

Supreme Court Case 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.

**APPLICATION AND AMICUS CURIAE BRIEF OF THE LEGAL AID
ASSOCIATION OF CALIFORNIA IN SUPPORT OF PETITIONERS
FAMILY VIOLENCE APPELLATE PROJECT AND BAY AREA
LEGAL AID**

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APPLICATION TO SUBMIT AMICUS CURIAE BRIEF

Pursuant to Rule 8.487(e) of the California Rules of Court, the Legal Aid Association of California (LAAC) respectfully requests leave to file the attached amicus curiae brief in support of Family Violence Appellate Project and Bay Area Legal Aid.

As the association for legal services organizations, LAAC is the united voice for legal aid in our state. LAAC supports the arguments made by Petitioners Family Violence Appellate Project (“FVAP”) and Bay Area Legal Aid (“BayLegal”). We submit this brief urging the Court to grant the Petitioners’ writ of mandate and/or prohibition and provide the relief requested in the Petition. LAAC’s member organizations provide legal assistance on a broad array of substantive issues and serve a wide range of low-income and vulnerable populations. As such, our members—and LAAC—have been focused on the issue of access to a verbatim record, not only because the issue directly impacts their ability to provide legal services but affects the communities they serve. For these reasons, our brief will assist the court in deciding the matter by illuminating the access to justice implications of this Petition and issue.

No party, counsel for a party, or any other person or entity, other than the amicus curiae, authored this brief or made a monetary contribution for its preparation or submission.

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California Gov. Code § 699578

INTEREST OF THE AMICUS CURIAE

LAAC's interest in this matter stems from the direct impact the Petition has on LAAC's work and that of its member organizations. LAAC is a statewide membership association of over 100 non-profit public interest law organizations, all of which provide free civil legal services to or systemic advocacy on behalf of low-income persons and communities throughout California. LAAC serves as California's unified voice for legal services and is a zealous advocate advancing the needs of the clients of legal services on a statewide level regarding funding and access to justice.

The Petitioners FVAP and BayLegal are two of our members, along with Community Legal Aid SoCal, as counsel. The mission of LAAC— itself a non-profit—is to provide an effective and unified voice for its members on issues of concern to the statewide justice community. LAAC member organizations provide legal assistance to people throughout California in all kinds of cases, from public benefits to access to healthcare to housing stability.

Legal aid nonprofits, LAAC's members, are directly serving the communities of Californians most severely impacted by the inability to access a record as described in the Petition. They serve marginalized, low-income, and other communities who are already disadvantaged in the legal system. As Petitioners make clear, this population is subject to many discrete impacts that include, but are not limited to, having to decline

appellate assistance to those without a record to being prevented from pursuing a client's interests. While the experiences described by the Petitioners indicate what they and their clients (as well as unrepresented litigants in their service areas) deal with, these experiences are not limited to them. These are widespread issues that impact not just the member Petitioners, but all of our members and the communities they serve across the state. The inability to access a record has become a system crisis across California's court system. The repercussion of the crisis on Petitioners is clear and representative of the impact on our membership at large: Not having a record obstructs legal aid's ability to increase access to justice and close the justice gap.

Advocating for laws and policies that increase access to justice is a core part of LAAC's mission and our work with and on behalf of our members. For years, LAAC has advocated to ensure that low-income and other marginalized litigants have access to a verbatim record, and thereby an understanding of their case and an ability to appeal, whether they can afford to have one produced or not. LAAC was an amicus curiae on both levels of appeal in *Jameson v. Desta*,¹ articulating many of the same issues as articulated in the Petition. LAAC and the legal aid community are invested in this issue because it is so critical to the ability of legal aid to

¹ *Jameson v. Desta*, 5 Cal.5th 594 (2018).

serve communities as well as ensure self-represented litigants who cannot access legal aid can navigate an already confusing, complex civil legal system.

LAAC members have signed on to this letter, and their statements of interest are provided at the end of this letter after the signature, along with the organization names.

ARGUMENT

I. Introduction

This Petition should be granted for all the reasons enumerated in the Petition: The current situation is constitutionally untenable. There is an ongoing violation of procedural due process and Equal Protection for low-income and other disadvantaged litigants as well as the separation of powers doctrine. California Code Section 69957 inhibits courts from ensuring equal access to justice and blocks them from exercising their constitutional duties therein.² This creates a two-tiered system by allowing those who can afford a court reporter to access a record while denying it to others, thereby directly impacting the clients of legal aid and low-income and other marginalized communities. As the voice for legal aid in our state, this letter focuses on the access-to-justice context and the ways in which access to a record is a critical part of minimizing the justice gap and ensuring equal access to the courts.

According to the California Access to Justice Commission, Judicial Council survey responses from late 2023 and early 2024 indicate that greater than one million hearings and trials occurred in unlimited civil, family, and probate cases during which the Superior Courts did not give

² Gov. Code § 69957.

litigants a way to generate a transcript of their proceedings.³ Across all three case types (unlimited civil, family, and probate), more than 70% of litigants did not get access to an official record, and more than 90% for unlimited civil specifically.⁴ For example, in Los Angeles County alone, over 525,000 proceedings have occurred without a verbatim record.⁵

Essentially, there is a “constitutional crisis”⁶ in California’s court system: the lack of access to verbatim recordings of proceedings, including for the low-income clients that are represented by legal aid or appear in court as unrepresented litigants. The numbers objectively and unequivocally paint a picture of a lack of access. It is undebatable that there is a massive deficiency within the system, one perpetuated by an outmoded and unconstitutional statute, Section 69957, and a scarcity of court reporters. It is time, as the Petition describes, to uproot this unconstitutional, ineffective system and give litigants what they need, deserve, and is their right.

³ CALIFORNIA ACCESS TO JUSTICE COMMISSION, ISSUE BRIEF: ACCESS TO THE RECORD OF CALIFORNIA TRIAL COURT PROCEEDINGS (2024) (data is from January 1, 2023 to June 30, 2024).

⁴ *Id.*

⁵ *Court Reporter Crisis Dashboard*, Superior Court of California, County of Los Angeles (Aug. 15, 2024).

⁶ *See, e.g.,* Milt Policzer, *A constitutional crisis?*, Courthouse News Service (Aug. 26, 2024).

II. The Context: Access to Justice in California

An overarching access-to-justice crisis in our state is the critical context for the ongoing problem of access to a record. Lack of access to one more piece of the judicial puzzle escalates the systemic inaccessibility of the court system and legal help in our state. The “justice gap” is such that 55% of all Californians face at least one civil legal issue in a year, but they receive inadequate or no legal assistance for 85% of their legal issues.⁷ Interconnected with this lack of access to legal help is the fact that most people in the civil legal system are self-represented.⁸

In California, there are around 5,089 eligible clients based on income (at or below 200% of FPL) per every one full-time legal aid attorney in California.⁹ This means most people who need help cannot get it: Legal aid organizations in California estimate that they are able to fully serve about 30% of problems presented to them.¹⁰ What this amounts to is a situation where most people either do not seek or cannot get the help they need. One more impediment—the inaccessibility of verbatim records—only

⁷ THE STATE BAR OF CALIFORNIA, THE CALIFORNIA JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF CALIFORNIANS 6–7 (2019).

⁸ See, e.g., Christine E. Cerniglia, *The Civil Self-Representation Crisis: The Need for More Data and Less Complacency*, 27 GEORGETOWN J. ON LAW & POL. 355 (2020).

⁹ 2023, on file with LAAC calculated using US Census data and data from grantees of the State Bar of California.

¹⁰ STATE BAR OF CALIFORNIA, *supra* note 7.

exacerbates the situation for legal aid service providers, their clients, and the unrepresented individuals going through the system.

III. Accessing a Verbatim Record is Challenging for Low-Income and Other Marginalized Litigants While Also Making it Harder for Legal Aid

Whether due to cost constraints or the complexities of the process of getting a court reporter, many low-income and self-represented litigants are unable to access a court reporter to produce the record they need.

Generally, they need to not only go through the process to ensure a court reporter is present (despite scarcity), they would also need to acquire the official transcript (through a fee waiver system or by purchasing it). First, an individual must request a free reporter (which they may not know they can do or how to do), and then they have to wait to see if they can get one. But, because of the scarcity of court reporters, this might mean waiting and waiting, including having to decide whether to keep waiting or forgo their right to a reporter. At that point, only if they made it through all that and a reporter is available and present, they must jump through more hoops and paperwork to acquire the actual transcript.

The problem persists even after *Jameson*.¹¹ *Jameson* was decided in 2018 and held that there must be a way for self-represented and low-income litigants to have access to an official record.¹² The Supreme Court wrote at that time: “[A]n official court reporter, or other valid means to create an official verbatim record for purposes of appeal, must generally be made available to in forma pauperis litigants upon request.”¹³ What we are seeing play out, however, is that no such reporter is being provided, nor are any alternative means to create a record being allowed. The barriers to access remain, with the most prominent simply being the lack of available court reporters. The Court wrote in *Jameson* of the “crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California.”¹⁴ Post-*Jameson*, rather than seeing the meaningful change to access that the court intended, low-income and self-represented litigants continue to face insurmountable obstacles to accessing a record.

All these impediments simply make it that much harder for litigants to access a record, favoring those who can afford to pay. This, ultimately, impacts not just a litigant’s ability to understand what even happened in

¹¹ *Jameson*, *supra* note 1.

¹² *Id.*

¹³ *Id.* at 599.

¹⁴ *Id.* at 608.

their case, but also their ability to appeal, both of which are essential to their participation in the legal process. “Providing an official record,” wrote the Commission on the Future of California’s Court System in Report to the Chief Justice, “is essential to equal access, transparency, and fundamental fairness.”¹⁵ As the Petition lays out, this is a critical due process, constitutional issue that transcends politics and legislative restrictions on other ways to deliver transcripts to those who need them.

Importantly, we wanted to address the issue of where to draw the line of “low-income” individuals impacted by this issue, because it appears the courts’ brief describes, in footnote 2, that it should stop at fee waiver recipients in responding to the Petition.¹⁶ However, we agree with the Petition, and contend that fee waivers should not be used as the standard, and, instead, courts can utilize the ability-to-pay standard that they employ daily. This is primarily because limiting this to merely those who are fee waiver recipients excludes other people who otherwise cannot afford private court reporters, but who may not otherwise have access to the fee waiver. Further, there are well-documented issues with the fee waiver process, most notably for self-represented litigants (SRLs), such that using

¹⁵ COMMISSION ON THE FUTURE OF CALIFORNIA’S COURT SYSTEM, REPORT TO THE CHIEF JUSTICE (2017).

¹⁶ *Response of Respondents Superior Courts of California, Counties of Contra Costa, Los Angeles, Santa Clara, and San Diego to Order to Show Cause*, 7 (citing Petition, para. 7, FN 1).

it as a standard is not feasible.¹⁷ Hence, as displayed by the Los Angeles general order,¹⁸ for instance, the issue goes beyond just those receiving or eligible for a fee waiver to a larger group of low- and moderate-income litigants. Consequently, a definition of income that prompts the need to engage electronic recording must be used.

Finally, as described in the Petition, this all makes it harder for legal aid nonprofits to do their work to serve low-income and other vulnerable litigants. To take up one important example, verbatim records are critical for due process and compliance with the Americans with Disabilities Act (ADA) for litigants with disabilities and the nonprofits that serve them.¹⁹ Access to a verbatim record is critical for litigants with disabilities. A complete record helps identify errors or omissions for appeal—impacting case outcomes—and thereby eroding the ability of litigants with disabilities, along with those who provide legal services to them, to protect their rights, engage in court proceedings, and utilize the appeals process.

Because of the court reporter shortage and the statutory impediments for the use of electronic recording to produce a record, litigants with disabilities can face challenges in obtaining a record, even when reasonable

¹⁷ See, e.g., Claire Johnson Raba & Dalié Jiménez, *Pay to Plead: Finding Unfairness and Abusive Practices in California Debt Collection Cases* (2024).

¹⁸ *Superior Court of Los Angeles County Issues General Order Allowing Electronic Recording in Specified Circumstances to Protect Constitutional Rights of Litigants*, SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, Sept. 5, 2024.

¹⁹ 42 U.S.C. § 12101 et seq., Section 504 of the Rehabilitation Act, and Gov. Code Section 11135.

accommodations are necessary to do so. Under the ADA, public entities, such as courts, are required to provide reasonable accommodations to ensure equal access to services. Disability Rights California (DRC)—a LAAC member—shared multiple stories with LAAC wherein litigants with disabilities were impacted by the lack of verbatim records for their cases. In one matter where DRC helped a hearing-impaired litigant, there were systemic failures, including multiple reasonable denials for a real-time captioner as well as a court reporter in family law hearings.

DRC has dealt with the challenge of increasing court reporter fees which impacts their limited litigation budget and therefore demands a calculation to determine if hiring a court reporter is worth it. For example, DRC did not hire a court reporter for a routine case management conference while representing a nonprofit association of parents with developmentally disabled children in order to minimize litigation costs, as they did not expect substantive decisions to be made. However, the court made an unexpected yet substantive order. Not having a court reporter (due to the cost) and thereby not obtaining a verbatim record made it harder to address the issue and seek emergency appellate review. This required DRC to rely on participants' recollections, leading to competing versions and increased uncertainty and stress, which would have easily been avoided if there was a record.

Altogether, the means for creating a record are less significant than simply having access to such a record, which allows for nonprofits like DRC to provide representation, appeal when needed, and, ultimately, protect due process and equal access rights, ensuring court compliance with disability law.

IV. The Current Solution of Hiring (and Failing to Hire) Court Reporters Is Not Fixing the Problem of the Inaccessibility of Verbatim Records

There are two main reasons this problem persists. The current combination of (a) an undeniable and unfixable court reporter shortage and (b) outdated restrictions on electronic recording enables the current crisis in the court system that is, namely, the inability of low-income litigants to have access to what litigants with money can get: a verbatim record of their proceedings. The fact that there are too few court reporters to get the job done is not debatable.²⁰ Simply put: There need to be court reporters (or another option) for low-income litigants to have access to the record that they need to understand their case and appeal if needed be. The other option, one long foreclosed due to politics and lobbying, is the expanded use of electronic recording to produce a verbatim transcript.

²⁰ See, e.g., Superior Court of California, County of Los Angeles, *supra* note 5.

The immediate solution, it would seem, would be more funding and more incentives for court reporters, but this has failed to get staffing up even close to where it would need to be.²¹ Getting more court reporters has long been presented as the sole solution to ensuring more people (or all people) are provided with a record. However, money and funding has not fixed the problem. Beginning in 2021, the Legislature and Governor started providing trial courts with \$30 million annually to try to hire more certified court reporters, to little avail.²² As can be seen in Los Angeles, abundant funding has been poured into this strategy.²³ This is not working and continuing to pretend like it will only delay fixing this protracted problem of access to a record. It is a waste of court funding that could go to fixing other issues with the court system. But, this is not the only solution to the problem.

V. Electronic Recording Can Help Bridge the Gap Immediately

Electronic recording is the other solution to ensuring equal access to a record despite ability to pay. In California, however, current law restricts

²¹ *Id.*

²² Cheryl Miller, *Bill to Allow Electronic Recording in Civil Cases Dies in California Legislature*, The Recorder (Jan. 19, 2024); *see also Orange County Superior Court Statement on Court Reporter Shortage Crisis in California*, Orange County Bar Assoc.

²³ Superior Court of California, County of Los Angeles, *supra* note 5.

the use of electronic recording to generate an official certified verbatim record of trial court proceedings, as an alternative to a court reporter, to limited civil actions (those involving claims under \$25,000) and criminal proceedings involving misdemeanors or infractions.²⁴ Jameson included some limited discussion of electronic recording, primarily pertaining to the recommendations from the Commission on the Future of California’s Court System’s report,²⁵ but it does position it as the other, cost-effective solution to the recording issue.²⁶ Even back in the 1990s, electronic recording was considered “a reliable, cost-effective alternative to stenographic court reporting.”²⁷ The pandemic brought on a massive overhaul of the technological infrastructure in the court system, diminishing the argument that there would be a need for large-scale investment in electronic recording systems at this time. Most other states already use electronic recording, with California being an outlier.²⁸

Ultimately, LAAC is not partisan per se on the issue of whether court reporters or electronic recording are preferable. Both seem to be effective in providing what is needed: a record of the proceedings.

Critically, the debate of which is best is, to us, is not extremely important,

²⁴ See, e.g., *Jameson*, *supra* note 1, at FN 2, 10, 17.

²⁵ COMMISSION ON THE FUTURE OF CALIFORNIA’S COURT SYSTEM, *supra* note 15.

²⁶ See, e.g., *Jameson*, *supra* note 1, at FN 2, 10, 17.

²⁷ COMMISSION ON THE FUTURE OF CALIFORNIA’S COURT SYSTEM, *supra* note 15.

²⁸ See, e.g., Lee Suskin & James McMillan, *Making the Record Utilizing Digital Electronic Recording*, NATIONAL CENTER FOR STATE COURTS (2013). See also Joseph Darius Jaafari & Nicole Lewis, *In Court, Where Are Siri and Alexa?*, THE MARSHALL PROJECT (Feb. 14, 2019).

with both having been proven to effectuate the goal of making a verbatim record in similar accuracy and completeness. For us, whatever the delivery method, low-income litigants deserve, and have a right to, a verbatim record of their case. If a litigant has a human court reporter provide the service, that is a welcome result that we highly support; if a litigant has an electronic recording to produce the record, that is also a welcome means to what is necessary, which is the production and availability of a record no matter ability to pay. In sum, what matters is all litigants have access to what is rightfully theirs (a record), not how the creation of that record is completed, and the current system abridges and denies that process.

VI. Attempted Legislative Fixes Are Not Enough

Over the years, there have been many attempts to change the legislative framework that prohibits expanded use of electronic recording, but that has proven futile due in part to the lobbying prowess of those interested in keeping the status quo even to the detriment of low-income court users.²⁹ This includes SB 662, co-sponsored by FVAP and LAAC, which did not make it out of the Senate Appropriations Committee earlier this year due, in large part, to politically influential unions representing

²⁹ COMMISSION ON THE FUTURE OF CALIFORNIA'S COURT SYSTEM, *supra* note 15.

court reporters.³⁰ It would have allowed for electronic recording when a court reporter was unavailable for any civil case.³¹ Hence, this would not really have reduced court reporters market share, it would have simply allowed for access to a record when the reporter was *unavailable*. This is just one of the many failed attempts to make legislative change indicates the power of the unions representing court reporters makes it untenable to believe that this problem can be fixed via a bill.³² Even now, anything going through the legislature does not move us forward toward other forms of producing a record, remaining stuck on centralizing court reporters (e.g., making it easier to pass the exam to become a court reporter³³). The Response from the legislature conveys that this is a matter for the Court, as well. Thus, as the Petition describes, it is time for the Court to take up this constitutional denial of due process and access to a verbatim record that has not been solved by the legislature, despite many opportunities.

³⁰ SB 662 (Rubio) (2023-2024).

³¹ *Id.*

³² *See, e.g.*, SB 662, Senate Appropriations Comm. (2023). The Committee's analysis points to AB 1834 (Wagner, 2015) and AB 251 (Wagner, 2013), both of which would have permitted electronic recording in family law cases when a court reporter was unavailable. Neither made it out of the Assembly Judiciary Committee. Before this, it is important to note that, in 2008, the Legislative Analyst's Office recommended electronic reporting be phased in over five years. Commission on the Future of California's Court System, *Report to the Chief Justice* 248 (2017). AB 803 (Wagner) from 2011 similarly sought to increase implementation of electronic recording by beginning with 20 percent of California Superior Courts, but this failed to get out of the first policy committee. *Id.*


³³ SB 861, introduced this year, would make a minor change to court reporter examination requirements by reducing the grading scale.

VII. Conclusion

As the Jameson Court wrote: “[T]he absence of a verbatim record of trial court proceedings will often have a devastating effect on a litigant's ability to have an appeal of a trial court judgment decided on the merits.”³⁴

Above all, the most important element on this is not how a record is produced, just that the record is actually furnished and accessible to everyone who needs one, as per Jameson and the California Constitution. What is happening now is an unequal playing field, where those who can afford a court reporter can get one to create their official record and those who cannot afford it get nothing, thereby creating a two-tiered system.³⁵ The people impacted are those already disadvantaged by the court system, the individuals and families that legal aid serves, or that go unrepresented, exacerbating the access-to-justice crisis. There is an easy fix, in overturning a detrimental code section that inhibits immediately and simply allowing for a system that works for all.

Respectfully Submitted,



Zachary Newman, Legal Aid Association of California (SBN: 312934)

³⁴ *Jameson*, *supra* note 1.

³⁵ CALIFORNIA ACCESS TO JUSTICE COMMISSION, *supra* note 3.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 13-point Times New Roman typeface. Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the number of words contained in the foregoing amicus curiae brief, including footnotes but excluding the Table of Contents, Table of Authorities, the Application for Leave to File Amicus Curiae Brief, the Appendix, and this Certificate, is 3,834 words, as calculated using the word count feature of the program used to prepare this brief.

Dated: April 4, 2025

Zachary Newman

Zachary Newman, Counsel for Amicus Curiae

PROOF OF SERVICE

I, Zachary Newman, hereby declare: that I am over the age of eighteen years and am not a party to this action, that I am employed in the City of Berkeley and County of Alameda, that my business address is 1832 2nd St, Suite 105, Berkeley, CA 94710.

On April 4, 2025, I served the Legal Aid Association of California's Amicus Curiae Letter in Case No. S288176, *Family Violence Appellate Project and Bay Area Legal Aid vs. Superior Courts of California, Counties of Contra Costa, Los Angeles, Santa Clara, and San Diego*.

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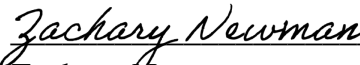
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California on April 4, 2025.



Zachary Newman

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **FAMILY VIOLENCE APPELLATE PROJECT v. S.C. (THE LEGISLATURE OF THE STATE OF CALIFORNIA)**

Case Number: **S288176**

Lower Court Case Number:

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

4/8/2025

Date

/s/Zach Newman

Signature

Newman, Zach (312934)

Last Name, First Name (PNum)

The Legal Aid Association of California

Law Firm