

No. S289952

In the Supreme Court of the State of California

**TESORO REFINING &
MARKETING COMPANY LLC *et al.*,**

Plaintiffs and Appellants,

v.

CITY OF CARSON,

Defendant and Respondent,

**OPENING BRIEF ON THE MERITS OF
APPELLANTS TESORO REFINING &
MARKETING COMPANY LLC, *et al.***

Of the Unpublished Decision of the Second Appellate
District, Division 4, Appeal No. B335686
On Appeal from the Superior Court of Los Angeles County
The Honorable Holly J. Fujie, Presiding
Superior Court Case No. 23STCV14351

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QUESTION PRESENTED

Appellants’ petition for review presented the following question: Can local governments establish “administrative review” procedures—timelines, hearing requirements, etc.—that claimants for money or damages under the Government Claims Act, [Govt. Code § 810 et seq.](#) (the “GCA” or “Act”),¹ must exhaust as a precondition to pursuing their remedies under the Act, even where none of the exceptions in [§ 905](#) apply, or are such additional procedures preempted by the Act, which “established a standardized procedure for bringing claims against local governmental entities”? [McWilliams v. City of Long Beach, 56 Cal. 4th 613, 618-19 \(2013\)](#) (*McWilliams*) (quoting [Ardon v. City of L.A., 52 Cal. 4th 241, 246 \(2011\)](#)).

Respondent’s answer did not present any additional questions for review, but merely sought to reframe Appellants’ question thus: “[T]he question lying at the heart of this [litigation] . . . on which this case turns: Was Tesoro required to exhaust the local remedies enumerated in the [City of Carson] Administrative Review Ordinances [Carson Municipal Code §§ 63516, 63521 & 63523] and comply with the GCA’s claims presentation procedures before filing suit against the City?”

¹ Statutory citations herein are to the Government Code unless otherwise specified.

INTRODUCTION

This appeal arises out of an action filed by Appellants TESORO REFINING & MARKETING COMPANY LLC and TESORO LOGISTICS OPERATIONS LLC (collectively “Tesoro”) in the Los Angeles County Superior Court, seeking a refund of taxes paid by those taxpayers under Respondent City of Carson (“City” or “Carson”)’s “Oil Industry Business License Tax” (“OIBLT”) ordinance. Tesoro contends that the supplemental tax assessments imposed by the City against Tesoro for the period covering December 2017 and tax year 2018, (1) were barred by the applicable statute of limitations and (2) did not apply an apportionment methodology that “fairly reflect[s] that proportion of the taxed activity actually carried on within the taxing jurisdiction” as required by the U.S. and California Constitutions, state statutes, and extensive case law.²

The dispute here, however, relates not to the merits of Tesoro’s claims, but to the proper procedures for pursuing them. In a larger sense, though, at issue here is whether local governments can impose procedural hurdles not in the GCA to impede claims for damages against them from being adjudicated on their merits.

² See, e.g., [*City of Los Angeles v. Shell Oil Co.*, 4 Cal. 3d 108, 124 \(1971\)](#); [*General Motors Corp. v. City of Los Angeles*, 35 Cal. App. 4th 1736, 1752 \(1995\)](#); [Govt. Code § 37101\(b\)](#); [Bus. & Prof. Code § 16000\(a\)](#).

In 1959, concerned that the pre-existing system for submitting claims for money or damages against local government was too complex, the Legislature adopted the Government Claims Act, [Govt. Code § 810 et seq.](#) (“GCA” or “Act”), to establish a single, uniform procedure. That same year, it submitted a constitutional amendment to the voters to ensure that there was no doubt as to its ability to apply such a uniform system even to charter cities. And in 2013, in [McWilliams v. City of Long Beach](#), *supra*, this Court resolved a long-standing ambiguity in the case law, to confirm that the GCA’s procedures apply to local tax refund claims. The Court unanimously held that “except as to ‘[c]laims under the Revenue and Taxation Code or other *statute* prescribing procedures for the refund ... of any tax” the provisions of the GCA govern claims by taxpayers against a local government entity for the refund of an unlawful tax. [56 Cal. 4th at 629](#) (emphasis added). The Court construed the word “statute” to exclude local ordinances, [id. at 617](#), and it also rejected the contention that charter cities’ constitutional home rule powers gave them the ability to adopt alternative claiming procedures. [Id. at 626-27](#).

The following year, a unanimous panel of the Second Appellate District, applying *McWilliams*, held that a local ordinance that seeks to “establish a precondition to filing a claim” for tax refund under the GCA is “preempted by the Government Claims Act” and that “[l]ocal ordinances may not subvert the

authority granted by” that Act to bring claims in accordance with its procedures. [*Sipple v. City of Hayward*, 225 Cal. App. 4th 349, 357-58 \(2014\)](#) (*Sipple*). This Court denied review. [2014 Cal. LEXIS 5113 \(Cal., July 23, 2014\)](#).

There is no dispute that Tesoro complied with the requirements of the GCA in this case, and there is no contention that a different “statute” applies. At issue, instead, is the City of Carson’s argument that, notwithstanding the Legislature’s intent to establish a uniform system, and notwithstanding *McWilliams* and *Sipple*, Tesoro was required to comply with additional, and in some cases directly conflicting, administrative procedures found in the City’s Municipal Code (“CMC”) before pursuing a refund under the Act. The trial court and Court of Appeal below both held that Carson *can* require taxpayers to complete a potentially years-long administrative process, including an administrative writ action under [Code of Civil Procedure § 1094.5](#), as a precondition to exercising their rights under the GCA so long as the City characterizes that precondition as “exhaustion of administrative remedies.” And they held that Tesoro’s failure to comply with local administrative hurdles imposed by the CMC barred Tesoro’s claims.

This conclusion conflicts with *McWilliams* and (as the Court of Appeal essentially conceded, *see slip op.* at 15) with *Sipple*. It also conflicts with the plain language of the

Government Claims Act itself, specifically [Government Code §§ 905](#) and [935](#).

It conflicts with long-standing case law—cited with approval by *McWilliams*—holding that the GCA completely “occupies the field” of regulation with respect to claims against local governments for money or damages. *See, e.g., Volkswagen Pacific, Inc. v. City of Los Angeles*, [7 Cal. 3d 48, 62 n.7 \(1972\)](#) (“*Volkswagen Pacific*”).

It conflicts with [Article XI, section 12](#), of the Constitution, which provides that “[t]he Legislature may prescribe procedure for presentation, consideration, and enforcement of claims against counties, cities, their officers, agents, or employees.” (Emphasis added.)

And it conflicts with the Legislature’s intent and purposes in enacting the GCA. With respect to this last point, the Legislature’s express purpose in enacting the GCA in 1959 was to “establish[] a *standardized* procedure for bringing claims against local governmental entities” that would replace the prior system in which “claims against the state, local, and municipal governments were governed by myriad state statutes and local ordinances.” [Ardon, 52 Cal. 4th at 246-47](#) (emphasis added). Accordingly, this Court has held the GCA

is remedial and should be liberally construed. Both the courts and Legislature have recognized that the labyrinth of claims statutes previously scattered throughout our statutes were traps for the unwary. [Citations.] An attempt has been made by the

Legislature to remove such snares. Courts should not rebuild them by a too narrow interpretation of the [GCA].

[Viles v. State, 66 Cal. 2d 24, 31 \(1967\)](#) (quoting [Hobbs v. Northeast Sacramento Cty. Sanitation Dist., 240 Cal. App. 2d 552, 556-57 \(1966\)](#); internal quotation marks omitted).

The ruling below threatens to do exactly that—to sanction the rebuilding of traps for the unwary. If adopted by this Court, the Court of Appeal’s decision would allow every city (of which there are 483), every one of the State’s 58 counties, and thousands of special districts to each adopt their own “administrative procedures” as preconditions to seeking tax refunds. Moreover, these thousands of entities could each adopt a different procedure for every distinct tax—one “administrative remedy” for business license taxes, another for utility users’ taxes, a third for transient occupancy taxes, etc.

Indeed, the Court of Appeal’s ruling would allow local governments to adopt different procedures for *any* type of claim for money or damages. The GCA “does not specifically apply to tax refunds, but to all claims against governmental entities,” [Ardon, 52 Cal. 4th at 247](#), and there is nothing in the City’s argument—or the decision below—that would limit this issue only to taxpayer claims. The potential implications are sweeping. There would seem to be nothing to prevent local governments facing a police brutality claim, for example, from establishing an “administrative review” process as a precondition to seeking tort

damages and making the relevant “factfinder” the police chief. Or that would prevent cities from forcing contract claims into administrative tribunals in which department heads decide whether their department has breached a contract.

Simply put, the Court of Appeal’s decision, if endorsed by this Court, would reauthorize the “Byzantine claims system” that predated the GCA, which consisted of “numerous state statutes and local ordinances.” Yet, it is precisely this complicated, patchwork system that the Legislature sought to replace with a “standardized” procedure. [*DiCampli-Mintz v. Co. of Santa Clara*, 55 Cal. 4th 983, 997 \(2012\)](#).

Finally, the lower courts’ rulings are also not supported by any relevant case law. To date, despite multiple rounds of briefing, the City has never cited a single case which holds that (1) a *local* government (not the Legislature) may (2) require exhaustion of a *local* administrative remedy (not one imposed by state statute), (3) where the GCA was held to actually apply to the claims at issue, and (4) where the GCA was actually complied with.³ Nor did the trial court or the Court of Appeal cite any such case. To the contrary, *McWilliams* and *Sipple* held that local governments could not do so.

³ Though the City has not cited them, Appellants are aware of two cases that did allow local procedures to be applied despite the GCA. See [*Pasadena Hotel Dev. Venture v. Pasadena*, 119 Cal. App. 3d 412 \(1981\)](#) (“*Pasadena Hotel*”), and [*Batt v. City & Cty. of S.F.*, 155 Cal. App. 4th 65 \(2007\)](#) (“*Batt*”). But *McWilliams* expressly disapproved of those two cases. [56 Cal. 4th at 626](#).

In short, the lower courts' judgment is contrary to every pertinent legal authority, including the unanimous decision of this Court in *McWilliams*. The judgment against should be vacated, and the case should be remanded for proceedings on the merits of Tesoro's refund claims.

STATEMENT OF FACTS & PROCEDURAL HISTORY

A. Assessment and Payment of the Illegal Tax and Tesoro's Claim for Refund Under the Government Claims Act.

In November 2017, Carson's voters approved Measure C, adopting [sections 63501-63526](#) of the Carson Municipal Code, also known as the "Oil Industry Business License Tax." The measure became effective December 1, 2017. (AA003.)

[Section 63505](#) of the OIBLT imposes a business license tax on businesses "operating an oil refinery or facility that stores petroleum products." Tesoro operates an "oil refinery" in Carson and is subject to the OIBLT. (AA002, AA074-080.)

Upon the OIBLT becoming effective, Tesoro immediately began to submit timely returns. (AA009.) However, the OIBLT did not prescribe an apportionment methodology to "fairly reflect that proportion of the taxed activity actually carried on within the taxing jurisdiction" as required by the U.S. and California Constitutions, extensive case law, and state statutes.⁴ Nor did

⁴ See note 2, *supra*.

the City adopt any regulations providing for apportionment of gross receipts, despite Appellants' requests that they do so. (AA009.)

Tesoro therefore calculated its tax due based on the gross receipts for transactions taking place within Carson, consistent with the language of the tax ordinance and apportionment methodologies it had long used in the City of Los Angeles, which were approved by Los Angeles on audit. (*Id.*) (The refinery in question lies partly in Carson and partly in Los Angeles.) During the period at issue in the Complaint, Tesoro timely paid the sums it calculated to be due according to the foregoing apportionment methodology. (*Id.*)

Some years later, the City began an audit of Tesoro's returns, and on April 27, 2022, the City issued a Notice of Deficiency against Tesoro, assessing additional amounts deemed by the City to be due. (AA009, AA074-088.) Tesoro contends that the additional amounts were assessed illegally, for a number of reasons set forth in the Complaint. (AA011-016.) For one thing, the assessments were issued after the pertinent statute of limitations had passed. Moreover, the City's assessment methodology improperly attempted to tax refining activity taking place in other jurisdictions—at the Los Angeles half of the refinery and in other States, cities, and counties along the supply chain.

Nevertheless, on May 25, 2022, Tesoro timely paid the amount assessed by the City (AA011), upon which a cause of action for refund of taxes illegally paid accrued. *See, e.g., Bainbridge v. County of Riverside*, [167 Cal. App. 2d 418, 422 \(1959\)](#). Shortly thereafter, because the City’s tax program was new and there were no procedural regulations issued, Tesoro’s counsel e-mailed Carson’s City Attorney, asking him to confirm that a taxpayer could either proceed under the GCA or the City’s review procedures; the City Attorney responded by e-mail that “both options are available to your client under the sections of the municipal code you have made reference to.” (AA149, 161.)⁵

B. Summary of the Government Claims Act and the Pertinent Provisions of the Carson Municipal Code (“CMC”).

The GCA requires that a person seeking a refund file the claim with the local government within a year of paying the tax. [§ 911.2\(a\)](#). The Act prescribes the required content of the claim, [§ 910](#), and provides that it is to be submitted by either “[d]elivering it to the clerk, secretary, or auditor thereof,” [§ 915\(a\)\(1\)](#), or “[m]ailing it to the clerk, secretary, auditor, or to the governing body at its principal office,” [§ 915\(a\)\(2\)](#). In the latter case, it is

⁵ *See Schifando v. City of Los Angeles*, [31 Cal. 4th 1074, 1086-88 & n.3 \(2003\)](#) (though city could not force employees to pursue local administrative remedies as a precondition to filing a claim under the Fair Employment and Housing Act, it could adopt administrative remedies that city employees could voluntarily choose to proceed under).

deemed to have been presented upon deposit with the U.S. Postal Service, [§ 915.2](#). The agency has 45 days to act, [§ 912.4\(a\)](#). If the claim is rejected, the claimant has six months to file suit in the superior court. [§ 945.6\(a\)\(1\)](#).

As the Court of Appeal noted (slip op. at 7), there is no dispute that Tesoro complied with these procedures. Relying on *McWilliams*, *Sipple*, and the City Attorney’s confirmation that “both options” were available to it, Tesoro filed a refund claim under the GCA on March 13, 2023, by depositing that claim via U.S. mail, addressed to the City Clerk as required by [§ 911.2](#). (AA090-126.) That claim was denied by the City’s insurance adjuster on April 27, 2023. (AA031.) Tesoro filed this suit on June 21, 2023. (AA001.)

The City argues, however—and the lower courts agreed—that the City’s administrative procedures are not an “option[] ... available to” Tesoro; instead, they *must* be pursued before filing a refund claim with the City under the GCA. The City currently interprets the process⁶ to work as follows:

- City’s Director of Finance issues a Notice of Deficiency ([CMC § 63516\(A\)](#)).
- Taxpayer pays deficiency + penalties and interest within 30 days (*id.*).

⁶ It should be said, the City’s interpretation has been a shifting target, and its current interpretation appears to be inconsistent with the text of the CMC itself.

- Taxpayer makes a “request” for refund to the Director within 1 year ([CMC § 63515](#)).
- The Director acts on the request (though the time for the Director to do so is unspecified, and there is no provision for “deemed” denial as there is under the GCA after 45 days of nonaction, *see* [§ 912.4\(c\)](#)).
- If the request is denied, the taxpayer appeals to the City Manager within 15 days of denial ([§ 63523\(A\)](#)).
- The City Manager sets a hearing within 60 days ([§ 63523\(C\)](#)); there is no provision for discovery and no deadline for issuance of a decision by the City Manager.
- If the City Manager rules against the taxpayer, it must challenge the City Manager’s decision under [Code of Civil Procedure § 1094.5](#) (which has 90-day deadline, per [Code Civ. Proc. § 1094.6](#)) ([CMC § 63523\(C\)](#)).
- Then, after the 1094.5 lawsuit is resolved, the Taxpayer may supposedly pursue GCA remedies (*see* AA153 (City’s demurrer reply) (GCA “comes into play only after the [CMC process] has been exhausted”)).

C. Superior Court Proceedings.

Tesoro filed this action in the superior court within six months of the denial of its claim by the City’s insurance adjuster, as required by [§ 945.6\(a\)\(1\)](#). (AA001.)

The City demurred to the Complaint based on Tesoro’s supposed failure to comply with various provisions of the Carson Municipal Code. (AA032.) Specifically, the City contended that (1) Tesoro filed its claim for refund with the wrong City official, because [CMC § 63515](#) purports to require a request for refund to be filed with the Director of Finance instead of the City Clerk; (2)

Tesoro failed to avail itself of the right to appeal the Director’s determination to the City Manager, as provided by [CMC § 63523](#); and (3) the proper means of challenging the tax is purportedly an administrative writ proceeding under [Code of Civil Procedure § 1094.5](#), per [CMC § 63523\(C\)](#). (AA039-049.)

Tesoro filed an opposition arguing primarily that Carson’s administrative procedures are preempted by the GCA. (AA129.) The City replied (AA152), and a hearing was held on August 22, 2023. Later that day the superior court issued a minute order sustaining the City’s demurrer based on the failure to allege exhaustion of the administrative procedures in the CMC but granting leave to amend. (AA170-173.)

The next day, Tesoro petitioned the Second District for a writ of mandate and stay,⁷ because it faced a Hobson’s choice: either (1) amend to allege substantial compliance with the City’s procedures or a recognized exception to exhaustion, in which case Tesoro would forfeit its right to later challenge the trial court’s ruling on preemption,⁸ or (2) preserve its right to make the preemption argument on appeal but forego arguments regarding substantial compliance and excuse. The Court of Appeal granted

⁷ See *Tesoro Refining & Mktg. Co. LLC v. Super. Court*, No. [B331256](#) (Cal. Ct. App. 2d Dist., Div. 4, filed Aug. 25, 2023).

⁸ See, e.g., *People ex rel. Omlansky v. Save Mart Supermarkets*, [39 Cal. App. 5th 523, 525-26 \(2019\)](#) (amending a cause of action following the sustaining of a demurrer waives a subsequent challenge to the ruling).

a temporary stay, but following briefing denied the petition “for failure to establish entitlement to extraordinary relief.” (AA202.)

On remand, judgment was entered against Tesoro (AA206-210), who timely appealed. (AA211.)

D. Decision of the Court of Appeal.

The Court of Appeal affirmed.

Beginning with Tesoro’s argument that the GCA “occupies the field” of claiming procedures, to the exclusion of local action, the Court laid out the applicable standards for field preemption, noting that courts asked to determine whether the Legislature has implicitly occupied a given field of regulation “consider factors including the language and scope of the adopted measure, the history behind the [statute], and the history of regulation in the area...” (Slip op. at 11, quoting [*Am. Fin. Servs. Ass’n v. City of Oakland*, 34 Cal. 4th 1239, 1261 \(2005\)](#).)

The Court declined to address these factors, however. It “acknowledge[d] that, in its opening brief, Tesoro touches upon a few of the factors relating to whether the Legislature intended to fully occupy the field of prescribing the procedures a taxpayer must follow prior to filing suit for refund of local tax”—specifically, the language of the GCA, “comments on the constitutional authority pursuant to which the Legislature enacted the GCA,” and “a few cases discussing the GCA’s purpose[.]” (Slip op. at 15-16.) But it criticized Tesoro for

purportedly failing to sufficiently connect the dots in showing that these factors support field preemption. (*Id.* at 11, 15-16.)

Next, the Court turned to the main case law authorities relied upon by Tesoro—[*McWilliams*](#), [*Volkswagen Pacific*](#), and [*Sipple*](#).

It distinguished *McWilliams* as a case exclusively about statutory construction of the word “statute” in [§ 905\(a\)](#), essentially ignoring the entire second half of the opinion, which considered whether charter cities could nevertheless adopt their own procedures under their home rule power. (Slip op. at 14-15.) The Court of Appeal acknowledged that “the *McWilliams* court used broad language to frame the issue being decided” (*id.* at 15), but it chose not to take this Court at its word regarding the issues it resolved.

The Court dismissed the pertinent discussion from *Volkswagen Pacific*, which was cited approvingly in *McWilliams* (see [56 Cal. 4th at 627](#)), as mere “dicta” (slip op. at 13-14), and it simply “decline[d] to follow” *Sipple*, implicitly acknowledging that case supports Tesoro’s position. Just as it had criticized Tesoro’s briefing, the Court criticized *Sipple* for relying directly on *McWilliams*, rather than “showing its work” by discussing in detail how the text, structure, purpose, and history of the GCA demonstrate field preemption. (Slip op. at 15.)

Finally, the Court held that Tesoro’s argument that many of Carson’s municipal code provisions directly contradict the GCA

was “waived” because Tesoro failed to make it with sufficient specificity in the superior court (slip op. at 17-18), though the issue was fully briefed in the Court of Appeal by both parties, and, in fact, the City really addressed *only* the contradiction form of preemption, rather than field preemption.⁹

Tesoro sought rehearing on March 17, 2025. The Court of Appeal filed an order on March 21, denying rehearing, modifying the opinion, and denying requests for publication filed by the City and by the League of California Cities, the California State Association of Counties, and the Rural County Representatives of California.

On April 9 Tesoro petitioned for review in this Court. The petition was granted on May 28, and the requests for publication were again denied.

STANDARD OF REVIEW

This case is subject to *de novo* review, both because it is an appeal from dismissal following the sustaining of a demurrer, *see* [Stone v. Alameda Health Sys.](#), 16 Cal. 5th 1040, 1052 (2024), and because “whether state law preempts a local ordinance is a question of law[.]” [Roble Vista Associates v. Bacon](#), 97 Cal. App. 4th 335, 339 (2002). Accordingly, the Court exercises its

⁹ In fact, the City used the word “field” only twice in its Respondent’s Brief—once in the “Procedural History” section, summarizing Appellant’s position in the superior court (RB at 20), and once in referring to a “level playing field for federal and state thrift institutions” in an unrelated parenthetical (RB at 44).

independent judgment to determine whether the complaint states facts sufficient to constitute a cause of action, accepting the truth of material facts properly pleaded in the operative complaint, but not contentions, deductions, or conclusions of fact or law.

[*Suchard v. Sonoma Acad.*, 109 Cal. App. 5th 1089, 1095 \(2025\).](#)

The Court “must also accept as true those facts that may be implied or inferred from those expressly alleged,” [*Lazar v. Hertz Corp.*, 69 Cal. App. 4th 1494, 1501 \(1999\)](#), and “must also consider judicially noticed matters.” [*Schifando*, 31 Cal. 4th at 1081.](#)

**LEGAL DISCUSSION: THE GOVERNMENT
CLAIMS ACT PREEMPTS ADMINISTRATIVE
PROCEDURES THAT LOCAL GOVERNMENTS
SEEK TO IMPOSE AS A PRECONDITION TO
SEEKING A TAX REFUND UNDER THE ACT**

The principles applicable to state law preemption of local ordinances are well-established. “Our state Constitution allows cities and counties to enact and enforce local ordinances so long as they are ‘not in conflict’ with the state’s ‘general laws.’ ([Cal. Const., art. XI, § 7.](#)) Any conflicting ordinance is preempted by state law and thus void.” [*O’Connell v. City of Stockton*, 41 Cal. 4th 1061, 1065 \(2007\)](#). “A conflict exists if the local legislation “duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.”” [Citations.]” [*Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893, 897 \(1993\)](#) (italics added, footnotes omitted). The latter

two types of preemption—contradiction and field preemption—are both implicated here.

A. The Legislature Has Occupied the Field with Respect to the Procedures Governing Claims against Local Governments, Including Tax Refund Claims.

“[W]here the state has fully occupied the field, there is no room for additional requirements by local legislation.” [*In re Lane*, 58 Cal. 2d 99, 105 \(1962\)](#). Accordingly, “local regulation is invalid if it attempts to impose additional requirements in a field which is fully occupied by statute.” [*Tolman v. Underhill*, 39 Cal. 2d 708, 712 \(1952\)](#) (emphasis added) (citing [*Eastlick v. City of Los Angeles*, 29 Cal. 2d 661, 666 \(1947\)](#)). “[W]here the Legislature has manifested an intention, expressly or by implication, wholly to occupy the field ... municipal power [to regulate in that area] is lost.” [*O’Connell*, 41 Cal. 4th at 1068](#) (quoting 8 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, § 986, p. 551)). Imposing “additional requirements” above and beyond those imposed by the GCA itself is exactly what Carson is trying to do here.

“A local ordinance enters a field fully occupied by state law in either of two situations—when the Legislature ‘expressly manifest[s]’ its intent to occupy the legal area or when the Legislature ‘impliedly’ occupies the field.” [*Id.*](#) (italics omitted). “When the Legislature has not expressly stated its intent to

occupy an area of law, [courts] look to whether it has impliedly done so. This occurs in three situations: when “(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the” locality.” *Id.* (quoting [Sherwin-Williams, 4 Cal. 4th at 898](#)).

In deciding whether a case falls within one of these three circumstances, courts “consider factors including the language and scope of the [statute], the history behind the [statute], and the history of regulation in the area....” [Am. Fin. Servs. Ass’n v. City of Oakland, 34 Cal. 4th 1239, 1261 \(2005\)](#); [Tolman, 39 Cal. 2d at 712](#) (Legislature’s “intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme”).

Consideration of these factors unequivocally leads to the conclusion that the Government Claims Act occupies the field with respect to the procedures for bringing claims for money or

damages—including tax refund claims—against local governments, to the exclusion of local action.

- 1. The Act was adopted pursuant to Article XI, section 12, which expressly vests the Legislature with the power to prescribe claims procedures against local governments.**

To begin with, it bears mentioning that—as this Court observed in [McWilliams, 56 Cal. 4th at 627](#)—the Constitution explicitly confers upon the Legislature the power to control the procedures by which money or damages, including tax refunds, are sought from local governments.

[Article XI, section 12](#), provides, “The Legislature may prescribe procedure for presentation, consideration, and enforcement of claims against counties, cities, their officers, agents, or employees.” The Legislature submitted the substantively-identical predecessor of that provision to the voters contemporaneously with its adoption of the Government Claims Act, and the amendment’s express purpose was to ensure that there was no doubt about the Legislature’s power to override claims procedures adopted by local government agencies, specifically charter cities. As the amendment’s legislative sponsors explained in the ballot argument supporting the measure:

Until last year a person who was owed money by a city, county, school district or other local

governmental agency often could not collect because of failure to comply with legal technicalities in filing his claim. These technicalities were contained in over 174 different laws concerning the filing of claims! It was difficult even for a lawyer to know exactly which law applied in any particular case.

In 1959 the Legislature repealed all these confusing laws and substituted a simple, uniform claim filing procedure which any citizen can follow to collect what is owing to him by a local governmental agency. However, the new law does not have statewide application because a few cities and counties are not governed by state law, but by local charters.

Proposition 9 extends the benefits of the new, simple procedures to persons who have legitimate claims against these chartered cities and counties. By adopting Proposition 9, the new law regarding claims will be applicable everywhere in California including chartered cities and counties. No longer, for example, would a person seriously injured be denied payment due him because of his failure in filing his claim to comply with some obscure provision in a city charter.

See [Ballot Pamp., General Elec. \(Nov. 8, 1960\) argument in favor of Assem. Const. Amend. No. 16, pp. 13-14.](#)¹⁰

2. The text and structure of the Act support the conclusion that the Legislature intended to occupy the field.

When deciding whether a state statute implicitly preempts local action by “occupying the field” of regulation, one of the chief

¹⁰ A copy of the pertinent pages of this ballot pamphlet submitted as Exhibit 1 to Appellants’ Motion for Judicial Notice, filed concurrently herewith.

factors the courts look to is the language and scope of the statute itself. The language and structure of the GCA clearly evidence an intention to occupy the field of procedures for seeking money or damages from local governments.

To begin with, [Code of Civil Procedure § 313](#) provides,

The general procedure for the presentation of claims to commencement of actions for money or damages against the State of California, counties, cities, cities and counties, districts, local authorities, and other political subdivisions of the State, and against the officers, employees, and servants thereof, is prescribed by Division 3.6 (commencing with Section 810) of Title 1 of the Government Code [i.e., the GCA].

(Emphasis added.)

[Government Code § 905](#), contained in [Division 3.6 of Title 1 of the Government Code](#), then sets out the baseline rule as follows:

There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) *all claims* for money or damages against local public entities *except any of the following...*

(Emphasis added.)

[Section 905](#) then proceeds to list sixteen categories of claims that are exempt from the general claims provisions of the GCA. None of the categories listed in [§ 905](#) exclude local tax refunds from the reach of the Act, other than those governed by

the Revenue & Taxation Code or other state “statutes.”

[McWilliams](#), 56 Cal. 4th at 621-26.

And just in case the categorical language of [§ 905](#)—“all claims”—was not enough to make the Legislature’s intentions clear, [§ 935\(a\)](#) further elaborates thus:

Claims against a local public entity for money or damages *which are excepted by [Section 905](#) from Chapter 1 (commencing with [Section 900](#)) and Chapter 2 (commencing with [Section 910](#)) of this part, and which are not governed by any other statutes or regulations^[11] expressly relating thereto, shall be governed by the procedure prescribed in any charter, ordinance, or regulation adopted by the local public entity.*

(Emphasis added.)

The necessary, unavoidable implication of these provisions, taken together, is that local governments may impose their own procedures by “charter, ordinance, or regulation” for claims expressly listed in [§ 905](#) but may not do so for claims subject to [§ 905](#), which, this Court held in *McWilliams*, includes local tax refund claims.

¹¹ Lest there be a suggestion that this reference to “regulations” would encompass local enactments, [Government Code § 811.6](#) defines “regulation” for purpose of the Act to mean “a rule, regulation, order or standard, having the force of law, adopted by an employee or agency of the United States pursuant to the federal Administrative Procedure Act (Chapter 5 (commencing with [Section 500](#)) of Title 5 of the United States Code) or as a regulation by an agency of the state pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with [Section 11340](#)) of Part 1 of Division 3 of Title 2).”

3. The history and purposes of the GCA also demonstrate the Legislature’s intention to occupy the field.

Another key factor in determining whether a state statute preempts local action by “occupying the field” of regulation is “the history behind the [statute]” and its “whole purpose.” [*Am. Fin. Servs. Ass’n*, 34 Cal. 4th at 1261](#); [*Tolman*, 39 Cal. 2d at 712](#). This factor also supports preemption here, because the clearly stated purpose underlying the adoption of the Act was *uniformity*, which would be undermined by allowing local governments to adopt their own tax refund procedures.

As this Court has previously summarized the Act’s history: “Before 1959, taxpayer and other claims against the state, local, and municipal governments were governed by myriad state statutes and local ordinances. Finding this system too complex, the Legislature enacted the Government Claims Act (the Act), which established a *standardized procedure* for bringing claims against local governmental entities.” [*Ardon*, 52 Cal. 4th at 246-47](#) (emphasis added).

The legislative history of [Article XI, section 12](#), quoted above, confirms that the purpose of the Act was to “substitute[] a simple, uniform claim filing procedure” for the multitude of claims provisions that had previously existed.

So does the legislative history of the Act itself. “In 1959, the California Law Revision Commission’s (Commission) report” that gave rise to the GCA “found that there were conflicting claim

presentation requirements for public entities throughout the state. The Commission urged that specificity and uniformity were necessary and recommended adoption of uniform procedures for certain claims against public entities.” [DiCampli-Mintz, 55 Cal. 4th at 993](#) (citing [Recommendation and Study Relating to the Presentation of Claims Against Public Entities \(Jan. 1959\) 2 Cal. Law Revision Com. Rep. \(1959\)](#) pp. A-57 to A-62, A-122 (“1959 Study”), as part of the GCA’s legislative history).¹²

As discussed in the 1959 Study, the number of Supreme Court and Court of Appeal cases involving “the interpretation, application or effect of a claims provision” increased four-fold during the period from 1923 to 1959, when compared to the period from statehood to 1923—a span of years more than twice as long. The 1959 Study continued:

This nearly four-fold increase in reported cases over the past three decades suggests that there are serious deficiencies in the present claims statutes. Such provisions, being fundamentally procedural in nature, should conform to the desiderata of simplicity and effectiveness which society has a right to expect of the means by which legally recognized rights are enforceable. Unfortunately, the existing pattern of claims provisions fails to meet these standards and in consequence ***claims procedures have been termed by the Supreme Court as “traps for the unwary” and by a legal writer on the subject as “a bramble patch of legislation which, in many***

¹² Select pages of the 1959 Study are included in the appendix to this brief, and a full copy is submitted as Exhibit 2 to Appellants’ Motion for Judicial Notice, filed concurrently herewith.

cases, completely chokes off . . . substantive rights.”

[1959 Study, supra, at A-21](#) (footnotes omitted; citing [Stewart v. McCollister, 37 Cal. 2d 203 \(1951\)](#), and Ward, *Requirements for Filing Claims Against Governmental Units in California*, 38 CALIF. L. REV. 269, 271 (1950)) (emphasis added).

This theme of “traps for the unwary” permeates the 1959 Study, and it led to the Study’s recommendation “that the procedure applicable to claims against all forms of governmental agencies below the State level be set forth in a single statutory enactment to be incorporated into the Code of Civil Procedure. The procedure so provided should be *uniformly applicable* to all claims for money or damages upon which a legal action might be brought against the public entity involved.” [1959 Study, supra, at A-116](#) (emphasis added).

The Legislature enacted the GCA to implement that recommendation, and the Legislative Committee comments that accompanied the adoption of the GCA expressly stated, “the terms and conditions of liability of public entities are matters of statewide concern and should be subject to uniform rules established by the action of the Legislature.” Legis. Comm. com., 32 West’s Ann. Govt. Code (1995 ed.) foll. [§ 815](#), p. 167.

Affirming the decision below would reverse 65 years of legislative efforts to prevent local governments from adopting their own mandatory “administrative procedures” to “choke off” legitimate claims for damages, including Appellants’ refund

claims. It would reauthorize the “Byzantine claims system” the GCA was meant to replace. As the First District has observed in an analogous context, “If every city and county were able to opt out of the statutory regime simply by passing a local ordinance, the statewide goal of uniform regulation of [government claims] would surely be frustrated. Clearly, the creation of a *uniform* regulatory scheme is a matter of statewide concern, which should not be disrupted by permitting this type of contradictory local action.” [*Fiscal v. City & Cty. of San Francisco*, 158 Cal. App. 4th 895, 919 \(2008\)](#) (italics in original); see also [*Haggis v. City of Los Angeles*, 22 Cal. 4th 490, 499 \(2000\)](#) (“We have previously rejected the notion that a local government can, by its own ordinance, exempt itself from liability under the state’s Tort¹³ Claims Act”).

4. Case law applying the Act also supports the conclusion that the Legislature intended to occupy the field.

Case law under the Act further supports the conclusion that the Legislature has occupied the field.

McWilliams certainly supports that conclusion. Prior to that case there was some ambiguity as to whether local

¹³ The GCA is also sometimes referred to as the “Tort Claims Act” in case law, but this Court has recognized that “because of the broad scope of the claim requirements ... ‘Government Claims Act’ is a more appropriate short title,” [*City of Stockton v. Superior Court*, 42 Cal. 4th 730, 741-42 \(2007\)](#). [Government Code § 810\(b\)](#), adopted in 2012, formally adopted the Court’s nomenclature.

governments could enact their own tax claiming provisions under [§ 905\(a\)](#), which provides that “[c]laims under the Revenue and Taxation Code or other statute prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification, or adjustment of any tax, assessment, fee, or charge or any portion of the charge, or of any penalties, costs, or related charges” are exempt from the GCA. Several Courts of Appeal had held that local ordinances were “other statute[s]” for purposes of this exemption, concluding that local governments could therefore establish their own claim procedures under [§ 935](#).¹⁴ Another Court of Appeal and the lower court decision in *McWilliams* reached the opposite conclusion.¹⁵

Relying on the authority expressly granted to the Legislature by [Article XI, section 12](#), and the legislative history of the GCA, this Court unanimously held that local tax refund claims are not “statutes,” and so such claims are not exempt from [§ 905](#), and the Government Claims Act applies.

The Court then addressed—and rejected—the City of Long Beach’s alternative argument that, even if [§ 905\(a\)](#) did not

¹⁴ [Batt](#), 155 Cal. App. 4th at 78-79, and [Pasadena Hotel](#), 119 Cal. App. 3d at 415.

¹⁵ See [City of Los Angeles \(Oronoz\) v. Superior Court](#), 159 Cal. App. 4th 353, 360 (2008); [McWilliams](#), 56 Cal. 4th at 618 (quoting the Court of Appeal decision under review as holding that “[t]he City is not authorized under the Government Claims Act to establish its own claims procedure for [transaction and use tax] refunds[.]”).

provide an exemption, charter cities could still adopt their own rules under their home rule power. [56 Cal. 4th at 626-27](#). Though the *McWilliams* decision doesn't specifically use the word "preemption" in reaching this conclusion, the entire logic of the home rule issue supports the proposition that the Legislature occupied the field, for if the GCA was not understood to preempt local action with respect to claims against local governments, there would be no need to decide whether charter cities' home rule powers would prevail. "[A] court asked to resolve a putative conflict between a state statute and a charter city measure initially must satisfy itself that the case presents an actual conflict between the two." [Cal. Fed. Sav. & Loan Ass'n v. City of L.A., 54 Cal. 3d 1, 16 \(1991\)](#). Such a conflict exists where the Legislature has occupied the field. See [City of Watsonville v. State Dep't of Health Servs., 133 Cal. App. 4th 875, 883-84 \(2005\)](#) ("There is an actual conflict in this case because state law fully occupies the area of fluoridation of public water systems having more than 10,000 hookups"). ¹⁶

¹⁶ See also [Wilson, 47 Cal. 2d at 859](#) (reciting the "rule that charter provisions cannot control in matters of statewide concern where the state has occupied the field"); [Bishop v. San Jose, 1 Cal. 3d 56, 61-62 \(1969\)](#) ("As to matters which are of statewide concern, however, home rule charter cities remain subject to and controlled by applicable general state laws regardless of the provisions of their charters, if it is the intent and purpose of such general laws to occupy the field to the exclusion of municipal regulation (the preemption doctrine)"); [Legis. Comm. com. foll. § 815](#) ("the terms and conditions of liability of public entities are

Moreover, while the City of Carson and the courts below have attempted to cabin *McWilliams* to a narrow holding about class actions, decided merely as a matter of statutory interpretation, this Court was explicit that it was deciding a broader issue:

[T]he issue here is not whether class actions for tax refunds should be permitted, but which level of government—the state or the local public entity—should define the procedures governing an action for refund of a local tax. We hold that except as to “[c]laims under the Revenue and Taxation Code or other statute prescribing procedures for the refund ... of any tax,” the Legislature has determined that the Government Claims Act applies. (§ 905.)

[56 Cal. 4th at 628-29](#). The Court of Appeal’s ruling below is entirely inconsistent with this holding. It determined that the City of Carson gets to define the procedures governing an action for refund of its Oil Industry Business License Tax, even where, as here, that local procedure conflicts with the GCA and serves no legitimate purpose but to limit a taxpayer’s rights to judicial review granted by the Legislature under the GCA.

A year after *McWilliams* was decided, Division 2 of the Second District applied this Court’s reasoning to strike down another local government’s attempt to adopt claims procedures not imposed by the GCA. In [Sipple, 225 Cal. App. 4th at 349](#), the primary issue was whether an internet service provider who had

matters of statewide concern and should be subject to uniform rules established by the action of the Legislature.”).

“erroneously charged its customers taxes on Internet access over a span of several years and remitted those taxes to the defendant cities and counties” had standing to seek a refund of the amounts paid, or whether the individual customers had to do so—an issue the Court of Appeal resolved in the service provider’s favor. [Id. at 353 & 358-63](#). But several of the governments also argued—and the trial court held—that the service provider’s claim was barred by local ordinances (1) prohibiting class claims and (2) requiring that before any such “representative” claim for refund could go forward, the provider had to refund the disputed amounts to the customers first. [Id. at 356](#).

On appeal, the local governments conceded that *McWilliams*, decided after the trial court’s ruling, disposed of their argument as to class claims; they continued to argue, however, that the service provider was required to make refunds to its customers first. [Id. at 357](#). The Court of Appeal rejected this claim. Applying *McWilliams*, it held that “[t]o the extent that these ‘refund first’ ordinances establish a precondition to filing a claim, they are preempted by the Government Claims Act,” which contains no such requirement, and that “[l]ocal ordinances may not subvert the authority granted by” that Act to bring claims in accordance with its procedures. [Id. at 357-58](#).

The Carson Municipal Code, of course, purports to establish multiple administrative “preconditions” to bringing a claim for tax refund under the GCA. (See AA153 [City’s reply in support of

demurrer] [GCA “comes into play *only after* the [CMC process] has been exhausted”].)

The Court of Appeal below did not deny that *Sipple* supports Tesoro’s contention that Carson’s administrative review processes are preempted by the GCA. It simply declined to follow that opinion.

Finally, in [Volkswagen Pacific](#) this Court explicitly stated, “the filing of claims for money or damages against California government units is an area of statewide concern in which the Legislature has occupied the entire field.” [7 Cal. 3d at 62 n.7](#) (citing [Eastlick](#) and [Code Civ. Proc. § 313](#)).

The Court of Appeal dismissed that statement as mere dicta,¹⁷ but it is notable that in *McWilliams* this Court cited the very footnote in question—*Volkswagen Pacific*’s [footnote 7](#)—favorably in rejecting the City of Long Beach’s argument that a city’s local charter provisions could be enforced despite the terms of the GCA under charter cities’ “home rule” powers. [McWilliams, 56 Cal. 4th at 626-27](#).

¹⁷ The decision below was not the first to dismiss the discussion of which that footnote was a part as *dicta*, see [Batt, 155 Cal. App. 4th at 83 & n.10](#), but *McWilliams* expressly overruled *Batt* on this point, [54 Cal. 4th at 626](#), and endorsed [Oronoz, 159 Cal. App. 4th at 361](#), which applied the supposed “dicta” of *Volkswagen Pacific*. See [56 Cal. 4th at 626](#).

5. The pre-GCA “history of regulation in the area” also supports the conclusion that the Legislature intended to occupy the field.

Pre-GCA case law also supports a finding of preemption. Though in the years before the GCA was adopted there was no single uniform claims procedure, nevertheless “[i]t ha[d] been held repeatedly that where liability is imposed by statute the method or regulation of the enforcement of the liability such as claim filing and limitation of actions is not a municipal affair controllable by” local law. [*Wilson v. Beville*, 47 Cal. 2d 852, 857 \(1957\)](#) (holding that charter city could not impose a claim filing requirement with respect to eminent domain proceedings where state law occupied the field and contained no such requirement) (footnote omitted). In other words, to the extent the Legislature decided to prescribe procedures for particular types of claims in the pre-GCA days, those procedures were deemed exclusive. The “fields” may have been narrower, but the Legislature’s preemptive intent was still well-recognized. The adoption of the GCA just extended this principle to “all claims” against local governments for money or damages. [§ 905](#).

Perhaps the most notable pre-GCA decision is [*Eastlick v. City of Los Angeles*, *supra*](#), which is cited in *Volkswagen Pacific* in support of this Court’s holding that the GCA “occupies the field.” In *Eastlick*, this Court construed a statutory predecessor of the GCA—the Public Liability Act of 1923 (the “PLA”), as amended in

1931—and held that, with respect to the categories of claims it covered, the PLA likewise “occupie[d] the entire field and *it impliedly preclude[d] control to that extent by municipal or local regulation.*” [29 Cal. 2d at 666](#) (citing cases) (emphasis added). It therefore barred the City of Los Angeles from enforcing an ordinance that purported to require claimants to itemize damages, instead of specifying the extent of the injuries or damages in general terms, and it held—in language equally applicable here—that the City could not “impose more onerous conditions affecting ... any matter covered by the statute ... [because it would] necessarily [be] inconsistent with the general form of claim presentation adopted by the Legislature for operation throughout the state.” [Id. at 666-67](#).

Many other pre-GCA decisions reached the same conclusion:

[Taylor v. Los Angeles, 180 Cal. App. 2d 255 \(1960\)](#), held unenforceable a Los Angeles’ charter provision requiring either formal rejection of a claim or a delay of 90 days without action before suit could be filed, where the relevant state claims statute did not so provide.

[Wilkes v. San Francisco, 44 Cal. App. 2d 393 \(1941\)](#), held that a charter city could not direct the filing of a claim to the city’s controller when state law specified filing with the city clerk.

[Helbach v. City of Long Beach, 50 Cal. App. 2d 242 \(1942\)](#), held that failure to comply with a 90-day period to file a claim

prescribed by state law was fatal, despite a city charter provision allowing for filing within six months.

And [*Peck v. Modesto*, 181 Cal. App. 2d 465 \(1960\)](#), held that failure to verify a claim for damages as then required by state law was fatal, though Modesto’s charter permitted unverified claims.

Tesoro cited all of this case law referenced above, but the Court of Appeal essentially ignored it. The only case the Court of Appeal cited—primarily in a footnote—was *Eastlick*, which it dismissed as “offer[ing] Tesoro little assistance because it was decided before the GCA’s enactment in 1959.” (Slip op. at 13 n.4.) However, that’s precisely the point. As the Court itself acknowledged (*id.* at 11), the “history of regulation in the area” is relevant to the question of whether a statute was intended to occupy the field, and each of these cases—including *Eastlick*—demonstrate the pre-existing understanding that when the Legislature enacts statutes prescribing the procedure for filing claims against the government, those statutes “occupy the field” to the extent of their reach. Again, the GCA just expanded that reach to cover “*all* claims for money or damages against local public entities” with specified exceptions. [§ 905](#) (emphasis added).

6. Neither the City, the trial court, nor the Court of Appeal has cited a single case allowing local governments to adopt “administrative remedies” as a precondition to filing a claim under the Act.

Finally, while ample case law supports the premise that the GCA occupies the field to the exclusion of the City’s administrative procedures, no case law supports the contrary conclusion. In the Court of Appeal, Appellants’ briefing summarized each and every case cited by the City in the trial court, in its various filings in the prior writ proceeding in the Court of Appeal, and in its Respondent’s Brief, as well as the additional cases cited by the trial court’s ruling to painstakingly demonstrate that none—not one—of those cases addresses the question presented here: whether (1) a *local* government (not the Legislature) may (2) require exhaustion of a *local* administrative remedy (not one imposed by state statute), (3) where the GCA actually applies to the claims at issue, and (4) where the GCA is actually complied with.

In other words, Appellants sought to demonstrate that the City is simply relying on passages from inapposite cases, taken wholly out of context, to support its position, such as (for example) cases in which fatal flaw was the failure to comply with the GCA itself, rather than with administrative procedures,¹⁸ or

¹⁸ See, e.g., [*Lozada v. City & County of San Francisco*, 145 Cal. App. 4th 1139, 1155 \(2006\)](#), cited throughout the Respondent’s Brief, which held that claims under the Public Safety Officers

in which *the Legislature* has prescribed administrative procedures as a precondition to pursuing a GCA claim.¹⁹ (After all, the fact that the Legislature may impose administrative remedies says nothing about what local governments may do when the Legislature, acting pursuant to its exclusive constitutional authority, prescribes a procedure that does not authorize local administrative remedies.)

The Court of Appeal’s opinion faulted Appellants’ thorough demonstration for “dedicat[ing] excessive pages to describing and criticizing the cases relied on by the” City (slip op. at 7), so Appellants will not repeat that discussion here. However, it remains the case that neither the City, the trial court, nor even the Court of Appeal has yet cited any case authorizing local governments to impose their own “administrative procedures” as prerequisites to filing a local tax refund claim that is subject to the GCA. And, indeed, in *McWilliams* this Court explicitly

Procedural Bill of Rights Act are not subject to administrative exhaustion but are still subject to the GCA, and [*Los Globos Corp. v. City of Los Angeles*, 17 Cal. App. 5th 627, 631 \(2017\)](#), cited several times in the Respondent’s Brief, noting “Los Globos’s failure to comply with the Government Claims Act.”

¹⁹ For example, [*Williams & Fickett v. Co. of Fresno*, 2 Cal. 5th 1258 \(2017\)](#), cited three times in the Respondent’s Brief, addressing property tax refunds under the Revenue & Taxation Code, which are exempt from the GCA under [*§ 905\(a\)*](#). Similarly, [*Loeffler v. Target Corp.*, 58 Cal. 4th 1081, 1108 \(2014\)](#), cited in the Respondent’s Brief, addressed refunds of the state Sales & Use Tax Law under the Revenue & Taxation Code.

disapproved the only two cases Appellants are aware of that did so. *See* note 3, *supra*.

B. The Carson Municipal Code Also Contradicts the Government Claims Act in Various Respects.

“A local ordinance contradicts state law when it is inimical to or cannot be reconciled with state law,” [O’Connell](#), 41 Cal. 4th at 1068—in other words, when it is not “reasonably possible to comply with both the state and local laws.” [Chevron U.S.A. Inc. v. Cty. of Monterey](#), 15 Cal. 5th 135, 150 (2023) (quoting [City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.](#), 56 Cal. 4th 729, 743 (2013)).

The CMC conflicts with the GCA in several respects.²⁰

²⁰ The Court of Appeal refused to consider this argument, deeming it waived because purportedly not raised in the trial court. But it was raised in the superior court, if perhaps not as clearly as it could have been in retrospect (*see, e.g.*, AA146, 148, 137), and besides, it is subsumed within, and intertwined with, Tesoro’s arguments regarding field preemption. Cf. [Preston v. State Bd. of Equalization](#), 25 Cal. 4th 197, 205-08 (2001) (where claim for refund did not specifically raise copyright issues, but those issues were “intertwined with and clearly implied from the contentions” the issue was properly preserved for consideration). Moreover, there is case law holding that “that preemption implicates subject matter jurisdiction and cannot be waived.” [Cty. of Amador v. El Dorado Cty. Water Agency](#), 76 Cal. App. 4th 931, 956 (1999). In any event, preemption is a pure issue of law to which the City had every opportunity to respond, and it did so. And where the opposing party has the opportunity to brief the issue and that issue is one of public importance, courts routinely decide preemption issues that arise for the first time on appeal. *See, e.g.*, [Rental Hous. Ass’n of N. Alameda Cty. v. City of](#)

First, the GCA provides that a claim must be filed with the city clerk and that it is deemed to be submitted upon mailing. *See Govt. Code § 915*. The CMC says it must be submitted to Carson’s Director of Finance instead, *see CMC § 63515*, and that the Director must “receive” the claim by the deadline. This, the City cannot do. In *Wilkes v. San Francisco*, 44 Cal. App. 2d at 393, a motorist sought to sue San Francisco for an accident caused by allegedly negligent construction and maintenance of a highway. The PLA required a claimant to file a verified claim with the clerk or secretary of the legislative body of the municipality within 90 days of the accident, but San Francisco’s City Charter specified that such claims had to be filed with the city controller instead. *Id.* at 394-95. The plaintiff complied with the charter but not the PLA. *Id.* The trial court dismissed the case for failure to comply with state law, and the Court of Appeal affirmed, concluding that the claims process was a matter of statewide concern and was thus controlled exclusively by the PLA, and not the charter. *Id.* at 397.

Second, the timeline set forth by the CMC interferes with the timeline prescribed by the GCA. A claim for refund of taxes illegally paid accrues upon payment. *See, e.g., Bainbridge*, 167 Cal. App. 2d at 422; *Util. Audit Co., Inc. v. City of L.A.*, 112 Cal. App. 4th 950, 962 (2003). Under the GCA, a taxpayer can initiate

Oakland, 171 Cal. App. 4th 741, 755 (2009) (deciding preemption issue raised for first time on appeal); *Espinoza v. Superior Court*, 83 Cal. App. 5th 761, 778 n.7 (2022) (same).

a claim for refund by filing a GCA claim with the city clerk immediately after payment of the contested tax, wait 45 days (or less, if the city council affirmatively rejects the claim sooner), and then go directly to court. The City’s process, by contrast, anticipates a longer timeline—an unspecified time for the Finance Director to act on the initial “request” for refund, then 60 days for the City Manager to conduct a hearing on a subsequent appeal, and then a suit under [Code of Civil Procedure § 1094.5](#). Only once all those steps are complete may the taxpayer then submit its GCA claim (according to the City²¹). But Carson lacks the authority to make a taxpayer wait longer than the timelines prescribed by the GCA. [Taylor, 180 Cal. App. 2d at 255](#) (Los Angeles’ charter provision purporting to require either formal rejection of a claim or a delay of 90 days without action before suit could be filed was unenforceable, where the relevant state claims statute did not require the plaintiff to wait); *see also* [Birkenfeld v. Berkeley, 17 Cal. 3d 129, 151-52 \(1976\)](#) (where the Legislature has prescribed the timeline for filing unlawful detainer actions, local governments could not interfere with that timeline by establishing “elaborate prerequisites” to pursuing the state law remedy; those prerequisites were preempted).

The City’s procedures would also affirmatively inhibit taxpayers from meeting the Act’s deadlines. [Government Code §](#)

²¹ *See* AA153 (the GCA “comes into play **only after** the [CMC process] has been exhausted” (emphasis in original)).

[911.2](#) requires that a claim for damages be filed with the public agency within one year after accrual. However, the City insists that the administrative processes contained in its municipal code—including an administrative writ proceeding under [Code of Civil Procedure § 1094.5](#)—must be exhausted before that claim can be filed,²² and those processes will almost inevitably take more than a year to complete. In the Court below, the City responded that this problem would be solved by equitable tolling, but while the GCA’s six-month deadline for filing a *lawsuit* after a claim is rejected can be equitably tolled, the prerequisite claims presentation deadline in [Government Code § 911.2](#), is *not* subject to equitable tolling. *See, e.g., Willis v. City of Carlsbad*, 48 Cal. App. 5th 1104, 1121 (2020); *Artukovich v. Astendorf*, 21 Cal. 2d 329, 333–34 (1942) (same re predecessor to the GCA). Consequently, if a taxpayer waits to exhaust the City’s procedures before filing a GCA claim, and those procedures take more than a year, the taxpayer’s cause of action under the GCA will be time-barred. That creates a direct conflict between the GCA and CMC, in which it is impossible to “comply with both.” [Chevron U.S.A. Inc.](#), 15 Cal. 5th at 150.

Finally, the City’s attempt to force the taxpayer to proceed under [Code of Civil Procedure § 1094.5](#) conflicts with the GCA, in two respects.

²² *See* note 21, *supra*.

First, it is well-established that a proceeding in mandamus is not a proper tool for challenging a tax that is alleged to be illegal. Ample case law holds that where a statute authorizes a suit for refund of taxes paid (or for monetary damages more generally)—as the GCA does—the ability to sue for refund is an adequate remedy at law that bars the issuance of a writ of mandate. *See, e.g., Little v. L.A. Cty. Assessment Appeals Bds.*, [155 Cal. App. 4th 915, 923 \(2007\)](#) (“A suit for a refund of taxes paid is an adequate remedy” that bars a writ of mandamus under § 1094.5); *Canova v. Trs. of Imperial Irrigation Dist. Emp. Pension Plan*, [150 Cal. App. 4th 1487, 1493-95 \(2007\)](#) (where claim for money or damages is available under the GCA, writ relief inappropriate). In other words, the CMC purports to create a remedy that state law precludes.

Additionally, the requirement to proceed under [§ 1094.5](#) conflicts with the GCA by attempting to alter the burden of proof that a taxpayer bears in a refund action. Outside the property tax context, a taxpayer seeking a refund of taxes paid is entitled to a *de novo* trial on its claims. *See, e.g., Nast v. State Bd. of Equalization*, [46 Cal. App. 4th 343, 348 \(1996\)](#) (in “a refund action ... the taxpayer’s contention is heard *de novo* in superior court.”). The GCA does not alter that fact. By purporting to make [§ 1094.5](#) applicable to Appellants’ refund claim, however, the City of Carson is improperly attempting to shift the burden of proof by subjecting taxpayers’ claims to the more deferential standards

that typically apply under that statute—substantial evidence review on a limited record—rather than the *de novo* review that is applicable under state law. But the City lacks the authority to do so. Cf. [Fisher v. City of Berkeley](#), 37 Cal. 3d 644, 697-99 (1984) (local government has no authority to alter the burden of proof prescribed by the Legislature and efforts to do so are preempted). Here, too, there is a direct conflict between state law and the CMC.²³

C. Were This Court to Accept the City’s Arguments, It Would Effect a Revolution in Local Government Claims.

In *McWilliams*, the City of Long Beach’s main argument that local governments could adopt their own procedures governing refund claims, which this Court ultimately rejected, was at least limited to the tax context because it was premised on the notion that local enactments were “statutes” within the meaning of [§ 905\(a\)](#).

²³ Tesoro does not concede that such deference, rather than independent judgment, would be the proper standard under [§ 1094.5](#), but that is clearly the result the City seeks. As Tesoro noted below, however, giving the Finance Director and City Manager near-conclusive ability to determine facts that would bind the trial court raises due process concerns. See [Ward v. Village of Monroeville](#), 409 U.S. 57 (1972) (due process violated by allowing mayor to act as judge in cases of ordinance violations and traffic offenses, where fines from such cases were a substantial part of the Village’s revenue and the mayor “had responsibilities for revenue production”).

In this case, by contrast, Carson’s argument has simply rested on a generic, broadbrush argument that “administrative remedies” serve valuable policy ends, so the Court should construe the GCA not to preclude them. There is nothing in this argument that would limit it to any particular type of claim under the Act. Thus, if this Court were to endorse the City’s position, new administrative tribunals and procedures could be adopted with respect to a host of claims that have traditionally been subject to the streamlined claims procedures under the GCA.

For example, traditional tort claims could be subjected to such procedures. Thus, a city could require that an alleged failure to maintain city property in a safe condition must be litigated before a panel comprised of employees from the city’s department of public works, in a proceeding without discovery rights (like Carson’s administrative refund procedures) and that any adverse factual findings must be tested in a [§ 1094.5](#) administrative writ hearing, all before a Government Claims Act claim could be pursued. That result would further delay the prompt resolution of such claims, potentially allow pertinent evidence to grow stale, and deprive litigants of a trial *de novo*.

Likewise, police brutality claims, contracts claims—essentially any claim against local government entities that is not governed by another specific statute—would face new, previously unheard-of obstacles, precluding the timely relief that

the Legislature meant to enable in enacting the GCA. It would threaten to once again create a “a bramble patch of legislation which, in many cases, completely chokes off . . . substantive rights.” [1959 Study, supra, at A-21](#) (quoting Ward, *Requirements for Filing Claims Against Governmental Units in California*, *supra*, 38 CALIF. L. REV. at 271).

CONCLUSION

“[T]he filing of claims for money or damages against California government units is an area of statewide concern in which the Legislature has occupied the entire field” by enacting the Government Claims Act, [Volkswagen Pacific, 7 Cal. 3d at 62 n.7](#). That field includes local tax refunds. Accordingly, the GCA applies “to the exclusion of *all* local regulation”—local governments are not allowed “to impose additional requirements in a field which is fully occupied by statute.” [Tolman, 39 Cal. 2d at 712](#) (emphasis added). Thus, the “additional requirements” contained in the CMC are preempted by state law, [McWilliams, 56 Cal. 4th at 626-29](#); [Sipple, 225 Cal. App. 4th at 357-58](#), to say nothing of the provisions that directly conflict.

To hold otherwise would undermine the very purpose of the GCA. Were this Court to accept the City of Carson’s position, it simply would permit local governments to create a new labyrinthine claims system, with different procedures in every


city and county once again, in the name of “administrative remedies.”

It is undisputed that Tesoro fully complied with the requirements of the GCA before bringing this suit, and that was all it was required to do. For these reasons, the judgment should be reversed, and the case should be remanded with directions to overrule the City’s demurrer and allow the case to proceed on the merits.


Respectfully submitted,

July 28, 2025

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WORD COUNT CERTIFICATION

Christopher E. Skinnell, Esq., declares:

1. I am licensed to practice law in the State of California, and I am one of the attorneys of record for Plaintiffs and Appellants TESORO REFINING & MARKETING COMPANY LLC and TESORO LOGISTICS OPERATIONS LLC in this case. I make this declaration to certify the word length of the **Opening Brief on the Merits of Appellants Tesoro Refining & Marketing Company LLC, et al.** (“Opening Brief”).

2. I am familiar with the word count function within the Microsoft Word software program by which this Opening Brief was prepared. Applying the word count function to the Opening Brief, I determined and hereby certify pursuant to California Rules of Court, Rule 8.520(c)(1), that it contains **10,737** words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and of my own personal knowledge except for those matters stated on information and belief and, as to those matters, I believe them to be true. If called as a witness, I could competently testify thereto.

Executed on July 28, 2025, at San Rafael, California.



Christopher E. Skinnell, Declarant

PROOF OF SERVICE

I, CHRISTOPHER E. SKINNELL, declare as follows:

I am over eighteen years of age and a citizen of the State of California. I am not a party to this action. My business address is 2350 Kerner Boulevard, Suite 250, San Rafael, California 94901, and my electronic service address is cskinnell@nmgovlaw.com.

On July 28, 2025, I served the foregoing “**Opening Brief on the Merits of Appellants Tesoro Refining & Marketing Company LLC, et al.**” on the following persons:

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X **BY ELECTRONIC SERVICE:** Pursuant to California Rules of Court, Rule 8.70, I caused the documents to be served electronically through TrueFiling in portable document format (“PDF”) Adobe Acrobat.

On that same day I also served a copy of the Opening Brief on the following person:

Clerk, Civil Appeals
Superior Court of California
County of Los Angeles
Stanley Mosk Courthouse
111 North Hill St., First Fl., Rm. 111A
Los Angeles, CA 90012

X **BY U.S. MAIL:** By following ordinary business practices and placing for collection and mailing at 2350 Kerner Blvd., Suite 250, California 94901 a true and correct copy of the above-referenced document(s), enclosed in a sealed envelope; in the ordinary course of business, the above documents would have been deposited for first-class delivery with the United States Postal Service the same day they were placed for deposit, with postage thereon fully prepaid.

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

Executed July 28, 2025, at San Rafael, California.



CHRISTOPHER E. SKINNELL

APPENDIX:

Selected Pages from

Recommendation and Study Relating to the Presentation of
Claims Against Public Entities (Jan. 1959), 2 Cal. Law
Revision Com. Rep. (1959)

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

Relating to Presentation of Claims Against Public Entities

The law of this State contains many statutes and county and city charters and ordinances which bar suit against a governmental entity for money or damages unless a written statement or "claim" setting forth the nature of the right asserted against the entity, the circumstances giving rise thereto and the amount involved is communicated to the entity within a relatively short time after the claimant's cause of action has accrued. Such provisions are referred to in this Recommendation and Study as "claims statutes."

Claims statutes have two principal purposes. First, they give the governmental entity an opportunity to settle just claims before suit is brought. Second, they permit the entity to make an early investigation of the facts on which a claim is based, thus enabling it to defend itself against unjust claims and to correct the conditions or practices which gave rise to the claim.

The principle justifying claims statutes has been extensively accepted in California over a long period of time. Claims statutes appeared as early as 1855. Today there are at least 174 separate claims provisions in the law of this State, scattered through statutes, charters, ordinances and regulations. As appears below and more fully in the research consultant's report, these provisions differ widely as to many material matters, including claims covered, time for filing, and information required to be furnished.

It has become increasingly clear in recent years that the implementation of the claims statute principle in this State by the enactment of numerous and conflicting claims provisions has created grave problems both for governmental entities and those who have just claims against them. The Law Revision Commission was, therefore, authorized and directed to study and analyze the various provisions of law relating to the filing of claims against public bodies and public employees to determine whether they should be made uniform and otherwise revised.¹ The Commission has made an exhaustive study of existing claims statutes and the judicial decisions interpreting and applying them.

On the basis of this study the Commission has concluded that the law of this State governing the presentation of claims against governmental entities is unduly complex, inconsistent, ambiguous and difficult to find, that it is productive of much litigation and that it often results in the barring of just claims. This conclusion is supported by the following facts among others disclosed by the Commission's study:²

1. There are at least 174 separate claims provisions in California. Yet a large number of cities, districts and other local entities are not protected by any claims statute.

¹ Cal. Stat. 1956, res. c. 35, p. 256.

² For a more complete statement of the defects in existing claims statutes see research consultant's study, *infra* at A-17.

2. There is great disparity among existing claims statutes with respect to the types of claims which are subject to presentation requirements, the time limits for presenting claims, the official to whom claims must be presented, the information which the claimant must furnish, the requirements of verification and signature, the time allowed for consideration of the claim by the governmental entity and the time allowed for commencing an action after a claim is rejected. A claim must be presented in conformity with the provisions of the particular claims statute applicable to it to avoid barring suit on the claim. Yet there is much ambiguity and overlapping in claims provisions, with the result that claimants, attorneys and courts are often confused as to which, if any, of several claims provisions applies to a particular case.

3. The courts have generally given claims provisions a strict construction, although a few courts have been relatively liberal in particular cases. As a result, many actions based upon apparently valid claims have been barred solely by reason of a technical failure to comply with the applicable claims statute, whereas in other factually similar cases technical deficiencies have not barred relief. This results in unfairness to particular claimants and leads to unnecessary litigation.

4. No consistent pattern appears in the judicial decisions dealing with the extent to which the principles of waiver and estoppel may be invoked to preclude a governmental entity from relying upon technical noncompliance with a claims provision.

5. Failure to comply with technical requirements of claims provisions, such as the failure to verify a claim, has frequently been the basis for barring relief to a claimant, even though such defect clearly did not impair the effectiveness of the claim in fulfilling the basic notice-giving function and purpose of the claim filing requirement. Although the courts have often applied the doctrine of substantial compliance to excuse certain technical failures to comply with claims filing requirements, there is great uncertainty as to which types of defects may and may not be excused through application of this doctrine.

The Commission has concluded that these and other substantial defects in existing claims statutes, detailed in its research consultant's study, require remedial legislative action. The Commission does not believe, however, that these defects warrant an abandonment of the claims statute principle in this State. The legitimate interests of governmental entities and the public whom they represent require that prompt notice of claims against them be given to such entities. The Commission recommends, therefore, not only that the principle be continued in effect as to those governmental entities which are now protected by claims statutes but that similar protection be extended to the considerable number of such entities which do not presently have it.

On the other hand, the Commission believes that the glaring defects in existing claims statutes can be virtually eliminated by legislative action. To this end the Commission has drafted a new general claims statute which, if enacted, would govern the presentation of most claims for money or damages against governmental entities in this State. The Commission recommends that the Legislature enact this new general claims statute and that existing claims provisions be repealed or revised to conform to the new statute. The Commission believes that if this recommendation is accepted the legitimate interest of governmental

entities in prompt notice of claims against them will be adequately protected while, by virtue of the ready accessibility and general coverage of the new statute, just claims can be easily filed and the substantial rights of claimants preserved.

The principal features of the legislation recommended by the Commission are the following:

Claims Presentation Procedure. The basic scheme of the proposed general claims statute is simple: no suit may be brought against a governmental entity on a cause of action to which the statute is applicable until a written claim relating thereto has been presented to the entity and time has been allowed for action thereon by its governing body. The claim must be presented not later than 100 days after the cause of action to which it relates has accrued. Thereafter the governing body has 80 days within which to act upon the claim. If it does not act within 80 days, the claim is deemed denied as a matter of law. Suit must be brought within nine months after the date on which the claim was presented.

Provisions Designed To Avoid Injustice. The statute incorporates three provisions designed to alleviate hardship to claimants which have been recognized, albeit not uniformly, in the decisions or statutes of this and other states:

(a) Defects in a claim are waived unless the claimant is given written notice thereof by the entity.

(b) Time for filing is extended for a period not to exceed one year in the case of the claimant's death, minority, or physical or mental disability during the claim-presenting period, if the governmental entity will not be unduly prejudiced thereby.

(c) The governmental entity is estopped to assert the claimant's failure to comply with the statute if he relied upon a representation made by an officer, employee or agent of the entity that a presentation of claim was not necessary or that a claim as filed conformed to legal requirements.

Constitutional Amendment. If the goal of general uniformity of claims provisions is to be realized in respect of chartered counties, cities and counties and cities it is desirable to amend the Constitution to confirm the Legislature's power to prescribe procedures governing the presentation, consideration and enforcement of claims against such entities. The Commission has drafted and recommends the adoption of a constitutional amendment for this purpose. The statutes proposed by the Commission expressly provide that they shall not take effect as to a chartered county or city which has a claims procedure prescribed by charter or pursuant thereto until this constitutional amendment has been adopted.

Coverage of General Claims Statute. The proposed new statute does not govern the presentation of all claims against all governmental entities in this State. Claims against the State itself have been omitted therefrom because the State is unique in comparison with other entities, its legislative body does not meet regularly throughout the year, and the existing statutory provisions governing the filing of claims

against the State appear to provide an adequate and well established procedure. Thus, the new statute applies only to local public entities, defined to include any county, city and county or city (but delayed in effect as to some chartered counties and cities as explained above) and any district, local authority or other political subdivision of the State, claims against which are not paid by warrants drawn by the State Controller.

Even as to local public entities, however, the coverage of the new general claims statute is not universal. Like nearly all existing claims statutes, it applies only to claims for money or damages. Moreover, certain types of claims for money or damages are expressly excluded from the statute—for example, claims for tax exemptions and refunds, claims by public officers and employees for salaries, expenses and allowances, and claims for principal and interest on bonded indebtedness. In such cases the same need for prompt notice and investigation does not usually exist and the filing of such claims can better be regulated by the statute which creates and governs the rights involved. Another exception to the coverage of the proposed statute is found in the authority given to local public entities to include special provisions in written contracts governing the presentation, consideration and payment of claims arising thereunder, thus permitting a desirable flexibility in contract situations.

Coordination of the New General Claims Statute With Existing Law.
The legislation recommended by the Commission includes the following provisions designed to fit the new general claims statute into the law of this State in such a way as to accomplish the desired simplification of the law without prejudice to either the local public entities or the claimants to whom it will apply:

(a) All statutes presently governing the presentation of claims against local public entities have been either repealed or amended where this is necessary to eliminate conflicts between them and the new general claims statute. In the interest of improving the structure of the Government Code the provisions thereof relating to claims against the State (Sections 16000-16054) and those relating to claims against public officers and employees (Sections 1980-82) have been transferred to new Division 3.5 of Title 1 of the Government Code. Thus, Division 3.5 will contain the statutes governing claims against the State, against local public entities (the new general claims statute) and against public officers and employees.³

(b) All local public entities are authorized to prescribe by charter, ordinance or regulation claims procedures applicable to claims not governed by the general claims statute or by other statutes specifically applicable thereto. This is necessary to close the gap in existing claims statute coverage which will be created by the repeal of claims statutes insofar as they apply to types of claims not covered by the new general claims statute.

(c) If the objectives of this study are to be achieved it will also be necessary for local public entities to repeal claims provisions which are

³ The legislative bills necessary to accomplish this coordination of the statutory law relating to claims against governmental entities are not printed in this publication, both because of their length and because so much of the legislation is of a repetitious character.

presently found in their charters, ordinances and regulations lest these become traps for unwary citizens. The Commission hopes that this coordination of local law with the new statute will be expeditiously accomplished soon after the enactment of the new general claims statute. It is anticipated, however, that at best it will take some time to accomplish all repeals and amendments of existing claims provisions which will be necessary to coordinate them with the new statute. The Commission has, therefore, included in the general claims statute a provision that until July 1, 1964 (nearly five years after the effective date of a bill enacted by the 1959 Session of the Legislature) a claim may be presented in conformity *either* with the new statute *or* with any existing claims procedure established by or pursuant to a statute, charter or ordinance in effect immediately prior to the effective date of the new claims statute and not yet repealed at the time the claim is presented.

Claims Against Public Officers and Employees. There are several provisions in the law of this State which require that a claim be filed before suit can be brought against a public officer or employee on his personal liability to the claimant. These provisions are in many respects ambiguous, uncertain and overlapping, thus sharing most of the defects found in existing claims provisions pertaining to public entities. Substantial questions exist as to whether such provisions are justifiable and, if so, whether they should be made uniformly applicable to officers and employees of all local public entities. If it is determined that such provisions should remain in existence as to some or all entities they should be amended to eliminate existing ambiguities and overlaps.

The Law Revision Commission has not had an opportunity to give public officer and employee claims statutes sufficient study to be prepared to make a recommendation concerning them at this time. The Commission intends to study these claims statutes further and to present a recommendation concerning them to a later session of the Legislature.

The Commission's recommendation that a new general claims statute be established would be effectuated by the enactment of the following measures:

I

An act to add Division 3.5 commencing with Section 700 to Title 1 of the Government Code, to repeal Section 342 of the Code of Civil Procedure and to add Sections 313 and 342 to said code, relating to claims against the State, local public entities and public officers and employees.

The people of the State of California do enact as follows:

SECTION 1. Division 3.5 commencing with Section 700 is added to Title 1 of the Government Code, to read:

procedural route to realization of the newly recognized substantive rights. An exhaustive search of the reports covering the seventy-three years from 1850 to 1923 has disclosed but 38 supreme court and 11 district court of appeal decisions or a total of 49 cases which involve the interpretation, application or effect of a claims provision. Since 1923 on the other hand—a period less than one-half as long—there have been 39 supreme court decisions and 135 decisions of the district courts of appeal (not counting opinions later vacated upon grant of hearing by the supreme court) for a total of 174 cases relating to claims statutes.

This nearly four-fold increase in reported cases over the past three decades suggests that there are serious deficiencies in the present claims statutes. Such provisions, being fundamentally procedural in nature, should conform to the desiderata of simplicity and effectiveness which society has a right to expect of the means by which legally recognized rights are enforceable. Unfortunately, the existing pattern of claims provisions fails to meet these standards and in consequence claims procedures have been termed by the Supreme Court as "traps for the unwary"³⁰ and by a legal writer on the subject as "a bramble patch of legislation which, in many cases, completely chokes off . . . substantive rights."³¹

SURVEY OF CLAIMS PROVISIONS

Coverage of Existing Claims Provisions

Legal requirements governing the filing of claims are surprisingly numerous in California. They are to be found in five sources: (1) the California codes, (2) the uncodified general laws of the State, (3) city charters, (4) municipal ordinances and (5) rules and regulations promulgated by designated governmental agencies pursuant to statutory authorization.

In the pages immediately following the various statutory,³² charter and ordinance claims provisions are listed in terms of the type of governmental agency to which they apply with a brief description of the nature of the claims covered. For convenience in referring to them later in this study, all claims provisions listed are numbered consecutively.

³⁰ *Stewart v. McCollister*, 37 Cal.2d 203, 231 P.2d 48 (1951).

³¹ *Ward, Requirements for Filing Claims Against Governmental Units in California*, 38 CALIF. L. REV. 259, 271 (1950).

³² This report was prepared during the 1957 General Session of the California Legislature. It therefore collates and analyzes the statute law existing prior to changes enacted at that session. The several new enactments relating to claims do not materially alter either the analysis or the conclusions reached in the report, although in a few instances minor details are affected. Among the changes adopted in the statutes of 1957 are:

- (a) Chapter 99, amending Government Code Section 29714 relating to rejection of claims against counties;
- (b) Chapter 252, adding a new Section 12330 to the Public Utilities Code, to provide for filing of claims against municipal utility districts;
- (c) Chapter 314, adding a new Section 29700.1 to the Government Code, relating to itemization of certain types of claims against counties;
- (d) Chapter 518, creating the Contra Costa County Water Agency, and incorporating in Section 20 thereof the county claims procedure as applicable to all claims against the agency.

apply to claims against public officers and employees or only to claims against public entities.⁵⁸⁴

20. Existing statutes which expressly purport to apply to claims against public officers and employees are in many respects ambiguous, uncertain and overlapping. Although such statutes are fewer in number than provisions governing claims against public entities, they share, most of the difficulties attributed above to the entity claims provisions.⁵⁸⁵

While the present law of this State governing the presentation of claims against public entities and their officers and employees is subject to criticism, the large number of claims statutes evidences a widespread acceptance of the basic policy underlying such procedural prerequisites. This policy postulates claims presentation as a means of giving prompt notice in order to allow for early investigation of the facts and not merely as a statute of limitations. The values to be secured from the procedure include early-negotiated settlements in lieu of expensive and annoying litigation disruptive of governmental efficiency and the discouragement of stale and ill-founded claims. It is believed that these basic objectives can be achieved without the present "bramble bush" of claims statutes by unifying and revising our claims procedures. My recommendations as to the legislation necessary to accomplish this purpose follow.

Unified Statutory Treatment

It is recommended that the procedure applicable to claims against all forms of governmental agencies below the State level be set forth in a single statutory enactment to be incorporated into the Code of Civil Procedure. The procedure so provided should be uniformly applicable to all claims for money or damages upon which a legal action might be brought against the public entity involved.

Limitation on Entities Covered

Practically all of the important litigation concerning claims provisions is related to claims against public entities rather than the State. In part, this is due to the fact that the claims provisions relating to the State are considerably more liberal in the filing times allowed and do not partake of the ambiguities which arise from the mere concurrent existence of many different governmental subdivisions with varying powers and administrative structures. There is only one State but there are many counties, cities and districts. The State is unique, also, in the size of both its geographical and financial programs and the wide dispersion of those activities which might give rise to claims of various types. Unlike local entities, the State Legislature is not in continuous periodic session where claims may be considered and funds for payment authorized. From nearly every viewpoint, claims against the State and its various departments are subject to quite different considerations and should be governed by different procedures from those which apply to claims against local agencies. Accordingly, since the major legal problems relating to claims procedure appear to be confined to claims against local agencies only, it is recommended that claims against the State or any State agency be excluded from the scope of the proposed

⁵⁸⁴ See pp. A-103-105 *supra*.

⁵⁸⁵ See pp. A-105-113 *supra*.

statute. All other forms of governmental subdivisions, however, should be included; and in order to avoid any doubts and to ensure proper notice that State claims are separately treated, an express cross-reference to the State claims statutes should be made.

Limitation on Claims Covered

The scope of the proposed unified claims statute is limited to claims for money or damages thereby excluding demands for injunctive or other forms of specific relief. This limitation is consistent with the scope of nearly all of the claims provisions presently found in California law. Also excluded are (1) claims for tax exemption, cancellation or refund; (2) claims required by the mechanics' and materialmen's lien laws; (3) claims for wages, salaries, fees and reimbursement of expenses of public employees; (4) claims arising under the workmen's compensation laws; (5) claims for aid under public assistance programs; (6) claims for money due under pension and retirement systems and (7) claims for interest and principal upon bonded indebtedness. In most of these instances, the basic objectives of early investigation to prevent litigation and discourage false claims which support a uniform procedure for tort and inverse condemnation claims are not applicable; and orderly administration of the substantive policies governing the enumerated types of claims strongly suggests that claims procedure should be closely and directly integrated into such substantive policies. Obvious and compelling reasons appear for gearing tax refund claims to assessment, levy and collection dates and procedures; establishing special modes for protecting mechanics and material suppliers on public projects; providing an uncomplicated routine procedure for processing the tremendous volume of salary, pension, workmen's compensation and public assistance claims; and permitting flexible, simple and automatic procedures for meeting obligations to bondholders.

Contract claims pose a somewhat intermediate problem. Insofar as the claim is one for breach of contract, the need for early investigation and negotiation is frequently as important as in the case of tort claims. Ordinary routine claims for money due on a contract, however, are in a different category and for purposes of administrative convenience should not be shackled with an elaborate formal claims procedure. Other types of non-routine contract claims such as claims for the value of goods or services on an implied contract theory lie somewhere between the first two classes. It is recommended that the new claims statute permit public entities to waive by contract compliance with the claims statutes as to causes of action founded upon express contract other than claims for damages for breach of contract.

Need for Constitutional Amendment

In order to provide for a uniform claims procedure applicable to charter cities as well as other local entities, it is recommended that a constitutional amendment be adopted. As pointed out previously, there is some doubt as to whether a statute of the type here proposed could be validly applied to some types of claims against charter cities, since such cities are vested by the constitution with legislative autonomy with respect to "municipal affairs." With some modifications the proposed amendment along these lines adopted by the Assembly

in 1953⁵⁸⁶ would serve to safeguard the statute adequately from successful attack.

Relationship to Existing Claims Provisions

One of the observable defects in present claims law is the tendency of claimants, not to mention lawyers and judges, to become confused as to which of several claims provisions applies in a particular case. To adopt a new uniform claims procedure as here recommended presents a problem as to what should be done with the existing statutes, charter provisions and ordinances. Unless the existing provisions are concurrently repealed, some unwitting claimants will in all likelihood attempt to comply with the specific claims procedure of a district law, city charter or city ordinance which procedure may not be in compliance with the new uniform claims statute. The proposed uniform claims procedure would not necessarily preclude the existing provisions from continuing to operate as traps for the unwary.

Express repeal of the existing provisions would, of course, be the desirable solution. Under the proposed constitutional amendment this could clearly be accomplished in legal contemplation. But as a practical matter, those claims provisions which are not found in statutory form such as city charters and ordinances would remain physically unchanged except by voluntary act of the city council and, in the case of charters, voters. Thus, although claims provisions in the codes and special district laws could and would be removed by amendment from future editions of such statute law, the charter and ordinance provisions would in many cases remain on the books to mislead the uninformed reader. Even to repeal the purely statutory provisions would require an exhaustive search of present statute law to avoid overlooking some provision; and although such a search was pursued in preparing the present report, the author is far from confident that every relevant provision was disclosed, for such is the inadequacy of the available indexes to our statute law.

Any solution to this dilemma should be designed to eliminate the "trap" possibilities. It is accordingly recommended (1) that the new uniform claims procedure be made *exclusively* applicable only where no other claims procedure is presently provided by law and (2) that the new statute provide that substantial compliance with any other claims procedure applicable to the type of claim which is in existence on the effective date of the new statute would be a sufficient *alternative* to compliance with the new statute. Thus limiting the alternative compliance clause would preclude valid enactment of further special claims provisions by charter or ordinance and would provide time for repeal of pre-existing provisions in an orderly fashion. In addition, it would be desirable to repeal expressly all existing procedural statutes relating to claims against counties, cities and districts concurrently with adoption of the new statute.

Many existing claims provisions, particularly in charters and ordinances, contain detailed procedures for auditing claims and for processing them through appropriate channels of authority. These

⁵⁸⁶ Assembly Constitutional Amendment No. 23 (Reg. Sess. 1953), quoted in Comment, *California Claims Statutes—"Traps for the Unwary,"* 1 U.C.L.A. L. Rev. 201, 210 (1954).

matters are primarily of local administrative concern. They do not affect the claimant except incidentally insofar as the internal procedures may delay approval or rejection of the claim; and they do not create any danger of being a "trap." Accordingly, it is recommended that such auditing, accounting and internal processing procedures as may presently pertain to claims be left unchanged where they are not inconsistent with the express provisions of the new statute.

Retroactive Application

Upon adoption of the proposed uniform claims procedure, the problem of its applicability to claims which accrued prior to its effective date will undoubtedly arise.⁵⁸⁷ As previously observed, in the absence of explicit provisions as to retroactivity of claims statutes, the California courts have disagreed as to the solution of the problem.⁵⁸⁸ Litigation on the point should be prevented by express rule. If the new statute were made fully retroactive to allow all claims not barred by the statute of limitations to be presented within a fixed period after its effective date, many state claims would undoubtedly be revived and additional burdens imposed on public funds. Limited retroactivity would have the same result, only to a lesser degree, and it would be difficult to fairly draw the line. It is recommended that the new law be made applicable only to causes of action which accrue after its effective date and that previously accruing causes of action be governed by the law, if any, applicable thereto prior to adoption of the new procedure.

Consequences of Noncompliance

Requirement of Prior Rejection

In some states, e.g., Connecticut,⁵⁸⁹ compliance with the claims statute is excused if an action is commenced on the claim within the claim filing period.⁵⁹⁰ Substantially the same rule appears to obtain in California where prior rejection is not expressly required as a condition precedent to suit.⁵⁹¹ If the claim statutes are regarded as a mere short statute of limitations, this view has merit. In general, however, the California Legislature and courts have regarded such procedures as much more than a time limitation. Commencement of a timely action on a claim before any demand has been made for payment defeats the basic policy of discouraging litigation. It may be true that service of the complaint gives adequate notice and equal opportunity for investigation but opportunity for negotiation and settlement prior to incurring the expense of litigation is completely precluded. Institution of a lawsuit not only obligates the claimant for attorney's fees and costs which will probably increase his minimum settlement figure, but frequently imposes a burden of needless annoyance and inconvenience to the public employees involved and to counsel for the local entity in preparing and filing an answer within the relatively short time allowed. Much expense

⁵⁸⁷ See Annot., *Municipality—Notice of Claim*, 14 A.L.R. 710 (1921).

⁵⁸⁸ See notes 299-305 *supra*.

⁵⁸⁹ See CONN. GEN. STAT. § 1180d (Supp. 1955).

⁵⁹⁰ See Annot., *Commencement of Action as Notice*, 101 A.L.R. 726 (1936).

⁵⁹¹ See *Porter v. Bakersfield & Kern Elec. Ry.*, 36 Cal.2d 582, 225 P.2d 223 (1950), discussed *supra* at A-97 at notes 447-50. Under the California view, it is service of the complaint rather than commencement of the action which constitutes compliance with the claim statute. Usually these two events occur closely together.

STATE OF CALIFORNIA
Supreme Court of California

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