March 28, 2019

Office of Assemblymember Laura Friedman
300 East Magnolia Boulevard
Suite 504
Burbank, CA 91502

Re: AB 700 (Friedman) – Oppose Unless Amended

Dear Assemblymember Friedman:

I write on behalf of People for the Ethical Treatment of Animals (PETA), Social Compassion in Legislation (SCIL), and Physicians Committee for Responsible Medicine (PCRM) with strong objections to Assembly Bill 700. We have reviewed the proposed amendments that your office forwarded on March 27, 2019, and while we appreciate that your office is attempting to correct some of the issues we have with this bill, we believe that the amendments do not address the underlying problems, and may only result in greater confusion and cumbersome litigation under the California Public Records Act (CPRA). Here are some of our specific objections and concerns with the bill, as amended:

- The language in the legislative intent is contradictory from the bill's provisions. The new legislative intent language states that academic research is a "continuous endeavor that lacks clear distinctions between ongoing and completed research projects." However, later in the text of the exemptions, it appears that the proposed bill does try to make precisely this distinction when it exempts "Research methods *that have not been published*" and "*Unpublished* data." Courts will likely find the guidance in the legislative intent section confusing, contradictory with its plain text, and impossible to apply.

- Section 6254(ae)(A)(i) still exempts "Research methods that have not been published." This exemption may make it impossible for animal advocates to gain access to animal use protocols, which are formal, written plans for an animal experiment. These protocol forms are routinely requested by animal advocacy organizations in order to have a more comprehensive understanding of how an experimenter plans to use animals, what justifications they assert for conducting the experiment, and how they searched for alternatives to using animals. Information from animal use protocols often reveals that laboratories failed to conduct a sufficient search for alternatives, and/or offered spurious or illegitimate reasons to justify cruel experiments on animals. They also reveal plans to inflict unjustifiable pain and suffering on other sentient beings. For example, PETA obtained animal use protocols via Wisconsin's state open records law which revealed that the University of Wisconsin-Madison planned to start "maternal deprivation" experiments, where baby monkeys would be torn away from their mothers so they could be psychologically experimented on. After we publicized the school's plans, the experiments were halted before they had a chance to begin. If PETA and other organizations were forced by law to wait until the results of this experiment had been published, needless misery would have already been carried out on sensitive, intelligent

monkeys. If public oversight is to be meaningful, it must be proactive, rather than a meaningless *post hoc* process, when the cruelty has already been inflicted, and our tax dollars wasted.

- Section 6254(ae)(A)(iii) still exempts "Unpublished data." We are concerned that the definition of "data" is very expansive, and will allow universities to withhold a wide range of records and information concerning their care of animals in laboratories. PETA is currently suing the University of California-Davis under the CPRA for videos of psychological tests carried out on baby monkeys. By some interpretations, these videos may be considered "data," since they depict the young monkeys' behavioral responses to a battery of stimuli in order to test a hypothesis. The experimenters likely *never* intend to publish these videos, so this exemption may keep these videos secret in perpetuity. Finally, if the CPRA were amended to require citizens to wait until the information was published, this would defeat the fundamental purpose of an open records law, which is to empower citizens to gain access to previously unreleased government records. It is pointless to carve out an exemption in the open records law that enables the custodian of the record to decide when and if to ever voluntarily release the information.

- Section 6254(ae)(A)(v) still exempts almost all correspondence. "Correspondence" is an incredibly broad exemption of *a mode of communication*. This would be the first exemption in the CPRA that is not tied to the informational nature of the records in question, thus making it nearly impossible to assess the public interest that may or may not be harmed by including this exemption. An exemption for "correspondence" may include routine and appropriate emails about a research project, but it may also include evidence of research misconduct or even criminal wrongdoing. For example, PETA recently learned details about how faculty at Louisiana State University (LSU) were purchasing live dogs from a nearby animal shelter for use in a deadly veterinary anatomy lab, in apparent violation of the federal Animal Welfare Act (the federal authorities are still investigating a PETA complaint). Many of the details of this scheme, including how many animals were acquired and for what purpose, were pieced together by reviewing *correspondence* from faculty members at LSU. Since PETA publicized this information, the shelter has stopped providing animals to LSU. If Louisiana's open records law had a vast exemption for "correspondence," PETA would not have been able to achieve this kind of accountability and positive change for animals.

We are still unclear precisely what problem this bill is attempting to address. We ask that your office withdraw the bill in light of the fact that the committee hearing is less than a week away in order to work with you and the committee staff on the following proposed amendments:

- Add intent language that explains the importance of transparency surrounding the use of animals in experimentation at public institutions. This language would explain that because animals are sentient beings without the ability to provide informed consent or advocate on their own behalf, oversight is crucial. Abuses of animals in laboratories frequently occur when laboratories are allowed to self-police. Therefore, it is vital that government agencies protect transparency surrounding the use of animals in laboratories to ensure that such use is in accordance with community values and applicable laws.

- **In addition to this intent language**, add specific protections for various itemized categories of records related to animal use. These would include: final approved animal use protocols, health and veterinary records, intake and disposition records, necropsy reports, videos and photos of animals held in laboratories, and records of the Institutional Animal Care and Use Committee (IACUC), including correspondence and meeting minutes. These are all records that our organizations frequently request, receive, and utilize in our meaningful efforts to reduce animal suffering and end pointless experiments. To avoid confusion, the language of these protections would have to make clear that they pre-empt the exemptions that the bill carves out elsewhere.

We recognize that these suggested amendments would add a layer of complexity to AB700, but we feel strongly that this would be the only way to avoid strong opposition of the bill.

I appreciate your time and thoughtful consideration. I can be reached at 385-227-7034 or Jeremyb@peta.org if you have any questions.

Sincerely,

Jeremy Beckham, MPA, MPH, CPH
Research Associate
Laboratory Investigations Department
People for the Ethical Treatment of Animals

ACLU
CENTER FOR ADVOCACY & POLICY
California

Center for Advocacy & Policy
Telephone (916) 442-1036
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March 28, 2019

The Honorable Laura Friedman
California State Capitol, Room 2137
Sacramento, California 95814

Re: AB 700 – as amended 3/18/19
Oppose

Dear Assemblymember Friedman:

The American Civil Liberties Union of California regrets that we must oppose your AB 700, which proposes to conceal information in public colleges and universities relating to researchers and their research by excluding it from the California Public Records Act (CPRA).

The CPRA reflects a fundamental principle of democracy: in order for the government to be reflective of and responsive to the will of the people, the public must be allowed to know what the government is up to. Absent some overriding interest, the people are entitled to know the conduct of the people's business in order to "instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good." (Cal. Const., Art. 1, section 3.)

Our public colleges and universities have never been exempt from these rules, nor have their faculty and researchers, or the data they create or analyze with public resources, or any other activity they engage in while employed in their capacity as public servants. With the benefits of public funding go the obligations of public accountability, just as surely for colleges and universities as for any other government entity, and for researchers just as surely as engineers, doctors, police officers or any of the myriad professions on the public payroll.

Despite your laudable goal to protect university researchers from harassment or distractions, or to promote recruitment, collaboration and the acquisition of knowledge, we do not believe the pursuit of truth and education is fostered by darkness rather than sunshine. If it is, the same theory would apply equally to every type of government official that undertakes any inquiry – not only university researchers – and the CPRA would be severely undermined. We also resist the suggestion that avoiding "disruption" of government agencies is a valid reason for cloaking their activities. We have been told that another reason for the bill is to protect university officials from harm to their reputation. Assuming that is a legitimate objective, there are existing methods and laws to address it. So too, if the concern is the protection of intellectual property, existing law provides the means to do so.

Moreover, it is impossible to take the CPRA out of the hands of those who use it for purposes you disapprove of without also extinguishing the rights of those who use the CPRA in the public interest to uncover any number of wrongs. Indeed, the bill seems to rest on the belief that public researchers and university administrators never lie, cheat, steal, commit fraud, falsify data, engage in nepotism or other favoritism, discriminate on the basis of race, sex or other factors, misuse public funds, take bribes, engage in unsafe practices, harm research subjects, or commit any other type of misconduct. Sadly, the University of California and other state higher educational

institutions have not been immune from academic fraud, wrongful tenure decisions, personnel abuses, admissions scandals, kick-backs, membership on corporate boards of directors and other improper arrangements.

For these reasons, we must respectfully oppose AB 700. Please do not hesitate to contact us should you have any questions or concerns.

Sincerely,

Kevin G. Baker
Legislative Director

cc: Members and Committee Staff, Assembly Judiciary Committee

SOCIETY OF PROFESSIONAL JOURNALISTS
NORTHERN CALIFORNIA CHAPTER

April 1, 2019

Assembly Member Laura Friedman
State Capitol
Room 2137
Sacramento, CA 95814

Re: SPJ NorCal Opposition to AB 700

Dear Assembly Member Friedman

I write on behalf of the Northern California Society of Professional Journalists ("SPJ NorCal") to express our opposition to AB 700. We strongly urges you to drop the bill.

The California Public Records Act is critical for journalists to be able to investigate taxpayer funded work. AB 700 would weaken the Act by exempting research taking place at the state's public universities. The spotlight journalists provide in the public interest should shine more brightly in areas where malfeasance can possibly take place, yet AB 700 seeks to turn the light out in a critical setting. This is not only problematic at the university level; it could also set a precedent through which other exemptions are sought and achieved, thereby making investigative journalism even more challenging than it already is.

In case you're not aware, I'd like to let you know about the code of ethics for the Society of Professional Journalists. It states that journalists should:

- Seek truth and report it
- Minimize harm
- Act independently
- Be accountable and transparent

We are in this work for the same noble purpose that elected officials shoul have: to serve the public to the best of our ability. Whatever your motivation is in sponsoring AB 700, it is our duty to let you know that we believe it will damage our profession. Please don't allow that to happen. T protect the ability of journalists to do their work protecting the public, SPJ NorCal urges you to drop AB 700.

Thank you for your consideration.

DocuSigned by:
Ben Trefny
24DF59BBE0984A7...

Ben Trefny, President, SPJ NorCal

PO BOX 625,
CHICO, CA 95927
530.570.6872
WWW.GOODFOODBRIGADE.ORG,

March 29, 2019

Assembly Judiciary Committee
1020 N Street, Room 104
Sacramento, CA 95814
916.319.2334 phone

RE: AB 700- Public Records, Exceptions To Disclosure

Dear Chairman Mark Stone, and members of the Assembly Judiciary Committee,

Our organization, The Good Food Brigade, opposes AB 700, as a misguided attempt to protect a small number of professors whose research benefits corporate interests. Professors at our public institutions are public employees. The public has a right to access public records, as stated in the California Constitution, article 1, Section 3. CPRA is the most important law in California that provides that transparency for consumers and the public to help us be informed citizens.

For many of us, CPRA is the only tool we have to expose that small group of professors who do not want their actions known and are appealing to you to unwittingly support their lack of ethical behavior. Education with public funds should rest on truth. If they have nothing to hide, they would probably not be the recipient of a CPRA request to being with.

This bill will take away tools that enable journalists to keep the public informed. If you take away this public right, then it gives the clear signal that government wants to protect its interests over the public good.

Please vote no on AB 700.

Thank you.

Pamm Larry
Director, The Good Food Brigade

March 29, 2019

Assemblymember Laura Friedman
State Capitol
Room 2137
Sacramento, CA 95814

Dear Assemblymember Friedman:

We are environmental and consumer groups writing to oppose AB 700, legislation to weaken the California Public Records Act (CPRA). This legislation would exempt from the CPRA much of the work product of California's public universities. We believe this legislation is likely to harm the environment, consumers, workers and public health.

We believe that requests under the CPRA for university documents -- including professors' correspondence -- are critical to efforts to investigate and expose corporate corruption of science, commercial influence in the research process, the commercialization of the university, lack of integrity in research, campus sexual harassment scandals and other wrongdoing by professors, researchers and universities. We understand that it is possible to abuse the CPRA, but we believe the proper remedy is not to weaken the CPRA, but rather to expose those who abuse it.

We deserve the right to know what our public universities and their researchers are doing with our tax dollars, and that right properly extends to inspecting the work of our taxpayer-paid employees, including those who work at public universities.

The CPRA is an essential part of our work to protect the environment, consumers and public health from myriad encroachments by state and local governments, and corporations. We oppose any efforts to weaken it, and we are particularly concerned that any successful effort to chip away at the CPRA could invite others, leading to a slippery slope that could diminish this crucial law in unforeseen ways, at cost to our health, our environment and our democracy.

We urge you to keep the CPRA strong, to protect our right to know, and to preserve the ability of journalists and other citizens to bring daylight and accountability to taxpayer-funded employees and our public universities.

Sincerely,

Center for Food Safety
Organic Consumers Association
Real Food Media
U.S. Right to Know

CALIFORNIA NEWS PUBLISHERS ASSOCIATION
CNPA Services, Inc.

2701 K Street, Sacramento, CA 95816 ♦ Ph: 916.288.6013 ♦ Fax: 916.288.6002 ♦ www.cnpa.com

March 28, 2019

Honorable Laura Friedman
California State Assembly
State Capitol Room 2137
Sacramento, CA 95814

RE: AB 700 (OPPOSE UNLESS AMENDED)

Dear Assemblymember Friedman:

I am writing on behalf of the California News Publishers Association to express CNPA's opposition to your AB 700, unless amended, as it would undermine the California Public Records Act (CPRA) and the public's right to know by exempting vast numbers of records held by public postsecondary institutions.

AB 700 would create a new exemption in the CPRA for records related to research conducted at public postsecondary institutions. CNPA understands that the bill is an attempt to address situations in which researchers at public universities have been targeted by advocacy groups with an interest in the subject of the research. Unfortunately, the approach taken in AB 700 is to create a broad exemption to address this relatively narrow issue, upending the CPRA's general presumption in favor of disclosure of public records. In doing so, AB 700 not only undermines the public interest in disclosure of public records, it also empowers the very advocacy groups the bill is intended to thwart.

AB 700 is an Overbroad Solution to a Narrow Problem

AB 700 is intended to address the alleged abuse of the CPRA by requesters who obtain records relating to researchers and then use that information for personal gain or to attempt to discredit the researchers. CNPA is sympathetic to concerns that the disclosure of certain types of information used by public university researchers may reduce the ability of public university researchers to collaborate with researchers from other institutions, but we disagree with the notion that protecting public employees from scrutiny is a sufficient justification for creating a new exemption to the CPRA.

AB 700, in its current form and as proposed to be amended, is far too broad. It exempts ten broad categories of information from public disclosure, including research methods, unpublished data, and all correspondence related to research whether or not part of the peer review process and regardless of whether the research has been published. To the extent there is a legitimate problem of alleged abuse of public records requests, the problem is narrow and should be addressed accordingly.

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AB 700 is Antithetical to the Structure and Purpose of the CPRA

Access to public records is of such paramount importance that it is enshrined in Article I, Section 3 of the California Constitution. The CPRA is the most important law providing the California public with access to records held by state and local agencies, and it is built on the concept that public records should generally be disclosable except in limited circumstances. As described the California Attorney General's Office, "[t]he fundamental precept of the CPRA is that governmental records shall be disclosed to the public, upon request, unless there is a **specific reason not to do so**." [emphasis added][1]

AB 700 would take this "fundamental precept" in favor of disclosure with only narrow exceptions and flip it on its head by broadly exempting records "related to research" held by public postsecondary institutions and, as proposed to be amended, then listing narrow categories of records that are subject to disclosure. This approach is antithetical to purpose of the CPRA, and inconsistent with its structure. To the extent a new exemption to the CPRA is needed, it should be narrowly drawn to specifically address only the circumstances that are identified and which existing law fails to protect. Toward this end, AB 700 falls short.

AB 700 Will Protect Bad Actors, Including Those the Bill is Intended to Hinder

Perhaps the most concerning aspect of AB 700 is the fact that it will prevent journalists from investigating allegations of researcher misconduct and/or improper influence by the very stakeholders at which the bill is aimed. In just the past several weeks, two major media outlets have published stories of researcher misconduct and improper influence that likely would not have come to light but for the ability to access public records:

- On February 25, 2019, *the Washington Post* reported on communications between an attorney for the payday lending industry and a professor at Kennesaw State University, and how those communications may have influenced the professor's research on how borrowers were affected by payday lending practices.[2]

- On March 20, 2019, *ProPublica Illinois* published a story about its investigation of a researcher at the University of Illinois at Chicago who violated research protocols, putting children with bipolar disorder at risk.[3] The story revealed that not only had the researcher engaged in such serious misconduct that the National Institute of Mental Health required repayment of grant money it had provided, but that the university had failed to properly oversee the research.

CNPA recognizes that most researchers do not engage in the type of conduct on display in these news stories, but the reality is that even well-intentioned exemptions to the CPRA can protect the worst actors.

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[1] *Summary of California Public Records Act, 2004*, California Office of the Attorney General, p. 2. http://ag.ca.gov/publications/summary_public_records_act.pdf

[2] Merle, Renae. "How a payday lending industry insider tilted academic research in its favor." *The Washington Post*, February 25, 2019. https://www.washingtonpost.com/business/2019/02/25/how-payday-lending-industry-insider-tilted-academic-research-its-favor/

[3] Cohen, Jodi S. "University of Illinois at Chicago Missed Warning Signs of Research Going Awry, Letters Show." *ProPublica Illinois*, March 20, 2019. https://www.propublica.org/article/university-of-illinois-chicago-uic-research-misconduct-letters-documents

As proposed to be amended, AB 700 would state that records of institutional audits and disciplinary actions are disclosable. However, CNPA is concerned that this provision is insufficient to protect the public's interest in knowing about researcher misconduct. Because the provision proposed to be added would only apply in situations in which institutional audit and disciplinary systems have done their jobs, it would leave cases where safeguards have failed – arguably most the newsworthy of all – shielded from public scrutiny.

The proposed amendments to AB 700 would also state that communications between funders and researchers would be disclosable, but again, this provision is insufficient to ensure public access to records that evidence improper influence by outside groups. By limiting the types of communications that are disclosable to only those between funders and researchers, AB 700 allows interested groups to easily sidestep the disclosure of records by having an intermediary provide the funding or engage in the communications.

CNPA recognizes the difficulty of drafting an exemption that is narrowly tailored enough to protect the public interest in disclosure of most public records while still addressing the problem at hand. But, the fact that the task is difficult does not mean that it is not worth attempting. CNPA strongly believes that striking that delicate balance is crucial to continuing to protect the public's right to know what government agencies are doing on its behalf.

CNPA is committed to continuing to work with your office to achieve a solution that is workable but for the reasons stated above we respectfully oppose AB 700 unless it is amended to narrow the proposed exemption.

Sincerely,

Whitney L. Prout
CNPA Staff Attorney

cc: Paulette Brown-Hinds, CNPA President, Publisher, *Black Voice News*, Riverside
Jeff Glasser, CNPA Governmental Affairs Committee Chairman, Senior Vice President and General Counsel, *Los Angeles Times*
Thomas W. Newton, CNPA Executive Director
James W. Ewert, CNPA General Counsel
Landon Klein, Consultant, Assembly Judiciary Committee
Paul Dress, Principal Counsel, Assembly Republican Caucus