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IN THE SUPREME COURT OF CALIFORNIA

SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT,
Petitioner,
v.
SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN LUIS OBISPO,
Respondent.

JANE DOE,
Real Party in Interest.

AFTER A DECISION BY THE SECOND APPELLATE DISTRICT, DIVISION SIX, CASE NO. B337957
SAN LUIS OBISPO SUPERIOR COURT • CRAIG B. VAN ROOYEN, JUDGE • CASE NO. 22CV0384

PETITION FOR REVIEW

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ISSUE PRESENTED

Under the Government Claims Act (Claims Act) (Gov. Code, § 810 et seq.), a plaintiff must present a public entity with a timely claim for damages before suing. A plaintiff who fails to do so has no cause of action. (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1240–1243 (*Bodde*).) Assembly Bill No. 218 (2019–2020 Reg. Sess.) (AB 218) eliminated the presentation requirement retroactively in childhood sexual assault cases.

In *West Contra Costa Unified School District v. Superior Court of Contra Costa County* (2024) 103 Cal.App.5th 1243 (*West Contra Costa*), the Court of Appeal held that eliminating the claim presentation requirement retroactively did not violate the state and federal Constitutions. This Court denied review in *West Contra Costa* over Justice Groban's dissent.

This new case presents the same issues, yet it divided the Court of Appeal. Two Justices denied writ relief and cited *West Contra Costa*. (Order 1.) But Justice Yegan dissented because *West Contra Costa* "is problematic." (Order 2 (dis. opn. of Yegan, J.) (Dissent).) In his view, *West Contra Costa* "appears to conflate legitimate policy reasons" for AB 218 with the separate constitutional "public purpose" requirement, and "rais[es] serious due process concerns which the court did not resolve." (Dissent 2.)

This Court should review the question that has now divided fair-minded appellate justices: whether the Legislature violated the gift clause of the California Constitution, or the due process clauses of the California and federal Constitutions, when it eliminated the claim presentation requirement retroactively.

INTRODUCTION

Public entities enjoy sovereign immunity except as limited by the Claims Act, which comprehensively regulates their potential tort liability. As part of the Claims Act, before suing a public entity, a plaintiff generally must present a timely claim for damages. This claim presentation requirement is not a statute of limitations designed to weed out claims resting on stale evidence. Instead, the claim presentation requirement enables public entities to plan ahead, including budgeting for and settling disputes early, recognizing that taxpayers ultimately bear the costs incurred by public entities. To promote effective planning, the claim presentation requirement operates as a precondition to liability, so public entities are not belatedly saddled with unforeseen expenses. As this Court has explained, a plaintiff who does not timely present a claim has no cause of action. (*Bodde*, *supra*, 32 Cal.4th at pp. 1240–1243.)

AB 218 repealed—retroactively—the claim presentation requirement in childhood sexual assault cases like this one brought by Jane Doe against the San Luis Coastal Unified School District. The question presented is whether AB 218 therefore violates the state and federal Constitutions.

This important question has provoked disagreement among Court of Appeal justices and superior court judges. While *West Contra Costa* and the majority below found no constitutional infirmities in AB 218, Justice Yegan concluded their analysis "is problematic." (Dissent 2.) Dozens of superior court judges have now confronted these issues and they are divided as well. (See

PWM 11.) Perhaps the best example of the unsettled terrain is that the school district that *lost* in *West Contra Costa* has also *prevailed* in another case, where it is now defending on appeal an order ruling AB 218 unconstitutional. (See *D.H. v. West Contra Costa Unified School District* (A169354, app. pending).) These conflicting results demonstrate the need for review in this Court.

The volume of litigation also counsels in favor of review. Justice Yegan explained that, in his Division alone, "we have four writ petitions challenging the constitutionality of Assembly Bill 218." (Dissent 3.)[1] And there are at least four pending appeals (from three Appellate Districts) challenging superior court orders finding unconstitutional AB 218's retroactive elimination of the claim presentation requirement. (*Doe v. Acalanes Union High School District* (A169013, app. pending); *D.H. v. West Contra Costa Unified School District* (A169354, app. pending); *Doe R.L. v. Merced City School District* (F087142, app. pending); *Doe v. North Monterey County Unified School District* (H052095, app. pending).) That is to say nothing of trial-level litigation. As Justice Yegan noted, there are nearly 5,000 cases pending against the County of Los Angeles alone. (Dissent 3.) Courts and litigants need guidance on this rising tide of litigation.

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[1] The public entities in those other cases are filing petitions for review in this Court today. (*Roe #2 v. Superior Court* (B334707, petn. for review pending); *County of Ventura v. Superior Court of Ventura County* (B341258, petn. for review pending); *County of Ventura v. Superior Court of Ventura County* (B341260, petn. for review pending).)

The stakes are high, as Justice Yegan outlined. "The fiscal impact flowing from the Legislature's erasure of time-honored rules concerning the filing of claims for personal injury against public entities is unprecedented. Local governmental entities and school districts are likely unable to litigate and compensate victims, even if they are worthy of compensation." (Dissent 3.) "The Legislature has provided no funding for the payment of these newly revived claims." (*Ibid.*) "There is no local 'reserve' fund to pay these claims and many insurance policies held by the public entities have lapsed long ago." (*Ibid.*)

A report last week by the Fiscal Crisis & Management Assistance Team—a study group created by the Legislature in 1991, via Assembly Bill No. 1200—confirms Justice Yegan's fears. "The best estimate of the dollar value of claims brought to date because of AB 218 is $2–$3 billion for local educational agencies." (Fiscal Crisis & Management Assistance Team, Childhood Sexual Assault: Fiscal Implications for California Public Agencies (Jan. 2025) p. 2 <https://tinyurl.com/2yajxv3w> [as of Feb. 2, 2025] (hereafter, FCMAT Report).) "Because AB 218 claims were not anticipated by local governmental agencies or their risk partners, few reserved funds for this risk exposure." (*Id.* at p. 13.) "AB 218 claims are settled or adjudicated at current dollar values, not the value of the dollar at the time of the offense (i.e., 1970s-1990s). Public agency insurance is not structured for this." (*Id.* at pp. 14–15.) Not surprisingly, "The insurance market for public agencies is perilously unstable." (*Id.* at p. 3.)

Justice Yegan's dissent referred to the many amicus briefs filed in *West Contra Costa*. Some collected eye-opening statistics about nuclear verdicts in AB 218 cases, and the way that AB 218 undermines the general welfare by threatening public schools with insolvency and taxpayers with providing bailouts. This Court has been attentive to similar concerns before. (E.g., *Stone v. Alameda Health System* (2024) 16 Cal.5th 1040, 1083 [rejecting statutory interpretation subjecting local public entities to increased liability as befitting a scheme to "rob Peter to pay Paul"]; *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1193 [increased liability could interfere with school districts' constitutional mandate to provide free public education], 1195–1196 [worrying about school districts' "fiscal ability to carry out their public missions"].)

Moreover, as Justice Yegan recognized, "There is no practical way for the entities to truly defend themselves." (Dissent 3.) "Many alleged sexual abusers and potential witnesses would likely be unavailable and/or dead." (*Ibid.*) "[C]ivil litigation contemplates an adversarial process. That is illusory in most of these stale cases." (*Ibid.*)

These practical concerns alone would justify this Court's review. And yet these concerns arrive at this Court's doorstep in the form of genuine constitutional disputes worthy of this Court's attention—all the more reason to grant review.

Doe alleges she was sexually assaulted by her fifth-grade teacher in 1987 and 1988. Thirty-five years later, long after memories have faded and witnesses have died or relocated, Doe

sued her teacher's employer, the District. Because she had not presented a claim to the District, she lost her ability to sue the District decades ago. A "cause of action against the School District [i]s extinguished" when no claim is presented. (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 210 (*Shirk*), superseded by statute on another ground as stated in *Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 914–915.)

In 2019, the Legislature enacted AB 218, which eliminated the claim presentation requirement for childhood sexual assault suits. Doe contends that AB 218 relieved her of the obligation to present a claim. The District moved for judgment on the pleadings and articulated constitutional reasons why AB 218 should not be applied to Doe's case. The superior court denied the motion and the Court of Appeal denied writ relief (over Justice Yegan's dissent), but other courts have accepted the District's constitutional arguments.

First, AB 218 violates the gift clause, which provides that the "Legislature shall have no power . . . to make any gift or authorize the making of any gift, of any public money or thing of value to any individual." (Cal. Const., art. XVI, § 6.) The Legislature violates the gift clause when it "create[s] a liability against the state for any past act of negligence upon the part of its officers." (*Chapman v. State* (1894) 104 Cal. 690, 693, emphasis omitted (*Chapman*).) AB 218 created new liability that did not previously exist—that is the "gift" or "thing of value" the Legislature conferred. Before AB 218, the District had sovereign immunity because Doe did not present a claim and thus did not

satisfy all provisions of the Claims Act waiving that immunity. (*Bodde*, *supra*, 32 Cal.4th at p. 1243.) AB 218 runs afoul of the gift clause by resurrecting Doe's extinguished claims.

West Contra Costa tried to avoid the gift clause problem by reimagining the claim presentation requirement, but that approach leads to an unavoidable tension in this Court's decisions. Relying on this Court's decision in *Quigley v. Garden Valley Fire Protection Dist*. (2019) 7 Cal.5th 798 (*Quigley*), *West Contra Costa* distinguished a public entity's "substantive liability" for alleged wrongdoing from its "consent to suit" (*West Contra Costa*, *supra*, 103 Cal.App.5th at p. 1261). According to *West Contra Costa*, a school district's "substantive liability" came into existence when the alleged tortious conduct occurred, and AB 218 merely furnished the plaintiff a remedy later (like extending a statute of limitations). (*Ibid.*)

But in *Bodde*, this Court held that claim presentation requirements " 'confine potential governmental *liability* to rigidly delineated circumstances . . . if the various requirements of the [Claims A]ct are satisfied.' " (*Bodde*, *supra*, 32 Cal.4th at p. 1243, emphasis added, quoting *Williams v. Horvath* (1976) 16 Cal.3d 834, 838 (*Williams*).) *Bodde* does not acknowledge the existence or role of underlying "substantive liability." Nor would it make sense: it cannot be true that the Claims Act confines governmental "liability" while ignoring preexisting "substantive liability."

This conflict is stark and worthy of review. Does a public entity become subject to "liability" only when the prerequisites to

waiving sovereign immunity in the Claims Act are satisfied (as the District contends), or does a public entity face "substantive liability" as soon as its employees engage in tortious conduct that could later give rise to a claim, under Government Code section 815.2 (as Doe contends)?

Second, legislation must serve a "public purpose" to survive gift clause scrutiny. *West Contra Costa* ascribed to AB 218 the purpose of providing compensation to sexual assault victims. That analysis was misguided, Justice Yegan showed, because it "conflate[d] legitimate policy reasons motivating [AB 218] with the constitutional requirement that the appropriation of funds for individual plaintiffs must serve a public purpose." (Dissent 2.) The Legislature's purpose was undeniably sympathetic, but it was quintessentially private (not public). It benefits only the individuals whom AB 218 enables to sue.

Finally, AB 218 violates state and federal due process principles. Under the Claims Act, the District enjoyed a form of vested right, akin to immunity or repose, that arose when a plaintiff like Doe failed to present a timely claim. Resurrecting extinguished claims (as AB 218 does) interferes with this immunity and therefore violates due process. (See *William Danzer & Co. v. Gulf & S.I.R. Co.* (1925) 268 U.S. 633, 637 [45 S.Ct. 612, 69 L.Ed. 1126] (*Danzer*) [federal due process]; *Carr v. State of California* (1976) 58 Cal.App.3d 139, 146–148 (*Carr*) [state due process].) Here, the Court of Appeal majority did not discuss due process, but did rely on the *West Contra Costa* opinion, which bypassed a school district's due process arguments

by concluding it lacked standing to raise them under the political subdivision rule. These issues also merit review, as explained below.

* * *

We echo Justice Yegan's closing remarks: "The seriousness of the issue and magnitude of the cost to the public fisc warrant review. I urge the Supreme Court to grant review of this important issue." (Dissent 4.)

STATEMENT OF THE CASE

A. Doe invokes Assembly Bill No. 218 and sues the San Luis Coastal Unified School District.

Real party Jane Doe alleges that her fifth-grade teacher at Morro Elementary School sexually assaulted her during the 1987–1988 school year. (PWM, exh. 2, pp. 40–41.) At that time, Morro was a school within the District. (PWM, exh. 2, p. 40.)

The teacher's abuse was soon reported to law enforcement, who arrested him in May 1988. (PWM, exh. 2, p. 41.) The teacher "was charged with ten counts of felony child molestation against four minor victims, including Plaintiff." (PWM, exh. 2, p. 42.) Doe alleges that she testified at trial and that the teacher "was ultimately sentenced for his crimes." (*Ibid.*)

Doe filed this lawsuit against the District in 2022. (PWM, exh. 1, p. 12.) She claims the District failed to take reasonable measures to protect her from her former teacher's sexual assaults. (PWM, exh. 2, p. 38.) Doe pleaded an array of negligence and related common law claims. (PWM, exh. 2, pp. 48–59.)

The Claims Act generally requires a person to present a claim to a public entity before filing a lawsuit. But Doe alleges she was relieved of that obligation (PWM, exh. 2, p. 38) by AB 218's amendment to Government Code section 905, subdivision (m), which exempts "Claims made pursuant to [s]ection 340.1 of the Code of Civil Procedure for the recovery of damages suffered as a result of childhood sexual assault."

B. The District moves for judgment on the pleadings on the ground that AB 218 is unconstitutional. The superior court denies the motion; the Court of Appeal denies writ relief.

The District answered the complaint and pleaded that Doe did not comply with the Claims Act. (PWM, exh. 3, pp. 65–66.)

The District later moved for judgment on the pleadings based on Doe's failure to present a timely claim. (PWM, exh. 4, pp. 73–74.) The District recognized that AB 218 retroactively eliminated the claim presentation requirement for childhood sexual assault plaintiffs like Doe, but the District contended that AB 218 is unconstitutional. (PWM, exh. 4, pp. 75–86.) The respondent superior court held a hearing (see PWM, exh. 9, pp. 560–576), and later denied the motion (PWM, exh. 10, pp. 578–587). The District filed a writ petition, but the Court of Appeal denied writ relief; the majority cited *West Contra Costa* without elaboration. (Order 1.)

LEGAL ARGUMENT

I. Review is needed to determine whether AB 218 violates the California Constitution's gift clause.

A. AB 218 confers a gift or thing of value.

Article XVI, section 6, of the California Constitution prohibits the Legislature from conferring a "gift" or "thing of value." A legislative appropriation of money could be a gift. Furnishing a plaintiff with a cause of action "based on newly created liability can also constitute a gift." (*West Contra Costa*, *supra*, 103 Cal.App.5th at p. 1258, fn. 8.)

More than a century ago, this Court clarified that "it would violate the gift clause for the Legislature to retroactively authorize an action based on negligence, because 'the [L]egislature has no power to *create* a liability against the state for any such past act of negligence upon the part of its officers.' " (*West Contra Costa*, *supra*, 103 Cal.App.5th at p. 1258, quoting *Chapman*, *supra*, 104 Cal. at p. 693.)

AB 218 violates this *Chapman* standard. The District is a public entity. Doe alleges negligence by the District's officers. The alleged conduct occurred in the 1980s. Doe did not timely present a claim to the District in the 1980s—or thereafter—so she had no cause of action against the District before AB 218 was enacted. (*Shirk*, *supra*, 42 Cal.4th at p. 210 [a "cause of action against the School District [i]s extinguished" when no claim is timely presented]; *Bodde*, *supra*, 32 Cal.4th at p. 1240 ["the claim presentation requirement is a 'state substantive limitation[ ] couched in procedural language' "].) It follows that AB 218 has

enabled Doe to allege claims for past negligence that were not actionable before AB 218's enactment. Yet the Legislature has no power to create such retroactive liability.

West Contra Costa rejected this analysis and unearthed tensions on fundamental points governing public entity liability and the primacy of state sovereign immunity—a term that *West Contra Costa* does not even mention. Those points warrant this Court's attention.

Relying on a separate portion of *Chapman*, *West Contra Costa* held that what matters is "whether the underlying conduct for which the Legislature provided a right to sue was conduct for which the state was *liable at the time it occurred*." (*West Contra Costa*, *supra*, 103 Cal.App.5th at p. 1259.) This was determinative, according to that court, because the District's "substantive liability" sprang into existence at the moment of misconduct (decades earlier), and the Legislature was always free to furnish Doe a remedy later, as it eventually did in AB 218. (See *ibid.*) In other words, because "the District's substantive liability existed when the alleged wrongful conduct occurred . . ., AB 218 imposes no new substantive liability under *Chapman*'s gift clause analysis." (*Id.* at p. 1261.)

The key step in the Court of Appeal's analysis was to distinguish *liability* from *substantive liability*. (*West Contra Costa*, *supra*, 103 Cal.App.5th at pp. 1259–1261.) As the court saw it, the District was "substantively liable" all along—starting when the alleged misconduct occurred decades earlier. When Doe failed to present a timely claim, she could not prove the District's

"liability," because a public entity is liable only if a claim is timely presented. But to the *West Contra Costa* court that did not matter because "the claims presentation requirement is not part of the District's substantive liability." (*Id.* at p. 1259.) So long as the District's "substantive liability" remained intact (and inchoate), Doe could await the day when the Legislature finally provided her a remedy by eliminating the claim presentation requirement.

West Contra Costa drew on this Court's decision in *Quigley*, *supra*, 7 Cal.5th 798, which mentions the "substantive liability" of public entities a handful of times in describing the historical origins of the Claims Act and its waiver of sovereign immunity. If *Quigley*'s use of "substantive liability" carries the meaning identified by *West Contra Costa*, however, then it presents an intractable conflict with this Court's decisions in *Chapman*, *Bodde*, and their progeny. In *Chapman*, this Court did not mention "substantive liability." Instead, the Court said "the legislature has no power to create a *liability* against the state for any past act of negligence upon the part of its officers." (*Chapman*, *supra*, 104 Cal. at p. 693, emphasis added.) And later in *Bodde*, this Court defined claim presentation requirements as " ' "elements of the plaintiff's cause of action" ' " that " 'confine potential governmental *liability* to rigidly delineated circumstances . . . if the various requirements of the [Claims A]ct are satisfied.' " (*Bodde*, *supra*, 32 Cal.4th at pp. 1240, 1243, emphasis added, quoting *Williams*, *supra*, 16 Cal.3d at pp. 838, 840.) Taken together, these cases say a public entity is not *liable*

unless a claim is timely presented, and the Legislature may not change that after the fact. Yet that conclusion is irreconcilable with *West Contra Costa*'s stance (drawn from *Quigley*) that substantive liability existed all along—whether or not a claim is presented—and that the Legislature may remove the barrier to recovery at any time.

These decisions need to be reconciled. That is reason enough to grant review. But there is one more critical point. *West Contra Costa*'s approach to "substantive liability" calls into question the operation of the claim presentation requirement and precipitates other doctrinal problems that will continue to divide fair-minded judges in future cases..

West Contra Costa erased the difference between claim presentation requirements and statutes of limitations. (*West Contra Costa*, *supra*, 103 Cal.App.5th at p. 1264 ["neither is a substantive aspect of the underlying tortious conduct for which the State has waived immunity"]; *ibid.* ["When the Legislature waives either requirement, it exposes the public treasury to potential causes of action that were otherwise barred"].) *West Contra Costa* tried to cabin the mischief of its own reasoning. (*Id.* at pp. 1261–1262 ["Although we agree that the claim presentation requirement and the statutes of limitations are distinct, the District has not shown the differences are material *for purposes of the gift clause*"].) But it is unclear (and the Court of Appeal did not explain) why the type of challenge a party raises should affect the analysis. In any event, the Court of Appeal's apparent conflation of statutes of limitations and claim

presentation requirements is difficult to square with *Shirk*, in which this Court explained that a law reviving causes of action barred by a statute of limitations did *not* circumvent the claim presentation requirement. (*Shirk*, *supra*, 42 Cal.4th at pp. 204–205.)

West Contra Costa's reasoning—which the Court of Appeal here accepted uncritically—is "problematic," to borrow Justice Yegan's term. (Dissent 2.) And the result is deeply troubling to public entities, who rely on claim presentation requirements to plan their affairs and budget their resources. Their planning is not limited to processing lawsuits for which timely claims *were* presented; planning also embraces *not* saving resources for *unforeseen* lawsuits—those for which no claim was presented. *West Contra Costa* upends this long-held understanding of claim presentation requirements. Now, apparently, the Legislature is free at will to change *both* statutes of limitations *and* claim presentation requirements retroactively. That handicaps proper planning by responsible public entities and imperils their solvency. This Court's review is warranted.

B. AB 218 serves no public purpose.

To satisfy the gift clause, legislation must serve a public purpose. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 746 (*Carleson*).) Courts evaluate whether there is "a reasonable basis" to find that a public purpose supports the Legislature's enactment. (*Ibid.*) This mode of analysis is not overly deferential to the Legislature. As this Court has cautioned, the gift clause "is not to receive a strict and narrow interpretation, but its spirit, as

well as its language, is to be followed." (*Conlin v. Board of Sup'rs of City and County of San Francisco* (1893) 99 Cal. 17, 21 (*Conlin*).) Any more deferential mode of review would, as Justice Yegan cautioned, interfere in courts' " 'duty to confront and resolve constitutional questions, regardless of their difficulty or magnitude.' " (Dissent 3–4, quoting *People v. Anderson* (1972) 6 Cal.3d 628, 640.)

West Contra Costa found that the legislative purpose behind AB 218 is to provide compensation to individuals who were sexually abused. (*West Contra Costa*, *supra*, 103 Cal.App.5th at pp. 1265 [AB 218 allows individuals to " 'seek compensation from the responsible parties' "], 1265 [" 'availability of tort relief' "], 1266 [" 'to seek justice' "].) Yet this Court has found that a similar purpose created a gift clause violation. In *Conlin*, the Court concluded that a law that appropriated money "for the 'relief' of the plaintiff" who " 'has not been able to obtain compensation' " at a time when "there was no legal obligation in favor of the plaintiff" violated the constitution. (*Conlin*, *supra*, 99 Cal. at p. 22.) This case presents the same scenario. Before AB 218 was enacted, plaintiffs like Doe could not obtain money from school districts via litigation; their failure to present a timely claim meant no obligation existed on which they could sue. The conflict between *West Contra Costa* and *Conlin* creates uncertainty warranting review.

West Contra Costa is at odds with other appellate decisions as well. While *West Contra Costa* concluded that paying money to victims via AB 218 served a *public* purpose, other courts would

likely find that to be an impermissibly *private* purpose, because only individual plaintiffs stand to gain. (See *Orange County Foundation v. Irvine Co.* (1983) 139 Cal.App.3d 195, 200 (*Orange County*) ["there must be some real benefit to the State which constitutes the 'public purpose' justifying the expenditure"]; accord, *Jordan v. California Dept. of Motor Vehicles* (2002) 100 Cal.App.4th 431, 450 [the unnecessary "expenditure of public funds" in litigation provides "no benefit to the public, only benefit to [a]ttorneys"].) This Court rarely has had occasion to address the gift clause, and existing precedent does not supply a workable test for delineating public purposes from private purposes. This case provides a good vehicle for the Court to provide guidance.

West Contra Costa papered over these tensions by analogizing AB 218 to general welfare programs that have survived gift clause scrutiny. (*West Contra Costa*, *supra*, 103 Cal.App.5th at pp. 1267–1269.) "[T]he public purpose underlying AB 218 is not fundamentally different from the public purpose involved in any of a number of other enactments providing assistance to other disadvantaged classes of persons 'in the best interests of the general public welfare.' " (*Id.* at p. 1269.) But in fact the differences are stark.

General welfare programs typically earmark funds, monitor usage for fraud and abuse, and audit performance. (E.g., Welf. & Inst. Code, § 14456 ["The [D]epartment [of Health Care Services] shall conduct annual medical audits of each prepaid health plan"].) AB 218 contains no such safeguards. (Cf. *City of Oakland*

v. Garrison (1924) 194 Cal. 298, 300–301 [public oversight of how funds are used is relevant to gift clause analysis].)

General welfare programs (like those discussed in *West Contra Costa*) also serve the *current* and *future* needs of eligible persons. AB 218 does not—its exclusive purpose is to remedy *past* wrongs. Also, general welfare programs do not limit their benefits to those who prevail in civil litigation, unlike AB 218. "Victims deserve a more compassionate and timely remedy than litigation." (FCMAT Report, *supra*, at p. 36.)

Furthermore, even if an analogy to general welfare programs were viable, the question remains whether the public actually *benefits* from AB 218. (See, e.g., *Orange County*, *supra*, 139 Cal.App.3d at pp. 200–201 [explaining that a law does not serve a "public purpose" if it returns "inadequate consideration" to the state].) It is debatable whether AB 218 returns a benefit to the public. "One of the frequent criticisms of AB 218 and AB 452 is that neither bill promoted a state policy priority of eliminating childhood sexual assault offenses, and neither addressed prevention." (FCMAT Report, *supra*, at p. 37.)

At the same time, AB 218 imposes a significant *burden* on the public. As Justice Yegan stated, "The Legislature has provided no funding for the payment of these newly revived claims . . . the Legislature will have to step in to avoid financial catastrophe at the local level." (Dissent 3 https://www.cbsnews.com/losangeles/news/southern-california-jury-delivers-135m-verdict-in-molestation-case-involving-middle-school-teacher/.) AB 218 precipitates an unprecedented wealth

transfer from public coffers to private individuals, imperiling the solvency of numerous school districts. (See, e.g., *Jury Delivers $135M Verdict in Molestation Case Involving Moreno Valley Middle School Teacher* (Oct. 11, 2023) CBS News <https://tinyurl.com/4eyksdbf> [as of Feb. 2, 2025].) AB 218 will lead to reduced funding for student activities and for retaining quality teachers and employees, none of which benefits the public.

A court cannot deduce whether legislation has "a reasonable basis" (*Carleson*, *supra*, 5 Cal.3d at p. 746) without weighing both its benefits and its burdens. *West Contra Costa* refused to engage in this balancing, contending these "would have been appropriate considerations for the Legislature in deciding whether to enact AB 218." (*West Contra Costa*, *supra*, 103 Cal.App.5th at p. 1270.) That punt negated the District's right to review and created its own conflict with *Carleson*, which establishes the standard governing these questions.

This case furnishes an excellent vehicle for examining whether providing a right to sue for individual compensation violates the gift clause, in part because there is no other colorable public purpose justifying AB 218. *West Contra Costa* properly recognized that any analysis of " 'moral or equitable obligation' " is foreclosed. (*West Contra Costa*, *supra*, 103 Cal.App.5th at p. 1266.) Nor could a purpose to deter future misconduct justify AB 218. The Legislature never suggested a deterrence rationale, and *West Contra Costa* correctly declined to rely on one. (*Id.* at p. 1269, fn. 15.) Indeed, that rationale simply would not make

sense. In 2009, the Legislature eliminated the claim presentation requirement *prospectively*. (See *id.* at p. 1257, fn. 7.) Eliminating the same requirement *retroactively* did not (and could not) deter public entities. It punished public entities the Legislature had lulled into a false sense of security (since 2009) that eliminating the claim presentation deadline would be forward-looking, not backward-looking. Thus, this case cleanly presents the question whether allowing a cause of action based on past conduct solely to compensate private individuals serves a public purpose under the gift clause.

II. Review is needed to determine whether AB 218 violates state and federal due process.

A. The District's due process arguments have merit.

The District's state and federal due process defenses are straightforward and persuasive, making this case an ideal vehicle for considering them as an independent alternative to the gift clause arguments.

Under the state Constitution, when the potential for liability against a public entity is extinguished because no claim is timely presented, a public entity's residual sovereign immunity (now rooted in the Claims Act) is restored. A new law disrupting that repose, one that (like AB 218) extends or eliminates the claim presentation period to create new liability or "resurrect" barred claims, violates due process. (*Carr*, *supra*, 58 Cal.App.3d at pp. 141–142, 147–148 [refusing to enforce new statute extending claim presentation period against state defendants

because once the statutory period lapsed, "appellants' right to bring an action was extinguished and respondents gained immunity from any potential liability"].)

Similarly, under the federal Constitution, a law exposing a defendant to new liability that had previously expired violates due process. (*Danzer*, *supra*, 268 U.S. at p. 635.) *Danzer* involved the interplay between an old law under which "the lapse of time not only barred the remedy, but also destroyed the liability of defendant to plaintiff," and a new law that revived that very liability. (*Id.* at p. 636.) The United States Supreme Court refused to construe the new statute "retroactively to create liability" that had already been extinguished, for that "would be to deprive defendant of its property without due process of law in contravention of the Fifth Amendment." (*Id.* at p. 637.)

The parallels between *Carr*, *Danzer*, and this case are unmistakable. When Doe did not timely present to the District the claim alleged in this action, her potential claim was extinguished, a limitation on liability arose, and the District became effectively immune from suit. In lifting that limitation on liability long after the fact, AB 218 resurrected Doe's claims just like the plaintiffs' claims were resurrected by legislatures in *Carr* and *Danzer*. In each prior case, however, courts held that the new statutes allowing plaintiffs to pursue causes of action for previously extinguished liability violated due process. To our knowledge, no court in California has rejected the merits of a school district's due process challenge to AB 218.

B. In reviewing due process arguments, the Court may wish to review an antecedent procedural question—whether the political subdivision rule bars a court from addressing the merits.

1. Federal law created—then confused—the political subdivision rule.

West Contra Costa held that a school district lacked standing under the political subdivision rule to raise due process challenges to AB 218. That procedural issue merits review here.

The United States Supreme Court initially applied the political subdivision rule in *Hunter v. City of Pittsburgh* (1907) 207 U.S. 161, 166 [28 S.Ct. 40, 52 L.Ed. 151] (*Hunter*), in which the small town of Allegheny invoked due process in resisting annexation by Pittsburgh under state law. The high court rejected Allegheny's effort categorically. "The number, nature, and duration of [municipal] powers . . . rests in the absolute discretion of the state," which may "modify or withdraw all such powers," and even "destroy" the municipality. (*Id.* at pp. 178–179.) Because "there is nothing in the Federal Constitution which protects them from these injurious consequences" (*id.* at p. 179), municipalities like Allegheny may not present federal constitutional challenges to state law. (Accord, e.g., *City of Newark v. State of New Jersey* (1923) 262 U.S. 192, 196 [43 S.Ct. 539, 67 L.Ed. 943] (*City of Newark*) ["The city cannot invoke the protection of the Fourteenth Amendment against the state"].)

A half-century later, in *Gomillion v. Lightfoot* (1960) 364 U.S. 339 [81 S.Ct. 125, 5 L.Ed.2d 110] (*Gomillion*), the high court course-corrected its earlier, categorical approach to the political

subdivision rule. *Gomillion* involved another boundary dispute—a Fifteenth Amendment challenge to a state law "which alters the shape of Tuskegee from a square to an uncouth twenty-eight-sided figure" that removed Black residents from the city. (*Id.* at p. 340.) The high court proffered "a correct reading of the seemingly unconfined dicta of *Hunter* and kindred cases" that was narrower than earlier cases suggested. (*Id.* at p. 344.) "[T]he Court has never acknowledged that the States have power to do as they will with municipal corporations regardless of consequences. Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution." (*Id.* at pp. 344–345.) Apparently the municipalities in *Hunter* and earlier cases had lost because "the State's authority [wa]s unrestrained by the particular prohibitions of the Constitution considered in those cases." (*Id.* at p. 344.) But *Gomillion* signaled this might not prove true of "relevant" constitutional arguments in future cases.

After zigzagging from *Hunter* to *Gomillion*, the high court retreated and has barely referenced the political subdivision rule since. Widespread confusion has ensued, as one scholar explains:

> [T]he Court has not offered a comprehensive rationale explaining what circumstances entail the doctrine's application or absence. This lack of a roadmap has left the status of municipalities the subject of great confusion among scholars, which is best summarized by Kathleen Morris's observation that "[t]hey are components of state governments except when they are not (but we do not know when or why), and they can bring constitutional claims

> except when they cannot (but we do not know when or why)."

(De Stasio, *A Municipal Speech Claim Against Body Camera Video Restrictions* (2018) 166 U. Pa. L.Rev. 961, 969 (hereafter De Stasio), footnotes omitted.)

The criticism from lower courts and commentators has been unsparing. (*Santa Monica Community College Dist. v. Public Employment Relations Bd.* (1980) 112 Cal.App.3d 684, 690 ["we find this rule shocking in the abstract and unfair in its application to District"]; De Stasio, at pp. 967–968 ["[the rule] has never been critically examined by the Court, despite being deployed inconsistently"; "[there is a] doctrinal thicket in the lower courts which is the result of its scattershot application"; "legal scholars view the *Hunter* doctrine as 'analytically muddled' and in need of an overhaul" (footnotes omitted)].)

A brief comparison of the reasoning and results of high court decisions reveals the confusion in this area. *Hunter* and its progeny hold that municipalities may not invoke due process in actions against their states. Yet some cities and school districts have won relief in the United States Supreme Court as plaintiffs suing states on Fourteenth Amendment theories. (E.g., *Romer v. Evans* (1996) 517 U.S. 620 [116 S.Ct. 1620, 134 L.Ed.2d 855] (*Romer*); *Washington v. Seattle School Dist. No. 1* (1982) 458 U.S. 457 [102 S.Ct. 3187, 73 L.Ed.2d 896] (*Seattle School District*).)

West Contra Costa waved away concerns about the consistency of high court precedent because *Romer* and *Seattle School District* did not discuss the political subdivision rule. (*West Contra Costa*, *supra*, 103 Cal.App.5th at pp. 1275–1276 & fn. 23.)

But that bolsters the case for review. Why was it necessary to apply the political subdivision rule in *Hunter*, but unnecessary to do so in *Romer* and *Seattle School District*? What legal principle explains the difference in a way that could be applied here in this case and others?

2. State-law decisions on the political subdivision rule contribute to the doctrinal confusion.

California cases have followed federal decisions, and the uncertainty in federal decisions has infected state law. This Court invoked the political subdivision rule in *Star-Kist Foods, Inc. v. County of Los Angeles* (1986) 42 Cal.3d 1 (*Star-Kist*), although its discussion was dicta because the Court ultimately applied an exception and allowed municipal defendants to raise a Commerce Clause challenge (*id.* at p. 10). More recently, however, this Court adjudicated the merits of a city's Fourteenth Amendment challenge to a state law without mentioning the political subdivision rule. (*Coral Construction, Inc. v. City and County of San Francisco* (2010) 50 Cal.4th 315, 326–332.) This Court did not explain why it considered the political subdivision rule in *Star-Kist*, but not *Coral Construction*, mirroring the high court's perplexing silence in *Romer* and *Seattle School District*.[2]

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[2] Separately, this Court has never addressed whether the political subdivision rule bars *state* due process challenges to state laws. A few lower courts have imported the rule from the federal constitutional context, either without any reasoning or by borrowing the reasoning from the high court's decisions. (See *West Contra Costa*, *supra*, 103 Cal.App.5th at p. 1274.) This issue

3. This case highlights four distinct areas of doctrinal uncertainty suitable for review.

First, most political subdivision rule cases involve municipal *plaintiffs* pursuing relief against *states*; it is unclear why the rule should bar a public entity *defendant* from challenging state laws in order to defend itself against *private plaintiffs*. The public entities in *Star-Kist* were defendants, but as this Court explained they were arguably "the 'true' plaintiffs in this controversy" (*Star-Kist*, *supra*, 42 Cal.3d at p. 5, fn. 6), so the Court had no need to analyze why the political subdivision rule should apply to true defendants (like the District here). *Star-Kist* also involved municipalities' duty to enforce state law (*id.* at p. 5), a feature common to cases involving assessments or injunctions. That feature is absent here, as it will be in many cases where private plaintiffs sue public entities for money damages. This case therefore falls into a gap this Court has yet to address.

Second, *Star-Kist* seemed to endorse a narrow reading of the political subdivision rule. This Court "[a]ccept[ed]" the Fifth Circuit's framing in *Rogers v. Brockette* (5th Cir. 1979) 588 F.2d 1057 (*Rogers*), that the rule should be "applied in two types of cases": disputes over boundaries and benefits. (*Star-Kist*, *supra*, 42 Cal.3d at p. 8.) Neither boundaries nor benefits were disputed in *West Contra Costa*, yet that court applied the political subdivision rule against a school district. (*West Contra Costa*,

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should be considered as well, alongside the application of the political subdivision rule to federal constitutional arguments.

supra, 103 Cal.App.5th at p. 1275.) That result captures the uncertainty about how narrowly or broadly the rule applies.

Third, even if the political subdivision rule were sound in theory, there may be practical reasons not to apply it monolithically to all public entities, including school districts. *West Contra Costa* downplayed the District's "bold but erroneous assertion" that " 'school districts are different and not subject to the political-subdivision rule.' " (*West Contra Costa*, *supra*, 103 Cal.App.5th at p. 1275.) But the point is open to debate. After all, some of the most significant decisions *not* applying the political subdivision rule have involved school districts. (See *Rogers*, *supra*, 588 F.2d 1057, and *Seattle School District*, *supra*, 458 U.S. 457].) As the Third Circuit has explained, school districts—unlike states—are "accorded Fifth Amendment due process protection," so "the Constitution can apply to them differently." (*In re Real Estate Title and Settlement Services Antitrust Litigation* (3d Cir. 1989) 869 F.2d 760, 765, fn. 3.) There are contrary cases and arguments, to be sure, but the unique role of school districts in educating the next generation of citizens—a purpose so fundamental it is enshrined in our Constitution—adds to the list of reasons to grant review and settle these questions.

Fourth, broadly applying the political subdivision rule can (inadvertently) *harm* the interests of the state that the rule is intended to protect. That is possible whenever a public entity mounts a defense that aligns with (rather than diverges from) the state's interests. This case offers an example. The state must "provide for a system of common schools" and ensure their

support. (Cal. Const., art. IX, §§ 5, 14.) Accordingly, this Court has held that the *state* must safeguard schoolchildren's constitutional right to public education by stepping in to fund insolvent local school districts. (See *Butt v. State of California* (1992) 4 Cal.4th 668, 685.) AB 218 poses that very threat here, as Justice Yegan observed. (See Dissent 3.) Viewed from this perspective, the District's defensive challenge to AB 218 here does not "invoke the protection of the Fourteenth Amendment *against* the state." (*City of Newark*, *supra*, 262 U.S. at p. 196, emphasis added.) Instead, the District's position should *benefit* the state, since AB 218 threatens to divert from public schools the funding the state is obligated to provide. At minimum, the District's position would avoid unnecessary bailouts caused by astronomical verdicts. It seems doubtful the political subdivision rule was intended to bar litigation in this posture.

For these reasons, applying the political subdivision rule here is difficult to justify. This Court's review of the various due process issues presented is warranted.

CONCLUSION

This Court should grant the District's petition for review.

February 3, 2025

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.504(d)(1).)

The text of this petition consists of 6,979 words, as counted by the program used to generate the petition.

Dated: February 3, 2025

Peder K. Batalden

California Court of Appeal,
Second District, Division Six
Case No. B337957

01/23/2025 Court of Appeal Opinion

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT, Petitioner, v. THE SUPERIOR COURT OF SAN LUIS OBISPO COUNTY, Respondent; JANE DOE, Real Party in Interest.	B337957 (Super. Ct. No. 22CV0384) (San Luis Obispo County) O R D E R COURT OF APPEAL – SECOND DIST. FILED Jan 23, 2025 EVA McCLINTOCK, Clerk Yalitza Esparza Deputy Clerk

THE COURT:

The petition for a writ of mandate or, alternatively, prohibition is denied. (*West Contra Costa Unified School District v. Superior Court of Contra Costa County* (2024) 103 Cal.App.5th 1243.)

GILBERT, P.J.

CODY, J.

YEGAN, J., Dissenting:

I dissent. I would entertain the petition and issue an order to show cause.

The First District's opinion in *West Contra Costa Unified School District v. Superior Court of Contra Costa County* (2024) 103 Cal.App.5th 1243, is problematic. The court did not adequately discuss the consideration required to avoid running afoul of the gift clause of the California Constitution. (Cal. Const., art. XVI, § 6; *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 745-746 ["in determining whether an appropriation of public funds is to be considered a gift, the primary question is whether the funds are to be used for a 'public' or 'private' purpose; the benefit to the state from an expenditure for a public purpose is in the nature of consideration"].) The court appears to conflate legitimate policy reasons motivating Assembly Bill 218 (2019-2020 Reg. Sess.) (Stats. 2019, ch. 861, § 1) with the constitutional requirement that the appropriation of funds for individual plaintiffs must serve a public purpose. Additionally, retroactive elimination of sovereign immunity raises serious due process concerns which the court did not resolve.

"The determination of what constitutes a public purpose is primarily a matter for the Legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis." (*County of Alameda v. Carleson, supra,* 5 Cal.3d at p. 746.) In 2008, the Legislature eliminated the claims presentation requirement prospectively for claims arising from childhood sexual abuse occurring after January 1, 2009. The California Supreme Court acknowledged that by providing for prospective application, the Legislature "took measured actions that protected public entities from potential liability for stale claims regarding conduct allegedly occurring before January 1, 2009, in which the public entity had no ability to do any fiscal planning, or opportunity to investigate the matter and take remedial action." (*Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 916.) In 2019, in enacting Assembly Bill 218, the Legislature abandoned its "measured" approach. The Legislature's retroactive elimination of sovereign immunity for claims arising from childhood sexual assault no matter the length of the

delay in presentation, while also allowing limitless liability, has no reasonable basis.

The fiscal impact flowing from the Legislature's erasure of time-honored rules concerning the filing of claims for personal injury against public entities is unprecedented. Local governmental entities and school districts are likely unable to litigate and compensate victims, even if they are worthy of compensation. These stale claims are not defendable even with a theoretical defense. Many alleged sexual abusers and potential witnesses would likely be unavailable and/or dead. There is no local "reserve" fund to pay these claims and many insurance policies held by the public entities have lapsed long ago.

According to amicus briefing in *West Contra Costa*, *supra*, there are four thousand nine hundred cases pending in Los Angeles County alone alleging misconduct in the foster care setting dating back as far as the 1950s. In our division, we have four writ petitions challenging the constitutionality of Assembly Bill 218. There is a thirty-five-year delay in bringing the action in one case and a fifty-year delay in another. How does an entity go about defending these cases? The Legislature has provided no funding for the payment of these newly revived claims. If the local entities are indeed political subdivisions of the state, the Legislature will have to step in to avoid financial catastrophe at the local level. The legislative goal is laudable, but civil litigation contemplates an adversarial process. That is illusory in most of these stale cases. The Legislature has provided that these claims are to be resolved in court. But, there will be nothing to resolve other than the amount of damages. There is no practical way for the entities to truly defend themselves.

" 'Courts do not sit as super-legislatures to determine the wisdom, desirability or propriety of statutes enacted by the Legislature.' " (*In re J.C.* (2017) 13 Cal.App.5th 1201, 1207.) "It is not for us to pass judgment on the wisdom or desirability of [the Legislature's] policy choices." (*People v. Hardin* (2024) 15 Cal.5th 834, 864.) Nonetheless, "[o]ur duty to confront and resolve constitutional

questions, regardless of their difficulty or magnitude, is at the very core of our judicial responsibility. It is a mandate of the most imperative nature." (*People v. Anderson* (1972) 6 Cal.3d 628, 640.)

This petition presents a compelling case for review. We should issue the order to show cause and review the constitutionality of Assembly Bill 218. The seriousness of the issue and magnitude of the cost to the public fisc warrant review. I urge the Supreme Court to grant review of this important issue.

YEGAN, J.

PROOF OF SERVICE
Doe v. San Luis Coastal Unified School District
COA Case No. B337957

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On February 3, 2025, I served true copies of the following document(s) described as **PETITION FOR REVIEW** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

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

Executed on February 3, 2025, at Burbank, California.

Emma Henderson

SERVICE LIST
Doe v. San Luis Coastal Unified School District
COA Case No. B337957

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