



December 17, 2024

Via TrueFiling

Honorable Chief Justice Patricia Guerrero
& Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: Letter of Amicus Curiae Public Justice Supporting Petitioners in *Family Violence Appellate Project et al. v. Superior Courts of California*, Case No. S288176

Dear Chief Justice Guerrero and Associate Justices:

Public Justice respectfully submits this letter in support of the petition for writ of mandate and/or prohibition in *Family Violence Appellate Project v. Superior Courts*, No. S288176.

Identification and Interests of Amicus Curiae¹

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.

Permitting electronic recording to create verbatim records of judicial proceedings would bring heightened transparency to California courts consistent with public policies favoring open access to courts. Public Justice requests that the Court consider this amicus letter in deciding whether to grant the petition. (Cal. Rules of Court, rule 8.200(c).)

¹ No party or party's counsel authored this letter in any part. No person or entity made any monetary contribution intended to fund the preparation or submission of this letter, other than the amicus curiae or its counsel.

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. (Petrn. 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. (Petrn. 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.² The problem stems from a severe shortage of court-employed court reporters that is unlikely to improve in the foreseeable future.³ 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. Just today, Gallup reported that the American public's confidence in the judiciary dropped to a record-low thirty five percent.⁴ The time could not be riper for this Court to take actions that enhance court transparency. We urge the Court to grant the petition.

² (Judicial Branch of California, Research and Data, *Shortage of Court Reporters in California* (June 2024) <<https://courts.ca.gov/shortage-court-reporters-california>> [as of Dec. 17, 2024].) Since April 2023, there have been 1,013,924 unlimited civil, probate, and family court hearings with no verbatim record. (*Ibid.*)

³ The Judicial Branch recently created an online “dashboard” that “visualizes court reporter recruitment, retention, and attrition numbers reported by California trial courts in the statewide aggregate.” (Judicial Branch of California, Research and Data, *Court Reporter Recruitment, Retention, and Attrition* (2024) <<https://courts.ca.gov/research-data/court-reporter-recruitment-retention-and-attrition>> [as of Dec. 17, 2024].) Data is available for each yearly quarter beginning in 2023 through the second quarter of 2024. (*Ibid.*) The data shows that, despite the use of salary increases bonuses, there has been a net loss of 23.6 full-time equivalent (FTE) court reporters since January 2023. (*Ibid.*)

⁴ (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 Dec. 17, 2024].)

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-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.⁵ To the extent that increased access to 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.⁶ 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 the legal system to protect against abuse?”⁷ 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.⁸

⁵ (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 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.”].)

⁶(See, 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].)

⁷ (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].)

⁸ (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].)

As the conservatorship debate continues, increased transparency in the probate court system can only benefit public dialogue and policymaking.⁹ The same can be said for a myriad of other issues of fundamental concern that are 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

The availability of verbatim court recordings helps the public and press monitor the judiciary to ensure our courts function 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.

Respectfully submitted,

/s/ Jacqueline Aranda Osorno

Jaqueline Aranda Osorno (SBN 308084)

PUBLIC JUSTICE

1620 L St. NW, Suite 630

Washington, DC 20036

jaosorno@publicjustice.net

⁹ (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].)

PROOF OF SERVICE

I, Jaqueline Aranda Osorno, declare that I am over the age of eighteen and not a party to the above action. My business address is 1620 L Street NW, Suite 630, Washington, DC 20036. My electronic service address is jaosorno@publicjustice.net. On December 17, 2024, I served the attached:

Letter of Amicus Curiae Public Justice Supporting Petitioners in *Family Violence Appellate Project et al. v. Superior Courts of California*, Case No. S288176

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused to be transmitted to the following case participants a true electronic copy of the document via this Court's TrueFiling system:

Sonya D. Winner (SBN 200348)
Ellen Y. Choi (SBN 326291)
Bryanna Walker (SBN 345454)
COVINGTON & BURLING LLP
415 Mission Street, Suite 5400
San Francisco, CA 94105
swinner@cov.com
echoi@cov.com
bwalker@cov.com

Jacob Pagano (SBN 352962)
COVINGTON & BURLING LLP
1999 Avenue of the Stars
Los Angeles, CA 90067
jpagano@cov.com

*Counsel for Petitioner Family
Violence Appellate Project*

Sarah Geneve Reisman
Katelyn Nicole Rowe
Erica Embree Ettinger
COMMUNITY LEGAL AID SOCAL
2101 North Tustin Avenue
Santa Ana, CA 92705
sreisman@clsocal.org
krowe@clsocal.org
eembree@clsocal.org

*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
badams@baylegal.org
jwcislo@baylegal.org

*Counsel for Petitioner Bay
Area Legal Aid*

Service list continued on next page

Document received by the CA Supreme Court.

BY MAIL: I caused to be mailed to the following case participants by depositing the sealed envelope with the U.S. Postal Service, with the postage fully prepaid:

Hon. Edward G. Wei, Presiding
Judge
Kate Bieker,
Court Executive Officer
**Superior Court of California
County of Contra Costa**
Wakefield Taylor Courthouse 725
Court Street
Martinez, CA 94553

Hon. Beth McGowen, Presiding
Judge
Hon. Julie A. Emede, Presiding
Judge-Elect
Rebecca Fleming,
Chief Executive Officer
**Superior Court of California
County of Santa Clara**
Downtown Superior Court
191 N. First Street
San Jose, CA 95113

Rob Bonta
Attorney General of California
**State of California Department
of Justice**
1300 I Street, Suite 1740
Sacramento, CA 95814

Hon. Samantha P. Jessner,
Presiding Judge
Hon. Sergio C. Tapia, Presiding
Judge
David Slayton,
Executive Officer/Clerk of Court
**Superior Court of California
County of Los Angeles**
Stanley Mosk Courthouse 111
North Hill Street
Los Angeles, CA 90012

Hon. Maureen F. Hallahan,
Presiding Judge
Hon. Michael S. Groch, Assistant
Presiding Judge
Michael M. Roddy,
Court Executive Officer/Clerk
**Superior Court of California
County of San Diego**
Central Courthouse
1100 Union Street
San Diego, CA 921

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

Executed on December 17, 2024, in Montgomery, Alabama.

/s/ Jaqueline Aranda Osorno