Case No. S269608

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

LOS ANGELES UNIFED SCHOOL DISTRICT, *Petitioner,*

v.

SUPERIOR COURT OF LOS ANGELES COUNTY, *Respondent*,

JANE DOE, *Real Party in Interest*.

[PROPOSED] AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF PETITIONER LOS ANGELES UNIFIED SCHOOL DISTRICT

Second Appellate District, Division Five, Case No. B307389

Los Angeles County Superior Court
Case No. BC659059
The Honorable Shirley Watkins

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I. INTRODUCTION

This case raises an important issue with potentially far-reaching ramifications beyond the facts of this case: Does Government Code section 818, which bars punitive damages against government defendants, preclude recovery under Code of Civil Procedure section 340.1, subdivision (b), which permits an award of up to treble damages after a child is sexually abused as a result of a cover up?

To be sure, any incident of childhood sexual abuse is a horrendous act, and when such acts are shown to be the result of a cover up, the tragedy is surely compounded. The Legislature has specifically extended the time to bring tort claims involving such acts against both public and private parties, and all the litigants to this lawsuit acknowledge that plaintiffs bringing such claims may receive damages for actual harm caused not only by the abuse itself, but also by any cover up that allowed the abuse to occur.

This case, therefore, is not about whether victims of childhood sexual abuse are fully compensated for their damages. Rather, the case calls upon this Court to determine how the treble damages allowed under Code of Civil Procedure section 340.1 interplay with the limitations on public entity liability set forth in the Government Claims Act.

When viewed considering the history and purpose of the Claims Act, the answer to the question posed in this case must be yes: Government Code section 818 precludes recovery under Code of Civil Procedure section 340.1(b) because any statutory override of the protections of the Government Claims Act must not be inferred, but must be specific and clear. Section 340.1(b) lacks such specificity.

II. ARGUMENT

A. HISTORICAL BACKGROUND OF THE GOVERNMENT CLAIMS ACT

In attempting to understand whether treble damages are properly applied to public entities in claims arising under Code of Civil Procedure section 340.1, it is important to understand how the Government Claims Act was developed and its intended purposes.

1. The concept of absolute sovereign immunity is part of California's historic common law.

Since the founding of our State, government agencies have provided necessary services to the people they govern, a unique and vulnerable position that the Legislature determined warrants a higher level of protection against legal claims than that accorded to private entities. (Calif. Law Rev. Comm., 4 Reports Recommendations and Studies 807 (1963).) The unique nature of the government's relationship with the public is evident in the types of services it provides, including its power to issue and

revoke licenses, quarantine sick persons, prosecute and incarcerate violators of the law, administer prison systems, provide for the protection of abused and neglected children and elders, and build and maintain thousands of miles of streets, sidewalks, and highways. In historic times, the practical necessity of exercising these government functions led to creation of the doctrine of sovereign immunity, which generates from the legal fiction that the king can do no wrong. (*See People v. Superior Court* (1947) 29 Cal.2d 754, 756.) This doctrine had general acceptance in California's common law. (*Ibid.*) The general rule was that neither the State nor its political subdivisions could be sued without their consent. (*Whittaker v. County of Tuolumne* (1892) 96 Cal. 100, 101.) As such, government entities in California were generally immune from liability for acts undertaken in a governmental capacity. (*Elson v. Public Utilities Commission* (1975) 51 Cal.App.3d 577, 582.)

By the early 1960s, the common law doctrine of sovereign immunity in California had been "riddled with exceptions and inconsistencies." (*Elson, supra,* 51 Cal.App.3d at p. 583.) In 1961, the California Supreme Court essentially abolished common law sovereign immunity in *Muskopf v. Corning Hospital District* (1961) 55 Cal.2d 211, and *Lipman v. Brisbane Elementary School District* (1961) 55 Cal.2d 224. The basic rule established by the Court in *Muskopf* and *Lipman* was that government officials could be held liable for their negligent performance of ministerial

duties, but were entitled to immunity for discretionary decisions. (*Muskopf*, *supra,* 55 Cal.2d at p. 220; *Lipman*, *supra,* 55 Cal.2d at p. 229.)

In response to these landmark decisions, the State Legislature enacted a moratorium suspending the effects of the *Muskopf* and *Lipman* (Stats 1961 ch 1404 § 1), and appointed a Law Revision Commission to thoroughly study the issue of governmental immunity and make policy recommendations. The work of the Law Revision Commission became, in essence, the first version of the Government Claims Act, which was enacted in 1963. (Stats 1963 ch 1681 § 1.)

2. The Government Claims Act strikes a careful balance between competing policy considerations.

The Law Revision Commission's sovereign immunity study undertook a detailed analysis of the policy considerations both in support of and against the concept of sovereign immunity. (*See generally* Calif. Law Rev. Comm., 4 Reports Recommendations and Studies (1963).) Supporting sovereign immunity is the separation of powers doctrine – the notion that the judiciary should not second-guess the decisions and judgments of governmental agencies. (*See, e.g., Johnson v. State of Calif.* (1968) 69 Cal.2d 782, 794; *Nunn v. State of Calif.* (1984) 35 Cal.3d 616, 622.) Similarly, it is well established that in discharging their duties, public employees should be permitted to exercise their judgment without fear of liability or the burden of a trial. (*Johnson, supra,* 69 Cal.2d at p. 790.)

In its 569-page report to the Legislature in 1963, the Law Revision Commission summarized the importance of a comprehensive scheme for determining liability as follows:

> The need for order and predictability is great for efficient and foresighted planning of governmental activities and their fiscal ramifications becomes extremely difficult if not impossible when the threat of possibly immense but unascertainable tort obligations hangs like a dark cloud on the horizon. Moreover, it would seem entirely likely that the danger of tort liability may, in certain areas of public responsibility, so seriously burden the public entity as to actually interfere with the prosecution of programs deemed essential to the public welfare. A comprehensive legislative solution, formulated on a sound theoretical foundation and modified to meet the exigencies of practical public administration of the powers vested in government, appears to be the only acceptable alternative.

(Calif. Law Rev. Comm., *A Study Relating to Sovereign Immunity*, p. 268 (1963).)[1]

In support of eliminating sovereign immunity is the idea of fairness. As the California Supreme Court noted in *Lipman*, it is "unjust in some circumstances to require an individual injured by official wrongdoing to bear the burden of his loss, rather than distribute it throughout the community." (*Lipman, supra*, 55 Cal.2d at p. 230.)

The Government Claims Act is the Legislature's attempt at reconciling these two competing policy considerations. In striking the balance between these objectives, the Act has both substantive and

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[1] This publication is available on the California Law Revision Commission's website at: http://www.clrc.ca.gov/pub/Printed-Reports/Pub050.pdf.

procedural elements. Substantively, the statute abolished all common law based on the doctrine of absolute sovereign immunity. (*Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450.) Instead, all government liability must be based on statute. (*Elson v. Public Utilities Commission* (1975) 51 Cal.App.3d 577.) The general rule in California since 1963, therefore, is that public entities generally are granted sovereign immunity, and where there is to be governmental liability, it is limited to exceptions specifically set forth by statute. (*Wright v. State of Calif.* (2004) 122 Cal.App.4th 659.) Those exceptions include direct liability for a breach of mandatory duties and derivative liability for certain employee negligence. (Gov. Code, §§ 815.2, 815.6.)

But in addition to these more substantive provisions, the Government Claims Act adopted certain procedural requirements and other limitations as part of striking the balance between the competing policy concerns. In other words, the Legislature determined that it would allow government liability only under specified conditions, including compliance with certain procedural safeguards and specific limits on the types of monetary recovery allowed.

In sum, "the general rule is that the governmental immunity will override a liability created by a statute outside of the [Government] Claims Act." (*Gates v. Superior Court* (1995) 32 Cal.App.4th 481, 510. See *Caldwell v. Montoya* (1995) 10 Cal.4th 972, 980 ["The Act governs all

public entities and their employees and all noncontractual bases of compensable damage or injury that might be actionable between private persons.”].)

B. THE LIMITATION ON PUNITIVE DAMAGES IS AN IMPORTANT ELEMENT IN THE OVERALL STATUTORY SCHEME OF THE GOVERNMENT CLAIMS ACT AND SHOULD NOT BE DISREGARDED WITHOUT SPECIFIC DIRECTION FROM THE LEGISLATURE.

The Law Revision Commission and the Legislature undertook a comprehensive review of sovereign immunity before settling on the basic principles now set forth in the Government Claims Act. The limitation on punitive damages is an essential component of that statutory scheme. Under the relevant provisions, a public entity can be found liable in tort and responsible for actual damages, but unlike private defendants, recovery of exemplary or punitive damages is intentionally limited as part of the overall statutory scheme.

The California Law Revision Commission report that served as the underlying basis for what is now known as the Government Claims Act noted many concerns with eliminating, waiving or limiting sovereign immunity. Two of those concerns are most relevant to this Court’s consideration of the interaction between Government Code section 818 and Code of Civil Procedure section 340.1.

First, the Commission was concerned that waiving sovereign immunity could spur “litigation-prone” individuals to file “promiscuous” litigation. (Calif. Law Rev. Comm., *A Study Relating to Sovereign Immunity*, p. 258 (1963).) The Commission noted that the challenge in considering whether to permit litigation against public entities was how to weed out meritorious claims from frivolous ones, noting that frivolous lawsuits would interfere with the ability of public entities and their officials from carrying out their public duties. (*Id.* at pp. 258-259.)

One of the Commission’s proposals for addressing this concern was to preclude recovery of exemplary or punitive damages. (*Ibid.*) The Commission noted that such limitation was a procedural technique “that may be invoked to minimize the adverse effects upon honest officials of permitting such litigation.” (*Id*. at p. 259.) Thus, while Real Party in Interest in this case asserts that one of the purposes of the treble damages in Code of Civil Procedure section 340.1 is to encourage would-be litigants to file claims, the Government Claims Act was drafted precisely to limit initiation of litigation only to those cases in which the parties would be motivated by the availability of tort recovery for actual damages rather than the possibility of exemplary or punitive damages.

Second, in considering whether and how to waive sovereign immunity in California, the Commission was also concerned about “protecting governmental entities against unduly burdensome financial

stress." (Calif. Law Rev. Comm., *A Study Relating to Sovereign Immunity*, p. 303 (1963).) Indeed, the Commission noted that a significant basis for concern in allowing claims to proceed against public entities:

> . . . relates to the potential repercussions upon the financial health of the public entity found to be liable. Public entities are engaged in a wide variety of public functions of differing degrees of importance to the public health, safety and welfare, all of which make competing demands upon the financial resources available. The public interest demands assurance that prospective, as well as actual, tort liabilities will not disrupt the orderly administration of public finances nor interfere with the diligent performance of public functions. Where financial capacity is limited, public entities especially need some form of protection against the potentially crippling consequences of extremely large "catastrophe" liabilities.

(*Id.* at p. 283.)

Taking this serious issue into account, the Commission considered, but ultimately rejected, a statutory maximum on the amount of damages for which public entities could be held liable. (*Id.* at p. 259.) The Commission considered such caps to be unduly arbitrary. (*Ibid.*)

An alternative that was deemed more consistent with tort law and accepted notions of justice, but also took into account the need to protect the public fisc, was restricting recovery of exemplary and punitive damages. (*Id.* at p. 304.) The Commission concluded that this would "tend to keep the amounts of potential damages within more easily projected limits and thus permit of more orderly fiscal planning to prepare for tort liabilities through insurance and other protective programs." (*Id.* at p. 305.)

While Real Party in Interest contends it is irrational to assume the Legislature intended to treat private and public entities differently when applying the treble damages in Code of Civil Procedure section 340.1(b), it is anything but. To the contrary, in light of the policy interests supporting the Government Claims Act, this distinction is entirely intentional, and designed specifically to limit lawsuits against public entities that would be spurred by the availability of such damages and to provide public entities (and by extension the taxpaying public) some fiscal certainty.

Given the careful policy balancing that has taken place in creating the Government Claims Act and the general rule of government immunity with limited waiver only where the elements of the statute are satisfied, the requirements of the Claims Act should not be construed as preempted by other statutory provisions unless the Legislature has specifically indicated such an intent. Indeed, this Court has previously rejected the notion that a lack of a specific reference to public entities in section 340.1 can be used to infer an intent to override a Government Claims Act provision. (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 212 ["Section 340.1, subdivision (c), makes no reference whatsoever to any revival of the period in which to present a claim under the government claims statute. That lack of reference led the Court of Appeal here to infer that because the Legislature must have been aware that by expressly reviving causes of action against entity defendants in general under subdivision (c), it

implicitly revived the deadline for presenting a claim to public entity defendants. We are not persuaded."].)

In reaching that conclusion in *Shirk*, this Court relied in part on the underlying policies supporting the Government Claims Act, including "recognition of the special status of public entities, according them greater protections than nonpublic entity defendants, because unlike nonpublic defendants, public entities whose acts or omissions are alleged to have caused harm will incur costs that must ultimately be borne by the taxpayers." (*Id.* at p. 213.)

This Court should similarly conclude here that for Code of Civil Procedure section 340.1, subdivision (b) to apply to public entities, the statute must expressly state its intent to do so. Real Party in Interest has it exactly backwards by arguing there is no evidence of the Legislature's intent to *exclude* public entities from section 340.1(b). Given the history and purpose of the Government Claims Act, what the Court must require is specific and direct language showing an intent to *include* public entities in the treble damages provision. Unless the Legislature specifically indicates that the balance between sovereign immunity principles and recovery for injured persons should be upset, courts should maintain strict compliance with the Government Claims Act's limitations on damages.

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C. THERE ARE SIGNIFICANT PRACTICAL RAMIFICATIONS TO INTERPRETING SECTION 340.1(b) AS AUTHORIZING TREBLE DAMAGES AGAINST PUBLIC ENTITIES.

Though framed in the context of judgments in childhood sexual abuse cases against school districts, the issue in this case has broader ramifications that should be considered.

First, the availability of treble damages impacts resolution of claims even if they do not go to trial or reach the judgment stage. In other contexts, commentators have noted that the availability of treble damages can result in settlement of cases that may not have been successful at trial and gives plaintiffs an advantage in settlement negotiations. (See, e.g., in the context of treble damages in RICO cases: Mary M. Cheh, *Constitutional Limits on Using Civil Remedies To Achieve Criminal Law Objectives: Understanding and Transcending the Criminal-Civil Law Distinction* (1991) 42 Hastings L.J. 1325, 1413; Robert K. Rasmussen, *Introductory Remarks and a Comment on Civil RICO's Remedial Provisions* (1990) 43 Vand.L.Rev. 623, 624.) This concern is certainly compounded in claims involving events that are decades old due to lack of records and unavailability of witnesses. To the extent application of treble damages increases settlement of cases that may not have strong merits just to avoid the potential of a significant fiscal loss at trial, that would be inapposite to two of the fundamental underpinnings of the Government Claims Act—discouraging meritless

claims and providing financial stability for public entities. Therefore, it is important to be mindful that this Court's ruling on this issue will impact not only cases that go to trial, but will also have an effect on how settlements proceed in claims filed against public entities.

Second, interpreting statutes relating to tort actions as impliedly superseding the protections afforded to public entities by the Government Claims Act will open the door to erosion of immunity principles in a wide variety of tort cases, and even those occurring outside of the tort context, such as contract claims. Courts have rejected this result, rightfully upholding immunity principles even when similar actions could go forward against private entities. (See *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730 [upholding claim presentment requirement in contract claims for money damages]; *Westcon Construction Corp. v. County of Sacramento* (2007) 152 Cal.App.4th 183 [applying Claims Act filing timelines strictly and rejecting equitable arguments on tolling]; *Roberts v. County of Los Angeles* (2009) 175 Cal.App.4th 474 [claim against public entity health care provider must comply with both the statute of limitations in the Claims Act and the timeline governing general medical negligence suits]; *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983 [claims must comply with express provisions of the Claims Act presentment requirements; "substantial compliance" is not allowed]; *Southern California Edison Co. v. City of Victorville* (2013) 217 Cal.App.4th 218

[claim presentment required even where claim is only for equitable indemnity]; *Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363 [immunity provisions apply to claims of promissory estoppel]; *Coble v. Ventura County Health Care Agency* (2021) 73 Cal.App.5th 417 [where an Executive Order extending litigation timelines due to Covid does not expressly extend the time to apply for leave to present a late claim, such extension will not be inferred from the order].)

Adopting the argument advanced by Real Party in Interest in this case – that failure to *exclude* a public entity from a statute that would otherwise conflict with the Government Claims Act should be interpreted as intent to *include* public entities within the statute's purview – would run counter to this well-established immunity case law and turn the carefully balanced Government Claims Act on its head, and could be used to erode governmental immunities in future cases.

Certainly, the Legislature has the authority to subject public entities to treble damages in childhood sexual abuse cases, but if it elects to do so, it must directly and expressly state that intent in statute. Its intent cannot simply be inferred from a failure to exclude public entities. As Petitioner notes in its answer brief, when the Legislature wants to narrow Claims Act requirements in order to allow childhood sexual abuse claims proceed against public entities, it has done so expressly. (Answer Br., pp. 27-28.) The same standard should be applied to the statutory provisions related to

treble damages in this case.

III. CONCLUSION

For all of these reasons, Amicus Curiae respectfully requests that this Court affirm the Court of Appeal and find in favor of Petitioner Los Angeles Unified School District.

Dated: March 9, 2022

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)

I hereby certify that this brief has been prepared using proportionately double-spaced 13-point Times New Roman typeface. According to the word count feature in my Microsoft Word software, this brief contains 3,453 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 9th day of March, 2022 in Sacramento, California.

Respectfully submitted,

/s/

By: ________________________

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