

S288176

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

FAMILY VIOLENCE APPELLATE PROJECT, et. al,
Petitioners,

v.

SUPERIOR COURT OF CONTRA COSTA COUNTY, et. al
Respondents,

LEGISLATURE OF THE STATE OF CALIFORNIA
Real Party in Interest.

Original Petition for Mandate Relief

**APPLICATION TO FILE AMICUS CURIAE BRIEF & BRIEF OF
AMICUS CURIAE PUBLIC JUSTICE IN SUPPORT OF
PETITIONERS**

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Application by Public Justice to File Amicus Curiae Brief in Support of Petitioners

Pursuant to rules 8.200(c) and 8.487(e) of the California Rules of Court, Public Justice respectfully applies for leave to file the accompanying amicus curiae brief in support of petitioners Family Violence Appellate Project and Bay Area Legal Aid. Amicus is familiar with the content of the parties' briefs.

Public Justice is a national public interest advocacy organization that specializes in precedent-setting, socially significant civil litigation, with a focus on fighting to preserve access to justice for victims of corporate and governmental misconduct and preserving the civil justice system as an effective tool for holding the powerful accountable. As part of its Access to Justice Project, Public Justice has long conducted a special project devoted to challenging court secrecy. As part of that advocacy, Public Justice routinely works with journalists and open government groups to vindicate the public's right of access to court records and proceedings.

The proposed brief will assist the Court by examining the public right of access to court records and proceedings and explaining why permitting electronic recording to create verbatim records of judicial proceedings is consistent with public

policies favoring open access to courts. Bringing greater transparency to our courts will not just benefit litigants but also help foster the public's trust in the administration of justice.

Amicus Public Justice certifies that no party or counsel for a party authored the proposed amicus brief in whole or in part, or made any monetary contribution intended to fund the preparation or submission of the brief. No person or entity other than amicus curiae, its members, or its counsel in the pending case made any monetary contribution intended to fund the preparation and/or submission of the proposed amicus brief. (Cal. Rules of Court, rules 8.200(c)(3), 8.487(e)(5).)

Dated: April 4, 2024

Respectfully submitted,

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Brief of Amicus Curiae Public Justice in Support of Petitioners

Introduction

Verbatim recordings of court proceedings play a key role in the legal system. As Petitioners have explained, verbatim recordings are necessary for meaningful appellate review. (Petn. at pp. 21-24.) They are also vital to trial courts' ability to reach fair and consistent outcomes, particularly in cases involving multiple judges or recurring review and modification of court orders. (Petn. at pp. 24-26.) Verbatim recordings serve a third purpose: they increase court transparency. By memorializing testimony, objections, arguments, and court rulings, verbatim recordings allow members of the public and press to understand the judicial decision-making process and scrutinize the application of law to particular facts.

Yet despite the unquestionable benefits of verbatim recordings, hundreds of thousands of people litigate in the California state court system without access to an official verbatim recording of their proceeding.¹ The problem stems

¹ (Judicial Branch of California, Research and Data, Shortage of Court Reporters in California (March 2025) <<https://courts.ca.gov/shortage-court-reporters-california>> [as

from a severe shortage of court-employed court reporters that is unlikely to improve in the foreseeable future.² Petitioners seek to remedy that problem with a simple solution—lifting the restriction on the use of electronic recording in unlimited civil, family, and probate proceedings. This solution will increase access to verbatim recordings to litigants, reporters, and members of the public at a critical time in our country’s history.

In December 2024, Gallup reported that the American public’s confidence in the judiciary dropped to a record-low thirty five percent—a number that has likely only decreased since then.³ The time could not be riper for this Court to take

of Apr. 4, 2025].) Since January 1, 2023, there have been more than 1.5 million unlimited civil, probate, and family court hearings with no verbatim record. (*Ibid.*)

² According to recent data, “[t]o meet the demands of the current caseload, California courts need an additional 458 full-time court reporters” yet “[c]ourts continue to lose more reporters than they can hire.” (*Ibid.*)

³ (Vigers & Saad, *Americans Pass Judgment on Their Courts* (Dec. 17, 2024) Gallup,

<https://news.gallup.com/poll/653897/americans-pass-judgment-courts.aspx>) [as of Apr. 4, 2025].) According to University of Chicago Professor Tom Ginsburg, the poll results are notable because “[i]n contrast with earlier eras, one side’s disapproval is not offset by approval from the other side, but we seem instead to be seeing an overall erosion of institutional

actions that enhance court transparency. We urge the Court to grant the requested relief.

Argument

Open access to court records and proceedings is a foundational element of the American legal system. California courts have long recognized a public right of access to court records and proceedings. (See *Estate of Hearst* (1977) 67 Cal. App. 3d 777, 782– 783 [recognizing common law right of access to judicial records]; *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal. 4th 1178, 1217 [establishing a presumption of access to civil court proceedings]; *McNair v. Nat’l Collegiate Athletic Ass’n* (2015) 234 Cal.App.4th 25, 29 [“Substantive courtroom proceedings in ordinary civil cases, and the transcripts and records pertaining to these proceedings are ‘presumptively open.’”], citation omitted ; *In re Marriage of Nicholas* (2010) 186 Cal.App.5th 1566, 1568 [noting that the “long-standing tradition of open civil proceedings . . . applies with equal force to family law cases”].) Indeed, the long common-

confidence.” (Liptak, *Confidence in U.S. Courts Plummet to Rate Far Below Peer Nations* (Dec. 17, 2024) New York Times <<https://www.nytimes.com/2024/12/17/us/gallup-poll-judiciary-courts.html>> [as of Apr. 4, 2025].)

law tradition of open access dates back to early English law. (See *Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 566–567 [recognizing “that all judicial trials are held in open court, to which the public have free access[] . . . appears to have been the rule in England from time immemorial”], citations omitted.)

Grounded in both common law and the First Amendment, the right of access is grounded in a “principle that people have the right to know what is done in their courts.” (*Wilson v. Sci. Applications Internat. Corp.* (1997) 52 Cal.App.4th 1025, 1030, citation omitted.) As this Court has recognized:

public access plays an important and specific structural role in the conduct of [civil trials]. Public access to civil proceedings serves to (i) demonstrate that justice is meted out fairly, thereby promoting public confidence in such governmental proceedings; (ii) provide a means by which citizens scrutinize and check the use and possible abuse of judicial power; and (iii) enhance the truth-finding function of the proceeding.

(*NBC Subsidiary (KNBC-TV)* (1999) 20 Cal.4th 1178, 1219, alteration in the original.) Accordingly, our law “favors a policy of maximum public access to proceedings and records of judicial tribunals.” (*Estate of Hearst*, *supra*, 67 Cal.App.3d 777, 784.)

Access to court proceedings and records, including verbatim recordings, is particularly important for reporters and news media organizations who “function[] as surrogates for the public,” (*Richmond Newspapers, Inc. v. Virginia*, supra, 448 U.S. at p. 573.) Reporters regularly rely on verbatim records in their reporting, and the resulting coverage serves an invaluable function in society. As this Court has recognized, it is “often impossible” for the public to obtain information about the conduct of government officials “unless the press provides it.” (*McCoy v. Hearst Corp.* (1986) 42 Cal.3d 835, 859.) “Without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally.” (*Cox Broadcasting Corp. v. Cohn* (1975) 420 U.S. 469, 492.) This is of particular concern in California, where superior court judges are elected by a citizenry that often struggles to find relevant information about judicial candidates on which to base their decisions.⁴ To the extent that increased access to

⁴ (See, e.g., Lee & Hernandez, *LA Superior Court Judges* (Oct. 8, 2024) LAist <<https://laist.com/news/politics/2024-election-california-general-los-angeles-county-superior-court-judge>> [as of Dec. 17, 2024] [noting that researching and evaluating judicial

verbatim recordings results in increased news coverage of particular cases, judges, or court systems, the public will be better able to make informed voting decisions that align with their values.

The impact of high-quality news coverage relating to legal proceedings and the court system extends beyond judicial elections to policymaking. Take, for example, news coverage relating to celebrity pop star Britney Spears’s 2021 conservatorship proceedings.⁵ As Cal Matters, a nonprofit newsroom, described, “questions long debated by advocates have suddenly become dinner table conversation. When is it OK to strip people of their rights to protect their welfare? Can we trust

candidates “is notoriously hard” and “not an easy task for the average voter”]; Americans for Democratic Action Southern California, Judicial Endorsements <https://www.adasocal.org/judicial_endorsements> [as of Dec. 17, 2024] [“Voters rarely know what to do when they encounter judicial races on their ballot.”].)

⁵See, e.g., Farrow & Tolentino, *Britney Spears’s Conservatorship Nightmare* (July, 3, 2021) *The New Yorker* <<https://www.newyorker.com/news/american-chronicles/britney-spears-conservatorship-nightmare>> [as of Dec. 17, 2024]; Baer, *Here’s The Official Transcript Of Britney Spears’ Explosive Conservatorship Hearing* (July 7, 2021) BuzzFeed News <<https://www.buzzfeednews.com/article/skbaer/britney-spears-court-transcript-conservatorship>> [as of Dec. 17, 2024].)

the legal system to protect against abuse?”⁶ The #FreeBritney movement and increased public engagement fueled calls for reform of the conservatorship system, not just in California but nationwide, eventually resulting in a change to California’s conservatorship law.⁷ As the conservatorship debate continues, increased transparency in the probate court system can only benefit public dialogue and policymaking.⁸ The same can be said for a myriad of other issues of fundamental concern that are

⁶ (Wiener, *The Britney Effect: How California Is Grappling With Conservatorship* (July 22, 2011) Cal Matters <<https://calmatters.org/justice/2021/07/britney-spears-conservatorship/>> [as of Dec. 17, 2024].)

⁷(Nguyen, *Spears case spotlights state efforts to rein in conservators*, Associated Press (Oct. 1, 2021) <<https://apnews.com/article/britney-spears-oregon-new-mexico-california-arts-and-entertainment-cb1b6ac286799d30acc4893033dccd0b>> [as of Dec. 17, 2024]; Kavi, *A Bipartisan Bill Seeks to ‘Free Britney’ and Others Who Ask a Judge to Replace Their Guardian or Conservator* (July 20, 2021) New York Times <<https://www.nytimes.com/2021/07/20/us/politics/free-britney-bill-law.html>> [as of Dec. 17, 2024].)

⁸ (Garrova, *Saving Lives Or Warehousing The Sick? Debate Continues Over New Law That Expands Criteria For Involuntary Treatment* (Jan. 16, 2024) LAist <<https://laist.com/news/politics/saving-lives-or-warehousing-the-sick-debate-continues-over-new-law-that-expands-criteria-for-involuntary-treatment>> [as of Dec. 17, 2024].)

being decided day after day in California courts without the creation of verbatim recordings.

This Court should recognize the value of increased access to courts and act accordingly.

Conclusion

As United States Supreme Court Chief Justice Warren Burger once wrote, “People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.” (*Richmond Newspapers, Inc. v. Virginia*, supra, 448 U.S. at p. 572) The availability of verbatim court recordings will help the public and press observe the daily workings of our courts to ensure our legal system functions fairly, efficiently, and equitably. Lifting the current prohibition on electronic recording of certain court proceedings will bring greater transparency to our courts and with it, increased trust in the administration of justice. For these reasons and the reasons described above, we urge the Court to grant the petition.

Dated: April 4, 2024

Respectfully submitted,

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Supreme Court of California

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