly in construing statutory terms in the Public Records Act. It has described the application of the constitutional provision to be "imperative." *American Civil Liberties Union Foundation v. Superior Court,* 3 Cal. 5th at 1039 (describing the "constitutional imperative to construe CPRA in a manner that furthers disclosure"); *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617 ("constitutional imperative"); See also *Los Angeles County Board of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 292.

Sierra Club v. Superior Court illustrates this deficiency in the Court of Appeal's analysis. In the *Sierra Club* opinion this Court carefully delineated the rules of statutory interpretation. It noted, as

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[5] *Compare Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176, 1190.

did the Court of Appeal, that if the statutory language permits more than one reasonable interpretation, courts may consider "'other aids, such as the statute's purpose, legislative history and public policy.'" *Id* at 166. However, this Court did not stop there:

> In this case, our usual approach to statutory construction is supplemented by a rule of interpretation that is specific to the case before us. In 2004, California voters approved Proposition 59, which amended the state constitution to provide a right of access to public records" *Id.*

The Court went on to summarize the provisions of the Proposition, including the constitutional mandate to construe statutes "broadly if it furthers the people's right of access, and narrowly construed if it limits the right of access." But this Court did not just recite this rule in its delineation of interpretive principles. Unlike the Court of Appeal, it went on to apply the "interpretive rule" of Article 1, sec 3(b)(2) to the facts of the case. *Sierra Club* at 175-76. It held:

> "To the extent that the term 'computer mapping system' is ambiguous, the constitutional canon requires us to interpret it in way that maximizes the public's access to information unless the Legislature has *expressly* provided to the contrary. (citation omitted) (emphasis by the court)….Our holding simply construes the terms of section 6254.9 in light of the constitutional mandate that a statute will be narrowly construed if it limits the right of access.." Cal. Const. Art 1, sec 3(b)(2)

The fundamental flaw in the Court of Appeal decision is that it failed to do just that – i.e., "'construe [] the terms of [section 6253.9] in light of the constitutional mandate that a statute will be narrowly construed if it limits the right of access.'"

Other decisions from this Court reflect adherence to the "interpretive rule" enunciated in the *Sierra Club* opinion. In the *City of San Jose* case, this Court recognized that "In CPRA cases, the standard approach to statutory interpretation is augmented by a constitutional imperative." 2 Cal. 5th at 608. However, again unlike the Court of Appeal, the *San Jose* opinion went on to apply this constitutional imperative to the facts of the case: "The City's narrow reading of CPRA's local agency definition is in consistent with the constitutional directive of broad interpretation." *Id*. at 620. Also, the importance of the constitutional mandate to this Court's holding in the recent *American Civil Liberties Union Foundation* opinion is manifest: "In light of our constitutional obligation to broadly construe the CPRA in a manner that furthers the people's right of access to the conduct of governmental operations, we disagree with the trial court and the Court of Appeal that the APLR scan data at issue here are subject to sec. 6254(f)'s for records of investigation." *Id.* at 836.

Had the Court of Appeal properly applied the constitutional imperative, it would have looked at whether allowing an agency to charge for redacting public records would reduce public access to public records. The failure of the Court to include the Constitution in its analysis accounts for its failure to address the point that its interpretation of the statute will impose a practical and significant limit on public access.

D. *The Court of Appeal Did Not Consider the Statute as a Whole In Order to Harmonize its Parts*

Compounding the failure to apply the constitutional imperative to statutory ambiguity, the Court of Appeal failed to apply the standard means of statutory analysis to the statute as a whole. *See Sierra Club v. Superior Court,* 57 Cal.4th at 165-166. As the Court has said repeatedly, "We do not examine [the] language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment." *City of San Jose v. Superior Court,* 2 Cal. 5th at 616. *See Ardon v. City of Los Angeles,* 62 Cal.4th at 1183.

First, the Court of Appeal failed to take account of Gov. Code section 6250 which proclaims that "that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." It does not say, it is a fundamental and necessary right of every person who can afford the labor costs necessary to produce a record. "The Public Records Act does not differentiate among those who seek access to public information." *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1190, 1197. "Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person," whether they are rich or poor, whether they are large companies working to enhance their businesses, or government watchdogs. Gov. Code section 6250. Information must be made available regardless of the identity of the requester. *City of Santa*

Clara v. Superior Court (2009) 170 Cal.App. 4th 1301, 1324; *State Board of Equalization,*10 Cal.App. 4th at 1190.

Second, the Court of Appeal failed to take any account of the fact that the Public Records Act introduced new terminology when the Act was amended in year 2000 by adding section 6253.9.

Importantly, the Act already required that non-exempt portions of records must be disclosed to a requester. Gov. Code section 6253(a). The Legislature used the language "reasonably segregable portion of a record," to describe the non-exempt part of the record that must be disclosed. There is no distinction in the Act between segregable portions of written records and segregable portions of electronic records. If information is not exempt, and reasonably segregable, it must be disclosed.

Section 6253.9(b)(2), allowing additional charges for data compilation, extraction, or programming of electronic records must therefore refer to something other than "segregation" of exempt and non-exempt information found in a record. If the Legislature had intended "extraction" to mean "segregation" with respect to charges to produce electronic records, it would have used the Public Records Act's statutory term "segregation." It did not.

Had the Legislature used the term segregation in section 6253.9(b), then the process described by section 6253(a) (the segregation requirement) and 6253.9(b)(2) (the provision allowing additional processing charges) would be consistent. Instead, the Legislature used different terms with different meanings. "It is a well

recognized principle of statutory construction that when the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded." *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 725; *Songstad v. Superior Court* (2001) 93 Cal.App.4th 1202, 1208-09 ("The use of a term in a statute addressing a subject, and omitting that term and using a different term in a similar statute addressing a related subject, shows a different meaning was intended in the two statutes.").

The term redaction had a settled meaning by the time section 6253.9 was added to the Public Records Act. The Legislature could have used the term "redaction" in section 6253.9(b)(2), instead of "extraction." "Redaction" is a legal term of art which was well known in 2000 when section 6253.9(b) was added to the Act. *See* e.g., *People v. Fletcher* (1996) 13 Cal.4th 451, 464; *Poway Unified School Dist. v. Superior Court (Copley Press)* (1998) 62 Cal.App.4th 1496, 1506 (Public Records Act: "the District has the power to address privacy concerns by redacting released materials.").[6] But instead of using the term redaction, the Legislature choose the term extraction, meaning something different.

Furthermore, the critical language in section 6253.9(b)(2) uses the term "data" in the context of compilation, extraction, or

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[6] A Westlaw search of reported California opinions issued prior to 2000 shows 117 cases that use the terms "redact" or "redaction" as legal terms of art.

programming. It allows charges to the requester when "The request would require *data* compilation, extraction, or programming to produce the *record*." (Emphasis added.) Section 6253.9(b) addresses electronic *data*, which is plainly different from an electronic *record*. The Legislature intended to allow additional charges when the public records request requires pulling data out of an electronic database in order to generate a record. Data is bits of information; a record is "a writing" in tangible form. Gov. Code section 6252(g) (a writing, includes a "recording upon any tangible thing any form of communication or representation").

The Legislature underscored the distinction between data and records in other sections of the Public Records Act. Section 6253(c) sets a ten day deadline for responding to a request for records. However, in "unusual circumstances," the time may be extended an additional 14 days. One of the few unusual circumstances listed is "The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request." Gov. Code section 6253(c)(1). Another is "The need to compile *data*, to write programming language or a computer program, or *to construct a computer report to extract data*." section 6253(c)(4) (emphasis added). In other words, a search for "records" is different from compilation, programming or extraction of "data" to generate a record or records that are subject to disclosure. Gov. Code section 6253(b). The language shows that compilation, programming, and extraction of data was viewed as extraordinary and

potentially burdensome. Therefore, the Legislature allowed more time to produce the resulting records, if necessary. In fact, this language was added to the Public Records Act by the same legislative bill that added section 6253.9, AB 2799, Sec. 1.

E. *The Court of Appeal Misread This Court's Precedent Interpreting the Legislative History and Misread the Legislative File*

After skipping over any constitutional analysis or any analysis of how section 6253.9(b) fits within the whole of the Public Records Act, the Court of Appeal immediately turned to the legislative history. But here its analysis ignored a prior interpretation by this Court and is incorrect and inconsistent with established methods of discerning legislative intent.

Section 6253.9(b) was added by AB2799 during the 1999-2000 Legislative Session.[7] Stats.2000, ch. 982, section 2, p. 7142, added by Assem. Bill No. 2799 (1999–2000 Reg. Sess.). First, as we pointed out earlier in this petition, the Court of Appeal entirely ignored the fact that this Court had previously examined that history in *Sierra Club v. Superior Court,* 57 Cal.4th 157. The court dismissed this Court's examination of the legislative history. Slip Opinion at 14, n. 10. The *Sierra Club* case examined the legislative history of AB 2799 and found that the legislative history did not address some

[7] The entire legislative history is part of the record filed in the Court of Appeal in this case. The Court of Appeal took judicial notice of this file.

agencies' concerns about the cost of redacting electronic records.

This Court said:

> "[Some] agencies expressed concern that because the bill would require electronic databases," it would require significant amounts of staff time to redact nondisclosable information and would increase the risk of unintentional release of nondisclosable information when compared with nonelectronic production. (Assem. Com. on Governmental Organization, Analysis of Assem. Bill 2799 (1999–2000 Reg. Sess.) as amended Apr. 27, 2000, pp. 2–3.) *The Legislature does not appear to have adopted any amendments in response to this concern, and documents in the Governor's Chaptered Bill File suggest that these concerns remained in effect through the final enrolled bill*. (See, e.g., Dept. of Information & Technology, Enrolled Bill Rep. on Assem. Bill 2799 (1999–2000 Reg.Sess.) Sept. 25, 2000, p. 2.)

57 Cal. 4th at 174-175 (emphasis added).

Second, while ignoring this Court's previous *Sierra Club* analysis with respect to whether the Legislature intended to say anything about the costs of redaction, the Court of Appeal seized on the arguments of agencies that voiced concerns about the burden of redaction, rather than focusing on the intent of the Legislature that actually voted on the bill. Slip Opinion at 11 ("Several groups opposed [the original bill] on the precise ground that redacting or segregating nondisclosable electronic records from disclosable electronic records would be time-consuming and costly.").[8] The Court then observed that the original bill was amended in June 2000 to add the current language of section 6253.9. *Id*. at 12. The court took a

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[8] The Court of Appeal quoted from letters from the San Bernardino Sheriff's Department and the County of Los Angeles. Slip Opinion at 12, n. 8.

giant leap by assuming the language was put in its present form precisely to assuage the concerns of a few agencies pointing to the costs of redaction. At best the Court of Appeal in a footnote quoted from a bill analysis by the Senate Committee on Judiciary in May 2000 saying that "amendments may be introduced to address the issue of the cost and feasibility of redacting public information." Slip Opinion at 12, n. 9. But the committee never said the actual amendments were introduced for that purpose.

The lynchpin of the Court's analysis quotes from a letter from a private organization, the California Newspaper Publisher's Association, to the Governor, urging him to sign the final bill, which the Court of Appeal read to acknowledge that the statute would cover redaction (even though the quoted language does not say this). And it quotes from another organization, the California Association of Clerks and Election Officials, which wrote that it was withdrawing its opposition to the bill, although the quote used by the Court of Appeal also did not address "redaction." Slip Opinion at 13.[9]

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[9] The Senate Judiciary Committee added the language concerning charges for electronic records. See AB2799, as amended in the Senate June 22, 2000, Appellant's Request for Judicial Notice at pdf index pp. 19-20. The bill analysis says that the purpose was to make electronic records easily available in order to mitigate the cost of production of paper copies from the records. Sen. Judiciary Com., Bill Analysis, Assem. Bill No. 2799 (1999-2000 Reg. Session), June 27, 2000. JA 193; Appellant's Request for Judicial Notice at pdf index p. 182.

The Court of Appeal then concluded that because lawmakers were made aware of the costs of redacting exempt information by opponents outside the Legislature, the Legislature must have drafted section 6253.9(b) to expand the circumstances under which an agency could be reimbursed to include redaction. Slip Opinion at 14.

This heavy reliance on letters from outside parties departs from well settled tenets for discerning statutory intent. The agency letters and third party letters have no weight inasmuch as they are simply the views of specially interested parties. "[T]hese letters state the views of the writers, not the intent of the Legislature." *Hassan v. Mercy American River Hosp*. (2003) 31 Cal.4th 709, 723; *People v. Dennis* (1998) 17 Cal.4th 468, 501 n. 7 (rejecting two letters from groups specially interested).

As a general rule, courts do not even consider individual views of legislators as indications of legislative intent. *Myers v. Philip Morris Companies, Inc*. (2002) 28 Cal.4th 828, 845 ("we have repeatedly declined to discern legislative intent from comments by a bill's author because they reflect only the views of a single legislator instead of those of the Legislature as a whole."); *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 377 ("in construing a statute we do not consider the motives or understanding of the author of a bill or of individual legislators who voted for it."). *See People v. Wade* (2016) 63 Cal.4th 137, 143. Individual views are irrelevant unless they have been lodged as a direct expression of legislative intent in the Journal of the Assembly or Senate or they express a reiteration of legislative

discussion. *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699-701. Accordingly, there is no basis to rely on objections voiced by outside individuals and private groups to discern what the legislators meant when they voted on a bill.

Tellingly, the final legislation did not use the words "redact" or "redaction," despite the concerns and objections by some agencies and despite the fact "redaction" was a well known legal term of art, applicable to exempt portions of records. The Legislature could have used the word "redaction," or the word "segregable," which appears elsewhere in the Public Records Act (§ 6253(a)), but chose instead to retain the term "extraction" in the final legislation which allows agencies to require a requester to bear the cost of compilation, extraction, or programming electronic records under some circumstances.

IV. *CONCLUSION*

Access to electronic information is necessary and fundamental. Access to electronic records will be out of reach for most people and organizations if they are required to pay the cost of redacting records.

This result betrays the California Constitution promise that the Public Records Act will be construed to broaden public access.

Review should be granted.

November 7, 2018

Respectfully submitted,
/s/ Amitai Schwartz
Amitai Schwartz
Alan L. Schlosser
Attorneys for Plaintiff and Respondent,
National Lawyers Guild,
San Francisco Bay Area Chapter

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.204(c))

The text of the foregoing Petition consists of 8,140 words as counted by the Corel WordPerfect X8 word-processing program used to generate the petition.

Dated: November 7, 2018

/s/ Amitai Schwartz
Amitai Schwartz
Attorney for Respondent

Filed 10/26/18 (unmodified opn. attached)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

NATIONAL LAWYERS GUILD, SAN FRANCISCO BAY AREA CHAPTER, Plaintiff and Respondent, v. CITY OF HAYWARD et al., Defendants and Appellants.	A149328 (Alameda County Super. Ct. No. RG15785743) ORDER MODIFYING OPINION AND DENYING REHEARING; NO CHANGE IN JUDGMENT

THE COURT:

It is ordered that the opinion filed herein on September 28, 2018, be modified as follows:

1. On page 1, in the first sentence of the opinion, the words "writ of administrative mandate" are changed to "writ of mandate" so the first sentence reads as follows:[1]

> This is an appeal from the trial court's decision to grant the petition for writ of mandate of the National Lawyers Guild, San Francisco Bay Area Chapter (Guild), and to issue a writ directing the City of Hayward and its Chief of Police Diane Urban (collectively, City) to refund the Guild for two payments made to cover certain of the City's costs in complying with the Guild's requests for production under the California Public Records Act (Gov. Code, § 6250 et seq.) (CPRA).

[1] Footnote 1 remains in place at the end of the first sentence of the opinion, unchanged.

2. On page 15, the last full paragraph of the opinion immediately preceding the disposition, beginning "Accordingly, we conclude based on the language of the statute" and ending "computer programming in the form of the Windows Movie Maker software," is modified to read as follows:

> Accordingly, we conclude based on the language of the statute, the legislative history, and policy considerations that the costs allowable under section 6253.9, subdivision (b)(2) include the City's expenses incurred in this case to construct a copy of the police body camera video recordings for disclosure purposes, including the cost of special computer services and programming (e.g., the Windows Movie Maker software) used to extract exempt material from these recordings in order to produce a copy thereof to the Guild. We thus remand to the trial court to conduct a further evidentiary hearing with respect to precisely which costs, among those billed to the Guild, the City is entitled to recover under this provision.

There is no change in the judgment.

Respondent's petition for rehearing is denied.

Dated: October 26, 2018 POLLAK, J., Acting P. J.

A149328/Nat. Lawyers Guild, S.F. Bay Area Ch. v. City of Hayward

Trial Court: Superior Court of Alameda County

Trial Judge: Evelio Grillo, J.

Counsel: Michael S. Lawson, City Attorney (Hayward) and Justin Nishioka, Assistant City Attorney, for Appellants.

Law Offices of Amitai Schwartz and Amitai Schwartz; American Civil Liberties Union Foundation of Northern California, Inc. and Alan L. Schlosser for Respondent.

Katie Townsend, Bruce D. Brown and Caitlin Vogus for Reporters Committee for Freedom of the Press as Amicus Curiae on behalf of Respondent.

Jim Ewert and Nikki Moore for California News Publishers Association as Amicus Curiae on behalf of Respondent.

Terry Francke for Californians Aware as Amicus Curiae on behalf of Respondent.

Judy Alexander; Davis Wright Tremaine and Thomas Burke for The Center for Investigative Reporting as Amicus Curiae on behalf of Respondent.

David Snyder for First Amendment Coalition as Amicus Curiae on behalf of Respondent.

Barbara W. Wall for Gannett Co., Inc. as Amicus Curiae on behalf of Respondent.

Jeffrey Glasser for Los Angeles Times, LLC and The San Diego Union-Tribune, LLC as Amici Curiae on behalf of Respondent.

Juan Cornejo for The McClatchy Company as Amicus Curiae on behalf of Respondent.

Filed 9/28/18 (unmodified version)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

NATIONAL LAWYERS GUILD, SAN FRANCISCO BAY AREA CHAPTER, Plaintiff and Respondent, v. CITY OF HAYWARD et al., Defendants and Appellants.	A149328 (Alameda County Super. Ct. No. RG15785743)

This is an appeal from the trial court's decision to grant the petition for writ of administrative mandate of the National Lawyers Guild, San Francisco Bay Area Chapter (Guild), and to issue a writ directing the City of Hayward and its Chief of Police Diane Urban (collectively, City) to refund the Guild for two payments made to cover certain of the City's costs in complying with the Guild's requests for production under the California Public Records Act (Gov. Code, § 6250 et seq.) (CPRA).[2] Concluding the trial court misinterpreted the applicable provision of the CPRA—section 6253.9, subdivision (b)—we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

The relevant facts are not in dispute. The Guild is a not-for-profit organization seeking to unite lawyers and law students with the aim to promote justice in the administration of law, civil rights and racial equality. On January 27, 2015, the Guild served on the City requests for 11 categories of public records (paper and electronic)

[2] Unless otherwise stated herein, all statutory citations are to the Government Code.

relating to a demonstration held in Berkeley in December 2014 to protest recent incidents of police violence toward private citizens, at which the Hayward Police Department (Department) provided security.

In response to these requests, the City provided the Guild with copies of well over 200 public records. Among the hundreds of such records, the City produced over six hours of police body camera videos from the Berkeley demonstration, which had been redacted to exclude material exempt from disclosure under the CPRA on privacy or security grounds.[3] In preparing for this production, City employees, including IT manager Nathaniel Roush and the Department's records administrator, Adam Perez, spent approximately 170 hours identifying, compiling, reviewing and redacting exempt portions from these videos, which were among thousands of hours of police videos stored on the Internet and accessible only by certain personnel through a password-protected external website.[4] According to evidence submitted by the City, Roush, in particular, performed 45 database searches that yielded 141 videos with, collectively, about 90 hours of footage. Then, after initially reviewing the videos for accuracy, Roush downloaded the videos from the cloud and copied them. However, in order to review these videos for exempt material and to make necessary redactions, Perez required the use of specialized third party software with audio/video editing capabilities. For this task, which the City had not previously undertaken, Perez researched several different software programs before selecting Windows Movie Maker as the most suitable program for performing these functions.

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[3] The Guild did not expressly request copies of these police body camera videos; however, the City interpreted the Guild's requests to include these videos and, thus, included copies of them in redacted form with its production. On appeal, there is no dispute these videos qualify as public records subject to disclosure under the CPRA.

[4] The Department instituted its "body-worn camera" program in 2014 and typically generates about 1,000 hours of videos from these cameras monthly. The Department's standard operating procedure under this program includes having individual officers upload the videos from their cameras in MP4 format for storage via a docking station upon their return to the station after their shifts.

Realizing the volume of work required to produce the body camera videos, the City conversed with the Guild with the goal of narrowing its requests. In March 2015, the Guild agreed "for now" to accept approximately six hours of video taken at the Berkeley demonstration.

On May 18, 2015, after discussions with the Guild regarding the City's costs in responding to the requests for body camera videos, the City sent the Guild an invoice for $2,939.58 seeking reimbursement for certain costs incurred by its employees in copying the videos for production (including the "tedious" task of redacting them).[5] The City reached this invoice total by determining Roush spent 4.9 hours of his time preparing the videos for production (excluding his work burning the videos onto DVD's and then preserving the DVD's as potential evidence). It determined Perez, in turn, spent 35.3 hours engaged in tasks including editing the videos with the Windows Movie Maker software (but excluding his time collecting and compiling the videos), reviewing over 90 hours of videos, and selecting, by trial and error, the Windows Movie Maker software program. The City also agreed to make the redacted videos available for viewing free of charge.

The Guild thereafter paid this invoice under protest, and received copies of roughly 232 minutes of police body camera videos, consisting of seven separate videos in MP4 format. Shortly thereafter, the Guild made a request for a second set of videos encompassing recordings from 24 named officers, plus other unnamed officers, on duty at

[5] Perez described the multi-phase video editing process, which alone took about 35 hours, as follows. First, all responsive videos were reviewed, and portions within them that were exempt from disclosure were noted by video start time and end time. Second, the audio from each exempt portion was extracted and placed into a separate audio file in MP3 format. Third, all exempt audio and video portions identified were redacted using the Windows Movie Maker software. To do this, the audio/video portions were uploaded, edited on a " 'storyboard,' " and then edited separately (video followed by audio) "using the 'split' function . . . to separate specific sections of the video . . . ." Finally, Perez listened to the videos to ensure no content subject to disclosure was "inadvertently" edited out, before carefully syncing the video and audio to correspond accurately.

the Berkeley demonstration during three specific time periods. The City promptly complied with this request, permitting the Guild to view the redacted videos free of charge and offering to produce copies of these videos for a charge of $308.89 to cover certain of its production costs.

Rather than pay this amount, the Guild brought this action in the form of a Verified Petition for Declaratory and Injunctive Relief and Writ of Mandate (petition), seeking relief in the form of a refund for its payment of $2,939.58 for the first set of videos and release of the second set of videos for "[no] more than the direct costs of production." About two weeks later, however, the Guild paid the second invoice under protest and received the second set of videos (two videos in MP4 format totaling 65 minutes), while proceeding with this action.

On June 24, 2016, following issuance of a tentative order and contested hearing, the trial court ruled in favor of the Guild, concluding that, as a matter of law, section 6253, subdivision (b) and section 6253.9, subdivision (a)(2) do not permit the City to charge a CPRA requester for costs incurred in making a redacted version of an existing public record. After the Guild's request for reconsideration was denied, the City filed this timely appeal.

DISCUSSION

The only issue before us is one of statutory construction, which is subject to de novo review. (*Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 223 (*Fredericks*).) Is the City entitled under section 6253.9, subdivision (b) (section 6253.9(b)) to recoup from the Guild certain costs it incurred to edit and redact exempt material on otherwise disclosable police department body camera videos prior to the electronic public records' production?

To begin, we consider the statute, section 6253.9(b), in proper context. California citizens have a protected right of access to information concerning the conduct of the state's business and, in particular, the conduct of its police force. (Cal. Const., art. I, § 3, subd. (b)(1) ["The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of

public officials and agencies shall be open to public scrutiny"]; § 6250; see *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 297 [" 'In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers' "].) This right extends to both paper and electronic records in the public domain. The Legislature thus broadly defines "public records" to include "any writing containing information relating to the conduct of the public's business . . . regardless of physical form or characteristics," and defines "writing" as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." (§ 6252, subds. (e), (g); see *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617 (*City of San Jose*).)

At the same time, "public access to information must sometimes yield to personal privacy interests. When enacting [the] CPRA, the Legislature was mindful of the right to privacy (§ 6250), and set out multiple exemptions designed to protect that right. ([Citation]; see § 6254.) Similarly, while the Constitution provides for public access, it does not supersede or modify existing privacy rights. (Cal. Const., art. I, § 3, subd. (b)(3).)" (*City of San Jose*, *supra*, 2 Cal.5th at pp. 615–616.) Accordingly, while, as a general matter, public records " 'must be disclosed unless a statutory exception is shown,' " section 6254 sets out a variety of exemptions, " 'many of which are designed to protect individual privacy.' " (*Id.* at p. 616.)

Relevant here, "if only part of a record is exempt, the agency is required to produce the remainder, if segregable. (§ 6253, subd. (a).) In other words, 'the fact that a public record may contain some confidential information does not justify withholding the entire document.' (*State Bd. of Equalization v. Superior Court* [(1992)] 10 Cal.App.4th [1177,] 1187; [citation].) 'The burden of segregating exempt from nonexempt materials, however, remains one of the considerations which the court can take into account in

determining whether the public interest favors disclosure under section 6255.' [Citation.]" (*County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1321 (*County of Santa Clara*).) The CPRA thus includes a "catchall" provision—section 6255, subdivision (a)—that exempts disclosure if " 'the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure.' "[6] (*City of San Jose, supra*, 2 Cal.5th at p. 616.)

This statutory framework and the public policies supporting it influence our application of the otherwise well-established tenets of statutory construction. " 'When we interpret a statute, "[o]ur fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy." [Citation.] "Furthermore, we consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose." ' [Citation.] [¶] In CPRA cases, this standard approach to statutory interpretation is augmented by a constitutional imperative. [Citation.] Proposition 59 amended the Constitution to provide 'A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be

[6] The City raised the additional argument below under section 6255 that the Guild's request for disclosure of the police body camera video recordings was too onerous due to the costs required to review and redact material in the recordings to protect privacy and other legitimate concerns. (See *Fredericks, supra*, 233 Cal.App.4th at pp. 237–238; *State Bd. of Equalization v. Superior Court, supra*, 10 Cal.App.4th at pp. 1188–1189.) However, the trial court found against the City on this issue, and the City has not appealed this ruling.

broadly construed if it furthers the people's right of access, and *narrowly* construed if it limits the right of access.' (Cal. Const., art. I, § 3, subd. (b)(2), italics added.) ' "Given the strong public policy of the people's right to information concerning the people's business (Gov. Code, § 6250), and the constitutional mandate to construe statutes limiting the right of access narrowly (Cal. Const., art. I, § 3, subd. (b)(2)), 'all public records are subject to disclosure unless the Legislature has *expressly* provided to the contrary.' " ' [Citation.]" (*City of San Jose*, *supra*, 2 Cal.5th at pp. 616–617.)

Returning to the matter at hand, the parties agree the electronic records sought by the Guild under the CPRA, including the police body camera videos, qualify as "public records" subject to disclosure under section 6252 either in full or in part. The dispute concerns which party must bear certain costs incurred in connection with the City's production of these records. Two provisions of the CPRA are implicated—section 6253, originally enacted in 1998 (Stats. 1998, ch. 620 § 5, pp. 4120–4121 (Sen. Bill. No. 143)), and section 6253.9, a relatively new addition to the CPRA added in 2000 to respond to the growing tendency of public entities to maintain records in electronic format rather than paper format (Stats. 2000, ch. 982 § 2, p. 7142 (Assem. Bill No. 2799)). (See *Fredericks*, *supra*, 233 Cal.App.4th at p. 236 [section 6253.9(b) was added "to allow allocation of costs for production of information in an electronic format"].)

More specifically, section 6253, subdivision (b) provides in relevant part that, subject to any applicable exemptions, a public agency has the duty to respond to "a request for a copy of records that reasonably describes an identifiable record or records" by making said records available "upon payment of fees covering direct costs of duplication, or a statutory fee if applicable." (See *Fredericks*, *supra*, 233 Cal.App.4th at p. 236 ["Generally, the ancillary costs of retrieving, inspecting, and handling material to be prepared for disclosure may not be charged to the requestor"]; *County of Santa Clara*, *supra*, 170 Cal.App.4th at p. 1336 [when paper records are sought, "direct cost has been interpreted to cover the 'cost of running the copy machine, and conceivably also the expense of the person operating it' while excluding any charge for 'the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which

the copy is extracted' "].) In addition, section 6253 affords an agency, upon its receipt of a CPRA request, 10 days to determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency. This time period may be extended by written notice in "unusual circumstances," which include the circumstance, among others, that proper processing of the particular request reasonably calls forth the "need to compile data, to write programming language or a computer program, or to construct a computer report to extract data." (§ 6253, subd. (c)(4) [added by Stats. 2000, ch. 982, § 1, pp. 7140–7141].)

Section 6253.9(b), in turn, provides that, when electronic (rather than paper) records are requested, "an agency [can] recover specified ancillary costs in either of two cases: (1) when it must 'produce a copy of an electronic record' between 'regularly scheduled intervals' of production, or (2) when compliance with the request for an electronic record 'would require data compilation, extraction, or programming to produce the record.' (§ 6253.9, subd. (b)(1)–(2); [citation].) Under those circumstances, the agency may charge '*the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record* . . . .' (§ 6253.9, subd. (b).)" (*County of Santa Clara, supra*, 170 Cal.App.4th at p. 1336, italics added; accord, 88 Ops.Cal.Atty.Gen. 153, 164 (2005) [whether under section 6253.9, subdivision (b)(1) or (b)(2), "the fee may not include expenses associated with the [public entity's] initial gathering of the information, or with initial conversion of the information into an electronic format, or with maintaining the information"].)

Here, the City relies on section 6253.9, subdivision (b)(2) to argue the Guild should bear the costs incurred by the City to acquire and employ a special computer software program to redact or "extract[]" from the body camera video recordings material exempt from disclosure on privacy or other statutorily recognized grounds. In so arguing, the City reasons that "[t]aking exempt material out of a digital video file in order to allow a record to be produced is a form of extraction . . . [such that its] efforts may be invoiced to a requestor as authorized by §6253.9(b)(2)."

The Guild disagrees, arguing that "extraction," as used in the statute, is limited to situations where " '[t]he request would require data compilation, extraction, or programming *to produce the record*. . . . Nothing in the statutory language indicates that the term 'extract' means to reduce a record by taking out information that is exempt from public disclosure." The trial court accepted this argument, concluding "the phrase 'data compilation, extraction, or programming to produce the record' [§§ 6253, subd. (c)(4), 6253.9, subd. (b)(2)] does not refer to making a redacted version of an existing public record."

Thus, at bottom, the parties' dispute over what costs are recoverable by a public agency under section 6253.9, subdivision (b)(2) hinges on the statutory definition of the term "extraction." We therefore begin with the well-established principle that statutes are to be interpreted "according to the usual, ordinary import of the language employed in framing them." (*In re Alpine* (1928) 203 Cal. 731, 737.) And the word "extract," as the parties have agreed, usually and ordinarily means to remove or to take out. (See Merriam-Webster Dict. <https://www.merriam-webster.com/dictionary/extract> [as of Sept. 21, 2018] ["to remove (something) by pulling it out or cutting it out"].) At first glance, "taking out" appears to be precisely the action taken by the City's employees in this case, causing the City to incur the costs for which it now seeks reimbursement from the Guild—they removed or took out exempt material from the body camera video recordings in order to produce the otherwise disclosable recordings. The Guild, however, contends this action by the City was "redaction"—distinct from "extraction"—which means taking exempt material out of the original record in order to produce the original record, "but with empty holes[.]" "Extraction," the Guild insists, means "pulling data out of an electronic database in order to generate a record" in order to meet a CPRA request. Because this did not occur here, the Guild continues, the City may recover only the direct cost of duplicating the records.

Accepting the Guild's position, the trial court reasoned (when declining to award the City any additional costs for preparing and redacting the videos for production) that "section[s] 6253.9(b) and 6263.9(b)(2) [*sic*] together strongly suggest[] that a public

agency may require cost reimbursement where the 'data compilation, extraction, or programming' is necessary . . . 'to construct a record,' but it does not suggest that when a request is made under the CPRA for an *existing* public record, . . . the agency may charge for information or data *removed* from that record." (Second italics added.)

Having considered both positions, we find no clear answer in the statutory text to the parties' dispute. On the one hand, the common meaning of "extraction" appears to extend beyond redacting privileged or otherwise nondisclosable data or information to "removing" or "taking out" *any* data or information. As such, we question, if the Legislature intended "extraction" in section 6253.9, subdivision (b)(2) to have a restricted meaning—to refer to extractions of "data" for the particular purpose of "constructing" or "generating" a new record but not to redactions of exempt data or information from an existing record—why the Legislature would not have made its intent more explicit.[7]

In any event, we are ultimately left to conclude that it is unclear from the statutory language whether "extraction" was intended by the Legislature to include any act of removing or taking out material from an electronic record in anticipation of its production (including exempt material) or, as the Guild insists, only removing or taking out "data" for the purpose of constructing or generating a previously nonexistent record. And in light of this ambiguity, we turn to extrinsic sources such as the legislative history to help decipher section 6253.9(b)'s meaning. (*Fredericks*, *supra*, 233 Cal.App.4th at p. 230 [ambiguity exists where statutory language is susceptible of more than one reasonable interpretation]; *County of Santa Clara*, *supra*, 170 Cal.App.4th at pp. 1333–1334 [" '[where] statutory terms are ambiguous, we may examine extrinsic sources, including . . . the legislative history' "].)

[7] "Data" ordinarily means "facts or information used usually to calculate, analyze, or plan something" or "information in digital form that can be transmitted or processed." (Merriam-Webster Dict. <https://www.merriam-webster.com/dictionary/data> [as of Sept. 21, 2018].) Accordingly, we see no basis for concluding that extracting "data" from an electronic file is distinct from extracting "information" from such file.

In this legislative history, which we judicially notice for purposes of this appeal, we find several documents supporting the City's position that section 6253.9(b) was intended to permit a local government to recover costs in circumstances, like this, where electronic public records require special computer programming to segregate disclosable from nondisclosable material in order to produce a copy of the record to the requester. To begin with, this history reveals that, when the sponsor of Assembly Bill No. 2799 first introduced the bill in February 2000 in recognition of the increasing tendency of public agencies to maintain records in electronic format, the draft bill continued the statutory limitation on recovery of costs by a public agency under the CPRA to "direct costs of duplication." (Assem. Bill No. 2799 (1999–2000 Reg. Sess.) § 1, as introduced Feb. 28, 2000 (AB 2799); Cal. Bus., Transportation & Housing Agency, Dept. of Fin. Insts., Enrolled Bill Rep. of AB 2799 as amended July 6, 2000, p. 1.) The draft bill did *not* include the language, now found in section 6253.9, subdivision (b)(2), that the requester shall bear the costs of producing an electronic record, including the cost of programming and computer services necessary to produce a copy of the record where (inter alia) the "request would require data compilation, extraction, or programming to produce the record." Several groups opposed this version of the bill on the precise ground that redacting or segregating nondisclosable electronic records from disclosable electronic records would be time-consuming and costly. Specifically, as explained in one analysis of AB 2799, groups opposing the bill were concerned "that separating disclosable electronic records from nondisclosable electronic records could be a costly and time-consuming process" and "that this bill does not contain a provision authorizing agencies to charge fees covering the cost of preparing the electronic record for public release when such preparation is necessary." (Assem. Com. on Governmental Organization, 3d reading analysis of AB 2799 as amended May 23, 2000, p. 2.)

Similarly, the fiscal comment section of the Assembly Republican Caucus's bill analysis noted: "Public entities may keep large amounts of information in a database, some of which may not be for public consumption. Public entities may then have to purge the database and eliminate nondiscloseable records, which could be a costly

endeavor."[8] (Assem. Republican Caucus, analysis of AB 2799 as amended May 23, 2000, p. 1.)

Responding to this opposition, the current language of section 6253.9, subdivision (b)(2) was added to the draft bill in June 2000, which was then approved by the Senate in July and by the Assembly in August.[9] (Sen. Amend. to AB 2799 June 22, 2000; AB 2799, 2 Assem. Final Hist. (1999–2000 Reg. Sess.) p. 1984; see General Counsel Thomas W. Newton, Cal. Newspaper Publishers Assn., letter to Gray Davis, Sept. 8, 2000, p. 2 ["AB 2799 was amended on June 22, to ensure the bill would not place new burdens on state or local agencies. Specifically, the bill was amended to require *the requester to bear the cost* of producing a copy of an electronically held record . . . . This provision guarantees the costs associated with any extra effort that

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[8] Among those opposing the bill on this ground was the San Bernardino County Sheriff's Department, which wrote to AB 2799's sponsor that "[l]aw enforcement records can and do at times contain sensitive business and personal data acquired during a criminal investigation" and that, among other concerns, the bill, as amended April 27, 2000, "fails to address the actual cost to the public of redacting an electronic database," including the cost of reviewing "each record . . . individually. All of the costs for personnel to review the database are not currently reimbursable . . . ." (Lt. Paul R. Curry, San Bernardino County Sheriff's Dept., letter to Assem. member Kevin Shelley, May 3, 2000.) Similarly, the County of Los Angeles voiced opposition to AB 2799, as amended April 27, 2000, in a letter to the Assembly floor, explaining "the Auditor-Controller reports that Countywide time keeping systems contain data that would require special programming to provide information without jeopardizing employee privacy. [¶] The Audit Division utilizes special proprietary software that cannot be redacted in its original electronic format. The electronic format proposal will increase substantially the cost of legal review, redaction and special programming. [¶] Because of the potential costs associated with its implementation, I urge your 'NO' vote on Assembly Bill 2799." (Principal Deputy County Counsel Steve Zehner, County of Los Angeles, assembly floor letter, May 22, 2000.)

[9] As noted on page 2 of the bill analysis for AB 2799 prepared by the Senate Committee on Judiciary in May 2000, shortly before the amended bill was released, the sponsor "[was] working with the opposition closely to address their concerns. Amendments may be introduced to address the issue of the cost and feasibility of redacting public information. If necessary, the amendments will be submitted to committee no later than June 19, 2000[.]"

might be required to make an electronic public record available shall be borne by the requester, not the state or local agency"].)

In this amended form, most opposition to AB 2799 was withdrawn. For example, the California Newspaper Publishers Association (CNPA), a supporter of the bill, wrote to the Governor to urge his support, advising that the bill in its amended form would not place "new burdens" on state and local agencies. And pointing to the newly added provision that ultimately became section 6253.9, subdivision (b)(2), the CNPA observed: "This provision guarantees the costs associated with any extra effort that might be required to make an electronic public record available shall be borne by the requester, not the state or local agency." (General Counsel Thomas W. Newton, CNPA, letter to Gray Davis, Sept. 8, 2000, p. 2.)

Also telling, the California Association of Clerks and Election Officials (CACEO) initially opposed the bill due to its "understand[ing] that it is the intent of the sponsor that [recoverable] costs *not* include costs associated with any minor programming that may be required to comply with a request made pursuant to this section of the bill and costs associated with redaction of any information that is exempted, or prohibited, from disclosure by other sections of law." (Co-chair Violet Varona-Lukens, CACEO, letter to Assem. member Carole Migden, May 11, 2000, p. 1.) However, the CACEO dropped its opposition in light of the June 22, 2000 amendment, writing to the bill's sponsor the day before the amendment passed that "[AB 2799], as proposed amended, now addresses the costs incurred by public agencies in providing copies of electronic records under circumstances now described in the bill [to wit, the language of section 6253.9(b)]." (Co-chair Violet Varona-Lukens, CACEO, letter to Assem. member Carole Migden, June 21, 2000.)

Below, the trial court found the "apparent legislative intent of section 6253.9 was to address issues particular to information in electronic format 'relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency.' (Government Code 6252(e).) There is, however, no indication [apparent to the trial court] that the legislature intended to permit a public agency to characterize its redactions

of electronic documents as 'extractions' and thereby recover its costs of redacting exempt information, but not to permit the public agency to recover its costs of redacting exempt information from paper public records if the agency performs the redaction with a black felt marker."

Our review of the legislative history, as described above, leads us to a different conclusion. Specifically, we conclude based on these documents that lawmakers were in fact aware the cost of redacting exempt information from electronic records would in many cases exceed the cost of redacting such information from paper records. For this reason (and perhaps others), lawmakers drafted section 6253.9(b) to expand the circumstances under which a public agency could be reimbursed by a CPRA requester to include, among others, the circumstance present here wherein the agency must incur costs to acquire and utilize special computer programming (e.g., the Windows Movie Maker software) to extract exempt material from otherwise disclosable electronic public records.[10] (See *Fredericks*, *supra*, 233 Cal.App.4th at p. 238 [where disclosures "would require generation, compilation and redaction of information from confidential electronic records, then section 6253.9, subdivision (b) may allow the court to condition disclosure upon an additional imposition of fees and costs, over and above the direct costs of duplication . . . . Section 6253.9, subdivision (b) contemplates that the trial court will make a determination about the reasonableness of any fiscal burdens that would be placed on the [agency] from the requested disclosures"].)

[10] We find the Guild's reliance on *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157 to be misplaced. There, the California Supreme Court found the legislative history relied upon by the parties to interpret a particular phrase in the statute unhelpful because it was not clear from the history that the objective of an authoring legislator was known to, much less accepted by, the Legislature as a whole. (*Id.* at p. 173.) However, there, the Supreme Court was considering section 6254.9, not section 6253.9, and, more specifically, "whether the Legislature intended the term 'computer mapping systems' to exclude both mapping software and parcel data in a system-compatible format from the definition of a public record, or to remove all 'computer readable data bases' from the ambit of the exclusion." (*Id.* at p. 174.) This statutory language is not our concern.

Accordingly, we conclude based on the language of the statute, the legislative history, and policy considerations that the costs allowable under section 6253.9, subdivision (b)(2) include the City's actual expenditures to produce a copy of the police body camera video recordings, including the cost of extracting exempt material from these video recordings with the aid of special computer programming in the form of the Windows Movie Maker software.

DISPOSITION

The trial court's judgment is reversed.

_____
Jenkins, J.

We concur:

_____
Siggins, P. J.

_____
Pollak, J.

A149328/Nat. Lawyers Guild, S.F. Bay Area Ch. v. City of Hayward

Trial Court: Superior Court of Alameda County

Trial Judge: Evelio Grillo, J.

Counsel: Michael S. Lawson, City Attorney (Hayward) and Justin Nishioka, Assistant City Attorney, for Appellants.

Law Offices of Amitai Schwartz and Amitai Schwartz; American Civil Liberties Union Foundation of Northern California, Inc. and Alan L. Schlosser for Respondent.

Katie Townsend, Bruce D. Brown and Caitlin Vogus for Reporters Committee for Freedom of the Press as Amicus Curiae on behalf of Respondent.

Jim Ewert and Nikki Moore for California News Publishers Association as Amicus Curiae on behalf of Respondent.

Terry Francke for Californians Aware as Amicus Curiae on behalf of Respondent.

Judy Alexander; Davis Wright Tremaine and Thomas Burke for The Center for Investigative Reporting as Amicus Curiae on behalf of Respondent.

David Snyder for First Amendment Coalition as Amicus Curiae on behalf of Respondent.

Barbara W. Wall for Gannett Co., Inc. as Amicus Curiae on behalf of Respondent.

Jeffrey Glasser for Los Angeles Times, LLC and The San Diego Union-Tribune, LLC as Amici Curiae on behalf of Respondent.

Juan Cornejo for The McClatchy Company as Amicus Curiae on behalf of Respondent.

PROOF OF SERVICE BY MAIL

Re: *National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward, et al.*, California Court of Appeal, First Appellate District, Case No. A149328

I, Amitai Schwartz, declare that I am over 18 years of age, and not a party to the within cause; my business address is 2000 Powell Street, Suite 1286, Emeryville, CA 94608. I served a true copy of the

Petition for Review

on the following, by placing a copy in an envelope addressed to the party listed below, which envelope was then sealed by me and deposited in United States Mail, postage prepaid at Emeryville, California, on November 7, 2018.

Michael Lawson, City Attorney
Justin Nishioka, Deputy City Attorney
City of Hayward
777 B St
Hayward, CA 94541

Clerk, Alameda County Superior Court
1225 Fallon Street
Oakland, CA 94612

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

Executed on November 7, 2018

/s/ Amitai Schwartz
Amitai Schwartz

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **National Lawyers Guild San Francisco Bay Area Chapter v. City of Hayward**
Case Number: **TEMP-YJQCV4WG**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **amitai@schwartzlaw.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
PETITION FOR REVIEW	Petition for Review

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Amitai Schwartz Law Offices of Amitai Schwartz 55187	amitai@schwartzlaw.com	e-Service	11/7/2018 3:53:07 PM
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Michael Lawson Additional Service Recipients	michael.lawson@hayward-ca.gov	e-Service	11/7/2018 3:53:07 PM

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

11/7/2018
Date

/s/Amitai Schwartz
Signature

Schwartz, Amitai (55187)
Last Name, First Name (PNum)

Law Offices of Amitai Schwartz
Law Firm