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.