DailyNews

State Wins a Writ Excusing It From Disclosing Whether Its Private Research Firm Engaged in Animal Cruelty

Tim Kowal *February 07, 2024*

A few months ago, when the Court of Appeal issued a rare writ on a discovery issue, I noted that this was unusual because appellate courts generally loathe discovery disputes. But here comes the court with another discovery writ. There are two things in common between that earlier case and the more recent case of *Regents of the Univ. of Cal. v. Superior Court* (D3 Dec. 29, 2023 No. C099588) [nonpub. opn.]. First, both discovery disputes occurred in a Public Records Act case. Second, in both efforts to get information from the state, the state won.

Here are the facts of *Regents*. UC Davis contracts with a private outfit, Neuralink Corp. The opinion doesn't mention it, but Neuralink is an Elon Musk company. Neuralink is working on embedding computer chips into brains. The means and ends —controlling advanced prosthetics? Embedding people in the Matrix?—no one knows. And if it was just Neuralink and Elon Musk, that would be their own business.

But Neuralink has partnered with UC Davis for some of its research, so several sources, including Gizmodo and, here, Physicians Committee for Responsible Medicine, submitted Public Records Act requests. Physicians Committee in this case requested information about whether Neuralink's experiments were harming animals. Dissatisfied with the Regents' disclosures, Physicians Committee filed a petition for writ of mandamus, and sought discovery into the nature of UC Davis's review and control over Neuralink's experiments, and whether UC Davis had diligently acted to prevent Neuralink from causing suffering and death to nonhuman primates. The trial court compelled the Regents to produce the information.

But the Court of Appeal granted the Regents' writ and vacated the discovery order. Yes, discovery rights apply to Public Records Act actions. But discovery is more limited than the broad "likely to lead to any relevant evidence" standard. Instead, the discovery must be directed to "whether [the] public agency has an obligation to disclose the records . . . requested." seq.), (*City of Los Angeles v. Superior Court* (2017) 9 Cal.App.5th 272, 289.)

Here, Physicians Committee sought discovery to establish a public interest that outweighs any state interest in nondisclosure. The court seemed to agree that the requests "might possibly lead to" evidence of a strong public interest, but that the discovery was not "necessary."

What was the irreparable harm that persuaded the court to intervene here on a writ basis? The court intervened so that the case would not "be bogged down by

additional protracted discovery disputes." Pretty generic stuff. If you attempt this justification in your next writ petition, expect it to get you precisely nowhere.

Comment

For an appellate court to intervene in a discovery dispute is unusual.

Appellate intervention where the discovery dispute involves no irreparable harm is presented is more unusual still.

Appellate intervention where the outcome rests on a pretty subtle discretionary call between whether discovery is "necessary" or merely "relevant" is becoming statistically undetectable.

The lesson here is: if you want to get writ relief on a discovery dispute, the best thing you can do is to represent the state.

This article was originally published on the website of Kowal Law Group.

Tim Kowal is an appellate specialist certified by the California State Bar Board of Legal Specialization. Tim helps trial attorneys and clients win their cases and avoid error on appeal. He co-hosts the Cal. Appellate Law Podcast at CALpodcast.com, and publishes summaries of cases and appellate tips for trial attorneys. Contact Tim at Tim@KowalLawGroup.com or (949) 676-9989.

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