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Supreme Court of California
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No. S279137

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

TAMELIN STONE, et al.,
Plaintiffs and Appellants,

vs.

ALAMEDA HEALTH SYSTEM;
Defendant and Respondent.

AMICUS BRIEF OF LOCAL GOVERNMENT ASSOCIATIONS IN SUPPORT OF RESPONDENT ALAMEDA HEALTH SYSTEM

After a Decision by the
First Appellate District, Case No. A164021
On Appeal from the Superior Court of California
County of Alameda, Case No. RG21092734
Hon. Noel Wise, Judge Presiding

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

This is the initial certificate of interested entities or persons submitted on behalf of Amici Curiae California Association of Joint Powers Authorities, California Special Districts Association, California State Association of Counties, and the League of California Cities in the case number listed above.

The undersigned certifies that there are no interested entities or persons that must be listed in this Certificate under California Rules of Court, rule 8.208.

DATED: December 5, 2023

COLANTUONO, HIGHSMITH & WHATLEY, PC

MICHAEL G. COLANTUONO
PAMELA K. GRAHAM
Attorneys for Local Government Amici

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE CHIEF JUSTICE:

Pursuant to California Rules of Court, Rule 8.520(f), the California Association of Joint Powers Authorities, California Special Districts Association, California State Association of Counties, and the League of California Cities (together, "Local Government Amici") respectfully seek leave to file the amicus curiae brief accompanying this application in support of Respondent Alameda Health System.

This brief will assist the Court by offering perspective and analysis on these issues:

- the policy context for the legal issues presented, including the great diversity of local government agencies it affects;
- the significance of the relevant statutes designating the Alameda Health System as a distinct agency and the use of similar language in the Joint Exercise of Powers Act, Government Code sections 6500 et seq. and its implications for the myriad local agencies formed under that law.

- The need for a clearer standard than the “hallmarks of sovereignty” test the opinion on review applies, which creates uncertainty and will engender much litigation if not clarified.

For the reasons stated in this application and in the attached amicus brief, Local Government Amici respectfully request leave to file that brief.

The application and amicus brief were authored by Michael G. Colantuono and Pamela K. Graham pro bono on behalf of the Local Government Amici. No other person or entity made a monetary contribution to its preparation and submission.

DATED: December 5, 2023 **COLANTUONO, HIGHSMITH & WHATLEY, PC**

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Attorneys for Local Government Amici

INTEREST OF AMICI CURIAE

The **California Association of Joint Powers Authorities** (CAJPA) is a statewide association for insurance-based risk-sharing pools and has served as an informational and educational network for joint powers authorities since 1981. CAJPA strives to provide leadership, education, advocacy, and assistance to public-sector risk pools to enable them to enhance their effectiveness. Its membership consists of more than 80 joint powers authorities representing municipalities, school districts, transit agencies, fire agencies, and similar public entities throughout the State of California.

The **California Special Districts Association** (CSDA) is a non-profit corporation with a membership of more than 1,000 special districts throughout California. CSDA was formed to promote good governance and to improve core local services through professional development, advocacy, and other services for all types of independent special districts. Independent special districts provide a wide variety of public services to urban, suburban, and rural communities, including irrigation, water, recreation and park, cemetery, fire protection, police protection, library, utilities, harbor, healthcare, community-service districts, and more. CSDA monitors issues of concern to special districts, identifies those matters that are of statewide significance, and has identified this case as both

presenting a potential harm to special districts and of statewide significance.

The **California State Association of Counties** (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The **League of California Cities** (Cal Cities) is an association of 476 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

This issues in this case are significant to Local Government Amici because the local governments they represent form a variety

of public agencies to carry out all manner of critical public functions throughout California. The governing structure and powers of these agencies can vary significantly depending on the source of their authority and the purpose for which they are formed. Thus, the Court of Appeal's narrow reading of Labor Code exemptions for public entities and its application of the "sovereign powers doctrine" is an issue of statewide significance that has a direct effect on core functions of local government.

AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT

INTRODUCTION AND SUMMARY OF ARGUMENT

The Court of Appeal concluded that Alameda Health System (AHS) should be treated differently from other public entities under the wage and hour laws because:

- it perceived no "positive indicia of a contrary legislative intent" to exempt AHS in the Wage Order, Labor Code, and AHS's principal act;[1] and
- applying the wage and hour laws to AHS would not "implicate any sovereign governmental powers."

But this reasoning turns California's well-established principles of local governance and municipal immunity on its head, unsettling the expectations of those local governments, those who bargain for their employees, and the public they serve. The opinion on review ("Opinion") creates uncertainty and exposes public agencies to liability the wage and hour statutes did not intend.

The Opinion's parsing of rules based on "sovereignty" of a government agency is incompatible with the reality of local

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[1] Government Code section 56056 defines "principal act" to mean: "in the case of a district, the law under which the district was formed and, in the case of a city, the general laws or the city charter."

government service delivery in this State. California's diverse communities rely on public agencies in a plenitude of forms to provide critical services. The Opinion's standard for immunity from wage orders written with the private sector in mind based on ad hoc consideration of ill-defined aspects of municipal sovereignty unsettles expectations, creates ambiguity, invites litigation, and threatens this system of governance. It fails to consider the reality of public agency structure and the important role that Joint Powers Agencies (JPAs)[2] and various types of special districts created under hundreds of general and special statutes play in delivering critical services around California. Treating these entities as less than sovereign will discourage use of these statutes, as well as creativity and efficiency in meeting the needs of California's diverse communities. The choice of form of service-delivery will be driven by liability concerns rather than how best to provide efficient services, responsive to local communities.

It is a basic assumption of the American legal system that general statutes do not apply to governments of all types absent

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[2] By this, we mean agencies formed under the Joint Exercise of Powers Act, Government Code section 6500 et seq. and not only the risk pools which take that form and are represented by Amicus CAJPA.

express intent to include them. (Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (2012) pp. 281–290.) Governmental immunity is the rule in California, and governmental liability is limited to exceptions expressed by statute. (Gov. Code, § 815.)

The Labor Code and wage orders are no exception. Their terms, history, and judicial application reveal positive indicia of legislative intent to exclude **all** public entities from their reach, not just those with ill-defined "sovereign governmental powers." The Opinion's ambiguous standard breaks with longstanding judicial and administrative understandings that Labor Code and wage orders apply only to private-sector employees, unless specifically made applicable to public employees (as the provisions at issue have not). Public-sector employment is typically structured by statute or collective bargaining agreements under the generous protections for collective bargaining the Meyers-Milias-Brown Act, Government Code section 3500 et seq requires. But, instead of this bright-line rule, the Opinion requires a balancing analysis of each public agency's share of sovereign powers. This will require a generation of litigation to determine given the sheer diversity of government agencies in our State. Every form of public entity is empowered with distinct authorities tailored to such criteria as its constituents' needs, available funding, jurisdictional boundaries, and its interaction with

other local agencies. And statutory authority to create new forms of governments arrives with nearly every legislative session. (E.g., Stats. 2022, ch. 266 [adopting Gov. Code, § 62300 et seq., the "Climate Resilience Districts Act"].) The Opinion creates anything but a clear standard producing predictable results that public agencies need to ensure their ability to serve and to limit liability.

For these reasons, as well as those stated in Respondent's briefs, Local Government Amici respectfully request this Court reverse the Court of Appeal, affirm the trial court, and establish a clearer test that looks to the core issue — legislative intent framed by the presumptions noted above, not an imprecise typology of government forms.

JOINDER IN AHS'S STATEMENT OF THE CASE

Local Government Amici join in the Statement of the Case of Respondent Alameda Health System. (Cal. Rules of Court, Rules 8.204 and 8.520.)

ARGUMENT

I. LOCAL GOVERNMENT AGENCIES ARE EXTRAORDINARILY DIVERSE

California communities rely on the public agencies they create pursuant to statute, as well as those the Legislature creates pursuant

to special legislation, to perform critical functions. While acknowledging statutory exemptions in the Labor Code and wage orders for some public entities, the Opinion concludes those exemptions only apply if a public entity exercises some ill-defined aspects of "municipal sovereignty." Thus, the Opinion subjects thousands of local public agencies critical to local governance to a different legal standard from California's 482 cities and 58 counties. But, it fails to consider the reality of public agency structure and the important role that special districts and Joint Powers Agencies (JPAs) play in delivering critical services.

Statutes and joint powers agreements under the Joint Exercise of Powers Act, Government Code, section 6500 et seq., empower diverse local agencies to meet community needs, including special districts formed under general acts, JPAs, and special-statute agencies (i.e., those formed under special acts of the Legislature). Each is structured to provide necessary services, typically within defined boundaries, and pursuant to a specified mission and directed by a locally responsive governing body. However arranged, each is vital to make California's local governance effective and accountable to the community it serves.

Special districts are essential to California's governance — with over 2,000 independent districts (more than 3,300 statewide

overall)[3], covering a broad array of services from airports to zoos, and expenditures of about $38 billion annually. Special districts are abundant, covering essential community needs statewide including such varied services as:

- airport districts (Pub. Utilities Code, § 22001)
- citrus pest districts (Food & Ag. Code, § 8410)
- fire protection districts (Health & Saf. Code, § 13800 et seq.)
- harbor districts (Harbors & Nav. Code, § 6000)
- levee districts (Water Code, §§ 70150–70151)
- library districts (Ed. Code, §§ 19400, 19600)
- mosquito abatement and vector control districts (Health & Saf. Code, § 2000 et seq.)
- utility districts (Pub. Utilities Code, § 11501)

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[3] Data reported in this brief regarding the numbers and types of special districts is drawn from the Legislative Analyst's 2010 report, *What's So Special About Special Districts?*, Senate Local Government Committee, October 2010 (4th Ed.), available at < https://www.ca-ilg.org/sites/main/files/file-attachments/resources__2010WSSASD4edition.pdf > (as of Dec. 1, 2023). But local government organization is dynamic and this data is likely no longer precisely accurate. It is indicative of the diversity of California's local government, however.

- recreation and park districts (Pub. Resources Code, § 5780 et seq.) and
- cemetery districts (Health & Saf. Code, § 9000 et. seq.).

Distinct from the general-purpose cities and counties that often create them, a special district can focus on provision of a particular service that its constituents desire within its territory. The breadth of their services and boundaries vary, from provision of one service in a single community, such as a cemetery district, to multi-functional County Service Areas (CSAs) operating throughout a large, urban county. For example, the Metropolitan Water District of Southern California serves nearly 19 million people in over 5,200 square miles in six counties, while Nevada County's Kingsbury Greens Community Services District provides sewer services for 45 condominiums on 7.65 acres. Over 895 CSAs provide some or all of animal control, libraries, police and fire protection, road maintenance and snow removal, weed abatement and other services. By contrast, many special districts are dedicated to one service, and can obtain community support precisely because funds cannot be diverted to other priorities. These include 252 public cemetery districts, like Siskiyou County's Happy Camp Cemetery District. Whether single- or multi-functional, with an independently elected board of directors or governed by a city council or county board of

supervisors, each special district is distinct. (Gov. Code, § 56032.5 [defining "dependent special district" and "dependent district"]; Gov. Code, § 56044 [defining "independent district" and "independent special district"].)

Operating under authorizing statutes and within constitutional limitations, special districts are autonomous government entities accountable to the voters or landowners they serve. (*People ex rel. City of Downey v. Downey County Water Dist.* (1962) 202 Cal.App.2d 786, 796.) Within their spheres, their authorities are akin to cities' and counties' — they may contract, employ workers, acquire property through purchase or eminent domain, issue debt, impose special taxes, and levy assessments. But, the precise authority of each is separately defined by a general or special statute (or, as to JPAs, a joint powers agreement). Communities seeking a new service provider may choose among some 60 principal acts, like the Community Services District Law (Gov. Code, §§ 61000–61850) governing all 325 community services districts, or the Fire Protection District Law of 1987 (Health & Saf. Code, § 13800 et seq.) governing all 386 fire districts.

Special-act agencies abound, too — there are about 125 statewide. (E.g., *South Santa Clara Valley Water Conserv. Dist. v. Santa Clara Valley Water Dist.* (1978) 76 Cal.App.3d 852.) Districts which are

regional in nature, have specific governing board requirements, provide unique services, or need special financing necessitate special laws. For example, while special acts are generally uncodified, West's and Deering's collect some 85 water districts' special acts in their respective Appendices to the Water Code. These include municipal and regional water agencies that also address irrigation, dams, fishways, flood control, drainage, and reclamation. But each special act is distinct according to its boundaries, powers like eminent domain, governing board, power to levy assessments, and ability to issue bonds, inter alia. (E.g., Water Code Appendix, ch. 145, §§ 145-1 to 145-31, Santa Clarita Valley Water Agency Act.)

In addition, there are more than 1,800 JPAs in California, which are formed (and reformed) by contract under statutory authority (Gov. Code, § 6500, et seq., or the "Joint Exercise of Powers Act") granted to any "public agency," broadly defined by Government Code section 6500 to include state and local agencies and Indian tribes, and some private ones. (E.g., Gov. Code, § 6516.7 [private childcare provider]; Gov. Code, §§ 6523.4–6524 [private hospitals]; Gov. Code, § 6525 [mutual water companies], Gov. Code, § 6528 [charter school operators].)

JPAs can exercise any power common to the contracting agencies that a joint powers agreement delegates. (Gov. Code,

§ 6502.) Accordingly, JPAs provide all manner of services — financial services, insurance pooling and purchasing discounts, planning services, and regulation, to name a few. JPAs allow state and local agencies to share resources and combine services, saving time and money. JPAs are widely used, and diverse in function. They may be used to expand a regional wastewater control plant, provide public safety planning, operate an emergency dispatch center, or finance a jail. This flexible tool encourages local creativity and allows Californians to tailor means to provide efficient, locally responsive services.

If a joint powers agreement creates an entity, that entity is legally distinct from the parties to the agreement and its liabilities and assets are its own — not those of the contracting parties. (Gov. Code, § 6507.) That fact is essential to their utility in issuing debt, managing risk, and operating risk pools in lieu of insurance (which is not always available to local governments). Their meetings are open to the public under the Ralph M. Brown Act and they are held accountable by various transparency laws, including the Public Records Act and the Political Reform Act, among others.

But, like special-act districts, no two JPAs are the same. The agreements forming a JPA dictate the member agencies' intentions, shared powers, and other mutually acceptable conditions that define

the intergovernmental arrangement. (Gov. Code, § 6503). Each JPA is unique, reflecting a mutually agreeable arrangement among public agencies that have joined together for a common purpose. The governance structure and scope of a JPA is decided by the local agency participants when the JPA is formed — and when they choose to amend it. (Gov. Code, § 6503.5 [referencing amendments].) The very essence of such entities is local control and diverse provision of services, based on the desires of the contracting parties.

To cite a few illustrative examples, the Belvedere-Tiburon Library Agency is a JPA that provides a common library to those two small communities in Marin County. Its seven-member board has three trustees appointed by the City of Belvedere, three by the Town of Tiburon, and one by the Reed Union School District which serves the two cities[4] and adjacent unincorporated areas. This JPA, like many others, has the same responsibilities as any public agency, including personnel, budgeting, operations, and maintenance.[5] Or a JPA may be established with limited purpose, like issuing debt to build a regional asset or merely to invoke the flexible provisions of the Marks-Roos Bond Pooling Act. (E.g., Gov. Code, § 54300 et seq.;

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[4] An incorporated "town" is a city. (Gov. Code, § 20.)

[5] More information on this JPA is available at https://www.beltiblibrary.org/about-us (as of Dec. 1, 2023)

Gov. Code, § 6584.)

A JPA may have 2 members or more than 100, as in the case of the 107-member Association of Bay Area Governments (ABAG), which serves as the regional planning agency and also offers its members bond-pooling programs to fund affordable housing and public works construction. Regional planning and bond pooling are two common purposes for which JPAs are formed. And regional councils of government formed for regional transportation and other planning purposes are typically formed as JPAs including ABAG noted above and Southern California Association of Governments (SCAG) covering six counties, 187 cities, and serving more than 18 million people.

Whatever its scope and size, a JPA's authority is limited only by the powers common to the contracting parties, or separately granted under more than a dozen amendments to the Joint Exercise of Powers Act. (Gov. Code, § 6509; §§ 6515–6539.1; see also *Robings v. Santa Monica Mountains Conservancy* (2010) 188 Cal.App.4th 952 [applying statute limiting JPA to powers common to the contacting parties].) So, while three fire protection agencies and a city can form a fire department by JPA, since each member agency has the power to do so, that JPA cannot also provide police services because fire districts lack that statutory authority. But, cities may delegate, for

example, their eminent domain powers to an airport authority they create as a JPA. (*Burbank-Glendale-Pasadena Airport Auth. v. Hensler* (2000) 83 Cal.App.4th 556, 563.)

Like the special acts governing some special districts, the Government Code contains more than a dozen specific to particular joint powers agencies. These cover JPA participation by out-of-state agencies, private hospitals, mutual water companies, and Indian tribes, among others. Government Code, section 6537, for instance, authorizes any JPA formed under that article, to which the Monterey Peninsula Water Management District is a member, to issue bonds if they will provide savings to water customers. Nonprofit corporations serving the homeless may form a JPA with public agencies for that purpose — recognizing the resulting agency as a public entity with all powers of a JPA, except the power to incur debt, even though its contracting parties include private non-profit corporations. (Gov. Code, § 6538.)

No matter the form, name, or source of authority in a general or special statute or a JPA agreement, all these agencies play important roles in serving California's residents, and offer benefits cities and counties cannot as readily and efficiently achieve. They address issues that cross jurisdictional lines, pool staffing, share equipment and other resources, compete for grant funding, tailor

governance appropriate to particular tasks, and can be more responsive to constituents by focusing on a single community or service.

Because they are formed by contract with unique powers that can change with each contract amendment, they may or may not include the factors the Opinion found to indicate sovereignty. (Opinion at p. 11; e.g., *Burbank-Glendale-Pasadena Airport Auth.*, *supra,* 83 Cal.App.4th at 563 [contracting parties may, but need not, delegate eminent domain power to a JPA].) But, treating these entities as less than sovereign discourages creativity and efficiency, and is inconsistent with the reality of government service delivery in California — and settled expectations arising from that reality.

II. AHS'S ENABLING STATUTE STATES IT IS A DISTINCT GOVERNMENT ENTITY

Using language like the Joint Exercise of Powers Act's Government Code section 6507, the Legislature provides AHS is a "separate public agency" and "as a government entity separate and apart from the county." (Health & Saf. Code, § 101850, subds. (a)(2), (j); cf. Gov. Code, § 6507 ["the agency is a public entity separate from the parties to the agreement"].) As such, it must file for inclusion in the Roster of Public Agencies maintained by the Secretary of State to

give notice to potential litigants of how it may be served with process. (Health & Saf. Code, § 101850, subd. (j), citing Gov. Code, § 53051.) Like JPAs, AHS's liabilities and obligations are expressly stated not to be those of the County. (Health & Saf. Code, § 101850, subd. (k); compare Gov. Code, § 6508.1 [same as to JPA unless agreement provides otherwise].)

AHS's principal act also commits it to collective bargaining (Meyers-Milias-Brown Act), open government laws (the Ralph M. Brown Act), the Public Records Act, the County Employees Retirement Law of 1937, and the Government Claims Act. (Health & Saf. Code, § 101850, subds. (s), (u), (x), (ai).) Numerous other subdivisions confirm AHS as a public agency. (*Id.*, subd. (s) ["district"]; subd. (u) ["public agency"]; subd. (w)(3) ["public entities and public employees"]; subd. (ag) ["public agency"].)

The Opinion overlooks the presumption against applying statutes to governments (reversing it, in fact) and therefore failed to respect AHS's creation, mission, and status as a separate government. Yet, this is the hallmark of California's diverse governance system — each special district or JPA operates as a legal entity separate from any city or county that might create it, carrying the privileges and immunities state law offers public entities. (E.g., Gov. Code, § 6507 [JPA deemed "a public entity separate from the

parties to the agreement"]; § 6508 [powers and rights of JPA]). So, for example, *Vanoni v. County of Sonoma* (1974) 40 Cal.App.3d 743, 749 rejected an argument that the Sonoma County Flood and Conservation District was indistinguishable from Sonoma County for purposes of constitutional debt limitation. Although the two governments had coterminous boundaries and shared a governing body, the court found the district to be "a legal entity separate from the county and created by act of the Legislature as a body corporate and politic." (*Ibid*.)

Recognition of special districts and JPAs as separate entities is essential to risk management. And the creation of separate government entities is crucial — if the JPA or special district shares risk with the parent city or county, that separation is lost.

The JPA statute was enacted in 1943, and functions today, to provide the public sector flexibility in the design of service delivery systems. It has become an essential alternative to for-profit insurance, much as are the FAIR Plan, a private entity, and the California Earthquake Authority, a creature of statute. (Ins. Code, § 10089.5 et seq.)

In the early 1970s, local government agencies throughout California faced a crisis. The commercial insurance industry withdrew from the public-agency marketplace. Liability and other

insurance premiums skyrocketed, insurance coverages became either extremely narrow or unavailable, and more than a few California cities, counties, school districts, and special districts found that they could not insure tort and other claims. (*City of South El Monte v. Southern California Joint Powers Insurance Authority* (1994) 38 Cal.App.4th 1629, 1633–1644; *Orange County Water District v. Association of California Water Agencies Joint Powers Insurance Authority, Federal Insurance Company* (1997) 54 Cal.App.4th 772, 775.)

Risk pools organized as joint powers authorities under 1976 authority emerged as a meaningful way for California's public agencies to manage risk. The device allows public agencies to pool self-insurance programs, jointly buy commercial reinsurance, and pursue other risk management strategies as to liability claims, workers' compensation claims, or other claims. (Gov. Code, §§ 990.8, 990.4, 6500, et seq.) Thousands of local government agencies began using risk pools. As a result, "layered" coverage became common — JPA pooled self-insurance up to an agreed level and commercial excess insurance or reinsurance for larger claims. Indeed, there is a Big Independent Cities Excess Pool.[6] In fact, this occurred most recently as to home insurance given the increased wildfire risks in

[6] < https://www.bicepjpa.org/about-us/ > (as of Dec. 4, 2023).

California. JPAs now play a critical role to blunt the impacts of private insurers' withdrawal from the market.[7]

By pooling resources, public agencies can cover more claims, at less cost than a policy from a for-profit insurer and obtain some protection against spikes in premiums. And they can do so with certainty and accurate prediction of future losses. Today, approximately 150 risk-pool JPAs serve a majority of California's local governments. (Gov. Code, § 990.8, subd. (c); *Southgate Recreation and Park District v. California Assoc. for Park and Recreation Insurance* (2003) 106 Cal.App.4th 293, 297.) The California Association of Joint Powers Authorities (CAJPA), provides a forum for these risk pools to exchange information about risk management, insurance and self-insurance, and proper methods of operation to maintain solvency. CAJPA's membership currently includes 99 of these JPAs, which serve all 58 counties, 471 of 482 cities, over 1,000 of some 1,200 school districts, and thousands of special districts throughout the state. By finding AHS unentitled to exemption from wage orders despite statutory language quite like Government Code section 6507 of the JPA statute, the Opinion jeopardizes the entire

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[7] See < https://apnews.com/article/california-wildfire-insurance-e31bef0ed7eeddcde096a5b8f2c1768f > (as of Dec. 4, 2023).

structure of local government risk management in our state, suggesting risk pools cannot isolate pooled liability from their members' liabilities.

While JPAs serve purposes other than risk-pooling — port, transit, airport and bridge authorities, etc. — risks can be a large driver of service-delivery-model selection. Local agencies must be able to cabin and estimate financial exposure with reasonable certainty lest pools fail and reinsurers forsake them. Most JPAs predict funding needs using an actuary's estimate of the frequency and size of expected claims, using past claims data and other information. But, the Opinion will defeat such predictions, changing fundamental assumptions about what JPAs will or will not be liable for and whether their status as a public agency will be respected.

Risk management, of course, is critical to local agencies, for which even known liabilities can be significant. This is particularly true for police liabilities, which often encompass the largest share of cities' budgets due to the many risks that come with operating a police department.

Pooling police resources saves money, making effective policing possible for small, poorly funded cities. For example, the Marin County cities of Corte Madera, Larkspur, and San Anselmo consolidated their police departments under a JPA in 2013 to ensure

affordable, effective public safety services to those small cities. Two members from each city council constitute the board of the Central Marin Police Authority. Management of the Authority is assigned to a committee of the three city managers. And operational authority is assigned to a chief of police.[8] If liability protection were not cabined to the Authority and its risk pool and reinsurers, these agencies would very likely be forced to reinsure that risk at the city level, doubling insurance cost to no additional public benefit — if coverage could even be obtained.[9]

Similarly, geologic hazard abatement districts (GHAD)[10] are another risk-management tool, allowing property owners to jointly finance the often substantial costs to control threats like landslides, beach erosion, and wildfire. Public Resources Code, § 26500 et seq. allows property owners to petition a city or county to form a GHAD to assist them. (See, e.g., *Broad Beach Geological Hazard Abatement Dist. v. 31506 Victoria Point, LLC* (2022) 81 Cal.App.5th 1068 [Prop. 218

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[8] Background on the JPA is available at < https://www.centralmarinpolice.org/27/About > (as of Dec. 1, 2023).

[9] Police liability coverage is presently fraught. < https://www.businessinsurance.com/article/20220601/NEWS06/912350160/Police-liability-market-still-tough-for-buyers > (as of Dec. 1, 2023).

[10] This is typically pronounced "gad."

challenge to assessment of 121 parcels to fund GHAD to abate shoreline erosion in Malibu].) They are political subdivisions of the state, with the power to "acquire, construct, operate, manage, or maintain improvements on public or private lands." (Pub. Res. Code, §§ 26525, 26580, subd. (a).) A GHAD can acquire property by purchase, lease, or eminent domain; construct improvements; and maintain and repair infrastructure — all of which can be financed by tax-exempt government bonds (Streets & Highways Code, § 8500 et seq.). Property owners can approve formation of a GHAD to allow assessments, joint financing, and risk pooling, rather than relying on a perhaps small city, like Malibu, which may be unwilling to accept responsibility for large risks for a small number of homes. GHADs, too, offer guarantees with respect to the security of property values because the GHAD can be sued (rather than individual property owners or the city or county), serving as a "liability sink," and making the benefited properties more marketable.

III. THE "HALLMARKS OF SOVEREIGNTY" TEST CREATES GREAT UNCERTAINTY AND INVITES LITIGATION

As the principal briefs demonstrate, precedent (other than the Opinion) holds that public entities are not subject to the wage orders — without citing the sovereign powers doctrine used to distinguish

public from private entities associated with government. When legislative intent to create a public entity is plain, resort to that test is needless. (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164.) Despite recognizing AHS's status as a "public entity of some sort" (*Stone v. Alameda Health System* (2023) 88 Cal.App.5th 84, 98) and a "'governmental entity' of some kind" (*id*. at p. 97) exempt from the wage statement law (Labor Code, § 226(i)), the Opinion reversed as to the remaining wage and hour claims because AHS lacks certain "hallmarks of sovereignty," such as a governing board elected by the public and the power to tax, seize property, regulate, or police. But, for the reasons detailed in AHS's briefs, the Opinion erred in even addressing the sovereign powers doctrine, which is "simply a maxim of statutory construction" that "cannot override positive indicia of a contrary legislative intent" in a statute's language, structure, or history. (*Wells, supra*, 39 Cal.4th at 1193.) (See Respondent's Op. Br. at 26–31, 49–53; Reply Br. at 13–28.) Nor is it a basis to discard the presumption cited above that general statutes are understood not to apply to government unless legislative intent to do so is plain. The presumption applicable to government ought to control here — for even the Opinion concedes AHS is a government "of some kind." The "indicia of sovereignty test" is a tool to identify a public agency when that question is in doubt.

Governments of **any kind** are exempt from general statutes absent contrary legislative intent.

Even were it helpful here, the Opinion misapplies the sovereign powers doctrine. The Opinion should have asked whether applying the wage and hour laws to a government like AHS would "significantly impede [its] fiscal ability to carry out [its] core public mission[]" (*Wells*, *supra,* 39 Cal.4th at p. 1193), or "affect [its] governmental purposes and functions" (*Johnson v. Arvin-Edison Water Storage Dist*. (2009) 174 Cal.App.4th 729, 738). (See Respondent's Op. Br. at 26–31, 49–53; Reply Br. at 19–28.)

Indeed, the purpose of the wage orders to protect private-sector employees from the greater economic power of many employers is addressed by the Meyers-Milias-Brown Act and the many, specific provisions of AHS's statute for the protection of employees' labor rights in these subdivisions of Health & Safety Code, section 101850:

(j) county personnel polices do not apply to AHS;

(s) authority to provide public-sector pensions;

(u) AHS subject to Meyers-Milias-Brown Act;

(v) duty to recognize employee bargaining agents appointed before transfer of hospital from County;

(w) detailed collective bargaining obligations;

(x) duty to honor earlier collective bargaining agreements,

(ac) authority to co-employ County staff,

(ai) peer review of AHS medical staff;

(an) subject to local government caps on severance benefits for management staff.

Given how particularly the Legislature considered the appropriate labor and employment standards for AHS, the Opinion enters a field the Legislature seems to have fully occupied.

A useful analogy arises from *Wolfe v. State Farm Fire & Casualty Ins. Co.* (1996) 46 Cal.App.4th 554, 564–567. That court declined to extend Business and Professions Code sections 17200 et seq. to the earthquake insurance industry as "unwarranted judicial intervention in an area of complex economic policy," given extensive legislation addressing the unavailability of earthquake coverage. (*Id*. at p. 565.) Providing safety-net medical services for a large, urban county like Alameda is no less complex.

The Opinion's analysis might apply to all manners of JPAs, general- and special-act districts, and other special-purpose entities, but provide courts and litigants little guidance as to which attributes of sovereignty are essential — provoking litigation as to each kind of entity, each change in its authorizing statute or agreement, each aspect of sovereignty, etc. For example, local governments creating a

habitat conservation JPA in one region may grant it eminent domain authority, while another region may not be so free with that power. Should the former have the governmental immunity our legal system generally presumes and not the latter? Or one agency may be permitted to issue debt and another not. Or perhaps one district may have an appointed Board and another elected. Many statutes allow that choice. (E.g., Pub. Res. Code, § 26583 [initial GHAD board appointed; successor boards elected]; Health & Saf. Code, § 13835 [fire district may have appointed or elected board or may be governed by county board of supervisors].) Which of these distinctions matters? Why? The Opinion leaves the critical questions to future litigation, which will abound.

In these cases, two entities perform the same functions with only slightly different authority or governance. This is perfectly permissible under current law, which does not require a "one-size-fits-all" service-delivery model for communities as diverse as Lassen and Los Angeles, Modoc and Monterey. Yet, the Opinion affords governmental immunity from general legislation to one agency, but not another, constraining choice in framing new service providers without apparent rationale. This ought not to be the law.

The Opinion invites litigation, making uncertain an area of law where certainty is essential, and impairs all the policies favoring

diversity of local agencies. It reaches disparate conclusions as to the labor statutes disputed here for reasons that defy bright-line analysis. It will require litigation of these points for every type of general-act agency and for every individual JPA or special-act agency. And renewed litigation when a statute or JPA changes. This will, of course, create uncertainty, fuel litigation, and overburden agencies, their insurers, and the courts.

More problematically, it will constrain legislative choice, taking options off the table when risk management concerns, for example, loom large — like medical care and public safety — making government less flexible and efficient. It also disserves apparent legislative intent, for the meaning of "a government entity separate and apart from the county" is not an obvious way to say "not a government agency."

IV. CONCLUSION — REVERSAL IS WARRANTED

The Local Government amici urge this Court to reverse the Court of Appeal and affirm the trial court, concluding AHS's undoubted status as a public agency is alone sufficient to immunize it from wage orders and other general statutes inapplicable to cities and counties.

Amici also urge this Court to establish a more manageable test

that looks to the core issue — legislative intent, not imprecise typology of forms of government. If it is government, it is exempt unless there is evidence of legislative intent to include it in general laws. (E.g., Scalia and Garner, *Reading Law: The Interpretation of Legal Text* (2012) pp. 281–289 [Canon 46: "A statute does not waive sovereign immunity … unless that disposition is unequivocally clear."]; *Harry Carian Sales v. Agricultural Relations Bd.* (1985) 39 Cal.3d 209, 223 [statutory language must be given such interpretation as will promote rather than defeat general purpose and policy of the law].) Legislative intent to exclude it need not require any arduous or specific formula. "All the rights and duties set forth in state law with respect to hospitals owned and operated by the county" and "a government entity separate and apart from the county" should be well within this standard.

DATED: Dec. 5, 2023

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CERTIFICATE OF WORD COUNT

The text of this brief consists of 5,180 words according to the word count feature of the computer program used to prepare this brief.

DATED: December 5, 2023 **COLANTUONO, HIGHSMITH & WHATLEY, PC**

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Supreme Court Case No. S279137

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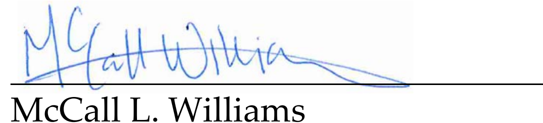

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