In an era defined in Washington by lies and the suppression of scientific research, California is positioning itself as a defender of facts and free inquiry. Assemblymember Laura Friedman (D, Los Angeles) this week introduced Assembly Bill 700, a bill sponsored by the Union of Concerned Scientists (UCS) to address the harm inflicted on public university scholars by harassing requests under the California Public Records Act. Records requests are made to harass rather than to enlighten when they seek unpublished data, peer-review correspondence, and other intellectually sensitive material with the intent of distorting it (or occasionally, scooping it). In so doing, such requests undermine academic freedom—the research, teaching, and free exp

ression necessary for scholars to create and disseminate new knowledge.

The parties behind abusive record requests are often repeat players with an ideological agenda. Requests from fossil fuel industry trade groups to climate researchers are typical: the requesters mine researchers' documents for quotes or data to reproduce out of context, and then suggest that they reveal doubt about climate change or even academic fraud. Academic researchers who can persuasively connect cigarette ads to youth smoking rates, hog farm runoff to adverse community health, or toxic chemicals to environmental disease have likewise been targets of industry records requests that appear designed to inflict reputational injury rather than to reveal truth or daylight academic scandal. Record requests in particularly politically sensitive fields often go a step further, requesting identity or physical location information about researchers that can contain an implied physical threat.

These issues are particularly germane in the University of California system, which, because of the scale and ambition of its research enterprise, is a frequent target of harassing record requests. Recent matters that UC scholars have been required to litigate that implicate intellectual freedom, researcher physical security, or both include requests for information about animal research at UC Davis, climate change litigation strategies allegedly developed at UCLA, and identities of abortion researchers at UCSF.

Although AB 700 currently contains just a single substantive provision, addressed to protecting researchers from physical threats, its stated intent is "to promote the ability of California's public universities and their faculty to conduct research on, and communicate with and teach students about, significant and publicly relevant topics, while also maintaining public access to university records." Through negotiation with stakeholders, the bill is expected to expand to encompass broader protections for researchers' intellectual products, not merely for their persons. Importantly, however, the bill will maintain public access to records regarding university administration, finances, and other matters that do not implicate core academic freedom interests.

Although promoting research integrity and fortifying democracy by *limiting* access to public records may seem counterintuitive, the bill reflects a much-needed, belated recognition of key differences between conventional government entities and universities. In the context of ordinary political operations, the need for open records laws is evident. The Trump Administration has been proof positive of the value and power of this citizen oversight tool. Federal Freedom of Information Act (FOIA) requests helped daylight former Administrator Scott Pruitt's profligate spending and create political momentum to oust him from the Environmental Protection Agency. FOIA requests presently in litigation promise to provide further insight into the scale of former Secretary Ryan Zinke's ethics transgressions before his own ousting from the Department of the Interior. Indeed, recognizing the power of the FOIA, the Interior Department recently proposed a (surely unlawful) rule to contract its FOIA response obligations; as Professor Justin Pidot recently and aptly blogged here, such efforts to shield federal agency information from the public must be vigorously resisted.

An inverse scenario has been playing out nationwide with respect to *state* public records laws, however, in the particular context of public university research records. (Because there is no federal university, access to university records is generally controlled by state law, unless federal grants are involved.) Every state has a mini-FOIA, and the majority of state legislatures included public universities within their definition of "agencies" susceptible to records requests, seemingly without giving the matter a lot of thought. Only a few had the foresight to exempt most scholar records from disclosure. For more than a decade, records requests under state open records statutes have increasingly been used to

harass climatologists, toxicologists, and public health researchers; more recently, the practice has spread to other academic disciplines, including the social sciences.

As I argue in a recent law review article (Open Records, Shuttered Labs: Ending Political Harassment of Public University Researchers, 66 UCLA L. Rev. 208 (2018)), the application of open records laws to academic research and teaching is inappropriate. Professors do not act in a representative capacity, and have no coercive power over the general citizenry. Thus, their research—unlike, say, records regarding an agency head's office redecoration or private jet travel expenses— is not the sort of activity that public records acts are designed to oversee. More crucial, requests to dig through professors' academic documents do tremendous societal harm, by disincentivizing researchers from engaging socially salient (and thus almost by definition, controversial) topics, and discouraging the candid debate among academic peers that is necessary to create new knowledge.

My article and related podcast explain that courts will be unable to deal with this problem effectively given the strong pro-disclosure presumption in public records statutes, and urge that state-by-state legislative reform is the best option. The article provides a list of the elements necessary in state public records laws to protect academic freedom. California's AB 700 represents the first step towards operationalizing these law reform recommendations. If successful, the bill will help unfetter the largest public university research enterprise in America to investigate society's most urgent questions without fear of ideologically driven harassment.