



11 Dec 2024

## VIA TRUEFILING

Chief Justice Patricia Guerrero and Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

### **Re: *amicus curiae* letter brief from California Constitution Scholars in *Family Violence Appellate Project v. Superior Courts*, S288176**

To the Honorable Court:

In this original mandate proceeding, under Rule of Court 8.847 the undersigned David A. Carrillo and Stephen M. Duvernay (collectively, *amicus curiae* California Constitution Scholars) request leave to file this *amicus* letter brief in support of petitioners. *Amicus* currently takes no position on the petition's merits. *Amicus* certifies under Rule of Court 8.520(f)(4) that no party or counsel for any party authored this brief, participated in its drafting, or made any monetary contributions intended to fund the preparation or submission of the proposed brief.

*Amicus* are California constitution scholars who seek to aid this Court in resolving the state constitutional interpretation issue here; we are academics affiliated with the California Constitution Center, a nonpartisan academic research center at the University of California, Berkeley, School of Law. The University of California is not party to this brief.

The proposed brief will assist the Court by showing how California's core powers doctrine can be applied here. *Amicus* is interested in this case because it raises an important issue of California constitutional law: how a court should reconcile the judiciary's inherent power to ensure the orderly administration of justice with the legislature's core power to regulate the business of California's courts. *Amicus* requests that this Court issue an alternative writ to allow full briefing and argument in this matter.

### **Overview**

Petitioners in this original writ petition proceeding ask this Court to resolve the apparent conflict between Government Code section 69957 and the judiciary's inherent power to oversee its dockets fairly. This is a serious question that deserves thoughtful consideration, which makes an alternative writ the best course here.

### **Discussion**

We suggest and request that the Court issue an alternative writ, setting a briefing schedule for real party in interest to file a return, and for petitioner to file a reply. Code of Civil Procedure sections 1089 and 1105; California Rules of Court, Rules 8.487(b)(1) and (3). The Court could also set a 30-day deadline for *amicus* briefing after merits briefing by the parties ends.

Mandate may issue as either alternative or peremptory writs. Code of Civil Procedure section 1087 and 1088; see *Bay Develop., Ltd. v. Sup.Ct.* (1990) 50 Cal.3d 1012, 1024. In mandate proceedings, an alternative writ may command the respondent to show cause why an act has not been performed. Code of Civil Procedure section 1087. An alternative writ is in the nature of an order to show cause, so the command is the same in either form. But the alternative writ (or order to show cause) does not determine that petitioner is correct on the merits; it merely determines that writ relief is the only adequate avenue for review. *Bridgestone/Firestone, Inc. v. Sup.Ct.* (1992) 7 Cal.App.4th 1384, 1389. And a court may determine that the petition was defective and discharge the alternative writ without issuing a full written opinion or hearing oral argument. *Countrywide Home Loans, Inc. v. Sup.Ct.* (1997) 54 Cal.App.4th 828, 832–33. Thus, issuing an alternative writ permits merits briefing without committing this Court to any action.

This case squarely presents the most difficult of divided powers issues: an attempt by one branch to regulate the core powers of another. It is undisputed that one branch may regulate the affairs of another, even to the point of having substantial effects on the other branch's operations. *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 54. Yet a branch is well within its rights to reject attempts to control core discretionary decisions. This court said as much in *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 298 (legislative branch barred from arrogating to itself core functions of the executive or judicial branches). The U.S. Supreme Court applied this concept of core powers being immune from regulation in *Trump v. United States* (2024) 603 U.S. 593, 634. Whether a core judicial power is materially impaired here, to the extent of preventing the judicial branch from accomplishing its constitutionally assigned functions, merits serious consideration.

Yet we and other potential *amici* cannot produce a proper discussion without first seeing returns from the Attorney General and other potential respondents. If the Court permits scheduled *amicus* briefing we would submit a thorough analysis of the issue.

### **Conclusion**

We request that this Court issue an order to show cause or an alternative writ, and set a briefing schedule that permits *amicus* briefing to follow reasonably after merits briefing concludes.

Respectfully submitted,



David A. Carrillo, J.S.D.  
Executive Director  
California Constitution Center

s/ Stephen M. Duvernay  
Stephen M. Duvernay,  
Chief Senior Research Fellow  
California Constitution Center

**CERTIFICATE OF SERVICE**

I, Stephen M. Duvernay, hereby certify as follows:

I am an active member of the State Bar of California, and I am not a party to this action. My business address is 701 University Avenue, Suite 106, Sacramento, California 95825, and my electronic service address is [steve@benbrooklawgroup.com](mailto:steve@benbrooklawgroup.com).

On December 11, 2024, I caused the foregoing document to be served as follows:

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