S287285

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

J. O. Petitioner, v. SUPERIOR COURT OF SAN JOAQUIN COUNTY, et al. Respondent. SAN JOAQUIN COUNTY PUBLIC CONSERVATOR, Real Party in Interest.	Supreme Court Case No.: S287285 3rd Appellate District Case No.: C102071 Superior Court Case No.: STK-MH-LPSC-2016-0000110 Honorable Judge, Kristine Eagle

ANSWER TO AMICUS CURIAE BRIEF FILED BY CALIFORNIA JUDGES ASSOCIATION

OFFICE OF THE COUNTY COUNSEL
Edward J. Kiernan, County Counsel, CSB #189243
Claudine L. Sherron, Deputy County Counsel, CSB #296499
COUNTY OF SAN JOAQUIN
44 North San Joaquin Street, Suite 679
Stockton, CA 95202
Telephone: (209) 468-2980
Email: csherron@sjgov.org

Attorneys for
SAN JOAQUIN COUNTY PUBLIC CONSERVATOR

CERTIFICATE OF INTERESTED PARTIES

There are no interested entities or persons to list in this certificate (Cal. Rules of Court, rule 8.208(e) (3)).

Dated: July 22, 2025

Respectfully submitted,

OFFICE OF THE COUNTY COUNSEL

/s/ Claudine L. Sherron
Claudine L. Sherron
Deputy County Counsel
Attorney for
SAN JOAQUIN COUNTY PUBLIC CONSERVATOR

TABLE OF CONTENTS

TABLE OF AUTHORITIES

The San Joaquin County Counsel submits this Answer to the Amicus Curiae Brief filed by the California Judges Association ("CJA"), which urges this Court to restrict or undermine the statutory right of government litigants under Code of Civil Procedure § 170.6. While styled as support for a more administratively convenient court system, CJA's arguments strike at the heart of the Legislature's express policy and the Constitution's guarantee of due process and impartial tribunals. This Court should disregard the Amicus position and affirm the rights of government litigants to exercise statutory and constitutional protections designed to preserve the fairness and integrity of our judiciary.

I. INTRODUCTION

This case centers on the San Joaquin County Counsel's use of CCP § 170.6 to disqualify a single judge, the Hon. Erin Guy Castillo, in mental health court proceedings. The CJA argues that the use of section 170.6 in this manner—arbitrarily characterized as a "blanket" use—is an abuse of the statute and invites judicial inefficiency. However, the CJA's argument ignores the historical and constitutional basis for the statute and seeks to elevate administrative convenience over the rights of the people the courts are meant to serve.

/ / /

II. SECTION 170.6 PROTECTS LITIGANTS' RIGHTS TO A FAIR TRIAL

A. Parties Have a Statutory Right to Disqualify a Judge Without Showing Cause.

Section 170.6 of the Code of Civil Procedure is unique among judicial disqualification statutes in that it allows a party to disqualify a judge without any showing of cause. As this Court explained in *Solberg v. Superior Court* (1977) 19 Cal.3d 182, the statute reflects a legislative determination that litigants are entitled to one opportunity to unilaterally avoid a judge they believe—reasonably or not—may not be fair. The *Solberg* court upheld the statute against constitutional challenge, emphasizing that the right of disqualification reflects an overriding interest in public confidence in the judiciary and outweighs the inconvenience to the courts:

> "The appearance of impartiality is as important as impartiality itself, and when litigants perceive bias, whether real or imagined, their confidence in the courts is undermined." (*Solberg v. Superior Court* (1977) 19 Cal.3d 182, 195)

The CJA's complaint that disqualifications make it more difficult to assign judges cannot override the statutory right created by the Legislature and reaffirmed in *Solberg*.

Although later the Court in *Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1069, noted that *Solberg v. Superior Court* (1977) 19 Cal.3d 182 was decided under an earlier procedural framework for judicial disqualification, *Solberg* remains the binding precedent on the constitutionality and policy rationale underlying Code of Civil Procedure section 170.6. The Legislature

has not amended the statute in any way that undermines *Solberg*'s central holding: that section 170.6 reflects a legitimate and important public interest in maintaining public confidence in the judiciary by allowing peremptory challenges without a showing of cause.

B. The California Constitution Protects Litigants' Right to an Impartial Judge.

The California Constitution, article I, section 7, guarantees due process of law to all persons. That includes the right to a fair trial before an impartial tribunal. This constitutional guarantee forms the backdrop against which section 170.6 must be interpreted. As the Supreme Court emphasized in *People v. Freeman* (2010) 47 Cal.4th 993, 1001, "a fair trial in a fair tribunal is a basic requirement of due process."

In enacting section 170.6, the Legislature chose to provide a statutory mechanism to preserve the appearance and reality of judicial impartiality, and this Court has recognized that "[s]tatutory disqualification provisions serve not only to ensure fairness to the litigants but also to preserve public confidence in the judicial system." (Ibid.)

The CJA's position—if adopted—would compromise these constitutional principles. By seeking to restrict or discourage the use of 170.6 by government litigants, the CJA invites the erosion of one of the only tools available to protect against both actual and perceived bias, and advocates for the creation of separate systems based on the involvement of government

attorneys. Especially in criminal and conservatorship proceedings, the stakes are too high to subordinate fairness to scheduling convenience.

III. *PEOPLE V. BUNN* REINFORCES THAT THE COURTS MAY NOT REWRITE STATUTES FOR ADMINISTRATIVE CONVENIENCE

The Amicus Brief's implicit call to judicially restrict 170.6's reach echoes a concern raised in *People v. Bunn* (2002) 27 Cal.4th 1, where this Court underscored that the judiciary may not interpret statutes in a way that contradicts legislative intent merely to avoid perceived inefficiencies. In *Bunn*, this Court reiterated the primacy of the Legislature's authority over procedural rules that reflect policy determinations.

> "The separation-of-powers doctrine is violated when the judiciary, under the guise of interpreting a statute, rewrites it." (*Bunn*, *supra*, at p. 25.)

Thus, the CJA's request that this Court treat certain uses of 170.6 as abusive or excessive risks exceeding judicial authority. The Legislature has provided a mechanism for amending the statute should it wish to address perceived misuse. It is not for the courts—let alone an association of judges—to effectuate a self-serving policy shift via litigation.

IV. *GRAYNED V. CITY OF ROCKFORD* CAUTIONS AGAINST VAGUE ENFORCEMENT STANDARDS

The CJA suggests that "blanket" challenges represent an abuse of process yet offers no clear standard by which a court or party might define when a disqualification becomes "blanket." This approach invites arbitrary and uneven enforcement. As the United States Supreme Court cautioned in

Grayned v. City of Rockford (1972) 408 U.S. 104, 108: "[i]t is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them." *Grayned, supra* at pp. 108–109.

To penalize a litigant or County Counsel based on some subjective threshold of what qualifies as "too many" 170.6 filings is to embrace a vague and arbitrary standard. Such a result chills the exercise of statutory rights and raises constitutional concerns.

V. THE ALLEGED ADMINISTRATIVE BURDEN IS OUTWEIGHED BY THE RIGHT TO A FAIR HEARING

The CJA warns that unrestricted use of section 170.6 creates logistical difficulties for courts. But this concern, while not insignificant, is subordinate to the rights of individuals who come before the courts. As the Court in *Solberg* recognized, "[w]e conclude that any potential for abuse is an inconsequential price to be paid for the efficient and discreet procedure provided by section 170.6." (*Solberg, supra*, at p. 197)

Ironically, the CJA's proposed solution—presumably, filing 170.6 declarations only sporadically—would likely create more administrative disruption. Without consistent practice, judicial administrators could not predict which judge might be disqualified, thus undermining courtroom efficiency more than helping it. A predictable and transparent application of 170.6, even if disfavored by some, is preferable to a chilling environment in which parties are afraid to exercise their rights for fear of reprisal or accusations of "blanketing."

VI. THE AMICUS POSITION EFFECTIVELY SEEKS TO NULLIFY SECTION 170.6

The CJA's opposition to repeated use of section 170.6, though couched in terms of efficiency and fairness to judges, ultimately amounts to a veiled attempt to eliminate the statute altogether. This Court should be wary of the broader implications of the CJA's position, which, if adopted, would undermine the very legislative safeguards enacted to protect the appearance and reality of impartial justice.

VII. UNEQUAL TREATMENT OF GOVERNMENT ATTORNEYS VIOLATES EQUAL PROTECTION

The CJA's proposal to suspend section 170.6 rights *only* for government attorneys—while preserving them for all other litigants—presents a facial classification that implicates the Equal Protection Clauses of both the United States and California Constitutions. The proposed

suspension does not target a form of conduct, but rather the *status* of the actor. This sort of line-drawing demands appropriate judicial scrutiny.

Under well-settled equal protection jurisprudence, statutory classifications must, at a minimum, bear a rational relationship to a legitimate government interest. However, where a classification affects the exercise of fundamental procedural rights—such as access to a fair tribunal—or targets a disfavored class, heightened scrutiny may apply. Government attorneys, like private litigants, appear in adversarial judicial proceedings and are subject to the same ethical duties, adversarial constraints, and procedural statutes. Singling out only government attorneys for suspension of statutory rights—without legislative authorization or individualized findings of abuse—raises serious constitutional concerns.

As the California Supreme Court explained in *In re King* (1970) 3 Cal.3d 226, 232:

> "It is basic that the guarantees of equal protection embodied in the Fourteenth Amendment to the United States Constitution and article I, sections 11 and 21, of the California Constitution, prohibit the state from arbitrarily discriminating among persons subject to its jurisdiction."

While courts are permitted to draw distinctions, such distinctions must serve legitimate purposes and must not be arbitrary. The suggestion that judicial inconvenience from alleged "blanket papering" justifies a categorical suspension for one group of litigants cannot survive constitutional scrutiny,

particularly in the absence of any legislative findings or evidence demonstrating that such conduct is limited to government attorneys.

Indeed, *In re Griffiths* (1973) 413 U.S. 717, though addressing alienage classifications, confirms that when government action imposes procedural disabilities on a defined class, the burden shifts to the government to justify the discrimination. There is no indication that the use of section 170.6 by government attorneys is so uniquely problematic that it justifies stripping their access to a statute that remains available to every other party.

If the judiciary were to adopt the CJA's proposed rule, it would amount to judicially re-writing section 170.6 to exclude a class of litigants, and/or create separate standards applicable to only government attorneys for administrative convenience—precisely the kind of action prohibited by separation of powers principles. As the California Supreme Court made clear in *People v. Bunn* (2002) 27 Cal.4th 1, 25:

> "The separation-of-powers doctrine is violated when the judiciary, under the guise of interpreting a statute, rewrites it."

The CJA's request that this Court carve out a categorical suspension of statutory rights—based solely on the identity of the litigant as a "government attorney"—invites precisely that unconstitutional result.

/ / /

VIII. THE AMICUS BRIEF URGES THIS COURT TO CONSIDER DISCRETIONARY OR CONTEXTUAL FACTORS THAT ARE LEGALLY IRRELEVANT ONCE THE REQUIREMENTS OF CODE OF CIVIL PROCEDURE SECTION 170.6 ARE MET. THAT ARGUMENT CONTRADICTS CONTROLLING AUTHORITY EMPHASIZING THAT COURTS MUST COMPLY WITH MANDATORY STATUTORY COMMANDS, AND MAY NOT RELITIGATE OR SECOND-GUESS DETERMINATIONS THAT SATISFY ESTABLISHED LEGAL THRESHOLDS

In *People v. Superior Court (Broadway)* (2025) Cal.App.LEXIS 436, the Court of Appeal granted a writ of mandate where the trial court had refused to follow applicable legal principles.

The same principle applies here. In particular, the Fourth District determined that "granting [a] peremptory challenge to [a] judge in behavioral health court was statutorily mandated where the challenge was timely and appropriate." That holding leaves no room for further factual development, balancing, or reinterpretation of judicial discretion. Once the procedural requirements of section 170.6 were met, the trial court had no choice but to grant the challenge. The amicus brief's invitation to consider facts or policies outside that statutory framework would, if adopted, lead to the same error the Court of Appeal corrected in *Broadway* — substituting discretion where the law requires none.

In both cases, appellate intervention was required because the trial court acted in excess of its jurisdiction by disregarding mandatory legal standards. That legal error, not factual nuance or judicial policy preference, is the proper focus of this proceeding.

IX. CONCLUSION

This Court should reject the invitation of the CJA to curtail the public's longstanding statutory and constitutional rights to judicial disqualification under section 170.6. The policy choice reflected in section 170.6 is a legislative one. The courts must not, under the guise of administrative necessity or procedural tidiness, impair the exercise of that right. The Amicus Brief offers no compelling reason to subordinate litigants' rights to institutional preferences.

Dated: July 22, 2025

Respectfully submitted,

OFFICE OF THE COUNTY COUNSEL

/s/ Claudine L. Sherron
Claudine L. Sherron
Deputy County Counsel
Attorney for
SAN JOAQUIN COUNTY PUBLIC CONSERVATOR

CERTIFICATE OF WORD COUNT

Counsel of record hereby certifies that pursuant to Rule 8.504(d)(1) of the California Rules of Court, the foregoing **ANSWER TO AMICUS CURIAE BRIEF FILED BY CALIFORNIA JUDGES ASSOCIATION** contains 2,048 words, not including the cover page, tables, signature lines, and this certificate. Counsel relies on the word count function of Microsoft Word, the computer program used to prepare this Brief.

Dated: July 22, 2025

Respectfully submitted,

OFFICE OF THE COUNTY COUNSEL

/s/ Claudine L. Sherron

Claudine L. Sherron
Deputy County Counsel
Attorney for
SAN JOAQUIN COUNTY PUBLIC CONSERVATOR

PROOF OF SERVICE BY MAIL

I, THE UNDERSIGNED, SAY:

I am, and was at all times herein mentioned, a citizen of the United States and employed in the County of San Joaquin, State of California, over the age of eighteen (18) years, and not a party to the within action; that my business address is 44 North San Joaquin Street, Suite 679, Stockton, California, 95202. I am readily familiar with the office's practice of collecting and processing correspondence for mailing with the U.S. Postal Service and, after collection, it is deposited with the U.S. Postal Service on the same day in the ordinary course of business with postage fully prepaid.

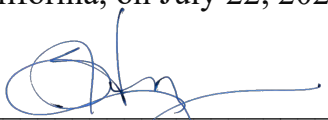
On July 22, 2025, at the Office of the County Counsel, County of San Joaquin, I enclosed a true copy of **ANSWER TO AMICUS CURIAE BRIEF FILED BY CALIFORNIA JUDGES ASSOCIATION** in a separate envelope for each of the person(s) named below, addressed as set forth immediately below the respective name(s), as follows:

NAME(S) /ADDRESS(S):

SUPERIOR COURT OF CALIFORNIA –SAN JOAQUIN
APPEALS DEPARTMENT
180 E. WEBER AVE., STE 230
STOCKTON, CA 95202

Each said envelope was sealed and placed for collection and mailing on the aforesaid date following ordinary business practices.

I DECLARE UNDER PENALTY OF PERJURY that the foregoing is true and correct. EXECUTED at Stockton, California, on July 22, 2025.



Shannon Hughes

PROOF OF ELECTRONIC SERVICE

I, THE UNDERSIGNED, SAY: I am, and was at all times herein mentioned, a citizen of the United States and employed in the County of San Joaquin, State of California, over the age of eighteen (18) years, and not a party to the within action; that my electronic address is shughes@sjgov.org and my business address is 44 North San Joaquin Street, Suite 679, Stockton, California, 95202.

On July 22, 2025, pursuant to California Rules of Court, Rule 8.71 (f), I electronically served **ANSWER TO AMICUS CURIAE BRIEF FILED BY CALIFORNIA JUDGES ASSOCIATION** on the person(s) named below, addressed as set forth immediately below the respective name(s), as follows:

NAME(S) /ADDRESS(S):

Nelson Lu nlu@sjgov.org	*Via TrueFiling*
Gilmore, Lori Rosing Pott & Strohbehn lgilmore@rosinglaw.com	*Via TrueFiling*

I DECLARE UNDER PENALTY OF PERJURY that the foregoing is true and correct. EXECUTED at Stockton, California, on July 22, 2025.

Shannon Hughes

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: **csherron@sjgov.org**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	Answer to Amicus Curiae Brief re J.O.

Service Recipients:

Person Served	Email Address	Type	Date / Time
Nelson Lu San Joaquin County Public Defender 208212	nlu@sjgov.org	e-Serve	7/22/2025 11:50:50 AM
Claudine Sherron Office of the County Counsel 296499	csherron@sjgov.org	e-Serve	7/22/2025 11:50:50 AM
Shannon Hughes San Joaquin County Counsel	shughes@sjgov.org	e-Serve	7/22/2025 11:50:50 AM
Kimberly Johnson San Joaquin County Counsel 191536	kijohnson@sjgov.org	e-Serve	7/22/2025 11:50:50 AM
Lori Gilmore Rosing Pott & Strohbehn	lgilmore@rosinglaw.com	e-Serve	7/22/2025 11:50:50 AM
Jonathan King Office of the County Counsel 227121	jking@sjgov.org	e-Serve	7/22/2025 11:50:50 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

7/22/2025
Date

/s/Shannon Hughes
Signature

Sherron, Claudine (296499)

Last Name, First Name (PNum)

OFFICE OF THE COUNTY COUNSEL

Law Firm