No. S288176

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

FAMILY VIOLENCE APPELLATE PROJECT and BAY AREA LEGAL AID,

Petitioners,

vs.

SUPERIOR COURTS OF CALIFORNIA, COUNTIES OF CONTRA COSTA, LOS ANGELES, SANTA CLARA, and SAN DIEGO,

Respondents.

LEGISLATURE OF THE STATE OF CALIFORNIA,

Real Party In Interest.

PETITIONERS' REPLY TO RETURNS OF RESPONDENT COURTS AND THE LEGISLATURE

Service on Attorney General required by Cal. Rules of Court, rule 8.29(c)

*Sonya D. Winner (SBN 200348)
Ellen Y. Choi (SBN 326291)
Bryanna Walker (SBN 345454)
Eva Dorrough (SBN 358449)
COVINGTON & BURLING LLP
415 Mission Street, Suite 5400
San Francisco, CA 94105
Telephone: (415) 591-6000
Fax: (415) 591-6091
swinner@cov.com
echoi@cov.com
bwalker@cov.com
edorrough@cov.com

*Sarah Reisman (SBN 294393)
Katelyn Rowe (SBN 318386)
Erica Embree Ettinger (SBN 321865)
COMMUNITY LEGAL AID SOCAL
2101 North Tustin Avenue
Santa Ana, CA 92705
Telephone: (714) 571-5200
Fax: (657) 261-8802
sreisman@clsocal.org
krowe@clsocal.org
eettinger@clsocal.org

Counsel for Petitioner Family Violence Appellate Project

[*Additional Counsel listed on next page*]

Jacob Pagano (SBN 352962)
COVINGTON & BURLING LLP
1999 Avenue of the Stars
Los Angeles, CA 90067
Telephone: (424) 332-4800
Fax: (424) 332-4749
jpagano@cov.com

Counsel for Petitioner Family Violence Appellate Project

*Brenda Star Adams (SBN 248746)
Jessica Wcislo (SBN 343058)
BAY AREA LEGAL AID
1735 Telegraph Avenue
Oakland, CA 94612
Telephone: (510) 663-4744
Fax: (510) 663-4740
badams@baylegal.org
jwcislo@baylegal.org

Counsel for Petitioner Bay Area Legal Aid

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I. INTRODUCTION

Pursuant to this Court's Order to Show Cause issued on February 19, 2025, Petitioners Family Violence Appellate Project ("FVAP") and Bay Area Legal Aid ("BayLegal") submit this Reply in response to the Returns filed on March 21, 2025, by the four respondent courts named in the Petition ("Respondent Courts" or "Respondents") and the Legislature.[1]

Neither of the Returns offers a demurrer or verified answer or otherwise disputes the core facts presented in the Petition. This is unsurprising, as those facts are well-known and beyond reasonable dispute.

Also absent from either Return is significant disagreement with the core *legal* showings of the Petition. The Respondent Courts' Return largely incorporates by reference those courts' General Orders (one of which was issued after the Petition was filed), stating that those orders "speak for themselves." (RCR at p. 7.) The orders do speak for themselves on the multiple respects in which they confirm the facts and conclusions set out in the Petition. But they offer no explanation, much less justification, for the relatively narrow relief they provide. This Reply will explain why that relief is insufficient to address what the Respondent Courts recognize as a profound constitutional crisis.

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[1] The Respondent Courts responded to the Order to Show Cause in the form of a brief; the Legislature submitted a letter. For the sake of simplicity, both submissions are referred to herein as "Returns." The Respondent Courts' Return is cited herein as "RCR," while the Legislature's Return is cited as "LR."

The Legislature, which this Court's Order to Show Cause "deem[s] the real party in interest," dedicates its Return to arguing that this designation was in error and that the Legislature should not be expected to express any views on the Petition. The Order to Show Cause merely "invited" the Legislature to file a Return; it did not mandate that it do so. The Legislature was therefore within its rights in choosing not to respond substantively, although, as discussed below, its arguments for why any such response would be objectively improper or unprecedented are not well taken.

Significantly, neither Return suggests that this Court should refrain from deciding this case on the merits. The Respondent Courts affirmatively emphasize the need for this Court to offer guidance to the lower courts on the important constitutional issues the Petition raises. (See RCR at pp. 4, 5, 8.) And the Legislature's Return, although declining to state a position on the merits, also implicitly recognizes the importance of the issues presented, even going so far as to urge the Court to appoint a third party to address those issues if adequate briefing is not otherwise presented. (LR at pp. 5-7.) Subsequent filings by multiple amici – to which Petitioners will respond separately as provided in rule 8.487(e)(6) of the California Rules of Court – should render that suggestion moot.

II. RESPONSE TO RESPONDENT COURTS' RETURN

The four Respondent Courts – the Superior Courts for the Counties of Contra Costa ("CCSC"), Los Angeles ("LASC"), Santa Clara ("SCSC") and San Diego ("SDSC") – filed a joint Return to

the Order to Show Cause. Most of that Return's substantive response is offered indirectly through incorporation by reference of Respondents' General Orders. (See RCR at pp. 6-7.) The factual findings and legal conclusions of those General Orders are consistent with the Petition.[2] Where they primarily diverge is in the relief provided in the General Orders, which has critical limitations making it inadequate to address the constitutional issues presented.

Petitioners respectfully disagree with Respondents' suggestion that they are constrained by precedent mandating that courts named as respondents in a writ proceeding should remain neutral and respond on the merits only when "'the issue involved directly impact[s] the operations and procedures of the court ...." (*Id.* at p. 6 [quoting *James G. v. Superior Court* (2000) 80 Cal.App.4th 275, 280].) It is difficult to imagine a writ proceeding that more broadly affects court operations and procedures than this one, as the General Orders make clear. And this is not the typical writ proceeding arising from litigation between private parties to whom briefing of the issues is properly deferred. (See *James G.*, *supra*, 80 Cal.App.4th at p. 280.) Be that as it may, the General Orders "speak for themselves" (RCR at p. 7), and insofar as Respondents' Return presents no answers to the troubling limitations in the General Orders that

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[2] The failure of a party responding to a writ to dispute facts set out in the Petition through a properly submitted demurrer or answer ordinarily leads the reviewing court to "accept all factual allegations in the petition as true." (*Titmas v. Superior Court* (2001) 87 Cal.App.4th 738, 741; see *Shaffer v. Superior Court* (1995) 33 Cal.App.4th 993, 996, fn. 2.)

Petitioners have identified, this Court may properly conclude that they have none to offer.

The operational concerns that are briefly discussed in the Respondent Courts' Return (relating to availability of recording equipment and determination of financial eligibility) do not provide a basis for limiting the relief sought by the Petition. Both address matters that Respondents are already required to manage, and neither is identified as a limiting factor in their General Orders.

A. Respondents' General Orders Properly Recognize a Profound Constitutional Crisis in California Courts but Do Not Offer Relief Adequate to Address It.

Three of the four Respondent Courts have issued General Orders addressing the constitutional crisis addressed in the Petition.[3] The three orders are substantially similar to one another. Each sets forth pertinent facts about the unavailability of court reporters in the issuing court and the resulting impact on litigants, with citation to an accompanying declaration of a court official and other evidence. Each offers essentially the same analysis of the constitutional issues the court is confronting and concludes with a directive that courtroom personnel use

[3] The LASC and SCSC General Orders appear respectively at pp. 212 and 464 of the Appendix to the Petition. The CCSC General Order was issued on December 30, 2024, after the Petition was filed. Footnote 1 of the Respondent Courts' Return provides a hyperlink to the CCSC General Order and contends that it is a proper subject of judicial notice. Petitioners agree, and citations to that order herein are to the internal page numbers of the CCSC General Order available at that link ("CCSC General Order").

electronic recording equipment to provide verbatim recordings of certain types of proceedings if the judicial officer directs them to do so based on findings made on six specified factors.[4]

The fourth Respondent, SDSC, has not issued a similar General Order. However, nothing in the Return indicates that SDSC disagrees with any of the findings or conclusions of the other courts' orders. Nor do Respondents dispute the facts presented in the Petition and its supporting Appendix concerning the experience of low-income litigants in SDSC.

Paragraphs 58-59 of the Petition discuss why the General Orders, although representing an important step toward addressing the serious constitutional crisis they describe, fail to provide the relief necessary to address that crisis. Although acknowledging that the Petition offers such criticisms (RCR at p. 5), Respondents' Return makes no effort to respond to them.

Petitioners recognize the challenges the Respondent Courts faced in crafting the General Orders, which represented an extraordinary step toward addressing an acute and unique constitutional crisis. But this Court can and should do more.

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[4] The only material difference in the ordering paragraphs is that the LASC and CCSC General Orders are limited to family, probate, and unlimited civil matters, whereas the SCSC General Order also applies to criminal felony matters. (Electronic recording is already permitted by statute in limited civil, misdemeanor, and infraction matters. (Gov. Code, § 69957, subd. (a).)) The relief sought in this Petition does not address criminal matters; Petitioners accordingly take no position on the application of the SCSC General Order to felony cases.

1. Respondents Agree with Most of the Facts and Legal Conclusions Presented in the Petition.

Respondents' Return does not dispute the facts on which the Petition relies. It could hardly do so, as the General Orders, backed up by sworn declarations from court officials and other evidence, rely on those same facts. These core facts are a matter of public record and not subject to reasonable dispute in any event. The parties are similarly in agreement on many key legal conclusions.

Among the points of agreement are:

- There is a constitutional crisis arising from the unavailability of court reporters in the Respondent Courts and the statutory bar on electronic recording in most types of civil cases. (RCR at p. 5.)[5]

- The crisis exists, and requires remediation, regardless of any question of its cause. (*Id.* at pp. 4-5.) No matter what reasons may exist for the absence of court reporters in family, probate, and civil departments, they ***are*** endemically absent, and thousands of hearings are going forward in those courtrooms every day with no verbatim recording.[6]

- The absence of verbatim recording has a severe impact on low-income litigants' rights and access to justice, as they cannot afford to pay the cost of a private court reporter.[7]

- Even if someone could be identified as being "at fault" for the situation, that "someone" is not the low-income litigants

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[5] See also Appx. 217 (LASC General Order); Appx. 470 (SCSC General Order); CCSC General Order at pp. 2, 11.

[6] Appx. 212-213 (LASC General Order); Appx. 465-466 (SCSC General Order); CCSC General Order at pp. 4-5.

[7] Appx. 217 (LASC General Order); Appx. 470 (SCSC General Order); CCSC General Order at p. 6.

whose access to justice is being compromised on a daily basis, both in the trial courts themselves and at the appellate level. As Respondents succinctly put it: those litigants are the "[m]ost faultless of all." (*Id.* at p. 5.)

- There is no constitutional, statutory, or other legal or ethical basis for depriving low-income litigants of the same access to justice that is provided to litigants who can afford the cost of a private court reporter.[8]

- Electronic recording can be used for most, if not all, of the purposes for which verbatim recording is needed. Regardless of whether electronic recording is inferior to, superior to, or the same as recording by a certified shorthand reporter, it is unquestionably superior to no verbatim recording at all.[9]

- Electronic recording equipment is widely available in Respondents' courtrooms.[10]

In short, Respondents agree that (a) there is an acute and widespread constitutional crisis in the California courts, affecting thousands of litigants every day; (b) a solution exists in the form of electronic recording for most situations where a court reporter is unavailable; and (c) the only material barrier to implementing that solution is Government Code section 69957 ("Section 69957").

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[8] Appx. 215, 230 (LASC General Order); Appx. 468, 483-484 (SCSC General Order); CCSC General Order at pp. 5-6.

[9] Appx. 214 (LASC General Order); Appx. 467 (SCSC General Order); CCSC General Order at p. 5.

[10] Appx. 234 (LASC General Order); CCSC General Order at pp. 5, 11; see also Appx. 178 (SDSC Executive Officer Michael M. Roddy, letter to Ellen Choi, Aug. 9, 2024).

Most important of all, Respondents agree that "[t]he Petition presents important matters on which statewide action and this Court's guidance are urgently needed." (RCR at p. 8.)[11]

2. The Limited Relief Granted in the General Orders Is Insufficient.

Respondents' Return does not argue that the status quo as it currently exists in SDSC – or as it existed in the other Respondent Courts before entry of their General Orders – satisfies those courts' constitutional responsibilities. The General Orders affirmatively find to the contrary.[12] Significantly, however, none of the General Orders states that it offers a full and adequate remedy. Respondents' Return is also silent on that point. (See *id.* at p. 5 [noting, but not responding to, Petitioners' contentions that the orders do not go far enough].) Rather, Respondents simply urge this Court to give them and other courts proper "guidance." (*Id.* at pp. 4, 8.) Petitioners urge the Court to provide that guidance in the terms set out in the Petition.

Each of the General Orders establishes essentially the same process through which electronic recording may be used notwithstanding the restrictions of Section 69957. Deputy clerks are directed to electronically record proceedings when instructed to do so by the judge based on findings made on six factors (which

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[11] Although Respondents' Return does not respond to Petitioners' separation of powers analysis, it acknowledges that Respondents issued their General Orders "in response to the constitutional rights and core powers that were implicated." (RCR at p. 4.)

[12] See e.g., Appx. 228-229 (LASC General Order); Appx. 482-483 (SCSC General Order); CCSC General Order at pp. 10-11.

are discussed in turn in the subsections below). (Appx. 230-231 [LASC General Order]; Appx. 484-485 [SCSC General Order]; CCSC General Order at p. 13.)

The General Orders make clear that their implementation is left to the discretion of the judge in each proceeding.[13] None of the General Orders requires or even encourages the judge (or anyone else) to ask the parties – including unrepresented parties – whether the General Order should be invoked; judges are free to ignore the subject if no party raises it. And a judge's determination under the General Order is effectively unreviewable, because there is no requirement that a verbatim recording (or any record) be made to document the showings made on the six factors or the court's findings.[14]

Petitioners continue to applaud the Respondent Courts for taking an important step toward addressing this constitutional crisis. And if this Court is disinclined to grant the full relief sought in the Petition, it should certainly not direct Respondents to step backward and return to providing no verbatim recording for cases covered by the General Orders. But to grant true relief for the pervasive crisis that exists in California courts, more is needed.

For the reasons explained below, the General Orders' six-factor "test" fails to give proper effect to the rights of low-income

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[13] See Appx. 223 (LASC General Order); Appx. 476 (SCSC General Order); CCSC General Order at p. 2.

[14] Petitioners understand that some judges are including reference to the subject in their minute orders, but this is not required by any of the General Orders.

litigants. Most of the factors the General Orders direct judges to consider should be irrelevant. The only two factors that should be considered are (a) the unavailability of a court-employed court reporter and (b) the litigant's inability to pay a private court reporter. These two factors are addressed in the simpler and more straightforward prayer for relief set out in Paragraph 63 of the Petition.

a) Relief Should Not Be Limited to Matters Implicating "Fundamental Rights and Liberties."

Each of the General Orders permits electronic recording to be provided to low-income litigants only for "matters that implicate fundamental rights or liberty rights as described herein." (E.g., Appx. 230 [LASC General Order].) Notably, nothing in the General Orders (or in Respondents' Return) offers a principled basis for this limitation.

Petitioners agree that verbatim recording must be freely available to low-income litigants in cases involving fundamental rights and liberties, including those described in the General Orders. But as the Petition makes clear, the right of low-income litigants to verbatim recordings exists across the board, regardless of the subject matter of the litigation. This right corresponds with courts' duty to facilitate equal access to justice. (See Petition at pp. 53-56.)

This Court's landmark decision in *Jameson* confirmed that courts have a "judicial dut[y]" to provide verbatim recordings free of charge to low-income litigants who cannot afford to pay for a private court reporter. (*Jameson v. Desta* (2018) 5 Cal.5th 594,

622-623.) Nothing in *Jameson* suggests that this duty is limited to cases implicating fundamental rights and liberties. To the contrary, *Jameson* itself was a medical malpractice case. (*Id.* at pp. 599-600.) This kind of bread-and-butter claim is the regular business of unlimited civil departments, and *Jameson* plainly contemplates that the rights it recognizes apply uniformly.

Subsequent decisions applying *Jameson* also similarly confirmed its application to civil claims not involving "fundamental rights." (See *Davis v. Superior Court* (2020) 50 Cal.App.5th 607, 616 [finding *Jameson* violation in hearing on motion to quash order to attend judgment debtor examination]; *Dogan v. Comanche Hills Apartments, Inc*. (2019) 31 Cal.App.5th 566, 570 [finding *Jameson* violation in personal injury and premises liability action].) Thus, a remedy limited to cases involving "fundamental rights" would fall far short of bringing Respondents into compliance with *Jameson*.

The General Orders' focus on "fundamental rights and liberties" is also problematic because the terms do not have a fixed meaning. The General Orders offer examples of matters that Respondents see as involving fundamental rights and liberties. (See, e.g., Appx. 228 [LASC General Order] [recognizing "fundamental interests protected by the due process clauses in court proceedings involving the status of [litigants'] marriage, the parentage and custody of their children, certain conservatorship and guardianship matters, their rights under

restraining orders, and civil contempt proceedings"].)[15] But it is unclear whether the categories identified are intended to be exhaustive; if not, no objective standard is identified for determining which other types of matters qualify.[16]

There is no question that the examples in the General Orders exclude many rights and liberties commonly accepted as "fundamental." These include (among others) suits against government entities to vindicate rights of free speech and free association, the right to vote, and other rights and liberties recognized in the U.S. and California Constitutions. (See *NAACP v. Alabama* (1958) 357 U.S. 449, 460; *Dunn v. Blumstein* (1972) 405 U.S. 330, 336.) Also unmentioned in the General Orders are claims against both public and private parties seeking to

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[15] See also Appx. 482 (SCSC General Order) (same as LASC list with addition of "[f]elony defendants"); CCSC General Order at p. 10 (same as LASC General Order with addition of "family contempt" proceedings).

[16] Adding to the confusion, some examples of "fundamental" rights offered in the General Orders are matters that courts have declined to treat as "fundamental" in other contexts. For example, the General Orders include child custody determinations among the types of proceedings involving fundamental rights (e.g., Appx. 224-225 [LASC General Order]), but in the equal protection context that designation has been given only to proceedings to terminate parental rights. (See *Santosky v. Kramer* (1982) 455 U.S. 745, 754.) It has not been applied to custody disputes between parents. (*Enrique M. v. Angelina V.* (2009) 174 Cal.App.4th 1148, 1155-1156 [explaining that California appellate courts, including the Supreme Court, routinely review custody and visitation orders between parents and no court has ever determined that these cases involve a fundamental right].) Thus, although custody disputes between parents are among the most important issues litigants may face in their lifetimes (see *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1366), they do not involve "fundamental rights" under current California law. This makes the reference to them in the General Orders confusing.

vindicate the right to privacy, which is also explicitly enshrined in the California Constitution. (Cal. Const., art. I, § 1.)

As the General Orders recognize (e.g., Appx. 222 [LASC General Order]), even if a plaintiff's claim does not itself invoke fundamental rights, such rights may nonetheless be implicated in the impact on a defendant of an adverse judgment or order. For example, a domestic violence restraining order typically imposes restrictions on the rights of the respondent to speak to or associate with protected parties and sometimes also their family members, employers, or others. These restrictions can have significant implications for First Amendment rights. (*In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416, 1427-1431 [discussing potential for restraining order to infringe respondent's right to free speech].) Such orders also restrict a respondent's ability to exercise rights protected by the Second Amendment to the U.S. Constitution. (*United States v. Rahimi* (2024) 602 U.S. 680, 690.)

The artificiality of the General Orders' focus on "fundamental rights" can be seen in the fact that they classify domestic violence restraining orders as involving fundamental rights ***not*** because of the importance of such orders to the protected parties – for whom the orders may literally be a matter of life and death – but rather only because the First and Second Amendment rights of respondents may be implicated. The latter are certainly important, but they do not enjoy precedence over the former. (See *id.* [confirming that domestic violence

restraining orders may permissibly limit the right to bear arms, which is otherwise "fundamental"].)

Much of the litigation occurring in unlimited civil, family, and probate departments – but excluded from the General Orders – involves interests that, even if not afforded "fundamental" status in constitutional terms, are nonetheless vital, and for which inadequate and unequal access to justice is a major constitutional problem. For example, if persons are wrongfully denied public benefits or otherwise wish to challenge government actions (or inactions) affecting their interests, they can file civil writ actions pursuant to Code of Civil Procedure sections 1094.5 and 1085. Such petitions address a wide variety of critical issues, including access to public financial assistance programs, housing, licensing, and education.[17] Even if the subject matter of these proceedings is not considered "fundamental" in constitutional terms, there are vital interests at stake.

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[17] See Cal. Judges Benchbook: Civil Proceedings After Trial (CJER 2024) Other Writ Proceedings in Superior Court, § 5.2 ("Judicial review of most public agency decisions is obtained by a proceeding in the superior court for a writ of ordinary or traditional mandate under CCP § 1085 or a writ of administrative mandamus under CCP § 1094.5."). See also, e.g., Welf. & Inst. Code, § 10962 (recipients of public social services, including MediCal, CalWorks, or CalFresh, may appeal agency's decision via § 1094.5 petition); *Mosser Cos. v. San Francisco Rent Stabilization & Arbitration Bd.* (2015) 233 Cal.App.4th 505, 508 (reviewing a trial court's denial of a landlord's § 1094.5 petition to overturn rent board prohibition of a rent increase); *Nathan G. v. Clovis Unified School Dist.* (2014) 224 Cal.App.4th 1393, 1396 (review of § 1094.5 petition challenging a school district's decision to involuntarily transfer a student); *Ramirez v. Dept. of Motor Vehicles* (2023) 88 Cal.App.5th 1313, 1317 (review of § 1094.5 petition to overturn suspension of a driver's license).

Another example is family law cases involving disputes over child custody and spousal and child support. These interests are not deemed "fundamental" under California law, but they are nonetheless among the most important issues the litigants may face in their lifetimes. (*Elkins*, *supra*, 41 Cal.4th at p. 1366 [recognizing domestic relations litigation as "one of the most important and sensitive tasks a judge faces"] [quoting *In re Marriage of Brantner* (1977) 67 Cal.App.3d 416, 422].) And although nothing in the General Orders recognizes the right of a low-income litigant to verbatim recording in a discrimination case brought under the Unruh Civil Rights Act or other antidiscrimination laws, those cases often involve litigants' access to employment, housing, and other critical necessities of life. (See Civ. Code, § 51.)

Ultimately, the line that the General Orders draw is at odds with this Court's constitutional jurisprudence. Procedural due process under the California Constitution is "'much more inclusive' and protects a broader range of interests than under the federal Constitution. [Citations.]" (*Ryan v. California Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1069.) "[W]hen an individual is subjected to deprivatory governmental action, he ***always*** has a due process liberty interest both in fair and unprejudiced decision-making and in being treated with respect and dignity." (*People v. Ramirez* (1979) 25 Cal.3d 260, 268 [emphasis added]; see Petition at pp. 60-65.) And insofar as verbatim recording is necessary to

provide meaningful due process, all litigants must receive this critical procedural safeguard.

The Equal Protection Clause, to be sure, applies a heightened standard when fundamental rights are at stake.[18] But in all cases the unequal treatment of individuals must be supported by ***at least*** some kind of rational basis. (*People v. Hardin* (2024) 15 Cal.5th 834, 852.) Respondents' General Orders find a violation of the heightened "strict scrutiny" standard where the application of Section 69957 deprives low-income litigants of verbatim recording in cases involving fundamental rights, but they also admit an inability to discern "**any** valid justification for depriving litigants of a verbatim record when a technological means for doing so exists."[19] There is none, and the unequal treatment of low-income litigants violates equal protection under either standard. (See Petition at pp. 67-72.)

Finally, even if *Jameson* and the California Constitution permitted a line to be drawn deeming only some cases important enough to merit the verbatim recording needed for equal access to justice – and they do not – there is no administratively feasible way to reliably draw that line. Unless relief was limited to the specific types of matters mentioned in the General Orders (which

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[18] See Petition at pp. 67-72. The General Orders' legal analysis is presented largely in Equal Protection terms, although they also make reference to Due Process considerations.

[19] Appx. 468 (SCSC General Order) (emphasis added); see also *id.* 484 ("[J]udicial officers in [SCSC] have conducted hearings in which section 69957 has failed strict scrutiny and might indeed fail even lower levels of scrutiny."); Appx. 215 (LASC General Order); CCSC General Order at p. 6.

provide an incomplete catalog of "fundamental" rights and liberties under any definition), the trial court judge would have no ready basis to determine what matters qualify. And the judge would need to have deep knowledge of the issues in the case and the ramifications for all parties to be able to assess fully the scope of interests involved. Yet the "finding" the General Orders require must be made in advance of the hearing. In essence, the trial court judge would often have to begin with a mini-trial on the issues just to determine whether the hearing itself needed to be recorded.

b) There Should Be No Threshold Requirement of a "Request."

The second factor listed in each of the General Orders is a required finding that "one or more parties wishes to have the possibility of creating a verbatim transcript of the proceeding." (E.g., Appx. 231 [LASC General Order]). This factor appears to reflect a presumption ***against*** verbatim recording, triggering the right only if a party makes an affirmative request. No burden is imposed on the trial judge even to ***ask*** the parties if they want a verbatim recording.

Verbatim recording is not a special service that is properly made available only upon request. Rather, as the Petition makes clear, it is an integral element of a judicial proceeding that is necessary both for the operations of the trial court and for purposes of appeal.[20]

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[20] *Jameson* does refer to the need to make verbatim recording available "upon request," but the logic of the Court's opinion did (continued…)

As the Petition demonstrates, the trial courts do little affirmatively to inform low-income litigants, the majority of whom lack legal counsel (Petition ¶ 20 & fn.16), that they are entitled to verbatim recordings under *Jameson*. (*Id.* ¶ 49.) Litigants who do learn of their *Jameson* rights and want to assert them are often subject to special notice requirements and must submit extra forms, presenting yet another layer to navigate in an already-daunting procedural labyrinth.[21]

The burden this imposes on low-income litigants is increased by the fact that they are very often self-represented. (See Petition ¶ 22 & fn.16.) Legal aid organizations and other sources of free or low-cost legal representation are able to serve only a small fraction of the low-income population.[22] The remainder are left to fend for themselves.

It is well accepted that courts have an affirmative obligation to assist self-represented litigants in pursuing their

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not suggest that a formal, unprompted request was a prerequisite to the right the Court recognized. (*Jameson*, *supra*, 5 Cal.5th at p. 600.) To the contrary, there was a dispute in that case about whether the plaintiff had requested a court reporter, and the Court's response was to criticize the trial court for failing to "inquire[] whether plaintiff desired the presence of an official court reporter." (*Id.* at p. 601, fn. 4.)

[21] Some of these requirements may have been unavoidably necessary in the past to allow courts that were short-staffed with court reporters – but still had enough to respond reliably to *Jameson* requests – to know which courtrooms would need to be covered for litigants with *Jameson* rights. The same need for advance notice should not exist for electronic recording, given the widespread installation of electronic recording equipment in Respondents' courtrooms. (See Petition ¶ 52.)

[22] See Petition ¶ 15; Appx. 1007, 1054 (Legal Services Corporation, The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans (Apr. 2022)).

rights. (See *In re Marriage of D.S. & A.S.* (2023) 87 Cal.App.5th 926, 935 [judges cannot rely on self-represented litigants to protect their due process rights]; *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284 ["Trial judges must acknowledge that in propria persona litigants often do not have an attorney's level of knowledge about the legal system and are more prone to misunderstanding the court's requirements."].) Given the irreparable damage to a litigant who lacks access to a verbatim recording of a proceeding (see Petition ¶¶ 19-29), there should be no presumption that verbatim recording is required only if the litigant knows to ask for one and is able to jump through procedural hoops to make a request.

c) Relief Is Properly Based on the Unavailability of a Court-employed Court Reporter to Record the Proceeding.

Each of the General Orders appropriately requires a finding that "no official court-employed [court reporter] is reasonably available to report the proceeding." (E.g., Appx. 231 [LASC General Order].) This is one of only two "findings" that are properly required to make verbatim recording available through electronic means. (See Petition ¶ 63.) If a court reporter is available to record the proceeding, there is no need to deviate from the statutory preference for court reporters. (*Id.* at p. 60.)

That said, this limitation should apply only if a court reporter is genuinely ***available*** – i.e., physically present in the courtroom (or, in those limited circumstances where it is permitted, connected remotely on a live basis) and able to record

the proceeding at the scheduled time. The right of a litigant to verbatim recording cannot be undermined based on an abstract question of whether a court reporter ***might*** have been available hypothetically if the court had made different choices about where to deploy its court reporter staff or had applied different measures to hire and maintain a larger staff to begin with. If a court acts wrongfully in making such choices, it can be called to account in a variety of ways, but the response cannot be to deprive innocent low-income litigants of equal access to justice.

d) Electronic Recording Should Be Available to Litigants Who Are Unable to Afford a Private Court Reporter.

Each of the General Orders requires a finding that the party requesting verbatim recording "has been unable to secure the presence of a private [court reporter] to report the proceeding because such [court reporter] was not reasonably available or on account of that party's reasonable inability to pay." (E.g., Appx. 231 [LASC General Order].) The General Orders' limitation based on a litigant's "reasonable inability to pay" appears to be largely the same as that set out in the Petition. (See Petition ¶ 7, fn. 1 & ¶ 63.) But Footnote 2 to Respondents' Return suggests that some disparity could exist.

The General Orders do not identify any administrability concerns with determining if a litigant is reasonably unable to pay for a private court reporter, and Respondents' Return does not assert any facts suggesting that they have experienced any

difficulties on this point since the General Orders went into effect.

Evaluation of ability to pay is a task superior courts routinely perform in a wide variety of contexts. (See, e.g., Gov. Code, § 68632, subd. (c) [requiring waiver of court fees for "[a]n applicant who, as individually determined by the court, cannot pay court fees without using moneys that normally would pay for the common necessaries of life for the applicant and the applicant's family"]; *People v. Dueñas* (2019) 30 Cal.App.5th 1157, 1168-1169 [courts cannot assess administrative fees against criminal defendants who do not have the ability to pay]; Veh. Code, § 42003, subd. (c) [courts required to determine ability to pay when imposing fines for vehicle code infractions]; Fam. Code, § 3153, subd. (b) [court determines whether parties together are financially unable to pay for part or all of minor's counsel compensation, and the portion they are unable to pay shall be paid by the county]; Fam. Code, § 3112, subd. (a) [court shall inquire and determine if parties are able reimburse court for all or part of fees for child custody evaluation investigation and report].)

Respondents' Return suggests that "[i]f the remedy is crafted in terms of inability to pay—rather than, say, the inability to secure a court reporter—considerations of administrability may counsel in favor of using the existing *Jameson* framework to define the class of litigants at issue." (RCR at p. 7, fn. 2.) But the "existing *Jameson* framework" as actually applied in the superior courts today is inadequate in

important respects. Among other things, a significant gap exists between the eligibility standard recognized in *Jameson* and the way that standard has been implemented in the lower courts. This is particularly important given the dramatically higher costs that are at issue in considering a litigant's ability to afford the cost of a private court reporter.

In *Jameson*, this Court adopted as a reference point for determining a litigant's right to free verbatim recording the statutory test for entitlement to a fee waiver under Government Code section 68630 et seq. (*Jameson*, *supra*, 5 Cal.5th at p. 599.) Although the Court described its holding as applying to litigants "who are ***entitled*** *to* a waiver" (*ibid.* [emphasis added]), the lower courts typically require a litigant to have applied for and ***received*** a fee waiver in order to be eligible to request a court-appointed court reporter. (See, e.g., Judicial Council Forms, form FW-020, "Request for Court Reporter ***by Party with Fee Waiver***" [emphasis added].) While many low-income litigants will already have received a fee waiver by the time the need for verbatim recording of a hearing arises, others will not. For example, a party who files a petition for a domestic violence restraining order or opposes a petition for appointment of a conservator is not charged a fee.[23] Such a litigant may therefore have no fee waiver already in place when the need arises for verbatim recording of a hearing. Other litigants, particularly

[23] See Statewide Civil Fee Schedule (effective January 1, 2024) ("Civil Fee Schedule") at pp. 7, 8.

those who are self-represented, may even be initially unaware of their entitlement to a fee waiver.

Moreover, there may be situations in which a litigant is not entitled to a fee waiver at the outset of a case or a negative fee waiver determination is appropriately revisited if and when court reporter costs become at issue. A litigant may not need to dip into funds required for the "common necessaries of life" to pay a $450 filing fee but might have to compromise those resources in order to afford more than $3000 per day for a court reporter. (See Gov. Code, § 68632, subd. (c).) Even the cost of recording a one-day hearing – much less a trial lasting several days – will be well outside the means of many litigants who can scrape together enough to cover an initial filing fee.

Relatedly, the "*Jameson* framework," as it is currently implemented in the trial courts, often gives too little attention to measures of ability to pay that go beyond the straightforward tests of subdivisions (a) and (b) of section 68632, ignoring the important additional test set out in subdivision (c). Section 68632 establishes three alternative tests for eligibility for a waiver of court fees and costs. Subdivision (a) grants eligibility to recipients of "public benefits" under one or more of an enumerated list of public benefit programs. Subdivision (b) requires a waiver for "[a]n applicant whose monthly income is 200 percent or less of the current poverty guidelines…." Subdivision (c) then provides, in the alternative, that fees will be waived for "[a]n applicant who, as individually determined by the court, cannot pay court fees without using moneys that normally

would pay for the common necessaries of life for the applicant and the applicant's family."

Notwithstanding the three equally valid tests set out in section 68632, in the context of court fee waivers attention is overwhelmingly given to the first two tests. This is not a surprise, given the simplified process for obtaining a fee waiver under those tests. (Gov. Code, § 68632, subds. (a), (b); *id.* §§ 68633, 68634 [requiring only basic information, with no supporting documents; allowing the court to delegate authority to grant fee waivers to the clerk].) The third test requires more information to be provided and involves greater process, including potentially an individual assessment made in a hearing with a judicial officer. (Gov. Code, § 68634, subd. (e)(5); see *Cruz v. Superior Court* (2004) 120 Cal.App.4th 175, 185-189.) As a result, section 68632, subdivision (c) is used less often for the relatively modest amounts usually at issue for fee waivers. It was for this reason that the Petition carefully specified that any application of section 68632 to evaluate eligibility for electronic recording when a court reporter is not available must, at a minimum, take into account ***all three*** of the statutory tests. (Petition ¶ 7, fn. 1.) Given the substantial expense of hiring a private court reporter (see *id.* ¶ 43), some litigants who do not receive public benefits and have incomes above the poverty threshold of subdivision (b) will still be unable to afford that cost "without using moneys that normally would pay for the common necessaries of life." (Gov. Code, § 68632, subd. (c).)

The dramatic disparity in cost between ordinary court fees and a private court reporter reinforces the critical importance of considering ability to pay in the broader sense recognized by section 68632, subdivision (c) and other statutes. A private court reporter will typically cost thousands of dollars for a single hearing. (Petition ¶ 43.) That can extend to tens of thousands of dollars for a trial lasting multiple days or a case involving multiple hearings. In contrast, most court fees for which waivers are granted under section 68632 are orders of magnitude less.[24]

Evaluation of ability to pay is a task superior courts routinely perform and are well equipped to handle. The process established in section 68632, subdivision (c), for example, is one to which litigants are already entitled. (*Cruz*, *supra*, 120 Cal.App.4th at p. 185.) Petitioners are not seeking to either restrict or expand courts' discretion in making these determinations. Notwithstanding the concern expressed in the footnote to Respondents' Return, the Petition seeks nothing new that is not already within Respondents' capabilities. But Petitioners also do not seek less than what litigants are constitutionally entitled to receive.

For avoidance of doubt, Petitioners agree that Respondents must have discretion to make electronic recording available without reference to the litigants' economic means in special circumstances where the interests of justice require it. Respondents' General Orders recognize that the need for electronic recording may occasionally arise in situations where

[24] See Civil Fee Schedule, *supra*.

litigants are able to afford a private court reporter but are nonetheless unable to retain one despite reasonable efforts to do so. (See, e.g., Appx. 218 [LASC General Order].) As court reporters have become increasingly sparse, this situation has arisen with increasing frequency, especially in remote areas.[25] All three General Orders properly permit use of electronic recording upon a showing that a litigant has been unable to secure attendance by a private court reporter.[26]

e) The Trial Court Should Have No Discretion to Evaluate the "Need" for a Verbatim Record.

The General Orders offer no explanation for their fifth factor, which requires a finding that "the proceeding involves significant legal and/or factual issues such that a verbatim record is likely necessary to create a record of sufficient completeness." (E.g., Appx. 231 [LASC General Order].) On its face this gives the trial court judge wide discretion in deciding whether a verbatim recording is "necessary." This judgment is not properly

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[25] *Id.*: see also Superior Court of California, County of Siskiyou, In re Findings Concerning Availability of CSR Court Reporters for the Siskiyou County Superior Court and Standing Order Regarding Electronic Recording ("Siskiyou County Order") (June 9, 2022) at p. 4; Appx. 148 (Puente-Douglass Decl. ¶ 18). Other special circumstances could make recording by a court reporter literally impossible. For example, in some counties there are times when travel to and from courts is effectively impossible. (See Siskiyou County Order, *supra*, at p. 4.) While parties are permitted to attend court remotely (Code Civ. Proc., § 367.75), court reporters usually are not (Gov. Code, § 69959), making it impossible to obtain recording by a court reporter regardless of ability to pay.

[26] Appx. 231 (LASC General Order); Appx. 484 (SCSC General Order); CCSC General Order at p. 13.

made on a discretionary basis.[27] Low-income litigants have a right to equal access to verbatim recording, and courts have a duty to ensure that access. (See Petition at pp. 53-56, 59.)

Moreover, this factor fails to recognize the practical reality that a judge will often not know at the outset of a hearing (when this finding must be made) everything that is going to happen, including whether any substantive rights will be discussed. For example, a family court hearing on a request for a minor adjustment in visitation could blossom into a major reconsideration of custody arrangements. And if that happens, there is no way to go back in time and create a verbatim recording after the fact.

f) Delay Should Not Be Treated as a Legitimate Alternative.

The sixth finding required by the General Orders is that "the proceeding should not, in the interests of justice, be further delayed." (E.g., Appx. 231 [LASC General Order].) The inclusion of this factor is puzzling, as each of the General Orders elsewhere properly recognizes that "delay" – i.e., a continuance – is ***not*** a legitimate alternative to offer litigants when they have shown up for a duly scheduled hearing and no court reporter is available.

As discussed in detail in the Petition, repeated continuances became an unfortunate norm in recent years in departments where low-income litigants regularly appear and the

[27] Such discretion would be particularly concerning as it affects the availability of verbatim recording as a tool of judicial oversight. Judges who are less careful than they ought to be about treating litigants fairly and with respect are those least likely to deem it "necessary" that a record be made of that fact.

needed court reporters are often unavailable.[28] The practical result was that litigants were faced with an impossible choice between accepting a continuance that was often lengthy, with no guarantee of a court reporter on the new date, or going forward with no verbatim recording.[29] Unsurprisingly, litigants frequently chose the immediate option that offered limited justice over the prospect of indefinite delays that could easily result in no justice at all.[30]

The General Orders flatly reject this as an acceptable state of affairs. The SCSC General Order observes that the alternative of a continuance "results in a pernicious delay in the administration of justice in cases where prompt court action is usually essential." (Appx. 471 [SCSC General Order].) LASC concurs, stating that continuances are "not a practical or efficient option" for dealing with the court reporter shortage, "considering the trial court's 'duty in the name of public policy to expeditiously process civil cases' [citation] the harm that could occur to parties from postponing a hearing, and the fact that there are likely to be *fewer*, not more [court reporters] in the future." (Appx. 218 [LASC General Order].)

The CCSC General Order offers the most pointed comments:

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[28] See Appx. 76, 81 (Wcislo Decl. ¶¶ 7, 16); Appx. 147-149 (Puente-Douglass Decl. ¶¶ 17-19).

[29] See Appx. 82-83 (Wcislo Decl. ¶ 18); Appx. 148-149 (Puente-Douglass Decl. ¶ 19).

[30] See Petition ¶¶ 45-48; see also Appx. 48-50 (Mustapha Decl. ¶¶ 21, 23-26); Appx. 148-149, 150-151 (Puente-Douglass Decl. ¶¶ 19, 22-23).

> A litigant could also continue a matter until a CSR is available. But this can prejudicially delay the administration of justice, an especially dangerous problem in cases where immediate court action is essential – such as restraining orders, child custody decisions, and creation or elimination of conservatorships upon vulnerable adults. ... And, finally, the question arises: continue to when? With an ever-decreasing availability of CSRs, there is simply no guarantee that a continuance would result in a court reporter being available for the rescheduled hearing, magnifying the due process problem of using continuances in this fashion.

(CCSC General Order at pp. 8-9.)

There will on occasion be independent and legitimate reasons for continuing a hearing. But as the General Orders themselves recognize, the possibility that a court reporter might be available on a different day should not be treated as such a reason.

g) Determinations of Whether to Permit Electronic Recording Should Be Recorded and Reviewable.

None of the General Orders requires that a verbatim recording be created to document the judge's assessment of the six factors discussed above. There is no guarantee that there will be any record of the evidence and arguments presented by the parties on each of the factors, or of the judge's ultimate findings and reasoning. Thus, individual determinations made under the General Orders are effectively unreviewable. This cannot be reconciled with the General Orders' recognition that the failure to

provide verbatim recording can result in a violation of litigants' constitutional rights.

Despite their otherwise acute sensitivity to the importance of verbatim recording, the General Orders, after setting up a procedure and test for judges to apply in determining whether electronic recording should be permitted, require no verbatim recording of that procedure, of the evidence and argument provided, or of the judge's findings and reasons. The individual determinations made under the General Orders are therefore effectively unreviewable, even though the General Orders implicitly recognize that a failure to provide verbatim recording when the six factors are satisfied results in a violation of litigants' constitutional rights.

There should be no administrative burden in creating a proper record of a trial court's determination of whether electronic recording must be employed for a hearing. This is especially true for the simpler and more straightforward relief proposed in the Petition. Petitioners ask this Court to mandate that electronic recording be made available as an alternative to create a verbatim record if (a) a court-employed court reporter is not available to record the proceeding – a fact that can be established through simple observation – and (b) the litigant cannot afford a private court reporter – a determination that will already have been made in most cases through an earlier fee waiver determination and can be assessed readily in most other cases through existing court processes, with a proper record made.

B. Petitioners' Prayer for Relief Would Impose No Improper Burden on Respondents.

Petitioners' prayer for relief seeks an order mandating that a low-income civil litigant is entitled to a free official verbatim recording, including by electronic recording if a court reporter is not available, and prohibiting Respondents from relying on Section 69957 as a bar to providing such a recording. (Petition ¶ 63.b.) In their Return, Respondents express concern that requiring electronic recording even when a courtroom is not equipped for it "would present logistical challenges since not all courtrooms have the necessary equipment." (RCR at pp. 7-8.) This concern appears to have no practical foundation with respect to Respondents themselves, and even if it did it would not detract from the courts' duty to ensure that low-income litigants have equal access to verbatim recording. (See *Jameson*, *supra*, 5 Cal.5th at pp. 622-623.)

As an initial matter, Respondents have offered no facts or evidence to establish the existence of any meaningful logistical challenges arising from Petitioners' requested relief.[31] To the contrary, Respondents have acknowledged that electronic recording equipment is widely installed in their courtrooms. The LASC General Order, for example, indicates that substantially all of its courtrooms are so equipped. (Appx. 234 [LASC General Order].) Similarly, the CCSC General Order confirms that "the

[31] Respondents cite to Paragraph 4 of the Petition for their assertion that "not all courtrooms have the necessary equipment." (RCR at p. 8.) Paragraph 4 simply states that "[m]ost of Respondents' courtrooms are equipped to use [electronic recording]." (Petition ¶ 4; see also *id.* ¶ 52.)

Court has outfitted all of its courtrooms with updated electronic recording and audio technology to ensure that each department can produce usable, accurate audio recordings." (CCSC General Order at p. 5.)[32]

Respondents' objection seems to be that electronic recording might not always be available in *every* courtroom. However, they have offered no facts indicating that they would encounter any practical difficulties in managing their use of courtrooms to accommodate proceedings that need to be electronically recorded. Notably, whether a courtroom is equipped for electronic recording is not a consideration identified in Respondents' General Orders; nor do the General Orders indicate that relief under them is available only in some courtrooms and not in others.

Even if logistical challenges related to the unavailability of recording equipment in a courtroom did exist, they could not overcome the courts' duty to uphold the California Constitution and *Jameson* to ensure that low-income litigants have equal access to verbatim recording. *Jameson* mandates that, to preserve equal access to justice, courts must ensure that free verbatim recordings are available to low-income litigants.

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[32] See also Appx. 178 (SDSC Executive Officer Michael M. Roddy, letter to Ellen Choi, Aug. 9, 2024) (indicating that two-thirds of the courtrooms in SDSC are equipped for electronic recording).. The SCSC General Order does not discuss the extent to which its courtrooms are equipped for electronic recording, but it indicates no concerns or limitations based on that consideration and actually authorizes electronic recording in a broader range of cases than the other Respondent Courts have done. (Appx. 484 [SCSC General Order] [order applies in "felony, family law, probate and civil departments"].)

(*Jameson*, *supra*, 5 Cal.5th at pp. 622-623.) This is so regardless of administrative hurdles, such as the budgetary constraints discussed in *Jameson*. Respondents have cited no authority suggesting otherwise.[33]

It is the responsibility of the superior courts to manage their courtrooms and staff to ensure that proceedings comply with constitutional requirements and that a proper record is made. Courts and their staff are accustomed to navigating logistical challenges, such as vacancies on the bench, interpreter requests, and hearings requiring more time than a department has on calendar. And they have years of experience in shifting around court reporters to try to meet their courtrooms' needs. With all this experience, courts are undoubtedly well-equipped to manage any modest hurdles that may arise because a particular courtroom is not equipped for electronic recording.

Additionally, it is unclear what Respondents intend to convey in stating a "presum[ption]" that "the contemplated relief" under Petitioners' second prayer for relief "would merely deem electronic recording a 'valid means to create an official verbatim record for purposes of appeal' when a verbatim record must be provided under *Jameson v. Desta* (2018) 5 Cal.5th 594, 599 …or is otherwise required by statute (e.g., Pen. Code, § 869)." (RCR at

[33] *James G.*, *supra*, 80 Cal.App.4th at p. 280, the only case other than *Jameson* cited by Respondents in this section of their Return, does not bear on the Court's authority to issue relief that might affect Respondents' procedures, operations, or budget. It simply describes the circumstances in which a superior court may properly file a substantive response to a writ petition.

p. 7).[34] Petitioners do seek confirmation that electronic recording is a "valid means" of creating a verbatim record of a judicial proceeding when no court reporter is available. But as the Petition makes clear, the creation of a verbatim record is often vital to the fair adjudication of proceedings in the trial court itself; it is not needed only "for purposes of appeal."

Moreover, the relief requested in the Petition extends beyond the mere recognition of electronic recording as a valid discretionary option when a court reporter is unavailable. It is the only practical alternative available in that situation today, and its use should not be discretionary when a court reporter is unavailable. The Petition therefore seeks "[a]n order ***mandating*** that, for any civil proceeding, a litigant who cannot afford to pay for a private court reporter is entitled to have an official verbatim recording created at no charge, including by electronic recording if a court reporter is not available, and prohibiting Respondents from relying upon Section 69957 as a basis for depriving such civil litigants of access to an official verbatim recording of any such proceeding." (Petition ¶ 63.b. [emphasis added].) As explained herein and in the Petition, this mandate is compelled by *Jameson* and the California Constitution.

III. RESPONSE TO LEGISLATURE'S RETURN

Nothing in the Legislature's Return challenges this Court's ability to rule on the merits of this case. Indeed, the Legislature

[34] The footnote to this sentence, which addresses how eligibility should be determined, is addressed in Section II.A.2.d, *supra*.

concedes that the Court will be well within its authority in doing so. (LR at p. 4 ["[I]t is the courts' role and duty to make the ultimate determination of the constitutionality of statutes, not the Legislature's."].) Four points raised in the Legislature's Return merit highlighting and/or a brief response.

First, the Legislature contends that this Court cannot require it to defend Section 69957 because doing so would "raise[] real separation of powers concerns." (*Id.* at p. 4.) This argument misconstrues the Order to Show Cause, which merely states that "[t]he Legislature of the State of California is deemed the real party in interest and is ***invited*** to file a return." (Emphasis added.) This Court gave the Legislature an opportunity to address the merits if it wished to do so, but did not require the Legislature to participate in the case or to defend Section 69957. This is consistent with the usual role and obligations of a real party in interest. (See, e.g., *Durkin v. City and County of San Francisco* (2023) 90 Cal.App.5th 643, 657, fn. 8 ["Merely naming a person as the real party in interest … does not compel that person to defend the litigation. … A real party in interest may simply decline to participate."] [collecting cases].) Thus, there is no separation of powers issue presented by this aspect of the Order to Show Cause.

Second, the Legislature has declined to address the constitutionality of Section 69957 or the separation of powers questions presented in the Petition. The Legislature suggests that doing so would be both improper and unprecedented. (LR at p. 4.) But in prior cases that raised separation of powers issues

implicating the Legislature's powers, it has readily weighed in – including as amici, intervenor, and real party in interest. (See, e.g., *Fuller v. Bowen* (2012) 203 Cal.App.4th 1476, 1483, 1488 [as amicus, the Legislature argued that, under the separation of powers doctrine, the court lacked jurisdiction to determine the qualifications of its members]; *Kopp v. Fair Political Practices Commission* (1995) 11 Cal.4th 607, 670 [as intervenor, the Legislature argued the separation of powers doctrine precluded judicial rewriting of statutes to preserve constitutionality]; *Howard Jarvis Taxpayers Assn. v. Padilla* (2016) 62 Cal.4th 486, 497-499 [as real party in interest, the Legislature defended its investigative powers in a case raising separation of powers issues].) The Legislature has also readily participated in other cases where its powers were implicated. (See, e.g., *Californians for an Open Primary v. McPherson* (2006) 38 Cal.4th 735, 751 [as real party in interest, the Legislature defended its "right to package constitutional amendment measures as it sees fit"]; *Franchise Tax Bd. v. Cory* (1978) 80 Cal.App.3d 772, 775-776 [as intervenor, the Legislature participated in a case where the governor vetoed control language "'because it raised a serious constitutional issue of the separation of powers' [citation]"].)

Given this precedent, the Legislature's decision ***not*** to weigh in on the separation of powers issues in this case, although certainly within its prerogative, may reasonably be interpreted as indicating that it does not view the Petition or the relief it seeks as threatening infringement of the Legislature's core constitutional powers. (See LR at p. 4.)

Third, the Legislature's suggestion, citing *Templo v. State* (2018) 24 Cal.App.5th 730, that the Judicial Council "maybe" is a proper party to defend this suit (LR at p. 3) is incorrect. In *Templo*, the plaintiffs challenged a statute that imposed a nonrefundable jury fee, and the Judicial Council was deemed the proper defendant because it is responsible for "administering and controlling funds allocated to the judicial branch." (*Templo*, *supra*, 24 Cal.App.5th at p. 737.) The instant action concerns the Respondents' failure to provide verbatim recording to low-income litigants, a situation over which the Judicial Council exerts no control.

Finally, the Legislature suggests that if Respondents fail to defend the statute and this Court does not appoint a third party to do so, then there may not be "sufficient adversity" to decide the case. (LR at pp. 5-7.) This argument has no basis in either California constitutional law or the actual circumstances of this case. "Unlike the federal Constitution, our state Constitution has no case or controversy requirement imposing an independent jurisdictional limitation on our standing doctrine." (*San Diegans for Open Government v. Public Facilities Financing Authority of City of San Diego* (2019) 8 Cal.5th 733, 738.) Here, Petitioners have established they have beneficial and public interest standing to bring the Petition. (See Petition ¶¶ 12-17.) And the Petition clearly presents contested issues requiring this Court's resolution.

Golden Gate Bridge and Highway District v. Felt (1931) 214 Cal. 308, cited in the Legislature's Return, confirms that this

Court should proceed to address the Petition on the merits. There, the respondent conceded that he was "personally desirous of a decision in favor of petitioner," and amici curiae argued the case should be dismissed as "fundamentally collusive in its nature" because there was no controversy between the parties. (*Id.* at pp. 315-316.) This Court disagreed, noting that "'[t]he personal desires of the parties as to the result of the litigation are of no moment, provided no fraud or collusion is resorted to. [Citations.]'" (*Id.* at p. 318.) Here, there is no fraud or collusion, and the Legislature does not suggest that there is. The Petition seeks relief that the Respondent Courts have failed to provide, and it challenges the General Orders issued by two (now three) of them as inadequate to resolve the ongoing constitutional crisis. (See, e.g., Petition ¶¶ 58-59 [describing deficiencies in LASC and SCSC General Orders].) Respondents have chosen to respond by letting the General Orders "speak for themselves." (RCR at pp. 6-7.) There is no doubt that a live controversy exists. As this Court found in *Golden Gate*, the Court "cannot lightly thrust aside a proceeding so important to the welfare of the citizens of the state." (*Golden Gate*, *supra*, 214 Cal. at pp. 315-316.)

In any event, to the extent the Legislature is concerned that there may be insufficient briefing to present all relevant perspectives, any such concern should now be moot, as this Court has received extensive briefing from amici addressing the issues presented. Amici such as the Service Employees International Union California State Council and other organizations representing court reporters have opposed the Petition. And a

wide variety of independent views and perspectives have been offered by distinguished constitutional scholars, the California Access to Justice Commission, various legal services organizations, the California Lawyers Association, and others. Petitioners will respond separately to those amici as provided by the Rules of Court.

IV. CONCLUSION

As Respondents recognize, "[t]he Petition presents important matters on which statewide action and this Court's guidance are urgently needed." (RCR at p. 8.) There is a pervasive constitutional crisis in the California Courts arising from the failure to provide verbatim recording to low-income civil litigants. Nothing in either Return provides a basis for this Court to deny the relief sought in Paragraph 63 of the Petition. Petitioners respectfully request that this Court grant the writ.

DATED: April 7, 2025

Respectfully submitted,

By: */s/ Sonya D. Winner*
Sonya D. Winner
Ellen Y. Choi
Bryanna Walker
Jacob Pagano
Eva Dorrough
COVINGTON & BURLING LLP

Sarah Reisman
Katelyn Rowe
Erica Embree Ettinger
COMMUNITY LEGAL AID SOCAL

Counsel for Petitioner Family Violence Appellate Project

By: _____
Brenda Star Adams
Jessica Wcislo
BAY AREA LEGAL AID

Counsel for Petitioner Bay Area Legal Aid

CERTIFICATE OF WORD COUNT

Pursuant to rule 8.204(c)(1) of the California Rules of Court, I hereby certify that the foregoing Reply contains 10,035 words, including footnotes, but excluding the items excluded from the limit set forth in that rule. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

/s/ Sonya D. Winner
Sonya D. Winner

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Denis Listengourt

SERVICE LIST

Mark R. Yohalem
Madelyn Chen
Tomas Arriaga
WILSON SONSINI GOODRICH & ROASTI PC
953 East Third Street, Suite 100
Los Angeles, CA 90013
Counsel for Respondents Superior Courts of California, Counties of Contra Costa, Los Angeles, Santa Clara, and San Diego
(by TrueFiling)

Robin B. Johansen
OLSON REMCHO, LLP
1901 Harrison Street, Suite 1550
Oakland, CA 94612
Counsel for Real Party In Interest Legislature of the State of California
(by TrueFiling)

Rob Bonta
ATTORNEY GENERAL OF CALIFORNIA
STATE OF CALIFORNIA DEPARTMENT OF JUSTICE
1300 I Street, Suite 1740
Sacramento, CA 95814
(by FedEx)

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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April Battaglia Legal Services of Northern California	abattaglia@lsnc.net	e-Serve	4/7/2025 2:09:45 PM
Jackie Aranda Osorno Public Justice 308084	jaosorno@publicjustice.net	e-Serve	4/7/2025 2:09:45 PM
Sarah Reisman COMMUNITY LEGAL AID SOCAL 294393	sreisman@clsocal.org	e-Serve	4/7/2025 2:09:45 PM
Lauren Davis ACLU of Northern California 357292	ldavis@aclunc.org	e-Serve	4/7/2025 2:09:45 PM
Superior Superior Court of Los Angeles County Court Added	stapia@lacourt.org	e-Serve	4/7/2025 2:09:45 PM

Attorney Attorney General - Sacramento Office Kenneth N. Sokoler, Supv. Deputy Attorney General	sacawttruefiling@doj.ca.gov	e-Serve	4/7/2025 2:09:45 PM
Mark Yohalem Wilson Sonsini Goodrich & Rosati PC 243596	mark.yohalem@wsgr.com	e-Serve	4/7/2025 2:09:45 PM
Ellen Choi 326291	echoi@cov.com	e-Serve	4/7/2025 2:09:45 PM
Kathryn Parker Complex Appellate Litigation Group LLP	paralegals@calg.com	e-Serve	4/7/2025 2:09:45 PM
Superior Superior Court of San Diego County Court Added	maureen.hallahan@sdcourt.ca.gov	e-Serve	4/7/2025 2:09:45 PM
Stephen Duvernay Benbrook Law Group 250957	steve@benbrooklawgroup.com	e-Serve	4/7/2025 2:09:45 PM
Lisa McCall Law Offices of Lisa R. McCall, APC 251877	lisa@lisamccalllaw.com	e-Serve	4/7/2025 2:09:45 PM
Neil Sawhney ACLU of Northern California 300130	nsawhney@aclunc.org	e-Serve	4/7/2025 2:09:45 PM
Scott Kronland Altshuler Berzon LLP 171693	skronland@altber.com	e-Serve	4/7/2025 2:09:45 PM
Michael von Loewenfeldt Complex Appellate Litigation Group LLP 178665	michael.vonloewenfeldt@calg.com	e-Serve	4/7/2025 2:09:45 PM
Robin Johansen Olson Remcho LLP 79084	RJohansen@olsonremcho.com	e-Serve	4/7/2025 2:09:45 PM
Jean Perley Altshuler Berzon LLP	jperley@altber.com	e-Serve	4/7/2025 2:09:45 PM
The The Legislature of the State of California Court Added	assemblymember.rivas@assembly.ca.gov	e-Serve	4/7/2025 2:09:45 PM
John Douglass Morrison & Foerster LLP 322801	jdouglass@mofo.com	e-Serve	4/7/2025 2:09:45 PM
Sara Cooksey American Civil Liberties Union Foundation of Northern California	scooksey@aclunc.org	e-Serve	4/7/2025 2:09:45 PM
Sonya Winner Covington & Burling, LLP 200348	swinner@cov.com	e-Serve	4/7/2025 2:09:45 PM
Superior Superior Court of Santa Clara County Court Added	jemede@scscourt.org	e-Serve	4/7/2025 2:09:45 PM

Alysa Meyer Legal Services of Northern California 173655	ameyer@lsnc.net	e-Serve	4/7/2025 2:09:45 PM
Brenda Adams BAY AREA LEGAL AID 248746	badams@baylegal.org	e-Serve	4/7/2025 2:09:45 PM
Jon Eisenberg Law Office of Jon B. Eisenberg 88278	jon@eisenbergappeals.com	e-Serve	4/7/2025 2:09:45 PM
Ann Taylor Court Counsel	ataylor@lacourt.org	e-Serve	4/7/2025 2:09:45 PM

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

4/7/2025

Date

/s/Sonya Winner

Signature

Winner, Sonya (200348)

Last Name, First Name (PNum)

Covington & Burling LLP

Law Firm