

No. S288176
IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

FAMILY VIOLENCE APPELLATE PROJECT and BAY AREA LEGAL AID,

Petitioners,

vs.

SUPERIOR COURTS OF CALIFORNIA, COUNTIES OF CONTRA COSTA,
LOS ANGELES, SANTA CLARA, AND SAN DIEGO,

Respondents,

LEGISLATURE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

RESPONSE OF RESPONDENTS
SUPERIOR COURTS OF CALIFORNIA, COUNTIES OF
CONTRA COSTA, LOS ANGELES, SANTA CLARA, AND SAN DIEGO
TO ORDER TO SHOW CAUSE

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TABLE OF CONTENTS

| | <u>Page</u> |
|---------------------------------|--------------------|
| Table of Authorities | 3 |
| Response | 4 |
| Certificate of Compliance | 9 |
| Proof of Service..... | 10 |

TABLE OF AUTHORITIES

| | <u>Page(s)</u> |
|------------------------------------------------------------------------------------|-----------------------|
| Cases | |
| <i>James G. v. Superior Court</i> (2000) 80 Cal.App.4th 275 | 6, 7 |
| <i>Jameson v. Desta</i> (2018) 5 Cal.5th 594 | 7 |
| <i>Municipal Court v. Superior Court (Gonzalez)</i> (1993) 5 Cal.4th 1126 | 6 |
| Statutes | |
| Evid. Code, § 451..... | 5 |
| Gov. Code, § 69957..... | 5, 7 |
| Pen. Code, § 869..... | 7 |
| Other Authorities | |
| 8 Witkin, Cal. Procedure (6th ed.) Extraordinary Writs, § 166 (2024)..... | 6 |

RESPONSE

The Petition invokes core principles shared by all stakeholders in California’s court system: fundamental rights must be protected; access to justice should be open and equal; and verbatim records of proceedings are essential to full appellate review. Unquestionably, the shortage of court reporters in California has created a crisis that impacts these shared values—primarily for parties who depend on a verbatim record of proceedings to secure their rights, but also for Petitioners, amici, and other public interest organizations, Respondents and their fellow superior courts, and this Court and the Courts of Appeal. All of those affected, as well as the Legislature (which this Court has recognized as the Real Party in Interest) should welcome this Court’s guidance. By deciding the Petition, the Court will make clear the rights, powers, and duties of individuals and entities caught up in this statewide crisis.

The Petition makes clear that it “does not ask this Court ... to assign fault” (Pet. ¶ 7, pp. 50-51), and rightly so. California courts have striven for years to address the court reporter shortage in a manner consistent with their mission to provide equal access to justice, the obligation to uphold California’s constitution, and their role in applying statutory law. Three of the four Respondents have issued comprehensive General Orders in response to the court reporter shortage, in view of the constitutional rights and core powers that were implicated. These General Orders recount

the history of the shortage, the courts’ unsuccessful efforts to address it, and the constitutional crisis that has arisen.¹

Most faultless of all in this crisis are the parties who are unable to obtain a verbatim record of proceedings—often necessary for appeal—even in hearings in which their fundamental rights and liberty interests are at stake. Every day, *thousands of hearings* take place in which no verbatim record can be made unless electronic recording is permitted. This Court’s decision on the Petition will ensure that—one way or another—the judicial and legislative branches of government will know what California’s constitution permits and requires to address the ongoing crisis.

The Petition concerns section 69957 of the Government Code, which recognizes that electronic recording can make up for the absence of “an official reporter or an official reporter pro tempore” when the courtroom has “approved equipment and equipment monitors.” But section 69957 provides for such recording only “in a limited civil case, or a misdemeanor or infraction case,” which has proven insufficient to address the court reporter shortage and provide equal access to the verbatim records necessary for appeal. The Petition—which “applaud[s]” the General Orders but sees them as not going far enough (Pet. ¶ 58)—

¹ In addition to the two general orders discussed in the Petition and included in the Appendix, the Superior Court for the County of Contra Costa issued a General Order re: Use of Electronic Recording Equipment on December 30, 2024. (See <https://www.cc-courts.org/civil/docs/FinalGeneralOrderElectronicReporting.pdf>.) The Court can take judicial notice of that order. (Evid. Code, § 451.)

seeks to eliminate, in certain contexts, limitations on electronic recording imposed by section 69957.

In addressing the Order to Show Cause, Respondents are mindful that, in general, a court remains “a neutral party” when “prohibition[] or mandamus is sought against [it]” (8 Witkin, Cal. Procedure (6th ed.) Extraordinary Writs, § 166 (2024)), with the lower courts’ “decisions” or “procedures” speaking for themselves to “the reviewing court.” (*Municipal Court v. Superior Court (Gonzalez)* (1993) 5 Cal.4th 1126, 1131 (*Gonzalez*)). There is also a long line of authority—dating to Justice Kennard’s separate opinion in *Gonzalez*—recognizing that lower courts may respond to a petition where “the issue involved directly impact[s] the operations and procedures of the court or potentially impose[s] financial obligations which would directly affect the court’s operations,” particularly if no real party in interest is there to address that impact. (*James G. v. Superior Court* (2000) 80 Cal.App.4th 275, 280 (*James G.*)).

The Petition primarily seeks a ruling limiting when section 69957 can “constitutionally be applied to preclude the use of electronic recording” (Pet. ¶ 63.a.) The Legislature of the State of California has been “invited to file a return” as “the real party in interest” on that question (2/19/25 Order to Show Cause), and amici have already begun to weigh in. The Court will have ample briefing addressing whether (and if so, in what circumstances) it is constitutionally permissible to bar parties from securing a necessary verbatim record of proceedings when electronic recording is available and a court reporter is not. Given the briefs

from these litigants, Respondents would let the lengthy General Orders speak for themselves at this juncture (see *James G.*, *supra*, 80 Cal.App.4th at p. 280), unless this Court requests a further written response on any issue.

Respondents must, however, briefly address the Petition’s second prayer for relief, which seeks “[a]n order *mandating*” the provision of electronic recording for a class of “litigants who cannot afford the cost of a private court reporter” (Pet. ¶ 63.b, italics added.) Presumably, the contemplated relief would merely deem electronic recording a “valid means to create an official verbatim record for purposes of appeal” when a verbatim record must be provided under *Jameson v. Desta* (2018) 5 Cal.5th 594, 599 (*Jameson*),² or is otherwise required by statute (e.g., Pen. Code, § 869). So construed, the prayer should not “directly impact[] the operations and procedures of [Respondents]” and “impose[] financial obligations which would directly affect [Respondents]’ operations.” (*James G.*, *supra*, 80 Cal.App.4th at p. 280.) Reading the second prayer to impose such a duty even when the courtroom lacks “approved equipment and equipment monitors” for electronic recording (Gov. Code, § 69957, subd. (a)), however, would present

² *Jameson* covers “in forma pauperis litigants” (*Supra*, 5 Cal.5th at p. 599.) The Petition suggests, in a footnote, that the second prayer might go beyond that. (See Pet. ¶ 7, fn. 1 [describing the class as “includ[ing], *at a minimum*, those who are eligible for waivers of court fees and costs], italics added.) If the remedy is crafted in terms of inability to pay—rather than, say, the inability to secure a court reporter—considerations of administrability may counsel in favor of using the existing *Jameson* framework to define the class of litigants at issue.

logistical challenges since not all courtrooms have the necessary equipment. (See Pet. ¶ 4.)


* * *

The Petition presents important matters on which statewide action and this Court’s guidance are urgently needed. Respondents read the Petition as seeking to ensure that section 69957 does not impede the creation of a verbatim record when a court reporter is unavailable—particularly when a court would deem the verbatim record necessary to discharge an obligation under *Jameson*, the California Constitution, its core powers, or some other provision of law. Whether and how to accomplish that goal will be thoroughly litigated by Petitioners, amici, and the Legislature (if it accepts this Court’s invitation). Accordingly, unless this Court wishes Respondents to address any issues further in writing, Respondents rest on this Response and the lengthy General Orders.

Dated: March 21, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c)(1) of the California Rules of Court and in reliance on the word count of the computer program used to prepare this Brief, counsel certifies that the text of this Brief (including footnotes) was produced using 13-point type and contains 1,175 words.

Dated: March 21, 2025

By: /s/ Mark R. Yohalem

Mark R. Yohalem

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The Legislature of State of California: Real Party in Interest
The Honorable Robert Rivas
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The Legislature of State of California: Real Party in Interest
The Honorable Mike McGuire
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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 March 21, 2025, at Los Angeles, California.



Shannon Hill

STATE OF CALIFORNIA
 Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
 Supreme Court of California

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3/21/2025

Date

/s/Mark Yohalem

Signature

Yohalem, Mark (243596)

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