No. _____

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.

PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION

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

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CERTIFICATE OF INTERESTED ENTITIES

Pursuant to rules 8.208 and 8.488 of the California Rules of Court, Petitioners Family Violence Appellate Project and Bay Area Legal Aid certify that there are no interested entities or persons that must be listed in this certificate.

Dated: December 4, 2024

Respectfully submitted,

/s/ Sonya D. Winner
Sonya D. Winner
Counsel for Petitioner Family Violence Appellate Project

Dated: December 4, 2024

Respectfully submitted,

Brenda S. Adams
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PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION

I. INTRODUCTION

1. There is an access to justice crisis in the California courts, an ever-worsening court reporter shortage that deprives litigants of verbatim recordings of civil proceedings. Every day, thousands of litigants turn to the courts to resolve civil disputes involving matters of fundamental importance, including the custody of their children, the financial resources available to support themselves and their families, and their physical safety. The judicial system is failing them.

2. This Court has recognized that access to justice requires verbatim recording of what is said in court. (*Jameson v. Desta* (2018) 5 Cal.5th 594 (*Jameson*).) However, because of the court reporter shortage, verbatim recordings are unavailable in many civil cases unless litigants can afford a private court reporter – an expensive option that is out of reach for many litigants. As a result, those litigants are deprived of equal access to justice, which violates multiple provisions of the California Constitution, including the Separation of Powers, Due Process, and Equal Protection guarantees. This Court's intervention is urgently needed to address this extraordinary issue of great public importance.

3. Our judicial system fundamentally depends on verbatim recordings of court proceedings. Without such recordings, it can be impossible for litigants to appeal erroneous trial court rulings. Such recordings are also vital to the courts' basic operations and their ability to administer justice fairly and

efficiently. However, the traditional method of creating verbatim recordings is increasingly unavailable, as courts struggle to employ enough court reporters. Declining numbers in the profession mean that there are insufficient court reporters to meet the courts' needs, despite the millions of dollars courts are offering in incentives.

4. There is an easy answer to this problem. Electronic recording is routinely used in federal and state courts across the country. Most of Respondents' courtrooms are equipped to use it. But Government Code section 69957 (Section 69957) prohibits courts from using electronic recording in unlimited civil, family law, and probate proceedings. Given the widespread unavailability of court reporters – which Section 69957 does not account for – the statute is preventing courts from providing ***any*** verbatim recording in over a million civil proceedings every year.

5. The wealthiest litigants are usually unaffected by this problem, because they can afford to pay a private court reporter to appear as an "official pro tempore reporter." (See Gov. Code, § 68086, subd. (d)(2).) But no solution exists for civil litigants who cannot afford this expense. These include California's most vulnerable litigants.

6. In *Jameson*, this Court confirmed that verbatim recording is a necessary component of the judicial system and that the courts' decision to "outsource" this "judicial dut[y]" to private court reporters cannot result in recording being unavailable to litigants who cannot afford that cost. (5 Cal.5th at p. 622.) *Jameson* held that, to preserve equal access to justice,

courts must exercise their inherent authority to ensure that free verbatim recordings are available to those litigants. (*Id.* at pp. 605, 623.) But *Jameson* did not explicitly address what should happen if courts are unable to provide court reporters to litigants who are entitled to them – can Section 69957 block them from providing any verbatim recording at all? It is vital for this Court to answer that question now.

7. This Petition asks this Court to mandate that courts satisfy their ministerial duty to uphold the California Constitution and *Jameson* and to ensure that low-income litigants have access to verbatim recordings.[1] Consistent with this duty, Section 69957 cannot be applied to bar the use of electronic recording to create verbatim recordings for low-income litigants when a court reporter is unavailable. The genesis of the court reporter crisis is multi-faceted, and this Petition does not ask this Court to solve it or to assign fault. It simply asks this Court to confirm that the rights of low-income litigants must be protected when a court – for whatever reason – is unable to provide a court reporter to create the verbatim recordings to which those litigants are entitled.

8. This Court should invoke its original jurisdiction here because the issues presented go to the heart of this Court's fundamental responsibility for oversight of California's judicial

[1] In this Petition, the term "low-income litigant" refers to litigants who cannot afford the cost of a private court reporter. This includes, at a minimum, those who are eligible for waivers of court fees and costs pursuant to any subdivision of Government Code section 68632, including the "means" test in subdivision (c), as applied to include the cost of a private court reporter.

system. They are extraordinary matters of great public importance requiring urgent resolution and for which no adequate remedy at law exists. This crisis affects thousands of litigants statewide every day and no single inferior court has jurisdiction to address it on a statewide basis.

9. Two of the Respondents have recently issued General Orders recognizing this as an urgent constitutional crisis and attempting to address the problem by unilaterally declaring that their judges have discretion to order the use of electronic recording in civil cases under certain circumstances.[2] However, as discussed further below, neither of those orders guarantees verbatim recording to all litigants who are entitled to it. Moreover, the two orders, although similar in scope, may produce inconsistent results, and neither has any force in other superior courts. Only this Court can resolve the important constitutional issues presented here in a way that ensures both certainty and consistent statewide protection for the rights of all low-income civil litigants.

10. The core facts underlying this Petition are undisputed and widely acknowledged in publicly available

[2] See Appx. 230-231 (Superior Court of California, County of Los Angeles, General Order Re Operation of Electronic Recording Equipment for Specified Proceedings Involving Fundamental Liberty Interests in the Absence of an Available Court Reporter (September 5, 2024) [LASC General Order]); Appx. 484-485 (Superior Court of California, County of Santa Clara, General Order Re Operation of Electronic Recording Equipment for Specified Proceedings Involving Fundamental Liberty Interests in the Absence of an Available Court Reporter (November 14, 2024) [SCSC General Order]).

sources, including materials provided in the Appendix to this Petition and cited herein.[3]

II. PARTIES

A. Respondents

11. Respondents are four California Superior Courts that, as set forth below, are not satisfying their duty to create verbatim recordings for low-income civil litigants. Two of the Respondents are regularly failing in this respect; the other two have recently issued General Orders that are designed to ameliorate the problem but do not address it fully. Respondents are not the only courts facing the issues this Petition addresses, and the relief sought, if granted, will provide appropriate guidance to all courts facing this critical barrier to access to justice in California.

B. Petitioners

12. Family Violence Appellate Project (FVAP) is a non-profit organization, based in California, that assists clients with appeals involving domestic violence, child custody and visitation, housing, access to justice, and related issues throughout the state, including in matters originating in the Respondent courts. FVAP's core mission is to promote the safety and well-being of

[3] Citations are to the Appendix pages where cited material can be found. The materials in the Appendix are all true and correct copies of documents obtained by undersigned counsel. Also included in the Appendix are declarations from Jennafer D. Wagner of Family Violence Appellate Project, Kemi Mustapha and Jessica Wcislo of Bay Area Legal Aid, Alison Puente-Douglass of Legal Aid Society of San Diego, Sarah Reisman of Community Legal Aid SoCal, and Ellen Y. Choi of Covington & Burling LLP.

survivors of domestic violence and other forms of intimate partner, family, and gender-based abuse by providing effective appellate representation in their cases. FVAP's clients are predominantly low-income, and many have appeared *pro se* in the trial court.[4]

13. The application of Section 69957 to prevent any verbatim recording of many civil proceedings impedes the pursuit of FVAP's core mission. In the past 18 months, FVAP has declined appellate assistance to dozens of abuse survivors because there were no verbatim recordings of their trial court proceedings. Even when a survivor's account of the proceedings suggests a meritorious appeal, the absence of a verbatim record often makes appeal essentially impossible.[5]

14. Bay Area Legal Aid (BayLegal) is a non-profit organization and the largest provider of free civil legal services in the San Francisco Bay Area.[6] BayLegal's eligibility requirements mean that all its clients are low-income.[7] BayLegal represents clients in both trial court and appellate proceedings, including matters involving child custody, support, and domestic violence restraining orders, guardianship, and debt collection and other consumer disputes.[8]

[4] Appx. 23 (Wagner Decl. ¶ 4).
[5] Appx. 24-27 (Wagner Decl. ¶¶ 7-11.)
[6] Appx. 41 (Mustapha Decl. ¶ 3).
[7] Appx. 42 (Mustapha Decl. ¶ 5).
[8] Appx. 42-43 (Mustapha Decl. ¶ 6).

15. The unavailability of verbatim recordings impedes BayLegal's mission by preventing it from fully pursuing its clients' legitimate interests, either at the trial court level or on appeal.[9] Nor can it properly assist formerly self-represented individuals who are unable to communicate fully the content of earlier proceedings that were unrecorded.[10] Court reporters have been regularly unavailable in family law cases in Contra Costa and Santa Clara County Superior Courts even when one was requested under *Jameson*. Availability is typically unknown until the day of the hearing, and BayLegal's clients often need to proceed without verbatim recordings, which hampers BayLegal's ability to represent them effectively.[11] Even when a continuance is a viable choice, it may be repeated, dragging out proceedings for many months or even years.[12] This drains BayLegal's resources by forcing attorneys to expend time preparing for and traveling to court multiple times before a hearing finally occurs. Client demand for BayLegal's services far exceeds what it can provide, and wasted attorney time undermines BayLegal's ability to satisfy its mission.[13]

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[9] Appx. 50-51 (Mustapha Decl. ¶ 27); Appx. 83-85 (Wcislo Decl. ¶¶ 21-22).

[10] Appx. 51 (Mustapha Decl. ¶ 28).

[11] Appx. 46, 48-50 (Mustapha Decl. ¶¶ 14, 21-27); Appx. 81-84 (Wcislo Decl. ¶¶ 17-21).

[12] Appx. 48 (Mustapha Decl. ¶ 21); Appx. 82-83 (Wcislo Decl. ¶¶ 18-19).

[13] Appx. 51-52 (Mustapha Decl. ¶ 29); Appx. 85 (Wcislo Decl. ¶ 23).

16. Petitioners have beneficial interest standing to bring this Petition. (Code Civ. Proc., § 1086; see *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165) [beneficial interest is "some special interest to be served … over and above the interest held in common with the public at large [Citations]"].) Section 69957 materially limits Petitioners' ability to realize their missions. Moreover, Petitioners are suffering economic injury as a result of the resources expended on preparing for hearings that are repeatedly continued, evaluating appeals for potential clients who must ultimately be turned away for lack of a verbatim recording, and advancing funds for private court reporters for clients who are entitled to free recording.[14] (*Save the Plastic Bag Coalition*, *supra*, 52 Cal.4th at p. 165 ["One who is in fact adversely affected by governmental action should have standing to challenge that action if it is judicially reviewable [Citation]"].) FVAP has also expended time and resources on advocacy and training to address the court reporter shortage.[15]

17. Petitioners also have public interest standing to bring this Petition. (*Id.* at p. 166 [public interest standing exists "where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty … [Citation]"].) The public has a clear interest in ensuring that

[14] In a few instances, BayLegal has expended its own scarce financial resources to pay for private reporters for clients who were entitled to free recording, but it lacks the resources to do so on a regular basis. (Appx. 81-82 [Wcislo Decl. ¶ 17]; Appx. 48 [Mustapha Decl. ¶ 20].)

[15] Appx. 27–28 (Wagner Decl. ¶¶ 12-13).

California courts, including Respondents, uphold the constitutional rights of litigants. (*Loeber v. Lakeside Joint School Dist.* (2024) 103 Cal.App.5th 552, 573-577 [petitioner had public interest standing to vindicate voters' right to initiative process].)

C. Real Parties in Interest

18. This Petition does not seek relief relating to specific antecedent proceedings in the Respondent courts involving other parties; there are therefore no separate real parties in interest. Pursuant to rule 8.29(c)(1) of the California Rules of Court, this Petition is being served upon the Attorney General of California.

III. THE IMPORTANCE OF VERBATIM RECORDING FOR CIVIL PROCEEDINGS

19. Verbatim recording of judicial proceedings is critical to the operation of the judicial system and to ensuring equal access to justice. Verbatim recording preserves an official record of what happens in court, including testimony, objections and arguments from parties and their counsel, and oral statements and rulings by the judge that are not memorialized in writing. Verbatim recording provides essential information that is unavailable anywhere else.

A. Verbatim Recording Is Necessary to Appellate Review.

20. "[T]he absence of a verbatim record can preclude effective appellate review, cloaking the trial court's actions in an impregnable presumption of correctness regardless of what may have actually transpired." (*In re Marriage of Obrecht* (2016) 245 Cal.App.4th 1, 9, fn. 3.) The "lack of a verbatim record" of trial court proceedings "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.) As this Court has explained:

> [I]t is a fundamental principle of appellate procedure that 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. [Citations] … 'A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults … [Citation].'

(*Id.* at pp. 608-609.) Countless appellate decisions have declined to address the merits of an appeal when no verbatim record was provided. (See *id.* at pp. 609-610 [collecting cases].)

21. In civil cases, if an "appellant intends to raise any issue that requires consideration of the oral proceedings in the superior court, the record on appeal must include" a reporter's transcript, agreed statement, or settled statement. (Cal. Rules of Court, rule 8.120(b).) Settled and agreed statements have inherent limitations because they merely summarize a proceeding and "may not capture the judge's complete analysis of an issue of fact or law." (*A.G. v. C.S.* (2016) 246 Cal.App.4th 1269, 1282.) "[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.) This Court has accordingly recognized that "the potential availability of a settled or agreed statement does not eliminate the restriction of meaningful access

caused by [a] policy" that deprives litigants of a verbatim record. (*Jameson*, *supra*, 5 Cal.5th at p. 622, fn. 20.)

22. Verbatim recordings are particularly crucial to effective appellate review in contexts – like family law and domestic violence restraining order cases – where the percentage of self-represented litigants is high,[16] and where much of the evidence and the trial court's findings are presented orally. (E.g., *In re Marriage of D.S. & A.S.* (2023) 87 Cal.App.5th 926, 932-933, 936 [reversing restraining order against self-represented party based on transcript demonstrating lower court's failure to properly inquire into the allegations against him]; *Vinson v. Kinsey* (2023) 93 Cal.App.5th 1166, 1169, 1172-1174 [relying on transcript to reverse restraining order denial]; *Hatley v. Southard* (2023) 94 Cal.App.5th 579, 587-588, 590 [finding error based on "the [trial court's oral] ruling taken together with the questions and comments to [appellant] during her testimony"]; *Jaime G. v. H.L.* (2018) 25 Cal.App.5th 794, 803, 807-810 [reversing because transcript revealed failure to make statutorily required findings before giving custody to perpetrator of abuse].)

[16] See Appx. 1170 (Commission on the Future of California's Court System, Report to the Chief Justice (2017) [Future Commission Report]) ("In some courts today, 75 percent of the cases in family law involve at least one [self-represented litigant]"). See also Appx. 1240 (Jud. Council of Cal., Task Force on Self-Represented Litigants, Final Report on Implementation of the Judicial Council Statewide Action Plan for Serving Self-Represented Litigants (Oct. 2014)); *Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420 [noting "the high percentage of self-represented litigants (many of whom, … do not speak English)" in domestic violence proceedings]).

23. Recognizing that verbatim recording is critical for effective appellate review, *Jameson* held that "an official court reporter, or other valid means to create an official verbatim record for purposes of appeal, ***must*** generally be made available to in forma pauperis litigants …." (5 Cal.5th at p. 599 [emphasis added]; see *Davis v. Superior Court* (2020) 50 Cal.App.5th 607, 616 ["The Supreme Court recognized the importance of a reporter's transcript to an indigent litigant's ability to meaningfully exercise his or her right to seek appellate review. [Citation]"]; *Dogan v. Comanche Hills Apartments, Inc.* (2019) 31 Cal.App.5th 566, 570 [lower court erred in failing to make recording available, which prevented appellate court from evaluating claim that minute order described testimony inaccurately].)

B. Verbatim Recording Is Vital to the Trial Courts' Ability to Fairly and Efficiently Dispense Justice.

24. Numerous aspects of practice and procedure in the trial courts require access to a verbatim recording.

25. Verbatim recordings are often critical in enabling litigants to fully develop the record and litigate their positions. For example, one of the most important vehicles for impeaching witnesses is to confront them with inconsistencies in their prior testimony. (See Evid. Code, § 1294.) This cannot be done if the prior testimony was not recorded. A litigant's ability to move for a new trial may be similarly limited without a verbatim recording that demonstrates errors supporting the motion. (See Code Civ. Proc., § 657.)

26. Trial courts often instruct litigants to prepare a formal Findings and Order After Hearing. (Cal. Rules of Court, rule 5.125.) Verbatim recordings assist parties in creating these orders and allow courts to fairly adjudicate disputes about their content.[17]

27. Verbatim recordings are also needed to avoid or resolve inconsistencies in proceedings, especially when multiple judges are involved. For example, family law disputes can span several years and involve multiple judges. (E.g., *Ashby v. Ashby* (2021) 68 Cal.App.5th 491, 496-508 [multiple judges oversaw case during a three-year period].) Sometimes different judges will be asked to resolve overlapping issues; applications for domestic violence restraining orders may be heard in one department while custody issues – which by statute must take domestic violence into account – are heard in another. (E.g., *In re Marriage of Brubaker & Strum* (2022) 73 Cal.App.5th 525, 530-531 [one judge issued the restraining order, and a different judge ruled on custody]; see Fam. Code, § 3044 [requiring findings on domestic violence issues in custody determinations].) Without verbatim recordings, key evidence from one proceeding may be unavailable in the other, and judges risk entering inconsistent orders.

28. Verbatim recordings are also important in allowing courts to determine whether to modify or renew prior orders, decisions that often require reference to prior hearing records.

[17] Appx. 1170 (Future Commission Report); Appx. 48-49 (Mustapha Decl. ¶ 22).

(See *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 256 [court may modify a permanent custody order only on proof of a significant change of circumstances]; *Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1290 [when considering whether to renew a domestic violence restraining order, the trial court "ordinarily should consider the evidence and findings on which [the] initial order was based"].) Absent a verbatim recording of the earlier proceeding, courts risk erroneous rulings that fail to take full account of the prior record.

29. The essential role that verbatim recordings play cannot be replaced by other means. For example, minute orders report little or nothing about evidence adduced at a hearing; they do not necessarily reflect all rulings made by the court or the reasoning behind those rulings; and they often contain boilerplate language and errors. (E.g., *In re J.S.* (2021) 62 Cal.App.5th 678, 685 [minute order contained "boilerplate findings" that "are not a sufficient substitute for the juvenile court making factual findings on the record"]; *Favor v. Superior Court* (2021) 59 Cal.App.5th 984, 988 [minute order contained misstatement]; *Berman v. Regents of Univ. of California* (2014) 229 Cal.App.4th 1265, 1269, fn.3 [minute order contained "discrepancy"].) A verbatim recording is the only complete and accurate record of the trial court proceedings.

IV. THE UNAVAILABILITY OF VERBATIM RECORDING IN CIVIL PROCEEDINGS

30. On November 14, 2024, the California Access to Justice Commission released an Issue Paper on Access to the Record of California Trial Court Proceedings (AJC Report), in

which it reported, for the year ending March 31, 2024, "***over one million hearings and trials took place in unlimited civil, family, and probate cases*** – for which California Superior Courts did not provide any means to create an official transcript." (Appx. 926 [extrapolating from Judicial Council data, emphasis added].) The Commission estimated that "litigants in over 70% of proceedings in the three categories … had no access to an official transcript." (*Ibid.*) This situation

> does not affect all Californians equally. Well-funded litigants can afford to bring a private court reporter to court, creating an uneven playing field for those without the ability to pay, who do not have access to the official record. This denies equal justice to poor and moderate-income litigants, creating and exacerbating a two-tier justice system based on financial resources.

(*Id.* at 927.) The reason for this situation is simple: "California is denying low- and moderate-income litigants equal access to civil justice and due process because too few [court reporters] work for Superior Courts to cover large numbers of hearing in the categories not permitted [to] be transcribed in any other way." (*Ibid.*)

31. The most obvious solution to this problem is blocked by statute. Section 69957, subdivision (a) provides: "A court shall not expend funds for or use electronic recording technology or equipment … to make the official record of an action or proceeding in circumstances not authorized by this section." The only civil matters for which the statute authorizes electronic recording are limited civil matters, which consist primarily of

unlawful detainer cases and those involving amounts in controversy of $35,000 or less. (Gov. Code, § 69957, subd. (a); Code Civ. Proc., § 86.) Section 69957 thus prohibits courts from using electronic recording in unlimited civil, family, and probate cases. In those cases, only verbatim recording by a court reporter is permitted.

A. There Is a Critical Shortage of Court Reporters in California Courts.

32. California courts have long relied on court reporters to create verbatim recordings of proceedings. Section 269, subdivision (a)(1) of the Code of Civil Procedure provides that:

> [a]n official reporter or official reporter pro tempore of the superior court shall take down in shorthand all testimony, objections made, rulings of the court, exceptions taken, … arguments of the attorneys to the jury, and statements and remarks made and oral instructions given by the judge or other judicial officer … [i]n a civil case, on the order of the court or at the request of a party.

33. For many decades, court reporters employed by the courts were routinely available in both criminal and civil proceedings. Then, beginning approximately 15 years ago, many California courts ceased assigning court reporters to most civil proceedings. (*Jameson, supra*, 5 Cal.5th at p. 610.) The burden increasingly fell on civil litigants to arrange for private court reporters to appear and record a proceeding as "official pro tempore reporters" under Government Code section 68086, subdivision (d)(2). (See *id.* at p. 611.) In essence, courts were "outsourcing" the "dut[y]" of providing verbatim recording for

court proceedings to private court reporters paid for by litigants. (*Id.* at p. 622.)

34. Meanwhile, there has been a growing shortage of court reporters in the courts. In 2014, the National Court Reporters Association projected a shortage of at least 5,000 court reporters by 2018 as a result of retirements outpacing new entrants.[18] Between 2012 and 2022, the number of court reporters in the United States decreased by more than 20 percent.[19] The number is expected to decrease by another 50 percent by 2028.[20] While approximately 1,120 reporters retire each year, at most 200 enter the profession – a net decrease of 920 reporters every year.[21]

35. California courts are particularly hard-hit.[22] In fiscal year 2022-23, California courts employed approximately 1,200 full-time-equivalent court reporters, approximately 650 fewer than needed to cover all proceedings in which electronic recording is not permitted.[23] The vacancy rate increased from 10 percent

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[18] Appx. 1306, 1310 (Ducker Worldwide, 2013-2014: Court Reporting Industry Outlook Report, Executive Summary (Mar. 2014) [Industry Outlook Report]).

[19] Appx. 1092 (California Trial Court Consortium, The Causes, Consequences, and Outlook of the Court Reporter Shortage in California and Beyond (Jan. 25, 2022)).

[20] *Ibid.*

[21] *Ibid.*

[22] Appx. 911 (CEOs of Super. Cts. of Cal., There Is a Court Reporter Shortage Crisis in California (Nov. 2, 2022) [Court CEOs' Statement]).

[23] Appx. 983 (Legis. Analyst, letter to Sen. Umberg, analysis of court reporter availability (2023-2024 Reg. Sess.) Mar. 5, 2024 [Sen. Umberg Letter]).

in July 2020 to 25 percent in July 2023.[24] Candidates to fill those vacancies often come from sister courts, redistributing rather than reducing the shortage.[25]

36. Courts have gone to great lengths to address the shortage, but the crisis continues to worsen. In 2022-23, forty-four superior courts spent $20.3 million on recruitment efforts, but that spending had "limited impact."[26] Numerous incentives have been attempted, including signing bonuses, retention and longevity bonuses, increased salaries, finder's fees, and student loan and tuition reimbursement incentives.[27]

37. Notwithstanding these and other efforts, in 2022-23 the California courts had almost twice as many departures as new hires.[28] Respondent Los Angeles Superior Court (LASC) alone had funding for over $9 million in incentives and engaged in extensive hiring and retention efforts, yet it sustained a net loss of nine court reporters.[29] No matter how attractive

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[24] Appx. 984 (Sen. Umberg Letter); see Appx. 932-933 (AJC Report) (citing Judicial Council data showing vacancy rates for budgeted positions in the 20 largest courts in the state increasing from 10% in 2021-22 to 24% in 2023-24).

[25] Appx. 924 (Jud. Council of Cal., Court Reporter Recruitment, Retention, and Attrition) (showing 49.2% of new hires came from other courts in the third quarter of 2023).

[26] Appx. 903 (Communications Office, Super. Ct. L.A. County, Superior Court of Los Angeles County Launches Internal Training Program to Expand Pipeline of Court Reporters and Court Interpreters (Apr. 2, 2024) [LA Training Program]); Appx. 994 (Sen. Umberg Letter).

[27] Appx. 954 (Jud. Council of Cal., Fact Sheet: Shortage of Certified Shorthand Reporters in California (June 2024) [Shortage Fact Sheet]).

[28] Appx. 984 (Sen. Umberg Letter).

[29] Appx. 903 (LA Training Program).

recruiting incentives may be, they cannot overcome demographic reality. The court reporter population is aging, and fewer reporters are joining the profession each year. The National Court Reporters Association has reported the average age of its members as 55 years old.[30] Approximately 45 percent of all active California court reporter licenses were issued at least 30 years ago.[31] Between fiscal years 2013-14 and 2021-22, the total number of new court reporter license applications in California declined by more than 70 percent.[32] Only 35 new licenses were issued in the entire state in 2021-22.[33]

38. Respondents LASC and Santa Clara Superior Court (SCSC) have documented the impact of this shortage on their courtrooms in their recent General Orders. LASC described the chronic court reporter vacancies it has been experiencing for years; its extensive but largely unsuccessful efforts to remedy the problem with recruitment and retention efforts; and the hundreds of thousands of hearings that were going unrecorded in its courtrooms each year.[34] As a "stopgap measure," LASC tried to provide court reporters on an ad hoc basis in the family law, probate, and unlimited civil departments in which they were generally unavailable, but even this approach "has proven

[30] Appx. 1092 (California Trial Court Consortium).

[31] Appx. 954 (Shortage Fact Sheet).

[32] *Id.* at 953.

[33] Appx. 981 (Sen. Umberg Letter).

[34] Appx. 212-213 (LASC General Order) (citing attached Declaration of Court Executive Officer and Clerk of Court David W Slayton).

inadequate, and the LASC cannot maintain it going forward."[35] On average, 1,571 hearings were going unrecorded ***every day in that court alone***.[36]

39. Respondent SCSC has offered a similar report. Notwithstanding extensive recruitment and retention efforts, SCSC has seen the court reporter staff it needs to cover 68 courtrooms drop from 70 in 2011 to only 28 in 2024.[37] On average, nearly 290 hearings go unrecorded every day in that court unless the parties retain a private court reporter.[38]

40. Respondent Contra Costa Superior Court (CCSC) has similarly confirmed that this "crisis has not abated but only worsened."[39] The number of full-time court reporters in its employ has almost halved since 2019.[40] Respondent San Diego Superior Court (SDSC) has reported "losing far more court reporters to retirement each year than it can hire to replace them."[41]

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[35] *Id.* at 213.

[36] *Ibid.*

[37] Appx. 465 [SCSC General Order; citing accompanying Declaration of Court Officer and Clerk of Court Rebecca J. Fleming).

[38] *Id.* at 465-466.

[39] Appx. 89 (Contra Costa County Superior Court Chief Counsel Matt J. Malone, letter to Jessica Wcislo, July 19, 2024 [CCSC Letter]).

[40] *Ibid.*

[41] Appx. 906 (Super. Ct. San Diego, San Diego Superior Court Offers Incentives to Recruit & Retain Court Reporters (Feb. 23, 2023) [SDSC Statement]).

41. In 2022, the CEO of almost every superior court – including Respondents – signed a Joint Statement titled, "There Is a Court Reporter Shortage Crisis in California."[42] It stated that "[e]very litigant in California should have access to the record" and "[i]deally, this would be provided by a court reporter but when none are available, other options need to be available to the courts."[43] However, the "current statutory framework inhibits creative responses to the shortage."[44] The Joint Statement explained that 71 percent of superior courts – including Respondents – were actively recruiting for court reporters.[45] However, "many … do not have enough court reporters to cover mandated criminal felony matters – let alone the wide range of areas in which litigants need a record of court proceedings."[46] The fundamental problem, they reported, was that "[t]here is no one to hire."[47]

42. This Petition does not require this Court to assess causes of the court reporter shortage or whether Respondents do enough to facilitate recruitment and retention. But there can be no question that a severe shortage exists in these courts today.

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[42] Appx. 911 (Court CEOs' Statement).

[43] *Id*. at 913.

[44] *Ibid.*

[45] *Ibid.*

[46] *Id*. at 912. See also Appx. 89 (CCSC Letter) ("the [Contra Costa Superior] Court often lacks sufficient reporters for even those cases where the reporters are statutorily mandated (felonies, LPS, etc.)").

[47] Appx. 912 (Court CEOs' Statement).

B. The Respondent Courts Are Regularly Denying Low-Income Litigants Meaningful Access to Verbatim Recording.

43. Respondents have attempted to triage the court reporter shortage by prioritizing assignment of available reporters to proceedings in which their presence is mandated by statute, such as felony trials.[48] As a result, court reporters are not staffed in family, probate, and unlimited civil courtrooms, and those proceedings are not recorded by a court-provided court reporter.[49] This includes proceedings involving child custody and visitation, spousal and child support, conservatorship, guardianship, and debt collection, among many others.[50] On a daily basis, litigants have been faced with the choice of either hiring private court reporters or going without a record. The Judicial Council has reported that the average cost to hire a court

[48] See, e.g., Appx. 906-907 [SDSC Statement] (announcing that "the Court had to eliminate court reporters in family law in November 2021 in order to move court reporter staff to cover assignments in legally mandated criminal felony and juvenile proceedings"); Appx. 93 (CCSC Letter) ("Reporters are assigned to Family Law based on availability after assignment to other departments where reporters are required by law (e.g., felony trials, LPS matters)…").

[49] Appx. 89 (CCSC Letter); Appx. 156 (SDSC Policy Regarding Normal Availability and Unavailability of Official Court Reporters); see Appx. 912 (Court CEOs' Statement) ("Over 50% of the California courts have reported that they are unable to routinely cover non-mandated case types including civil, family law and probate"); see Appx. 926 (AJC Report).

[50] See Appx. 77-78 (Wcislo Decl. ¶ 10); Appx. 150-151 (Puente-Douglass Decl. ¶¶ 23-24); Appx. 46 (Mustapha Decl. ¶ 15); Appx. 930-931 (AJC Report).

reporter through a private company is $3,300 per day.[51] This expense is unaffordable for millions of Californians.[52] As a result, thousands of hearings are held every day with no verbatim record.

44. *Jameson* requires courts to mitigate this harm by providing free verbatim recording to indigent litigants. But even for litigants who are aware of this right and know how to exercise it, the result is often no different. Court reporters are frequently unavailable even when requested. (E.g., Appx. 89 [CCSC Letter] ["While the [CCSC] makes every effort to provide reporters whenever requested, … staffing shortages make this impossible on a regular basis"]; Appx. 45-47 [Mustapha Decl. ¶¶ 13-15] [describing unavailability of court reporters in family law matters in SCSC before entry of the November 2024 General Order]; Appx. 147 [Puente-Douglass Decl. ¶ 16] [court reporters not always available when requested by indigent litigants in SDSC]; see also Appx. 213 [LASC General Order] [describing inability to sustain "stopgap measure" to supply court reporters on an ad hoc basis in departments where they are usually absent].)

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[51] Appx. 954 (Shortage Fact Sheet); see also Appx. 993 (Sen. Umberg Letter) (noting that private court reporters may charge "a couple of thousand dollars … per day or even half-day").

[52] The Legal Services Corporation reported in 2022 that California has the highest number of low-income residents in the country, at approximately 5.9 million. (Appx 1022 [Legal Services Corporation, The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans (Apr. 2022)].) The report uses the term "low-income" to describe "anyone with a household income at or below 125% of [federal poverty limit] or below 125% of the poverty threshold." (*Id.* at 1017.) A much larger number of people lack the means to pay for the extraordinary expense of a private court reporter.

45. Litigants who submit *Jameson* requests are typically not informed of court reporter unavailability until their hearing dates.[53] The alternative some courts then offer – a continuance to a later date[54] – is often untenable. As Respondent LASC has recognized, continuances are "not a practical or efficient option" for dealing with the court reporter shortage, "considering the trial court's 'duty in the name of public policy to expeditiously process civil cases', the harm that could occur to parties from postponing a hearing, and the fact that there are likely to be *fewer*, not more, [court reporters] in the future."[55] Continuances are often lengthy, and multiple continuances may be entered in the same matter based on ongoing court reporter unavailability.[56] Respondent SCSC has observed that this situation "results in a pernicious delay in the administration of justice in cases where prompt court action is usually essential."[57]

[53] Appx. 158 (SDSC Form ADM-379 [San Diego Form]) ("Given the general unavailability of official court reporters, notice of the availability of a court reporter will not be given until the day of the trial or hearing"); Appx. 90 (CCSC Letter) ("Advance notice of court reporter availability cannot be given to parties as the [Contra Costa Superior] Court does not know the full availability of court reporters for a particular day until that morning"); Appx 46 (Mustapha Decl. ¶ 14).

[54] See Appx. 76, 81 (Wcislo Decl. ¶¶ 7, 16); Appx. 147-149 (Puente-Douglass Decl. ¶¶ 17-19).

[55] Appx. 218 (LASC General Order) (citation omitted).

[56] See Appx. 82-83 (Wcislo Decl. ¶ 18); Appx. 148-149 (Puente-Douglass Decl. ¶ 19).

[57] Appx. 471(SCSC General Order).

46. Litigants' need for judicial assistance is often urgent, and lengthy continuances can have a detrimental impact on litigants' substantive rights.[58]

> [T]he right of the mother and child to apply for relief pendente lite will be materially impaired and perhaps destroyed by the imposition of any substantial continuance.... Situations other than those involving provisional remedies may also arise in which a substantial existing right would be defeated or abridged by extended continuances. [Citation.]

(*People v. Engram* (2010) 50 Cal.4th 1131, 1149.) For example, a child custody determination will give heavy weight to the status quo, allowing a parent who has interim custody to benefit, perhaps unfairly, from a lengthy delay in the final custody determination. (See *Lester v. Lennane* (2000) 84 Cal.App.4th 536, 565.) Moreover, delays can have severe impacts on litigants' ability to present their positions and evidence. Memories fade over time under even the best of circumstances, and witnesses may become unavailable.

47. Even apart from the substantive impact on litigants' rights, continuances to await the ***possible*** future availability of a court reporter impose significant hardships on low-income litigants who have already prepared for a hearing, taken off work, incurred transportation costs, and arranged childcare. In domestic violence cases, survivors must steel themselves each time they must face their abusers and testify about sensitive, traumatic experiences. If the hearing is rescheduled for a new

[58] See Appx. 49-50 (Mustapha Decl. ¶¶ 23-25); Appx. 83 (Wcislo Decl. ¶¶ 19-20); Appx. 149 (Puente-Douglass Decl. ¶¶ 20-21).

day, litigants will have to repeat this process, and there is no guarantee that a court reporter will be available on the future hearing date either.[59]

48. Accordingly, when no court reporter is available, there is intense pressure on litigants to proceed as scheduled with no verbatim recording. When a court does not offer low-income litigants any chance of having their proceedings recorded unless they accept continuances, it forces them to choose between the timely resolution of their disputes to which they are entitled – and for which their need is often acute – and the verbatim recording necessary to provide full access to the judicial system. Often litigants choose to proceed without a verbatim recording when faced with a second continuance due to the unavailability of a court reporter.[60] Regardless of which choice a litigant makes, the result is an intolerable compromise of the equal access to justice to which all litigants are entitled.

49. The failure of trial courts to provide court reporters in response to *Jameson* requests is compounded by the barriers low-income litigants – many of whom are self-represented – face in making those requests. Most courts require litigants to request court reporters in advance by submitting separate

[59] See Appx. 82-83 (Wcislo Decl. ¶ 18); Appx. 48-49 (Mustapha Decl. ¶¶ 21-22); Appx. 148-150 (Puente-Douglass Decl. ¶¶ 19-21); Appx. 928 (AJC Report).

[60] See Appx. 49-50 (Mustapha Decl. ¶¶ 23-26); Appx. 150-151 (Puente-Douglass Decl. ¶¶ 22-24).

paperwork in addition to that required for a fee waiver.[61] At least some Respondent courts do not clearly inform indigent litigants about the availability of free court reporters and what is required to obtain one.[62] Only the minority of eligible litigants who are able to secure free counsel have a meaningful prospect of even knowing there is a process to request a court reporter and the ramifications of not doing so. And there are not enough court reporters available even for them.

C. Electronic Recording Is a Valid Method of Recording Judicial Proceedings.

50. Electronic recording is a well-recognized method for creating a verbatim recording of a judicial proceeding. It is authorized in the federal court system (28 U.S.C. § 753(b)), as well as in state trial courts outside California, the majority of which now use electronic recording, some as a primary recording method.[63]

51. In California, Section 69957 allows courts to use electronic recording to create the official verbatim record in limited civil, misdemeanor, and infraction cases when "an official reporter or an official reporter pro tempore is unavailable." (Gov.

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[61] For example, SDSC requires litigants to fill out a separate local form to request a court reporter. Appx. 158 (San Diego Form). CCSC also has its own local form. Appx. 126 (Super. Ct. Contra Costa, Local Forms, Form MC-30).

[62] For example, there is no information on the SCSC website or in its local rules or notices that instructs a fee-waiver-eligible litigant on how to make a request for a court reporter. Appx. 52-54 (Mustapha Decl. ¶¶ 31-33).

[63] Appx. 940-942 (AJC Report); Appx. 1306 (Industry Outlook Report); Appx. 1175-1176 (Future Commission Report).

Code, § 69957, subd. (a).)[64] A transcript derived from an electronic recording may be used whenever a transcript of court proceedings is required – including on appeal. (*Ibid.*; see also Cal. Rules of Court, rule 2.952(g)-(j).)

52. The infrastructure for electronic recording is widely installed throughout the court system. In Respondent CCSC, for example, all courtrooms are equipped for electronic recording.[65] Extensive measures are in place to ensure the consistency and quality of these systems. Government Code section 69957, subdivision (c) requires Judicial Council approval for any recording equipment that is installed, and the rules establish detailed requirements for such equipment and its use. (See Cal. Rules of Court, rules 2.952, 2.954.)

53. More than 2.1 million records in California trial courts were made through electronic recording in fiscal year 2022-23.[66] Respondent LASC reports that it has routinely used electronic recording for limited civil, misdemeanor, and infraction cases, and its Appellate Division handles hundreds of appeals

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[64] Electronic recording is also permitted for purposes of supervising subordinate judicial officers (Gov. Code, § 69957, subd. (b)) and in administrative proceedings when no court reporter is available (*Id.*, § 11512, subd. (d)).

[65] Appx. 173 (Contra Costa County Superior Court Chief Counsel Matt J. Malone, letter to Ellen Choi and Katelyn Rowe, Aug. 23, 2024). The same is true in LASC, where all, or substantially all, courtrooms are equipped for electronic recording. Appx. 234 (LASC General Order). Two-thirds of the courtroom in SDSC are so equipped. Appx. 178 (SDSC Executive Officer Michael M. Roddy, letter to Ellen Choi, Aug. 9, 2024). See also Appx. 482 (SCSC General Order).

[66] Appx. 986 (Sen. Umberg Letter).

annually based on electronic recordings.[67] Respondent SCSC has also reported positive experience with electronic recording.[68]

54. Electronic recordings can be used for almost any purpose in the trial court for which a court reporter's recording might be used. For example, a party directed to submit a proposed order after a hearing can readily refer to an electronic recording, as can the court if the proposed order is disputed. A witness who can be impeached with a transcript of prior testimony can just as easily be impeached by playing an audio recording of that testimony. And electronic recordings may in certain circumstances be submitted directly to the Court of Appeal without transcription. (Cal. Rules of Court, rule 2.952(j)(1).)

D. Respondents Have Acknowledged Their Inability to Create Verbatim Recordings for Low-Income Litigants Without Violating Government Code Section 69957.

55. Respondents have been outspoken about the court reporter shortage and the resulting impacts on equal access to justice.[69] In September 2024, LASC issued a General Order that found: "our Court's practical inability to provide [court reporters], combined with section 69957's statutory prohibition against providing [electronic recording] to many litigants, results in a

[67] Appx. 217 (LASC General Order); Appx. 899 (Super. Ct. L.A. County, General Order (Jan. 10, 2023)).

[68] Appx. 467 (SCSC General Order).

[69] E.g., Appx. 918 (Super. Ct. Los Angeles, Effective November 14, the Court Will Prioritize Official Court Reporters for Criminal Felony, Juvenile Cases as Severe Staffing Shortages Persist Despite New State Funding (Aug. 25, 2022)).

profound denial of equal access to justice." (Appx. 217 [LASC General Order].) This, the court concluded, created a "constitutional crisis" that demanded action. (*Id.*)

56. The LASC General Order accordingly orders deputy clerks to electronically record proceedings in family law, probate, and civil departments when instructed to do so by the judge based on findings that:

> (1) the proceeding concerns matters that implicate fundamental rights or liberty rights as described herein; (2) one or more parties wishes to have the possibility of creating a verbatim transcript of the proceeding; (3) no official court-employed [certified shorthand reporter (CSR)] is reasonably available to report the proceeding; (4) the party so requesting has been unable to secure the presence of a private CSR to report the proceeding because such CSR was not reasonably available or on account of that party's reasonable inability to pay; (5) the proceeding involves significant legal and/or factual issues such that a verbatim record is likely necessary to create a record of sufficient completeness; and (6) the proceeding should not, in the interests of justice, be further delayed.

(*Id.* at 230-231.) Implementation is discretionary for each judge in each case. (*Id.* at 223, 230-231.)

57. On November 14, 2024, Respondent SCSC issued a similar General Order, finding that its "practical inability to provide court reporters, combined with section 69957's statutory prohibition against [electronic recording] in many proceedings, results in a profound denial of equal justice for all in a fair,

accessible, effective and efficient manner." (Appx. 470 [SCSC General Order].) That order "confirms the discretion of [SCSC] judicial officers to authorize [electronic recording] to preserve parties' right to appeal when their fundamental rights and liberty interests may be at stake in the hearing." (*Id.* at 476.) Like the LASC General Order, it directs courtroom clerks to turn on electronic recording equipment if a court reporter is unavailable – but only if the judge, in an exercise of discretion, makes findings substantially the same as those required by the LASC General Order. (*Id.* at 484-485.)

58. Petitioners applaud LASC and SCSC for this important step in addressing this access to justice crisis. Petitioners have nonetheless named them as Respondents here because their General Orders fail to provide verbatim recording to ***all*** low-income litigants who should receive it pursuant to *Jameson* and the California Constitution. (See Memorandum, *ante*.) Access to verbatim recording is not appropriately limited to cases involving "fundamental" rights and liberties; rather, all low-income civil litigants are entitled to this procedural protection. Moreover, neither order defines with clarity the full spectrum of rights and liberties that should be deemed "fundamental."[70]

[70] Both orders offer examples that Petitioners agree represent some of the types of proceedings in which verbatim recording is crucial, but neither offers an objective test for making that determination, which is left to the discretion of each individual judge.

59. The LASC and SCSC General Orders are also problematic in that they leave implementation to the discretion of the trial judge in each individual case. A court's duty to uphold the constitutional rights of low-income litigants to due process and equal protection is not discretionary. Moreover, each order requires judges to predict the necessity of verbatim recording ***before*** a hearing has even begun, by foreseeing the significance of whatever legal or factual issues may arise and predicting litigants' potential need for a verbatim recording. (Appx. 230-231 [LASC General Order]; Appx. 484 [SCSC General Order].) Neither General Order provides any explanation for this limitation, which threatens to deny verbatim recordings where such predictions prove inaccurate. Notably, SCSC (in discussing the inadequacy of settled statements) recognized that "trial judges, like trial counsel, generally cannot 'determine in advance what issues may arise.'" (Appx. 473 [SCSC General Order, citing *Jameson*, *supra*, 5 Cal.5th at p. 622, fn. 20].) Moreover, neither order, ironically, requires any record of the judge's factual findings on the need for verbatim recording, thus insulating erroneous determinations from judicial review.

60. The other Respondent Courts have continued to treat Section 69957 as barring the use of electronic recording in certain civil proceedings, even when it is the only means available. But both have also been vocal about the court reporter shortage and its negative impact on litigants.[71]

[71] See ¶¶ 40-41, *ante*; see also Appx. 89 (CCSC Letter); Appx. 906-907 (SDSC Statement).

61. Petitioners believe there is no requirement in the circumstances here to plead demand and refusal. However, Petitioners have made demands on all Respondents that they satisfy their duty to provide electronic recording for proceedings involving low-income litigants when court reporters are unavailable.[72] As discussed above, LASC and SCSC have taken steps to address the issue, but their General Orders still fail to guarantee verbatim recording to many low-income civil litigants who are entitled to it. The other Respondents have made no material changes in their practices.

V. CLAIMS ASSERTED

62. This Petition seeks relief to address Respondents' failure to comply with their ministerial duty under the California Constitution and this Court's decision in *Jameson* by ensuring that low-income civil litigants receive verbatim recordings even when court reporters are unavailable. As discussed in the accompanying Memorandum, the current application of Section 69957 violates the California Constitution's guarantees of Separation of Powers, Due Process, and Equal Protection.

VI. RELIEF SOUGHT

63. This Petition seeks:

a. A finding and declaration that Government Code section 69957 may not constitutionally be applied to preclude the use of electronic recording to create an official verbatim recording of civil proceedings

[72] Appx. 28 (Wagner Decl. ¶ 14); Appx. 54 (Mustapha Decl. ¶ 34); Appx. 85-86 (Wcislo Decl. ¶ 24; Appx. 180-181 (Reisman Decl. ¶ 3).

involving litigants who cannot afford to pay for a private court reporter when the court does not itself supply a court reporter.

b. An order mandating that, for any civil proceeding, a litigant who cannot afford to pay for a private court reporter is entitled to have an official verbatim recording created at no charge, including by electronic recording if a court reporter is not available, and prohibiting Respondents from relying upon Section 69957 as a basis for depriving such civil litigants of access to an official verbatim recording of any such proceeding.

VII. JURISDICTIONAL STATEMENT

64. This Court has original jurisdiction under article VI, section 10 of the California Constitution to issue extraordinary writs in matters of public importance. (See also Code Civ. Proc., § 1085, subd. (a).) This is such a matter. Petitioners have no adequate remedy at law, and this Court is uniquely situated to address the issues presented. (Memorandum, Part I.)

VIII. VERIFICATION

I, Sonya D. Winner, hereby declare:

I am an attorney licensed to practice law in the State of California and am Senior Counsel with Covington & Burling, LLP.

I have read the foregoing petition for writ of mandate and the exhibits appended thereto and declare that the contents of the petition are true of my own personal knowledge, or on information and belief based on my review of the declarations and exhibits that have been submitted to the Court in the accompanying Appendix.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on December 4, 2024, in San Francisco, California.

Respectfully submitted,

/s/ Sonya D. Winner
Sonya D. Winner

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE ISSUES PRESENTED ARE PROPERLY CONSIDERED BY THIS COURT ON AN ORIGINAL WRIT.

This Court should exercise its original jurisdiction to resolve the issues presented in this Petition. (See Cal. Const., art. VI, § 10.)

The court reporter shortage is a statewide emergency with direct impacts on the public welfare. (*Roma Macaroni Factory v. Giambastiani* (1933) 219 Cal. 435, 437 [original jurisdiction is exercised "where some emergency exists or the public welfare is involved"].) Because of the statewide court reporter shortage and Section 69957's prohibition on electronic recording, Respondents are regularly failing to create verbatim recordings for litigants who cannot afford to pay for a private court reporter. This is an urgent issue, because litigants cannot be made whole again once a hearing has gone unrecorded. Countless litigants will continue to suffer irreparable harm if the situation continues.

The public welfare is affected because courts are materially impaired in their ability to exercise their inherent constitutional powers to ensure equal access to justice and to administer justice fairly and efficiently, including through appellate review. This raises a grave separation of powers problem under article III, section 3 of the California Constitution. (*Post,* Part II.) And litigants' constitutional rights to procedural due process and equal protection are regularly being violated. (*Post*, Parts III-IV.) 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. Navarro* (1972) 7 Cal.3d 248, 260 ["Wherever statutes conflict with constitutional provisions, the latter must prevail"].)

As the ultimate supervisory court for the California judicial system – and ultimate authority on the proper interpretation of the California Constitution – this Court is the proper court of first and last resort on this issue. (See Cal. Rules of Court, rule 8.486(a)(1); *People v. Kelly* (2006) 40 Cal.4th 106, 110; *People v. Delgadillo* (2022) 14 Cal.5th 216, 222.) The ongoing constitutional injury is acute. Trial courts across the state are caught between the Scylla of their obligation to create verbatim recordings for low-income litigants and the Charybdis of a statute that prohibits them from doing so. Guidance is needed from this Court, "exercis[ing] [its] inherent authority to ensure the orderly administration of justice and to settle important issues of statewide significance." (*Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1346).

A lower court would be an inferior venue for this controversy in any event. If suits were brought against any Respondent in its own court, conflict-of-interest rules would require its judges to recuse themselves. (See Code Civ. Proc., § 170.1, subds. (a)(4), (a)(6)(A)(iii); *Golin v. Allenby* (2010) 190 Cal.App.4th 616, 629.) Such conflicts would similarly affect any other superior court asked to hear such a case. The underlying dilemma posed by the court reporter shortage exists to some extent in virtually every court. While the specific choices made

by individual courts may differ, any superior court adjudicating the validity of another court's choices will inevitably be required to either confirm or condemn its own choices. (See Code Civ. Proc., § 170.1, subd. (a)(6)(A)(iii) [requiring recusal if "[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial"].)

Nor would an intermediate appellate court be in a position to provide the comprehensive relief that is needed.[73] Just as the General Orders issued by LASC and SCSC are by necessity limited to just their own courts, any challenge to those orders – or any challenge to the *failure* of another court to issue a similar order – would have no legal effect elsewhere. A patchwork of varying practices is already in existence, and years of delay as multiple individual challenges made their way through the system would burden the courts and provide no uniform result statewide until the issue reached this Court. (*Briggs v. Brown* (2017) 3 Cal.5th 808, 861 [recognizing Supreme Court's role in securing "a correct and uniform construction of the constitution"].) Meanwhile, the irreparable harm to litigants would continue.

This Petition presents no material factual disputes. There is no dispute that court reporter vacancies are endemic in

[73] An appeal by an individual litigant who is wrongly deprived of a verbatim recording would be unlikely to resolve the constitutional issues presented here, as the remedy would simply be to remand and order the lower court to provide a court reporter to that particular litigant pursuant to *Jameson*, without any need to address systemic issues. (E.g., *Davis, supra*, 50 Cal.App.5th at p. 616; *Dogan*, *supra*, 31 Cal.App.5th at pp. 570-571.)

California courts, and that, as a result, thousands of civil proceedings in the Respondent courts, including those of litigants who cannot afford a private court reporter, are going unrecorded. (Petition ¶¶ 30, 49.) Nor is there any dispute that electronic recording equipment is widely available. (*Id.* ¶¶ 52-53.) This Petition does not require any evaluation of fault for the shortage – rather, it simply asks this Court to ensure that low-income litigants do not suffer because of it.[74]

The question presented by this Petition is a purely legal one: whether California courts have a mandatory, ministerial duty to uphold the California Constitution and the inherent duties recognized in *Jameson* to ensure that verbatim recordings are created for low-income litigants even when court reporters are unavailable. That legal determination should be made by this Court.[75]

II. THE SEPARATION OF POWERS DOCTRINE PRECLUDES APPLICATION OF SECTION 69957 TO MATERIALLY IMPAIR THE COURTS' INHERENT POWERS.

The separation of powers clause of the California Constitution provides that "[t]he powers of state government are

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[74] This Petition also does not require this Court to determine whether electronic recording is equivalent in quality to recording by a court reporter. As the recent AJC Report explains, views on this question vary. (See Appx. 939-940 [AJC Report].) This Petition merely rests on the clear superiority of electronic recording to no recording at all.

[75] If the Court were to determine that limited fact-finding is required, it could appoint a referee to perform that function. (See Code Civ. Proc., §§ 638, 639; *In re Boyette* (2013) 56 Cal.4th 866, 870; *Wilson v. Eu* (1991) 54 Cal.3d 471, 473.)

legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." (Cal. Const., art. III, § 3.) Under the separation of powers doctrine, the Legislature may not defeat or materially impair the courts' exercise or fulfillment of their inherent powers. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1103; see also *Briggs*, *supra*, 3 Cal.5th at p. 846.) Courts "should maintain vigorously all the inherent and implied powers necessary to properly and effectively function" as a separate branch of government. (*Briggs*, *supra*, 3 Cal.5th at pp. 852-853, quotation and citation omitted.) When a legislative enactment interferes with the courts' ability to exercise their constitutionally protected powers, this Court's standard approach is to interpret mandatory statutory language as merely "directive," applying only to the extent consistent with the courts' inherent powers and duties. (*Id.* at pp. 850-859 [collecting cases].)

This Court should apply its separation of powers precedents to hold that Section 69957 cannot be interpreted as prohibiting electronic recording of judicial proceedings for low-income litigants when a court-provided court reporter is unavailable, because such a prohibition materially impairs the courts' ability to satisfy their constitutional duties to ensure equal access to justice and to fairly adjudicate cases.

A. Courts Have Both a Duty and the Power to Facilitate Equal Access to Justice and to Perform Their Constitutional Functions.

"It is well established, in California and elsewhere, that a court has both the inherent authority and responsibility to fairly and efficiently administer all of the judicial proceedings that are pending before it." (*Engram*, *supra*, 50 Cal.4th at p. 1146.) This includes "protect[ing] and safeguard[ing] the rights and interests of all litigants." (*Id.* at pp. 1148-1149; see also *Briggs*, *supra*, 3 Cal.5th at p. 853; *Verio Healthcare, Inc. v. Superior Court* (2016) 3 Cal.App.5th 1315, 1319 [recognizing this power is "a necessary appendage to a court organized to enforce rights and redress wrongs"] [quoting *Lorraine v. McComb* (1934) 220 Cal. 753, 756].)

The blanket prohibition of Section 69957 materially impairs the courts' exercise of their constitutionally protected powers and the fulfillment of their corresponding duties in at least two important respects. *First*, it materially impairs the courts' ability to satisfy their obligation to ensure that indigent litigants have full access to the judicial system. *Second,* and more generally, it materially interferes with the ability of the appellate courts to exercise their constitutionally granted authority to hear and decide appeals.

For over a century, this Court has recognized that "California courts have the inherent power to permit an indigent person to litigate a civil case in forma pauperis." (*Jameson*, *supra*, 5 Cal.5th at pp. 603 [citing *Martin v. Superior Court* (1917) 176 Cal. 289, 293-296].) A "long line of decisions" has confirmed that "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." (*Id.* at p. 605.) This authority "is not limited to excusing the payment of fees that the government charges for government-provided services," but extends to allowing indigent litigants to avoid other "statutorily imposed expenses … and to devising alternative procedures … so that indigent litigants are not, as a practical matter, denied their day in court." (*Ibid.*)

Applying these principles to verbatim recording of judicial proceedings, *Jameson* held:

> [U]nder California law when a litigant in a judicial proceeding has qualified for in forma pauperis status, a court may not consign the indigent litigant to a costly private alternative procedure that the litigant cannot afford and that effectively negates the purpose and benefit of in forma pauperis status. In other words, whatever a court's authority may be in general to outsource to privately compensated individuals or entities part or all of the court's judicial duties with respect to litigants who can pay for such private services, a court may not engage in such outsourcing in the case of in forma pauperis litigants when the practical effect is to deprive such litigants of the equal access to justice that in forma pauperis status was intended to afford.

(*Id.* at p. 622.) Accordingly,

> when a superior court adopts a general policy under which official court reporters are not made available in civil cases but parties who can afford to pay for a private court reporter are permitted to do so, the superior court must

> include in its policy an exception for fee waiver recipients that assures such litigants the availability of a verbatim record….

(*Id.* at p. 623.) "[F]ailing to provide an exception … effectively deprives such litigants of equal access to the appellate process." (*Id.* at p. 622.)

That courts have an inherent ***duty*** to create verbatim recordings for indigent civil litigants – and the inherent ***power*** to satisfy that duty – is accordingly well established. This Petition presents a follow-on question not explicitly addressed in *Jameson*: Does that duty still exist if a court is unable, for whatever reason, to create verbatim recording through a court reporter? The answer is clearly "yes." In a footnote in *Jameson,* the Court acknowledged that "current legislation restricts the use of electronic recording to generate an official certified verbatim record of trial court proceedings, as an alternative to a court reporter." (5 Cal.5th at p. 598, fn.2.) But the Court did not suggest that this statutory restriction overrides the duty to provide free verbatim recording if electronic recording is the ***only*** option available. Nothing in *Jameson* suggests that, under such circumstances, the duty to protect indigent litigants' right to equal access to justice disappears, while the rights of wealthy litigants remain unaffected. To the contrary, it is apparent from the reasoning of *Jameson* that if this situation were to arise – as it now has – the courts' duty to preserve the rights of low-income litigants must take precedence. (*Id.* at pp. 621-623 [citing *Roldan v. Callahan & Blaine* (2013) 219 Cal.App.4th 87, 94, which recognized "California's long-standing public policy of ensuring

that all litigants have access to the justice system … without regard to their financial means" and held that plaintiffs could be excused from obligation to pay arbitration fees required under Code of Civil Procedure section 1284.2].)

In addition to the inherent duty and authority recognized in *Jameson*, the California Constitution explicitly provides that "courts of appeal have appellate jurisdiction when superior courts have original jurisdiction." (Cal. Const., art. VI, § 11.) Appellate jurisdiction includes "the power to review and correct error in trial court orders and judgments." (*Leone v. Medical Bd. of Cal.* (2000) 22 Cal.4th 660, 668.) The Legislature may regulate the *mode* of review that is authorized (e.g., direct appeal versus writ), but it "may not restrict appellate review in a manner that would 'substantially impair the constitutional powers of the courts, or practically defeat their exercise.' [Citation]." (*Ibid.*)

B. Section 69957's Restrictions Have Materially Impaired the Courts' Ability to Exercise Their Constitutionally Protected Powers.

While the Legislature may adopt reasonable regulations affecting the courts' inherent powers, it may not "defeat or materially impair" the courts' exercise of those powers. (*Le Francois*, *supra*, 35 Cal.4th at p. 1103; *Leone*, *supra*, 22 Cal.4th at p. 668.) "[I]f the statute in question were interpreted as imposing an inflexible and obligatory restriction upon a court's authority, the constitutionality of the statute would be questionable. [Citation]." (*Engram*, *supra*, 50 Cal.4th at pp. 1147-1148.)

Literal application of Section 69957 materially impairs the courts' ability to exercise their constitutionally protected powers. In prohibiting courts from using electronic recording to make official verbatim records of unlimited civil, family, and probate proceedings, Section 69957 provides no exception for litigants who cannot afford to pay for a private court reporter. Application of Section 69957 therefore prevents courts from providing ***any*** verbatim recording for those litigants when no court reporter is available. This impairs the courts' ability to fulfill their duty to facilitate equal access to justice, including as required by *Jameson*. It also "practically defeat[s] [the] exercise" of the appellate courts' authority to hear appeals of trial court decisions when critical aspects of the trial court record proceedings are unrecorded. (See *Leone*, *supra*, 22 Cal.4th at p. 668.)

As *Jameson* recognized, verbatim recording is so integral to our judicial system that it is properly viewed as a "judicial dut[y]." (5 Cal.5th at p. 622.) Verbatim recording is necessary for meaningful appellate review of erroneous trial court rulings. (Petition ¶¶ 20-23.) It is also necessary to countless aspects of the everyday operation of the trial courts themselves. (Petition ¶¶ 24-29.) A statutory barrier to verbatim recording thus "defeat[s] the court's most basic functions." (*Le Francois, supra*, 35 Cal.4th at pp. 1104.)

This Court has found separation-of-powers problems with legislative mandates that had similar impacts on the courts' fundamental duties and powers. In *Le Francois*, this Court determined that a "legislative restriction of a court's ability to

sua sponte reconsider its own rulings … would directly and materially impair and defeat the court's most basic functions, exercising its discretion to rule upon controversies between the parties and ensuring the orderly administration of justice." (*Ibid.*) Similarly, in *Engram*, the Court found that if a statute mandated precedence for criminal over civil cases, it would create a "rigid and absolute rule" that would "defeat or at the very least materially impair the court's fulfillment of its constitutional obligation to provide for fair administration of justice for *all* cases pending in the court." (50 Cal.4th at p. 1161.) Application of Section 69957 to preclude any verbatim recording has at least the same impact on the fair administration of justice and the courts' constitutionally protected powers.

C. To Preserve Separation of Powers, Section 69957 Must Be Interpreted as Directive Rather Than Mandatory.

"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" in the context of separation of powers. (*Briggs*, *supra*, 3 Cal.5th at pp. 850-859 [collecting cases].) "Rather than striking down statutes that might unduly interfere with judicial functions, [this Court] construe[s] them so as to maintain the courts' discretionary control." (*Id.* at p. 858; see also *Engram*, *supra*, 50 Cal.4th at pp. 1147-1151 [collecting cases].)

In *Briggs* and *Engram*, this Court chose to read the Legislature's intent (or in *Briggs*, that of the voters) as simply

encouraging the courts to pursue policies promoting timely resolution of habeas petitions and efficient resolution of criminal cases, respectively. It declined to find that the courts' inherent authority to ensure the fair and equal administration of justice could be undermined by mandatory application of the enactments. (*Briggs*, *supra*, 3 Cal.5th at p. 858; *Engram*, *supra*, 50 Cal.4th at pp. 1151-1152; see *Jameson*, *supra*, 5 Cal.5th at pp. 613-614 [rejecting interpretation of Government Code section 68086 that would override courts' inherent authority to ensure that in forma pauperis litigants have access to verbatim recording].)

This Court should similarly interpret Section 69957 as having only "directive" force, with no mandatory application in civil cases involving low-income litigants where a court reporter is unavailable.

This approach is particularly appropriate given that there is no indication that the Legislature intended to impose the profound burden on low-income litigants that exists today. (See *Jameson*, *supra*, 5 Cal.5th at p. 604 ["[O]nly the plainest declaration of legislative intent would be construed as … deny[ing] to the courts the exercise of their most just and most necessary inherent power" to facilitate equal access to justice for indigent litigants] [quoting *Martin*, *supra*, 176 Cal. at p. 297]; *Le Francois*, *supra*, 35 Cal.4th at p. 1106 [finding "no hint" that the Legislature "intended ... 'to solve[] one set of problems by possibly creating another' [Citation]" that violated constitutional separation of powers].)

Neither Section 69957 nor its legislative history[76] indicates an intent to deprive litigants of ***all*** verbatim recording. To be sure, Section 69957 demonstrates a legislative preference for proceedings to be recorded by court reporters when they are available. This Petition does not seek rejection of that preference. (See *Briggs*, *supra*, 3 Cal.5th at p. 860 [observing that time limits, although they could not be construed as mandatory, "may serve as benchmarks to guide courts, if meeting the limits is reasonably possible"].) But nothing in the statute indicates a legislative intent to bar low-income litigants' access to justice by depriving them of ***any*** verbatim recording, and it should not be interpreted as overriding the courts' inherent duty to create verbatim recordings through other means where necessary.

III. APPLICATION OF SECTION 69957 TO DENY LOW-INCOME LITIGANTS ACCESS TO VERBATIM RECORDING VIOLATES PROCEDURAL DUE PROCESS.

When trial courts are unable to provide court reporters to civil litigants who cannot afford a private court reporter, application of Section 69957 violates the Due Process Clause of the California Constitution. (See Cal. Const., art. I, § 7, subd. (a) ["A person may not be deprived of life, liberty, or property without due process of law"].)

Procedural due process requires that "persons forced to settle their claims of right and duty through the judicial process

[76] See Appx. 1319 (Cal. Bill. Analysis, S.B. 1102 Assem. (July 27, 2004)); Appx. 1326 (Cal. Bill. Analysis, S.B. 1102 Sen. (July 27, 2004)).

must be given a meaningful opportunity to be heard." (*Payne v. Superior Court* (1976) 17 Cal.3d 908, 914 [quoting *Boddie v. Connecticut* (1971) 401 U.S. 371, 377]; see *Lammers v. Superior Court* (2000) 83 Cal.App.4th 1309, 1325 ["The guarantee of procedural due process – a meaningful opportunity to be heard – is an aspect of the constitutional right of access to the courts for all persons.… [Citations]."].)

Procedural due process under the California Constitution is "'much more inclusive' and protects a broader range of interests than under the federal Constitution. [Citations.]" (*Ryan v. Cal. Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1069.) Because "freedom from arbitrary adjudicative procedures is a substantive element of one's liberty" (*People v. Ramirez* (1979) 25 Cal.3d 260, 268), the California Constitution recognizes that a litigant "always has a due process liberty interest both in fair and unprejudiced decision-making and in being treated with respect and dignity." (*Ibid.*) When a deprivation of due process is alleged, a court must conduct "a careful weighing of the private and governmental interests involved." (*Smith v. Bd. of Medical Quality Assurance* (1988) 202 Cal.App.3d 316, 327.) The factors to be considered are:

> (1) the private interest that will be affected by the official action, (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, (3) the dignitary interest in informing individuals of the nature, grounds and consequences of the action and in enabling them to present their side of the

> story, … and (4) the governmental interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

(*Ramirez*, *supra*, 25 Cal.3d at p. 269.) Balancing these factors, "[t]he procedures that are constitutionally required are those that will, without unduly burdening the government, maximize the accuracy of the resulting decision and respect the dignity of the individual subject to the decision-making process." (*Smith, supra*, 202 Cal.App.3d at p. 327.)

Applying this analysis confirms that Section 69957 violates procedural due process when it results in low-income litigants being denied verbatim recording.

A. Important Private Interests Are at Stake.

When litigants access the courts, there are almost always important private interests at stake. In the civil cases in which verbatim recording is currently unavailable, these include (among many others), interests in child custody and visitation, spousal and child support, conservatorship, guardianship, debt collection, and civil protections from domestic, workplace, and other forms of harassment and violence. (See Petition ¶ 43.) These private interests merit all of the procedural protections the legal system can offer. (E.g., *Lammers*, *supra*, 83 Cal.App.4th at p. 1326 [litigants' interests in "familial rights" were "clearly more substantial than the mere loss of money at stake"]; *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 227-228 [describing multiple rights and liberties at stake in a conservatorship proceeding].)

B. Depriving Low-Income Litigants of Verbatim Recording Significantly Increases the Risk of Erroneous Deprivation of Their Private Interests.

By creating no verbatim recording for litigants who are unable to afford a private court reporter, Respondents deprive those litigants of procedural protections that are crucial to avoiding erroneous deprivation of the private interests that are before the courts. Such litigants face a higher risk of error in the trial court (Petition ¶¶ 22, 46), and their ability to address any error on appeal will be diminished, if not extinguished entirely. (*Id.* ¶¶ 48-49.) All of this creates a grave "risk of an erroneous deprivation" of the private interests litigants seek to protect through the legal process. (*Ramirez*, *supra*, 25 Cal.3d at p. 269.)

Numerous courts have recognized that the absence of verbatim recording "raise[s] grave issues of due process," given the role such recording plays in avoiding and redressing errors that may deprive litigants of the private interests at stake in their cases. (*In re Marriage of Obrecht*, *supra*, 245 Cal.App.4th at p. 9, fn.3; see *Maxwell v. Dolezal* (2014) 231 Cal.App.4th 93, 100 [expressing "profound[] concern[] about the due process implications" where there is no verbatim record and trial court "incorporates within its ruling reasons that are not documented for the litigants or the reviewing court"]; *Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 212 [the function of due process "is to minimize the risk of erroneous decisions.… [Citation.]"].) Verbatim recording is a critical and necessary component of the "process" that is "due" from California courts.

The "value" of electronic recordings as "additional or substitute procedural safeguards" (*Ramirez*, *supra*, 25 Cal.3d at p. 269) where court reporters are unavailable is evident. Electronic recording is routinely used in countless court proceedings in California and elsewhere. (Petition ¶¶ 50-53.) Electronic recordings can be used for virtually all the same purposes as those created by court reporters. (*Id.* ¶ 54.) In short, the "value" of electronic recording is not reasonably debatable when compared to ***no recording at all.*** Allowing use of electronic recording will preserve low-income litigants' access to the procedural safeguard of a verbatim recording – and by extension, their right to due process.

C. Litigants Have a Dignitary Interest in Receiving Verbatim Recordings of Court Proceedings.

The "dignitary interest" protected by the California Due Process clause includes litigants' ability "to present their side of the story." (*Ramirez*, *supra*, 25 Cal.3d at p. 269.) "[E]ven in cases in which the decision-making procedure will not alter the outcome of governmental action, due process may nevertheless require that certain procedural protections be granted the individual in order to protect important dignitary values." (*Id.* at p. 268.) When important private interests are in the control of a government body, such as a court or administrative agency, a person "always has a due process liberty interest both in fair and unprejudiced decision-making and in being treated with respect and dignity." (*Ibid.*)

The dignitary interests here are profound, as litigants turn to the justice system for a chance to "present their side of the story" on some of the most important issues in their lives. Section 69957 infringes those dignitary interests by depriving low-income litigants of the recording they need to fully present their side of the story in the trial court – or to present it at all on appeal. And a two-tiered system in which the fundamental "process" available to litigants is driven by ability to pay for a private court reporter is flatly inconsistent with the due process requirement that ***all*** litigants be "treated with respect and dignity." (*Id.*)

D. There Is No Competing Government Interest.

There is no countervailing government interest that supports depriving litigants of any verbatim recording of judicial proceedings. The government has an affirmative obligation to uphold low-income litigants' due-process rights. "[O]ur 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).)

As discussed in Part II.C, *ante,* there is no indication in either the statute or its legislative history that the Legislature had a specific intent to deprive low-income litigants of any verbatim recording for their family, probate, and unlimited civil matters, much less that it perceived a government interest in that outcome. The fact that Section 69957 permits electronic recording of ***some*** proceedings confirms that it is a valid means to record judicial proceedings. (Gov. Code, § 69957, subd. (a).) Similarly, the California Rules of Court allow an electronic

recording to serve as an official record for purposes of appeal, in further recognition of its validity. (Cal. Rules of Court, rule 2.952(h) & (j).)

There is minimal, if any, administrative burden for Respondents to use electronic recording. Installation of the necessary equipment is widespread (Petition ¶ 52), and neither LASC nor SCSC has identified any administrative challenge to expanding use of electronic recording as provided in their General Orders.

Even assuming there is a government interest in prioritizing the use of court reporters over electronic recording, the application of Section 69957 at issue here does not serve that interest. When no court reporters are available, it simply results in no verbatim recording at all. Nothing can justify this absurd result. Nor could this application of the statute fulfill a hypothetical government interest in protecting court reporters' jobs. This Petition seeks only a holding by this Court that electronic recording may not be withheld when a court reporter is unavailable. Whatever the reason may be for that unavailability, there can be no legitimate government interest in using that as a reason to deprive low-income litigants of full access to the courts.

Accordingly, any reasonable balancing of the factors of the *Ramirez* test confirms that application of Section 69957 to deprive low-income litigants of verbatim recording violates due process.[77]

[77] Respondents LASC and SCSC have taken important steps toward addressing this deprivation of due process in their recent (continued…)

IV. APPLICATION OF SECTION 69957 TO DEPRIVE LOW-INCOME LITIGANTS OF VERBATIM RECORDING VIOLATES EQUAL PROTECTION.

When trial courts are unable to provide court reporters to low-income civil litigants, application of Section 69957 to prohibit the use of electronic recording as an alternative also violates the Equal Protection clause of the California Constitution. (Cal. Const., art. I, § 7, subd. (a) ["[a] person may not be … denied equal protection of the laws"].) When the court does not provide a court reporter, Section 69957 creates two classes of litigants in unlimited civil, family, and probate matters: litigants who can afford a private court reporter to provide the verbatim recording necessary for full access to justice, and those who cannot. This distinction results in disparate, unequal treatment of low-income litigants and is not supported by any legitimate state interest.

"'[T]he requirement of equal protection ensures that the government does not treat a group of people unequally without some justification.' [Citation]." (*People v. Hardin* (2024) 15 Cal.5th 834, 847.) Courts must consider "whether the challenged difference in treatment is adequately justified under the applicable standard of review." (*Id.* at p. 851.) The degree of justification required depends on the type of unequal treatment at issue.

General Orders. However, because those orders do not require electronic recording in all situations in which litigants are entitled to it in the absence of a court reporter, application of Section 69957 continues to deny due process to some low-income litigants in those courts. (Petition ¶¶ 58-59.)

As discussed below, there is no rational basis for Section 69957 when it completely deprives low-income litigants of verbatim recording. This Court should therefore hold that equal protection precludes application of the statutory ban to any low-income litigant when a court reporter is not available. At a minimum, this Court should find that the statute fails strict scrutiny as applied in cases involving litigants' fundamental rights and liberty interests.

A. Application of Government Code Section 69957 Creates a Two-Tiered System of Justice That Severely Disadvantages Low-Income Litigants.

Verbatim recordings of civil proceedings are critical for all litigants – regardless of income – to enjoy full and fair access to the judicial system. (Petition ¶¶ 19-29.) When court-appointed court reporters are unavailable and Section 69957 prohibits courts from using electronic recording in the alternative, the result is a two-tiered system of justice: Wealthy litigants can access verbatim recordings by paying a private court reporter, but low-income litigants are denied this protection because they cannot afford the cost. (*In re Marriage of Obrecht*, *supra*, 245 Cal.App.4th at p. 9, fn.3 ["Such a regime can raise grave issues of … equal protection in light of its disparate impact on litigants with limited financial means"].) Without verbatim recordings, these litigants – who are often vulnerable and self-represented – will have substantially degraded access to the judicial system. (Petition ¶¶ 43-49.)

B. Application of Section 69957 to Deprive Low-Income Litigants of Any Verbatim Recording Lacks Any Rational Basis.

Under rational basis review, there must be a "rational basis for the unequal treatment [that] is reasonably conceivable. [Citation.]" (*Hardin*, *supra*, 15 Cal.5th at p. 852.) If no such reasonable basis exists, the discriminatory treatment violates equal protection. (E.g., *Del Monte v. Wilson* (1992) 1 Cal.4th 1009, 1025 [no rational basis for distribution scheme for veterans' benefits that favored residency at a particular time]; *People v. Fisher* (2001) 71 Cal.App.5th 745, 759 [no rational basis for more severe punishment for less serious offense].)

There is no rational basis for denying verbatim recording to an entire class of litigants solely based on income.[78] Neither the language of Section 69957 nor its legislative history elucidates any government interest in depriving low-income litigants of verbatim recording, much less one that would provide a rational basis for such a result. (*Ante*, p. 60.) Nor is it "reasonably conceivable" (*Hardin*, *supra*, 15 Cal.5th at p. 852) that the government has a legitimate interest in a system that discriminates against low-income litigants in their efforts to vindicate their rights to make child-rearing decisions, to obtain restraining orders against abusive partners, to contest a conservatorship, or otherwise to vindicate their legal rights.

[78] Respondents SCSC and LASC considered the question and were unable to discern "any valid justification for depriving litigants of a verbatim record when a technological means for doing so exists." (Appx. 468 [SCSC General Order]; see Appx. 215 [LASC General Order].)

Nor, again, is there a conceivable rational interest in this outcome deriving from any legislative preference for recording by court reporters. No such interest is served by a situation in which electronic equipment that is already installed in courtrooms cannot be used even when no court reporter is available and litigants cannot afford to pay for private reporters.

C. Section 69957 Fails Under Strict Scrutiny When It Burdens Litigants' Ability to Vindicate Fundamental Rights.

For the reasons set forth above, application of Section 69957 to deprive low-income litigants of any verbatim recording when the court is unable to supply a court reporter violates equal protection under the rational basis test. At a minimum, this Court should confirm that the statute cannot withstand strict scrutiny review as applied in cases that involve fundamental rights.

Strict scrutiny applies if the challenged law involves "a suspect classification … or uses any classification to burden discriminatorily a fundamental right." (*People v. Son* (2020) 49 Cal.App.5th 565, 589.) Under strict scrutiny, the state must meet its burden to show the law is "narrowly tailored to support a compelling governmental interest. [Citation.]" (*Id.* at p. 590.) Where fundamental interests are involved, this Court has long held that discrimination based on wealth involves a "suspect

classification" warranting strict scrutiny. (*Serrano v. Priest* (1976) 18 Cal.3d 728, 765-768.)[79]

As the LASC and SCSC General Orders recognize, many of the cases in which low-income litigants are currently being deprived of verbatim recording – and therefore equal access to justice – involve fundamental substantive rights.[80] For example, fundamental substantive rights are often at issue in probate proceedings on conservatorship issues, which implicate fundamental liberty interests. (*Conservatorship of Roulet, supra*, 23 Cal.3d at p. 227; see *People v. Dunley* (2016) 247 Cal.App.4th 1438, 1451 ["[E]qual protection challenges to involuntary civil commitment schemes are reviewed under the strict scrutiny test because such schemes affect the committed person's fundamental interest in liberty"].

As discussed above, there is no government interest in denying verbatim recordings to an entire class of litigants based solely on income. Nor is there any other "compelling" government interest that the statute is "narrowly tailored" to advance. (*Son*, *supra*, 49 Cal.App.5th at p. 590.) Even if there

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[79] This Court's reasoning in *Serrano* could support a holding that equal access to justice is ***itself*** a fundamental interest, analogous to the interest in education recognized by this Court in that case. *Serrano.* (18 Cal.3d at pp. 765-767; see *Cruz v. Superior Court* (2004) 120 Cal.App.4th 175, 179 ["Access to justice is a fundamental and essential right in a democratic society"]. Such a holding would require strict scrutiny for application of Section 69957 to low-income litigants in all cases, and not just in those involving fundamental rights. And for the reasons set forth below, the statute clearly fails the strict scrutiny test.

[80] Appx. 221-228 [LASC General Order]; Appx. 474-481 [SCSC General Order].

were an administrative concern (there is not), "[a]dministrative convenience is an inadequate state interest under a strict scrutiny analysis." (*Woods v. Horton* (2008) 167 Cal.App.4th 658, 675; see *Elkins*, *supra*, 41 Cal.4th at p. 1353 ["a measure implemented for the sake of efficiency cannot jeopardize the constitutional integrity of the judicial process"].) And insofar as one assumes a government interest in preferring recording by court reporters, a statute that prohibits electronic recording even when a court reporter is unavailable – and leaves low-income litigants with no recording at all – is not "narrowly tailored" to advance it.

Accordingly, if this Court does not find that the application of Section 69957 to low-income litigants violates equal protection in ***all*** civil cases in which it results in them being denied a verbatim recording that a wealthy litigant can obtain, this Court should at a minimum make such a finding at least as to cases involving the fundamental rights addressed in the LASC and SCSC General Orders.[81]

V. CONCLUSION

In California today, access to justice is for sale at a price – the price of a private court reporter. This Petition does not ask this Court to solve the court reporter crisis. Rather, Petitioners only ask this Court to confirm that Section 69957 cannot

[81] Relief based on such a holding should apply on a non-discretionary basis and should not permit denial based on a (potentially inaccurate) advance prediction about the likelihood that a hearing will involve "significant legal and/or factual issues such that a verbatim record is likely necessary to create a record of sufficient completeness." (Appx. 484 [SCSC General Order].)

constitutionally be applied to relieve Respondents of their ministerial duty to create verbatim recordings for low-income litigants who cannot afford private court reporters.

For the reasons set forth above, Petitioners ask this Court to GRANT a writ of mandate and/or prohibition providing the relief requested in the Petition.

DATED: December 4, 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 Petition and Memorandum of Points and Authorities collectively contain 14,497 words, including footnotes, but excluding the items excluded from the limit set forth in that rule and in rule 8.486(a)(6). In making this certification, I have relied on the word count of the computer program used to prepare the brief. I have filed concurrently with this Petition and Memorandum of Points and Authorities an Application for Permission to File Petition for Writ of Mandate in Excess of 14,000 Words.

/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 December 4, 2024 I served true copies of the following document described as:

PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION

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 December 4, 2024 at Los Angeles, California.

Denis Listengourt

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