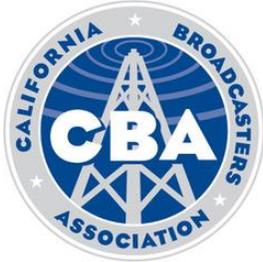




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April 15, 2021

Honorable Ed Chau
Honorable Kevin Kiley
Honorable Rebecca Bauer-Kahan
Honorable Steve Bennett
Honorable Wendy Carrillo
Honorable Jordan Cunningham
Honorable Jesse Gabriel
Honorable James Gallagher
Honorable Jaqui Irwin
Honorable Alex Lee
Honorable Buffy Wicks

California State Assembly
Legislative Office Building, 162
1020 N Street, Room 111
Sacramento, CA 95814

RE: Opposition AB 268 (Irwin)

Dear Chair Chau and Members of the Privacy and Consumer Protections Committee:

I am writing on behalf of the California News Publishers Association, California Broadcasters Association, ACLU, California Black Media, and the First Amendment Coalition to express our strong opposition to AB 268, as amended on February 25, 2021, which would prevent the public from being able to exercise their critical right to access autopsy reports to report on issues that impact our communities. We strongly urge your “NO” vote.

AB 268 would give the right to seal these critical investigative tools to family members, rather than the agencies and courts, which are properly equipped to address the competing interests for and against disclosure.

Autopsy Records Are Public Records Regularly Used by News Publications to Report on Issues Critical to the Communities They Serve

Autopsy records are well established public records that reporters rely on when it comes to reporting on a number of critical issues including police involved shootings, mass shootings, deaths of individuals in custody, overdoses, murders, horrific car accidents, COVID-19 deaths, and any other death where the manner and circumstances involve a matter of public concern. For example, the Ventura County Star, and other publications, regularly report on every homicide because of the impact on the community. This has led to more in-depth investigation on issues ranging from the treatment of those with mental illness in police custody to dangers of underage drinking and driving to laying rumors around the deaths of celebrities to rest.

These reports have helped shine the light on misconduct in the medical examiner's office, specifically in Ventura County where the coroner signed off on autopsies done by an assistant, not certified to perform them, while he was on vacation. The same coroner was also found to be conducting autopsies in two separate jurisdictions, which led to the passing of policy changes in SB 1189 (2016). Another investigative report based on autopsy reports found a coroner selling the corneas of the deceased. It is essential for transparency that the public can access these reports when Sheriff's are responsible for performing autopsies in 49 of the 58 counties across the state, particularly in the case of a police involved shooting.

In the case of Stephon Clark, it was the discrepancies in the official and private autopsy reports that [brought into the public light](#) the fact that officers had shot Clark in the back, suggesting that he may not have been facing or moving towards the officers, as they had originally reported. These autopsy reports give a window into the decision makers mind when there is suspicion or potential different causes of death in a case, such as Clark's. The reports help tell the whole story when there are different narratives at play.

While family members might not request to seal autopsies from police involved shootings or other examples I have just mentioned, the importance of access to these records to report on matters of public concern. This bill would give exclusive power to families to seal autopsy records in homicides by requiring courts to seal the records, rather than allowing them to use existing authority to weigh the public interest in disclosure of records versus the interests in non-disclosure, including any privacy rights involved.

Journalists must be able to access this information to fulfill their constitutional mandate to inform the public and serve as a necessary check on government actions.

Existing Law Provides for the Denial or Redaction of Records Containing "Private" Information

We understand that the intent of this legislation is to protect the privacy of decedent and their loved ones. However, under the existing structure already provides safeguards to protect those interests. Under the current structure a report that contains information that should be withheld, the holder of those records, such as the coroner, can withhold portions of the report. These types of redactions are common and provide an appropriate balance between the public's right to know and other competing interests.

The request for records of the victims in the Borderline shooting, which are the catalyst for this bill, is making its way through the courts. The Legislature should allow this case to be resolved in the proper forum, a court of law.

Additionally, the Legislature specifically rejected confidentiality of autopsy reports with the enactment of SB 1421, which included the requirement for the release of autopsy reports in officer involved shootings or caused great bodily injury. This demonstrates that the Legislature recognizes the importance of these records the need for transparency on these issues.

The courts have held that failure to require redactions in lieu of blanket withholding in all but the rarest of cases constitutes reversible error. Moreover, the Supreme Court has held that “public agencies use the equivalent of a surgical scalpel to separate those portions of the record subject to disclosure from privileged portions.”

AB 268 seeks to override allowing agencies and the courts to take a surgical scalpel approach, in favor of privacy concerns, which are already addressed by redaction practices and the courts ability to review records on a case by case basis to weigh whether the constitutional principles of privacy or the public’s right to access public records should prevail.

AB 268 Places Wrongfully Places Authority for Access to Public Records in the Hands of Family Members

While family members may not request to seal autopsies from police involved shootings or other specific, the importance of access to these records is too great to justify placing their fate in the hands of loved ones. However, the courts have held that privacy rights do not extend to surviving family members.

In *Catsouras v. Department of California Highway Patrol* (2010) 181Cal.App.4th 856, 896, the court made this distinction very clear:

“California law clearly provides that surviving family members have no right of privacy in the context of written media discussing, or pictorial media portraying the life of a decedent. Any cause of action for invasion of privacy in that context belongs to the decedent and expires along with him or her. (*Flynn v. Higham* (1983) 149 Cal.App3d 677) The publication of death images is another matter.”

While family members may have an interest in the disclosure of postmortem photos, those are treated distinctly from the written contents of autopsy reports. Existing law already prevents autopsy photos from being released, thus this interest has already been addressed.

AB 268 Unreasonably Expands Existing Law that Only Applies to Children’s Records, which are Regularly Treated Differently than Adults

Lastly, this bill seeks to amend a section of code that was only intended to apply to children’s autopsy reports that the parents requested to seal. Records relating to children ranging from juvenile justice to family courts decisions have always been treated differently than those of adults, as they should be. This bill takes a very limited exception and extremely broadens it to include an adult who died as the result of a criminal act as long as the perpetrator has been convicted or has died.

Additionally, rather than a parent or guardian, any next of kin, personal representative, child, grandparent, grandchild, sibling or domestic partner may request the records be sealed.

In conclusion, AB 268 seeks to limit access to records that are essential for reporting on issues ranging from mass shootings to overdose, when there is already a system in existing law to balance privacy and the public's constitutional right to access public records.

For all of these reasons, CNPA, California Black Media, California Broadcasters Association, ACLU, and the First Amendment Coalition, strongly opposes AB 268(Irwin) and respectfully urges your "NO" vote.

Sincerely,



Brittney Barsotti
CNPA General Counsel

cc: Simon Grieve, CNPA Chairperson, Publisher, The Grunion, Beach Reporter, Palos Verdes Peninsula News
Jeff Glasser, CNPA Governmental Affairs Committee Chair, Senior Vice President and General Counsel, Los Angeles Times
Steve Falk, CNPA Governmental Affairs Committee Co-Chair, CEO Sonoma Media
Chuck Champion, CNPA President and CEO
Nichole Rapiet Rocha, Chief Consultant, Assembly Committee on Privacy and Consumer Protections