S287285

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

J.O.

Petitioner,

v.

SUPERIOR COURT OF SAN JOAQUIN COUNTY,

Defendant and Appellant,

SAN JOAQUIN COUNTY PUBLIC CONSERVATOR,

Real Party in Interest

No. S287285

Court of Appeal, Third Appellate District No. C102071
San Joaquin Superior Court No. MH-2016-0000110
The Honorable Kristine Eagle, Judge

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICUS CURIAE IN SUPPORT OF REAL PARTY IN INTEREST, SAN JOAQUIN COUNTY PUBLIC CONSERVATOR

DECLARATION TO ALLOW A LATE FILING (RULE 8.520(f)(2))

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

J.O. **Petitioner,** **v.** **SUPERIOR COURT OF SAN JOAQUIN COUNTY,** **Defendant and Appellant,** **SAN JOAQUIN COUNTY PUBLIC CONSERVATOR,** **Real Party in Interest**	**No. S287285**

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE PATRICIA GUERRERO, CHIEF JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

The California District Attorneys Association is the statewide organization of California prosecutors. It is a professional organization that has been in existence for over 90 years and was incorporated as a nonprofit public benefit corporation in 1974. CDAA has over 3,500 members, including elected and appointed district attorneys, city attorneys principally engaged in the prosecution of criminal cases, and attorneys employed by these officials. CDAA offers seminars, publications, legislative advocacy, and extensive online tools. It serves as a forum for the exchange of information and innovation in the field of criminal justice.

The association has empowered its Appellate Committee to coordinate the presentation of prosecutor's views in appellate cases when it

concludes that the issues raised in such cases will significantly affect the administration of criminal justice statewide. This case raises matters of great concern to prosecutors. The continued legal viability of challenges to judges under Code of Civil Procedure section 170.6 is a matter of statewide importance. Moreover, the issue of whether under separation of powers principles, the rules pertaining to prosecutors should be the same as to public defenders affects the fair and evenhanded administration of justice throughout the state. CDAA seeks to present its views to the courts by way of amicus curiae briefs in cases which affect the work of prosecutors and their pursuit of justice. The case at bar is such a case.

The undersigned and principal author of this brief is a Senior Deputy District Attorney for the County of San Luis Obispo and has served as a prosecutor for over 40 years. He also serves on the CDAA Appellate committee and is authorized to present their views to this Court. The applicant is familiar with the questions involved in this case and the scope of their application. The applicant has over 35 years of appellate experience and has filed amicus briefs in this Court in 12 cases concerning various subjects (predominantly bearing upon indeterminate sentencing and parole issues). Consequently, additional argument and briefing on these points will be helpful, and for these reasons CDAA respectfully requests that this court accept the attached brief and permit it to appear as amicus curiae.

Pursuant to Rule 8.520(f)(4), applicant states that no party nor counsel for a party in this appeal authored in whole or in part the proposed amicus brief, nor made any monetary contribution to fund the preparation or submission of the proposed amicus brief. Applicant further states that no person or entity made any monetary contribution to fund the preparation or submission of the proposed amicus brief other than the office of the undersigned Deputy District Attorney, in the course of his regular employment.

For these reasons, applicant asks this Court to permit the filing of the attached brief and allow CDAA to appear as amicus curiae.

DATE: October 21, 2025

Respectfully submitted,

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REQUEST TO ALLOW A LATE FILING

Your Applicant, the California District Attorneys Association, requests permission to file the within proposed amicus curiae brief approximately seven days past the due date set forth by this Court of October 15, 2025. The undersigned applicant and principal author of this brief works part time as a Deputy District Attorney for the County of San Luis Obispo, assisting the office with appellate work. The undersigned is the only Deputy District Attorney with significant appellate experience and serves as the sole person in this function. I have been unable to file this brief by October 15, 2025, due to my other duties including submitting three amicus briefs in this Court on capital cases concerning the Racial Justice Act, and other appellate matters pending in the Second District Court of Appeal, Division Six, as well as advisory functions concerning statutory and decisional law for my office.

Recognizing that this Court ordered all amicus briefs to be filed simultaneously with the supplemental briefs in this matter, applicant represents that he has not undertaken any examination of said supplemental or amicus briefs ordered to be filed on or before October 15, 2025, before drafting this brief. Due to the orders in the docket and timing in this matter, applicant recognizes that its input may only be considered as to the second issue; however, applicant respectfully prays that the Court consider this brief in its entirety. (See *post*, p. 8, fn. 1.)

Due to the applicant's other responsibilities and status as a part-time employee, I have not been able to have the instant brief reviewed, edited, formatted and filed by the October 15, 2025, due date, which is the date by which this brief should have been submitted per the September 24, 2025, order of this Court. Pursuant to Rule 8.520(f)(2), the Chief Justice may allow a late filing of an amicus curiae brief.

Accordingly, applicant respectfully prays for permission for the late filing of the within amicus curiae brief, in support of Real Party in Interest, the San Joaquin County Public Conservator.

I declare under penalty of perjury that the above is true and correct.

Respectfully submitted,

RICHARD J. SACHS, SBN 113542
Senior Deputy District Attorney
County of San Luis Obispo
On Behalf the of CDAA Appellate Committee

Attorneys for Amicus Curiae
California District Attorneys Association

ISSUES PRESENTED

This Court framed the issues as follows:

(1) Should this court's decision in *Solberg v. Superior Court* (1977) 19 Cal.3d 182 be overruled or limited insofar as it allowed a public agency to bring "blanket challenges" against particular judges under Code of Civil Procedure section 170.6?[1]

(2) Assuming arguendo that "blanket challenges" to a particular judge under Code of Civil Procedure[2] section 170.6 implicate separation of powers concerns, do those concerns apply to actions taken only by executive branch offices such as a county counsel or a district attorney's office, or does the concern apply more broadly to non-executive branch entities such as a public defender's office or a private law firm? (See, e.g., *People v. Superior Court (Tejeda)* (2016) 1 Cal.App.5th 892, 896; *id*. at p. 912, fn. 2 (conc. opn. of Aronson, J.); *id*. at p. 930 (dis. opn. of Thompson, J.).)

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[1] According to information available in the docket in this matter, input for the first issue was due no later than February 28, 2025. Notwithstanding that the Court allowed an amicus brief from the California Judges Association to be filed on July 15, 2025, we recognize that the Court has now moved on to a second issue with a due date of October 15, 2025, and responses to the supplemental briefing and amicus briefs due October 29, 2025. Thus, the focus of this brief is to provide input as to issue number two and to the extent practicable, issue one to put the matter in context. Due to workload concerns, your amicus was unable to provide input as to issue one in a timely manner and has only recently agreed to submit input to the Court from the CDAA Appellate Committee. However, we do believe issue one is of paramount importance, and pray that this Court will fully consider our brief, and if so inclined, provide an additional period of time to file a supplemental amicus brief to provide a more detailed examination of this complex issue, beyond what is offered here, if consistent with this Court's calendar and briefing schedule.

[2] Unless otherwise specified, all statutory references are to the Code of Civil Procedure.

ARGUMENT

I.

DECISIONAL LAW HAS MADE IT CLEAR THAT BLANKET CHALLENGES TO JUDGES UNDER CODE OF CIVIL PROCEDURE SECTION 170.6 ARE PERMISSIBLE BUT VIEWED WITH CIRCUMSPECT BY THE APPELLATE COURTS

In 1937, the Legislature enacted former section 170.5 which provided for the peremptory challenge of a superior or municipal court judge without any showing of cause. No averment of prejudice was required in the affidavit filed by the party. The prosecution was denied the right in a criminal case.

Subsequently, the statute was held unconstitutional as providing a private citizen an arbitrary right to remove a judge free from bias, and as violative of the separation of powers doctrine by discriminating in favor of defense attorneys and against the prosecution in criminal cases. (*Daigh v. Shaffer* (1937) Cal.App.2d 449, 454; see also, *Austin v. Lambert* (1938) 11 Cal.2d 73, 77 [statute was described as a concealed weapon "to be used to the manifest detriment of the proper conduct of the judicial department."].)

Recognizing the need for a new peremptory challenge statute, the Legislature enacted section 170.6 in 1957. The new statute was designed to overcome the constitutional infirmities of section 170.5, by requiring a formal affidavit to disqualify a judge with a sworn statement of prejudice. A constitutional challenge was upheld in *Johnson v. Superior Court* (1958) 50 Cal.2d 693. The crux of this Court's holding in *Johnson* was that to maintain the integrity and fairness of the judiciary, the business of the courts must "be conducted in such a manner as will avoid [a] suspicion of unfairness." (*Ibid*. at p. 697.)

The rationale for this holding formed the foundation for future decisions considering the constitutionality of peremptory challenges without a specified showing of actual prejudice:

> Prejudice, being a state of mind, is very difficult to prove, and, when a judge asserts that he is unbiased, courts are naturally reluctant to determine that he is prejudiced. In order to insure confidence in the judiciary and avoid the suspicion which might arise from the belief of a litigant that the judge is biased in a case where it may be difficult or impossible for the litigant to persuade a court that his belief is justified, the Legislature could reasonably conclude that a party should have an opportunity to obtain the disqualification of a judge for prejudice, upon a sworn statement, without being required to establish it as a fact to the satisfaction of a judicial body.

(*Ibid;* see also, *Zilog, Inc. v. Superior Court* (2001) 86 Cal.App.4th 1309, 1315 ["where disqualification motion is timely filed and in proper form, the trial court is bound to accept it without further inquiry."].)

This Court also knew as early as its decision in *Johnson* that the statute could be subject to abuse. "The possibility that the section may be abused by parties seeking to delay trial or to obtain a favorable judge was a matter to be balanced by the Legislature against the desirability of the objective of the statute." (*Johnson v. Superior Court, supra,* 50 Cal.2d at p. 697.) This Court noted the safeguards inherent in the statute which would minimize this risk, including the limitation of only one challenge allotted to each side, the requirement for a declaration of prejudice filed under oath, and the time limitations imposed. (*Ibid.*) This Court concluded, "[w]e cannot properly assume that there will be a wholesale making of false statements under oath, and the fact that some persons may abuse the section is not a ground for holding the provision to be unconstitutional." (*Ibid.*)

In *Solberg v. Superior Court* (1977) 19 Cal.3d 182, this Court reaffirmed the constitutionality of the statute and cited the rationale of *Johnson* with approval. (*Id*. at p. 193.) This Court found that the affidavit requirement and procedure was reasonable even though it did not establish prejudice as a matter of fact, but instead because it expresses "the belief of a litigant" that he or she cannot have a fair trial before the assigned judge.

(*Ibid*; see also, 2 Witkin, Cal. Procedure (6th ed. 2021) Courts, § 175, pp. 214–215.) This "belief" was deemed sufficient without a further showing or proof of prejudice in order "in order to preserve public confidence in the impartiality of the courts." (*Ibid*.)

Though *Johnson's* continued validity was reaffirmed by this Court in *Solberg*, it was not without misgivings. The petitioner in *Solberg* argued that in the two decades since *Johnson* was decided, section 170.6 has led to abuse and removal of judges on other grounds besides prejudice. (*Solberg v. Superior Court*, *supra*, 19 Cal.3d at pp. 194-195.) This Court stated it did not condone the use of the statute in this manner and does not underestimate the effect of such misuse upon the trial courts but still held that it did not need to reconsider its holding in *Johnson* for several significant reasons.

Among the reasons cited was the reality that lawyers who misuse the statute will antagonize the bench, and in any event are subject to strict timeliness requirements in making the challenge, which notably they can only do once. (*Id*. at pp. 196-197.) Based upon these factors, and the totality of the circumstances, the *Solberg* Court concluded:

> [T]o the extent that abuses persist in the utilization of section 170.6 they do not, in our judgment, 'substantially impair' or 'practically defeat' the exercise of the constitutional jurisdiction of the trial courts. Rather, it may be helpful to view them as a relatively inconsequential price to be paid for the efficient and discreet procedure provided in section 170.6. The statute thus remains a reasonable—and hence valid—accommodation of the competing interests of bench, bar, and public on the subject of judicial disqualification. We do not doubt that should future adjustments to this sensitive balance becomes necessary or desirable, the Legislature will act with due regard for the rights of all concerned.

(*Id*. at p. 204.)

Of significance to the issue before this Court was consideration of the "blanket challenge" as discussed in *Solberg* in criminal cases. This Court noted that such a challenge can have the practical effect of preventing a judge from hearing a type of criminal case, or even all criminal cases. (*Id*. at p. 202.) This Court held that "[u]pon close analysis we conclude this contention is different *not in kind* but only in degree from the arguments rejected in *Johnson*, and the difference does not warrant a contrary result." (*Ibid*, emphasis added.)

In reaching this conclusion, this Court noted "[a] district attorney or a public defender must realize that his practice tends to be concentrated in a particular court, and that if he or his deputies file unwarranted 'blanket challenges' against a particular judge the effect may well be to antagonize the remaining judges of the court," recognizing that a jurist will be assigned to replace the unseated colleague by the presiding judge and both may resent the blanket interference with the orderly administration of justice. (*Ibid*.) This Court also noted that a blanket challenge can in some circumstances be tantamount to a confession of bad faith because the allegation of prejudice is predetermined instead of resting on individual case specific factors at the time of the assignment. (*Id*. at p. 203.)

Ultimately, this Court reiterated its disapproval of blanket challenges but found their use in criminal cases does not distinguish "the present criminal proceeding from *Johnson*, and the reasoning of that decision is equally applicable to the current version of the statute, governing both civil and criminal cases." (*Id*. at p. 204.)

Subsequent to the *Solberg* decision, the Court of Appeal in *People v. Superior Court (Tejeda)* (2016) 1 Cal.App.5th 892 upheld the use of the blanket challenge by the district attorney's office. Though following the *Solberg* decision under the principles of stare decisis, as a reasonable accommodation of the "competing interests of the bench, bar and public," the *Tejeda* court was circumspect and urged this Court to revisit the blanket

papering issue. (*Id*. at pp. 896, 907–908, citing *Solberg v. Superior Court*, *supra*, 19 Cal.3d at p. 204.) "[A] trial court has no discretion to refrain from following binding Supreme Court authority." (*People v. Superior Court (Tejeda), supra,* 1 Cal.App.5th at p. 901.)

A concurring Justice in the *Tejeda* court also noted there may be legitimate concerns that justify a blanket challenge: "The Supreme Court's imputation of bad faith to blanket challenges may be over inclusive because under certain circumstances a blanket challenge to a judge could be brought in *good faith* if the district attorney or public defender reasonably believes the challenged judge is prejudiced against the entire office." (*People v. Superior Court (Tejeda)*, *supra*, 1 Cal.App.5th at p. 919, fn. 11, conc. opn. of Aronson, J., emphasis added.)

Your amicus agrees that the propriety of blanket challenges by a district attorney or public defender office as permissible is settled law but each case that has examined the issue has expressed disapproval of the practice, and thus it is by no means a cut and dry legal issue. The underlying briefs by the parties and amicus in this matter urge this Court to reconsider *Solberg* and *Johnson* but largely ignore the decisions which stress the importance of having the means to challenge a judge peremptorily in place. As had been noted before in appellate decisions considering the issue, "[t]he right to exercise a peremptory challenge under section 170.6 is a substantial right and an important part of California's system of due process that promotes fair and impartial trials and confidence in the judiciary." (*Hemingway v. Superior Court* (2004) 122 Cal.App.4th 1148, 1158, citing *Stephens v. Superior Court* (2002) 96 Cal.App.4th 54, 61.) "Courts must refrain from any tactic or maneuver that has the practical effect of diminishing this important right. (*Hemingway v. Superior Court*, *supra*, 122 Cal.App.4th at p. 1158; see also, *People v. Superior Court (Broadway)* (2025) 112 Cal.App.5th 854, 863 ["section 170.6 'is to be liberally construed in favor of allowing a peremptory challenge and a

challenge should only be denied if the statute absolutely forbids it.'"].) Even where the court suspects the process of peremptorily challenging judges has been abused, courts still hold that the disqualification motion must be granted based upon the policy considerations set forth in *Johnson* and *Solberg*. (See e.g., *LaSeigneurie v. Holdings, Inc. v. Superior Court* (1994) 29 Cal.App.4th 1500, 1505.)

Thus, amicus would welcome the opportunity to submit additional briefing on this subject, but as it stands at this juncture, we submit that the holdings in *Johnson* and *Solberg* have provided great predictability and stability in the law and are a workable balance between the competing interests of the bench, bar, and public.

Courts have repeatedly found no separation of powers violations each time they have examined the issue, including with respect to blanket challenges. Consequently, despite judicial misgivings, it appears that even blanket challenges survive appellate scrunity under the separation of powers doctrine. (*Solberg v. Superior Court*, *supra*, 19 Cal.3d at p. 204; *Johnson v. Superior Court*, *supra*, 50 Cal.2d at p. 697; see also, *Moreira v. Superior Court* (1989) 215 Cal.App.3d 42.)

However, should this Court find that the decision in *Solberg* should be overruled or limited insofar as it allows a public agency to bring "blanket challenges" against particular judges under Code of Civil Procedure section 170.6, amicus submits that in fundamental fairness adversarial parties who regularly occupy a large portion of the court's calendar should remain on equal footing.

II.

ANY CHANGE IN THE LAW CONCERNING BLANKET CHALLENGES SHOULD ENSURE, IN FUNDAMENTAL FAIRNESS, THAT ADVERSARIAL PARTIES WHO REGULARLY OCCUPY A LARGE PORTION OF THE COURT'S CALENDAR REMAIN ON EQUAL FOOTING

This Court requested supplemental briefing on whether, assuming arguendo, blanket challenges to a particular judge under section 170.6 implicate separation of powers concerns, are such concerns equally applicable to executive branch offices such as the county counsel or district attorney, "or does the concern apply more broadly to non-executive branch entities such as a public defender's office or a private law firm." (Docket entry (9-24-25).)

The ultimate question in this regard is if this Court decides it is prudent to overrule or limit *Solberg*, insofar as it allows public agencies to bring "blanket challenges" against particular judges under section 170.6, would such limitations apply equally to the public defender, as well as the county counsel and district attorney?[3]

Clearly, the answer to this question turns first on an analysis of the separation of powers doctrine, and its applicability to the public defender's

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[3] This Court has also asked whether separation of powers concerns could apply to a private law firm (assuming they occupy a large portion of a specialty department's calendar). At first blush the answer appears to be "no" because as a private firm, they are not subject to the separation of powers doctrine. The separation of powers doctrine concerns the separation of powers among and between governmental entities. (Cal. Const., Art. III, § 3; see also, Jeremy Waldron, *Separation of Powers in Thought and Practice?* 54 Boston College Law Review 433, at 433 (2013).) There may, however, be an argument that in an "as applied" challenge they could implicate separation of powers concerns vis a vie legislative overreach upon the courts. (See *People v. Superior Court (Tejeda)*, *supra*, 1 Cal.App.5th at p. 912, fn. 8.) For the purposes of this brief, amicus focuses upon the question as to whether the public defender, as petitioner in this action, should be on parity with the district attorney and county counsel.

office. The separation of powers clause in the California Constitution provides:

> The Powers of state governments are 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.)

The purpose of the separation of powers clause is to prevent one branch of government from intruding upon the core functions of another. The powers of state government can overlap with the functions of other branches but may not be used to "defeat or materially impair" their exercise of constitutional authority. (See *Howard Jarvis Taxpayers Assn. v. Padilla* (2016) 62 Cal.4th 486, 499; *In re Lira* (2014) 58 Cal.4th 573, 583; *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 472.)

Notwithstanding the comments of Justice Aronson in the concurring opinion in *Tejeda*, it is not entirely clear that the Public Defender's Office is not properly classified as a part of the Executive Branch. (See *People v. Superior Court (Tejeda)*, *supra*, 1 Cal.App.5th 892, at p. 912, fn. 8 (conc. opn. of Aronson, J.) As Professor Irene Oritseweyinmi Joe (a former Public Defender) has written, most states house the Public Defender either in the Executive Branch or the Judicial Branch. (Irene Oritseweyinmi Joe, *The Atlantic*, "Defend the Public Defenders," (3/13/21).) In California, the Public Defender is established in each county by action of the Board of Supervisors, which has significant latitude in defining how it will be structured. (See Gov. Code §§ 27700–27705.)

Government Code section 27700 is the enabling legislation and reads as follows: "The board of supervisors of any county may establish the office of the public defender for the county. Any county may join with one or more counties to establish and maintain the office of public defender to serve such counties." (*Ibid*.) Government Code section 27702 provides that

"[a]t the time of establishing the office the board of supervisors shall determine whether the public defender is to be appointed or elected." (*Ibid*.) Government Code section 27703 provides that any appointed public defender serves at the will of the Board of Supervisors. (*Ibid*.) Finally, Government Code section 27705 requires that the public defender shall devote all his or her time to the duties of the office and shall not engage in the practice of law except in the capacity of being the public defender. (*Ibid*.)

The Government Code sections demonstrate that in California, the public defender's existence is derivative from the public authority vested in the county board of supervisors. The Government Code sections discussed demonstrate that the judicial branch is not involved in their creation or ongoing existence, and does not exercise authority over their operations, except as to appoint them to criminal cases to represent an indigent defendant. Even though the public defender's duty is to his or her client, the ability to act and function exists as a result of being created by the power of state government, as properly vested in the county board of supervisors. As such, a compelling argument can be made that they are a public agency subject to the same separation of powers concerns as the county counsel or district attorney.

Moreover, even if this Court found that the public defender was a non-executive branch entity, there is still a substantial concern that blanket papering by the public defender has an impact upon the operation of the court, and could substantially impair its ability to function.[4] Based on

[4] The issue of whether the public defender is a Governmental entity for separation of powers purposes is not entirely clear. Despite the enabling sections found in the Government Code, case law states that the public defender does not represent the public in the same manner as a deputy district attorney, or an officer of the state or county. Amicus accepts that a public defender appointed to represent the accused becomes the attorney for

principles of fundamental fairness, any change to *Solberg* should thus apply equally to adversarial parties regularly appearing before the court.

The impact of any entity of litigant attorneys (i.e., District Attorneys, County Counsel, Public Defenders) should be evaluated in terms of its impact on the Judicial Branch, and the courts. The overall impact on the operation of the courts appears to be central to the arguments of both petitioner and amicus, the California Judges Association. "Blanket papering … causes substantial impairment of the trial courts to perform their constitutional duty to administer and provide justice." (Brief of California Judges Association (CJA), pp. 2; see also Petitioner's Traverse to the Public Conservators Return, p. 33.)

The impact of a section 170.6 challenge is only minimal if one is evaluating the impact of a single attorney filing a lone peremptory challenge to one judge. However, the argument being made is that when a large government entity files "blanket challenges" against a particular judge, it sufficiently interferes with the court's ability to manage the judicial branch, so it should not be permitted, or at least should in some manner be regulated or restricted, despite the holding in *Solberg* that it passes constitutional muster. (*Solberg v. Superior Court*, *supra*, 19 Cal.3d at p. 204.) As a practical matter, this can only arise when the entity conducting the "blanket challenges" controls such a large percentage of the court's docket that it leads to a disproportionate impact on the court's ability to manage its own affairs.

Many government law offices may have that impact. For example, a district attorney typically handles nearly all the criminal cases in a county, so the district attorney's decision to "blanket challenge" a judge could

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a defendant to the same extent as if regularly retained by him or her. (See *In re Hough* (1944) 24 Cal.2d 522.)

eliminate that judge's ability to hear criminal cases, which is a significant part of the day-to-day operation of the Superior Court.

However, the public defender stands in nearly the same position. Public Defenders represent approximately 80 percent of all persons charged with felonies in California. (See Fact Sheet, *California's Criminal Courts*, Public Policy Institute of California, (October 2015).) While this is not all cases, it is such a large share of the criminal law caseload that the public defender's decision to "blanket paper" an individual judge will, in many courts, have the same impact of eliminating that judge's ability to hear criminal cases, which has been noted by Real Party as occurring in their county. (See Return, Real Party (8-12-24), p. 11.)

The measure of the court's interest in assuring its ability to manage its business appears to apply with equal force to all stakeholders who regularly appear before it and occupy a large portion of the calendar. Thus, any justification in regulating or limiting the legislatively granted power to make a peremptory challenge of a judge should be tied to the impact that the questioned practice has on the courts.

Public Defenders cover such a significant percentage of some caseloads (i.e., felony cases, or as in the case at bar all or nearly all the probate mental health case subjects in a particular county), that the public defender's actions in regard to blanket challenges creates the same level of impact on the administration of the court. In fundamental fairness, this would thus merit the same level of restriction, as may be considered appropriate for the district attorney and the county counsel. Equitable concerns dictate that removing the blanket challenge from the district attorney or county counsel, but preserving it for the public defender, would be a manifest injustice based on the practical effects of such action, dramatically tilting the scales in favor of one party at the expense of the other. Thus, since the public defender appears to be derivative of a

governmental agency, or operates de facto in the same manner, amicus submits that any change in *Solberg* should apply equally to all parites.

CONCLUSION

Amicus submit that for the reasons stated, the *Solberg* decision should not be overruled or modified at this time, as it has provided years of predictability concerning section 170.6 challenges, and provides all stakeholders with a level playing field, as an appropriate accommodation between the bench, bar and public. As noted, *Solberg* and *Johnson* rejected the argument that potential abuses of section 170.6 unconstitutionally disrupted court operations, explaining the Legislature considered the potential abuses and associated problems in enacting the statute and concluded the statute's benefits outweighed those risks. Amicus respectfully submits that any change in the law governing section 170.6 challenges (including blanket challenges) should come from the Legislature, as contemplated by decisional law. However, if any changes are contemplated in this action, amicus submits that in fundamental fairness, such changes should apply equally to all parties who regularly appear and occupy a large portion of the court’s calendar.

Respectfully submitted,

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County of San Luis Obispo
On Behalf the of CDAA Appellate Committee

Attorneys for Amicus Curiae
California District Attorneys Association

CERTIFICATE OF COMPLIANCE

I certify that the attached AMICUS CURIAE BRIEF uses a 13-point Times New Roman font and contains 4,474 words excluding title page, tables, word count, and signature blocks.

/s/

RICHARD J. SACHS
Senior Deputy District Attorney

DECLARATION OF ELECTRONIC SERVICE

Case Name: J.O. v. Superior Court of San Joaquin County
Case Number: Supreme Court No. S287285
Third Appellate District No. C102071
San Joaquin County Superior Court No. MH-2016-0000110

I, Laura Bell, declare as follows:

I am over the age of 18, and not a party to this action. I am employed in the County of Sacramento. My business address is 2495 Natomas Park Drive, Suite 575, Sacramento, CA 95833.

I served a true copy of the following document:

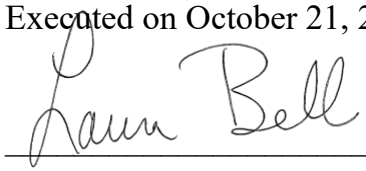
Application for Permission to File Amicus Curiae Brief and Brief of Amicus Curiae in Support of Real Party In Interest, San Joaquin County Public Conservator

Declaration to Allow a Late Filing (Rule 8.520(f)(2)

The aforementioned document was served electronically (via TrueFiling) to the listed case participants on October 21, 2025.

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

Executed on October 21, 2025, at Sacramento County, California.



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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **O. (J.) v. S.C. (SAN JOAQUIN COUNTY PUBLIC CONSERVATOR)**
Case Number: **S287285**
Lower Court Case Number: **C102071**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **gtotten@cdaa.org**

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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.

10/21/2025

Date

/s/Laura Bell

Signature

Totten, Gregory (106639)

Last Name, First Name (PNum)

California District Attorneys Association

Law Firm