No. S288176

In the Supreme Court of the State of California

FAMILY VIOLENCE APPELLATE PROJECT AND BAY AREA LEGAL AID,
Petitioners,

v.

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.

AMICUS CURIAE BRIEF OF THE ATTORNEY GENERAL IN SUPPORT OF PETITIONERS

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INTRODUCTION AND STATEMENT OF INTEREST

The Attorney General submits this brief as amicus curiae in response to the Court's invitation. As the "chief law officer of the State" (Cal. Const., art. V, § 13), the Attorney General has an interest in ensuring that all state residents, regardless of their financial means, are not denied meaningful access to the State's judicial system. (See Gov. Code, § 68630, subd. (a) ["our legal system cannot provide 'equal justice under law' unless all persons have access to the courts without regard to their economic means"].) To that end, the Attorney General has filed briefs in recent cases that address the constitutionality of aspects of our judicial system that impose costs on litigants who cannot afford them. (See *People v. Kopp*, No. S257844 [punitive fines and user fees]; *In re Humphrey* (2021) 11 Cal.5th 135 [cash bail].)

This case also presents serious access-to-justice concerns. As the Court explained in *Jameson v. Desta* (2018) 5 Cal.5th 594, verbatim records of superior court proceedings play an important role in our judicial system because, among other things, they are generally necessary to enable meaningful appellate review. But for far too many litigants in our State, the availability of such records turns on whether they can afford a private court reporter, often at the cost of thousands of dollars per day. To address this concern, the Court held in *Jameson* that litigants who qualify for fee waivers are entitled to a court-provided reporter at no charge.

Today, however, California is facing a critical shortage of court reporters. And Government Code section 69957 prohibits superior courts from using electronic recording—the most readily available alternative method to create a verbatim record—in a

great many cases. The combination of the court reporter shortage and section 69957 means that many low-income litigants in California are unable to obtain a verbatim record of their superior court proceedings, including proceedings that affect some of the most significant aspects of their lives.

In the Attorney General's view, this situation has become untenable for low-income litigants and the State's judicial system. Petitioners are correct that the current application of section 69957 fails to comport with the procedural guarantees of the State's due process clause. And this case satisfies the demanding criteria for original mandate relief from this Court.

BACKGROUND

Verbatim records of superior court proceedings play an important role in both trial court and on appeal. They benefit the superior courts' operation by creating an official record of what occurred in prior proceedings, which can be particularly important where a long delay occurs between hearings, or where judges or attorneys change in a case. (See Br. of Cal. Lawyers Assn. 20-22.) And verbatim records are often necessary to enable meaningful appellate review. "This is so because . . . a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment." (*Jameson*, *supra*, 5 Cal.5th at pp. 608-609.) The absence of a verbatim record will therefore "frequently be fatal" to litigants' ability to have their appeals heard on the merits. (*Id.* at p. 608.)

Historically, official certified shorthand court reporters have provided verbatim records by transcribing judicial proceedings. (See *Jameson*, *supra*, 5 Cal.5th at p. 610; see also Louisell & Pirsig, *The Significance of Verbatim Recording of Proceedings in American Adjudication* (1953) 38 Minn. L.Rev. 29, 30-31.) These reporters were typically employed by the courts and would prepare transcripts at the request of the court or a party. (See *City of Los Angeles v. Vaughn* (1961) 55 Cal.2d 198, 200; Code Civ. Proc., § 269.) But about 15 years ago, in response to budget cuts, many superior courts in California stopped providing court reporters for most civil proceedings. (See *Jameson*, at p. 610.)

Since then, the State has seen a "persistent and deepening shortage" of available court reporters—with about 40% fewer court-employed reporters today than in 2010. (Judicial Branch of Cal., Shortage of Court Reporters in California (data updated June 2025) <https://tinyurl.com/4unuxwew> [as of June 26, 2025].) This trend is partly the result of court reporters choosing to work in the private rather than public sector. (See, e.g., Cal. Access to Justice Com., Issue Paper: Access to the Record of California Trial Court Proceedings (Nov. 14, 2024) pp. 12-13 <https://tinyurl.com/2e3vjxw7> [as of June 26, 2025].)[1] But it also reflects an overall decline in the pool of licensed court reporters—both in California and nationwide—with more people retiring and leaving the profession than entering it. (See Judicial

[1] See also Legis. Analyst's Office, Letter to Sen. Umberg (Mar. 5, 2024) pp. 18-20 <https://tinyurl.com/y9tsccv4> (as of June 26, 2025).

Branch of Cal., *supra*, Shortage of Court Reporters; CEOs of Super. Cts. of Cal., There is a Court Reporter Shortage Crisis in California (Nov. 2, 2022) <https://tinyurl.com/5thje84w> [as of June 26, 2025]; Cal. Trial Ct. Consortium, The Causes, Consequences, and Outlook of the Court Reporter Shortage in California and Beyond (Jan. 25, 2022) pp. 4-12 <https://tinyurl.com/bdep3n5c> [as of June 26, 2025].)

An alternative method for creating verbatim records is electronic recording. This method is generally less costly than employing court reporters and is used successfully in federal and state courtrooms across the country. (See, e.g., *Jameson*, *supra*, 5 Cal.5th at p. 598, fn. 2; *id.* at p. 618, fn. 17; 28 U.S.C. § 753, subd. (b).)[2] In California, courts have long used electronic recording to create verbatim records in "hundreds of thousands" of misdemeanor proceedings, infraction proceedings, and "limited" civil matters, which consist primarily of unlawful detainer cases and those involving amounts in controversy of $35,000 or less. (Cal. Access to Justice Com., *supra*, at p. 15; see Gov. Code, § 69957, subd. (a); Code Civ. Proc., § 86.) Government Code section 69957, however, prohibits courts from using electronic recording to produce verbatim records in family, probate, and all other civil cases. (See *Jameson*, at p. 608, fn. 10.) These cases concern child custody, debt collection, domestic violence

[2] See also Cal. Access to Justice Com., *supra*, at pp. 15-17; Com. on the Future of California's Court System, Report to the Chief Justice (2017) pp. 244-247 <https://tinyurl.com/yhmmzzh2> (as of June 26, 2025).

protection orders, and many other important issues. (See Pet. 34, citing, e.g., Cal. Access to Justice Com., *supra*, at pp. 5-6.)

Together with the current court reporter shortage, section 69957's electronic recording prohibition means that many low-income litigants are unable to obtain a verbatim record of their superior court proceedings. Those with financial means can hire private reporters, typically at a cost of thousands of dollars per day. (See Judicial Branch of Cal., *supra*, Shortage of Court Reporters.) But low-income litigants must choose between either waiting long periods for an available court-provided reporter or forgoing a verbatim record and effectively waiving their right to appeal. (See, e.g., Pet. 36-38; Br. of Assn. of Certified Family Law Specialists 16-17.) An estimated 70% of family law, probate, and unlimited civil hearings—thousands of hearings per day, and hundreds of thousands per year—are now held without any verbatim record being produced. (See Cal. Access to Justice Com., *supra*, at p. 6.)

Several superior courts have responded in recent months by issuing orders that allow their judges to use electronic recording in certain circumstances where it would otherwise be prohibited by section 69957. (See Response of Respondent Courts 4-5; see also Br. of Legal Services of Northern Cal. 12-16.) These orders describe the current situation as a "constitutional crisis" and a "profound denial of equal access to justice." (E.g., L.A. Super. Ct., General Order re Operation of Electronic Recording Equipment (Sept. 5, 2024) p. 6 <https://tinyurl.com/4d8ekywv> [as of June 26, 2025]; see also, e.g., Santa Clara Super. Ct., General Order re

Operation of Electronic Recording Equipment (Nov. 14, 2024) p. 7 <https://tinyurl.com/5669td65> [as of June 26, 2025].)

Meanwhile, petitioners filed this case, asking the Court to hold that the application of section 69957's electronic recording prohibition is unconstitutional where a court-provided reporter is unavailable and litigants cannot afford a private one. (Pet. 45-46.) The Court invited the Attorney General to file an amicus brief addressing the issues presented in the case.

ARGUMENT

I. PETITIONERS HAVE DEMONSTRATED AN AS-APPLIED VIOLATION OF CALIFORNIA'S CONSTITUTION

In the Attorney General's view, petitioners are correct that the current application of section 69957 violates the due process clause of the California Constitution. Litigants have a substantial interest in verbatim records of their superior court proceedings that are generally necessary to enable meaningful appellate review. And the Legislature's preference for court reporters over electronic recording does not outweigh low-income litigants' private interests where court reporters are unavailable, recording equipment is already installed, and the alternative is no verbatim record at all. If the Court agrees, it need not—and should not—reach petitioners' other constitutional claims.

A. The current application of Government Code section 69957 fails to comport with due process

"A person may not be deprived of life, liberty, or property without due process of law." (Cal. Const., art. I, § 7, subd. (a).) As this Court has recognized, "freedom from arbitrary adjudicative procedures is a substantive element of one's liberty."

(*People v. Ramirez* (1979) 25 Cal.3d 260, 268 (plur. opn.).)[3] "[W]hen an individual is subjected to deprivatory governmental action, he *always* has a due process liberty interest both in fair and unprejudiced decision-making and in being treated with respect and dignity." (*Ibid.*, italics added.) The scope of that liberty interest is not always clear at the margins. (See, e.g., *Ryan v. Cal. Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1071-1073.) But there can be no serious question that when the State opens its courts to civil cases—and provides a statutory right to appeal (*post*, pp. 16-17)—it must ensure that adjudicative procedures are fair and non-arbitrary. (See generally *Cal. Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 338-339 ["The guarantee of procedural due process . . . is an aspect of the constitutional right of access to the courts for all persons, without regard to the type of relief sought"].)[4]

The procedural safeguards required by the due process clause are those that "maximize the accuracy of the resulting

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[3] Although only three justices joined the lead opinion in *Ramirez*, *supra*, 25 Cal.3d at p. 277, Chief Justice Bird provided a fourth vote for "the lead opinion's discussion of the scope of the due process [guarantee] of the California Constitution." (*Id.* at p. 278 (conc. & dis. opn. of Bird, C.J.).) And a majority of the Court has repeatedly recognized and applied the framework set forth in the *Ramirez* lead opinion. (See, e.g., *Saleeby v. State Bar* (1985) 39 Cal.3d 547, 564-568; see also *Leone v. Medical Bd.* (2000) 22 Cal.4th 660, 666 [agreement of four justices "provides controlling authority," even if not reflected in a single opinion].)

[4] As relevant here, the state procedural due process guarantee is broader than its federal counterpart, which generally defines protected "liberty" or "property" interests more narrowly. (See *Ramirez*, *supra*, 25 Cal.3d at pp. 265-268.)

decision and respect the dignity of the individual subjected to the decisionmaking process," albeit "without unduly burdening the government." (*Oberholzer v. Com. Jud. Perform.* (1999) 20 Cal.4th 371, 390, quoting *Rodriguez v. Dept. of Real Estate* (1996) 51 Cal.App.4th 1289, 1297.) Courts balance four factors: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest and the value of additional or substitute procedural safeguards; (3) the dignitary interest in additional procedural protections; and (4) the governmental interest, including the fiscal or administrative burdens that additional procedural requirements would entail. (See *Ramirez*, *supra*, 25 Cal.3d at p. 269.) Applying those factors here, section 69957 violates the due process clause on an as-applied basis.

Private interest. There are substantial private interests at stake in proceedings where section 69957 bars electronic recording. Because "access to courts is 'a right guaranteed to all persons'" (*Nuño v. Cal. State University, Bakersfield* (2020) 47 Cal.App.5th 799, 811, citing, e.g., Cal. Const., art. I, § 3, subd. (a)), there is necessarily a weighty private interest in any proceeding in which a litigant invokes the State's judicial system to obtain relief. And there is often much of consequence on the line in the family, probate, and "unlimited" civil proceedings covered by section 69957's electronic-recording prohibition. The $35,000 amount-in-controversy threshold for unlimited civil cases is a significant amount of money for anyone, and especially for low-income litigants. (See Code Civ. Proc., § 86.) Covered cases also frequently concern matters that "profoundly affect a person's

life." (E.g., *Salas v. Cortez* (1979) 24 Cal.3d 22, 28.) Examples of litigants harmed by section 69957 include: a "[s]elf-represented divorced spouse [who] could not effectively appeal [the] denial of spousal support and community property interest in a business and real property" (Cal. Access to Justice Com.*, supra*, at p. 5); a "[s]elf-represented mother[] [whose] appeal failed after [the] probate court ruled she could not be [a] trustee of her son's special needs trust" (*ibid.*); and "[e]mployees claiming Labor Code violations" who were denied a merits ruling on appeal from the trial court's "grant of [their] employer's summary judgment motion" (*ibid.*). There are many other similar examples. (See, e.g., *ibid.*; see also Pet. 34, 62 [discussing child custody, conservatorship, and domestic violence protection orders, among other important matters].)

Risk of erroneous deprivation. By denying access to a verbatim record when no court reporter is available, section 69957 materially increases the "risk of an erroneous deprivation" in cases subject to the electronic recording prohibition. (*Ramirez*, *supra*, 25 Cal.3d at p. 269.) Without verbatim records of superior court proceedings, important rights can be lost in both trial court and on appeal. (*Ante*, p. 9.) Indeed, the lack of a verbatim record "will frequently be fatal to a litigant's ability to have his or her claims of trial court error resolved on the merits by an appellate court." (*Jameson*, *supra*, 5 Cal.5th at p. 608; see also *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186-187 [collecting cases where Courts of Appeal declined to reach merits without verbatim record].) By providing a right to appeal

(see Code Civ. Proc., §§ 902, 904.1, subd. (a)), California law presupposes the important role of appellate review in ensuring accurate, fair decisionmaking. (See generally *Coleman v. Gulf Ins. Group* (1986) 41 Cal.3d 782, 797 [recognizing "the fundamental protections of the right to appeal"].)[5]

Consistent with the role of appellate review in correcting errors, California courts have recognized that depriving low-income litigants of a verbatim record "raise[s] grave issues of due process." (E.g., *In re Marriage of Obrecht* (2016) 245 Cal.App.4th 1, 9, fn. 3.) The denial of a verbatim record "cloak[s] the trial court's actions in an impregnable presumption of correctness regardless of what may have actually transpired." (*Ibid.*; see also *Maxwell v. Dolezal* (2014) 231 Cal.App.4th 93, 100 [expressing "profound[] concern[]" about the "due process implications of a proceeding in which the court, aware that no record will be made, incorporates within its ruling reasons that are not documented for the litigants or the reviewing court"].)

Electronic recording therefore has great "value" as a "substitute procedural safeguard[]" because it helps preserve litigants' ability to correct any errors on appeal. (*Ramirez*, *supra*, 25 Cal.3d at p. 269.) The Rules of Court already recognize as

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[5] The "potential availability of a settled or agreed statement does not eliminate" the general need for a verbatim record. (*Jameson*, *supra*, 5 Cal.5th at p. 622, fn. 20; see Cal. Rules of Court, rules 8.130(h), 8.134, 8.137.) "[W]here the parties are not in agreement, and the settled statement must depend upon fading memories or other uncertainties, it will ordinarily not suffice." (*In re Armstrong* (1981) 126 Cal.App.3d 565, 573; see L.A. Super. Ct. General Order, *supra*, at pp. 3, 9-10.)

much by allowing an electronic recording to serve as the official record for purposes of appeal. (See Cal. Rules of Court, rule 2.952(j).) Practices in federal court and other States also provide "considerable evidence that electronic recording can produce accurate verbatim transcripts." (Cal. Access to Justice Com., *supra*, at p. 15; see also *Jameson, supra,* 5 Cal. 5th at p. 598, fn. 2.) And as relevant here, the question is not whether an electronic recording is better than a court reporter's transcript. It is whether an electronic recording is better than *no verbatim record at all*. The answer to that question is "yes."

Dignitary interest. Even in cases where additional procedures will not change the ultimate outcome, "due process may nevertheless require that certain procedural protections be granted . . . in order to protect important dignitary values." (*Ramirez*, *supra*, 25 Cal.3d at p. 268.) Section 69957 harms low-income litigants' "dignitary interest" by impeding their ability to "present their side of the story" on appeal. (*Id.* at p. 269.) And because section 69957 deprives only low-income litigants (but not those who can afford to hire private court reporters) of the record they need to appeal, it harms their interest in "being treated with respect and dignity." (*Id*. at p. 268.)

Governmental interest. The final factor in the procedural due process inquiry is "the governmental interest, including . . . the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." (*Ramirez*, *supra*, 25 Cal.3d at p. 269.) Where a court reporter is available to provide a low-income litigant with a transcript of proceedings

free of charge, the government has a cognizable interest in ensuring that transcription is provided by a live, human reporter. Amici in this case have argued—and petitioners do not dispute—that court reporters generally provide more accurate transcripts than electronic recording can offer. (See Br. of SEIU et al. 13-14; see also Pet. 60; Pet. Consolidated Answer 12.) Requiring new electronic recording equipment in courtrooms could also "impose financial obligations" and "present logistical challenges since not all courtrooms have the necessary equipment." (Response of Respondent Courts 7-8, internal quotation marks and alterations omitted.) But any governmental interest in producing more accurate transcripts through live court reporters is inapplicable when court-provided reporters are *unavailable* and the litigants cannot afford a private one. And the burdens of installing additional recording equipment are immaterial with respect to the many courtrooms where that equipment is already installed. Petitioners argue, and no party or amicus contests, that most courtrooms in the respondent superior courts are already equipped with recording equipment. (See, e.g., Pet. 40, & fn. 65.)

Balancing. The final step of the due process inquiry involves "weighing" the four factors against one another to determine what procedures are constitutionally required. (*Ramirez*, *supra*, 25 Cal.3d at p. 273; see *Saleeby*, *supra*, 39 Cal.3d at 565.) As a general matter, "legislatures and agencies have significant comparative advantages over courts in identifying and measuring the many costs and benefits of alternative decisionmaking procedures." (*Today's Fresh Start,*

Inc. v. L.A. County Office of Education (2013) 57 Cal.4th 197, 230, internal quotation marks and alterations omitted.) "[J]udges should be cautious" before second-guessing legislative or executive branch decisions in this area. (*Ibid.*) "In the vast bulk of circumstances, the procedures chosen by the legislature or by the agency are likely to be based on [a judgment] by an institution positioned better than a court to identify and quantify social costs and benefits." (*Ibid.*)

Here, however, the Attorney General agrees with petitioners that this is the rare case in which the current application of a statute violates procedural due process. The first three factors discussed above—private interests, risk of erroneous deprivation, and dignitary interests—weigh heavily in favor of allowing electronic recording when court-provided reporters are unavailable and litigants cannot afford a private one. And the final factor—the governmental interest—provides no material counterweight in such circumstances where electronic recording equipment is also already installed in the courtroom. Because the Court can craft an appropriate remedy limited to those circumstances (*post*, pp. 26-28), the due process clause prohibits application of section 69957 in such circumstances to deprive low-income litigants of a verbatim record of their civil proceedings.

B. The Court need not address petitioners' separation of powers and equal protection claims

If the Court agrees with the foregoing due process analysis, it need not reach petitioners' remaining claims. Those claims pose difficult questions and could require factual development of a type that this Court may prefer not to conduct or oversee in the

first instance. (See generally *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 296 (conc. opn. of George, C.J.) ["traditional principles of judicial restraint" favor avoidance of unnecessary constitutional rulings].)

Petitioners' separation of powers claim would require the Court to determine whether the Legislature has "materially impair[ed]" the courts' fulfillment of their core constitutional functions. (Pet. 52, quoting *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1103.) Application of that standard may depend, in part, on the comparative responsibility of the judicial branch for the current court reporter shortage. (Cf. Br. of SEIU et al. 16-22.) But petitioners ask the Court to refrain from "assign[ing] fault." (Pet. 15; see Pet. Consolidated Answer 10, 19.) For that reason, and because petitioners' due process claim focuses more narrowly on the harm to low-income litigants who indisputably bear no responsibility for the current shortage, the Court should avoid reaching the separation of powers challenge. (Cf. *Miller v. French* (2000) 530 U.S. 327, 350 ["In contrast to due process, which principally serves to protect the personal rights of litigants to a full and fair hearing, separation of powers principles are primarily addressed to the structural concerns of protecting the role of the independent Judiciary"].)

Petitioners' equal protection claim also poses difficulties that are better avoided. Under federal law, wealth-based access-to-justice restrictions trigger heightened judicial scrutiny only in cases that implicate fundamental interests, such as the termination of parental rights. (See, e.g., *M.L.B. v. S.L.J.* (1996)

519 U.S. 102, 119-124.) Petitioners do not ask the Court to apply a different approach under the state equal protection clause. (See Pet. 70-72.) A holding limited to "fundamental" interests would present serious administrability challenges, however, as there is no settled understanding of what qualifies as "fundamental." (See Pet. Reply 19-25.) That approach would invite inconsistent results across the State, as different superior courts and appellate courts would inevitably disagree about what interests rank as "fundamental." And courts would be required to apply different approaches under the Court's decision here and under *Jameson*, which was not limited to cases implicating fundamental interests. (See *id.* at pp. 18-19; cf. Response of Respondent Courts 7, fn. 2 ["considerations of administrability may counsel in favor of using the existing *Jameson* framework"].)

Alternatively, petitioners ask the Court to consider their equal protection claim under the rational basis standard, which would require them to demonstrate that there is no "reasonably conceivable" basis for section 69957's restrictions on electronic recording. (Pet. 69-70, quoting *People v. Hardin* (2024) 15 Cal.5th 834, 852.) Although that approach would not pose the administrability challenges discussed above, it is not clear that petitioners could satisfy the exceptionally deferential rational basis standard. "Rational basis review 'sets a high bar' for litigants challenging legislative enactments." (*Hardin*, at p. 852.) "If a plausible basis exists for the disparity, courts may not second-guess its wisdom, fairness, or logic." (*Ibid.*, internal quotation marks omitted.) To avoid weakening or casting doubt

on that standard—which serves important purposes that "lie at the heart of our system of democratic governance" (*ibid.*)—the Court should evaluate petitioners' challenge through the lens of procedural due process, not equal protection. Procedural due process provides the most natural, judicially manageable path for affording petitioners the relief that they seek.

II. PETITIONERS ARE ENTITLED TO ORIGINAL MANDAMUS RELIEF

This Court generally exercises its original jurisdiction only when presented with matters of exceptional public importance that require immediate resolution. (See, e.g., *Cal. Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 253; *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 340; *Clean Air Constituency v. Cal. State Air Resources Bd.* (1974) 11 Cal.3d 801, 808; *S.F. Unified School Dist. v. Johnson* (1971) 3 Cal.3d 937, 945.) This case satisfies that standard. As the Chief Justice has explained, ensuring that litigants have "a verbatim record of their court proceedings" is a "pressing issue that deserves our attention."[6] The California Access to Justice Commission—which includes members appointed by all three government branches and the State Bar—has similarly emphasized the need to "take action" to address the widespread denial of "equal access to civil justice and due process." (Cal. Access to Justice Com., *supra*, at p. 2.) And the respondent courts have rightly described the current situation as a "constitutional crisis" where, every day, "*thousands*

[6] Cal. Cts. Newsroom, California Chief Justice Delivers 2024 State of the Judiciary Address (May 19, 2024) <https://tinyurl.com/ttk3rmmz> (as of June 26, 2025).

of hearings take place in which no verbatim record can be made unless electronic recording is permitted." (Response of Respondent Courts 4-5; see also CEOs of Super. Cts. of Cal., *supra*, pp. 1-4.)

Before granting original writ relief, the Court also generally considers whether petitioners have a beneficial interest and whether another adequate remedy is available. (See Code Civ. Proc., §§ 1086, 1103, subd. (a).) These requirements are satisfied. The petitioning organizations possess a beneficial interest because they have expended scarce resources in response to the court-reporter shortage—including by "pay[ing] for private reporters for clients" who cannot afford them. (Pet. 20, & fn. 14.) And the Attorney General agrees with petitioners that no adequate alternative remedy exists, given the need for statewide guidance and the recusal difficulties that would arise if petitioners sought similar relief in the ordinary course from a superior court. (See Pet. 49-50, & fn. 73; see also Response of Respondent Courts 8 [agreeing that the case "presents important matters on which statewide action and this Court's guidance are urgently needed"].)[7]

[7] The mandamus standard also traditionally requires a showing that respondents have failed to carry out a "ministerial duty." (*People v. Picklesimer* (2010) 48 Cal.4th 330, 340; see Pet. 15, 45, 51.) That showing is not invariably required, however, when the Court confronts pressing constitutional issues that demand immediate statewide resolution. (See, e.g., *Legislature v. Weber* (2024) 16 Cal.5th 237, 246-247; *Vandermost v. Bowen* (2012) 53 Cal.4th 421, 450-452.)

Nor are there other obstacles to this Court granting relief. Although some disputes may exist about the *causes* of the state court reporter shortage (see, e.g., Br. of SEIU et al. 28-29), those factual questions are not material to the procedural due process analysis (*ante*, pp. 14-20, 21). It is undisputed that the low-income litigants whose rights are at issue bear no fault for the shortage. (See, e.g., Pet. Consolidated Answer 13-16; Response of Respondent Courts 4-5.) And to the extent the Court deems it necessary to make findings about the scope of the current shortage, the parties have submitted many reliable reports on the subject. (See, e.g., *People v. Seumanu* (2015) 61 Cal.4th 1293, 1372-1373, citing Evid. Code, § 452, subd. (h) [recognizing Court's authority to take judicial notice of facts "that are not reasonably subject to dispute" and contained in authoritative reports and sources "of reasonably indisputable accuracy"].)

The absence of adversarial briefing among the parties, while far from ideal, does not preclude relief in the circumstances presented here either. No party has opposed the petition (see Letter of the Legislature March 21, 2025), but amici curiae have done so (see Br. of SEIU et al. 25-31). Those amici will have the opportunity to request time to participate in oral argument. (Cal. Rules of Court, rule 8.524(g).) The Court could also appoint pro bono counsel if it concludes that it would benefit from additional briefing or argument opposing the petition. (See, e.g., *People ex rel. Garcia-Brower v. Kolla's, Inc.* (2023) 14 Cal.5th 719, 722.)

With respect to the scope of relief, the Attorney General generally agrees that the relief requested in the petition would be

appropriate. (See Pet. 45-46.) In particular, the Attorney General agrees that the Court's holding should extend to all civil litigants who cannot afford a private court reporter; relief should not be limited to individuals who qualify for fee waivers under subdivisions (a) and (b) of Government Code section 68632. Those subdivisions apply to individuals who receive certain public benefits or earn income at or below 200% of the poverty line. (See Pet. Reply 31-32.) But for many litigants who do not fall into those categories, the cost of hiring a private court reporter—often at thousands of dollars per day (see *ante*, p. 12)—can still be far out of reach. The Court should ensure that its holding and remedy extends to those litigants as well.[8]

The Attorney General also agrees that the Court's holding should not require case-by-case assessments about the need for a verbatim recording in particular proceedings. (Pet. Reply 34-35.) Any such limitation would pose significant administrability concerns, given that there is "generally no way to determine in advance what issues may arise" in a case or proceeding, "or whether such an issue can be raised and decided on appeal absent a verbatim record." (*Jameson*, *supra*, 5 Cal.5th at p. 622,

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[8] The Court could do this in one of two ways. First, it could base eligibility for electronic recording on subdivision (c) of section 68632, which entitles a litigant to a fee waiver if fees would require the "us[e] [of] moneys that normally would pay for the common necessaries of life." (See Pet. Reply 29, 32.) Alternatively, the Court could simply adopt a standard akin to other ability-to-pay inquiries that courts routinely apply. (See *Humphrey*, *supra*, 11 Cal.5th at p. 143; see also Pet. Reply 29, citing, e.g., Veh. Code, § 42003, subd. (c), and Fam. Code, § 3153, subd. (b); Br. of Cal. Academy of Appellate Lawyers 19.)

fn. 20.) For example, "a family court hearing on a request for a minor adjustment in visitation could blossom into a major reconsideration of custody arrangements." (Pet. Reply 35.) "And if that happens, there is no way to go back in time and create a verbatim recording after the fact." (*Ibid.*)

The Attorney General does, however, respectfully suggest that the Court limit the relief requested by petitioners in two ways. First, the Court should reserve the question whether superior courts have an obligation to install electronic recording equipment in courtrooms where it does not currently exist. An obligation of that nature would implicate fiscal interests that could alter the due process analysis. (*Ante*, pp. 19-20.) Given petitioners' uncontested allegations that recording equipment is "widely installed" in the State's courtrooms (Pet. 40), there is no need for the Court to provide broader relief at the present time.

Second, the Court should issue relief on an *interim* basis at this juncture, and retain jurisdiction so it can consider appropriate modifications based on factual or legal developments. The Court has discretion to retain jurisdiction in an original proceeding for such purposes. (See *Vandermost*, *supra*, 53 Cal.4th at pp. 492-493, & fn. 2 (conc. opn. of Liu, J.) [collecting authorities].) Here, experience implementing the Court's order may reveal the need for clarifications or other modifications to ensure that litigants' rights are respected—and that superior courts can effectively administer the Court's order. Or the Legislature may amend section 69957 or enact other reforms that make continuing judicial relief unnecessary in whole or in part.

(See, e.g., Br. of SEIU et al. 22-25 [discussing recent legislative proposals].) Following the passage of an appropriate amount of time, if no party or amicus asks the Court to clarify or alter the scope of its interim remedy, the Court may enter final judgment and close the case. In light of the pressing need for relief, however, the Court should not delay awarding an interim remedy to ensure that low-income litigants are no longer denied the basic procedural protections that are due under our State's charter.

CONCLUSION

The petition for a writ of mandate should be granted.

Respectfully submitted,

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June 30, 2025

CERTIFICATE OF COMPLIANCE

I certify that the attached AMICUS CURIAE BRIEF uses a 13 point Century Schoolbook font and contains 5327 words.

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