



March 21, 2025

Via TrueFiling

The Honorable Patricia Guerrero, Chief Justice
and The Honorable Associate Justices of the
California Supreme Court
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Family Violence Appellate Project v. S.C. (The Legislature of the State of California)*, Supreme Court No. S288176

Dear Chief Justice Guerrero and Associate Justices:

On behalf of the Legislature of the State of California, I write in response to the Court's February 19, 2025 order deeming the Legislature the real party in interest in the above-captioned case and inviting it to file a return. The Legislature files this letter to explain why the Legislature is not a proper party to this case and should not be deemed the real party in interest. Instead, the Court could appoint or invite others to serve as amicus curiae in order to respond substantively to the petition.

I. The Legislature Is Not A Proper Party To The Case

The Court's order deeming the Legislature the real party in interest is unprecedented. The Legislature's only apparent connection to the case is that it passed the law at issue in the petition, which is true of virtually every petition challenging state law. The Legislature has found no reported case in which a California court has named the Legislature as a real party to defend a statute. To the contrary, the available case law and the principle of separation of powers dictate otherwise.

In *Serrano v. Priest* (1976) 18 Cal.3d 728, 752 (*Serrano*), this Court affirmed the trial court's refusal to join the Governor and Legislature as parties in a lawsuit that challenged public school financing laws and named as defendants various school superintendents and state and county officers. The defendants, including the State Treasurer, Superintendent of Public Instruction, Controller, and various county officials, argued that the

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Governor and Legislature were indispensable parties. The Court rejected the argument based on the “general and long-established rule that in actions for declaratory and injunctive relief challenging the constitutionality of state statutes, state officers with statewide administrative functions under the challenged statute are the proper parties defendant.” (*Id.* at pp. 751-752.) The Court explained that, despite the fact that the case involved statutes passed by the Legislature, it is the level of interest in the final outcome that determines the proper defendant, and that in cases challenging the constitutionality of a statute, the interest of the Legislature or Governor “is not of the immediacy and directness requisite to party status.” (*Id.* at p. 752.) The Court contrasted cases involving legislative redistricting, saying that “the fact that in the reapportionment context the Legislature and its members may also be considered proper parties stems from the direct institutional interest of those parties in the determination.” (*Ibid.*) In cases like this one, where the challenge is to a statute, the Court held that state and local agencies with “direct institutional interest” are the proper defendants. (*Ibid.*)¹

The *Serrano* Court also rejected the argument that failure to join the Legislature and the Governor “would deny [the] people who created this financing system through their elective representatives of their day in Court” (*Id.* at pp. 751-752.) Noting that the trial court “explicitly and properly refrained from issuing directives to the lawmakers and the chief executive,” the Court held that the interest of lawmakers concerned with the validity of statutes enacted by them may be “fully and adequately represented by the appropriate administrative officers of the state.” (*Id.* at p. 752.)

More recently, the First District Court of Appeal held that the State of California was not a proper defendant in a case challenging the jury demand fee imposed by Code of Civil Procedure section 631. (*Templo v. State of California* (2018) 24 Cal.App.5th 730, review denied Aug. 22, 2018)

¹ See also *State v. Superior Court* (1974) 12 Cal.3d 237, 255 (upholding order sustaining demurrer on ground that declaratory relief was not available against the State of California in case challenging constitutionality of California Coastal Zone Conservation Act, “as distinguished from the Commission acting as its agent.”).

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(*Templo*.) The plaintiffs argued that the fee was a tax under article XIII A, section 3 of the California Constitution and that they properly sued the State because section 3 requires the State to bear the burden of proof that the fee is not a tax. The Court of Appeal rejected the argument, saying that it is not “reasonable to require the State to defend all Proposition 26 cases.” (*Id.* at p. 738.) Instead, the court concluded that “it is the Judicial Council, and not the State as a whole, that has the ‘direct institutional interest’ necessary to defend the action.” (*Id.* at p. 737.)

Our research has found only one example in which this Court deemed a third party to be a real party in interest, absent any request to join that party to the litigation: *All Youth Detained in Juvenile Halls & Camps in Los Angeles County v. Juvenile Division* (Apr. 22, 2020, No. S261701) 2020 Cal. LEXIS 2853 (deeming the People of the State of California and the County of Los Angeles real parties in interest). However, as discussed more fully below, that case is distinguishable, especially because the Court requested and received a response from the Los Angeles District Attorney before naming any real parties in interest.

The only other instance we have found of a reviewing court appointing a real party is in *Gressett v. Superior Court* (2010) 185 Cal.App.4th 114, 117.² In that case, the petitioner, a criminal defendant, sought a writ of mandate after the Superior Court denied his request for a specific attorney to be his appointed counsel. The Court of Appeal, apparently *sua sponte*, determined that Contra Costa County was a real party in interest. (*Ibid.*)

In both of these cases, the named counties were proper real party defendants because the petitioners could obtain relief against them and because they are political subdivisions of the State charged with enforcing state law. That is not true of the Legislature in this case. Here, the named superior courts – and as in *Templo, supra*, 24 Cal.App.5th at p. 737, maybe the Judicial Council – are the proper parties to defend Government Code

² In *L.A. County Dep’t of Children Etc. Servs. v. Superior Court* (1998) 62 Cal.App.4th 1, the Court of Appeal stated that it deemed the couple whose adoption request was relevant as real parties, but it is unclear whether that occurred at the couple’s request.

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section 69957. We understand that respondents may decline to defend the statute, but it does not follow that the Legislature is the proper party to step in and fill that role. To the contrary, this approach raises real separation of powers concerns and, as we explain, may have grave consequences that seriously infringe on the Legislature’s authority as a coequal branch of government.

First, designating the Legislature as “the” real party in interest could imply that the Legislature must defend the statute on the merits or else concede its unconstitutionality. Yet, it is the courts’ role and duty to make the ultimate determination of the constitutionality of statutes, not the Legislature’s. Although the Court invited the Legislature to file a return, it has not made clear what the consequence would be if the Legislature declines. The Court’s order leaves the Legislature in the untenable position of setting precedent no matter what it does. If it defends the statute, the Legislature could be named real party in interest in other cases; if it declines, petitioners may argue that the Legislature concedes that the statute is unconstitutional.

Second, the Court’s decision to deem the Legislature to be the real party in interest in this action will encourage litigants and even lower courts to do the same. Just as the *Templo* court held it was not reasonable to expect the State to defend every case invoking Proposition 26, it would be even more unreasonable to expect the Legislature to defend every challenge to the constitutionality of a state statute. (*Templo, supra*, 24 Cal.App.5th at p. 738.) California has 29 statutory codes, many of which contain thousands of separate statutes. As explained by the Court in *Serrano*, the burden of defending those statutes should properly be spread among the state and local agencies charged with enforcing them, as it has throughout history. (*Serrano, supra*, 18 Cal.3d at p. 752.) It cannot and should not be borne by the Legislature itself.

Finally, the Legislature is not the proper real party in interest because the petitioners have not sought relief from the Legislature, and there is no relief the Court could compel the Legislature to provide. This is due to the “well-established principle, rooted in the doctrine of separation of powers (Cal. Const., art. III, § 3), that the courts may not order the Legislature or its

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members to enact or not to enact, or the Governor to sign or not to sign, specific legislation[.]” (*Serrano, supra*, 18 Cal.3d at p. 751.)

II. There Are Other Options Available To The Court In Order To Obtain Adversity In This Case

The Legislature appreciates that the named respondents in this action may decline to defend Government Code section 69957. However, that may not necessarily be the case; one or more of these entities might defend the constitutionality of the statute although they may disagree with it. If that were to happen, there would be sufficient adversity for the Court to decide the case. (*See, e.g., Golden Gate Bridge & Highway Dist. v. Felt* (1931) 214 Cal. 308, 316-317 [bridge district secretary adequately defended his refusal to sign bonds despite his personal desire that he be ordered to sign].)

If neither the respondent courts nor the Judicial Council is willing to defend Government Code section 69957, the Court may do what has often been done in the past and request that other persons or organizations appear as *amici curiae* to inform the Court’s decision and/or defend the statute. The following is a partial list showing how that practice has been used in other cases:

- *Center for Biological Diversity v. Department of Fish & Wildlife* (July 8, 2015, No. S217763) 2015 Cal. LEXIS 8316, at *1: Inviting the Attorney General “or an appropriate state agency to be identified by the Attorney General” to file an amicus brief.
- *Ennabe v. Manosa* (2014) 58 Cal.4th 697, 717: Inviting the Department of Alcoholic Beverage Control to brief statutory interpretation issues.
- *In re Garcia* (2014) 58 Cal.4th 440, 450: Inviting the California Attorney General and the Attorney General of the United States to participate as amicus.
- *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233: Inviting the Second District Court of Appeal to file an amicus brief.

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- *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 170: Noting that the Court of Appeal invited the California Public Utilities Commission to file an amicus brief.
- *Prang v. Los Angeles County Assessment Appeals Bd.* (2020) 58 Cal.App.5th 246, 252, fn. 1: Inviting the State Board of Equalization, the California Assessors Association, the California State Association of Counties, and others to file amicus briefs.³
- *Bianka M. v. Superior Court* (2018) 5 Cal.5th 1004, 1015, fn. 4: Inviting a practitioner to file an amicus brief in place of a respondent's brief when respondent did not file a brief.

We understand that several court reporters associations and the Service Employees International Union, which represents them, have filed an amicus letter in opposition to the Petition.⁴ Both the California Court Reporters Association and the Los Angeles County Court Reporters Association have challenged the use of electronic reporting in California courtrooms in the past and are familiar with the issue. (*California Court Reporters Assn. v. Judicial Council of California* (1995) 39 Cal.App.4th 15; *Los Angeles County Court Reporters Assn. v. Superior Court* (1995) 31 Cal.App.4th 403.) By filing their amicus letter, these organizations have indicated not only their willingness to participate in this matter but their desire to do so.

The Court need not rely on the court reporter organizations, however. Instead, it could request amicus participation from others similar to the examples above or do what the Supreme Court of the United States did in *Seila Law LLC v. Consumer Financial Protection Bureau* (2020) 591 U.S. 197, 209, where it said: “Because the Government agrees with

³ Register of Actions, *Jeffrey Prang, Los Angeles County Assessor v. Luis A. Amen et al.*, No. B298794 (Cal. Ct. App., May 21, 2020).

⁴ See Brian Joseph, *Court Reporters and the New Front In the War Over Electronic Recording* (Jan. 6, 2025) Capitol Weekly <<https://capitolweekly.net/court-reporters-and-the-new-front-in-the-war-over-electronic-recording/>>.

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Petitioner on the merits of the constitutional question, we appointed [former United States Solicitor General] Paul Clement to defend the judgment below as amicus curiae.”

For all of the reasons stated above, including core principles of separation of powers, the Legislature respectfully requests that the Court revoke its February 19, 2025 order deeming the Legislature the real party in interest in this case. Instead, the Legislature suggests that the Court invite or appoint other organizations to defend the statute.

Respectfully submitted,

OLSON REMCHO, LLP



Robin B. Johansen
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of the State of California

RBJ:NL

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 1901 Harrison Street, Suite 1550, Oakland, CA 94612.

On March 21, 2025, I served a true copy of the following document(s):

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I declare, under penalty of perjury, that the foregoing is true and correct. Executed on March 21, 2025, in Gardnerville, Nevada.

Nina Leathley

Nina Leathley

(2,060,647)

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S288176**

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3/21/2025

Date

/s/Nina Leathley

Signature

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