

No. A173244

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FOUR

MAURY BLACKMAN,
Plaintiff-Appellant,

v.

SUBSTACK, INC.; JACK POULSON; and TECH INQUIRY,
INC.,
Defendants-Respondents.

Appeal From the Superior Court of the State of California,
County of San Francisco,
CGC-24-618681, Honorable Christine Van Aken

APPLICATION FOR PERMISSION TO FILE *AMICI*
CURIAE BRIEF AND [PROPOSED] *AMICI CURIAE* BRIEF
OF FOUNDATION FOR INDIVIDUAL RIGHTS AND
EXPRESSION, FIRST AMENDMENT COALITION, AND
EUGENE VOLOKH IN SUPPORT OF
DEFENDANTS/RESPONDENTS AND AFFIRMANCE

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rule of Court 8.208, *amici* Foundation for Individual Rights and Expression (“FIRE”), First Amendment Coalition, and Professor Eugene Volokh certify they know of no entity or person, other than those listed by the parties themselves, that must be listed in this certificate.

Dated: March 20, 2026

/s/ D Gill Sperlein
D Gill Sperlein

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Eugene Volokh, *Court Throws Out Lawsuit Over
Journalist’s Publication of Information About Sealed
Arrest*, REASON (Feb. 11, 2025)14

**To the Honorable Presiding Justice of Division Four of
the First District Court of Appeal:**

Pursuant to California Rule of Court 8.520(f), *amici* the Foundation for Individual Rights and Expression (“FIRE”), The First Amendment Coalition, and Professor Eugene Volokh respectfully request leave to file the attached *amici curiae* brief in support of Defendants/Respondents and Affirmance.

INTEREST OF PROPOSED *AMICI CURIAE*¹

The Foundation for Individual Rights and Expression (“FIRE”) is a nonpartisan nonprofit that defends the individual rights of all Americans to free speech and free thought—the essential qualities of liberty. Since 1999, FIRE has successfully defended First Amendment rights nationwide through public advocacy, strategic litigation, and participation as *amicus curiae* in free speech cases. FIRE represents speakers without regard to their political views in lawsuits across the United States. *See, e.g., Villarreal v. City of Laredo*, 134 F.4th 273 (5th Cir. 2025), *petition for cert. filed sub nom., Villarreal v. Alaniz*, No. 25-29 (U.S. July 9, 2025); *Reges v. Cauce*, 162 F.4th 979 (9th Cir. 2025); *Flores v. Bennett*, No. 22-16762, 2023 WL 4946605 (9th Cir. Aug. 3, 2023); *Stanford Daily Publ’g Corp. v. Rubio*, No. 25-cv-06618-NW, 2026 WL 125241 (N.D. Cal. Jan. 16, 2026).

FIRE has an interest in this case because California Penal Code § 851.92(c) (“the anti-dissemination statute”), the law

¹ Per California Rule of Court 8.200(c)(3), no counsel for a party authored this brief in whole or in part. No person other than *amici*, their members, or their counsel contributed money intended to fund this brief’s preparation or submission.

Appellant-Plaintiff Maury Blackman relied on for legal arguments that the Superior Court properly rejected, unconstitutionally bars the publication of lawfully obtained information. In fact, FIRE currently represents fellow *amici* First Amendment Coalition (“FAC”) and Eugene Volokh in federal litigation challenging application of the anti-dissemination statute to journalists. *See First Amendment Coal., et al. v. Chiu*, No. 3:24-cv-08343-TSH (N.D. Cal. filed Nov. 22, 2024). That litigation concerns the publication of the same arrest record at issue in this matter.²

Additionally, in defending and fostering free expression, FIRE frequently encounters strategic lawsuits against public participation (“SLAPPs”) and state anti-SLAPP laws like that in California on which Blackman sought to rely and has participated in numerous cases addressing those laws. *See, e.g.*, Brief for FIRE as *Amicus Curiae* Supporting Plaintiff-Appellant, *U.S. News & World Report, L.P. v. Chiu*, No. 24-2928 (9th Cir. filed July 9, 2024); Brief for FIRE as *Amicus Curiae* Supporting Petitioners, *G.W. v. Coronado Unified Sch. Dist.*, No. S293866 (Cal. filed Dec. 12, 2025); Brief for FIRE as *Amicus Curiae* Supporting Neither Party, *Salaam v. Trump*, No. 2:24-cv-05560-WB (E.D. Pa. filed Jan. 16, 2025). FIRE also relies on anti-SLAPP laws when defending the expressive rights of its own clients. *See, e.g.*, *Mastriano v. Gregory*, No. CIV-24-567-F, 2024 WL 4003343 (W.D.

² The record in this case includes copies of the *First Amendment Coal., et al. v. Chiu* Complaint [4 AA 0885–906], Redacted Preliminary Injunction Motion [4 AA 0908–32], and Stipulation and Order for Entry of Preliminary Injunction [4 AA 0934–37].

Okla. Aug. 26, 2024); *Adams v. Gulley*, No. CCH-24-587004 (Super. Ct. San Francisco Cnty. Oct. 11, 2024).

The First Amendment Coalition is a San Rafael–based nonprofit dedicated to protecting a free press, freedom of expression, and the public’s right to know. It frequently comments publicly on threats to expressive freedom and transparency in California, including policies such as the anti-dissemination statute. FAC director of advocacy Ginny LaRoe co-authored an opinion piece criticizing Plaintiff-Appellant Blackman and San Francisco City Attorney David Chiu’s efforts to suppress Defendant-Appellee Poulson’s publication of an incident report police officers prepared after Blackman’s arrest for domestic violence.³ *See* Order Granting Motion to Dismiss (“Order”), 4 AA 0992. FAC fears the anti-dissemination statute may subject it to civil penalties for commenting about Blackman, the incident report, or this litigation. *See Chiu*, No. 3:24-cv-08343-TSH, Complaint ¶¶ 65–80, 4 AA 0893–94.

Eugene Volokh is a Senior Fellow at the Hoover Institution at Stanford University and Professor of Law Emeritus at UCLA School of Law. He specializes in the First Amendment and has long written about access to government records, defamation, anonymous litigants, and civil harassment injunctions used to suppress speech. For more than twenty years he has written and edited *The Volokh Conspiracy*, a widely read legal blog now hosted

³ “All of the claims asserted in the complaint [in this case] relate to the blog posts and the effect of their publication on Blackman.” Order, 4 AA 0992.

by *Reason Magazine*, where he regularly posts primary documents to allow readers to verify his reporting.

Because Volokh is a California attorney, he seeks to comply with California law, including Rule 8.4(d) of the California Rules of Professional Conduct, which makes it professional misconduct to engage in conduct “prejudicial to the administration of justice.” Although Volokh believes publication of lawfully obtained sealed arrest records is protected by the First Amendment, the anti-dissemination statute appears to embody the contrary view. Accordingly, Volokh, represented by FIRE and joined by FAC, filed litigation seeking to enjoin enforcement of the statute. *See Chiu*, No. 3:24-cv-08343-TSH, Complaint ¶¶ 81–92, 4 AA 0895–96.

THE PROPOSED AMICUS BRIEF WILL ASSIST THE COURT

Amici’s participation in separate litigation challenging the anti-dissemination statute—FIRE as counsel and FAC and Volokh as plaintiffs—gives them a distinct interest in this litigation. That participation, together with their extensive experience in First Amendment jurisprudence, uniquely qualifies them to assist the Court in understanding the statute’s First Amendment implications, why the Defendant-Appellees’ speech is fully protected, and therefore why the Court should affirm the decision below.

Dated: March 20, 2026

Respectfully submitted,

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INTRODUCTION AND SUMMARY OF ARGUMENT

The trial court correctly granted Defendants’ special motion to strike in holding Blackman’s claims arose from activity protected by California’s anti-SLAPP statute and that he failed to demonstrate a probability of success on those claims. Order, 4 AA 0993–98. That ruling safeguards an essential concern of the First Amendment: the ability of journalists to report on matters of public concern using lawfully obtained information. A contrary decision—one that would permit private parties like Blackman to impose liability on journalists for publishing truthful information of public interest—would violate Supreme Court precedent.

“Blackman was arrested in December 2021 for domestic violence at a time when he was the CEO of Premise Data[.]” Order, 4 AA 0992. “[P]olice officers prepared a report (‘Incident Report’) describing the incident[.]” *Id.* “No charges were ultimately pursued against Blackman,” and “the Superior Court entered an order sealing the arrest records under Penal Code sections 851.91 and 851.92[.]” *Id.* Defendant Poulson “published a blog post reporting the arrest and relating what was described in the Incident Report,” and “there is no evidence [he] and the other defendants knew the arrest was sealed before [he] reported on it[.]” Order, 4 AA 0992, 0997.

Before ultimately filing the action below, Blackman pressured Poulson to remove the information from the internet. And he received help doing so from San Francisco City Attorney David Chiu, who “contact[ed] at least some of the defendants to request that they remove information about the Incident Report.”

Id. at 0996.⁴ Aware of these efforts, and as regular opponents of resorts to legal process to deny the public access to information about public issues, *amicus* Volokh sought to write about Blackman’s censorial efforts, while *amicus* FAC and LaRoe wanted to comment publicly—including in the press, on FAC’s website, and in public letters to lawmakers or other officials—about the risks to press freedom and transparency exemplified by the efforts of Blackman and the government to suppress Poulson’s publication. But they were concerned that they, too, would be targeted by Blackman and the City Attorney.

The Superior Court ultimately determined “Poulson did not violate any law in obtaining [and publicly disclosing] the Incident Report.” Order, 4 AA 1009. And the federal district court in *FAC v. Chiu* issued a stipulated preliminary injunction enjoining enforcement of the anti-distribution statute against *amicus* FAC and its advocacy director, or against *amicus* Volokh.⁵ *FAC v. Chiu* Stipulated Order, 4 AA 0934–37.

That result is consistent with how the Supreme Court has time and again struck down misguided state efforts to forbid the

⁴ See also Blackman Decl., Ex. B, Chiu letter to Def. Substack, 4 AA 0857; Ex. C, Chiu letter to Substack’s attorney, 4 AA 0860–61; Ex. D, Chiu letter to Def. Poulson’s attorney, 4 AA 0864.

⁵ After the courts issued these orders, *amicus* Volokh wrote about the cases in his blog, including the underlying story of Blackman’s arrest. See Eugene Volokh, *Court Throws Out Lawsuit Over Journalist’s Publication of Information About Sealed Arrest*, REASON (Feb. 11, 2025), <https://reason.com/volokh/2025/02/11/court-throws-out-lawsuit-over-journalists-publication-of-information-about-sealed-arrest/>.

publication of lawfully obtained information about matters of public concern. When the “State attempts the extraordinary measure of punishing truthful publication in the name of privacy,” the First Amendment requires the government to show it is justified by an interest of the “highest order.” *Fla. Star v. B.J.F.*, 491 U.S. 524, 533, 540 (1989) (internal quotation marks omitted). That stringent test is not satisfied even by weighty considerations like encouraging rape victims to contact police or discouraging wiretapping. *See, e.g., id.* at 534 (name of a rape victim); *Bartnicki v. Vopper*, 532 U.S. 514, 534–35 (2001) (broadcast of phone call known to have been recorded unlawfully); *Landmark Commc’ns, Inc. v. Virginia*, 435 U.S. 829, 838 (1978) (information about the investigation of a judge). Once a publisher has obtained information in a lawful manner—even if the publisher’s source obtained it unlawfully—the government may not “punish the ensuing publication of that information based on a defect in the chain.” *Bartnicki*, 532 U.S. at 528 (internal quotation marks omitted).

Amici FAC and Volokh’s experiences demonstrate the stakes. FAC’s Advocacy Director Ginny LaRoe co-authored an opinion piece critical of how Blackman, with the help of the San Francisco City Attorney, pressured Defendants to cease publication of legally obtained and constitutionally protected information by threatening to invoke the anti-dissemination statute to impose civil penalties. The opinion piece, published in a San Francisco newspaper, contained information about the sealed arrest record. Because he opposes efforts to remove online content

through court orders, copyright takedown notices, and similar complaints—and because he regularly links to source material—*amicus* Volokh also sought to write about Blackman’s attempts to conceal the arrest report.

Like Defendant Poulson, *amici* FAC and Volokh legally obtained copies of the arrest report, as well as information about Blackman’s attempts to conceal information in the report. Given Blackman and Chiu’s aggressive attempts to silence the Defendants, *amici* FAC and Volokh became understandably concerned they, too, might risk facing civil penalties and private lawsuits for money damages, such that they secured the above-referenced stipulated preliminary injunction.

The trial court here correctly granted Defendants’ special motion to strike because Blackman’s claims concern plainly protected activity and he is unable to demonstrate probability of succeeding on those claims. *See* CAL. CODE CIV. PROC. § 425.16; *Park v. Bd. of Trs. of Cal. State Univ.*, 2 Cal.5th 1057, 1061 (2017). Any argument that Defendants’ actions were unlawful and thus not entitled to protection under California’s anti-SLAPP law fails. The First Amendment protects journalists against state action when they publish “lawfully obtain[ed] truthful information about a matter of public significance.” *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 103 (1979) (“*Daily Mail Publ’g Co.*”).

But more to the point, the First Amendment prohibits application of the anti-dissemination statute to *any* journalist reporting on lawfully obtained information. The “dissemination of information [is] speech within the meaning of the First

Amendment.” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011). The anti-dissemination law is presumptively unconstitutional because it is a content-based restriction that targets speech “by particular subject matter,” see *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015), *i.e.*, that “relating to a sealed arrest.” CAL. PENAL CODE § 851.92(c). And it fails strict scrutiny: The statute is not narrowly tailored to serve a compelling government interest, California’s asserted interest in reputation does not serve a compelling interest, *Butterworth v. Smith*, 494 U.S. 624, 634 (1990), the statute is both over-and under-inclusive, and it is not the least restrictive means of achieving its stated purpose.

For all these reasons, *amici* request that the Court affirm the trial court’s order granting Defendants’ special motion to strike.

ARGUMENT

I. The trial court correctly granted Defendants’ special motion to strike.

The trial court correctly applied the now-familiar two-step anti-SLAPP analytical framework to grant Defendants’ special motion to strike⁶ because Blackman cannot succeed on his claims, all of which arose from Defendants’ plainly protected activity. See CAL. CODE CIV. PROC. § 425.16; *Park*, 2 Cal.5th at 1061. Under the first step, Defendants established the applicability of the anti-SLAPP protections because their publications appeared in a public forum in connection with the arrest of the CEO of a company with

⁶ Alternatively, courts refer to the two “steps” as “prongs.” See *Oasis W. Realty, LLC v. Goldman*, 51 Cal.4th 811, 819–20 (2011).

government contracts in the security and intelligence area, an issue of public interest, and they were not unlawful. Order 4 AA 0993–96. Under the second step, Blackman failed to establish probable success on his claims given Defendants’ affirmative First Amendment defense. *Id.* at 0997 (“This court is persuaded that the First Amendment’s protections for the publication of truthful speech [on] matters of public interest vitiate Blackman’s merits showing.”).

A. Defendants’ publication activities were not illegal as a matter of law.

Defendants satisfied the first step of the anti-SLAPP analysis because “any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest” is considered protected under the statute, as is “any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech” in connection with such an issue. CAL. CODE CIV. PROC. § 425.16 (e)(3)–(4). The trial court therefore had “little difficulty” finding the claims, which arose from Defendants’ reporting and publishing activities relating to Blackman, to be covered under the statute. Order, 4 AA 0993.

And the First Amendment defeats any argument that Defendants’ anti-SLAPP motion fails the first prong on grounds that Defendants’ reporting on the arrest incident report is illegal under California’s anti-dissemination statute. AOB at §IB, pp 29–32. As explained in detail in Section II, *infra*, the law violates the First Amendment facially and as applied to Defendants, meaning

their reporting and publishing activities are not illegal, so Blackman’s argument fails.

B. Blackman cannot prevail on his claims because he cannot overcome Defendants’ affirmative First Amendment defense.

Grant of the motion to strike and dismissal of Blackman’s claims was correct because he cannot at step two demonstrate a probability of prevailing on any of his claims. *See Taus v. Loftus*, 40 Cal.4th 683, 713 (2007) (“[U]nder section 425.16, plaintiff bore the burden of demonstrating a probability that [h]e would prevail[.]”). Consistent with the notion that a plaintiff must substantiate a favorable judgment, the California Supreme Court held in *Flatley v. Mauro*, 39 Cal.4th 299, 323 (2006), that an affirmative defense is “relevant to the second step in the anti-SLAPP analysis in that it may present a substantive defense a plaintiff must overcome to demonstrate a probability of prevailing.” Similarly, the Court of Appeal in *Comstock v. Aber*, 212 Cal.App.4th 931, 953 (Cal. Ct. App. 2012), stated: “The law is that to defeat a SLAPP motion, [plaintiffs] must overcome substantive defenses.”

Here, Blackman cannot show a probability of prevailing on his claims because he cannot overcome Defendants’ First Amendment defense. *See Gates v. Discovery Commc’ns, Inc.*, 34 Cal.4th 679, 696 (2004) (finding no probability of success on invasion of privacy claim arising from activity protected by the First Amendment). In this brief, *amici* focus on how the First Amendment prohibits application of the anti-dissemination statute against journalists or public advocacy organizations

reporting on, commenting on, or publishing legally obtained information concerning topics of public interest, and why it fully protects the Defendants’ actions from which Blackman’s claims arise. But those same First Amendment principles protect Defendants against *all* of Blackman’s claims, even those not reliant on the anti-dissemination statute.

Namely, a state may not “punish publication” of “lawfully obtain[ed] truthful information about a matter of public significance,” such as that about an arrestee. *Daily Mail Publ’g Co.*, 443 U.S. at 103. For the same reason that Blackman could not establish Defendants’ publications were illegal and thus defeat Defendants’ anti-SLAPP motion at the first step of the analysis, he cannot demonstrate a likelihood of success at the second. The anti-dissemination statute, in the way Blackman invokes it, violates the First Amendment. In fact, as *amici* demonstrate in Section II, *infra*, the statute is facially unconstitutional.

II. California Penal Code § 851.92(c) is a presumptively unconstitutional content-based restriction on speech.

The anti-dissemination statute regulates speech in covering only “disseminat[ing] information” and is content-based in reaching only speech “relating to a sealed arrest.” CAL. PENAL CODE § 851.92(c). The “dissemination of information [is] speech within the meaning of the First Amendment.” *Sorrell*, 564 U.S. at 570. That is especially so as to publishing lawfully obtained information about public issues, like a tech executive’s arrest that is relevant to the public debate about technology industry ethics. The Supreme Court’s decades-old holding that, a state may not

“punish publication” of “lawfully obtain[ed] truthful information about a matter of public significance,” *Daily Mail Publ’g Co.*, 443 U.S. at 103, clearly applies to information surrounding arrests. For example, in *Worrell Newspapers of Ind. v. Westhafer*, 739 F.2d 1219, 1221–25 (7th Cir. 1984), the Seventh Circuit struck down as overbroad a statute prohibiting any person from disclosing the existence of a sealed indictment before the defendant is arrested. As applied in circumstances like this case and *FAC v. Chiu*, punishing lawfully obtained information is exactly what the anti-dissemination statute does.

A. California Penal Code § 851.92(c) is content based.

The anti-dissemination statute is an “obvious” content-based regulation. *Reed*, 576 U.S. at 163–64. By barring “dissemination of information relating to a sealed arrest,” CAL. PENAL CODE § 851.92(c), it targets speech “by particular subject matter”—*i.e.*, information *about* the subject of an arrest record—and makes “reference to the content of the regulated speech” to determine the law’s application. *Reed*, 576 U.S. at 163–64 (quoting, in part, *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). This is consistent with a recent California Supreme Court decision holding California Penal Code § 148.6(a), which makes it a crime to file a knowingly false allegation of misconduct against a peace officer, constitutes a content-based regulation. *Los Angeles Police Protective League v. City of Los Angeles*, 18 Cal.5th 970, 1004 (2025), *as modified on denial of reh’g* (Jan. 21, 2026); *see also IMDb.com Inc. v. Becerra*, 962 F.3d 1111, 1120–21 (9th Cir. 2020) (law prohibiting publication of actors’ ages held content-based);

Sarver v. Chartier, 813 F.3d 891, 903 (9th Cir. 2016) (holding California’s right of publicity law, which prohibits use of a celebrity’s name, voice, signature, photograph, or likeness for commercial purposes without celebrity’s consent, “clearly restricts speech based upon its content”).

Defendants’ chilled speech illustrates the statute’s operative focus on content. If Jack Poulson or any other journalist publishes a blog post on any subject, the City Attorney or other law enforcement official must read its content to ascertain whether it shares “information relating to” Blackman’s sealed arrest. If journalists or public interest organizations inform the public about the free speech implications of Blackman’s lawsuit, an official would have to determine whether the speech detailed anything “related to” the sealed arrest. Because the anti-dissemination statute is a content-based restriction on speech, it is presumptively unconstitutional. *See Reed*, 576 U.S. at 163.

Not only is the law unconstitutional as applied to Poulson and *amici* FAC and Volokh, it is also presumptively unconstitutional on its face. By its content-based terms, the statute penalizes disseminating lawfully obtained information about sealed arrests in an extensive number of its applications. True enough, the statute also covers those who disseminate information about sealed arrests they obtained through independently unlawful means. But that category represents a small subset of the statute’s overall application.

More predominantly, the statute punishes almost exclusively what the First Amendment protects—publishing

lawfully obtained information about matters of public concern. *See Daily Mail Publ'g Co.*, 443 U.S. at 104. As a result, a substantial number of the statute's applications fall on constitutionally protected expression, including routine newsgathering, public advocacy, and commentary of the kind at issue here and in *FAC v. Chiu*. As detailed next, penalizing that range of protected expression cannot survive constitutional scrutiny because it is facially unconstitutional as to a substantial amount of the dissemination of lawfully obtained information. *See United States v. Stevens*, 559 U.S. 460, 482 (2010) (a law will be "invalidated as overbroad if 'a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep'" (citation omitted)).

B. The statute fails strict scrutiny because California's asserted interest in reputation does not serve a compelling interest.

Being a content-based restriction on speech, the anti-dissemination statute triggers strict scrutiny, but the law is not "narrowly tailored to serve compelling state interests." *Reed*, 576 U.S. at 163 (citations omitted). First, as the statute "punishes publication" of "lawfully obtain[ed,] truthful information about a matter of public significance," it must "further a state interest of the highest order," *Daily Mail Publ'g Co.*, 443 U.S. at 103, with a showing "far stronger than mere speculation about serious harms" or "[u]nusual" incidents. *Bartnicki*, 532 U.S. at 531–32 (citation omitted). And Blackman must overcome the fact that the Supreme Court has never upheld a comparable regulation even where there were far weightier interests, such as encouraging rape victims to

come forward and limiting publicity to the names of youthful offenders, than those California identified in enacting the law. *Fla. Star*, 491 U.S. at 534 (name of rape victim); *Daily Mail Publ'g Co.*, 443 U.S. at 99–104 (youthful offenders).

In enacting the statute, California sought to “remove barriers [to] employment and housing opportunities” that an arrest history might pose.⁷ Because “background checks conducted by consumer reporting agencies” are the primary means for information about arrests to “find[] its way into the hands of potential employers, housing providers, and other decision makers,” the Legislature sought to “[p]rovid[e] restraints on consumer reporting agencies” by imposing the anti-dissemination statute’s civil penalty.⁸

But any government interest in remedying harm to an individual’s reputation—whether directly or because of economic reasons—takes a constitutional backseat to the First Amendment right to share truthful information of public concern. “[R]eputational interests” do not “justify the proscription of truthful speech.” *Butterworth*, 494 U.S. at 634. Likewise, the desire to prevent employment discrimination does not generally justify restricting truthful speech about people. *See IMDb.com*, 962 F.3d at 1125–26.

⁷ See CAL. SENATE JUDICIARY COMMITTEE ANALYSIS OF SENATE BILL 383, 2017–2018 Regular Sess., at 7 (Apr. 17, 2017), *available* *at:*
https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB393 (“SB 393 Analysis”).

⁸ *Id.* at 9.

Here, the anti-dissemination statute *targets* truthful statements—the fact of an arrest or the existence of a sealed record—for the purpose of preventing the downstream economic harm caused by damage to reputation, which may inhibit employment or housing prospects. But the First Amendment does not permit the State to privilege the reputation of a person—whether a public official, public figure, or purely private person—over the dissemination of truthful statements of public concern. *Landmark Commc’ns*, 435 U.S. at 841–42 (injury to “official reputation” of judges); *cf. N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964) (public officials must show falsity and actual malice); *Garrison v. Louisiana*, 379 U.S. 64, 72 & n.8, 74 (1964) (absolute defense of truth in connection with any “public affairs”).

The Supreme Court’s decision in *Florida Star v. B.J.F.* illustrates why California’s interests here fall short of being of the “highest order.” In *Florida Star*, the Supreme Court invalidated a finding of civil liability against a newspaper for publishing the name of a rape victim obtained from a publicly released police report. 491 U.S. at 526. The story concerned only the victim’s report, not an arrest or trial. *Id.* at 527, 532. The Court held the First Amendment protected the newspaper’s truthful report and that “investigation of a violent crime which had been reported to the authorities” was a “matter of public significance.” *Id.* at 536–37. In doing so, it recognized that “the privacy of victims of sexual offenses,” risks to their “physical safety ... if their names become known to their assailants[,] and the goal of encouraging victims” to come forward were “highly significant interests”—but these

interests did not amount to a compelling “need” to punish the publication. *Id.* at 537.

Compared to the privacy of a rape victim involuntarily thrust into the legal system, speculation about potential economic harm from disclosure of a sealed arrest rings hollow. That’s especially so here, where officials have rushed to the defense of a high-profile CEO. Because the anti-dissemination statute does not serve a compelling state interest, it cannot survive strict scrutiny. The trial court correctly granted Defendants’ special motion to strike because Blackman cannot demonstrate a probability of prevailing on his claims given that the First Amendment fully protects the Defendants’ publications.

C. The anti-dissemination statute fails strict scrutiny because it is not the least restrictive means or narrowly tailored.

Even if the anti-dissemination statute served a compelling interest, it still fails strict scrutiny because Defendants cannot make the “exceptionally demanding” showing that it is the “least-restrictive means” to meet that interest. *Meinecke v. City of Seattle*, 99 F.4th 514, 525 (9th Cir. 2024) (quoting *Holt v. Hobbs*, 574 U.S. 352, 364 (2015)). “If a less restrictive alternative would serve the Government’s purpose, the legislature must use that alternative.” *Playboy Ent. Grp.*, 529 U.S. at 813 (citation omitted). Under strict scrutiny, “[e]ven if a state intends to advance a compelling government interest, we will not permit speech-restrictive measures when the state may remedy the problem by implementing or enforcing laws that do not infringe on speech.” *IMDb.com*, 962 F.3d at 1125.

The law is not narrowly tailored three times over: First, Supreme Court precedent forecloses the state from punishing those who publish lawfully obtained facts of public interest to reinforce the government's interests in keeping its own confidences. Second, the statute is over-inclusive because its plain language reaches *any* speaker, not just those with an obligation to maintain a secret, and the State ignored obvious means of narrowing the law in manners that would protect journalists, publishers, and public commentators. Third, it is under-inclusive because it exempts the government agencies and employees who *do* have an obligation to prevent the release of government records.

D. In reaching lawfully obtained information, the law crosses clear lines set forth by the Supreme Court.

The anti-dissemination statute cannot survive strict scrutiny because it allows sanctioning publication of lawfully obtained truthful information of public concern. Such regulation disregards the unbroken line of cases in which the Supreme Court repeatedly held that when a speaker “lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information absent a need ... of the highest order.” *Bartnicki*, 532 U.S. at 527–28 (radio commentator’s broadcast of a recording of a telephone call, which he knew was unlawfully recorded by someone else, was protected by the First Amendment because the commentator obtained it lawfully); *see also, e.g., Worrell Newspapers of Ind.*, 739 F.2d at 1221–25 (statutory prohibition on disclosing the existence of a sealed indictment before the

defendant is arrested violated the First Amendment as applied to the media); *Fla. Star*, 491 U.S. 524, *supra* at 15; *Landmark Commc'ns, Inc.*, 435 U.S. 829, *supra* at 15. The dissemination of lawfully obtained information about sealed arrests—including Defendants' speech—falls squarely within these cases.

Jack Poulson obtained information about Blackman's sealed arrest lawfully. "It is undisputed that the copy of the Incident Report that Poulson received did not include any language indicating the arrest was sealed, and the police did not inform Poulson of this when he called to verify the authenticity of the report." Order, 4 AA 0995. But even if he had some indication his source had unlawfully obtained the report, the First Amendment protects its publication. *Bartnicki*, 532 U.S. at 528–30. Indeed, Blackman's own theory is that the San Francisco Police Department negligently shared the report in response to a public records request.⁹ Complaint ¶ 45, 1 AA 0017.

The information Blackman sought to suppress involves matters of public concern. Regarding the underlying incident report, the "commission, and investigation, of a violent crime which had been reported to authorities" is a "matter of paramount public import." *Fla. Star*, 491 U.S. at 537; *see also Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 492 (1975) ("The commission of crime,

⁹ If so, the government is at fault—which may be why the City Attorney was so eager to deploy the anti-dissemination statute to put the horse back in the barn. *Cf. Fla. Star*, 491 U.S. at 534 (where government has "sensitive information" in its custody, it must seek to "forestall or mitigate the injury caused by its release" short of penalizing publishers).

prosecutions resulting from it, and judicial proceedings arising from the prosecutions ... are without question events of legitimate concern to the public[.]”). Blackman’s arrest is of public concern not only because of his status as a controversial technology industry executive widely covered in the press but also because his arrest implicates his security clearance. So, too, are the circumstances of Blackman’s successful petition to seal the arrest report of legitimate public interest. *Briggs v. Eden Council for Hope & Opportunity*, 969 P.2d 564, 571 (Cal. 1999) (every legal proceeding “possesses some measure of ‘public significance’”). And efforts by Blackman and the City Attorney to suppress reporting about the arrest, including Blackman’s lawsuit, are independently matters of public concern.

E. The statute is overinclusive, reaching beyond consumer reporting agencies and ignoring means to exempt publishers.

The anti-dissemination statute is also not properly tailored because when “information is entrusted to the government, a less drastic means than punishing truthful publication almost always exists for guarding against the dissemination of private facts.” *Fla. Star*, 491 U.S. at 534. Here, there are obvious ways the Legislature could have written the law while burdening less speech:¹⁰

¹⁰ Though *amici* do not concede that such narrower laws would be constitutional, their potential availability shows that the current statute is unconstitutional. *Cf., e.g., Wal-Mart Puerto Rico, Inc. v. Zaragoza-Gomez*, 834 F.3d 110, 127 n.16 (1st Cir. 2016) (“In listing these possible alternatives, we do not decide that any of those particular alternatives are themselves sufficiently narrow to survive dormant Commerce Clause scrutiny. It suffices for our

Eliminating the ambiguous “relating to” language.

The statute is not only broad in *who* it restricts, but also in *what* they are prohibited from communicating. It prohibits not only the dissemination of particular documents but any information “relating” to them—a term so expansive it cannot be understood with reasonable clarity. *See San Diego Unified Sch. Dist. v. Yee*, 30 Cal. App. 5th 723, 733 (2018) (noting “broad” meaning of “relating to” as “to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with”) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383–84 (1992)). That ambiguity compounds its chilling effect, requiring speakers to guess whether their comments might relate to a sealed arrest—and exemplifying why the statute is not narrowly tailored.

For example, *amicus* Volokh must guess whether writing about Blackman’s “John Doe” lawsuit may trigger liability, even if he does not use Blackman’s name, because the litigation “relates to” the sealed record. *Amici* FAC and LaRoe similarly must guess whether they can discuss the basis of Blackman’s lawsuit or Blackman’s censorship campaign in their public advocacy.

Exempting publishers, including journalists. When it crafts statutes dealing with sensitive information, California’s legislature frequently exempts people or entities defined in California Evidence Code Section 1070, which broadly protects people affiliated with media outlets.¹¹ But it chose not to with this

purposes to say that the availability of those less restrictive alternatives invalidates the AMT in its current form.”).

¹¹ *See, e.g.*, CAL. GOV’T CODE § 6208.1(b)(3) (in regulating the posting of addresses of victims of domestic violence, providing

statute, threatening journalists’ right to report on lawfully obtained information without risk of liability under the Penal Code. While Blackman can file a civil suit against a journalist who reported on his arrest, other media outlets and commentators—like *amicus* Volokh—risk a civil penalty if they write about that *unsealed* lawsuit, because doing so may disclose information “related to” the sealed arrest.

Limiting the penalty to authorized persons who disclose information to unauthorized persons. An earlier version of the bill would have made it a misdemeanor offense for a “person who is authorized to have access to information relating to an expunged arrest [to] disseminate[] information relating to an expunged arrest to a person who is not authorized.”¹² This narrowing language, although imperfect,¹³ would have allowed the State to insist that its agencies and employees maintain secrecy

that the law “shall not apply to a person or entity defined in Section 1070 of the Evidence Code”); CAL. GOV’T CODE § 6218(b)(3) (same, with respect to information pertaining to reproductive health care providers); CAL. LAB. CODE § 432.7(g)(3) (possession of criminal or juvenile records); CAL. PENAL CODE § 11143 (criminal history information).

¹² See COMPARE VERSIONS, CAL. S. SB 393 (chaptered Oct. 11, 2017) *compared to* CAL. S. SB 393 (introduced Feb. 15, 2017), at § 851.867(g)(1), *available at* https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201720180SB393&cversion=20170SB39399INT.

¹³ The law would be clearer if it limited its application to persons authorized to have access by virtue of their employment by a law-enforcement agency.

without obligating every member of the public to do the same.¹⁴ Yet the State chose not to adopt that narrower version.

Including an intent requirement. The statute could also be narrowed by requiring intent to disseminate the information for unlawful purposes, like identity theft or extortion. That would provide breathing space for protected speech like publishing lawfully obtained sealed arrest information as part of news coverage, commentary, criticism, scholarship, and a host of other lawful expressive purposes. *See Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (requiring a showing of purposeful intent in incitement cases); *see also Counterman v. Colorado*, 600 U.S. 66, 74–82 (2023) (requiring recklessness for “true threats” statutes and explaining why that subjective intent helps preserve First Amendment breathing space). But instead, the law ensnares all those purposes, stifling First Amendment-protected activity and cementing the statute’s failure under strict scrutiny.

Regulating discrimination based on arrest records. Finally, if California is concerned with use of arrest records to deny

¹⁴ The legislative history also shows that lawmakers were concerned with a need to deter “consumer reporting agencies,” which are “generally” how “information of arrests ... finds its way” into the public, from continuing to disclose information about sealed arrests. SB 393 Analysis, *supra* at ¶ 4. The statute provides a definition of these agencies, and the Legislature could have simply barred a “[c]riminal history provider” from disseminating sealed records—a far narrower burden than prohibiting *any* “person or entity” from sharing truthful information. CAL. PENAL CODE § 851.92(c), (d)(3). But even this narrower measure would not survive First Amendment scrutiny. *See Sorrell*, 564 U.S. at 568–77 (striking down limits on information the speaker already possesses).

employment or housing, it can prohibit discrimination on that basis as a less restrictive means, as the Ninth Circuit similarly recognized in *IMDb.com*. See 962 F.3d at 1125. In fact, the state already uses such means to some extent, demonstrating it can accomplish these goals without burdening speech. See, e.g., CAL. GOV'T CODE § 12952(a)(3)(A) (limiting employers' consideration of an "[a]rrest not followed by conviction" in hiring decisions); 2 CAL. CODE REGS. 12264, *et seq.* (regulations on the use of criminal history in housing).

F. The statute is underinclusive because it exempts those responsible for safeguarding sealed records.

The anti-dissemination statute is also not properly tailored because it under-inclusively exempts the very people most likely to negligently (or purposefully) share sealed arrest information—government employees within the criminal justice system—“rais[ing] serious doubts” whether the law serves its asserted objective. *Fla. Star*, 491 U.S. at 540; see also *Republican Party v. White*, 536 U.S. 765, 780 (2002) (noting a “law cannot be regarded as protecting an interest of the highest order” when “it leaves appreciable damage to that supposedly vital interest unprohibited”).

Specifically, the statute exempts from its civil penalty every “criminal justice agency,” which it defines broadly to include law-enforcement agencies and individual officers, relieving them of a strong incentive to avoid mishandling sealed arrest records. CAL. PENAL CODE §§ 851.92(c), (d)(4). The government can insist its employees maintain the confidentiality of sensitive records, and it

can provide a civil remedy to persons affected when employees fail to do so, but it cannot “enhance the guarantee of confidentiality” by burdening the public’s speech. *Landmark Commc’ns*, 435 U.S. at 841.

Because there are obvious means of narrowing the anti-dissemination statute to avoid burdening protected speech, the statute cannot satisfy strict scrutiny. Both as applied to Defendants in this case, and on its face as extended to disseminating lawfully obtained information about sealed arrests, the anti-dissemination statute violates the First Amendment.

CONCLUSION

Because the First Amendment precludes application of the anti-dissemination statute against Defendants and otherwise fully protects their speech, *amici* respectfully request that the Court affirm the trial court’s grant of Defendants’ special motion to strike.

Dated: March 20, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this brief contains 6,297 words, including footnotes, but excluding the tables, this certificate, and any permitted attachments.

This brief was prepared using Microsoft Word, which generated this word count.

Dated: March 20, 2026

/s/ D Gill Sperlein
D Gill Sperlein

Document received by the CA 1st District Court of Appeal.

CERTIFICATE OF SERVICE

I, D Gill Sperlein, declare:

I am a resident of the state of California, over the age of eighteen years, and not a party to the within action. My business address is 700 Pennsylvania Avenue SE, Suite 340, Washington, DC 20003.

On March 20, 2026, I served the foregoing document.

APPLICATION FOR PERMISSION TO FILE *AMICI CURIAE* BRIEF AND [PROPOSED] *AMICI CURIAE* BRIEF OF FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION, FIRST AMENDMENT COALITION, AND EUGENE VOLOKH IN SUPPORT OF DEFENDANTS/RESPONDENTS AND AFFIRMANCE

X BY TRUEFILING: I caused the foregoing document to be filed with the court using the court’s e-filing system, TrueFiling. Parties and/or counsel of record were electronically served via the TrueFiling website at the time of filing.

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San Francisco, CA 94102

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

Dated: March 20, 2026

/s/ D Gill Sperlein
D Gill Sperlein

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