

TRANSPARENCY BLIND SPOT: A RESPONSE TO *TRANSPARENCY DESERTS*

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We have read with interest Christina Koningisor's publication, *Transparency Deserts*.¹ While there is much to be lauded in the work – all access advocates would like to see more scholarship and publicity about the importance of transparency and accountability – we are disheartened by the article's failure to recognize the extant vibrant body of scholarship and activism in state freedom of information law. We, moreover, find this omission characteristic of a broader ignorance in legal academia of the sweat and toil of legal scholars, scholar-practitioners, and interdisciplinary academics who analyze and advocate for *state* transparency laws. This blind spot particularly manifests, unfortunately, among those at elite (typically coastal) law schools, who generally contribute vitally to the literature of the undoubtedly important federal transparency regime. These federal freedom-of-information scholars too often neglect the critical importance of state transparency laws – as well as state-transparency legal academics. Quite in contrast, state-law access advocates generally acknowledge the value of federal statutory analogs, often referencing federal norms and practices comparatively, while, nonetheless, working upon the apt assumption that state access laws, *en masse*, have a greater day-to-day impact in improving Americans' lives and in enhancing democratic

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¹ Christina Koningisor, *Transparency Deserts*, 114 NW. U. L. REV. 1461 (2020).

accountability in America than does the federal Freedom of Information Act. Koningisor’s article evidences this disappointing tension.

A. Coastal Parallax

Citing five articles on state freedom of information acts (FOIAs)² as examples of exceptions to the rule, Koningisor, in *Transparency Deserts*, laments: “[d]espite [a] profusion of legal scholarship examining federal transparency laws, scholars have been curiously silent on transparency law issues at the subfederal level.”³ Koningisor repeatedly reiterates the notion, including in her declaration, that “[t]here have been a handful of articles addressing particular slices of state-level transparency statutes. But scholars have not yet taken a more comprehensive look at how these statutes impact state government.”⁴ Citing six authors on *federal* FOIA as examples, Koningisor observes that “[t]here has been a proliferation of scholarship in recent years focused on federal transparency laws in general, and on the [FOIA] in particular. The scholarship on this topic is both deep and diverse. . . .”⁵ However, Koningisor’s coup-de-grâce declaration, that “the federal statute dominates the transparency scholarship, at least within the legal literature,” merely refers back to the sources used to demonstrate “a proliferation” of *federal*-FOIA scholarship, with no further reference to *state*-FOIA scholarship.⁶ While we in no way dispute the fact that the body of scholarship covering the federal FOIA is large when compared to the same for state FOIAs, that realization alone hardly offers sufficient support for Koningisor’s hyperbolic assertions, and her dearth of citation to the ample state-FOIA scholarship is, of course, not evidence of its nonexistence. We demonstrate Koningisor’s failures herein.

By way of textual introduction, we, along with University of Arkansas Professor Emeritus John J. Watkins, co-authored the sixth edition of the treatise, *The Arkansas Freedom of Information Act*.⁷ Nicknamed, not by us, Arkansas’s “FOIA ‘Bible,’” *The Arkansas FOIA* is cited dozens of times annually in Arkansas Attorney General opinions⁸ and in nearly every decision of the Arkansas appellate courts on the Arkansas FOIA.⁹

² We use the acronym “FOIA” to refer loosely to freedom of information acts at the state level or to the singular Freedom of Information Act, 5 U.S.C. § 552, at the federal level. At times, for sake of clarity when the distinctions are immaterial, we use “FOIA” to refer inclusively to state-level access law that comprises more than just the state’s principal open-records and open-meetings laws. State-level access typically comprises a broader network of inter-related statutory, regulatory, and common law, as well as constitutional mechanisms than operate at the federal level.

³ Koningisor, *supra* note 1, at 1465.

⁴ *Id.* at 1465–66 (footnote omitted).

⁵ *Id.* at 1464–65 (footnote omitted).

⁶ *Id.* at 1464–65, 1471.

⁷ See generally JOHN J. WATKINS, RICHARD J. PELTZ-STEELE & ROBERT STEINBUCH, *THE ARKANSAS FREEDOM OF INFORMATION ACT* (6th ed. 2017).

⁸ See generally Arkansas Freedom of Information Act Opinions Search, ARKANSAS ATTORNEY GENERAL, <https://arkansasag.gov/arkansas-lawyer/opinions-department/opinions-search/> (search “The Arkansas Freedom of Information Act” in the “Full Text Search” field).

⁹ See generally Arkansas Appellate Court Decision Search, WESTLAW, <https://1.next.westlaw.com/> (search “The Arkansas Freedom of Information Act” in the search field and select “Arkansas” as the jurisdiction).

Our treatise is not hard to find. Indeed, the book in its present and preceding editions, back to John Watkins’s first in 1988,¹⁰ are readily discoverable through popular and academic search tools. Moreover, not only is Arkansas’s transparency law robust on paper, it is frequently employed by citizens and journalists to expose (and likely prevent) wrongdoing at the state level.¹¹ Frankly, there can be no legitimate doubt that the state’s transparency law has had a much greater impact on Arkansas government and the lives of Arkansans than the federal FOIA.

Koningisor’s myopia seemingly stems in part from the sources selected for both of her lists of relevant scholarship. These skew heavily toward articles in flagship journals at *U.S. News*’ top-50 law schools, which typically do not focus on state-specific jurisprudence and instead often style themselves as arbiters of national and federal law.¹² Although this is not a complaint – and the journals are free to make that legitimate editorial choice – harvesting in a field of publications that tends to exclude intra-state analyses is bound to disappoint if state law is the fruit of your purported desire. There are, however, many other law journals that have published on state FOIAs, discussed below.

Moreover, the demonstrated antipathy of “top” flagship journals to state-specific content may engender avoidance by authors of such placements in the first place. For that rational reason, and perhaps because they are more likely than federal-FOIA scholars to be immersed in the application of legal research to the practice of law, state-FOIA scholars may favor less conventional publishing outlets such as bar and trade journals, and non-governmental organizations’ white papers. These latter placements do not make the content something less than “legal scholarship.” Indeed, for academics devoted to the analysis and application of laws often known as the “people’s laws,” seeking venues that will result in a vertically diverse readership is equally rational and should not be eschewed by those conducting meta-analyses of transparency scholarship.

Thus, Koningisor’s anecdotal evidence – interviews with state officials, mostly on the coasts, and a closer case study of one state’s (Kansas) transparency law – at most serves to lightly camouflage her blind spot. Only if these anecdotes are broadly representative can they support Koningisor’s far-reaching conclusions: that the United States is plagued with “transparency deserts, or discrete geographic areas in which a confluence of factors – including poorly written transparency laws, deficiencies in the application of these laws, and weak civil society organizations – impedes effective government oversight”;¹³

¹⁰ See generally JOHN J. WATKINS, *THE ARKANSAS FREEDOM OF INFORMATION ACT* (1st ed. 1988); JOHN J. WATKINS & RICHARD J. PELTZ, *THE ARKANSAS FREEDOM OF INFORMATION ACT* (4th & 5th eds. 2004 & 2010).

¹¹ See *Arkansas Freedom of Information Act*, ARKANSAS ATTORNEY GENERAL, (2020), <https://arkansasag.gov/arkansas-lawyer/opinions-department/arkansas-freedom-of-information-act/>.

¹² See Koningisor, *supra* note 1, at 1480–82.

¹³ *Id.* at 1547.

that legal scholarship has failed to recognize the importance of state FOIAs;¹⁴ and that “scholars have largely ignored transparency issues at the subfederal level.”¹⁵ By our informed evaluation, however, the presented anecdotal evidence is not representative. In reality, state-level transparency scholarship, while not as voluminous as its federal counterpart, is nonetheless quite robust.

To demonstrate this, we undertook – with no such research plans before reading *Transparency Deserts* – the time-consuming and significant task of cataloging key scholarship on state-transparency law. While what we produced may be a resource for all FOIA scholars in the future, state and federal alike, we recognize that we are not singularly skilled in the ability to create this compendium of relevant literature. More importantly, while our compilation did not previously exist, no one sufficiently immersed in the examination of state FOIAs could reasonably have alleged the nonexistence of this scholarship. And certainly, no one making an affirmative claim as to its absence should have done so without assuming the responsibility of engaging in the hard work that we, in fact, undertook.

So, to demonstrate our understanding of the state of state-level FOIA scholarship, we began conservatively with a title search in Westlaw, well recognizing that the results of such an inquiry would produce a limited measure of state-FOIA scholarship because many articles on topic (including some of our own) do not have “FOIA” or similar identifiers in their titles. After correcting for false positives and screening venues that some might find not sufficiently academic (notwithstanding their value), we found *hundreds* of articles discussing FOIAs in more than three dozen states.¹⁶ We then searched key non-legal academic databases to tabulate additional significant articles. This is particularly salient in this context because too many legal academics largely restrict their focus of secondary source material to law journals (indeed, even more limitedly to legal scholarship found in Westlaw and Lexis), reflecting perhaps an implicit narcissism or, at least, a remarkable narrow-mindedness.

¹⁴ *See id.* at 1466–67.

¹⁵ *Id.* at 1547.

¹⁶ Search Directions for FOIA Articles, WESTLAW, <https://1.next.westlaw.com/> (search in: “Law Reviews & Journals” for: “TI((Alabama Alaska Arizona Arkansas California Colorado Connecticut Delaware Florida Georgia Hawaii Idaho Illinois Indiana Iowa Kansas Kentucky Louisiana Maine Maryland Massachusetts Michigan Minnesota Mississippi Missouri Montana Nebraska Nevada ”New Hampshire” “New Jersey” “New Mexico” “New York” “North Carolina” “North Dakota” Ohio Oklahoma Oregon Pennsylvania “Rhode Island” “South Carolina” “South Dakota” Tennessee Texas Utah Vermont Virginia Washington “West Virginia” Wisconsin Wyoming) and (“freedom of information” “transparency law” “sunshine” “public records” “open records” “open meetings” (access /s records))))”). Fifty-state research is always challenging, especially when the object of the search, here state FOIAs, goes by different names in different jurisdictions. Even this highly disjunctive search hardly gets the job done. For example, Steinbuch’s articles are not returned, because he named them in the vein of their sectoral focus on higher education, rather than titling them with “state” or “Arkansas” – perhaps an only partly conscious aversion to academia’s implicit bias, as reflected in Koningisor’s work.

The results of our investigation are reproduced below in **Table 1: Selected Titles Evidencing Research on State FOIAs**.¹⁷ While our research does not purport to constitute a *complete* bibliography – that is an enterprise we leave for another day or other scholars similarly interested in thoroughly mapping the landscape of access law across the United States – it clearly demonstrates the presence of a “deep and diverse” range of research in state FOIA, notwithstanding Koningisor’s core contention to the contrary.

Even when Koningisor does note research on state FOIAs, those references are, sadly, marginalized. *Transparency Deserts* makes scant mention, only in footnotes and never in the main text, to the white papers of the National Freedom of Information Coalition (NFOIC)¹⁸ and the state open government guides of the Reporters Committee for Freedom of the Press (RCFP).¹⁹ The Brechner Center for the Freedom of Information at the University of Florida, which is now under the direction of Frank LoMonte and just helped to launch *The Journal of Civic Information*, is never mentioned at all. The *Open Government Guide* of the RCFP, and more, its predecessor, *Tapping Official Secrets*, are also not mentioned, despite being influential authorities in state FOIA for decades before the Internet became widely available. Much of the content in the RCFP’s annually updated 50 state guides was authored by scholars – notwithstanding that we find apt distinction between scholarship and practitioner guidance in the content, rather than in the caste titles afforded authors by like-credentialed guild members.

Further, *Transparency Deserts* virtually ignores interdisciplinary mass-communication scholarship in state transparency, some of which is produced by J.D./Ph.D.s, and almost all of which is subject to considerably more rigorous peer review than legal scholarship. State FOIA experts such as Bill Chamberlin, Sandra Chance, David Cuillier, Charles Davis, and Chip Stewart – accomplished legal scholars, if not law school professors – appear not at all in *Transparency Deserts*. In comparison, *federal-FOIA* expert and law professor Margaret Kwoka is, remarkably, cited about three dozen times in an article about *state* transparency law and scholarship.²⁰

¹⁷ The results of even our initial search were so voluminous that, to maintain readability here, we moved them to a table below rather than citing them in footnotes. To be exceedingly conservative, we eliminated bar and trade journals and case notes, such as we could identify them, from our results. However, many of those works – consider, for example, research in the ABA’s *Urban Lawyer* – are indistinguishable as legal scholarship from conventional law review articles. We did retain, however, works labeled “comment,” even if authored by law students, when they presented substantively as law review articles. While it is possible that our results might include some false positives, in the end, a comprehensive list going beyond our investigation of the contents of titles of scholarly work would no doubt be even longer. We hope readers will take the time to review the table, taking account of the authors, titles, and journals, as a first step to correcting the myopia that afflicts too many law school academics.

¹⁸ See Koningisor, *supra* note 1, at 1510, 1518.

¹⁹ See *id.* at 1510, 1512, 1513, 1521.

²⁰ See *id.* at 1465, 1467, 1472, 1481, 1487, 1489, 1498, 1499, 1501, 1504, 1517, 1544.

Similarly, *Transparency Deserts* ignores the active and substantive engagement with state FOIAs by local media and the “civil society organizations” that are described conclusively by Koningisor as “weak.”²¹ In our experience in Arkansas, by way of example, the Arkansas Freedom of Information Coalition, with which we both have worked closely, is well regarded by most legislators of both parties as an essential voice, such that no FOIA legislation is likely to pass in Arkansas without coalition imprimatur.²² Comparable state coalitions have worked together for decades, having organized as the NFOIC since 1989.²³ And that’s to say nothing of ombud-governmental agencies – such as the Virginia Freedom of Information Advisory Council, which predates the federal Office of Government Information Services – as well as the critical efforts of citizen activists.²⁴

B. View from the Ground

While we are just two scholars who have actively and productively worked on, and with, one state’s FOIA, our ongoing efforts in shaping a state-level transparency regime are broad and diverse, extending beyond Arkansas. Notably, Peltz-Steele authored the only

²¹ See *id.* at 1525-27.

²² See generally *Arkansas Freedom of Information Handbook* (19th ed. 2020), https://www.healthy.arkansas.gov/images/uploads/pdf/foia_handbook_19th_edition.pdf.

²³ See generally *Who We Are*, NATIONAL FREEDOM OF INFORMATION COALITION, (2017-2020), <https://www.nfoic.org/about>.

²⁴ Indeed, some of the most important and consequential cases on the Arkansas Freedom of Information Act were not initiated by either lawyers or academics; rather, they were prosecuted *pro se*. The Arkansas Supreme Court held that the state FOIA “permits a public agency to refuse to comply with a request for disclosure of public records on the ground that the request lacks sufficient specificity, but not on the ground that it is ‘too broad or burdensome.’” *Arkansas Supreme Court Affirms FOIA’s Emphasis on Disclosure of Public Records*, PRISON LEGAL NEWS, May 15, 2013, <https://www.prisonlegalnews.org/news/2013/may/15/arkansas-supreme-court-affirms-foias-emphasis-on-disclosure-of-public-records/> (last visited Sept. 17, 2020); *Daugherty v. Jacksonville Police Dep’t*, 411 S.W.3d 196 (Ark. 2012). For example, when the plaintiff in *Daugherty* was cited for speeding, she made several FOIA requests of the police department. *Daugherty*, 411 S.W.3d at 196. The city attorney for Jacksonville, Arkansas initially demanded \$2,500 in copying fees, based on personnel costs. *Id.* After further wrangling, the attorney reported that the records had been purged after the standard 45-day retention period. *Id.* The Supreme Court reversed the trial court’s dismissal of the complaint and concluded that personnel costs effectively charge a taxpayer a second time for records already maintained at public expense. *Id.* Moreover, the Court concluded, a “burdensome” veto would allow public officials to dodge accountability. *Id.* See also Jordana D. Johnson, *Harris v. City of Ft. Smith: Arkansas Sunshine Clouds Over*, 59 ARK. L. REV. 147 (2006) (discussing another influential and multi-faceted *pro se* Arkansas FOIA prosecution, if with mixed results, *Harris v. City of Ft. Smith (Harris II)*, 197 S.W.3d 461 (Ark. 2004), *aff’g (Harris I)*, 158 S.W.3d 733 (Ark. Ct. App. 2004), *later appealed on other grounds (Harris III)*, 234 S.W.3d 875 (Ark. 2006)). Such state precedents may offer inspiration for the development of federal FOIA, notwithstanding implicitly biased estimations of the latter’s preeminence. These state precedents emerge from such humble beginnings: Partne Daugherty’s self-selected first name is “entrap” reversed, as a nod to her own criminal history. Max Brantley, *Partne Daugherty Denied Costs on Successful Appeal of Speeding Conviction*, ARK. TIMES (June 27, 2013), <https://arktimes.com/arkansas-blog/2013/06/27/partne-daugherty-denied-costs-on-successful-appeal-of-speeding-conviction> (last visited Sept. 17, 2020).

casebook on extra-federal freedom of information, *The Law of Access to Government*,²⁵ which, while certainly including chapters on the federal FOIA and national security, focuses principally on access norms across the states.

Professors Watkins, Steinbuch, and Peltz-Steele –along with many alumni of our classes and mentorship – have published scholarship on state access law and policy for decades. Steinbuch has a vibrant scholarship, and uses both qualitative and quantitative methods to seek accountability in public higher education.²⁶ He puts his energy where his pen is and has pursued litigation under the Arkansas FOIA for access to the public records that provide data in his research.²⁷ Peltz-Steele wrote authoritative articles on multistate-access norms, calling for extrapolation of Arkansas’s strong transparency tradition in the areas of court-record access²⁸ and executive-record retention.²⁹ Watkins’s groundbreaking scholarship³⁰ has contributed to the development of the rules of broad and narrow construction-of-access and exemption provisions. Additionally, Watkins litigated landmark Arkansas FOIA cases.³¹ Watkins led Arkansas into the electronic era as chair of the state’s transformative e-FOIA commission.³² Furthermore, Peltz-Steele and Steinbuch have worked closely with the Arkansas General Assembly and the Arkansas Freedom of Information Coalition in shaping every major FOIA initiative in the state for nearly 20 years.³³ Steinbuch now serves on the Arkansas FOIA Task Force,³⁴ a statutory body he assisted in the creation of in 2017, “for the purpose of reviewing, evaluating, and approving proposed amendments to the [Arkansas FOIA].”³⁵ We say all

²⁵ Richard J. Peltz-Steele, *Teaching Access, or Freedom of Information Law*, SSRN, (Sept. 23, 2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2329998.

²⁶ See generally Robert E. Steinbuch, *Looking Through the Class and What Alice Found There: A Frustrated Analysis of Law School Admissions Policies and Practices*, 14 SCHOLAR 61 (2011); Robert Steinbuch & Kim Love, *Color-Blind-Spot: The Intersection of Freedom of Information Law and Affirmative Action in Law School Admissions*, 20 Tex. Rev. L. & Pol. 1 (2016).

²⁷ See Richard H. Sander & Robert E. Steinbuch, *Mismatch and Bar Passage: A School-Specific Analysis*, UCLA SCH. L. PUB. L. Res. Paper No. 17-40, <https://ssrn.com/abstract=3054208>.

²⁸ Richard J. Peltz et. al., *The Arkansas Proposal on Access to Court Records: Upgrading the Common Law with Electronic Freedom of Information Norms*, 59 ARK. L. REV. 555 (2006).

²⁹ Richard J. Peltz, *Arkansas’s Public Records Retention Program: Finding the FOIA’s Absent Partner*, 28 U. ARK. LITTLE ROCK L. REV. 175 (2006).

³⁰ E.g., John J. Watkins, *The Arkansas Freedom of Information Act: Time for a Change*, 44 ARK. L. REV. 535 (1991); John J. Watkins, *Open Meetings Under the Arkansas Freedom of Information Act*, 38 ARK. L. REV. 268 (1984); John J. Watkins, *Access to Public Records Under the Arkansas Freedom of Information Act*, 37 ARK. L. REV. 741 (1984).

³¹ E.g., *Bryant v. Mars*, 830 S.W.2d 869 (Ark. 1992); *Scott v. Smith*, 728 S.W.2d 515 (Ark. 1987).

³² See *John Watkins*, UNIVERSITY OF ARKANSAS SCHOOL OF LAW, <https://law.uark.edu/directory/emeritus-profiles/profile-watkins.php>.

³³ See generally *Arkansas Freedom of Information Handbook* (19th ed. 2020), https://www.healthy.arkansas.gov/images/uploads/pdf/foia_handbook_19th_edition.pdf.

³⁴ *Professor Steinbuch Appointed to FOIA Task Force*, UNIV. OF ARK. AT LITTLE ROCK WILLIAM BOWEN SCH. OF L. (Jan. 10, 2019), <https://ualr.edu/law/2019/01/10/professor-steinbuch-appointed-to-foia-task-force/>.

³⁵ ARK. CODE ANN. § 25-19-111 (2017).

of this not to boast, nor to claim that we are unique among clusters of scholars working in the states; rather, we wish to demonstrate that scholars working in state FOIA are, in fact, *working*.

Transparency Deserts cites none of this work.

Often, quite unlike our elite law-school colleagues, state-FOIA scholars work without teaching fellows to disciple, research teams to build literature reviews, staffs to take on the burden of writing myriad distracting accreditation studies, strategic plans, and assessments (typically for the American Bar Association, whose accreditation requirements have more to do with economic protectionism than with the quality of legal education for law students), or marketing teams to disseminate our work product. Indeed, state-FOIA scholars have been *working* since the advent of state FOIAs in the 20th century and, through our scholarship and its application, have been making a difference at the state and local level for decades. We proffer, with conscious immodesty, that our cohort has been making people's lives better through transparency, and we have been making democracy functional through accountability, in countless ways, all of this time. *Transparency Deserts* – through its eponymous conclusion elaborated as an indictment of “poorly written transparency laws, deficiencies in the application of these laws, and weak civil society organizations”³⁶ that characterize some vast swath of America – is simply not credible when the article's author appears to be wholly unaware of what state-law scholars have actually accomplished.

Indeed, we conclude, based on our experience in Arkansas and with the FOIAs of various states, that the *federal* FOIA – far more than its state analogs, on the whole – is a model of poor drafting, dysfunctional application, and impotent civil society organizations, elite academia included among the latter. Indeed, the evidence does not support the conclusion that our experience at the state level is the exception to the rule. Koningisor's demonstrative, one-off study of Kansas does, indeed, look bleak. Yet, when we see in *Transparency Deserts* a failure to engage with the academic literature on state FOIAs, an over-reliance on the distant and ill-informed perspective of federal-FOIA experts opining on state FOIAs, and a Chicago publication born of coastal academia, we cannot see how the article's characterization of the states bears any significant relation to reality.

C. Academic Marginalization of State FOIA Work

We wish that Koningisor's myopia was an outlier, but Professor Peltz-Steele's career experience is illustrative of the broader, unfortunate marginalization of state FOIA research by federal FOIA researchers and national journals. In 2011, he moved from the University of Arkansas at Little Rock Law School to the University of Massachusetts Law School.³⁷ In Arkansas, Peltz-Steele had won the Arkansas Freedom of Information Award from the Arkansas Press Association, had been appointed to state access reform

³⁶ Koningisor, *supra* note 1, at 1547.

³⁷ See Richard Peltz-Steele, University of Massachusetts School of Law, <https://www.umassd.edu/directory/rpeltzsteele/>.

bodies in all three branches of Arkansas government, and had testified dozens of times on FOIA in the Arkansas General Assembly.³⁸ Yet when he moved to Massachusetts, Peltz-Steele resolved to limit involvement in state FOIA research beyond his ongoing obligations and turned down opportunities to comment on the Massachusetts FOIA. The reason was simple: while Peltz-Steele is proud of the work he did for the people of Arkansas, and Professor Steinbuch – amongst many others – believes that Peltz-Steele had a great and enduring impact on transparency and accountability in the state, work in Arkansas FOIA did very little to enhance, and in fact worked to marginalize, Peltz-Steele’s academic career and national reputation.

Peltz-Steele’s publications on court record access (co-authored with students) and on record retention, and his first “e-FOIA” chapter for *The Arkansas FOIA*’s fifth edition, available on SSRN since publication of the sixth edition,³⁹ marked the first articulations of many key concepts in contemporary electronic access and privacy in FOIA legal scholarship. These publications thoroughly articulated multistate policy norms, yet were almost never cited, even as like ideas turned up in the well circulated legal scholarship of coastal elites years later. One wonders at the extent to which “Arkansas” in the title, or publication in the Arkansas-based law reviews, was detrimental, even while serving the works’ public service aims. Peltz-Steele was torn between his personal and professional commitment to public service and his natural ambition to grow in his life’s work. He largely regarded state-FOIA research as a death sentence for the latter. Upon moving to Massachusetts, he pivoted in his FOIA work, turning to study access in foreign comparative law. That work has much more readily flowered in academic reputation and collaborations across borders.

Peltz-Steele’s experience provides striking evidence for a critical claim (and core thesis here) collateral to, yet distinctly different from, the thesis of *Transparency Deserts*. Had Koningisor openly concluded that *elite legal scholars have largely ignored transparency scholarship and scholars at the sub-federal level*, especially where “flyover” country is concerned – rather than contributing herself to that phenomenon – we would have agreed wholeheartedly. And to her credit, Koningisor does a superb job laying out the importance of state FOIAs and state FOIA scholarship, more crucial – we posit – than the federal FOIA in people’s daily lives, affecting, as it does, *inter alia*, local police, schools, and property. It’s a shame she suggests even this “discovery” to be novel, as Professor Steinbuch, for example, wrote in 2012:

State freedom of information acts are the superlaws of public scrutiny—allowing citizens insight into, and indirect oversight of, government activity. They have helped, albeit haltingly, to move governments away from cronyism

³⁸ *See id.*

³⁹ JOHN J. WATKINS & RICHARD J. PELTZ, THE ARKANSAS FREEDOM OF INFORMATION ACT, Arkansas Law Press (Oct. 10, 2010), <https://ssrn.com/abstract=1495802>.

and corruption and toward better serving the public they represent. While all state FOIAs differ in some way, at their core they all pursue one goal: more openness to the very citizens who fund government and to whom government is responsible and should be accountable. Of course, FOIAs have not come anywhere close to successfully achieving this goal. Moreover, their efficacy varies depending on the specific state statute and interpretation of it by courts. Although they are not the only weapon available in the public's arsenal, they remain the single best, albeit flawed, extant statutory tool for citizen checks on government abuse.⁴⁰

We equally subscribe to a corollary to the significant recognition of the importance of state FOIAs in the lives of Americans: privileged scholars' ignorance of, and failure to engage with, state-transparency scholarship itself gravely undermines American civic life.

D. We're Here, and We're Proud

We cannot, then, agree with the claim that “scholars have been curiously silent on transparency law issues at the subfederal level.”⁴¹ And we do not subscribe to the view that the states are “transparency deserts.” Perhaps Koningisor overlooked a life-sustaining chain of oases. Or maybe she stood at one dry bore hole in Kansas and, inexplicably, could not see a lush surrounding jungle. Either way, the characterization of “transparency deserts” smacks of the tourist who flies from New England to southern California, never to witness the vast diversity and earnest lives of Americans in the flourishing heartland below.

As far as we can tell, state-FOIA scholars do not invest in state-transparency research for accolades, nor for the approval of those who believe state law is unworthy of analysis. We certainly don't. Indeed, if either of us were ill content to serve in the ways we do, we know how to walk away. We have no such desire. But we cannot stomach the express declaration that the large cohort to which we happily belong does not exist.

On behalf of the many scholars toiling across the country in state-FOIA research, we proudly declare: We're here. We've been here all long. See for yourself:

⁴⁰ Robert E. Steinbuch, *Four Easy Pieces to Balance Privacy and Accountability in Public Higher Education: A Response to Wrongdoing Ranging from Petty Corruption to the Sandusky and Penn State Tragedy*, 46 LOY. L.A. L. REV. 163, 174 (2012) (footnotes omitted) (citing 50 state FOIAs and Adriana S. Cordis & Patrick L. Warren, *Sunshine as Disinfectant: The Effect of State Freedom of Information Act Laws on Public Corruption*, 115 J. PUB. ECON. 18 (April 18, 2014), <http://media.clemson.edu/economics/web/docs/Corruption/Cordis-Warren-Corruption.pdf>.) Neither Steinbuch nor Cordis and Warren are cited in *Transparency Deserts*.

⁴¹ Koningisor, *supra* note 1, at 1465.

Table 1: Selected Titles Evidencing Research on State FOIAs

The research referenced here is illustrative and not a complete bibliography. Furthermore, case notes and bar and trade journals have been omitted when they could be identified readily as such; white papers also are omitted. Those omissions are not to understate the vital contribution of those works, often scholarly equals to research published in academic journals, to the literature on state FOIAs. Rather, we seek to present the most conservative depiction of the wealth of state transparency-law sources available for researchers who want to find them. For more information about the composition of this table, see notes 16-17, *supra*.

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