S240156

IN THE SUPREME COURT
OF THE
STATE OF CALIFORNIA

DON L. MATHEWS, MICHAEL L. ALVAREZ and WILLIAM OWEN
Plaintiffs and Appellants,

v.

XAVIER BECERRA and JACKIE LACEY
Defendants and Respondents.

On Review From The Court Of Appeal For the Second Appellate District,
Division TWO
2nd Civil No. B265900
After An Appeal From the Superior Court of Los Angeles County
Honorable Michael L. Stern, Judge
Case Number BC573135

CONSOLIDATED ANSWER TO *AMICI CURIAE* BRIEFS

HURRELL CANTRALL LLP
THOMAS C. HURRELL, SBN 119876
MELINDA CANTRALL, SBN 198717
MARIA MARKOVA, SBN 233953
300 SOUTH GRAND AVENUE, SUITE 1300
LOS ANGELES, CALIFORNIA 90071
TELEPHONE: (213) 426-2000
FACSIMILE: (213) 426-2020
Attorneys for Defendant-Respondent
JACKIE LACEY

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LOS ANGELES, CALIFORNIA 90071
TELEPHONE: (213) 426-2000
FACSIMILE: (213) 426-2020
Attorneys for Defendant-Respondent
JACKIE LACEY

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INTRODUCTION

Two *amicus curiae* have submitted briefs. The first brief filed by three special interest Associations ("Associations Amici") argues the case should be remanded to the trial court for further fact gathering. To the extent the Associations Amici argue that the record is insufficient for a meaningful analysis of the competing societal interests involved, the argument is unavailing because courts are neither policymakers nor legislative factfinders, and Amici's "public policy" arguments are properly directed to the Legislature, not this Court.

The second brief filed by several professors and scholars ("Scholars Amici") disagrees that the case should be remanded to the lower court for further proceedings, but also invites this Court to act as the State's policymaker regarding the issues of child abuse prevention and psychotherapy patient treatment. This Court should decline to engage in judicial review that would supplant the decisions made by elected policymakers in the child protection context.

Both Amici acknowledge, that child sexual abuse is a serious problem and its prevention a laudable goal. Nevertheless, they argue that the requirement that psychotherapists, among other mandated reporters, report suspected child sexual abuse deprives the child pornography consumer of meaningful access to psychotherapy.

This Court should reject the unsound arguments inherent in Amici's claims that the State's laws aimed at protecting children from sexual exploitation somehow violate the privacy rights of the child pornography consumer under the California and United States Constitutions. Equally flawed is any argument that child pornography consumers not engaged the production or distribution of child pornography for profit or actual physical abuse, present no harm or threat to child victims. Whether raised by parties, scholars, or special interest groups, arguments attempting to create a fundamental autonomy right to psychotherapy treatment are specious and improperly dismissive of well-established precedent, as well as the special protection and care given to children due to their vulnerability.

State and federal courts have consistently acknowledged the grave and continuing harms inflicted by child pornography. By way of example, in the landmark case of *New York v. Ferber* (1982) 458 U.S. 747 [102 S.Ct. 3348, 73 L.Ed.2d 1113], the United States Supreme Court concluded that "[t]he prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance." (*Id.* At 757.) In making this finding, the high Court cited studies indicating that "[p]ornography poses an even greater threat to the child victim than does sexual abuse or prostitution." (*Id.* at 759, fn. 10.) Beyond the initial trauma of the sexual abuse suffered by the victims of child pornography, victims depicted in these images are repeatedly exploited as the images are continually

disseminated and viewed. (See *Osborne v. Ohio* (1990) 495 U.S. 103, 111 [110 S.Ct. 1691, 109 L.Ed. 2d 98].) As child pornography is now traded with ease on the Internet, "the number of still images and videos memorializing the sexual assault and other sexual exploitation of children, many very young in age, has grown exponentially." (*Paroline v. United States* (2014) __ U.S. __ [134 S.Ct. 1710, 1717-1718, 188 L.Ed. 714].)

It is undisputable that child sexual images are criminal and of grave concern. These sexual abuse images linger on the Internet for years after the initial abuse. Whether the recording of the original crime is then sold or offered freely as part of a barter system makes little difference. The system of exploitation validates the crime and causes a lifetime of exploitation to the victim. The gravity of the State's interest in this context belies Plaintiffs' constitutional challenge or Amici's arguments in support thereof.

ARGUMENT

I. The Court Should Not Consider Arguments That Plaintiffs Themselves Do Not Raise.

As a threshold matter, this Court should not consider the Associations Amici's arguments that the judgment should be reversed and the matter remanded for further proceedings to factually determine "whether there are in fact patients who acknowledge they have a problem and sincerely seek therapy to cure the problem." (Associations Amici Brief

at 32.) Plaintiffs did not advance the argument before the trial court. (AA 0111-0133.) Plaintiffs also elected not to advance the argument in the court of appeal, instead arguing exclusively that the challenged statute is unconstitutional under the state and federal constitutions as a matter of law. (See generally, Plaintiffs' Opening Brief "POB".)

The Associations Amici's position is difficult to reconcile with the standard of review governing an appeal from an order sustaining a demurrer. In such cases, the appellant bears two important burdens: the burden to show the existence of reversible error, and the burden to show there is a reasonable possibility he can amend to "change the legal effects of his pleading," if he previously declined to do so. (*Everett v. State Farm General Ins. Co.* (2008) 162 Cal.App.4th 649, 656 [75 Cal.Rptr.3d 812] (*Everett*).) Here, Amici advance an interpretation of Plaintiffs' opening brief, and a basis for reversal, that Plaintiffs themselves have not advanced, either to this Court or to the lower courts. Consideration of Amici's argument is therefore improper. (*Everett*, *supra*, at p. 655 (Because "the burden is on the appellant to demonstrate the existence of reversible error... we need only discuss whether a cause of action was stated under the theories raised on appeal."); *see also Palm Springs Tennis Club v. Rangel* (1999) 73 Cal.App.4th 1, 7-8 [86 Cal.Rptr.2d 73] (affirming order sustaining demurrer where plaintiff "made no attempt to indicate how the complaint may have been amended to state a cause of action).)

Because Plaintiffs chose not to raise the argument in their opening brief, it is not properly before this Court. "Obvious considerations of fairness in argument demand that the appellant present all of his points in the opening brief." (*Neighbours v. Buzz Oates Enterprises* (1990) 217 Cal.App.3d 325, 335 fn. 8 [265 Cal.Rptr. 788], quoting 9 Witkin, Cal. Proc. (3d ed. 1985) § 496, at 484.) It is for this reason that courts generally do not consider new issues raised by Amici. (See *Interinsurance Exchange v. Spectrum Investment Corp* (1989) 209 Cal.App.3d 1243, 1258-1259 [258 Cal.Rptr.43].) Doing so would also run afoul of the requirement that a party seeking review of an order sustaining a demurrer must identify the particular grounds for reversal. This Court should disregard the Associations Amici's arguments premised on the argument that the judgment should be reserved and the matter remanded for further proceedings in the underlying action.

II. When Entertaining Facial Challenges, Courts Can Rule On Such Claims As A Matter of Law.

When entertaining facial challenges, courts typically rule on such claims as a matter of law, without allowing discovery or making factual determinations. (See, e.g., *Kasler v. Lockyer* (2000) 23 Cal.4th 472, 478 [97 Cal.Rptr.2d 334]; see also *Alfaro v. Terhune* (2002) 98 Cal.App.4th 492, 511 [120 Cal.Rptr.2d 197] (where statutes validity "'depends on the existence of a certain state of facts,'" courts must presume[] that the

Legislature has investigated and ascertained the existence of that state of facts'" before adopting the law, citation omitted"); see also *id.* at 509-510 (where constitutional challenge presents question of law, trial court may resolve case on demurrer).)

The propriety of resolving a constitutional claim on demurrer does not depend upon whether a challenge is styled facial or as-applied; rather, it depends upon whether the complaint sets forth a claim that can be resolved as a question of law. (Code Civ. Proc., § 589(a); *Adams v. Superior Court* (1964) 226 Cal.App.2d 365, 367 [38 Cal.Rptr. 164]; *Ferraris v. Levy* (1963) 223 Cal.App.2d 408, 412 [36 Cal.Rptr. 30].) Regardless of how Plaintiffs phrase their claim, their complaint boils down to a contention that AB 1775 is unconstitutional as written. They have not alleged specific facts to show that a facially valid enactment is being, or has been, applied in a constitutionally impermissible manner. (See *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084-1085 [40 Cal.Rptr.2d 402, 892 P.2d 1145].) Accordingly, Plaintiffs can show no error by the lower court in resolving the claim as a question of law.

The Associations Amici argue that the only information before the Court by which to analyze the health care implications of the questions are Plaintiffs' "*conclusory* allegations of fact and Defendants' "*conclusory* arguments of law." (Associations Amici Brief at 10, 22.) Amici then select an argument from this Defendant's demurrer suggesting that in order to

protect a patient's expectation of privacy regarding the seemingly confidential therapy session, the therapist should warn the patient of his or her statutory duty to report instances of child pornography consumption. (AA 0062.) Amici then extrapolate that this is the only information that the Court has to analyze the health care implications of the challenged statute, and identify a number of questions into which they wish the lower court to inquire. (Associations Amici Brief at 21.)

First, Amici's argument has been rejected by this Court in *Lewis v. Superior Court* (2017) 3 Cal.5th 561, 573 [220 Cal.Rptr.3d 319] (*Lewis*).). The possibility of disclosure of some information by virtue of the submission of a mandated report may be one consideration among many affecting a patient's choice to pursue treatment. (See, *id.* at 573.) While the mandated reporting of limited information regarding the patients "may chill patients' willingness to pursue treatment," it cannot "be said that any individual has been deprived of the right to decide," to avail himself to psychotherapy. (See, *ibid.*) Indeed, Plaintiffs themselves acknowledge that they advise their patients that information conveyed in therapy can be revealed to authorities in compliance with legal mandates like CANRA. (AA at 0014 (¶ 33) [plaintiffs inform their patients of reporting requirement during intake screening].) Because the claimed intrusion here is "'limited and confidential information is carefully shielded from disclosure except to

those who have a legitimate need to know, privacy concerns are assuaged.'" (*Lewis*, *supra*, at 576.)

Secondly, and perhaps more importantly, a court is not an investigative agency. The judicial function is to resolve actual cases and controversies between the parties before the court. (*Marin Water etc. Co. v. Railroad Com.* (1916) 171 Cal. 706, 712 [154 P. 864]; *Los Angeles v. South Gate* (1930) 108 Cal.App. 398, 401.) Where, as here, Plaintiffs do not allege specific facts to demonstrate that a statutory scheme is being applied in an unconstitutional manner and allege only that they wish to use the court's processes to investigate whether, in some future instance, it might be, then the court does not err in treating the challenge as facial and resolving it upon demurrer. (*Alfaro*, *supra*, 98 Cal.App.4th at 510.) Thus, as previously established, this case was properly resolved on demurrer.

III. Any Policy Issues Involved Call For Judicial Deference To The Legislative Judgment.

When a statutory scheme is challenged under the right to privacy, courts must accord due deference to the primacy of the legislative branch as the maker of laws. (*Loder v. Municipal Court* (1976) 17 Cal.3d 859, 876 [132 Cal.Rptr. 464].) Plaintiffs' complaint and Amici's arguments in support thereof presuppose that a court has the authority to hear and determine, as a question of fact, the validity of the legislative determinations that support the enactment. But courts do not have such

authority. "It is not the judiciary's function ... to reweigh the 'legislative facts' underlying a legislative enactment." (*American Bank & Trust Co. v. Community Hospital* (1984) 36 Cal.3d 359, 372 [204 Cal.Rptr. 671].) Accordingly, "[i]f the validity of a statute depends on the existence of a certain state of facts, it will be presumed that the Legislature has investigated and ascertained the existence of that state of facts before passing the law." (*City of Ojai v. Chaffee* (1943) 60 Cal.App.2d 54, 61 [140 P.2d 116].) The presumption of constitutionality that must be accorded legislative acts requires that a legislative act "be deemed to have been enacted on the basis of any state of facts supporting it that reasonably can be conceived." (*Higgins v. City of Santa Monica* (1964) 62 Cal.2d 24, 30 [41 Cal.Rptr. 9].) "What all this means is that the courts will not, as suggested by plaintiff [s], engage in a trial at which the court, as trier of fact, determines the factual basis upon which the Legislature may act." (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1219 [70 Cal.Rptr.2d 745].)

The Associations Amici's argument that "there is no way to answer the question" of whether child abuse prevention outweighs the privacy interests of psychotherapy patients "unless and until the Court has more information" (Associations Amici Brief at 33), runs afoul of the Doctrine of Separation of Powers. (Cal. Const., art. III, § 3.) Likewise, the Scholars Amici's refusal to accord due deference to the Legislature's findings and the

introduction of numerous articles and other extraneous materials so as to advocate invalidation of AB 1775 violates the Separation of Powers doctrine and promulgates government by the judiciary.[1] As detailed in Defendant's Opposition to the Scholars Amici Motion for Judicial Notice, the scholarly articles and other extraneous material submitted by the Scholars Amici should be disregarded as improper and immaterial. (See, Defendant's Opposition to Scholars Amici Motion for Judicial Notice.) Moreover, many of the articles or studies merely echo the allegations in Plaintiffs' complaint, and thus go little distance in "assist[ing] the court in deciding the matter." (Cal. R. Ct. 8.520(f)(3).)

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[1] "[D]ecisions dating back to the turn of the century require the courts to always presume that the Legislature acts with integrity and with an honest purpose to keep within constitutional restrictions and limitations. [Citations.] '[U]nder the doctrine of separation of powers neither the trial nor appellate courts are authorized to "review" legislative determinations.' [Citation.] Thus, the Legislature's determination of the facts warranting its action "'must not be set aside or disregarded by the courts, unless the legislative decision is clearly and palpably wrong and the error appears beyond reasonable doubt from facts or evidence which cannot be controverted ....'" [Citations.] In other words, legislative determinations are not to be judicially nullified unless they are manifestly unreasonable, arbitrary or capricious. [Citations.] Judges may not substitute their judgment for that of the Legislature if there is any reasonable justification for the latter's action. [Citations.] This means that if reasonable minds may differ as to the reasonableness of a legislative enactment [citations], or if the reasonableness of the enactment is fairly debatable [citation], the enactment must be upheld." (*Professional Engineers v. Department of Transportation, supra*, 15 Cal.4th 543, 575-576 [63 Cal.Rptr.2d 467], fn. omitted (dis. opn. of Baxter, J.).)

"[A]bsent a constitutional prohibition, the choice among competing policy considerations in enacting laws is a legislative function." (*Superior Court v. County of Mendocino* (1996) 13 Cal.4th at 13 Cal.4th 45, 53 [51 Cal.Rptr.2d 837].) Confining judicial review to constitutional questions serves an important practical purpose. That limitation allows the political branches to devise innovative solutions to social, economic, and public health ills as they develop. The Legislature's police power is not a "'circumscribed prerogative,'" but is instead "'elastic and ... capable of expansion to meet existing conditions of modern life.'" (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 160 [130 Cal.Rptr. 465] (citation omitted.)

In sum, constitutional questions aside, the policy issues involved in this case call for judicial deference to legislative judgment particularly where the Legislature has repeatedly expressed both the desire and the willingness to address them. As this Court has noted, "'Legislatures, in making such policy decisions, have the ability to gather empirical evidence, solicit the advice of experts, and hold hearings at which all interested parties may present evidence and express their views.'" (*Foley v. Interactive Data Corp.* (1989) 47 Cal.3d 654, n. 31 [47 Cal.3d 653].) Defendant believes that same deference to be appropriate here as well.

This Court has also recognized that courts should defer to the legislative judgment as to the appropriate balance between a constitutional

provision and competing goals. (*Prof'l Engineers v. Dep't of Transportation* (1997) 15 Cal.4th 543, 606–07 [63 Cal.Rptr.2d 467]; see *Pacific Legal Found. v. Brown* (1980) 29 Cal.3d 168, 180 [172 Cal.Rptr. 487] ("[A] considered legislative judgment as to the appropriate reach of the constitutional provision... enjoys significant weight and deference by the courts.").

In other words, the judiciary's review of legislative acts must be circumspect and deferential, reflecting the constraints of the Constitution. Otherwise, the judicial branch may be perceived as assuming the role of arbiter of social policy, a role which is properly left to the representative branch of government. (*Prof'l Engineers*, *supra*, 15 Cal.4th at 606-07) ("For the judiciary to litigate and reject the factual conclusions of the legislative branch supporting its policy determinations—and even to come to opposite conclusions—strikes at the heart of this delicate structure. Courts are neither policymakers nor legislative factfinders. It is to the Legislature to find the facts and it falls to us to respect those findings unless they are clearly wrong—wrong without reasoned dispute or the influence of opposing perspectives.").)

If Amici believe that the policy of the State in addressing the problem of pedophilia and eliminating child abuse and exploitation lacks proven efficacy, and that healthcare professionals should not be mandated

to report consumers of child pornography to authorities, they must make the argument to the Legislature, not to the courts.

IV. Patient Discussions With A Psychotherapist Of "Past Criminal Acts" Against Children Are Not Shielded From The Mandatory Disclosure Laws Under CANRA, Which Plaintiffs Do Not Challenge.

The Petitioners do not challenge any aspect of CANRA other than the addition of AB 1775.[2] Accordingly, any amici challenge to CANRA's pre-existing mandate that disclosure of past child abuse is not privileged has been waived.

Likewise, the Scholars Amici seek to characterize CANRA's protection to situations where the psychotherapist becomes aware of "significant imminent danger" to a child. (Scholars Amici Brief at 17.) Amici's erroneous proposition hinges on the mistaken belief that the right to privacy in the patient-psychotherapist communication is seemingly absolute and protects the patient from any inquiries "into communications about the most horrendous of crimes, including rape and murder." (Scholars Amici Brief at 19.) Under section 11166, a mandated reporter shall make a report whenever the reporter has knowledge of a child whom the reporter knows

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[2] Indeed, Scholars Amici acknowledge in their brief ". . . Petitioners do not challenge anything about CANRA other than the changes made to it by AB 1775. . . ." (Scholars Amici Brief at 40-41.)

or reasonably suspects **has been** the victim of abuse. (Pen. Code § 11166 (a).) Thus, by its very terms, the plain meaning of the statute requires a report of any instance of child abuse, and is not limited to circumstances where the reporter believes abuse may occur in the future. (*Ibid*; see also, *B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 242 [195 Cal.Rptr.3d 220] (under CANRA, mandated reporter required to report suspicions of prior, previously unreported incident of child abuse).)

The Scholars Amici cite to *Story v. Superior Court* (2003) 109 Cal.App.4th 1007 [135 Cal.Rptr.2d 532] (*Story*) – in support of their erroneous extrapolation that a patient who discloses past incidents of viewing child pornography or having engaged in any other form of child abuse is entitled to full confidentiality under the psychotherapy-patient privilege. (Scholars Amici Brief at 19, 36.) *Story*, however, is inapposite because it does not involve CANRA or the mandated reporting of child abuse.

Furthermore, although the reporting of past crimes in accordance with CANRA is not subject to Evidence Code section 1041, child pornography is a crime scene displaying the sexual abuse and exploitation of children captured in time and existing in perpetuity. Accordingly, accessing child pornography is not a *past* crime, in any event. In *Grant*, this Court rejected the petitioner's argument that "simple possession" of child pornography did not include an intent to harm a child by recognizing

that "'[t]he 'victimization' of the children ... does not end when the pornographer's camera is put away." (*In re Grant* (2014) 58 Cal.4th 469, 477 [167 Cal.Rptr.3d 401]).

As this Court explained:

> The consumer, or end recipient, of pornographic materials may be considered to be causing the children depicted in those materials to suffer as a result of his actions in at least three ways. [¶] *First*, the simple fact that the images have been disseminated perpetuates the abuse initiated by the producer of the materials.... The consumer who 'merely' or 'passively' receives or possesses child pornography directly contributes to this continuing victimization. [¶] *Second*, ... [t]he recipient of child pornography obviously perpetuates the existence of the images received, and therefore the recipient may be considered to be invading the privacy of the children depicted, directly victimizing these children. [¶] *Third*, the consumer of child pornography instigates the original production of child pornography by providing an economic motive for creating and distributing the materials.... The underlying point ... is that there is no sense in distinguishing ... between the producers and the consumers of child pornography. Neither could exist without the other. [Citations.]'"

(*Id.* at 477-478) (italics in original.)

Amici's arguments to the contrary lack merit, and are directly contrary to CANRA and this Court's decision and reasoning in *Grant*, *supra*.

V. AB 1775 Does Not Invade Interests Fundamental To Personal Autonomy.

Privacy interests are of two kinds: (1) autonomy privacy, which is the interest "in making intimate personal decisions or conducting personal

activities without observation, intrusion, or interference"; and (2) informational privacy, which is the interest in preventing "dissemination or misuse of sensitive and confidential information." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35 [26 Cal.Rptr.2d 834] (*Hill*).)

The Scholars Amici conclude that AB 1775 must be subjected to strict scrutiny. The significance of Amici's attempt to apply a "compelling interest" test cannot be overstated. Whether an interest is protected, what level of scrutiny is appropriately applied to any infringement, and who has the burden of proof, depend on how the interest is characterized in the first instance. As this Court recognized in *Hill*, "strict scrutiny generally functions as a judicial 'trump card,' invalidating any attempt at state regulation." (*Hill*, *supra*, 7 Cal.4th at 30; see also *id.* at 37.) It also shifts the burden of proof. Instead of deferring to legislative findings of fact, the analysis begins by assuming the interest in question is constitutionally protected and requires the state to prove normative presuppositions that are incapable of objective proof. (Hafen, *The Constitutional Status of Marriage, Kinship, and Sexual Privacy-Balancing the Individual and Social Interests* (1983) 81 Mich. L.Rev. 463, 548-550; see also *Dunn v. Blumstein* (1972) 405 U.S. 330, 363-364 [92 S.Ct. 995, 1013, 31 L.Ed.2d 274] (dis. opn. of Burger, C. J.) ["Some lines must be drawn. To challenge such lines by the 'compelling state interest' standard is to condemn them all.

So far as I am aware, no state law has ever satisfied this seemingly insurmountable standard, and I doubt one ever will, for it demands nothing less than perfection."].) Amici's argument that a "compelling interest" test applies is thus tantamount to declaring AB 1775 unconstitutional. (See Kurland, *The Supreme Court, Compulsory Education, and the First Amendment's Religion Clauses* (1973) 75 W.Va.L.Rev. 213, 232 [The "compelling interest" test imposes such a severe burden of justification on the state as to be "a statement of a conclusion rather than a measure of constitutionality."].)

The Scholars Amici justify their decision to apply a "compelling interest" test, the highest level of constitutional scrutiny, by arguing that psychotherapy involves personal autonomy. Amici, however, disregard the following passage from *Hill*:

> [T]he particular context, i.e., the specific kind of privacy interest involved and the nature and the seriousness of the invasion and any countervailing interests, remains the critical factor in the analysis. Where the case involves an obvious invasion of an interest fundamental to personal autonomy, e.g., freedom from involuntary sterilization or the freedom to pursue consensual familial relationships, a "compelling interest" must be present to overcome the vital privacy interest. If, in contrast, the privacy interest is less central, or in bona fide dispute, general balancing tests are employed.

(*Hill, supra*, 7 Cal.4th at 34.)

First, psychotherapy does not involve an interest fundamental to personal autonomy because this court has ruled that the right to privacy does not encompass the affirmative right to access psychotherapy treatment. (See, *People v. Privitera* (1979) 23 Cal.3d 697, 702 [153 Cal.Rptr. 431] (*Privitera*) (holding that the right to seek a particular form of medical treatment as a cure for one's illness has not been recognized as a fundamental right in California).) The "important decisions" recognized by this court "as falling within the right of privacy" include "'matters relating to marriage, procreation, contraception, family relationships, and child rearing and education' [citations omitted], but do not include medical treatment." (*Id.* at 702 (emphasis added).)[3]

Secondly, a "compelling interest" test is not required whenever an interest fundamental to personal autonomy is at stake. Rather, it requires that "the nature and seriousness of the invasion and any countervailing interests" also be taken into account in determining the appropriate level of scrutiny. (*Hill, supra*, 7 Cal.4th at 34.) Significantly for the present

[3] The Scholars Amici also erroneously rely on *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) 505 U.S. 833, 893 for the proposition that requiring disclosure of private information implicates informational as well as autonomy privacy interest. (Scholars Amici Brief at 21.) *Casey*, however, is unavailing. This plurality opinion was unable to arrive at a majority position regarding the burdens on abortion rights.

purposes, where the privacy interest at stake is "in bona fide dispute," a general balancing test is employed. (*Ibid.*)

As this Court recently emphasized in *Lewis* all but one of the California Supreme Court cases applying *Hill*, have applied a general balancing test without requiring the asserted countervailing interest to be compelling. (*Lewis*, *supra*, 3 Cal.5th at 573; see also, *Loder* v. City of Glendale, (1997) 14 Cal.4th at 846, 898 [59 Cal.Rptr.2d 696] [applying a general balancing test to an employer's suspicionless drug testing of a job applicant]; *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 373 [53 Cal.Rptr.3d 513] [applying a general balancing test to plaintiff's request to obtain defendant's customer lists]; *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 339 [64 Cal.Rptr.3d 693] [the public's "strong" interest in public employees' salaries outweighed any privacy invasion]; *Hernandez v. Hillside* (2009) 47 Cal.4th at 272, 287 [97 Cal.Rptr.3d 274] [because a fundamental autonomy right was not implicated, the defendant did not need to present a compelling countervailing interest].) "The only case requiring a compelling interest involved a challenge to a statute requiring a pregnant minor to obtain parental consent or judicial authorization before having an abortion, an issue that "unquestionably impinges upon 'an interest fundamental to personal autonomy.'" (*Lewis*, *supra*, 3 Cal.5th at 573; see *American*

Academy of Pediatrics v. Lungren (1997) 16 Cal.4th 307, 340 [66 Cal.Rptr.2d 210].)

Here, as fully briefed in Defendant's Answer Brief on the Merits, AB 1775 does not implicate a fundamental autonomy right. Further, as discussed above, AB 1775 burdens a psychotherapy patient's privacy interest only by requiring the psychotherapist to disclose instances of suspected child abuse by preparation of a limited report. In fact, the psychotherapist is not even required to disclose any diagnosis or medical information regarding his patient. Clearly, "the nature and seriousness of the invasion" do not warrant the application of a "compelling interest" test. (*Hill*, *supra*, 7 Cal.4th at 34; see also *id.* at 79 (dis. opn. of Mosk, J.) ["[C]onduct adversely affecting, but not abridging, an established right of privacy may be allowed if reasonable."]; *id.* at 85, 107.) Nor does the fact that AB 1775 apply to "sexting" minors[4] warrant the application of a "compelling interest" test. Rather, the statute effects a reasonable accommodation of "countervailing interests." (*Hill*, *supra*, 7 Cal.4th at 34.) To put it another way, at most, the privacy interest at stake in this case is

[4] Also, there is no standing to assert any invasion of privacy rights by minors. Petitioners' Complaint raises allegations of interference in the treatment of their adult patients who disclose viewing child pornography, and asserts no allegations in relation to minor patients who are engaged in sexting.

"in bona fide dispute," and, hence, a general balancing test must apply. (*Ibid.*)

Furthermore, even under a strict scrutiny test, (which, again, Respondent strenuously submits cannot apply) the reporting of child sexual abuse is a compelling interest by the State, which would satisfy the strict scrutiny standard. Given the importance of the State's compelling interest in protecting children from sexual exploitation, and the fact that the interests underlying child pornography prohibitions far exceed the interest of psychotherapy patients, the State may constitutionally mandate psychotherapists to report suspected child abuse in the form of child pornography consumption or exchange. (See, *Osborne*, *supra*, 495 U.S. at 111 (recognizing that the gravity of the state's interest in protecting the victims of child exploitation).)

In sum, the fundamental problem with Amici's approach to constitutional jurisprudence is that it intrudes on the Legislature's decision-making process and improperly positions the courts to become the ultimate authority in a context in which their view of wisdom cannot be challenged. "[T]he judiciary can change the most fundamental patterns of our social character with no real proof that the change will be for the better-or, in the long run, even tolerable." (Hafen, *The Constitutional Status of Marriage, Kinship, and Sexual Privacy-Balancing the Individual and Social Interests*, *supra*, 81 Mich.L.Rev. at 550.) That is why the Legislature must be

accorded broad deference on issues as to which reasonable minds can differ and why courts must exercise reasoned judgment and self-restraint.

VI. The Associations Amici's Argument That Leading Federal Decisions on Privacy Existed As Of 1972, At The Time The Right To Privacy Was Added To The California Constitution, Misconstrues United States Supreme Court Precedent.

The fact that many federal constitutional cases may have arisen in the context of health care is immaterial. Importantly, and as detailed in Defendant's Answer Brief on the Merits, the United States Supreme Court has not acknowledged the existence of a constitutional right to informational privacy. To this day, the Supreme Court has not extended the Fourteenth Amendment right to privacy beyond fundamental family-related concerns. Indeed, this Court has questioned the continuing vitality of the constitutional bases for the psychotherapist-patient privilege. "Although over 40 years have elapsed since our decision in *Lifschutz*, the United States Supreme Court itself has not yet definitively determined whether the federal Constitution embodies even a general right of informational privacy." (*People v. Gonzales* (2013) 56 Cal.4th 353, 384 [154 Cal.Rptr.3d 38] (italics omitted).)

Accordingly, the Associations Amici's argument that the state of the federal constitutional law in 1972 when this State adopted the privacy initiative, somehow demonstrates that privacy in healthcare is one of the

most important aspects of the state Constitutional right to privacy, lacks merit. Contrary to the Scholars Amici's suggestion, no court has acceded to the notion that the right to privacy encompasses an affirmative right to access psychotherapy treatment (see, *Privitera*, *supra*, 23 Cal.3d at 702), and the notion was expressly rejected by this Court in *Privitera*, which discussed the right of privacy under section I, article 1 of the California Constitution and held that the right to seek a particular form of medical treatment as a cure for one's illness has not been recognized as a fundamental right in California. (*Ibid.*)

The Associations Amici, thus, present no argument that impacts the Court's analysis of the case.

VII. CANRA'S Reporting Mandate Serves Vital Public Safety Interests That Outweigh Any Intrusion On Access To Psychotherapy.

It is undisputable that despite congressional and judicial efforts to stem its tide, with the expansion of the Internet, child pornography remains an acute and growing problem across a wide segment of society. Yet, without citing to any authority, Amici urge this Court to speculate that AB 1775 is unlikely to identify children for rescue or catch child abusers who would not have otherwise been caught by prior law or "exhaustive" federal efforts. (Scholars Amici Brief at 23-24.) Amici further conclude that CANRA should only require therapists to report individuals who

commercially participate in the exploitation of children or engage in *physical* or violent sexual abuse of children.[5] (*Id.* at 23.) The argument is meritless as well as contrary to the findings in congressional reports, which this Court should have the benefit of reviewing, particularly if the Scholars Amici's Request for Judicial Notice is granted. (See Defendant's Request for Judicial Notice.)

A. Sexual Abuse Images Cause a Lifetime of Exploitation To The Victim And It Makes Little Difference If They Are Sold Or Offered Freely.

According to Department of Justice reports to Congress, both the quantity and severity of child pornography on the Internet has increased dramatically. (*See* U.S. Dep't of Justice, The National Strategy for Child Exploitation Prevention and Interdiction: A Report to Congress 9 (2010), *available at* http://www.projectsafechildhood.gov/docs/natstrategyreport.pdf ("2010 DOJ Report"); U.S. Dep't of Justice, The National Strategy for Child Exploitation Prevention and Interdiction: A Report to Congress 73 (2016), *available at* https://www.justice.gov/psc/file/842411/download ("2016 DOJ Report").) According to the reports, offenders have a sophisticated

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[5] Amici rely upon extraneous documents of questionable methodology and uncertain reliability or accuracy of the data presented, and often overstate the conclusions of the cited materials. The majority of the studies presented simply do not lend themselves to judicial review. (See, Respondent's Opposition to the Scholars Amici Motion for Judicial Notice.)

understanding of computer technologies that can facilitate and hide their criminal activity. Investigative data shows that child exploitation offenders often gather in communities over the Internet fostering the demand for new child pornography, and the trading of child pornography files within these online communities is just one component of a larger relationship that is premised on a shared sexual interest in children. (2016 DOJ Report, at 72-73.) Therefore, the individual possessor of child pornography who accesses such images has the effect of validating the production of the images, which leads only to more production. (*Id.* at 73.)

Yet another challenge is posed by the innovations in mobile technology, especially those that enable the easy anonymous production and sharing of videos, allowing the offenders to entice naïve and trusting minors to share explicit images of themselves via the Internet. (2016 DOJ Report, at 80.) Although some of the images are marketed by criminal organizations, a significant amount of the images are homemade and record the image producer's ongoing sexual assault of a family member or neighbor. (2010 DOJ Report at 21, 25-26.) Many of the images are also traded by non-commercial networks of individuals who share a sexual interest in child abuse. (*Id.* at 25-26.) Members trade images by contributing to group discussions, posting photographs, and transmitting live video during the sexual abuse of a child. (*Id.* at 23.) Network members are not simply passive viewers. Rather, they are participants in the abuse,

driving the demand for fresh material. To gain entry into a network, potential members often are required to demonstrate a genuine interest in sexual contact with minors by transmitting new child pornography images to the group. (*Id.* at 26.) Once in the network, posting new images allows members to climb in the group hierarchy. (U.S. Sentencing Comm'n, Report to the Congress: Federal Child Pornography Offenses 96 (Dec. 2012.)[6] Most offenders prosecuted for distribution of child pornography trade with one another in a non-commercial manner in "child pornography communities," where offenders engage in "'personal'" distribution to other individuals in the form of bartering images in Internet chat-rooms, and trading via closed P2P programs. (*Id.* at 98-100.)

Amici's contention that AB 1775 would not reduce the demand for child pornography is widely speculative and unsupported. (Scholars Amici Brief at 34-36.) Contrary to Amici's contention, the widespread availability of "free images" over the Internet has not obscured the connection between the production and the demand for child pornography. (Scholars Amici Brief at 35.) To the contrary, as Congressional reports explain, "offenders often gather in communities over the Internet where trading of these images is just one component of a larger relationship that is

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[6] Go to https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/sex-offense-topics/201212-federal-child-pornography-offenses/Full_Report_to_Congress.pdf.)

premised on a shared sexual interest in children. [] This self-reinforcing cycle is fueling ever greater demand in the market. . . **and this demand drives supply**." (2016 DOJ Report at 73) (emphasis added).) Obviously, the reduction of persons who duplicate, print, exchange, download, access or stream child pornography, will reduce the ongoing sexual exploitation of children. (See, *Osborne*, *supra*, 495 U.S. at 109-110.)

Indeed, courts have consistently rejected the idea that offenders must expect some financial gain from the trading of child pornography and confirm that the crucial fact is the offender's intent to share images of child pornography irrespective of financial motive. (See, *U.S. v. Dyer* (1st Cir. 2009) 589 F.3d 520, 526; *U.S. v. Brown* (7th Cir. 2003) 333 F.3d. 850, 853-854; *U.S. v. Bennett* (2nd Cir. 2016) 839 F.3d 153, 160-61.) Furthermore, as this Court emphasized, "there is no sense in distinguishing. . . between the producers and the consumers of child pornography. . . neither could exist without the other." (*In re Grant*, *supra*, 58 Cal.4th at 477-478.)

Against this backdrop, the Scholars Amici's argument that the Legislature should only address offenders who participate in the commercial market for child pornography is illogical and ineffective, and should be disregarded.

B. Amici's Contention That Individuals Accessing Child Pornography Rarely Commit Contact Sexual Offenses Is Immaterial As Well As Specious.

As detailed above, the Scholars Amici decline to recognize the deference due legislative findings in direct disregard of the governing rule. (*City of Mendocino*, *supra*, 13 Cal.4th at 53 ("The judiciary, in reviewing statutes enacted by the Legislature, may not undertake to evaluate the wisdom of the policies embodied in such legislation; absent a constitutional prohibition, the choice among competing policy considerations in enacting laws is a legislative function.").) However, even if one were to look at the extraneous materials submitted by Amici, at least one study establishes a link between possession of child abuse images and sexually abusing children, although Amici attempt to brush it aside by labeling it "an outlier." (Scholars Amici Brief at 28, fn. 6.)

Furthermore, child sexual abuse is not limited to "contact" sexual abuse as implied by Scholars Amici, but includes the **sexual exploitation of children.** Section 11165.1 defines "sexual abuse" as used in CANRA as sexual assault **or** sexual exploitation. (Pen. Code, § 11165.1.) The Legislature enacted Penal Code section 11165.1 in 1987 to expand the definition of "child abuse" to include "sexual exploitation." (Respondent's Motion for Judicial Notice ("MJN"), Exh. A.)

Additionally, as the Child Exploitation and Obscenity (CEOS) section of The Department of Justice has argued "whether there is a causal connection or even a correlation between child pornography and child molestation, those who collect child pornography exploit and victimize the children in those images, and create a demand for the production of more child pornography **regardless of whether they have ever personally molested a child**." (Alexandra Gelber, Response to "A Reluctant Rebellion," U.S. Dep't of Justice, 6 (2009), *available at* https://www.justice.gov/sites/default/files/criminal-ceos/legacy/2012/03/19/ReluctantRebellionResponse.pdf) (emphasis added).) Indeed, this Court has also recognized the grave impact child abuse images have on its victims. (See *In re Grant*, *supra*, 58 Cal.4th at 477-478.) Hence, the prosecution of individuals who access or stream these images is crucial to defeat the market creation for these images, and to keep children safe.

C. Like Plaintiffs, Amici Fail To Establish That The Prior Version Of Section 11165.1 Subdivision (c)(3) Did Not Trigger The Mandated Reporter's Obligation To Report Known Or Suspected Instances of Child Abuse, Including A Patient Accessing Child Pornography Online.

Amici erroneously argue that prior to AB 1775, CANRA's disclosure requirements had a close fit to the traditional dangerous patient exception

because it only covered a '"person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges film, photograph, video, negative, or slide in which a child is engaged in an act of obscene sexual conduct. . .'" (Scholars Amici Brief at 37.) Citing to AB 2233, the Scholars Amici argue that the pre-AB 1775 language did not cover possession of child pornography as CANRA only required reporting of someone who '"intend[ed] to distribute or exhibit"' child pornography.'" (Scholars Amici Brief at 42.) Nothing in this language, however, distinguishes commercial distribution from barter-like markets, where offenders share, swap, barter, or trade files between one another.

Further, the Scholars Amici cite to federal regulations from the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 for the proposition that pre-AB 1775 laws did not cover possession of child pornography. (Scholars Amici Brief at 42-43.) Again, the relied upon federal regulations do not provide support for the Scholars' position. If anything, they support respondents in explaining that "sexual exploitation" includes "allowing, permitting, encouraging, or engaging in the pornographic filming or depicting of a child under state law." (*Id.* at 43.) Certainly, the conduct of sharing, bartering or swapping child sexual images falls squarely within the definition of "sexual exploitation."

To explain, as recognized in reports to Congress, as well as case law, rather than simply downloading or uploading images of child pornography

to and from the Internet, offenders use current technologies to share, swap, barter, or trade files between one another. (See, 2010 DOJ Report at 9; *U.S. v. Griffin* (8th Cir. 2007) 482 F.3d 1008, 1012-13; *U.S. v. Reingold* (2nd Cir. 2013) 731 F.3d 204, 217-18.) In a barter-like market where sharing and distribution is integral to receipt, it cannot be concluded that offenders are not engaged in "exchange" of child pornography, which required a report prior to AB 1775 as well as subsequent to AB 1775.

Although patients who disclose accessing child pornography online may not have prepared the images themselves or have contact with the children who were their subjects, the Legislature is entitled to classify those who possess and exchange the offending images for the purpose of their sexual stimulation as active participants in the perpetuation of child pornography and the exploitation of children. (See, *Shoemaker v. Harris* (2013) 214 Cal.App.4th 1210, 1229-1230 [155 Cal.Rptr.3d 76].) Furthermore, the original CANRA provision in question defined sexual exploitation as where a person depicts a child in, or who knowingly "develops, duplicates, prints, or exchanges" any film, photograph, video tape, negative, or slide of child pornography (Pen. Code, § 11165.1(c)(3).) AB 1775 punishes the same conduct through updating the provision to cover technological updates.

As well, "duplicate" means "to make an exact copy of." (Dictionary.com < http://www.dictionary.com/browse/duplicate?s=t> [as of

Jan. 11, 2018].) When one downloads, streams or accesses child pornography off the Internet, they *are* making an exact copy on their computer, phone or electronic device of an image that previously existed elsewhere. Moreover, "print" means "to reproduce (a design or pattern) by engraving on a plate or block." (Dictionary.com <http://www.dictionary.com/browse/print?s=t> [as of Jan. 11, 2018].) Downloading an image is *reproducing* the image, and the term "download" is a modern way to "print" or "reproduce" an image. (See, *People v. Petrovic* (2014) 224 Cal.App.4th 1510, 1516 [169 Cal.Rptr.3d 648] ("By accessing the Web sites, the defendant has the ability to manipulate, download, copy, print, save, or email the images. . . "); *United States v. Mohrbacher* (9th Cir. 1999) 182 F.3d 1041, 1047 (Downloading is analogous to placing an order trough a mail order catalogue except that the inventory is not depleted because a new copy of the image is generated.)) Additionally, "stream" may be defined as "*Digital Technology*. to transfer or transmit (data) in such a way that it is processed in a steady and continuous stream." (Dictionary.com <http://www.dictionary.com/browse/stream?s=t> [as of Jan. 11, 2018].) Accordingly, when one "streams" data, the image is being exchanged.

Thus, as shown, AB 1775 simply applies existing law to cover technological advances in the way material is accessed. AB 1775 was a technical revision of the law, and as detailed in Respondent's Answer Brief

on the Merits, the Legislature lawfully clarified the existing law to ensure its language properly reflects modernized technologies. Regardless of whether a psychotherapist believes a patient is a passive possessor or not, it is not his responsibility or duty to investigate the technologies used by the offender to access or view child pornography.

However, even assuming that AB 1775 broadens the scope of the mandated reporting obligation, its scope is rationally related to the goal of protecting the victims of child pornography. Since much of the child pornography has been driven underground, it is difficult to solve the child pornography problem by only attacking production and distribution. (*Osborne*, *supra*, 495 U.S. at 110-111 (recognizing that states can properly proscribe possession of materials depicting child exploitation and that state measures aimed at encouraging the destruction of child pornography are "desirable").)

D. The Remainder Of The Scholars Amici's Arguments Regarding Imposing A Punitive Measure On An Unpopular Group Are Unpersuasive As Well As Speculative.

The Scholars Amici's unsupported contention that searching an individual's computer may uncover pictures the individual viewed or accessed but that information would be unlikely to lead to the identification of children unknown to law enforcement, is purely conclusory.

"Pornography may well involve 'a' specific, identifiable child even if neither covered professionals nor their patients know of the child's identity." (MJN, Exh. D, Opinion of The Office of Legal Counsel, Duty to Report Suspected Child Abuse Under 42 U.S.C. § 13031, 2012 OLC Lexis 6, 28-30.) While some child pornography may be the work of professionals and difficult to link to identifiable children, other images are homemade recordings of sexual abuse "committed against young neighbors or family members, and therefore traceable through law enforcement investigation to a protected child or children. [Citations.]" (*Id.*)

Likewise, Amici's conclusion that law enforcement has no tool enabling it to "unpost" any image or prevent its continued dissemination can hardly justify the proffered conclusion that like-minded criminals should freely and knowingly create a vast marketplace for the enjoyment and perpetuation of the sexual abuse and exploitation of children. (Scholars Amici Brief at 34.) Tellingly, Congressional Reports indicate that the anonymity afforded by the Internet and the ability to trade with like-minded people has the effect of "eroding the shame that typically would accompany [viewing child pornography], and desensitizing those involved to the physical and psychological damage cased to the children involved." (2010 DOJ Report.) Further, as courts have recognized, a ban on possession and viewing and other measures aimed at "stamping out this vice" encourages the possessors of these materials to destroy them, which is further desirable

because pedophiles use child pornography to seduce other children into sexual activity. (*Osborne*, *supra*, 495 U.S. at 110-111.)

Amici's arguments thus fail to "assist the court in deciding the matter." (Cal. R. Ct. 8.520(f)(3).)

VIII. Contrary to Amici's Erroneous Argument, Statutory Exceptions Do Not Define Constitutional Limits.

Finally, Amici disregard the test established by *Hill*, *supra*, 7 Cal.4th 1[7], and simply conclude that psychotherapy patients have an expectation of privacy and their psychotherapists have a corresponding duty not to disclose patient statements. (Associations Amici Brief at 23.) Next, citing to the Evidence Code for the basic provisions setting forth the state's psychotherapy-patient privilege, Amici mistakenly argue that the question is "*whether one of the statutory exceptions applies*." (*Id.* at 27.) Amici then inexplicably attempt to distinguish Penal Code section 11171.2, subdivision (b) from Evidence Code sections 1018 and 1024, arguing without any authority that section 11171.2 does not apply to psychotherapist's offices but only court proceedings and administrative hearings. (*Id.* at 31.) In a similar manner, the Scholars Amici point to the

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[7] Under the *Hill* test, Amici fail to establish that psychotherapy patients have a legally protected privacy interest or a reasonable expectation of privacy in their communications with a psychotherapist regarding disclosure of child exploitation under the California Constitution.

Evidence Code to conclude that said code does not create an exception to the privilege for the therapist's communications that aid in the apprehension and prosecution of offenders. (Scholars Amici Brief at 37.) The Amici arguments lack any merit and should be rejected.

First, as discussed above, the Petitioners do not challenge any aspect of CANRA other than the addition of AB 1775. Any challenge to CANRA's pre-existing mandate has been waived.

Second, the duty to report is not excused by the psychotherapist-patient privilege of Evidence Code section 1014. (Pen. Code, § 11171.2 (b); (*People v. Stritzinger* (1983) 34 Cal.3d 505, 512 [194 Cal.Rptr. 431] (*Stritzinger*) ("the Legislature intended the child abuse reporting obligation to take precedence over the physician-patient or psychotherapist-patient privilege."); see Evid. Code, § 1027.) CANRA imposes on psychotherapists the "affirmative duty to report to a child protective agency all known and suspected instances of child abuse." (*Stritzinger*, *supra*, 34 Cal.3d at 512.) Nevertheless, the Associations Amici argue at length in their brief that AB 1775 creates a conflict with Evidence Code section 1014. However, the argument has no merit whatsoever, as CANRA is an exception to Evidence Code section 1014. Further, as set forth above, there is no past crime exception for reporting child abuse under CANRA, irrespective of AB 1775. (*Supra,* at 13-15.)

As well, a plaintiff alleging an invasion of privacy in violation of the state constitutional right to privacy must establish a (1) legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy. (*Hill*, *supra*, 7 Cal.4th 39-30.) Yet, Amici seem to assume, without any argument, the existence of a constitutional right to privacy in the disclosure of child pornography consumption to a therapist. It is absurd to suggest, as Amici necessarily do, that the application of the statutory exceptions under the Evidence Code are the only sufficient vehicle for such a showing in this action and that the statutory exceptions would-or could-establish the existence of a violation of the state Constitution. Furthermore, contrary to Amici's erroneous proposition, this Court has already recognized that instead of relying upon the contours of the existing state statutory provisions, it is necessary to look to the specific nature and extent of the constitutional privacy interests that are implicated to determine the existence of a constitutional right to privacy. (See, *People v. Gonzalez* (2013) 56 Cal.4th 353, 386 [154 Cal.Rptr.3d 38].)

The remainder of Amici's arguments repeat the arguments already made by Plaintiffs. Defendant Lacey addresses these arguments comprehensively in her Answer Brief on the Merits filed on September 1, 2017.

CONCLUSION

For all the reasons previously stated in Defendant's Answer Brief on the Merits, and for the additional reasons stated above, defendant Lacey respectfully submits the Court should affirm the holding of the Court of Appeal that AB 1775 is constitutional under both the state and federal Constitutions.

DATED: January 16, 2018

HURRELL CANTRALL LLP

By: _____

THOMAS C. HURRELL
MELINDA CANTRALL
MARIA MARKOVA
Attorneys for Defendant-Respondent JACKIE LACEY

CERTIFICATE OF WORD COUNT

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 8,017 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

DATED: January 16, 2018

HURRELL CANTRALL LLP

By: _____

THOMAS C. HURRELL
MELINDA CANTRALL
MARIA Z. MARKOVA
Attorneys for Defendant-Respondent JACKIE LACEY

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 300 South Grand Avenue, Suite 1300, Los Angeles, California 90071.

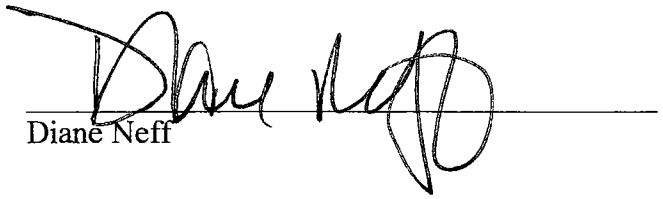
On January 16, 2018, I served true copies of the following document(s) described as **CONSOLIDATED ANSWER TO AMICI CURIAE BRIEFS** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Hurrell Cantrall's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on January 16, 2018, at Los Angeles, California.



Diane Neff

300 SOUTH GRAND AVENUE, SUITE 1300
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 426-2000

Party	Attorney
Don L. Mathews : Plaintiff and Appellant	Salvatore John Zimmitti Nelson Hardiman LLP 11835 West Olympic Boulevard, Suite 900 Los Angeles, CA Mark Steven Hardiman Nelson Hardiman LLP 11835 West Olympic Boulevard, Suite 900 Los Angeles, CA
Michael L. Alvarez : Plaintiff and Appellant	Mark Steven Hardiman Nelson Hardiman LLP 11835 West Olympic Boulevard, Suite 900 Los Angeles, CA Salvatore John Zimmitti Nelson Hardiman LLP 11835 West Olympic Boulevard, Suite 900 Los Angeles, CA
William Owen : Plaintiff and Appellant	Salvatore John Zimmitti Nelson Hardiman LLP 11835 West Olympic Boulevard, Suite 900 Los Angeles, CA Mark Steven Hardiman Nelson Hardiman LLP 11835 West Olympic Boulevard, Suite 900 Los Angeles, CA
Xavier Becerra : Defendant and Respondent	Selma Michele Inan Office of the Attorney General 455 Golden Gate Avenue, #11000 San Francisco, CA Marc A. LeForestier Office of the Attorney General 1300 I Street Sacramento, CA Aimee Feinberg Office of the Attorney General 1300 I Street, Suite 125 Sacramento, CA
Rule 8.29 : Other	Attorney General - Los Angeles Office 300 South Spring Street, Suite 5000 Los Angeles, CA

	District Attorney - Los Angeles County Appellate Division 320 West Temple Street, #540 Los Angeles, CA
California Medical Association : Amicus curiae	Cassidy C. Davenport Cole Pedroza LLP 2670 Mission Street, Suite 200 San Marino, CA Curtis A. Cole Cole Pedroza LLP 2670 Mission Street, Suite 200 San Marino, CA
California Dental Association : Amicus curiae	Cassidy C. Davenport Cole Pedroza LLP 2670 Mission Street, Suite 200 San Marino, CA Curtis A. Cole Cole Pedroza LLP 2670 Mission Street, Suite 200 San Marino, CA
California Hospital Association : Amicus curiae	Cassidy C. Davenport Cole Pedroza LLP 2670 Mission Street, Suite 200 San Marino, CA Curtis A. Cole Cole Pedroza LLP 2670 Mission Street, Suite 200 San Marino, CA
Amici Curiae Scholars : Amicus curiae	Trenton H. Norris Arnold & Porter Kaye Scholer, LLP Three Embarcadero Center, 10th Floor San Francisco, CA Oscar Ramallo Arnold Porter Kaye Scholer, LLP 777 South Figueroa Street, 44th Floor Los Angeles, CA
Amanda Agan : Amicus curiae	Trenton H. Norris Arnold & Porter Kaye Scholer LLP Three Embarcadero Center, 10th Floor San Francisco, CA

	Oscar Ramallo Arnold & Porter Kaye Scholer, LLP 777 South Figueroa 44th Floor Los Angeles, CA
Ira Ellman : Amicus curiae	Trenton H. Norris Arnold Porter Kaye Scholer, LLP 10th Floor, Three Embarcadero Center San Francisco, CA Oscar Ramallo Arnold Porter Kaye Scholer, LLP 777 South Figueroa Street, 44th Floor Los Angeles, CA
Eric Janus : Amicus curiae	Trenton H. Norris Arnold Porter Kaye Scholer, LLP 10th Floor, Three Embarcadero Center San Francisco, CA Oscar Ramallo Arnold Porter Kaye Scholer, LLP 777 South Figueroa Street, 44th Floor Los Angeles, CA
Roger Lancaster : Amicus curiae	Trenton H. Norris Arnold Porter Kaye Scholer, LLP 10th Floor, Three Embarcadero Center San Francisco, CA Oscar Ramallo Arnold Porter Kaye Scholer, LLP 777 South Figueroa Street, 44th Floor Los Angeles, CA
Richard A. Leo : Amicus curiae	Trenton H. Norris Arnold Porter Kaye Scholer, LLP 10th Floor, Three Embarcadero Center San Francisco, CA Oscar Ramallo Arnold Porter Kaye Scholer, LLP 777 South Figueroa, 44th Floor Los Angeles, CA
Chrysanthi Leon : Amicus curiae	Trenton H. Norris Arnold Porter Kaye Scholer, LLP 10th Floor, Three Embarcadero Center San Francisco, CA

	Oscar Ramallo Arnold Porter Kaye Scholer, LLP 777 South Figueroa Street, 44th Floor Los Angeles, CA
Jill Levenson : Amicus curiae	Trenton H. Norris Arnold Porter Kaye Scholer, LLP 10th Floor, Three Embarcadero Center San Francisco, CA Oscar Ramallo Kaye Scholer, LLP 777 South Figueroa Street, 44th Floor Los Angeles, CA
Wayne A. Logan : Amicus curiae	Trenton H. Norris Arnold Porter Kaye Scholer, LLP 10th Floor, Three Embarcadero Center San Francisco, CA Oscar Ramallo Arnold & Porter Kaye Scholer 777 South Figueroa Street, 44th Floor Los Angeles, CA
J.J. Prescott : Amicus curiae	Trenton H/ Norris Arnold Porter Kaye Scholer, LLP 10th Floor, Three Embarcadero Center San Francisco, CA Oscar Ramallo Arnold Porter Kaye Scholer, LLP 777 South Figueroa Street, 44th Floor Los Angeles, CA
Michael Seto : Amicus curiae	Trenton H. Norris Arnold Porter Kaye Scholer, LLP 10th Floor, Three Embarcadero Center San Francisco, CA Oscar Ramallo Arnold Porter Kaye Scholer, LLP 777 South Figueroa Street, 44th Floor Los Angeles, CA
Jonathan Simon : Amicus curiae	Trenton H. Norris Arnold Porter Kaye Scholer, LLP 10th Floor, Three Embarcadero Center San Francisco, CA

	Oscar Ramallo Arnold Porter Kaye Scholer, LLP 777 South Figueroa Street, 44th Floor Los Angeles, CA
Christopher Slobogin : Amicus curiae	Trenton H. Norris Arnold Porter Kaye Scholer, LLP 10th Floor, Three Embarcadero Center San Francisco, CA Oscar Ramallo Arnold Porter Kaye Scholer, LLP 777 South Figueroa Street, 44th Floor Los Angeles, CA
Richard Wollert : Amicus curiae	Trenton H. Norris Arnold Porter Kaye Scholer, LLP 10th Floor, Three Embarcadero Center San Francisco, CA Oscar Ramallo Arnold Porter Kaye Scholer, LLP 777 South Figueroa Street, 44th Floor Los Angeles, CA
Franklin Zimring : Amicus curiae	Trenton H. Norris Arnold Porter Kaye Scholer, LLP 10th Floor, Three Embarcadero Center San Francisco, CA Oscar Ramallo Arnold Porter Kaye Scholer, LLP 777 South Figueroa Street, 44th Floor Los Angeles, CA
	Court of Appeals Second Appellate District Division Two 300 S. Spring St. 2nd Floor North Tower Los Angeles, CA 90013
	Los Angeles Superior Court ATTN: Hon. Michael J. Stern, Dept. 62 111 N. Hill St. Los Angeles, CA 90012