

S287285

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

J.O., Petitioner, v. THE SUPERIOR COURT OF SAN JOAQUIN COUNTY, Respondent, SAN JOAQUIN COUNTY PUBLIC CONSERVATOR, Real Party in Interest.	No. Court of Appeal No. 3 Civ. C102071 Superior Court No. STK-MH-LPSC-2016-0000110 (The Hon. Kristine Eagle, Judge of the San Joaquin Superior Court, Department 7C, (209) 992-5577) PETITION FOR REVIEW
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**PETITION FOR REVIEW
After Decision by Court of Appeal
Third Appellate District**

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Attorneys for Petitioner

INTRODUCTION

In this case, after rulings that it did not like the results of, the San Joaquin County Counsel, on mental health cases, began to file “blanket” Code of Civil Procedure section 170.6 (“section 170.6”) motions against the Honorable Erin A. Guy Castillo, Judge of the Superior Court, who was then assigned to mental health calendars, in May 2024. In this case, after the County Counsel filed a section 170.6 motion against Judge Guy Castillo and she initially granted the motion, without prior notice to Petitioner J.O., Petitioner filed an objection to the “blanket” section 170.6 motion. The Superior Court (Hon. Kristine Eagle, Judge of the Superior Court, who had succeeded Judge Guy Castillo on mental health calendars) overruled the objection and upheld the section 170.6 motion, under the compulsion of this Court’s opinion *Solberg v. Superior Court* (1977) 19 Cal.3d 182 [137 Cal.Rptr. 460, 561 P.2d 1148] (*Solberg*). With all due respect to this Court, Petitioner believes that *Solberg*’s reasoning, as questioned then by Acting Chief Justice Tobriner and later by the Court of Appeal justices in *People v. Superior Court (Tejeda)* (2016) 1 Cal.App.5th 892 [205 Cal.Rptr.3d 200], is problematic for the sacrosanct principle of judicial independence. He urges the Court to revisit *Solberg*.

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CERTIFIED WORD COUNT

I, NELSON C. LU, hereby declare:

1. I am an attorney licensed to practice before all the courts of the State of California and a Deputy Public Defender for the County of San Joaquin.
2. I am one of the attorneys representing Petitioner in this Petition.
3. In reliance on the word count function of the Microsoft Word computer program, I hereby certify that this Petition, excluding the cover, tables, this certification, the proof of service, and the attachment, is 1,494 words.

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

Executed on October 5, 2024 in Stockton, California.

A handwritten signature in black ink, appearing to read 'Nelson C. Lu', is written over a horizontal line.

Nelson C. Lu
Deputy Public Defender

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

J.O., Petitioner, v. THE SUPERIOR COURT OF SAN JOAQUIN COUNTY, Respondent, SAN JOAQUIN COUNTY PUBLIC CONSERVATOR, Real Party in Interest.	No. Court of Appeal No. 3 Civ. C102077 Superior Court No. STK-MH-LPSC-2022-0000087 (The Hon. Kristine Eagle, Judge of the San Joaquin Superior Court, Department 7C, (209) 992-5577) PETITION FOR REVIEW
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Petitioner, J.O., hereby respectfully petitions this Honorable Court for review of the order of the Court of Appeal, Third Appellate District, filed on September 30, 2024, summarily denying without comment Petitioner’s petition for writ of mandate that specifically acknowledged *Solberg v. Superior Court* (1977) 19 Cal.3d 182 [137 Cal.Rptr. 460, 561 P.2d 1148] (*Solberg*) but asking that Court to urge this Court to revisit *Solberg*, as to its holding that a public law office’s “blanket” use of Code of Civil Procedure section 170.6¹ motions is permissible.

ISSUE PRESENTED FOR REVIEW

Whether *Solberg*’s holding permitting “blanket” section 170.6 motions by a public law office against a certain judicial officer permits unconstitutional infringement of separation of powers (Cal. Const., art. III,

¹ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

§ 3; *Springer v. Government of the Philippine Islands* (1928) 277 U.S. 189 [48 S.Ct. 480, 72 L.Ed. 845]) and should be either overruled or limited.

REASONS REVIEW SHOULD BE GRANTED

Since *Solberg*'s issuance 47 years ago, a few courts have expressed discomfort with its permission of potential misuse of section 170.6 motions that infringes on judicial independence. (E.g., *Autoland, Inc. v. Superior Court* (1988) 205 Cal.App.3d 857, 860-862 [252 Cal.Rptr. 662]; *id.* at pp. 862-863 (conc. opn. of Gates, J.); see *People v. Superior Court (Williams)* (1992) 8 Cal.App.4th 688, 706-708 [10 Cal.Rptr.2d 873] (*Williams*) [creating an exception to *Solberg* where the § 170.6 motion was based on racial or similar bias].) In a particularly egregious case of the prosecution's misuse of blanket section 170.6 motions against then-Judge Goethals (now a justice of the Court of Appeal for the Fourth District, Division Three) (*People v. Superior Court (Tejéda)* (2016) 1 Cal.App.5th 892 [205 Cal.Rptr.3d 200] (*Tejéda*)), the Court of Appeal followed *Solberg* as it was required to, but all three justices – two in majority, one in dissent – pointed out that effectively, the prosecution was punishing Judge Goethals for calling it out for its misconduct. (*Id.* at pp. 908-910; *id.* at p. 913 (conc. opn. of Aronson, J.); *id.* at p. 921 (dis. opn. of Thompson, J.).) Despite those justices' call, this Court did not grant review in *Tejéda* then, although Justices Werdegar, Liu, and Cuéllar were in favor of doing so. (*Id.* at p.

931.) Petitioner believes that the concerns of the *Tejeda* justices were valid, and that it is time for this Court to revisit *Solberg*.

STATEMENT OF THE CASE

Petitioner has been subject of a conservatorship since 2016; at the relevant time points below, the San Joaquin County Public Conservator was and is his conservator. Since 2016, the San Joaquin County Public Defender has been representing Petitioner.

The Honorable Erin A. Guy Castillo, Judge of the Superior Court, was assigned to Department 7C – the department at the San Joaquin Superior Court where most mental health-related cases are heard – in December 2023, after the retirement of the previously assigned judge, the Honorable Richard A. Vlavianos, Judge of the Superior Court.

Starting in May 2024, apparently in dissatisfactions with Judge Guy Castillo’s rulings against it and/or its clients, the San Joaquin County Counsel’s Office started a practice of filing “blanket” section 170.6 motions against Judge Guy Castillo on all mental health cases involving the County Counsel; this included filing section 170.6 motions against her that were clearly untimely or otherwise barred by section 170.6.²

On July 10, 2024, the Public Conservator, represented by the County Counsel, filed a petition to be ratified as Petitioner’s conservator for one

² Petitioner does not claim that the section 170.6 motion filed in this case was untimely.

more year. On the same day, the Public Conservator filed a section 170.6 motion against Judge Guy Castillo.

On July 12, 2024, Judge Guy Castillo issued an order denying that section 170.6 motion, ruling that it was premature.

On July 29, 2024, Petitioner, through his counsel, filed a petition to have the Public Conservator removed as his conservator and have his sister, Jennifer O. (“Jennifer”), appointed as successor conservator.

On August 9, 2024, the Public Conservator filed another section 170.6 motion against Judge Guy Castillo.

On August 12, 2024, Judge Guy Castillo, in writing without the matter being called in court, granted the section 170.6 motion, without Petitioner’s having had a chance to be heard.

Having later found out from the Superior Court’s docket about the section 170.6 motion’s being granted, on August 15, 2024, the Public Defender, representing Petitioner, filed an objection to the section 170.6 motion.

In August 2024, the Superior Court reassigned Judge Guy Castillo to another department and assigned the Respondent Court to Department 7C.

On or about August 21, 2024, the Public Conservator filed a motion to sanction the Public Defender.

On September 16, 2024, the Respondent Court held a hearing and overruled Petitioner’s objection to the section 170.6 motion, citing *Solberg* – but found that Petitioner had a good faith basis to make the objection.

On September 24, 2024, Petitioner filed a petition for writ of mandate in the Court of Appeal for the Third District – not asking for it to grant relief without permission from this Court but asking for it to issue an opinion to urge this Court to revisit *Solberg*. On October 1, 2024, the Court of Appeal issued an order summarily denying the petition without comment.

LAW AND ARGUMENT

A. THE COURT HAS JURISDICTION TO HEAR THE PETITION AND SHOULD HEAR IT.

This Court has jurisdiction to consider a petition for review after the Court of Appeal denied a petition for extraordinary relief. (Cal. Rules of Court, rule 8.500(a)(1);³ see, e.g., *Chambers v. Superior Court* (2007) 42 Cal.4th 673, 678 [68 Cal.Rptr.3d 43, 170 P.3d 617].) Believing that this case contains important questions of law, Petitioner thus presents this Court with his petition for review and respectfully requests the Court to grant it.

B. THE STANDARD OF REVIEW.

As the Court of Appeal denied Petitioner’s petition summarily without issuing an order to show cause or scheduling any other formal

³ All further references to rules are to the California Rules of Court.

proceedings, and it did not issue an opinion stating its reasons, Petitioner believes that this Court should review the Superior Court directly for abuse of discretion. (*Jonathon M. v. Superior Court* (2006) 141 Cal.App.4th 1093, 1098 [46 Cal.Rptr.3d 798]; but see *Ziesmer v. Superior Court* (2003) 107 Cal.App.4th 360, 363 [132 Cal.Rptr.2d 130] [suggesting that there is no discretion to exercise].)

C. THE PETITION PRESENTS IMPORTANT SEPARATION OF POWERS QUESTIONS THAT THIS COURT SHOULD REVISIT; THEREFORE, THE PETITION SHOULD BE GRANTED.

This Court may grant review “[w]hen necessary to secure uniformity of decision or to settle an important question of law.” (Rule 8.500(b)(1).) For reasons to be further discussed herein, Petitioner believes that the issue involved here is an important one and should be revisited by this Court.

Tejéda represented, admittedly, an extreme case – a prosecutor’s office bent on revenge for being called out for its misconduct and bent on making sure that a judge who ruled against it would pay for doing so. But as can be seen here in this case, a public law office determined to run a judge out of an important calendar was able to get its way in doing so. The Orange Superior Court presiding judge in *Tejéda* would have found it offensive. Whether this Court should continue to allow this result by letting *Solberg* remain good law without limiting it⁴ – a result that *Tejéda*

⁴ The Court has, of course, allowed *Williams*’s limitation to *Solberg* to stand by not granting review on its own motion. (Rule 8.512(c)(2).)

lamented and observed may be in conflict with the trend in this Court's jurisprudence about the separation of powers (*Tejeda*, *supra*, 1 Cal.App.5th at p. 908)⁵ – is, Petitioner believes, an important question that the Court did not take up in 2016 when *Tejeda* was issued – and which, at that time, three justices of this Court believed that it should have. It should do so now.

CONCLUSION

For the above reasons, the Petitioner J.O. prays that this Court grant review to decide the issue presented.

Dated: October 5, 2024

Respectfully submitted,

LAW OFFICES OF THE PUBLIC DEFENDER
JUDYANNE D. VALLADO, Public Defender
JANIS D. EVERETT, Deputy Public Defender
NELSON C. LU, Deputy Public Defender

By: 

Nelson C. Lu, Deputy Public Defender
Attorneys for the Petitioner

⁵ *Tejeda* cited *Steen v. Appellate Division* (2014) 59 Cal.4th 1045 [175 Cal.Rptr.3d 760, 331 P.3d 136]. Petitioner believes that the same spirit, in preventing one branch in overstepping into another branch's functions, was reflected in this Court's subsequent clarification of its role in the pardon process, upholding its own constitutional role while avoiding usurping the Governor's. (*Procedures for Considering Requests for Recommendation Concerning Applications for Pardon or Commutation* (2018) 4 Cal.5th 897, 899 [233 Cal.Rptr.3d 129, 417 P.3d 769].)

ATTACHMENT
ORDER OF THE COURT OF APPEAL

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

J.O.,
Petitioner,
v.
THE SUPERIOR COURT
OF SAN JOAQUIN COUNTY,
Respondent;
SAN JOAQUIN COUNTY
PUBLIC CONSERVATOR,
Real Party in Interest.

C102071
San Joaquin County
No. STKMHLPC20160000110

BY THE COURT:

The petition for writ of mandate is denied.


ROBIE, Acting P.J.

cc: See Mailing List

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

MAILING LIST

Re: J.O. v. The Superior Court of San Joaquin County
C102071
San Joaquin County Super. Ct. No. STKMHLPC20160000110

Copies of this document have been sent by mail to the parties checked below unless they were noticed electronically. If a party does not appear on the TrueFiling Servicing Notification and is not checked below, service was not required.

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San Joaquin County Superior Court
Appeals Division
180 E. Weber Avenue, Suite 230
Stockton, CA 95202
(By e-mail)

S287285

AFFIDAVIT OF SERVICE BY MAIL

**J.O.,
Petitioner,**

v.

**THE SUPERIOR COURT OF
SAN JOAQUIN COUNTY,
Respondent,**

**SAN JOAQUIN COUNTY
PUBLIC CONSERVATOR,
Real Party in Interest.**

I, Christine Gutierrez, being first duly sworn deposes and says:

I am a citizen of the United States, over the age of 18 years and am not a party to the above-entitled proceeding. I am a resident of the County of San Joaquin, State of California. My business address is 102 S. San Joaquin, Room 1, Stockton, California.

That on October 9, 2024, I served the within document upon the person(s) herein after named:

PETITION FOR REVIEW After Decision by Court of Appeal Third Appellate District in Re: J.O., Petitioner, v. THE SUPERIOR COURT OF SAN JOAQUIN COUNTY, Respondent, SAN JOAQUIN COUNTY PUBLIC CONSERVATOR, Real Party in Interest. SUPERIOR COURT NO: STK-MH-LPSC-2016-0000110, COURT OF APPEAL NO. 3 CIV. C102071

by placing a copy of this document in sealed envelopes, addressing one envelope as herein-above indicated to each of said persons, sealing and envelopes and then depositing the same in the United States mail with postage fully prepaid thereon; that there is a delivery service by United States mail at each of the places so addressed, or that there is a regular communication by mail between the said place of mailing and each of the said places so addressed.

**Jennifer O.
2634 Courtney Way
Stockton, CA 95210**

**I declare under penalty of perjury that the foregoing is true and correct,
Executed this 9th day of October, 2024.**

CHRISTINE GUTIERREZ

PROOF OF ELECTRONIC SERVICE

**J.O.,
Petitioner,**

v.

**THE SUPERIOR COURT OF
SAN JOAQUIN COUNTY,
Respondent,**

**SAN JOAQUIN COUNTY
PUBLIC CONSERVATOR,
Real Party in Interest.**

Nelson Lu being first duly sworn deposes and says:

I am a citizen of the United States, over the age of 18 years and am not a party to the above-entitled proceeding. I am a resident of the County of San Joaquin, State of California. My business address is 102 S. San Joaquin, Room 1, Stockton, California.

On the 9th day of October 2024, at Stockton, County of San Joaquin, California, I served the within document upon the person(s) hereinafter named:

**PETITION FOR REVIEW After Decision by Court of Appeal Third Appellate District in
Re: J.O., Petitioner, v. THE SUPERIOR COURT OF SAN JOAQUIN COUNTY,
Respondent, SAN JOAQUIN COUNTY PUBLIC CONSERVATOR, Real Party in
Interest. SUPERIOR COURT NO: STK-MH-LPSC-2016-0000110,
COURT OF APPEAL NO. 3 CIV. C102071**

**Court of Appeal
914 Capitol Mall
Sacramento, CA 95814
(916) 654-0209**

**County Counsel
(209) 468-2980
csherron@sjgov.org**

**Supreme Cour of California
350 McAllister St. Room 1295
San Francisco, CA 94102
(415) 865-7000**

by electronic service.

**I declare under penalty of perjury that the foregoing is true and correct and
that this Declaration of Service was executed on October 9, 2024 in Stockton, California.**

NELSON LU

AFFIDAVIT OF PERSONAL SERVICE

**J.O.,
Petitioner,**

v.

**THE SUPERIOR COURT OF
SAN JOAQUIN COUNTY,
Respondent,**

**SAN JOAQUIN COUNTY
PUBLIC CONSERVATOR,
Real Party in Interest.**

I, Jazmine Sandoval being first duly sworn deposes and says:

I am a citizen of the United States, over the age of 18 years and am not a party to the above-entitled proceeding. I am a resident of the County of San Joaquin, State of California. My business address is 102 S. San Joaquin, Room 1, Stockton, California.

That on October 9, 2024, I personally served the following document, to wit:

**PETITION FOR REVIEW After Decision by Court of Appeal Third Appellate District in
Re: J.O., Petitioner, v. THE SUPERIOR COURT OF SAN JOAQUIN COUNTY,
Respondent, SAN JOAQUIN COUNTY PUBLIC CONSERVATOR, Real Party in
Interest. SUPERIOR COURT NO: STK-MH-LPSC-2016-0000110,
COURT OF APPEAL NO. 3 CIV. C102071**

**on the hereinafter named person or party by delivering to and leaving with said person
or party at the place and date hereinafter set opposite the name of such person or party,
a true copy of said abovementioned document:**

**Superior Court
180 E. Weber Avenue
Stockton, CA 95202
(209) 992-5555**

**I declare under penalty of perjury that the foregoing is true and correct, executed
this 9th day of October 2024.**

JAZMINE SANDOVAL

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **J.O. v. Superior Court**

Case Number: **TEMP-56DQ8ZDD**

Lower Court Case Number:

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: **nlu@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
ISI CASE INIT FORM DT	Case Initiation Form
PETITION FOR REVIEW	Petition for Review
PROOF OF SERVICE	Proofs of Service

Service Recipients:

Person Served	Email Address	Type	Date / Time
Nelson Lu San Joaquin County Public Defender 208212	nlu@sjgov.org	e-Serve	10/9/2024 9:38:09 AM
Janis Everett	jeverett@sjgov.org	e-Serve	10/9/2024 9:38:09 AM
Claudine Sherron 296499	csherron@sjgov.org	e-Serve	10/9/2024 9:38:09 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.

10/9/2024

Date

/s/Nelson Lu

Signature

Lu, Nelson (208212)

Last Name, First Name (PNum)

San Joaquin County Public Defender

Law Firm