SUPREME COURT OF THE UNITED STATES

No. 98–678

LOS ANGELES POLICE DEPARTMENT, PETITIONER *v.* UNITED REPORTING PUBLISHING CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[December 7, 1999]

JUSTICE GINSBURG, with whom JUSTICE O'CONNOR, JUSTICE SOUTER, and JUSTICE BREYER join, concurring.

I join the Court's opinion, which recognizes that California Government Code §6254(f)(3) is properly analyzed as a restriction on access to government information, not as a restriction on protected speech. See *ante*, at 7. That is sufficient reason to reverse the Ninth Circuit's judgment.

As the Court observes, see *ante*, at 7, the statute at issue does not restrict speakers from conveying information they already possess. Anyone who comes upon arrestee address information in the public domain is free to use that information as she sees fit. It is true, as JUSTICE SCALIA suggests, *ante* at 2, that the information could be provided to and published by journalists, and §6254(f)(3) would indeed be a speech restriction if it then prohibited people from using that published information to speak to or about arrestees. But the statute contains no such prohibition. Once address information is in the public domain, the statute does not restrict its use in any way.

California could, as the Court notes, constitutionally decide not to give out arrestee address information at all. See *ante*, at 8. It does not appear that the selective disclosure of address information that California has chosen instead impermissibly burdens speech. To be sure, the

provision of address information is a kind of subsidy to people who wish to speak to or about arrestees, and once a State decides to make such a benefit available to the public, there are no doubt limits to its freedom to decide how that benefit will be distributed. California could not, for example, release address information only to those whose political views were in line with the party in power. Cf. *Board of Comm'rs, Wabaunsee Cty.* v. *Umbehr*, 518 U. S. 668 (1996) (local officials may not terminate an independent contractor for criticizing government policy). But if the award of the subsidy is not based on an illegitimate criterion such as viewpoint, California is free to support some speech without supporting other speech. See *Regan* v. *Taxation With Representation of Wash.*, 461 U. S. 540 (1983).

Throughout its argument, respondent assumes that §6254(f)(3)'s regime of selective disclosure burdens speech in the sense of reducing the total flow of information. Whether that is correct is far from clear and depends on the point of comparison. If California were to publish the names and addresses of arrestees for everyone to use freely, it would indeed be easier to speak to and about arrestees than it is under the present system. But if States were required to choose between keeping proprietary information to themselves and making it available without limits, States might well choose the former option. In that event, disallowing selective disclosure would lead not to more speech overall but to more secrecy and less speech. As noted above, this consideration could not justify limited disclosures that discriminated on the basis of viewpoint or some other proscribed criterion. But it does suggest that society's interest in the free flow of information might argue for upholding laws like the one at issue in this case rather than imposing an all-or-nothing regime under which "nothing" could be a State's easiest response.