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' CONSOLIDATED ANSWER TO BRIEFS OF AMICI CURIAE

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

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I. INTRODUCTION

This Court has accepted fourteen amicus briefs addressing issues presented in the Petition. One of those briefs – submitted by the Service Employees International Union California State Council and other labor organizations representing court reporters ("SEIU Amici") – opposes the Petition. The remaining amici either formally support the Petition or do so in substance.

Petitioners appreciate the insightful perspectives offered by supporting amici, which do much to supplement the analysis provided in the Petition. Those offerings speak for themselves and for the most part require no "answer" here. In this consolidated Answer, filed pursuant to rule 8.487(e)(6) of the California Rules of Court, Petitioners begin by addressing the arguments offered in opposition by SEIU Amici. This Answer then addresses certain comments of other amici addressing the scope and nature of the remedy that should be provided.[1]

II. RESPONSE TO SEIU AMICUS BRIEF

A. The SEIU Amicus Brief Does Not Meaningfully Address the Issues Presented in the Petition.

The SEIU Amicus Brief fundamentally misapprehends the Petition and the relief sought. It disputes neither the core material facts on which the Petition rests nor most of the legal

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[1] Citations in this Answer use the same abbreviations used in the Petition and Petitioners' Reply to Returns of Respondent Courts and the Legislature ("Pet. Reply to Returns"). These include "Section 69957" for Government Code section 69957, "Respondents" and "Respondent Courts" for the four respondent courts (as well as the abbreviations previously used for each of those courts, such as "LASC" for Los Angeles Superior Court), "LR" for the Legislature's Return, and "RCR" for the Return filed by the Respondent Courts.

conclusions deriving from those facts. It has almost nothing to say about the widespread irreparable harm to low-income civil litigants in California courts who are deprived of equal access to justice because no verbatim recording is made of their judicial proceedings.

SEIU Amici focus instead on arguments for (a) why this Court should not hold trial courts blameless for the widespread absence of court reporters in their civil, family, and probate departments and (b) why this Court should not give Respondents and other courts unfettered discretion to replace court reporters with electronic recording. But the Petition asks for neither of those things.

As the Petition makes clear, it neither seeks nor requires a parsing of the causes of the court reporter shortage in California's superior courts or any assignment of "fault." (See Petition ¶¶ 7, 42.) Nor does the Petition seek a remedy that would authorize, much less require, the replacement of a single court reporter with electronic recording. Petitioners only ask this Court to hold that if there is no court-provided reporter available to record a hearing, and a litigant is unable to afford a private court reporter, Section 69957 cannot be invoked to preclude the use of electronic recording as a valid alternative means of creating an official verbatim record. (*Id.* ¶ 63.)

Nothing in the SEIU Amicus Brief disputes Petitioners' showing that a large number of hearings are conducted every day in which low-income litigants lack access to verbatim recording. SEIU Amici offer extensive arguments about ***why*** court reporters

are not present to record those proceedings. But they do not dispute that court reporters are, in fact, absent from most unlimited civil, family, and probate departments today. And no one, including SEIU Amici, disputes that the most vulnerable ***victims*** of the court reporter shortage – the low-income litigants who are deprived of verbatim recording of their judicial hearings – are entirely blameless for the situation. It is those litigants' rights that are being infringed, and it is for them that the Petition seeks relief.

SEIU Amici identify no way in which the relief sought in the Petition – which would apply only in those situations where a court reporter is unavailable – would harm them or their members. Petitioners propose no changes to the obligations that superior courts currently have to employ court reporters.

The most disturbing aspect of SEIU Amici's arguments is their implicit assumption that if the court reporter shortage were shown to be the "fault" of the superior courts' hiring and management practices, that would justify continuing to deprive thousands of low-income litigants of equal access to justice. They argue, in short, for the pointless victimization of the blameless. That "dog in the manger" view should be flatly rejected.[2]

The Petition is clear: This case is not about whether electronic recording is better or worse than reporting by a

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[2] The ancient Greek fable speaks of a dog who was lying in a manger full of hay. The dog could not eat the hay, but it would not permit the cattle to get close enough to eat it either. So the dog made the cattle go hungry, yet it received no benefit itself from doing so. (*The Aesop for Children: The Dog in the Manger*, https://read.gov/aesop/081.html.)

certified shorthand court reporter. The Petition does not ask this Court to quarrel with the Legislature's expressed preference for court reporters. (Petition at p. 60.) Nor does the Petition challenge the requirement that litigants who can afford to hire a private court reporter be required to do so in civil cases. This case is solely about whether low-income litigants who cannot afford a private court reporter can be deprived of electronic recording when that is the only alternative to no recording at all. (*Ibid.*) SEIU Amici offer no meaningful answer to that question.

B. The Petition Presents Issues That Are Properly Considered by This Court.

1. The Petition Does Not Rest on Disputed Facts.

SEIU Amici begin by arguing that this Court should not hear this case because "it involves issues of fact, not pure questions of law." (SEIU Amicus Br. at p. 25.)[3] But they identify no disputed issues of fact that have a material bearing on the issues presented, and none that make this case "not suitable for resolution by this Court in an original proceeding." (*Id.* at p. 29.)

SEIU Amici do not dispute that court reporters are absent from most unlimited civil, family, and probate law departments,

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[3] Oddly, SEIU Amici then assert that "[t]he petition's central contention is that the respondent superior 'courts are unable to provide court reporters to litigants who are entitled to them' 'without violating government Code Section 69957.'" (*Id.* at p. 25 [citing Petition at pp. 15, 41].) It should be clear that Petitioners are not claiming that Section 69957 is preventing courts from providing court reporters. Petitioners' "central contention," rather, is that when a court is ***unable*** to supply a court reporter, its obligation to create verbatim recordings for low-income litigants who cannot afford a private court reporter is not, and cannot be, excused by Section 69957.

both in the Respondent Courts and elsewhere. The "issues of fact" SEIU Amici identify instead address ***why*** those reporters are absent and whether the courts could have taken additional steps to hire more court reporters. (See, e.g., *id.* at pp. 28-29.) But those questions are immaterial to the Petition and should not prevent this Court from addressing this case on the merits.

Even if one were to accept SEIU Amici's contentions about contributing causes of the court reporter shortage in California courts – such as insufficient efforts to recruit court reporters, inadequate budgets, or poor management (see *id.* at pp. 16-17, 28) – none of those contentions would erase the fact that the shortage exists.[4] SEIU Amici offer no response to the showing in the Petition that the population of available court reporters has declined extensively in recent years, with far more court reporters exiting the profession than entering it. (See Petition ¶¶ 34-40.) Indeed, their suggestion that the courts can hire the same pro tempore reporters that private litigants are currently hiring fails to account for the fact that pro tempore reporters are

[4] Petitioners do observe that many of the arguments about causation are dubious at best. For example, SEIU Amici assert that courts have lost employees to private reporting because the latter offers flexibility and higher pay, including the ability to make thousands of dollars for just ten minutes of work. (SEIU Amicus Br. at p. 22; see SEIU Amicus Decls. at pp. 4-5 [Caldwell Decl. ¶¶ 4.a-c], 20-21 [Van Dyke Decl. ¶¶ 11-12].) But they then ask why the courts are not able to hire those same court reporters for court positions at what they say would be significantly ***lower*** compensation. (SEIU Amicus Br. at pp. 26-27.) That question answers itself. Other suggestions are equally fanciful: SEIU Amici identify no courthouses where crowds of "freelancers available to be retained as official reporters pro tempore gather on the court steps every morning." (*Id.* at p. 40.)

themselves often in short supply. (See Appx. 218 [LASC General Order].)

Ultimately, none of the "fact" questions SEIU Amici offer are material to the Petition, the constitutional violations it identifies, or the relief it seeks. The only facts that matter are that (1) court reporters are routinely not present in civil, family, and probate courtrooms, with low-income litigants regularly being told "there is no court reporter available for you today," and (2) when those courts adhere to the letter of Section 69957, they provide no verbatim recording for those litigants. The result is that low-income litigants are being deprived of their rights under *Jameson v. Desta* (2018) 5 Cal.5th 594, 623, and the Due Process and Equal Protection clauses of the California Constitution.

On the first of these points, SEIU Amici's brief and declarations actually ***stress*** the endemic absence of court reporters in these courts.[5] SEIU Amici do contend that one of the four Respondent Courts, SDSC, has filled all of the court reporter positions funded in its budget (SEIU Amicus Br. at p. 20), but they do not deny that low-income litigants are still regularly unable to obtain court reporters for their scheduled hearings in

[5] Although these declarations are replete with speculation and other content going well beyond the personal knowledge of the declarants, they confirm the existence of the court reporter shortage in superior courts. (See, e.g., SEIU Amicus Decls. at pp. 3 [Caldwell Decl. ¶ 4], 9-10 [McCarthy Decl. ¶¶ 5-13], 27 [Burnett Decl. ¶¶ 3-7], 30 [Walden Decl. ¶ 3]; see also SEIU Amicus Br. at pp. 17-18.) The declarations otherwise focus on topics that have no bearing on the issues presented, such as alleged missteps by the courts that the declarants contend contributed to the court reporter shortage, anecdotes supporting the superiority of court reporters over electronic recording, and the use of court reporters in depositions.

unlimited civil, family, and probate proceedings in that court. (See Petition ¶¶ 41-44.)[6]

SEIU Amici also agree with Petitioners that the "removal of court reporters from civil departments created a two-tier justice system because wealthy litigants can hire freelance reporters to serve as official reporters pro tempore while poor litigants cannot afford to do so." (SEIU Amicus Br. at p. 9.) Beyond that, however, SEIU Amici have nothing to say about the impact of the court reporter shortage on low-income litigants' access to justice. While offering a host of criticisms of court managers for their alleged role in contributing to the shortage, SEIU Amici essentially ignore the fact that the people being "punished" – low-income litigants who have no means of obtaining verbatim recordings of their judicial proceedings – have had nothing to do with creating the problem. As the Respondent Courts have acknowledged, those litigants are the "[m]ost faultless of all." (RCR at p. 5.) They are also among the most vulnerable litigants in California courts, often lacking both legal counsel and expertise in the court system. (See Petition ¶ 22.)

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[6] One declarant claims to have no knowledge of any "recent instance" of a *Jameson* request being denied in SDSC (SEIU Decs. at p. 17 [Walker Decl. ¶ 14]), but he identifies no reason he would have knowledge of such instances. The issue only arises when court reporters like him are not present. In any event, no answer is offered to Petitioners' showing that low-income litigants who make *Jameson* requests in SDSC are regularly informed that their hearings must be continued if they want them recorded. (See Petition ¶ 45.) This may not constitute formal denial of a *Jameson* request, but it is effectively the same thing. (*Id.* ¶¶ 45-48; see Appx. 49-50, 83, 149-150.)

Thus, there are no fact disputes that should prevent this Court from exercising its original jurisdiction here. It is well established that a claim may properly be decided as a question of law if there is no genuine dispute about facts that are material to that legal question. For example, a superior court may grant summary judgment in a civil case if there is no genuine dispute of ***material*** fact bearing on the legal issues presented, regardless of whether there are disputes about other, immaterial facts. (See Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850; *Kelly v. First Astri Corp*. (1999) 72 Cal.App.4th 462, 470.) Given that the facts material to the claims in this case are not disputed, SEIU Amici's argument that this Court should stay its hand because of alleged "fact disputes" about ***other*** things is simply wrong.

2. The Court Has Adequate Benefit of Competing Views.

SEIU Amici next argue that this Court should decline to decide the Petition because of "the lack of adversariness." (SEIU Amicus Br. at p. 29.) It is unclear what legal ground, if any, SEIU Amici rely upon for this argument; they cite no supporting authority. They do not (and could not) challenge Petitioners' standing or the existence of a genuine issue presented for this Court's resolution. (See Pet. Reply to Returns at pp. 45-47.)

SEIU Amici instead simply assert that "Petitioners and respondents share the same goal, which is to give the respondents maximum discretion to expand the use of electronic recording in civil proceedings." (SEIU Amicus Br. at pp. 29-30.)

This would have no legal significance even if it were true[7] – but it is plainly not true. Far from seeking more discretion for the Respondent Courts, the Petition focuses on their ***mandatory*** duties. (See Petition ¶¶ 7, 63 & p. 51.) Indeed, the subject of "discretion" is one of several issues on which Petitioners have criticized Respondents' General Orders. (*Id.* ¶ 59; see Pet. Reply to Returns at pp. 34-35.)

There is also no merit in SEIU Amici's suggestion that insufficient "adversariness" exists because no one other than themselves has stepped forward to challenge the Petition broadly or to offer a full-throated defense of Section 69957. The Legislature did decline this Court's invitation to weigh in on the merits as a Real Party in Interest. But SEIU Amici ***have*** filed a lengthy amicus brief opposing the Petition. Insofar as it is useful to this Court to have the benefit of competing viewpoints, even SEIU Amici acknowledge that this can properly come from an amicus on legal issues. (SEIU Amicus Br. at p. 30.)

Moreover, in addition to the SEIU Amicus Brief and Respondents' General Orders, this Court has now received more than a dozen other amicus briefs from a wide variety of independent third parties, including two groups of distinguished constitutional law scholars, the California Access to Justice

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[7] This Court has recognized 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.]" (*Golden Gate Bridge and Highway District v. Felt* (1931) 214 Cal. 308, 318.) SEIU Amici do not suggest that there has been any fraud or collusion here, and there has been none.

Commission, the California Lawyers Association, numerous legal services organizations, and other stakeholders.

There can thus be no serious question that this Court has the benefit of sufficient viewpoints to fairly evaluate the issues presented in this case. To the extent that no one (including SEIU Amici) has disputed many of the key points presented in the Petition – including the impact of the absence of verbatim recording on low-income litigants' access to justice – it is because those matters are beyond genuine dispute.

3. There Is No Appearance of Unfairness That Would Preclude This Court from Acting.

SEIU Amici's suggestion that a decision from this Court on the merits "would not have the appearance of justice" (SEIU Amicus Br. at pp. 30-31) turns reality on its head. This Court has ultimate supervisory responsibility for the administration of justice in California (see Petition at p. 49), and it is this Court's duty to address the widespread violations of litigants' rights that are occurring every day.

SEIU Amici argue that the Court should decline to hear this case because the Judicial Council supported proposed legislation that would have expanded the authorized use of electronic recording. (SEIU Amicus Br. at p. 31.) SEIU Amici cite no authority supporting this argument. There is none. One of the Judicial Council's assigned functions is to offer commentary on proposed legislation concerning court operations and rules. (See Cal. Rules of Court, rules 10.1(b)(3), 10.10 & 10.12.) If SEIU Amici's argument were accepted, the Judicial

Council would need to abandon this important function for fear of limiting this Court's ability to hear cases touching on any broad subject matter on which the Judicial Council offered comment.

Nor is there any merit in SEIU Amici's argument that this Court should refuse to hear this case because the Chief Justice stated in her 2024 State of the Judiciary address that "'the courts are doing all that we feasibly can' to hire more court reporters." (SEIU Amicus Br. at p. 31.) SEIU Amici argue that their "evidence shows that is not true." (*Id.*) This argument once again returns to the false premise that infects most of the SEIU Amicus Brief: that Petitioners' claims require findings as to the ***causes*** of the court reporter shortage in the courts, with a corresponding assignment of fault. It is this premise that is "not true."

Finally, there is no basis for SEIU Amici's suggestion that this Court should abandon its constitutional responsibility to provide a remedy for a wholesale and ongoing failure of the judicial system by simply declaring a need and then leaving it up to the Legislature to address the problem. (*Id.* at pp. 30-32.) As discussed in Part II.D. below, the relief sought here is urgently needed and well within the scope of this Court's constitutional powers and responsibilities.

C. The Petition Identifies a Genuine Constitutional Crisis Requiring Action from This Court.

1. The Petition Identifies Widespread Infringements of Well-Established Constitutional Rights.

The Petition sets forth a detailed analysis of why the failure of superior courts to create verbatim recordings for litigants who cannot afford a private court reporter is inconsistent with both this Court's decision in *Jameson* and the Due Process and Equal Protection clauses of the California Constitution. (Petition at pp. 53-72.) SEIU Amici do not attempt to refute this. Apart from a brief acknowledgement of Petitioners' Due Process and Equal Protection arguments (SEIU Amicus Br. at p. 32), SEIU Amici do not discuss them, much less offer any response. Nor do they respond to Petitioners' core arguments concerning *Jameson*.

Instead, SEIU Amici argue that this Court has never recognized "an absolute freestanding constitutional right to a verbatim record at public expense in civil cases." (*Id.*; see also *id.* at p. 37 ["Petitioners' argument therefore depends on the recognition of a new constitutional right."].) That is not what the Petition asserts.

As the Petition demonstrates, the need for verbatim recording is built into the very fabric of our judicial system; without it, a litigant is deprived of full (or in some respects any) access to important functions of the system, including the ability to appeal an adverse ruling. (Petition ¶¶ 19-29.) Where a court does not supply a court reporter, the default solution to preserve

litigants' rights is to permit them to hire a private court reporter to record a proceeding. (*Jameson, supra,* 5 Cal.5th at p. 623.) Nothing in the Petition challenges that solution for those who can afford it. But for those who cannot afford the high cost of a private court reporter, the result is severely diminished access to justice. (*Ibid.*) This violates *Jameson* and the California Constitution.

SEIU Amici argue that this Court's decision in *Jameson* was not made on constitutional grounds. But that is of no consequence, as the *Jameson* Court did not ***need*** to find that the plaintiff's constitutional rights had been violated in order to hold that he had been improperly deprived of verbatim recording.[8] And *Jameson* emphasized the courts' inherent power to ensure that indigent litigants enjoy equal access to justice. (*Id.* at pp. 603-605.)

SEIU Amici's analogy to the absence of a right to legal counsel in a civil case (SEIU Amicus Br. at pp. 11, 34) is not meaningful. While it is extremely unfortunate that many low-income civil litigants are forced to represent themselves in cases that address the most important issues in their lives, the absence of counsel does not itself ***extinguish*** a litigant's legal rights. For example, there is no rule requiring a litigant to have had a

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[8] This Court does not reach constitutional questions when a case can be resolved on other grounds. (*People v. Duarte* (2000) 24 Cal.4th 603, 610 ["It is well established that 'we do not reach constitutional questions unless absolutely required to do so to dispose of the matter before us.' [Citation.]"]; *Palermo v. Stockton Theatres* (1948) 32 Cal.2d 53, 65-66 ["At least as early as [1903], this court said, 'A court will not decide a constitutional question unless such construction is absolutely necessary ….'"].)

lawyer in the trial court in order to pursue an appeal. But without a verbatim recording of a hearing, a litigant's right to appeal the outcome of that hearing is effectively eliminated. (*Jameson*, *supra*, 5 Cal.5th at pp. 608-609.)

The remaining "questions" presented in this portion of the SEIU Amicus Brief (at pp. 32-33) are red herrings. Those questions are clearly answered in the Petition, and SEIU Amici offer no argument for rejecting Petitioners' answers.

- "If Section 69957 is unconstitutional as applied to poor litigants, does it apply only to litigants eligible for a fee waiver?" (*Ibid.*)

This question is answered in the Petition (¶ 7, fn. 1) and is discussed at length in Petitioners' Reply to Returns (at pp. 28-34). Although posing the question, SEIU Amici offer no argument in support of a different answer.

- "If there is a constitutional right to a verbatim record at public expense, does it apply only to proceedings where evidence is presented?" (SEIU Amicus Br. at p. 33.)

Insofar as this question addresses the relief the Petition seeks, SEIU Amici offer no reason for a limitation to evidentiary proceedings, and the Petition is not so limited. There are many non-evidentiary hearings in superior courts in which the rights of litigants are addressed and for which a verbatim recording would be needed, including for follow-on proceedings in the same court or to pursue an appeal. (See Petition ¶¶ 20-22, 24-28.)[9]

[9] Additional examples are provided in the amicus briefs. For example, the Legal Aid Association of California's ("LAAC") (continued…)

- "[D]oes it apply only to proceedings where fundamental rights or liberty interests are at stake …?" (SEIU Amicus Br. at p. 33.)

The Petition is unequivocal in its objection to this limitation in the Respondent Courts' General Orders. (Petition ¶ 58.) The subject is addressed in further detail in Petitioners' Reply to Returns (at pp. 18-25). SEIU Amici offer no counter-arguments.

- "[D]oes the government have the obligation to pay for the preparation of transcripts?" (SEIU Amicus Br. at p. 33.)

The Petition does not seek such relief. Even without a transcript, an electronic recording can be used for many of the same purposes as a transcript prepared by a court reporter, including some appeals. (Petition ¶ 54.) And as this Court held in *Jameson*, any challenges litigants face in paying for transcripts, when they are needed, cannot excuse a failure to make verbatim ***recording*** available. (*Jameson*, *supra*, 5 Cal.5th at pp. 624-625.)

2. SEIU Amici Fail to Refute Petitioners' Showing That Section 69957 Materially Impairs the Courts' Exercise of Their Inherent Powers.

As the Petition explains, the Legislature may not defeat or materially impair the courts' exercise or fulfillment of their

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Amicus Brief recounts an occasion when Disability Rights California did not retain a court reporter for a routine case management conference at which no substantive decisions were expected. However, the court unexpectedly did issue a "substantive order," and no verbatim recording was available to support a challenge to it. (LAAC Amicus Br. at p. 15.)

inherent and constitutionally granted powers and duties; when a legislative enactment has this effect, it violates the constitutional separation of powers. (See Petition at pp. 52, 56 [citing *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1103; *Briggs v. Brown* (2017) 3 Cal.5th 808, 846, 850-859; *People v. Engram* (2010) 50 Cal.4th 1131, 1147-1148].) Here, Petitioners have established that the current application of Section 69957 to low-income litigants when a court reporter is unavailable materially impairs the courts' ability to fulfill their duty to provide verbatim recording for low-income litigants who cannot afford a private court reporter. SEIU Amici do not dispute that this impairment exists; nor could they do so.

As demonstrated in the Petition, verbatim recordings are necessary for meaningful appellate review and are vital to the trial courts' own ability to fairly and efficiently dispense justice. (*Id*. ¶¶ 19-29.) Section 69957 flatly prohibits the use of electronic recording in unlimited civil, family, and probate matters, and it provides no exception for litigants who cannot afford a private court reporter. Where court reporters are available to record those litigants' proceedings, this causes no problem. But, as the Petition has shown (and as SEIU Amici have not meaningfully disputed), there is a severe court reporter shortage in California courts, and court-provided court reporters are unavailable in most unlimited civil, family and probate matters. (*Id.* ¶¶ 30-35.) Section 69957 therefore deprives courts of the ability to create ***any*** verbatim recording for those proceedings. This materially impairs the courts' exercise of their inherent and constitutional

powers and duties, including (1) the power and duty to ensure that low-income litigants have full, equal access to the judicial system,[10] (2) the power and duty to fairly and efficiently administer justice, and (3) the power and duty to review and correct errors in trial court orders and judgments. (*Id.* at pp. 53-58.)

SEIU Amici do not dispute that California courts have these powers and duties. They do not dispute Petitioners' showing that these powers and duties are enshrined in the California Constitution or have otherwise been formally recognized by this Court as "inherent." (See *id.*) Nor do they dispute the importance of verbatim recordings to the courts' ability to exercise their core powers and fulfill their core duties.

Instead, SEIU Amici argue that, "unlike '[d]eciding cases,' 'managing dockets' … and 'control[ling] … calendars' … the manner of creating verbatim records has never been an issue left to the judiciary." (SEIU Amicus Br. at p. 36.) But this misses the point. No one disputes that the Legislature can, and historically has, enacted statutes governing the ***method*** for creating verbatim recordings. The relevant inquiry is whether the Legislature's regulation of verbatim recording can go so far as to ***eliminate verbatim recording entirely for many litigants***. That it cannot do.

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[10] As stated in *Jameson*, "California courts … have the inherent discretion to facilitate an indigent civil litigant's equal access to the judicial process even when the relevant statutory provisions … do not themselves contain an exception for needy litigants." (*Jameson*, *supra*, 5 Cal.5th at p. 605.)

There is, and can be, no serious dispute that the question of ***whether*** to provide verbatim recording is central to the inherent powers and functions of the courts. The California Constitution explicitly designates superior courts as "courts of record" (Cal. Const., art. VI, § 1),[11] and their operation is fundamentally dependent on the existence of verbatim recording of judicial proceedings. A legislative enactment that has the effect of eliminating verbatim recording for thousands of judicial proceedings every day materially impairs the exercise of the courts' inherent powers.

3. This Court's Precedents Require Section 69957 to Be Treated as Directive to Avoid a Separation of Powers Violation.

When a statute materially impairs fulfillment of the courts' inherent and constitutional powers and duties, this Court's standard approach is to interpret mandatory statutory language as merely "directive" to avoid a separation of powers problem. (See Petition at pp. 52, 56 [citing *Briggs*, *supra*, 3 Cal.5th at pp. 846, 850-859; *Engram*, *supra*, 50 Cal.4th at pp. 1147-1148; *Le Francois*, *supra*, 35 Cal.4th at p. 1103].) Petitioners have shown that this Court can and should apply this precedent to interpret Section 69957 as directive insofar as it precludes the use of electronic recording when no court reporter is available and a

[11] A valuable analysis of the history and significance of this designation is provided in the amicus brief submitted by a group of leading constitutional law scholars, including (among others), Dean Erwin Chemerinsky of UC Berkeley School of Law and Professor Judith Resnik of Yale Law School ("Law Professor Amicus Br.").

litigant cannot afford a private court reporter. (*Id.* at pp. 58-60.) None of SEIU Amici's contrary arguments has merit.

First, SEIU Amici contend that Section 69957 "cannot be interpreted as merely directory" because it would contravene the Legislature's clear intent to restrict the use of electronic recording. (SEIU Amicus Br. at pp. 36-37.) But this Court's separation of powers precedents focus on the ***effect*** of the legislation – whether it materially impairs the courts' core functions – not on whether the impairment was intentional.[12] This was made clear in *Briggs v. Brown* (2017) 3 Cal.5th 808, where this Court held:

> [O]ur case law establishes that while the Legislature has broad authority to regulate procedure, the constitutional separation of powers does not permit statutory restrictions that would materially impair fair adjudication or unduly restrict the courts' ability to administer justice in an orderly fashion. Repeatedly, for over 80 years, California courts have held that statutes may not be given mandatory effect, despite mandatory phrasing, when strict enforcement would create constitutional problems.

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[12] SEIU Amici cite *California Court Reporters Assn. v. Judicial Council of California* (1995) 39 Cal.App.4th 15 and *California Court Reporters Assn. v. Judicial Council of California* (1997) 59 Cal.App.4th 959, as showing that the Legislature's intent behind Section 69957 was "to impose binding restrictions on the courts." (SEIU Amicus Br. at pp. 15, 36.) Those cases did not address the impairment of litigants' rights that is presented here. Rather, they simply addressed the choice between two different but – at that time – equally available options: court reporters or electronic recording. Those decisions had no need to consider the choice at issue here, which is between electronic recording and no recording at all.

(*Briggs*, *supra*, 3 Cal.5th at pp. 853-854; see also *Engram*, *supra*, 50 Cal.4th at pp. 1146-1151.)

The rule enunciated in *Briggs* and *Engram* did not require a finding that an enactment was not intended to be mandatory. Rather, the Court's reasoning was straightforward: When the effect of an enactment is to "defeat" or "materially impair" the courts' exercise of their core powers and responsibilities, the "statute[] **may not be given mandatory effect, despite mandatory phrasing**." (*Briggs*, *supra*, 3 Cal.5th at pp. 853-854, emphasis added; see also *Engram*, *supra*, 50 Cal.4th at pp. 1151-1152.) This principle does not apply with lesser force merely because the Legislature intended a statute to mean what it said.

Neither *Engram* nor *Briggs* can be distinguished based on the Court's observation in each case that the Legislature (or the voters) may not have anticipated the full implications of the enactment. (See *Briggs*, *supra*, 3 Cal.5th at p. 858; *Engram*, *supra*, 50 Cal.4th at p. 1152, fn. 9.) The same could be said of Section 69957: There is no indication that the Legislature intended for Section 69957's restrictions on electronic recording to impose the profound burden on low-income litigants that exists today. (Petition at pp. 59-60.) Nothing in the plain language of the statute or its legislative history suggests an intent to deprive litigants who cannot afford a private court reporter of ***any*** verbatim recording. (*Id.*)

In fact, treating the prohibitory language of Section 69957 as merely directive allows a separation of powers problem to be avoided while giving full effect to the actual intent of that statute

(the Legislature's preference for reporting by court reporters), as well as "the strong legislative policy in support of equal access to justice" reflected in Government Code section 68630 et seq. (See *Jameson*, *supra*, 5 Cal.5th at p. 614.) This Petition does not challenge the Legislature's preference for use of a court reporter when that is a genuine option in real life. The only relief the Petition seeks is for cases where recording by a court reporter is ***not*** an option genuinely available to a low-income litigant. And if this Court interprets Section 69957 as merely directive in those circumstances, such a ruling would be consistent with, and in furtherance of, the Legislature's own finding "[t]hat our legal system cannot provide 'equal justice under law' unless all persons have access to the courts without regard to their economic means." (Gov. Code, § 68630, subd. (a).)

Second, SEIU Amici contend that Petitioners' Separation of Powers argument should fail because "there is no similar precedent for treating statutes about court reporters and electronic recording as merely directory …." (SEIU Amicus Br. at p. 36.) This Court does not restrict its response to constitutional violations to those it has previously addressed. SEIU Amici cite no authority to that effect.

Third, SEIU Amici argue that Section 69957 cannot be treated as merely directory "because the expenditure of public funds is involved." (*Id.*)[13] This argument is another red herring.

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[13] In a closely related argument, SEIU Amici argue that this Court should refrain from ordering a remedy because doing so would affirmatively violate separation of powers where the (continued…)

Nothing in the Petition seeks to impose any obligation on the Legislature concerning appropriation of public funds. Indeed, the relief sought in the Petition would impose no obligation on the Legislature at all – a fact that presumably contributed to the Legislature's objection to being named a Real Party in Interest by this Court. (See LR at pp. 4-5.)

The statutory language to which SEIU Amici point states that "[a] court shall not expend funds for or use electronic recording technology … to make the official record of an action or proceeding in circumstances not authorized by this section." (Gov. Code, § 69957, subd. (a).) The reference to expenditure of funds has no significance to the issues presented here, either legally or practically.[14] When the Legislature imposes restrictions on the operations of a government entity, it will rarely be lawful for the entity to expend funds for the prohibited activity, regardless of whether such spending is explicitly forbidden. As discussed further in Part II.D below, even if such explicit language about funding exists, the analysis is the same for separation of powers purposes. (See *Mandel v. Myers* (1981) 29 Cal.3d 531, 551, fn. 9 [the Legislature may not "arrogate to itself functions which it may not constitutionally exercise simply by adopting restrictions in an appropriations bill"].)

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spending of "public money" could be involved. That argument, which has no greater merit, is discussed in Part II.D below.

[14] There is no indication that any of the Respondent Courts would need to expend significant amounts of public funds to implement the remedy sought in the Petition, as they have electronic equipment already in place. (See Pet. Reply to Returns at pp. 39-40.) The principal barrier they face comes from the statutory bar on "use" of electronic recording technology.

D. This Court Has Both the Power and the Duty to Grant the Requested Relief.

This Court is the ultimate arbiter of the California Constitution and therefore has power to rule on the constitutionality of Section 69957. And it has a duty to do so. This Court "must enforce the provisions of our Constitution and 'may not lightly disregard or blink at ... a clear constitutional mandate.' [Citation.]" (*County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 285; see also *People v. Kelly* (2006) 40 Cal.4th 106, 110; *People v. Delgadillo* (2022) 14 Cal.5th 216, 222.)[15]

SEIU Amici's suggestion that this Court would itself violate separation of powers by failing to give full effect to Section 69957 (SEIU Amicus Br. at pp. 34-37) fundamentally misunderstands the separation of powers doctrine. This Court's power to decide questions of constitutionality includes the power to determine whether a statute violates separation of powers principles. The Court performs this function to ***preserve*** separations of powers between the branches. The Court's practice in this context of treating problematic statutory language as "directive" is actually more deferential than the standard response to a constitutional infirmity, which is to simply invalidate the unconstitutional statute. (See, e.g., *In re Marriage Cases* (2008) 43 Cal.4th 757,

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[15] See also RCR at p. 8 (Respondent Courts agreeing that "[t]he Petition presents important matters on which statewide action and this Court's guidance are urgently needed"); LR at p. 4 (Legislature asserting "it is the courts' role and duty to make the ultimate determination of the constitutionality of statutes, not the Legislature's").

856 [holding unconstitutional statutes excluding same-sex couples from the designation of marriage]; see also *Valdes v. Cory* (1983) 139 Cal.App.3d 773, 793 [invalidating provisions of statute that violated constitutional prohibition against impairment of contracts].)

SEIU Amici try to suggest that a ruling in Petitioners' favor would create a separation of powers problem because it would require the Legislature to act, arguing that "courts cannot usurp the Legislature's authority to decide whether and how to spend public money." (SEIU Amicus Br. at pp. 37-41.) But the relief sought is directed at the Respondent Courts, not the Legislature. Petitioners do not seek an order requiring enactment of a different statute or any appropriation by the Legislature; nor are such measures necessary for the Court to grant the relief requested here.

There is no rule that prohibits a court from issuing an order that affects the expenditures of public funds. To the contrary, virtually every ruling from a court that finds a constitutional violation in the actions of a government entity in the course of its operations will implicate that entity's operational spending to at least some degree. But the fact that compliance may not be cost-free is no barrier to this Court's authority to require compliance with the law. In *Jameson*, for example, this Court did not direct the Legislature to take any action, even though the outcome would result in expenditure of public funds

for court reporters who could record hearings for free for low-income litigants.[16]

Even when payment of money has been directly involved, courts have long recognized the distinction between ordering the Legislature to enact a specific appropriation – which is not at issue here – and simply directing that appropriated funds be paid without regard to an invalid legislative restriction. (See *Committee To Defend Reproductive Rights v. Cory* (1982) 132 Cal.App.3d 852, 856 [citing *Mandel*, *supra*, 29 Cal.3d at p. 542].)

In *Mandel*, this Court upheld a trial court's decision ordering an agency to pay attorneys' fees from funds previously appropriated to that agency despite the lack of specific appropriation for the payment and in the face of clear legislative intent that the attorneys' fees in question not be paid. (29 Cal.3d at pp. 535, 552.) In so holding, the Court recognized that under certain circumstances, "a court decision implementing constitutional rights may result in the expenditure of funds in a manner that the Legislature has not contemplated and yet pose no separation of powers problems whatsoever." (*Id.* at p. 540.) Indeed, when implementing constitutional rights, a court may authorize the expenditure of funds in a way that the Legislature has ***expressly forbidden*** if restrictions placed on the

[16] Some court funding is appropriated for specific purposes; the remainder may be used for any legally permissible need. (The 2025-26 Budget Judicial Branch, Legislative Analyst's Office (Feb. 12, 2025), https://lao.ca.gov/Publications/Report/4959.) No special appropriation was needed to permit compliance with *Jameson*, and SEIU Amici do not (and could not credibly) argue that the relief sought by the Petition here would require funds not adequately covered by the courts' general appropriation.

appropriation of those funds is improper. (*Id.* [citing *Shapiro v. Thompson* (1969) 394 U.S. 618].)

Mandel's reliance on *State Board of Education v. Levit* (1959) 52 Cal.2d 441 is instructive. There, the Legislature appropriated funds to the Department of Education for the purchase of textbooks for schools, but expressly prohibited funds from being used for two specific books. (52 Cal.2d at pp. 446-447.) The court struck down the restriction as improper and ordered the Controller to purchase books "without regard to the ineffective restriction contained in [the budget act]." (*Id.* at p. 466.)

Mandel also expressly disavowed *Myers v. English* (1858) 9 Cal. 341 on the point for which SEIU Amici cite it: "The longstanding general rule … that the courts cannot usurp the Legislature's authority to decide whether and how to spend public money." (SEIU Amicus Br. at p. 41.) *Mandel* found that *Myers* and other cases "hold simply that by virtue of the separation of powers doctrine courts lack the power to order the Legislature to pass a prescribed legislative act." (*Mandel*, 52 Cal.2d at p. 551, fn.9.) This Court held that to the extent *Myers* "can be read to suggest that the Legislature is not constrained by the separation of powers doctrine in exercising its appropriations power, such language … must be disapproved." (*Id.*)

SEIU Amici's other cited cases also do not support their assertion that this Court should defer to the Legislature. In both *Payne v. Superior Court* (1976) 17 Cal.3d 908 and *Yarbrough v. Superior Court* (1985) 39 Cal.3d 197, the Court crafted

standalone legal remedies that did not rely on legislative action. In *Payne*, the Court held that a court cannot deny appointed counsel to an indigent imprisoned civil litigant who is threatened with a judicially sanctioned deprivation of his property. (*Payne*, *supra*, 17 Cal.3d at pp. 924, 927.) The Court did recognize that "if and how [such appointed] counsel will be compensated is for the Legislature to decide." (*Id.* at p. 920, fn. 6.)[17] But the Court went on to say that "[until] that body determines that appointed counsel may be compensated from public funds … attorneys must serve gratuitously in accordance with their statutory duty …." (*Id.*) In other words, the *Payne* court did not "[leave] implementation of the right to the Legislature" (SEIU Amicus Br. at p. 37); it required the appointment of attorneys in the circumstances of the case, on a pro bono basis if necessary.

SEIU Amici's remaining cases on this point (*id.* at pp. 37-38) are even further afield. None concerned preservation of the courts' inherent and constitutional powers; instead, they all addressed subjects that were decidedly within the purview of the executive and legislative branches. (See *Humbert v. Dunn* (1890) 84 Cal. 57, 57-58 [discussing a state controller's authority to pay a committee member's salary from the state treasury absent clear legislative appropriation of funds]; *Gould v. Grubb* (1975) 14 Cal.3d 661, 676 [deferring to the Legislature to pick an ordering

[17] The Court's hope that the Legislature would step in to address payment of appointed attorneys in civil cases was reiterated in *Yarbrough*, although in that case the Court merely remanded the case to determine whether the petitioner was entitled to a free civil attorney at all. (*Yarbrough*, *supra*, 39 Cal.3d at p. 207.)

scheme for candidates on a city council ballot and to regulate electoral matters]; *Young v. Gnoss* (1972) 7 Cal.3d 18, 28 [deferring to the Legislature to choose how to reform residency requirements for state voting eligibility purposes]; *Serrano v. Priest* (1976) 18 Cal.3d 728, 775, fn. 54 [asking the Legislature to determine a constitutional public school financing system].)

SEIU Amici's corollary argument – that this Court can only act to implement constitutional rights in the face of legislative inaction (SEIU Amicus Br. at p. 39) – is likewise not supported by the cases they cite. Nothing in those cases suggests such a prerequisite, and all recognize this Court's broad power to address constitutional issues. (See *In re Attorney Discipline System* (1998) 19 Cal.4th 582, 607 [Court exercising its "inherent constitutional authority" to regulate the attorney disciplinary system to protect the public from harm]; *Wilson v. Eu* (1991) 54 Cal.3d 471, 473 [Court stepping in to ensure the electorate equal protection of the law]; *Legislature v. Reinecke* (1973) 10 Cal.3d 396, 400 [similar]; *Crawford v. Board of Education* (1976) 17 Cal.3d 280, 307 [Court intervening to protect the constitutional rights of minority children where local school board failed to implement a desegregation program].)

The suggestion that this Court should simply announce the existence of a constitutional violation and then defer to the Legislature to fix it is particularly inappropriate given that the problem addressed here has been well-known for years and

legislative proposals to address it have repeatedly failed.[18] Most recently, as discussed in the Amicus Briefs of the Legal Aid Association of California ("LAAC") and the ACLU of Northern California ("ACLUNC"), the Legislature failed to pass Senate Bill 662, which would have provided a complete remedy. (LAAC Amicus Br. at pp. 19-20; ACLUNC Amicus Br. at p. 26.) SEIU Amici's discussion of supposed "flaws" in that bill that were "feared" by its "[o]pponents" (SEIU Amicus Br. at p. 23) fails to mention that they themselves were the "opponents" to whom they refer. (See LAAC Amicus Br. at pp. 19-20.)

SEIU Amici's emphasis on a currently pending bill (SEIU Amicus Br. at pp. 24-25, 31) reinforces that legislative action is unlikely to provide the needed remedy. As discussed in Part II.E.2 below, that bill, even if enacted, would fall far short of providing the relief needed for this widespread access-to-justice problem.

This Court has a constitutional duty to remedy the failure of the superior courts to satisfy their obligation to provide equal access to justice to ***all*** litigants. It should satisfy that duty in this case by granting the relief requested in the Petition.

E. Relief Should Be Granted Based on Today's Reality, Not Speculation About Possible Future Circumstances.

Unable to offer any meaningful challenge to the Petition's showing of widespread infringement of low-income litigants'

[18] As discussed in Part II.E.1 below, the narrow bills that have been enacted recently promise no more than, at best, marginal increases in the court reporter population.

rights, SEIU Amici suggest that this Court should refrain from granting relief because the situation might get better, either because of recently enacted legislation designed to increase the court reporter population or a proposed bill in the Legislature that, if enacted, would partially – but only partially – address the problem for a limited period of time. None of these arguments has merit.

1. Optimistic Predictions Cannot Disguise the Ongoing Constitutional Crisis.

SEIU Amici place great emphasis in their brief and accompanying declarations on four recent legislative actions aimed at increasing the pool of available court reporters: (a) the approval of voice writing, (b) the authorization of licensing reciprocity for out-of-state court reporters who have passed the National Verbatim Court Reporters Board examination, (c) an additional appropriation of funding to the superior courts for recruitment and retention of court reporters, and (d) the authorization of a pilot study of remote reporting. (SEIU Amicus Br. at pp. 19-20.) SEIU Amici do not claim that these measures, either alone or collectively, are currently sufficient to address the courts' failure to provide verbatim recording to low-income civil litigants. Nor do they – or could they – seriously claim that such an outcome is likely in the near future.

As a general matter, SEIU Amici's predictions of potential future impacts from these measures are inherently speculative and, as such, are irrelevant to whether relief is needed for constitutional violations occurring ***now.*** (See *Monks v. City of Rancho Palos Verdes* (2008) 167 Cal.App.4th 263, 309, *as*

modified on denial of reh'g (Oct. 22, 2008) ["[S]peculation does not justify violating the state Constitution …."].) The widespread unavailability of verbatim recording for low-income litigants is a constitutional crisis now, and it requires a proper remedy now.

There is no risk that the remedy Petitioners seek would outlive its usefulness (or the courts' need of it) even if and to the extent the new measures are ultimately such a success in bringing new court reporters into California courtrooms that verbatim recording by court reporters is once again reliably available for all low-income litigants.[19] If that were to occur, Petitioners' remedy would "sunset" on its own terms, since it would authorize use of electronic recording only when a court reporter is not available.

In fact, there is little reason to conclude that the four measures to which SEIU Amici point will have a major impact anytime soon, even to offset the ongoing stream of departures from the courts, much less to reverse those losses and return the courts to full staffing levels.

First, SEIU Amici point to waiting lists for court reporting schools and an "uptick in the number of licensed certified shorthand reporters" because of legislation permitting licensure of voice writers. (See, e.g., SEIU Amicus Br. at p. 10; SEIU Amicus Decls. at pp. 6 [Caldwell Decl. ¶ 5]; 32-33 [Leslie Decl.

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[19] Even if this were to happen, there is virtually no chance that it would happen everywhere at once. Shortages of court reporters are particularly acute in remote areas and are likely to persist in those courts even if the situation improves in the major population centers. (See Amicus Brief of Legal Services of Northern California ("LSNC Amicus Br.") at pp. 14, 17-19.)

¶ 10].) But aspiring voice writers on waiting lists may not make it all the way through court reporting school, let alone pass the licensure exam. Those who do pass may choose to work in private practice, rather than in the public sphere. (See Appx. 937 [California Access to Justice Commission ("AJC") Report] [anticipating that "any net increase in number of licensees will be divided between private sector and court employment"].) And the "uptick" in licenses to which SEIU Amici point represent no more than an incremental increase from a very low starting point. (See Petition ¶ 37.)

Second, the Legislature's recent grant of reciprocity for those who passed the National Verbatim Court Reporters Board examination is also unlikely to have a significant short-term impact on court reporter numbers in California courts. To take advantage of this change, out-of-state court reporters licensed elsewhere would have to move to California, and there is no evidence that a flood of court reporters has been anxiously waiting to do so. (See Appx. 938-939 [AJC Report].) The court reporter shortage is nationwide; it is not limited to California. (Petition ¶ 34.)

Third, money appropriated for recruiting incentives is important, but prior experience has already shown that it has limited effectiveness in either enticing private court reporters to work in the public sphere or stopping public court reporters from leaving. (See *id.* ¶¶ 36-37.)

Finally, the remote reporting pilot project that SEIU Amici discuss is limited to just one year in fewer than a quarter of the

superior courts, each of which may include no more than 20 percent of its total full-time official court reporters. (Gov. Code, § 69959.5, subds. (b), (b)(3)(A) & (c)(1).) And to record "remotely" under the program, a court reporter must still be physically located in a courthouse or in another authorized location. (*Id.*, subd. (b)(2).) In short, this is not a "work from home" program designed to attract widespread participation from court reporters who find commuting onerous. And even if the pilot is successful, there is no guarantee that it will be expanded. A previous remote court reporting pilot project was never adopted more broadly.[20]

Hopefully, these initiatives collectively will aid in slowing the expansion of the court reporter shortage. But they are highly unlikely to eliminate the shortage anytime in the foreseeable future. The Access to Justice Commission has concluded that "the evidence does not suggest that voice writers will close the hiring gap, at least for years to come." (Appx. 937 [AJC Report].) Based on data from the Court Reporter Board, the Commission has estimated that "it would take 200 new licensees per year – double the most recent annual pass rate – just to stay even with attrition in licensed CSRs available for all forms of employment." (*Ibid.*) The court reporter population is aging, and the courts' hiring of court reporters has been more than offset in recent years by the number of court reporters who are retiring.[21] This

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[20] See Appx. 1100 (California Trial Court Consortium, The Causes, Consequences, and Outlook of the Court Reporter Shortage in California and Beyond (Jan. 25, 2022)).

[21] See Petition ¶¶ 34-40; Appx. 236 (LASC General Order); Appx. 469 (SCSC General Order); Appx. 936 (AJC Report)
(continued…)

trend is likely to continue; in at least some courts more than half of the existing reporters are eligible for retirement.[22]

What matters in this case is that there are ***currently*** not enough court-provided court reporters present in courtrooms to provide recordings to low-income litigants. The numbers speak for themselves. The Legislative Analyst's Office estimated in 2024 that California courts needed an additional 691 full-time court reporters.[23] But between January 1, 2023, and March 31, 2024, only 119 court reporters were hired, more than a quarter of whom came from other courts. Meanwhile, 146 court reporters had left the courts, for a net loss of 27.[24]

If a day comes when the remedy sought in the Petition is no longer necessary, that will be welcome, and Petitioners' remedy, if granted, will sunset on its own terms. But until and unless that day comes, the remedy is sorely needed. Nothing in SEIU's Amicus Brief demonstrates otherwise.

(concluding "it will be difficult in the future, even with increasing numbers of CSRs (including the recently authorized voice writers), for new hiring to offset the significant retirements of current CSRs, let alone increase the total number of reporters in the courts.").

[22] For example, as of December 2024, almost 60 percent of CCSC's court reporters (10 out of 17) were eligible for retirement. (CCSC General Order at pp. 3-4.) As of January 2024, 72 percent of LASC's court reporters were retirement-eligible. (Appx. 235 [LASC General Order].)

[23] Appx. 953 (Fact Sheet: Shortage of Certified Shorthand Reporters in California, June 2024).

[24] *Ibid.* For updated data, see Shortage of Court Reporters in California, Cal. Courts., https://courts.ca.gov/news-reference/research-data/shortage-court-reporters-california (data updated Mar. 2025).

2. The Court Should Not Abandon Its Constitutional Responsibilities Based on Hopes That the Legislature Might Enact a Solution.

SEIU Amici also suggest that this Court should stay its hand because legislation is pending that, if enacted, would authorize electronic recording for a limited time in a subset of cases. (SEIU Amicus Br. at pp. 25, 31 [citing Assem. Bill No. 882 (2025-2026 Reg. Sess.) ("AB 882"), as amended March 20, 2025].)[25] The Court should reject that suggestion outright.

To begin with, unless and until AB 882 is enacted and has the force of law, it is irrelevant to this lawsuit. A court's "function … is not to discuss the law as it may be in the future but to interpret the law which presently exists." (*People v. Superior Court (Carl W.)* (1975) 15 Cal.3d 271, 282.) And legislative attempts to authorize wider use of electronic recording have repeatedly failed.[26] There is no basis for assuming that this bill will not suffer the same fate.[27]

In any event, even if it were enacted, AB 882 would not remedy the constitutional violations here, at least in its current form. SEIU Amici claim that AB 882 "largely tracks the

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[25] AB 882 was further amended on April 9, 2025, to add a provision declaring that the act would take effect immediately as an urgency statute.

[26] See LAAC Amicus Br. at pp. 19-20 (describing unsuccessful legislative attempts); ACLUNC Amicus Br. at p. 26 (same).

[27] As a whole generation of Americans learned as children: "It's a long, long wait / While I'm sitting in committee, / But I know I'll be a law someday / At least I hope and pray that I will, / But today I am still just a bill." (I'm Just a Bill, Schoolhouse Rock, https://www.youtube.com/watch?v=SZ8psP4S6BQ.)

language of Los Angeles' general order in establishing the circumstances in which electronic recording may be used." (SEIU Amicus Br. at p. 25.) That is inaccurate – AB 882 is even more restrictive than the LASC General Order, as discussed below. But even if it were a carbon copy of the LASC General Order, it would be insufficient to protect the rights of low-income litigants. As Petitioners have previously explained at length, Respondents' General Orders contain a variety of limitations that prevent them from providing the full relief to which low-income litigants are entitled. (See Petition ¶¶ 58-59 & pp. 66-67, fn.77; Pet. Reply to Returns at pp. 16-38.)

Moreover, AB 882 would allow electronic recording in even fewer proceedings than are authorized under Respondents' General Orders. For example, most unlimited civil proceedings – even those involving "fundamental rights" – are excluded.[28] The bill adds other significant limitations as well. Litigants would be generally required to give five court days advance notice in order to benefit (AB 882, § 2), a requirement that many low-income litigants would find difficult to satisfy. (See Pet. Reply to Returns at pp. 25-27.) Moreover, the bill includes a sunset provision that would terminate all of the expanded authorization

[28] AB 882 would only extend authorization of electronic recording to "family law, probate, and civil contempt proceedings," excluding all other types of civil proceedings (such as civil harassment restraining orders, which are expressly covered by the General Orders). (AB 882, § 2.) Moreover, the bill would actually ***reduce*** courts' ability to use electronic recording as it currently exists under Section 69957, precluding the purchase of electronic recording equipment for the purpose of supervising subordinate judicial officers. (*Id.* § 1.)

on January 1, 2028. (AB 882, § 2.) If – as is highly likely – the supply of court reporters continues to be insufficient to ensure protection of low-income litigants' right to verbatim recording, even the partial relief the bill offers would be eliminated after just a couple of years.[29]

This lawsuit involves violation of rights under *Jameson* and the California Constitution that requires a remedy ***now***. Judicial hearings are happening every day with no record being made, undermining litigants' rights in a way that cannot be remedied. (Petition ¶¶ 30, 38-39.) This urgency required Petitioners to seek relief through an original writ petition to this Court. (*Id.* at pp. 48-51.) These violations cannot be allowed to occur while the latest in a long line of legislative proposals makes its way through the legislative process, with no guarantee of success – and, as currently framed, no prospect of providing the needed remedy.

F. For Purposes of the Relief Sought, "Unavailability" of a Court Reporter Is a Straightforward Question.

In the final section of their brief, SEIU Amici claim that the Petition fails to define "unavailable," arguing that this Court should adopt an "enforceable" definition that requires superior

[29] Also problematic are the requirements AB 882 would impose even for the modest expansion of electronic recording it would authorize. Before any court could rely on that expansion, it would be required to issue a general order with provisions dictated by the bill. The bill also dictates circumstances under which the court would be required to rescind that order. (AB 882, § 2.) Such detailed mandates on the content and timing of court orders would be an improper intrusion by the Legislature into the core functions of the courts.

courts to do more to hire court reporters and even appoint a special master to oversee them in doing so. (SEIU Amicus Br. at pp. 40-41.) Once again, SEIU Amici are trying to transmute this case from one about the rights of low-income litigants into a labor dispute, complete with a whole new regulatory regime to resolve disagreements between the courts and their unions. The need to interpret "unavailable" provides no reason for such a transmutation.

Even though the Petition does not present a formal definition of "unavailable," the meaning of the term is obvious and straightforward in context. It requires no reference to a court's general hiring and employment practices and policies. Rather, if a low-income litigant – such as a woman earning minimum wage who seeks a domestic violence restraining order against an abusive partner or child support to pay her family's rent – shows up for a hearing and the court is unable to provide a court reporter for that hearing, a court reporter is "unavailable." Such unavailability could have multiple underlying causes. Perhaps, as is usually the case today, the court simply does not have enough court reporters on staff. Perhaps illnesses, on top of vacations, have led to an unexpected surge in absences. Perhaps extreme weather conditions, wildfires, or other emergencies have prevented court reporters from reaching the courthouse. Whatever the reason, the court does not have a court reporter to send to that courtroom on that day to record that woman's hearing. That is what "unavailability" means.

SEIU Amici apparently have in mind an alternative definition of "unavailable" that would go far beyond this to also consider whether, hypothetically, a court reporter ***might*** have been available had the court done more to recruit, hire, and maintain enough court reporters. Even if such a definition were administrable in practice, it disregards the immediate rights of that woman seeking a domestic violence restraining order or child support – and the thousands of other litigants like her who are being routinely deprived of equal access to justice. Any approach that deems a court reporter to be "available" in an abstract sense when there is no such person actually available in the courtroom in a genuine and immediate sense would simply return everyone to the current situation, where (except in cases benefitting from the General Orders) low-income litigants are routinely being denied access to verbatim recording.[30]

SEIU Amici's arguments on the "availability" point reflect an apparent concern that superior courts will abuse the remedy Petitioners seek if it is granted. They apparently fear that if this Court authorizes electronic recording for low-income litigants where no court reporter is available, the superior courts will simply move to electronic recording for everyone across the board, even if court reporters are in fact available – and that they may even go so far as to cease employing court reporters, creating an

[30] See Petition ¶¶ 43-44; see also ACLUNC Amicus Br. at p. 12; Amicus Brief of Amicus Curiae Committee of the California Access to Justice Commission in Support of Petitioners ("AJC ACC Amicus Br.") at pp. 21-22; LSNC Amicus Br. at pp. 11-12, 17-19; Amicus Brief of Survivor Justice Center at pp. 13-14.

artificial unavailability that would not otherwise exist. But there is no place in this case for a ***presumption*** that the lower courts will deliberately fail to uphold the rule of law, including the letter of this Court's orders. To the contrary, if this Court says, "You may do X but only if Y is true," there should be no one better able to properly understand and apply that order than a superior court.

There may be significant disagreements between the courts and the court reporter unions bearing on questions such as what constitute "market wage rates," how court reporters should be managed, and whether court management is paying enough attention to the unions' ideas about recruiting. (SEIU Amicus Br. at p. 41; see also *id.* at pp. 17-18, 20-22.) But the labor laws provide an entire regime of remedies to address such disputes if they cannot be resolved at the bargaining table. And if SEIU Amici believe that courts are in fact adopting policies in flagrant non-compliance with governing law, they have shown their ability to bring their own lawsuits in response. (See *id.* at pp. 12-13, 15 [citing prior cases].)

The unreasonableness of SEIU Amici's position is confirmed by two striking facts: (1) that the policies that have already been adopted by courts to deviate from the restrictions of Section 69957, far from being surreptitious, have been publicly announced in General Orders, supported by sworn declarations of court officials and other evidence, and (b) that ***no one***, including SEIU Amici, has challenged those orders as reflecting insufficient efforts by those courts to hire court reporters. The LASC General

Order was issued more than six months ago, and although SEIU Amici's Brief in this Court is highly critical of that court's recruiting efforts (*id.* at p. 16), they have chosen not to bring a lawsuit challenging that order (or any of the other General Orders) as unlawful.[31]

In short, "unavailable" means "unavailable" – that there is no court reporter in the courtroom to record a hearing. And there is no reason for it to mean anything else or to build a regulatory edifice around it.

III. RESPONSE TO COMMENTS FROM OTHER AMICI ON THE RELIEF SOUGHT IN THE PETITION

All of the other amici either formally support the petition or do so in effect. These amici offer highly valuable insights into the complex issues presented, including sophisticated constitutional analysis,[32] important practical observations about how the court reporter crisis is affecting litigants in the superior courts every

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[31] SEIU Amici offer a declaration that purports to report an instance in which an SCSC judge recorded a hearing electronically even though a reporter was physically present in the courtroom to provide assistance to a hearing-impaired litigant. (SEIU Amicus Decls. at p. 7 [Caldwell Decl. ¶ 10].) Few details are provided about this alleged incident, including whether it was feasible for the court reporter both to provide the needed assistance to the hearing-impaired litigant and to record the proceeding. If a court reporter was genuinely available, any violation of Section 69957 through the use of electronic recording would also have violated SCSC's own General Order, and it could have been addressed accordingly.

[32] See Law Professor Amicus Br., *supra*; Amicus Brief of California Constitution Scholars Supporting No Party ("Cal. Const. Scholars Amicus Br."); ACLUNC Amicus Br., *supra*; Amicus Brief of California Lawyers Association; Amicus Brief of the California Academy of Appellate Lawyers, et. al.

day,[33] and discussion of how this issue affects public trust in the judicial branch and the ability of the branch to maintain the highest standards of judicial ethics.[34] In this section, Petitioners briefly respond to comments from certain amici concerning aspects of the remedy sought in the Petition.

A. The Remedy Sought in the Petition Is Self-Executing and Does Not Require Oversight from a Third Party.

Some of the amici offer comments and suggestions on the remedy requested in the Petition. The California Constitution Scholars Amicus Brief addresses the constitutional questions presented in the Petition, including those addressing separation of powers. It concludes by suggesting that this Court direct the Judicial Council to amend California Rules of Court, rule 2.952(a) to provide that a trial court may order electronic recording of a proceeding "when the interests of justice so require and an official reporter is unavailable." (Cal. Const. Scholars Amicus Br. at p. 23.) The Amicus Curiae Committee of the Access to Justice Commission ("AJC ACC") instead suggests that this Court appoint a special master to "review and recommend approval or amendment of plans by Superior Courts to provide equitable and

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[33] See LAAC Amicus Br., *supra*; LSNC Amicus Br., *supra*; Amicus Brief of Domestic Violence Legal Empowerment and Appeals Project, et al.; Survivor Justice Center Amicus Br., *supra*; Amicus Brief of Association of Certified Family Law Specialists, et al. ("ACFLS Amicus Br."); California Lawyers Association Amicus Br., *supra*. See also AJC ACC Amicus Br., *supra*.

[34] See Amicus Brief of Public Justice; Amicus Brief of Center for Judicial Excellence.

full access to official transcripts." (AJC ACC Amicus Br. at pp. 28-29.)[35]

The relief sought in the Petition is sufficiently self-executing to require no further implementing steps through a third party. Under the requested relief, a court needs only to determine whether a litigant is entitled to a court-provided recording and whether a court reporter is available to create that recording. And although Petitioners have made no secret of their expectation that the Court's legal ruling in this case will guide the future conduct of California superior courts that are not respondents here, this straightforward remedy can be readily executed by them as well. If the Court believes a formal amendment to the Rules of Court, similar to that proposed by the California Constitution Scholars Amicus Brief, would be advantageous, Petitioners would not object to a directive from this Court to the Judicial Council to that effect.

Petitioners do not believe that the appointment of a special master would be either warranted or useful. There may be details of implementation that will need to be worked out in some courts. Those may include, for example, specific procedures for determining the eligibility of particular low-income litigants for electronic recording in a context in which "ability to pay" will have to take into account the much larger amounts required for private court reporters than are at issue in traditional court fee

[35] Although the AJC ACC's reference is to "transcripts," Petitioners assume it meant to refer to verbatim recording, as the Petition does not address transcription. (See AJC ACC Amicus Br. at p. 21.)

waivers. (This subject is discussed in detail in Petitioners' Reply to Returns at pp. 28-34 and is addressed further below.) But the courts' existing processes are capable of handling those issues with reasonable adjustments, and there is no need for a special master to oversee separate court "plans" on such points. If the Court were to conclude that further guidance on implementation was needed, the Judicial Council, with appropriate direction from this Court, would be the proper instrumentality to accomplish it.

What is *not* needed is a new infrastructure in the California court system that conflates the non-negotiable need to respect the rights of low-income litigants to verbatim recording – a right that the AJC ACC emphatically recognizes – with the separate need to pursue reasonable measures to improve the availability of court reporters in the courts. AJC ACC's suggested requirement that each court develop and submit its own "plan" for approval by a special master appears to be overwhelmingly focused on the latter, since the former is, again, non-negotiable. As Petitioners discuss above in the context of SEIU Amici's proposal of a "special master," hijacking a remedy intended to vindicate the rights of low-income litigants to instead focus on ***other*** issues would be highly inappropriate. Indeed, that approach – tying low-income litigants' access to verbatim recording to the courts' efforts to hire and retain court reporters – is exactly what led to the current dire situation.

No matter what this Court decides to do in the way of long-term measures for the judicial branch as a whole, Petitioners agree whole-heartedly with the AJC ACC that further debates

and third-party involvement "should not … delay relief" and that "any remedy mandated by this Court should be self-executing" for at least the short term. (AJC ACC Amicus Br. at p. 30.)

B. The Lower Courts Can and Should Assess a Litigant's Ability to Pay for a Private Court Reporter Under a Standard that Takes Account of the Costs Involved.

The brief filed by the Association of Certified Family Law Specialists and other family law associations ("ACFLS Amici") supports the Petition but takes sharp issue with the adequacy of the relief it seeks. These amici offer extensive observations about the actual experience of litigants in family law courts throughout California that are unfortunately all too familiar to Petitioners. (Compare ACFLS Amicus Br. at pp. 11-17 with Petition ¶¶ 43-49.) And their criticisms of the existing framework used by the superior courts "on the ground" to assess eligibility under *Jameson* – which consists largely of an automated application of the first two subdivisions of Section 68632 without meaningful reference to the general ability-to-pay test of subdivision (c) – are similar to those presented by Petitioners in their discussion of the same subject in their Reply to Returns brief. (Compare ACFLS Amicus Br. at pp. 17-19 with Pet. Reply to Returns at pp. 31-33.) Lest there be any doubt, Petitioners agree that, when considering the much higher costs associated with private court reporters, the shortcut processes and forms generally used by the superior courts to determine eligibility for a fee waiver under the first two subdivisions of Section 68632 would be grossly inadequate. (See Pet. Reply to Returns at pp. 28-34.)

ACFLS Amici suggest that the Court should implement measures that go beyond those sought in the Petition, however, including an "always on" policy for electronic recording in family courts. (ACFLS Amicus Br. at p. 22.) Petitioners do not challenge the current requirements that a court reporter provide the official record if one is available, or that wealthier litigants who can afford a court reporter in family court be required to hire one in a court that does not provide a staff court reporter.

ACFLS Amici also suggest that a court could face challenges in some cases in evaluating a party's eligibility for free verbatim recording without delaying scheduled hearings.[36] But there is no reason to believe that courts cannot apply practical solutions, consistent with their experience in other areas, to address those challenges. (See Pet. Reply to Returns at p. 29.) For example, a court could make a provisional finding of eligibility based on an oral proffer and allow electronic recording to go forward, but then designate the recording as an official court record and make it available only after the showing of eligibility was perfected.

Thus, while Petitioners agree that their proposed remedy might require some adjustments for the superior courts, those courts should be able to address them without undue difficulty,

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[36] For example, there might have been no previous reason to address the litigant's entitlement to a fee waiver (such as when the case filing requires no fee). Or a party not eligible for waiver of a modest court fee might nonetheless satisfy the "need" standard when considering the much higher cost of a private court reporter. (See Pet. Reply to Returns at pp. 30-31.)

drawing on their long experience in implementing this Court's judgments.

IV. CONCLUSION

Overall, the amicus briefs submitted in this case confirm the critical need for this Court to address the endemic infringement of low-income litigants' rights that is occurring daily in the California courts. None of the amici identifies a persuasive reason for this Court to withhold the relief sought in the Petition, and most confirm that this relief is urgently needed. Petitioners therefore ask this Court to issue a writ providing the relief set out in Paragraph 63 of the Petition.

DATED: April 24, 2024

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to rule 8.204(c)(1) of the California Rules of Court, I hereby certify that the foregoing Answer contains 12,462 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

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. My business address is 1999 Avenue of the Stars, Los Angeles, CA 90067.

On April 24, 2025 I served true copies of the following document described as:

PETITIONERS' CONSOLIDATED ANSWER TO BRIEFS OF AMICI CURIAE

on the interested parties in this action as follows:

BY TRUEFILING: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system.

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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 on April 24, 2025 at Los Angeles, California.

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