FILED WITH PERMISSION

S271054

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

DEBRA TURNER,

Plaintiff and Appellant,

v.

LAURIE ANNE VICTORIA, *et al*.

Defendants and Respondents.

After a Decision by the Court of Appeal, Fourth Appellate District, Division One, Case Nos. D076318, D076337

San Diego County Superior Court
Trial Court Case No. 37-2017-00009873-PR-TR-CTL
The Honorable Julia C. Kelety, Dept. 503
(Appeal No. D076318)

San Diego County Superior Court
Trial Court Case No. 37-2018-00038613-CU-MC-CTL
The Honorable Kenneth J. Medel, Dept. C-66
(Appeal No. D076337)

APPELLANT'S CONSOLIDATED REPLY BRIEF ON THE MERITS

SERVICE ON THE OFFICE OF THE ATTORNEY GENERAL CHARITABLE TRUSTS SECTION AS REQUIRED BY PROBATE CODE §§ 17200, 17203, CORPORATIONS CODE §§ 5142, 5223, and 5233 AND CRC 8.29(a)

COOLEY LLP
STEVEN M. STRAUSS, BAR NO. 99153
(SMS@COOLEY.COM)
ERIN C. TRENDA, BAR NO. 277155
(ETRENDA@COOLEY.COM)
4401 Eastgate Mall
San Diego, CA 92121
Telephone: (858) 550-6000
Facsimile: (858) 550-6420

COOLEY LLP
MATT K. NGUYEN, BAR NO. 329151
(MNGUYEN@COOLEY.COM)
1299 Pennsylvania Avenue NW, Suite 700
Washington, DC 20004
Telephone: (202) 842-7800
Facsimile: (202) 842-7899

Attorneys for Plaintiff and Appellant
DEBRA TURNER

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INTRODUCTION

Respondents Anthony Cortes, Joseph Gronotte, Gregory Rogers, and Laurie Anne Victoria deprived the Conrad Prebys Foundation and the California public of $15 million through a hasty and conflict-ridden settlement in violation of California law, Foundation bylaws, and the operative trust of the late Conrad Prebys. As the Foundation's lone dissenting director, officer, and member, Debra Turner promptly filed an action to protect the Foundation's interests pursuant to the charity director enforcement statutes (Corporations Code,[1] sections 5142, 5223, and 5233) and charity member enforcement statute (section 5710). In reprisal for Turner's suit challenging their misconduct, Respondents colluded to remove Turner at the Foundation's next election and, immediately after doing so, they moved to dismiss Turner's case against them for lack of standing.

Turner and Respondents agree that, through the director enforcement statutes, the Legislature empowered minority charity directors and officers with a statutory right of action to file such an action and with standing to litigate that action to protect the charity from misconduct by their board majority. Thereafter, the parties diverge.

Under Turner's view, bolstered by the Second District in *Summers v. Colette*, the Attorney General's longstanding interpretation, the Restatement of Charitable Nonprofit Organizations ("Restatement"), and sister state jurisdictions, the

[1] All undesignated statutory references are to the Corporations Code.

statutes' plain language and fundamental purpose unequivocally support uninterrupted standing for a minority director or officer who brings suit to protect the charity, regardless of whether her status is lost during the pendency of the suit. As detailed in Turner's opening brief and the Attorney General's amicus letter supporting review, a contrary reading would effectively gut the statutes, circumvent conflict of interest prohibitions, and expose California's 118,000 charities to heightened risk of malfeasance by fiduciaries against an illusory backdrop of judicial recourse.

Under Respondents' interpretation, culminating in their remarkable insistence that the charity safeguards in *Summers* be disapproved, the exact same board majority credibly accused of wrongdoing by a minority director nevertheless wields unilateral power to remove that director plaintiff on a whim, whether by special vote or during the charity's next election, and dismiss the suit against them for lack of standing. Unmoored to statutory text or legislative intent, Respondents' perverse reading would aggravate, rather than remediate, "the problem of providing adequate supervision and enforcement of charitable trusts" that the statutes were enacted to correct—undermining this Court's holding *Holt v. College of Osteopathic Physicians and Surgeons* and immunizing internal charity abuses.

In their briefing, Respondents raise four contentions. None is persuasive. *First*, Respondents claim that the statutes' text mandates that a minority director plaintiff lose standing to see her preexisting action to completion if she is removed by special vote or annual election—even though nothing in the statutory language

favors, much less requires, such a fatal reading. Rather, the most natural reading confirms a single precondition to "bring" such an action: The plaintiff must be a contemporaneous director or officer *at the time she files suit*. Even assuming the statutory text is susceptible to multiple reasonable constructions, it is evident that the Legislature's purpose of deputizing minority charity directors or officers to root out internal wrongdoing is achieved only through uninterrupted standing for those who file suit prior to their ouster.

Second, with disarming irony considering the misconduct allegations against them, Respondents belittle the well-recognized fiduciary obligations and liabilities, civil and criminal, that outlive Turner's director status and validate both her standing and her unwavering advocacy for the Foundation's best interests. They conveniently presume, without record basis at this standing stage on appeal of a case dismissal, that Turner is a "vexatious, self-interested former director" because her action is—by statutory design—unsupported by the accused board majority. For support, Respondents strangely cite Turner's steadfast pursuit of judicial remedies authorized by statute, including "remov[al] from office" of the inculpated directors (§ 5223) and "pay[ment of] such damages" to the charity (§ 5233(h)). Then, in their most telling concession, Respondents admit that Turner's fiduciary duties from the time of their misconduct and potential liabilities due to that misconduct afford her sufficient "personal" interest in the outcome of the action. (Foundation Answer Brief on the Merits, at p. 15 ("Foundation Board AB"), at p. 15; Laurie Anne Victoria's Answering Brief on the Merits, at p. 48 ("Victoria AB").) Under

California law, this is more than enough to confirm Turner's uninterrupted standing.

Third, Respondents mischaracterize Turner's action under the charity director enforcement statutes as a "derivative" suit. Relying on doctrines specific to derivative suits by for-profit corporation stockholders, Respondents jam their square peg from shareholder derivative litigation into the round hole of charity governance. Crucially, they demand such reflexivity despite the fact that a director/officer-initiated action is neither derivative nor comparable to suit by for-profit stockholders; contrary statutory text; a history of differential treatment between the two corporate forms by this Court; and the Legislature's charity-specific intent undergirding the enforcement statutes themselves.

Fourth, Respondents assert that the Attorney General's independent right of action and ability to name a relator somehow manifest legislative intent to undercut the separate standing afforded to minority charity directors and officers after they are ousted. Not only is Respondents' atextual binary squarely rejected by the statutes' plain text and *Holt*, but it also runs far afield of the Legislature's intent to establish robust private mechanisms for safeguarding charities by the minority directors or officers who witnessed the wrongdoing firsthand. Even further, and once again in stark tension with legislative purpose, Respondents overlook the significant cost, delays, and uncertainties for the parties, the court, the Attorney General, and the charity's public beneficiaries to initiate the relator process from scratch years into an existing action. That, or Respondents would compel the Attorney General

to redirect internal resources and departmental priorities to initiate his own investigation and bring a public action.

Tellingly, not once in over 142 pages of collective briefing do Respondents explain how, under their analysis, a minority charity director or officer could successfully maintain standing throughout any such action save for the whimsical generosity of the culpable board majority. Instead, in implicit recognition of the infirmities of their position, Respondents introduce a litany of disputed factual contentions and unwarranted mudslinging against Turner.

Respondents' accusations are spurious and contrary to the record. They are also premature and categorically irrelevant in the nascent posture of this case—i.e., appeal of a demurrer on standing grounds—where Turner's pleadings constitute the full record on appeal. Respondents' pleas to transform this Court into a trial-level factfinding body should be rejected. At this standing stage, the sole function of Respondents' derisive attitude is to reinforce Turner's allegations concerning their blind willingness to validate a conflict-ridden $15 million distribution in contravention of California law, Foundation bylaws, and Prebys's operative trust, and to self-insulate director-trustee Victoria. If Respondents wish to litigate their factual contentions replete with *ad hominem* attacks, they may do so in an appropriate tribunal on summary judgment or at trial, *after* remand from this Court.

This Court should reverse the erroneous decision below and hold, consistent with the Second District in *Summers*, that Turner

and other ousted directors and officers retain standing to litigate their preexisting suits against culpable directors to completion.[2]

ARGUMENT

I. THE CHARITY DIRECTOR ENFORCEMENT STATUTES GUARANTEE UNINTERRUPTED STANDING FOR MINORITY DIRECTORS AND OFFICERS, REGARDLESS OF OUSTER.

Respondents argue that culpable directors may extinguish a plaintiff's standing by removing her as a charity director, officer, and member by special vote or annual election—even though (1) their reading conflicts irreconcilably with *Summers v. Colette* (2019) 34 Cal.App.5th 361 (*Summers*); (2) the statutes' plain text permits no such rescission of standing; (3) statutory purpose and legislative intent support uninterrupted standing and discredit Respondents' allusion to for-profit stockholder derivative suits; (4) the minority director, whether ousted or not, retains significant interests and liabilities related to the misconduct at issue sufficient for uninterrupted standing; and (5) the Attorney General's interpretation, the Restatement, and sister state authorities support Turner's standing here.

A. *Summers* was correctly decided.

Carefully analyzing the text and purpose of the charity director enforcement statutes, this Court's opinion in *Holt*, and the wisdom of other state jurisdictions, *Summers* reasoned that a

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[2] Separately, given the facts of this case, the same considerations animating Turner's continued standing under the charity director enforcement statutes also support Turner's standing under the charity member enforcement statute at section 5710.

charity director has standing to file her action under the statutes, and that she retains standing to see her action to completion, notwithstanding a subsequent special election that resulted in her ouster. (*Summers*, *supra*, 34 Cal.App.5th at p. 374; see *Picasso v. Merida* (Cal. Ct. App. May 17, 2022) 2022 WL 1552565, at *9 [A charity director's "standing to sue depends on whether [s]he was a director … when [s]he filed h[er] complaint."].)

In an effort to avoid judicial scrutiny for Turner's existing suit against them, Respondents call on this Court to disapprove *Summers*. Gronotte and the Foundation do so explicitly, declaring that "[t]he Court should use this opportunity to overrule *Summers* in its entirety" and "impose a continuance standing requirement regardless of how and why the former board member is no longer serving." (Joseph Gronotte's Answering Brief on the Merits, at pp. 24, 33 ("Gronotte AB")[3]; Foundation Board AB, at p. 34 ["*Summers* is wrongly decided and should be overturned."].) Victoria adopts an identical position in a more subtle manner: Even as she initially says that *Summers* is distinguishable, she criticizes every ounce of the Second District opinion and demands a strained reading of *Holt* and *Summers* that would render both opinions dead letter law. (Victoria AB, at pp. 31, 41 [claiming that *Summers* is "incorrect" and "backwards," and that it did not "faithfully app[y] [common law] principles"].)

As the following Sections make clear, Respondents' critiques

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[3] Both Cortes (the current Foundation Board chair) and Rogers filed joinders to the answer briefs of Gronotte and Victoria and so, where this Consolidated Reply Brief addresses arguments raised in those briefs, it responds to their joinders as well.

of *Summers* "misread the plain language of the statutes enacted by the Legislature, undermine the legislative history, and cast aside the goals and purposes that underpin the statutes at issue." (*Presbyterian Camp & Conference Centers, Inc. v. Superior Court* (2021) 12 Cal.5th 493, 516 (*Presbyterian Camp*).)

B. Contrary to Respondents' arguments, the statutory text does not withdraw standing for directors or officers following their ouster.

Central to Respondents' textual claim is their contention that the charity director enforcement statutes "compel the conclusion that a plaintiff-director must maintain their status throughout the litigation." (Victoria AB, at p. 30; Gronotte AB, at p. 17; Foundation Board AB, at pp. 27–28.) But the enforcement statutes impose no such requirement.

"In construing a statute, [this Court is] ' "careful not to add requirements to those already supplied by the Legislature. [Citation.]" ' " (*Kim v. Reins Internat. Cal., Inc.* (2020) 9 Cal.5th 73, 85 (*Kim*).) By the enforcement statutes' plain terms, a minority charity "director" or "officer" "may bring an action" to challenge "fraudulent or dishonest acts," "gross abuse of authority," and "self-dealing transaction[s]," and to "remedy a breach of charitable trust" by the charity's board majority. (§§ 5142, 5223, 5233.) Simply put, the statutes evince the Legislature's intent to require a plaintiff to be a contemporaneous charity director or officer ***when she files suit***. (See also Code Civ. Proc., § 350.)

Applying familiar tools of interpretation, the Second District observed that "[t]he statutes provide a director 'may bring' the action, but they do not say whether, having brought the action, the

plaintiff must continue to be a director to continue to have standing." (*Summers*, *supra*, 34 Cal.App.5th at p. 368.) Had the "Legislature intended to limit [] standing" to exclude ousted charity directors who already brought enforcement actions, the Legislature "could have worded the statute accordingly." (*Kim*, *supra*, 9 Cal.5th at p. 85.) "[N]othing in the statute[s'] language suggests such a cramped conception of [] standing. … As a matter of statutory drafting, the Legislature could easily have written the statute to restrict standing only to those who" remain directors throughout the litigation, but they did not do so. (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1251 (*Weatherford*).) " 'That [the Legislature] did not implies no such … requirement was intended. [Citation.]' " (*Kim*, *supra*, 9 Cal.5th at p. 85.)

According to Respondents, the word "bring" here does not refer to when the contemporaneous director files suit, but necessarily applies to "its continued maintenance," such that the Legislature intended the word "bring" to require a continuous state of being throughout "the entire judicial proceeding." (Victoria AB, at p. 34.) Yet, a straightforward analysis of verb tenses in the statutes unravels their assertion altogether. (See *United States v. Wilson* (1992) 503 U.S. 329, 333 ["use of a verb tense is significant in construing statutes"].) These "surrounding provisions indicate the language used by the Legislature reflected an informed choice." (*Kaanaana v. Barrett Business Services, Inc.* (2021) 11 Cal.5th 158, 169.) (*Kaanaana*).)

Here, the Legislature chose the present tense verb "bring" when referring to a minority director's initiation of an action and,

within the same statutes, the past tense "brought" to refer to the ongoing action ***after*** it has already been filed. (§ 5142 ["any action brought"]; § 5223, subd. (b) ["an action brought"]; § 5233, subd. (d) ["any action brought"].) This suggests the Legislature was concerned about the plaintiff's contemporaneous director or officer status only when she files her complaint, and that it had no intent to retract standing once her suit had already been "brought." Thus, Respondents' "interpretation would add an expiration element" to the enforcement statutes even though "the Legislature said no such thing." (*Kim, supra*, 9 Cal.5th at p. 85.)

Respondents also attribute significance to another statute that authorizes suit by a "former member" of a religious nonprofit. (§ 9142.) They stress that " 'former director' (or 'former member')" does not appear "in section 5142 or the other standing statutes at issue here" (Foundation Board AB, at p. 45, fn. 17; Gronotte AB, at p. 26; Victoria AB, at pp. 32–33), which they regard as "plainly intentional." (Victoria AB, at pp. 32–33.)

Respondents overread the textual difference between these statutes. Properly understood, section 9142 authorizes a contemporaneous director, officer, and member, and a "former member" to "bring an action" ***in the first instance***. To the extent its text differs from the enforcement statutes, section 9142 merely evinces legislative intent to additionally permit "former members" of religious nonprofits to initiate a new action even after their membership has elapsed—not to bar an ousted director or officer from seeing her previously-initiated suit to completion.

After all, interpreting section 9142 in the way Respondents

suggest would result in highly "incongruous results" that could not possibly be derived from legislative intent. (*Cal. Assn. of Health Facilities v. Dept. of Health Services* (1997) 16 Cal.4th 284, 300.) Their perverse reading would mean that the Legislature intended on one hand to empower a religious nonprofit "member" to continue litigating his suit following his ouster, and on the other hand to prohibit an ousted religious nonprofit "director" or "officer" from finishing her suit under identical conditions. So much like the statutes at issue here, the only reasonable reading of section 9142 is the absence of legislative intent to deprive a director, officer, or member who already filed suit of standing after she is involuntarily ousted.

Victoria is simply incorrect when she says, "[i]t is undisputed that if Turner had filed suit the day after her terms expired, she would lack standing." (Victoria AB, at p. 24.) While it is Turner's view that, at minimum, the enforcement statutes' text and purpose guarantee standing for a minority director who filed suit before her ouster, there are compelling justifications grounded in legislative intent as to why a former director or officer may bring suit so long as she was serving in such a role ***when the misconduct took place***, as Turner was here. (See Appellant's Opening Brief on the Merits ("Turner AOB"), at pp. 56, 59–61 [citing *Tenney v. Rosenthal* (1959) 189 N.Y.S.2d 158 (*Tenney*); Rest., § 6.02; and sister state jurisdictions].)

Victoria raises one final but equally unmerited textual argument. She inaccurately states that Turner "did not raise that argument" contrasting the "may bring" language in the charity

director enforcement statutes with section 5710's "instituted or maintained" language "in her opening brief, and has thus waived it." (Victoria AB, at p. 35, fn. 7.) Even though such textual parsing is unnecessary for Turner to prevail, Victoria is mistaken. (Turner AOB, at pp. 30–31 [contrasting the "may bring" language in the enforcement statutes with section 5710's "instituted or maintained" language]; see Foundation Board AB, at p. 36 [noting Turner's analysis to that effect].)

C. Statutory purpose and legislative intent confirm uninterrupted standing for charity director plaintiffs irrespective of ouster.

This Court has stressed that "[s]tanding rules for statutes must be viewed in light of the intent of the Legislature and the purpose of the enactment." (*White v. Square, Inc.* (2019) 7 Cal.5th 1019, 1024 (*White*).) Since the enforcement statutes are remedial in nature, courts " ' "must construe [them] broadly, not … restrictively," ' [citation], ' "so as to afford all the relief" that their "language … indicates … the Legislature intended to grant [citation]." ' " (*Pulliam v. HNL Automotive Inc.* (Cal., May 26, 2022, No. S267576) 2022 WL 1672918, at *5; *Weatherford*, *supra*, 2 Cal.5th at p. 1251 [construing statutory standing "liberally … in light of [statute's] remedial purpose"].)

So in addition to "analysis [] grounded in the statutory text," this Court's "sensitivity to the larger context of standing … better effectuate[s] the Legislature's purpose in providing certain statutory remedies" (*Weatherford*, *supra*, 2 Cal.5th at p. 1249), as all statutes are "interpreted to be 'consistent with legislative purpose and not evasive thereof.' " (*Presbyterian Camp*, *supra*, 12

Cal.5th at p. 512.) Particularly in the absence of "explicit statutory limits … on [statutory] standing" (*Weatherford*, *supra*, 2 Cal.5th at p. 1251), it is improper to construe standing in a manner that takes "too narrow a view of the harms that the [statute] is intended to deter and remedy" (*White, supra*, 7 Cal.5th at p. 1030). It is these bedrock principles of interpretation and statutory standing that animate the Second District's reasoned decision in *Summers* and Turner's reading of the charity director enforcement statutes.

Respondents repeatedly mischaracterize *Summers*, claiming that the Second District "incorrectly interpreted Sections 5142, 5223 and 5233 as creating a new exception to long-established standing precedent" and "incorrectly assumed that the lack of an explicit reference to a continuous standing requirement in Sections 5142, 5223 and 5233 creates a presumption that no such requirement should apply." (Gronotte AB, at pp. 20, 23; see Victoria AB, at p. 41.) The overall thrust of their argument is that permitting a minority director to retain standing following her involuntary ouster would upend "bedrock principles of standing and corporate law." (Victoria AB, at p. 24; Gronotte AB, at p. 20.)

Respondents reach this conclusion because their analysis erroneously begins with stockholder derivative standing principles rather than the text, purpose, and intent of the enforcement statutes themselves. Where Respondents' reasoning falls apart altogether is their refusal to acknowledge that, when the minority director plaintiff has already brought an enforcement action under those statutes, the operative question is whether the Legislature intended for ouster by the accused directors to eviscerate her

standing in the midst of her ongoing effort to safeguard the charity. The answer is definitively no.

In discerning purpose and legislative intent, *Holt* offers a straightforward guidepost—especially since the enforcement statutes reflect the Legislature's codification of *Holt* itself. In *Holt*, this Court clarified that "minority directors and 'trustees' of a charitable corporation" have standing to bring enforcement actions challenging wrongful diversion by their majority counterparts, as "[n]othing in these sections suggests that [they] are precluded from bringing an action to enforce the trust." (*Holt v. College of Osteopathic Physicians and Surgeons* (1964) 61 Cal.2d 750, 754 (*Holt*).) According to *Holt*, the core purpose of allowing minority directors or trustees to "bring an action" is to alleviate "the problem of providing adequate supervision and enforcement of charitable trusts." (*Ibid.*; see Cindy M. Lott et al., *State Regulation and Enforcement in the Charitable Sector*, Urban Inst. (2016), at p. 21 <https://www.urban.org/sites/default/files/publication/84161/2000925-State-Regulation-and-Enforcement-in-the-Charitable-Sector.pdf> [as of June 13, 2022] ["Governance issues arise in [charities] that have a dysfunctional, 'captive,' or self-serving board of directors … that puts the organization at risk for misappropriation or diversion of assets."]

Enabling defendant directors to unilaterally terminate the minority director's standing, whether by special vote or election, and end any suit against them would be ruinous to "the intent of the Legislature and the purpose of the enactment" by precluding robust private enforcement altogether. (*White*, *supra*, 7 Cal.5th at

p. 1024.) Respondents' proposed reading would "unnecessarily deprive the Attorney General and the public of the assistance of 'responsible individuals' " who had already brought actions pursuant to the enforcement statutes while they were serving as directors or officers. (*Summers*, *supra*, 34 Cal.App.5th at p. 361.)

Respondents concoct a parade of horribles when a minority director or officer who brings suit retains standing to see her action to completion, even after she is ousted. (See Gronotte AB, at p. 20; Victoria AB, at p. 36; Foundation Board AB, at p. 33.) Yet, such preexisting plaintiffs who are later ousted are "sufficiently 'few in number' " so as to render any hypothetical risk negligible. (*Summers*, *supra*, 34 Cal.App.5th at p. 371, quoting *Holt, supra*, 61 Cal.2d at p. 755.) Our courts are—contrary to Respondents' insinuation—more than capable of assessing an ousted director's allegations on demurrer for failure to state a claim and permitting viable misconduct claims to move forward while nipping unmerited claims in the bud. Non-meritorious suits would not "continue in perpetuity," as Respondents would like this Court to believe. (Victoria AB, at p. 25; Foundation Board AB, at p. 34.) The knee-jerk reaction Respondents demand would force courts to dismiss private enforcement actions immediately after a director plaintiff is ousted by a special or annual election dictated by the accused majority. With this in mind, uninterrupted standing for director plaintiffs, whether ousted or not, strikes the appropriate balance between Respondents' overstated concern for "harassing litigation" from an ousted charity director (Gronotte AB, at p. 20; Victoria AB, at p. 23) and the Legislature's undisputed objective of

bolstering private enforcement mechanisms by deputizing charity directors to deter and remedy wrongdoing by their counterparts (*Holt*, *supra*, 61 Cal.2d at p. 754).

Victoria next sets up a straw man, misconstruing *Summers* and Turner's position as licensing "any individual who has at some point held that office" to bring an action, including "former Attorney General Becerra." (Victoria AB, at p. 33.) This is, of course, a nonsensical analogy. For one, it is apparent that a minority charity director who witnesses misconduct firsthand and promptly brings a private enforcement action to defend the charity is differently situated than the Attorney General, who may bring a public action, not based on firsthand knowledge or proximity to the charity, but in his elected capacity as "chief law officer of the State" (Cal. Const. art. V, § 13) "empowered to oversee charities as the representative of the public" (*Holt*, *supra*, 61 Cal.2d at p. 754).

Indeed, Respondents' view that only a "current fiduciar[y]" or "officeholder" (Victoria AB, at pp. 32, 42) can bring and maintain an action exists in significant tension with the fact that their interpretation attributes no significance to whether the director or officer plaintiff in question witnessed or may be exposed to liability for the misconduct at issue. This Court explained in *Holt* that private enforcement of charitable trusts is vindicated by persons "in the best position to learn about breaches of trust and to bring the relevant facts to a court's attention"—i.e., a contemporaneous director or officer *when the misconduct took plac*e. (*Holt*, *supra*, 61 Cal.2d at p. 756 (quoting Kenneth L. Karst, *The Efficiency of the Charitable Dollar: An Unfulfilled State Responsibility* (1960) 733

Harv. L. Rev. 433 at pp. 444–45).) It is this contemporaneous director or officer's "position to learn" ***about the misconduct***; her "aware[ness]" ***of the misconduct***; her "familiar[ity] with the situation to appreciate its impact" (*Holt*, *supra*, 61 Cal.2d at p. 755); her fiduciary duties to the charity ***at the time of the misconduct***; as well as her ongoing risk of criminal and civil liability ***due to the misconduct*** that prompt her to bring an action. (Cf. *Ballard v. Anderson* (1971) 4 Cal.3d 873, 877 [plaintiff's "potential liability" to criminal or civil penalties is sufficient to establish his standing under state law].)

There is nothing "conjectural or hypothetical" about a minority director's prevailing interests and liabilities where, as here, she personally witnessed the board majority's malfeasance and she has given the state's top prosecutor notice of the alleged wrongdoing. (Gronotte AB, at p. 19.) Even Victoria concedes that an ousted director's interests and liabilities in the charity's activities that took place during her tenure persist following her resignation or ouster—or else a director's liability for past wrongdoing would evaporate simply through resignation. (Victoria AB, at p. 43 ["[I]ndividuals may be liable, even after they left office, for wrongdoing committed while in office."].) As Gronotte acknowledges, all but one of the accused directors have resigned or left the Foundation's board "since [Turner] filed her first action," after she shone the light of public and judicial scrutiny on their malfeasance. (Gronotte AB, at p. 11.) Just as Respondents' own departures from the board (by resignation, special vote, or annual election) do not absolve them from

subsequent findings of liability for misconduct effectuated during their tenures, neither does Turner's involuntary ouster.

Turner remains tethered to these preexisting interests and liabilities regardless of her ouster, such that her standing in the present action "exist[s] at all times until judgment is entered and not just on the date the complaint is filed." (*Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 233.) Thus, Respondents' presumption that Turner is merely a "disaffected person[] … or disgruntled member[] of the public" by virtue of her ouster lacks merit. (Gronotte AB, at p. 28; *id.* at p. 17 [assuming without record basis that Turner is a "vexatious, self-interested former director"]; Foundation Board AB, at pp. 12–13; Victoria AB, at pp. 22, 48.) As the Fourth District clarified below, its ruling "in no way impl[ies] that Turner is a disgruntled or disaffected person who continued this litigation in bad faith." (*Turner v. Victoria* (2021) 67 Cal.App.5th 1099, 1135 (*Turner*).)

"The purpose of a standing requirement is to ensure that the courts will decide only actual controversies between parties with a sufficient interest in the subject matter of the dispute to press their case with vigor." (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439 (*Common Cause*).) In light of the foregoing considerations, a director plaintiff like Turner who timely brought suit to address malfeasance that she witnessed and objected to assuredly has "some 'special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large,' [citation]" whether she remains in her director capacity or not. (*San Diegans*

for Open Government v. Public Facilities Financing Authority of City of San Diego (2019) 8 Cal.5th 733, 738 (*San Diegans for Open Government*)[4]; see *Cornblum v. Board of Supervisors* (1980) 110 Cal.App.3d 976, 980 ["A party enjoys standing to bring h[er] complaint into court if h[er] stake in the resolution of that complaint assumes the proportions necessary to ensure that [s]he will vigorously present h[er] case."].)

Victoria bafflingly contends that Turner does not "explain how this suit would somehow relieve her of any such liability." (Victoria AB, at p. 48.) Victoria is again incorrect. (Turner AOB, at pp. 42–43 ["[C]harity leaders may either (a) pursue judicial recourse as a responsible plaintiff like Turner did here, or (b) risk prosecution or suit as a complicit or culpable defendant."].) If, for example, Turner's suit were dismissed here and the Attorney General later brought a criminal or civil action (as Respondents implicitly endorse), Turner could be among the persons exposed to claims—since she, like Respondents, served on the board when the harm to the Foundation took place.

Although the Foundation Board and Victoria euphemize their illegitimate vote for the hasty and unlawful diversion of charitable funds to a non-charitable settlement as "a non-binding, advisory resolution" (Foundation Board AB, at p. 9) or mere

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[4] It is unclear what basis Gronotte has for asserting that *Common Cause*, *San Diegans for Open Government*, and *Kim* are "completely irrelevant" (Gronotte AB, at pp. 30–32) when these authorities articulate this Court's bedrock standing principles for remedial statutes like the provisions at issue here (see Turner AOB, at pp. 38–40, 45).

"advice to Victoria" (Victoria AB, at p. 48), in reality, "the Board voted in favor of approving an offer of $12 million to settle the son's claims, with the trust paying any associated estate tax." (Gronotte AB, at p. 10.) Respondents' coordinated vote—in which Victoria partook in her director capacity despite her conflicted dual role and other hidden conflicts as a trust beneficiary—rubber-stamped Victoria's unlawful settlement offer, self-immunized Victoria in her trustee role, and precluded suit by the Foundation as the remainder beneficiary. (See *Estate of Giraldin* (2012) 55 Cal.4th 1058, 1068 ["[T]he Probate Code affords beneficiaries broad remedies for breach of trust."].) Consequently, there is a direct and unbroken chain of causation between (1) Victoria's $15 million settlement offer and the board's contested endorsement of an even larger sum, and (2) $15 million subtracted from the total assets received by the Foundation under the Conrad Prebys Trust (the "Trust")—which Prebys overly designated, not for his disinherited son, but for charity across San Diego and California.

Thus, filing a private action expressly authorized by statute strictly adhered to Turner's fiduciary duty to oppose Victoria's misappropriation of what would otherwise be charitable funding in violation of California law and the unequivocal terms of the Prebys trust, and Respondents' blessing of the same in breach of their fiduciary duties to the Foundation. And notwithstanding Respondents' protests, the remedies that Turner seeks—e.g., restoration of the charity's lost assets, inclusive of the $35 million that Victoria seeks to profit from her unlawful diversion (which

Victoria would further deduct from the Foundation's assets)[5]— are consistent with Turner's duties, would resolve Respondents' injury to the Foundation, and would obviate the need for a separate public action altogether. (See *San Diego etc. Boy Scouts of America v. City of Escondido* (1971) 14 Cal.App.3d 189, 196 fn. 1 [noting that private action could sufficiently "enforce" charitable trust without the need for separate action by the Attorney General].)

D. Stockholder derivative standing doctrines are inapposite to the direct right of action and standing granted by the enforcement statutes.

Given the Legislature's express grant of standing to minority directors and officers, Respondents' allusions to for-profit stockholder derivative standing principles are unavailing. (See Victoria AB, at p. 26; Gronotte AB, at p. 17; Foundation Board AB, at p. 9.) Based on the plain language of the enforcement statutes, the Legislature granted directors like Turner a direct right of action and standing to protect their charity's interests.

Gronotte and the Foundation Board posit that Turner lacks standing because she is not the "real party in interest," citing Code of Civil Procedure, section 367. (Foundation Board AB, at pp. 21–22; Gronotte AB, at p. 19.) While Respondents fixate on the provision's general rule that "[e]very action must be prosecuted in the name of the real party in interest," they turn a blind eye to dispositive language later in that same statute that confirms

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[5] Turner's Request for Judicial Notice and Exhibit A to be judicially noticed, titled Attorney General's Objection to Third Account and Report of Trustee and Petition for: (1) Settlement of Account; (2) Ratification of Prior Acts by Trustee; and (3) Order Authorizing Trustee's Fees, were filed alongside this Reply Brief.

Turner's standing, "except as otherwise provided by statute"—i.e., the precise function of the charity director enforcement statutes. (Code Civ. Proc., § 367.)

Respondents also confuse Turner's enforcement action as solely a "derivative" suit "on behalf of a corporation" (Victoria AB, at p. 26; Gronotte AB, at p. 14; Foundation Board AB, at p. 22), even as Victoria later admits that the "director standing statutes" here are "not" "derivative statutes" (Victoria AB, at p. 52). When the Legislature adopts statutory language like "by the corporation or by a member ***suing in a representative suit***" (§ 5141 [emphasis added]), "***in right of any domestic or foreign corporation*** by any holder of shares" (§ 800 [emphasis added]), or "***in the right of any corporation*** by any member of such corporation" (§ 5710 [emphasis added]), it intends for the plaintiff to sue derivatively.

However, the charity director enforcement statutes contain no such text or intent. (*American Coatings Assn. v. South Coast Air Quality Management Dist.* (2012) 54 Cal.4th 446, 463 ["When the Legislature uses materially different language … , the normal inference is that the Legislature intended a difference in meaning." [Citation.]"].) Respondents refuse to appreciate this pivotal distinction. Here, the statutes clearly allow a charity director or officer like Turner to, in her own right, "bring an action to enjoin, correct, obtain damages for or to otherwise remedy a breach of a charitable trust" (§ 5142), and "bring an action in the superior court" against any "self-dealing transaction" (§ 5233). She may also file "suit" in "superior court" to "remove from office any

director in case of fraudulent or dishonest acts or gross abuse of authority." (§ 5223.) That the charity stands to benefit from a minority director's action does not transform it into a derivative suit. Accordingly, the Legislature unambiguously established a direct right of action for minority directors and officers to protect their charities, foreclosing Respondents' argument that Turner merely litigates derivatively *as* the charity.

Respondents' misguided understanding of the direct right of action and standing held by minority directors and officers comes into clearest view through their parallel depiction of the Attorney General's enforcement as "bringing claims on behalf of the Foundation." (Victoria AB, at p. 33.) When "there is a failure to comply with a charitable trust ' … the Attorney General shall institute, ***in the name of the State***, the proceedings necessary to correct the noncompliance or departure.' [Citation]" (*Holt, supra*, 61 Cal.2d at p. 754 [emphasis added]; see *ibid.* [the Attorney General sues as "representative of the public"].) Much like charity directors and officers, the statutes codify the Attorney General's independent right of action—one that the Legislature surely contemplated would benefit the charity, even as the Attorney General does not sue derivatively as the charity.

Despite this, Respondents contend that *Grosset v. Wenaas*, which concerned a for-profit stockholder derivative statute, also evinces legislative intent to withhold standing for charity directors and officers after they are ousted. (Gronotte AB, at p. 19; Foundation Board AB, at pp. 28–29; Victoria AB, at p. 36; see *Grosset v. Wenaas* (2008) 42 Cal.4th 1100, 1114 (*Grosset*).)

Nothing could be further from the truth.

First, *Grosset* analyzed a Corporations Code chapter specific to "Shareholder Derivative Actions" (§ 800) and, as noted above, a charity director's enforcement action under sections 5142, 5223, and 5233 is not a derivative action. It is axiomatic that there is no "abuse of the derivative suit," as Respondents allege, since Turner's underlying action is not derivative. Second, the text of section 800(b)(1) clearly illustrates that the Legislature prescribed myriad conditions for "any shareholder who does not meet these requirements" to bring a derivative suit. (§ 800(b)(1).) No such textual limitations appear in the charity director enforcement statutes precisely because the Legislature had no intention of curtailing the standing of minority directors or officers ousted after they filed suit.

Third, and most importantly, central to *Grosset*'s holding was the noted absence of evidence that construing the for-profit stockholder derivative statute to require continuous stock ownership "would be contrary to legislative intent." (*Grosset*, *supra*, 42 Cal.4th at p. 1113.) Yet, Respondents overlook the fact that the exact opposite is true with respect to the enforcement statutes. The Legislature enacted these statutes "in recognition of the problem of providing adequate supervision and enforcement of charitable trusts" with the intention of deputizing minority charity directors to prosecute malfeasance by the board majority—even if, and perhaps especially when, as here, the culpable directors oust the minority director plaintiff in the midst of her ongoing suit.

(*Holt*, *supra*, 61 Cal.2d at p. 754.)[6]

In tandem with their misplaced reliance on *Grosset*, Respondents also hinge their arguments around *Wolf v. CDS Devco*, which is also readily distinguished. (*Wolf v. CDS Devco* (2010) 185 Cal.App.4th 903 (*Wolf*).) In *Wolf*, the Fourth District confirmed that its ruling involved the "narrow" issue of a for-profit corporation director's "absolute right at any reasonable time to inspect and copy all books, records and documents of every kind"—and not whether a charity director may continue litigating an enforcement action after being ousted by the accused board majority. (*Id.* at p. 906, fn. 1; see *Tenney*, *supra*, 189 N.Y.S.2d at p. 209 [noting that inspection rights are "merely a procedural adjunct of [a director's] duty to keep informed of corporate matters"].) Analyzing these limited facts in the for-profit context,

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[6] Beyond the charity director enforcement statutes, Turner's uninterrupted standing is separately grounded in the charity member enforcement statute. (§ 5710.) *Grosset*'s for-profit stockholder rule should not be superimposed on charities; and if it is, then the equitable exception applies. (Turner AOB, at pp. 62–68.) In assuming *Grosset* applies to charity members under section 5710, Respondents selectively discount *Grosset*'s "equitable considerations" and argue that "the Foundation's normally scheduled annual election had nothing to do with Turner's lawsuit." (Victoria AB, at p. 61; Foundation AB, at p. 40; Gronotte AB, at p. 30.) Respondents, again, disregard Turner's pleadings replete with factual allegations that they colluded to game the election's *substantive outcome* and not its mere "schedul[ing]." (9 AA 2014, 2031, 2036–2037.) These facts establish the "reasonable [] infer[ence]" that Respondents refused to nominate or reelect Turner due to "allegations of wrongdoing she made against the[m]" (*Workman*, *supra*, 382 P.3d at p. 819), thereby dovetailing with *Grosset*'s equitable considerations.

the *Wolf* court had no occasion to contextualize or even consider this Court's *Holt* precedent or the Legislature's longstanding efforts to enhance internal charity safeguards.

Additionally, the *Wolf* plaintiff brought an action pursuant to his right "to conduct [] a prospective inspection" of records—not on the basis of any documented wrongdoing by the board majority, as Turner did here. (*Wolf*, *supra*, 185 Cal.App.4th at p. 916.) So even though the *Wolf* plaintiff "argue[d] that he may be exposed to personal liability for his own or other directors' activities that occurred before he left the board" (*id.* at p. 915), he alleged no specific wrongdoing during his corporate director tenure and could therefore not point to any specific source of potential liability for himself or the other board members, which Turner has clearly done in relation to Respondents' misconduct.

Finally, the Foundation Board complains that continued suit by a minority director after her ouster "seek[s] to usurp the authority of the corporation's board of directors," which Victoria echoes. (Foundation Board AB, at p. 23; Victoria AB, at p. 26.) To be sure, there is no dispute that a charity's governing board may in general bring or defend litigation related to the charity. But that principle has minimal significance here, as the Legislature expressly contemplated the integral role of a minority director to bring suit against a board majority that has breached their fiduciary duties and engaged in self-dealing.

"When charitable trusts are badly or corruptly managed, underenforcement of the original charitable purpose disserves the public interest in furthering social betterment." (*Autonomous*

Region of Narcotics Anonymous v. Narcotics Anonymous World Services, Inc. (2022) 77 Cal. App. 5th 950, 966.) Mindful of the longstanding "problem of providing adequate supervision and enforcement of charitable trusts," the Legislature saw fit to confer on minority directors and officers standing to bring and fully litigate suits to vindicate the best interests of the charity and the California public. (*Holt*, *supra*, 61 Cal.2d at p. 754; *Summers*, *supra*, 34 Cal.App.5th at p. 371.) These "wider historical circumstances" of the statutes' enactment "assist in ascertaining legislative intent." (*Kaanaana*, *supra*, 11 Cal.5th at p. 169.)

This core objective of "adequate … enforcement" is poorly served when the standing of any minority director or officer remains under constant threat by the board majority throughout the litigation. If a minority director's board position can be voided at any time to end the enforcement action—whether by special vote, annual election, or "expiration of her term" (as Respondents erroneously characterize it) (Foundation Board AB, at pp. 7, 17)—then the minority director plaintiff has perverse incentives to not file suit to begin with or, even after filing suit, to pull punches, make inappropriate concessions, and advocate less fervently for the charity over the course of the litigation. As such, Respondents' arguments regarding director and officer standing would rein in vigorous advocacy for charities—not strengthen it.

Consequently, to effectuate the Legislature's intent and the core statutory purpose, it is clear that a minority director's *independent autonomy* (and standing) from the will of the board majority is imperative. To the extent Respondents bemoan the fact

that the Legislature conferred upon minority directors and officers "the extraordinary right to displace the board's authority" to bring and then fully litigate actions to safeguard the charity, their grievances should be lodged not with this tribunal, but with the Legislature whose concerns regarding charity malfeasance—echoed by *Holt*—were indeed "extraordinary." (Foundation Board AB, at pp. 23–24; see *Holt*, *supra*, 61 Cal.2d at p. 757.)

E. The Attorney General's Longstanding Interpretation and Out-of-State Authorities Support Uninterrupted Standing for Ousted Directors and Officers

1. The Attorney General's 44-Year Interpretation of the Enforcement Statutes Is Entitled to Deference and Supports Turner's Standing Here.

Under California law, "the Attorney General has primary responsibility for the enforcement of charitable trusts." (*Holt*, *supra*, 61 Cal.2d at p. 755; see Govt. Code, § 12598(a).) "The purpose of [the Attorney General's] oversight is to protect charitable assets for their intended use and ensure that the charitable donations contributed by Californians are not misapplied and squandered through fraud or other means." (Office of the Attorney General, *Charities* (2022) Cal. Dept. of Justice <https://oag.ca.gov/charities> [as of June 13, 2022].)

Since the Legislature's passage of the enforcement statutes nearly a half century ago, the Attorney General has consistently interpreted those statutes as preserving standing for minority director and officer plaintiffs, regardless of whether they are ousted during the pendency of the action. Respondents do not dispute that the Attorney General "has historically been the

protector, supervisor, and enforcer" of California charities; that he has great expertise in enforcement of charitable trusts, including the statutes at issue here; or even that he has interpreted these statutes in that manner consistently since their enactment. (Foundation Board AB, at p. 31.)

Instead, Victoria and the Foundation Board create a red herring, claiming that Turner's opening brief stands for the proposition "that the Attorney General's amicus briefs in this case and *Summers*" are what is entitled to deference. (Victoria AB, at p. 55; see Foundation Board AB, at p. 41.) Not so. As Turner's opening brief explains, it is not the Attorney General's amicus briefs that are entitled to deference, but rather his "longstanding, consistent, and contemporaneous interpretation" of the statutes since their 1978 enactment—which he also articulated in his amicus letter and briefs—for which deference is warranted. (Turner AOB, at p. 47.)

Victoria individually argues that "the Attorney General, having observed [Turner's] conduct of this matter, almost certainly would not appoint her [as a relator]." (Victoria AB, at p. 12.) There is no support in the record for Victoria's radical proclamation beyond her personal contempt for Turner and the present action, which she has made abundantly clear. This notion is undermined even further by the Attorney General's ongoing support for Turner's standing under the charity director enforcement statutes here. (Attorney General Amicus Curiae Letter in Support of the Petition for Review in *Turner v. Victoria*, Case No. S271054, Cal. Dept. of Justice.)

To the extent Respondents seek to fabricate a negative inference from the fact that the Attorney General has not conferred upon Turner relator status, their argument is meritless. As noted, "given his longstanding interpretation, supported by *Summers*, that the enforcement statutes confer upon Turner standing to see her action to completion," the Attorney General has no need to designate Turner as a relator. (Turner AOB, at p. 54.)

2. The Restatement and Out-of-State Authorities Support Continuous Standing for Ousted Directors and Officers

Respondents levy a range of unpersuasive critiques on the Restatement and the wisdom of sister state jurisdictions. While "not controlling" for this Court, these authorities offer "valuable insight" into the purposive principles animating the Legislature's enactment of the charity director enforcement statutes. (*In re Joyner* (1989) 48 Cal.3d 487, 492.) Significantly, these authorities reveal the guardrails other states have adopted to bar an accused board majority from eliminating a director or officer plaintiff's standing to protect her charity through private enforcement.

The Foundation Board initially complains that "the Restatement, like RMNCA, is not controlling law." (Foundation Board AB, at p. 39.) It is settled law, however, that this Court regards the Restatement as persuasive, especially in illuminating the purposive considerations undergirding analogous statutes. (*Montrose Chemical Corp. v. Superior Court of Los Angeles County* (2020) 9 Cal.5th 215, 233; see *Holt*, *supra*, 61 Cal.2d at pp. 753, 757, 763 fn. 6 [repeatedly citing the Restatement]; *Riverisland*

Cold Storage, Inc. v. Fresno-Madera Production Credit Assn. (2013) 55 Cal.4th 1169, 1172 [rejecting a rule that "conflicts with the doctrine of the Restatements … and the majority of our sister-state jurisdictions"]; see also Victoria AB, at p. 52 [acknowledging the Restatement has " 'persuasive' value"].)

In turn, Victoria insists the Restatement does not address "director standing," even as the Restatement plainly encompasses statutes that afford standing to "a current" or "former member of the board of the charity"—i.e., a charity director. (Victoria AB, at p. 52.) Victoria then asserts that this Court "already" adopted in *Grosset* a rule inimical to the Restatement and other sister jurisdictions. (*Ibid.*) But *Grosset* is not cited or mentioned once in the Restatement, much less section 6.02 concerning private actions to protect charities. (Rest., § 6.02.) Nor is *Holt* cited even once in *Grosset*. These omissions confirm that Respondents are cloistered in their view that *Grosset*'s for-profit stockholder ownership rule applies to charity directors and officers.

Victoria's last-ditch effort to challenge the Restatement—declaring that it "does not say that continuous … directorship is not required"—is equally dubious. (Victoria AB, at p. 53.) The Restatement makes clear that "a board cannot evade responsibility for misconduct by removing a [director] after the matter has been brought to the[ir] attention," and so sister jurisdictions generally "recognize the standing" of "a former member of the board of the charity who is no longer a member for reasons related to [her] attempt to address the alleged harm to the charity." (Rest., § 6.02.)

Beyond the Restatement, Respondents dispute the wisdom

and application of the out-of-state authorities that, like *Summers* and the Restatement, ensure uninterrupted standing for minority directors and officers who bring actions prior to their ouster. Specifically, Respondents protest the weight of out-of-state case law and strive to distinguish *Tenney* and *Workman*. (*Tenney*, *supra*, 6 N.Y.2d at p. 209; *Workman v. Verde Wilderness Wellness Center, Inc.* (Ariz. Ct. App. 2016) 382 P.3d 812 (*Workman*).) But these on-point decisions are not so readily distinguished.

Tenney considered "the issue whether the plaintiff has standing to continue to prosecute the action now that he is no longer a director" after he was not "re-elected as a director at the [annual] election"—a question identical to the one presented before this Court on review. (*Tenney*, *supra*, 6 N.Y.2d at p. 209.) Focused on statutes' purpose and "strong reasons of policy," the N.Y. high court held, first, that the plaintiff "had the legal capacity to bring the action, when he did" and, second, that there was "no basis" for finding "he lost that capacity or suffered a disqualification when he failed to be re-elected as director." (*Ibid.*)

Victoria attempts to cast doubt on *Tenney* by arguing that it did not "involve[] a plaintiff-director whose term expired naturally due to the passage of time." (Victoria AB, at p. 51.) As an initial matter, it is difficult to reconcile Victoria's representation that Turner's term "expired naturally" with her antithetical assertion regarding "numerous other reasons why the other directors may not have wanted to endorse Turner with a nomination." (Victoria AB, at pp. 40–41.) Victoria assigns significance to whether the director-plaintiff's term "expired naturally" (a phrase that has no

independent meaning), even though none of the cases cited relied on any such distinction. Indeed, the factual similarities between *Tenney* and the present appeal are uncanny: In both cases, after the director-plaintiffs brought suit against their fellow directors to safeguard their organization's best interests, they were neither nominated nor reelected at the next election, and thereafter the accused parties moved to dismiss their actions for lack of standing. Like the plaintiff in *Tenney*, Turner alleged that Respondents "by virtue of the power they hold in the [Foundation], and which it is alleged they have misused, [found] it advantageous to defeat [Turner's] re-election rather than defend the suit." (*Id.* at p. 213.)

Victoria then cites another N.Y. case, erroneously supposing that it narrows *Tenney*'s holding to the "specific circumstance of a director's removal." (Victoria AB, at p. 55; see *Pall v. McKenzie Homeowners' Assn., Inc.* (N.Y. App. Div. 2014) 995 N.Y.S.2d 400 (*Pall*).) *Pall*'s reasoning centered on a statutory amendment that "specifically eliminated the ability of less than five percent of shareholders to continue an action." (*Pall*, *supra*, 995 N.Y.S.2d at p. 402.) No such amendment or intent exists here. Even assuming for the sake of argument that *Tenney* was so narrowed, Turner's pleadings allege that she was ousted by Respondents in retaliation for her filed enforcement action such that, against Respondents' protestations, wrongful ouster is present here. "It is reasonable to infer that the board removed [Turner] in response to her claims, particularly in light of the allegations of wrongdoing she made against the other directors." (*Workman*, *supra*, 382 P.3d at p. 819.)

Citing "fundamental differences" between California, New

York, and Arizona, Gronotte and the Foundation Board argue that standing in those states "(1) is not jurisdictional and (2) is waivable." (Gronotte AB, at p. 29; Foundation Board AB, at p. 38.) It is not clear how these contentions, even if true, meaningfully distinguish them from the present appeal. For one, California "has no case or controversy requirement imposing an independent jurisdictional limitation on our standing doctrine" (*Weatherford*, *supra*, 2 Cal.5th at pp. 1247–48) and, regardless, the enforcement statutes guarantee continuous standing for directors and officers like Turner who already brought suit, whether ousted or not, such that jurisdiction is ever-present. (*Summers*, *supra*, 34 Cal.App.5th at p. 374.) Nor are there any indicia in *Tenney* or *Workman* that standing requirements were "waiv[ed]" to permit suit by the ousted director-plaintiff, as Respondents suggest.

Ostensibly in support of her position, Victoria relies on a Tennessee case and an unpublished Kentucky case. (See *United Supreme Council AASR SJ v. McWilliams* (Tenn. Ct. App. 2019) 586 S.W.3d 373 (*McWilliams*); *Fenley v. Kamp Kaintuck, Inc.* (Ky. Ct. App. Nov. 10, 2011) 2011 WL 5443440 (*Fenley*) [unpublished].) Victoria's dependence on *McWilliams* is misplaced and, given its procedural posture, actually supports Turner's standing here. On appeal from a grant of summary judgment, a Tennessee appeals court held that the plaintiffs lacked standing because they had "formed a rival corporation" and, "pursuant to the original [Masonic/Scottish Rite] organization's constitution," they "voluntarily" "surrender[ed] all their membership rights." (*McWilliams*, at pp. 375, 377.) So unlike here, there was no factual

dispute as to whether the *McWilliams* plaintiffs were ousted as the case was decided on summary judgment following discovery, not on demurrer. (*Id.* at p. 377 ["plaintiffs 'voted with their feet' and left [the Masonic/Scottish Rite membership organization]"].) So if Respondents wish to contest whether Turner was, in fact, ousted—in contrast to Turner's factual allegations to that effect—they should invite discovery and introduce their supposed adverse evidence on summary judgment or at trial.

Likewise, *Fenley*'s relevance here is similarly doubtful. *Fenley* is unpublished (see Ky. R. Civ. P. 76.28(4)(b) [unpublished Kentucky opinions "shall not be cited or used as binding precedent in any other case in any court of this state"]; cf. Cal. Rules of Court, Rule 8.1115(a)), and the case involved "members" (rather than directors or officers) of "a voluntary private club" who brought suit after they lost their voluntary membership (*Fenley*, at p. *1)—facts far afield of Turner's action, initiated as a duly-serving Foundation director, officer, and member, to curb Respondents' wrongdoing.

II. THE ATTORNEY GENERAL'S STANDALONE CAUSE OF ACTION AND THE RELATOR PROCESS HAVE NO BEARING ON A DIRECTOR OR OFFICER'S STATUTORY STANDING

A. The Attorney General's authority to initiate a public action is separate from the statutory standing held by charity directors and officers

Respondents repeatedly refer to the Attorney General's enforcement authority to justify limiting the statutory standing of charity directors and officers after their ouster. These arguments are foreclosed by *Holt*, which firmly rejected the majority trustees' "conten[tion] that only the Attorney General can bring such an

action." (*Holt*, *supra*, 61 Cal.2d at p. 753.) "There is no rule or policy against supplementing the Attorney General's power of enforcement by allowing other responsible individuals to sue in behalf of the charity. The administration of charitable trusts stands only to benefit if in addition to the Attorney General other suitable means of enforcement are available." (*Id.* at pp. 755–56.) Thus, Respondents' assertion that *Summers* was wrongly decided because "where, as here, a charitable corporation is accused of misconduct, the Attorney General will always have standing to investigate and litigate those claims," their argument is foreclosed by *Holt*. (Gronotte AB, at p. 21; Victoria AB, at pp. 27–28.)

B. The time- and cost-intensive relator process also has no bearing on director or officer standing.

Respondents posit that the Attorney General's authority to "grant[] relator status" in sections 5142(a)(5) and 5233(c)(4) also evinces the Legislature's intent to revoke the separate standing held by directors and officers following their involuntary ouster, as Turner was here, and that "*Summers* ignored this 'relator status' provision set forth in Section 5233." (Gronotte AB, at pp. 21–22; Victoria AB, at pp. 42–43.) They cite no authority for this proposition because nothing in the statutory text favors their view. To the extent that *Summers* "ignored" the relator provision, the Second District did so because it rightly has no bearing on the Legislature's independent grant of statutory standing for charity directors and officers.

Crucially, Respondents' theory squarely undermines the fundamental purpose of the charity director enforcement statutes. Far from facilitating "adequate supervision and enforcement of

charitable trusts," Respondents would compel a minority charity director or officer—even though the Legislature granted her an express cause of action and standing—to undertake the time- and resource-intensive relator process to reset the same action that the Legislature already authorized her to bring. If adopted, their view would deter minority directors or officers from bringing actions on the basis of their director or officer status at all. Given the perennial risk that private enforcement actions could be unjustly terminated by a board majority at some hypothetical future date, in lieu of suing promptly under the statutory standing provisions specifically afforded to them, like the Legislature envisioned, such plaintiffs would likely delay filing suit to pursue relator status.

Under the relator process, a minority director must exhaust personal resources to (1) bring an enforcement action only to (2) lose her directorship partway through from the collusive efforts of her accused counterparts, (3) have her ongoing action dismissed pending (4) her submission of a request to the Attorney General for relator status, which (5) the accused directors may oppose. From there, the Attorney General must then (6) conduct his own investigation into the allegations and, (7) even if he grants relator status, (8) the relator must file her complaint or petition anew, and in contrast to a director or officer plaintiff, (9) the Attorney General may rescind relator standing at any time during the litigation. All the while, Respondents' alleged harm to the Foundation remains unresolved; the costs to the parties, Attorney General, courts, charity, and public are magnified exponentially; and the statute of limitations continues to run and could easily elapse before the

relator process concludes. (§ 5233, subd. (e).)

Respondents' conflation of director and officer standing with the separate relator process also neglects to consider the historical challenges attached to relator status unrelated to the merits. "The mere availability of relator status is not a panacea" since "[a] major shortcoming of the doctrine of relation is that the attorney general's discretion to grant relator status can be influenced by factors which do not address the merits of the case. The standing issue has become increasingly important as the Attorney General's Office has suffered staff reductions while the number of charitable trusts has greatly increased." (Lisa M. Bell & Robert B. Bell, *Supervision of Charitable Trusts in California* (1980) 32 Hastings L.J. 433, 447–48.)

Gronotte goes even further to claim that Turner "conferred 'relator status' upon herself" by "us[ing] the *Summers* decision." (Gronotte AB, at p. 22.) This is patently absurd. Turner has never claimed to be a relator. She timely filed suit as a contemporaneous director and officer under sections 5142(a)(2)–(3), 5223(a), and 5233(c)(1)–(2) and "her subsequent removal as director did not deprive her of standing." (*Summers*, supra, 39 Cal.App.5th at p. 374.) Per Respondents, it is "[r]emarkable" that "Turner does not mention that the court reversed in part so she could pursue relator status." (Victoria AB, at p. 12; Gronotte AB, at p. 15; Foundation Board AB, at p. 14.) But, as discussed, relator status is inapposite to the Legislature's express grant of standing to charity officers and directors, whether ousted or not.

Beyond this, there are serious gaps in how the Fourth

District's affirmance of dismissal and remand for "substitut[ion]" may interact with the potentially fatal statute of limitations, which Respondents conveniently neglect to mention. (*Turner*, *supra*, 67 Cal.App.5th at p. 1138.) Since the relator application takes place outside the judicial process, the Fourth District opinion affirming dismissal of Turner's ongoing action may implicate the statute of limitations and preclude suit by relator altogether.

Based on the foregoing limitations on relator status, it is apparent that Respondents' arguments concerning relators—whose standing exists independent of the express cause of action and standing for charity directors and officers—are unsupported by statutory text and purpose, and seek to impose onerous and redundant procedural requirements that run up the costs of suit and run out the statute of limitations. In other words, Respondents' interpretation would hinder and, in many cases, even preclude "adequate … enforcement" by responsible directors or officers like Turner. (*Holt*, *supra*, 61 Cal.2d at p. 754.)

III. RESPONDENTS' FACTUAL CONTENTIONS AND BASELESS ATTACKS ON TURNER ARE OUTSIDE THE RECORD ON DEMURRER.

In a misplaced effort to bolster their claims, Respondents resort to a laundry list of specious and contested factual allegations and mischaracterizations against Turner, none of which are drawn from Turner's operative pleadings—the only pertinent record on appeal of demurrers on standing grounds. (*White*, *supra*, 7 Cal.5th at p. 1032 [this Court's "standing analysis is limited to the pleadings."].) In short, Respondents' accusations are false, premature, and irrelevant in the instant posture.

"[W]hen a demurrer or pretrial motion to dismiss challenges a complaint on standing grounds, the court may not simply assume the allegations supporting standing lack merit and dismiss the complaint." (*Barefoot v. Jennings* (2020) 8 Cal.5th 822, 827 (*Barefoot*).) This Court "appl[ies] the established principle that a demurrer 'admits the truth of all material factual allegations in the complaint … ; the question of plaintiff's ability to prove those allegations, or the possible difficulty in making such proof does not concern the reviewing court.' " (*Perdue v. Crocker National Bank* (1985) 38 Cal.3d 913, 922, quoting *Alcorn* v. *Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496.) On demurrer, in particular, "the complaint must be liberally construed with a view to substantial justice between the parties" (*Ramsden v. Western Union* (1977) 71 Cal.App.3d 873, 879, citing Code Civ. Proc., § 452), in full recognition that "demurrer is simply not the appropriate procedure for determining the truth of disputed facts" introduced by the movants. (*Id.* at p. 879.) If, after "assum[ing] the truth of the complaint's properly pleaded or implied factual allegations" (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081), this Court "finds standing," then it "should allow the litigation to continue" (*Barefoot*, *supra*, 8 Cal.5th at p. 827).

As stated in Turner's operative petition and complaint: (1) director-trustee Victoria offered to Prebys's disinherited son $15 million deducted directly from the Foundation's trust inheritance (9 AA 2026–27, 2030–32); (2) Respondents, including director-trustee Victoria, voted to accept the conflict-ridden settlement and self-immunize director-trustee Victoria in violation of California

law, Foundation bylaws, and the unambiguous terms of the Trust (9 AA 2030–37); (3) Respondents behaved dismissively when Turner raised serious conflict of interest concerns in relation to the settlement (9 AA 2036–37, 2040–41); (4) Respondents responded with hostility to Turner following the contested vote and after she filed her enforcement action, and they implied they would oust Turner eventually, just not "now" (9 AA 2042–43); (5) in retaliation for filing her enforcement action against them, Respondents colluded to remove Turner, and they did indeed remove her, at the Foundation's next election (9 AA 2045); and (6) Respondents immediately seized on their orchestrated election outcome to argue that Turner lost standing, all the while claiming she never nominated herself and ignoring her subsequent self-nomination to the vacant board seat (9 AA 2045–2046, 2216).

Notwithstanding the fact that Turner's operative pleading constitutes the four corners of this record on appeal, it is remarkable that, even as Respondents repeatedly insist that Turner has lost her standing to see her action to completion, their briefs are littered with highly disputed factual contentions outside the operative record. Respondents recite a laundry list of non-record allegations in a naked attempt to distort this Court's record and prematurely litigate their merits arguments against Turner:

- Turner is "attempting to usurp the powers of the Board in order to gain control of the Foundation and to rehabilitate a reputation tarnished by the settlement." (Foundation Board AB, at p. 9; see Gronotte AB, at p. 6.)
- "Turner herself was credibly accused of wrongdoing."

(Victoria AB, at p. 10.)

- "Turner contended there should be no settlement at all, because she wanted to defend herself at trial." (Victoria AB, at p. 11.)
- "Turner filed this action challenging the settlement … as a weapon for her own agenda: vindication against those who saw potential merit in the allegations against her, and control of a $1.5 billion nonprofit, with all its attendant prestige in the community." (*Ibid.*; see Foundation Board AB, at p. 15.)
- "[T]he Attorney General, having observed her conduct of this matter, almost certainly would not appoint her, or would supervise her and thus thwart her personal agenda." (Victoria AB, at p. 12.)
- Turner brought suit "for no reason except furthering her personalized interests." (Victoria AB, at p. 24; Foundation Board AB, at pp. 15, 37; Gronotte AB, at p. 32.)
- There are "numerous other reasons why the other directors may not have wanted to endorse Turner with a nomination." (Victoria AB, at p. 41.)
- Turner's "first act as chair was to try to push aside multiple directors simply because they worked for Conrad's company." (*Id.* at p. 41, fn. 10.)
- "Turner also resisted any limits on her ability to unilaterally commit the Foundation to financial obligations, including spending guidelines or oversight." (*Ibid.*)
- Turner's "true interest is vindication on Eric's charges

against her and unilateral control over the Foundation." (*Id.* at p. 49).

These contentions, which Turner denies and the record does not support, are wholly irrelevant for an appeal on demurrer.

It is important to note that, in light of the current procedural posture, this Court's ruling that Turner and other similarly-situated plaintiffs have standing to fully litigate their preexisting suits would "not preclude [Respondents] from disputing [Turner's] factual allegations … in a motion for summary judgment or at trial." (*White*, *supra*, 7 Cal.5th at p. 1032.) If Respondent truly believed that Turner's suit were "an abuse of the litigation process and contrary to the Foundation's goals" (Gronotte AB, at p. 32)—despite the fact that Turner has consistently sought remedies prescribed by statute and in the Foundation's best interests—then they surely must be eager to move beyond the narrow record on demurrer to introduce their imagined evidence to that effect. But for some reason, Respondents appear reluctant to reach the merits.

Turner on the other hand is confident in the strength of her case and the statutory grounding for her requested relief. She therefore welcomes the opportunity to turn to the discovery phase, where she can introduce supporting record evidence and rebut Respondents' baseless accusations on summary judgment or at trial. Much more importantly, Turner looks forward to securing a judicial outcome that improves the governance and management of the Foundation and other California charities, replenishes the charitable funds diverted from the Foundation, and ensures that the Foundation is best positioned to fulfill its essential mission of

empowering children, families, and communities across California, in accordance with the final wishes of Conrad Prebys.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed and the case should be remanded for further proceedings consistent with the Court's opinion.

Dated: June 13, 2022

COOLEY LLP

Steven M. Strauss
Erin C. Trenda
Matt K. Nguyen

Attorneys for Plaintiff and Appellant DEBRA TURNER

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.504(d) of the California Rules of Court and Appellant Debra Turner's Application to File Overlength Consolidated Reply Brief, filed contemporaneously with this brief, I hereby certify that this brief contains 11,041 words, including footnotes, as counted by Microsoft Word, the word processing software used to prepare this brief.

Dated: June 13, 2022

Respectfully submitted,

Steven M. Strauss

PROOF OF SERVICE

I am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 4401 Eastgate Mall, San Diego, CA 92121. My email address is bdanziger@cooley.com. On June 13, 2022, I served the following:

1. APPELLANT'S CONSOLIDATED REPLY BRIEF ON THE MERITS

as follows:

Alexander K. Mircheff, Esq.
Megan M. Cooney, Esq.
Jillian N. London, Esq.
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Email: amircheff@gibsondunn.com
Email: mcooney@gibsondunn.com
Email: jlondon@gibsondunn.com

Attorneys for Laurie Anne Victoria

Scott A. Edelman, Esq.
Gibson, Dunn & Crutcher LLP
2029 Century Park E, Suite 4000
Los Angeles, CA 90067
Email: sedelman@gibsondunn.com

Attorneys for Laurie Anne Victoria

Kristen E. Caverly, Esq.
Lisa Roper, Esq.
Henderson Caverly Pum & Trytten LLP
12750 High Bluff Dr., Suite 300
San Diego, CA 92130
kcaverly@hcesq.com
lroper@hcesq.com

Attorneys for Joseph Gronotte

J. Christopher Jaczko, Esq.
Procopio, Cory, Hargreaves & Savitch LLP
12544 High Bluff Drive, Suite 400
San Diego, CA 92130
Email: chris.jaczko@procopio.com

Attorneys for Gregory Rogers

Sean Sullivan, Esq.
Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
Email: sean.sullivan@JJrocopio.com

Attorneys for Gregory Rogers

Reginald Vitek, Esq.
Scott W. Perlin, Esq.
Seltzer Caplan McMahon Vitek
750 B Street, Suite 2100
San Diego, CA 92101-8177
Email: vitek@scmv.com
Email: perlin@scmv.com

Attorneys for Anthony Cortes

Robert W. Brownlie, Esq.
Brownlie Hansen LLP
10920 Via Frontera, Suite 550
San Diego, CA 92127
Email: robert.brownlie@brownliehansen.com

Attorneys for The Conrad Prebys Foundation

S. Andrew Pharies, Esq.
DLA Piper LLP (US)
4365 Executive Drive, Suite 1100
San Diego, CA 92121
Email: andrew.pharies@dlapiper.com

Attorneys for The Conrad Prebys Foundation

Rob Bonta, Esq.
Sandra Barrientos, Esq.
Joseph Zimring, Esq.
Caroline K. Hughes, Esq.
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Email: Sandra.Barrientos@doj.ca.gov

Attorneys for the Office of the Attorney General, State of California

Email: Joseph.Zimring@doj.ca.gov
Email: Caroline.hughes@doj.ca.gov

Clerk
Court of Appeal
Fourth Appellate District, Division One
750 B Street, Suite 300
San Diego, CA 92101
eservice@capcentral.org

☒ (BY EMAIL) I electronically filed the aforementioned documents with the clerk of this court, through the designated E-File Service Provider ImageSoft Inc.'s TrueFiling. TrueFiling's Service Notification system will forward a copy to all parties registered to receive such service.

and as follows:

San Diego County Superior Court
The Honorable Julia C. Kelety
1100 Union Street, Fifth Flr., Dept. SD-503
San Diego, CA 92101

San Diego County Superior Court
The Honorable Kenneth J. Medel
330 W. Broadway, Dept. SD-66
San Diego, CA 92101

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Executed at San Diego, California on June 13, 2022.

Brenda Danziger

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **TURNER v. VICTORIA**
Case Number: **S271054**
Lower Court Case Number: **D076318**

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Robert Brownlie Brownlie Hansen, LLP 138793	robert.brownlie@brownliehansen.com	e-Serve	6/13/2022 6:00:23 PM
John Jaczko Procopio Cory Hargreaves & Savitch LLP 149317	chris.jaczko@procopio.com	e-Serve	6/13/2022 6:00:23 PM
Caroline Hughes Department of Justice	caroline.hughes@doj.ca.gov	e-Serve	6/13/2022 6:00:23 PM
Steven M. Strauss Cooley, LLP 099153	sms@cooley.com	e-Serve	6/13/2022 6:00:23 PM
Martha Zarate Procopio, Cory, Hargreaves & Savitch LLP	martha.zarate@procopio.com	e-Serve	6/13/2022 6:00:23 PM
Reginald Vitek Seltzer Caplan McMahon Vitek	vitek@scmv.com	e-Serve	6/13/2022 6:00:23 PM
Scott Edelman Gibson Dunn & Crutcher LLP 116927	sedelman@gibsondunn.com	e-Serve	6/13/2022 6:00:23 PM
Erin Trenda Cooley LLP 277155	etrenda@cooley.com	e-Serve	6/13/2022 6:00:23 PM
Jillian London Gibson Dunn & Crutcher LLP 319924	jlondon@gibsondunn.com	e-Serve	6/13/2022 6:00:23 PM
Alexander Mircheff Gibson, Dunn & Crutcher	amircheff@gibsondunn.com	e-Serve	6/13/2022 6:00:23 PM

245074			
Kristen Caverly Henderson Caverly Pum & Trytten LLP 175070	kcaverly@hcesq.com	e-Serve	6/13/2022 6:00:23 PM
Scott Perlin Seltzer Caplan McMahon Vitek 311169	perlin@scmv.com	e-Serve	6/13/2022 6:00:23 PM
Stephen Pharies DLA Piper LLP (US)	andrew.pharies@dlapiper.com	e-Serve	6/13/2022 6:00:23 PM
Sandra Barrientos ATTORNEY GENERAL OF 163808	sandra.barrientos@doj.ca.gov	e-Serve	6/13/2022 6:00:23 PM
Matt K. Nguyen	mnguyen@cooley.com	e-Serve	6/13/2022 6:00:23 PM
Megan M. Cooney 295174	mcooney@gibsondunn.com	e-Serve	6/13/2022 6:00:23 PM
Lisa Roper 282152	lroper@hcesq.com	e-Serve	6/13/2022 6:00:23 PM
Sean Sullivan 254372	sean.sullivan@Procopio.com	e-Serve	6/13/2022 6:00:23 PM
Joseph Zimring 185916	Joseph.Zimring@doj.ca.gov	e-Serve	6/13/2022 6:00:23 PM

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6/13/2022

Date

/s/Steven Strauss

Signature

Strauss, Steven (099153)

Last Name, First Name (PNum)

Cooley LLP

Law Firm