IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S269608

LOS ANGELES UNIFIED SCHOOL DISTRICT,
Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent,

JANE DOE,
Real Party in Interest.

Court of Appeal of California
Second District, Division Three
No. B307389

Superior Court of California
Los Angeles County
No. BC659059
Shirley K. Watkins

AMICUS CURIAE BRIEF IN SUPPORT OF JANE DOE

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

This is the initial certificate of interested entities or persons submitted on behalf of Amicus Curiae for Real Party in Interest Consumer Attorneys of California in the case number listed above.

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

Dated: February 28, 2022 By: /s/ Alan Charles Dell'Ario

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APPLICATION TO FILE AMICUS BRIEF

Consumer Attorneys of California requests that the attached amicus brief be submitted in support of the real party in interest Jane Doe. Counsel is familiar with all of the briefing filed in this action to date. The concurrently-filed amicus brief addresses the significance of the Legislature's amendments to Government Code sections 905 and 935 on the interpretation of Code of Civil Procedure section 340.1, subdivision (b). Those amendments make clear the Legislature considers childhood sexual assault and its cover-up particularly egregious tortious conduct requiring a broad waiver of any sovereign immunity.

No party to this action has provided support in any form concerning the authorship, production or filing of this brief.

STATEMENT OF INTEREST

Consumer Attorneys of California ("CAOC") is a voluntary membership organization representing over 6,000 associated consumer attorneys practicing throughout California. The organization was founded in 1962. Its membership consists primarily of attorneys who represent individuals who are injured or killed because of the negligent or wrongful acts of others, including governmental agencies and employees. CAOC has taken a leading role in advancing and protecting the rights of Californians in both the courts and the Legislature.

As an organization representative of the plaintiff's trial bar throughout California, including many attorneys who represent plaintiffs injured or killed due to negligence, CAOC is interested in the significant issues presented by the Court of Appeal's decision in this case. CAOC supported AB 218 as it made its way through the Legislature and is familiar with the issues. The appellate decision undercuts the Legislature's intent that victims of childhood sexual assault be treated equally whether the assault arises in a public or private setting.

AMICUS CURIAE BRIEF

> "Childhood sexual abuse has been correlated with higher levels of depression, guilt, shame, self- blame, eating disorders, somatic concerns, anxiety, dissociative patterns, repression, denial, sexual problems, and relationship problems."[1]

The history of AB 218 evinces the Legislature's manifest intent to create a parity of remedy for public and private victims of childhood sexual assault.

Perpetrators of childhood sexual assault do not discriminate between public and private victims. Cover-up of these assaults by private entities is no more heinous than when committed by public entities. This simple proposition accounts for the changes

[1] Sen. Judiciary Comm. analysis of AB 218 (2019-2022 Reg. Sess)(Jul. 1, 2019) 8 quoting Melissa Hall and Joshua Hall, The long- term effects of childhood sexual abuse: Counseling implications (2011) https://www.counseling.or g/docs/ disaste r-and- trauma_sexu al- abuse/longterm- effects- of-childhood-sexual- abuse.pdf ? [as of June 6, 2019] (Sen. Jud. Comm.).

wrought by AB 218 from prior legislative attempts to expand the avenues of redress for assault victims. And this proposition accounts for the Legislature's use of the word "entity" as opposed to private entity or public entity in subdivisions (a)(2) and (a)(3) of section 340.1 to identify the defendants who are subject to its treble-damages provision.

AB 218 represents the Legislature's fourth attempt to extend the statute of limitations for victims of childhood sexual assault and streamline such victims' ability to pursue their claims against public entities. In 2002, the Legislature enacted SB 1779. It amended section 340.1 to expand the time to sue third-party defendants if that defendant's employees or agents knew of unlawful sexual conduct and failed to act. (Sen. Jud. Comm., *supra* at 4.) But SB 1779 did not address the claims requirement of the Government Tort Claims Act. (Gov. Code, §§ 911.2, et seq.) So, when presented with the question, the Court held a timely claim was required in order that a victim proceed against a public entity, notwithstanding the expanded limitation period. (*Shirk v. Vista Unified Sch. Dist.* (2007) 42 Cal.4th 201, 213–214.) The plaintiff, whose claim had accrued when she was molested in 1980, was out of court because she needed to have presented a claim at that time.

To address this "loophole," SB 640 was enacted in 2008. (Stats. 2008, ch. 383.) It amended Government Code section 905 to exclude from the claims-presentation requirement "[c]laims made pursuant to section 340.1" if arising out of conduct occurring on or after January 1, 2009. (Sen. Jud. Comm., *supra,* at 5.) Concerned about the lapse of meritorious claims unaddressed by existing legislation, in 2013, the Legislature passed SB 131. It

would have provided a one-year revival of otherwise barred claims. But Governor Jerry Brown vetoed it because it only applied to private entities. He wrote:

> In passing this 2008 law, I can't believe the legislature decided that victims of abuse by a public entity are somehow less deserving than those who suffered abuse by a private entity. . . .
>
> . . .
>
> This extraordinary extension of the statute of limitations, which legislators chose not to apply to public institutions, is simply too open-ended and unfair.

(Sen. Jud. Comm., *supra* at 9.)

In 2018, the Legislature tried again with AB 3120. But "Governor Brown again vetoed the bill" because, among other things, it "did not fully address the inequity between state defendants and others." (Sen. Jud. Comm., *supra* at 9.)

Meanwhile, also in 2018, the Legislature enacted SB 1053. (Stats. 2018, ch. 153.) The Governor approved *this* measure. It amended Government Code section 935 to preclude public agencies from evading the 2008 SB 640 amendments to section 905. That is, and despite the elimination of the claims requirement for childhood sexual abuse claims, local agencies had been relying on the authority of section 935 to create their own claims-presentation requirements. (Sen. Rules Comm., analysis of SB 1053 (2017–2018) Reg. Sess. (Jun. 27, 2018) 3 (Sen. Rules Comm.). Appellate courts had been upholding these

requirements. (*Id*. at 4 citing *Big Oak Flat-Groveland Unified Sch. Dist. v. Superior Court* (2018) 21 Cal.App.5th 403, rev. granted.[2])

According to the Senate Rules Committee, the Legislature had always intended its amendments to section 340.1 to apply to public entities.

> Despite this additional legislation [SB 640] making it clear *the Legislature intended CCP Section 340.1 to apply to claims against local public entities*, numerous public entities, including school districts, have been using another statute, Section 935 of the Government Code, to circumvent and undermine SB 640 and Section 905(m) of the Government Code. These public entities are attempting to defeat lawsuits alleging claims of childhood sexual abuse based on claims-presentations requirements the local public entities have set in their own charter, ordinance, or regulation. This bill explicitly prohibits this practice and effectuates the intent of the Legislature in enacting SB 640, thereby ensuring the delayed discovery provisions in Section 340.1 apply to all childhood sexual abuse claims against local public entities.

(Sen. Rules Comm., *supra* at 3 [emphasis added].)

Against this backdrop, the Legislature took to its task in 2019. The legislators were acutely aware of the disparate treatment

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[2] The Court transferred the case to the Court of Appeal for reconsideration in light of the amendments to section 935 made by SB 1053. (*Big Oak Flat-Groveland Unified Sch. Dist. v. Superior Court* (Cal. 2019) 444 P.3d 665.)

under the law between private-entity victims and public-entity victims. They already had acted only to be thwarted by the courts. They had acted only to be thwarted by the Governor.

So what did they do to remedy this disparity? They *eliminated* the claims-presentation requirement for government tort claims to redress childhood sexual assault altogether.[3] And they amended section 340.1 in several significant ways, not the least of which was to provide for the victims to recover up to treble-damages where the perpetrator was an assailant whose prior misconduct had been covered up by any person or *entity* defendant thus permitting further assaults on unsuspecting, vulnerable child-victims.

"[T]he objective of statutory interpretation is to ascertain and effectuate legislative intent." (*People v. Flores* (2003) 30 Cal.4th 1059, 1063 *(Flores)*.) In ascertaining that intent, AB 218 must be viewed in light of this 17-year history of the Legislature's efforts to expand the remedies for victims of childhood sexual assault. It must be considered in light of the judicial interpretation of those efforts that thwarted them. It must be considered in light of Governor Brown's rejection of those efforts because they failed, in his view, to achieve parity of remedy between victims of public and private entities.

"To determine legislative intent, we turn first, to the words of the statute, giving them their usual and ordinary meaning."

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[3] They also replaced "childhood sexual abuse" with "childhood sexual assault" throughout the affected statutes in order to mirror Pen. Code., § 311.4, so as "to increase the conduct to which the extended limitations and enhanced damages apply." (Sen. Jud. Comm., *supra* at 11.)

(*Flores*, *supra*, 30 Cal.4th at p. 1063.) The Legislature used the word "entity" to identify the defendants against whom claims for childhood sexual assault could be brought. (Code Civ. Proc., § 340.1, subds. (a)(2), (a)(3).) It did not use private entity. An "entity" is "[a]n organization (such as a business or *governmental unit*) that has a legal identity apart from its members or owners." (Black's Law Dictionary (9th Ed. 2009) "Entity" p. 612, accord Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/entity [as of Feb. 23, 2022][emphasis added].)

Any of those entity defendants could be subject to the treble-damages provision "unless prohibited by another law." (Code Civ. Proc., § 340.1, subd. (b).) The district argues this provision was added to bring the treble damages within the proscriptions of Government Code section 818. But as Doe explains at length in her reply brief, the same public agencies that opposed the bill continued to urge the elimination of this provision, reflecting the common understanding that treble damages could be awarded against public entities notwithstanding this added language. (RBM 21.) As Doe also explains, the Legislature knew how to exempt public agencies from civil penalties by express reference to section 818. (RBM 22 citing Gov. Code, § 66641.5, subd. (c).) It didn't do so.

After acknowledging its duty to "ascertain the intent of the enacting legislative body," the Court of Appeal instead substituted its judgment for that of the Legislature. (*L.A. Unified Sch. Dist. v. Superior Court* (2021) 64 Cal.App.5th 549, 559.) The court dismissed the reference in the legislative committee reports to the bill's author concerning its purpose. "The bill would allow

for recovery of up to treble damages from the defendant who covered up sexual assault. This reform is clearly needed *both to compensate victims* who never should have been victims. . . and also *as an effective deterrent*. . . ." (Assm. Floor analysis AB 218 (2019–2020 Reg. Sess.) (Sep. 14, 2019) 2 [emphasis added] (Assm. Floor) [attached].) This report was the last prepared, after the bill had been amended in the Senate.

Said the court, "While the same statement shows up in several other Assembly Floor Analyses for A.B. 218, it appears to be the only reference to compensation related to treble damages in all the legislative history materials the parties have offered." (*L.A. Unified Sch. Dist. v. Superior Court*, *supra*, 64 Cal.App.5th at p. 558.) Yet nothing in those legislative materials says otherwise. No mention exists of exempting public agencies from the treble-damages provisions or of section 818. Rather, the Legislature rejected the public agency pleas "to eliminate the treble damages provision, eliminate the revival period, and limit liability for third parties." (Assm. Floor, *supra* at 3.)

What the materials consistently reflect is that the Legislature intended to treat public and private defendants alike. SB 640 and SB 1053 were both enacted with the intention to treating public and private victims the same. (Sen. Rules Comm., *supra* at 3.) AB 218 closed any remaining gap.

Ignoring this history, the Court of Appeal concluded,

> The treble damages provision in section 340.1 does not have a compensatory function; its primary purpose is to punish past childhood sexual abuse cover ups to deter future ones. While this is a worthy

> public policy objective, it is not one for which the state has waived sovereign immunity under the Tort Claims Act.

(*LAUSD, supra*, 64 Cal.App.5th at p. 567.)

All the legislative analyses noted the years of frustration as the Legislature sought to achieve parity of remedy for public and private victims of childhood sexual assault. The 2018 Senate Rules Committee flatly stated "the Legislature intended CCP Section 340.1 to apply to claims against local public entities." (Sen. Rules Comm, *supra* at 3.) Could the Legislature have intended to upend those efforts without so much as a word in an Assembly or Senate report, and in the face of the author's contrary assertion? Such an interpretation flies in the face of the years of history preceding AB 218 as well as the bill's history itself. Every one of the legislators who voted approved the bill – 69–0 in the Assembly and 33–0 in the Senate.[4]

The Legislature *is* the state for purposes of sovereign immunity. Government Code section 815 creates sovereign immunity "[e]xcept as otherwise provided by statute." To the extent a special waiver of sovereign immunity was necessary, the Legislature did so with AB 218. It has "otherwise provided by statute."

Even if the Legislature did have a punitive or deterrent primary purpose in adding the treble-damages provision, it was within its power to do so. After all, it amended sections 905 and

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[4] https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201920200AB218 [as of 2–24–22].

935 to accord special treatment to claims of childhood sexual assault against public entities. No one questions the Legislature's authority to do this.

The Legislature intended to subject all defendants, public and private, to section 340.1 and its treble-damages provision. Any other interpretation is contrary to that intent. The Court should so hold.

Respectfully submitted,

Dated: February 28, 2022 By: /s/ Alan Charles Dell'Ario

Attorney for Amicus Curiae
for Real Party in Interest
Consumer Attorneys of
California

CERTIFICATE OF COMPLIANCE

This brief is set using **13-pt Century Schoolbook**. According to TypeLaw.com, the computer program used to prepare this brief, this brief contains **2,209** words, excluding the cover, tables, signature block, and this certificate.

The undersigned certifies that this brief complies with the form requirements set by California Rules of Court, rule 8.204(b) and contains fewer words than permitted by rule 8.520(c) or by Order of this Court.

Dated: February 28, 2022 By: /s/ Alan Charles Dell'Ario

PROOF OF SERVICE

I declare:

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(for Hon. Shirley Watkins)

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Dated: February 28, 2022 By: /s/ Alan Charles Dell'Ario

AB 218 Assembly Floor Analysis (Sep. 14, 2019)

(**Without Reference to File**)

CONCURRENCE IN SENATE AMENDMENTS
AB 218 (Gonzalez)
As Amended August 30, 2019
Majority vote

SUMMARY:

Extends the civil statute of limitations for childhood sexual assault by 14 years, revives, for three years, old claims, and increases certain penalties for childhood sexual assault.

Major Provisions

1) Redefines childhood sexual abuse as childhood sexual assault and expands the definition slightly.

2) Extends the time for commencing a civil action based on injuries resulting from childhood sexual assault to 22 years after the plaintiff reaches majority (i.e., until 40 years of age) or within five years of the date the plaintiff discovers or reasonably should have discovered that the psychological injury or illness occurring after the age of majority was caused by the abuse, whichever occurs later.

3) Prohibits suit against third parties after the plaintiff's 40th birthday unless the person or entity knew or had reason to know, or was otherwise on notice, of any misconduct that creates a risk of childhood sexual assault by an employee, volunteer, representative, or agent, or failed to take reasonable steps, or to implement reasonable safeguards, to avoid acts of childhood sexual assault.

4) Revives, until three years of January 1, 2020, or the time period under 2), above, whichever is later, any actions for childhood sexual assault that has not been litigated to finality and that would otherwise be barred as of January 1, 2020, because of applicable statute of limitations, claims presentation deadline, or any other time limit.

5) Allows a person, in an action for recovery of damages suffered as the result of childhood sexual assault, to recover up to tremble damages if the sexual assault is the result of a cover-up by the defendant of a sexual assault of a minor, unless otherwise prohibited. Defines "cover-up" as a concerted effort to hide evidence relating to childhood sexual assault.

6) Eliminates the existing limitation on exemption from the Government Tort Claims Act and instead exempts, from the Government Tort Claims Act, all claims for childhood sexual assault against a local public entity, including those arising out of conduct occurring before January 1, 2009.

The Senate Amendments:
Limit the possible damages for a sexual assault cover up.

COMMENTS:

Childhood sexual abuse continues to ruin children lives and continues to shock the nation because, unfortunately, perpetrators continue to abuse, often with impunity, and sometimes with

the help of third parties who either choose not to get involved or actively cover-up the abuse. Whether the abuse occurred through gymnastics, swimming, school, or a religious institution, too many children have been victims of abuse and their lives have been forever impacted by that abuse. Despite the lifetime of damage that this abuse causes its victims, the state's statute of limitations restricts how long actions can be brought to recover for damages caused by childhood sexual abuse. In an effort to allow more victims of childhood sexual assault to be compensated for their injuries and, to help prevent future assaults by raising the costs for this abuse, this bill extends the civil statute of limitations for childhood sexual assault by 14 years, revives old claims for three years, and eliminates existing limitations for claims against public institutions. This bill applies equally to abuse occurring at public and private schools and applies to all local public entities. Lastly, the bill allows a victim of childhood sexual abuse to recover tremble damages against a defendant if the sexual assault is the result of a cover-up by the defendant of a prior sexual assault of a minor.

For more information, see the Assembly Judiciary Committee analysis of the bill.

According to the Author:

AB 218 would expand access to justice for victims of childhood sexual assault by removing the arbitrary time limits upon victims to pursue a case. Several states have already taken this step and have eliminated the civil statute of limitations for these cases. There should not be a reasonable expectation that if simply enough time passes, there will be no accountability for these despicable past acts by individuals and entities. This bill ensures that "time's up" for the perpetrators of childhood sexual assault, not for victims.

AB 218 would also confront the pervasive problem of cover ups in institutions, from schools to sports league, which result in continuing victimization and the sexual assault of additional children. The bill would allow for recovery of up to treble damages from the defendant who covered up sexual assault. This reform is clearly needed both to compensate victims who never should have been victims- and would not have been if past sexual assault had been properly brought to light- and also as an effective deterrent against individuals and entities who have chosen to protect the perpetrators of sexual assault over the victims.

Arguments in Support:

The sponsor, the Victim Policy Institute, writes: "The current law lets too many abusers avoid accountability for their actions. The only good thing to come out of recent scandals was an environment that encouraged well-known women - actors or Olympians - who were victims of childhood sexual assault to come forward. It is time for the law to recognize what we all now know – that it can take decades before some survivors are capable of coming forward. Children being assaulted today may not be ready to come forward until decades in the future."

Arguments in Opposition:

The bill is opposed by California Civil Liberties Advocacy, which argues that the bill will "negatively impact civil defendants because the availability and reliability of evidence diminishes over time," and that "extending the statute of limitations in civil suits is in more in the interests of the plaintiffs' lawyer industry than that of the abuse survivors, in which the negative effects will be felt in the decades to come."

This bill is opposed, unless amended, by public and private school officials, insurance associations, and joint powers associations. All of the opponents raise the same basic concerns: it is very difficult to defend against old claims when records and witnesses may be unavailable,

insurance may no longer be available, and the cost of defending these actions could be astronomical and could prevent the impacted entities from being able to support their main work. They request, among other things, that the bill be amended to eliminate the treble damages provision, eliminate the revival period, and limit liability for third parties. They also request amendments to create and fund procedures to prevent future abuse.

FISCAL COMMENTS:

According to the Senate Appropriations Committee:

1) Unknown, potentially-significant costs to state entities to the extent litigation is successfully brought outside the current statute of limitations and/or the entities are liable for damages.

2) Unknown, potentially-significant workload cost pressures to the courts to adjudicate cases filed within the expanded statute of limitations that otherwise would have been time barred. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources. For example, the Budget Act of 2019 appropriated $41.8 million from the General Fund to backfill continued reduction in fine and penalty revenue for trial court operations. (General Fund*)

3) Unknown, potentially-major out-year costs to local entities and school districts to the extent litigation is successfully brought outside the current statute of limitations and/or the entities are liable for damages. If payouts are large enough, this measure could lead to cost pressures to the state to stabilize a local jurisdiction or district.

   Additionally, to the extent an extended statute of limitations affects liability insurance premiums, school district could experience unknown, potentially-significant costs related to procuring liability insurance, apart from any specific claims. (Local funds)

*Trial Court Trust Fund

VOTES:

ASM JUDICIARY: 8-2-2
YES: Mark Stone, Chau, Chiu, Gonzalez, Holden, Kalra, Maienschein, Reyes
NO: Kiley, Obernolte
ABS, ABST OR NV: Gallagher, Petrie-Norris

ASSEMBLY FLOOR: 64-3-13
YES: Aguiar-Curry, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Cooley, Cooper, Cunningham, Daly, Diep, Eggman, Friedman, Gabriel, Cristina Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager-Dove, Lackey, Levine, Limón, Low, Maienschein, McCarty, Medina, Melendez, Mullin, Muratsuchi, Nazarian, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Waldron, Weber, Wicks, Wood, Rendon
NO: Brough, Obernolte, Voepel
ABS, ABST OR NV: Arambula, Bigelow, Chen, Choi, Dahle, Flora, Fong, Frazier, Gallagher, Eduardo Garcia, Kiley, Mathis, Mayes

UPDATED:

VERSION: August 30, 2019

CONSULTANT: Leora Gershenzon / JUD. / (916) 319-2334 FN: 0000066 FN:

STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **LOS ANGELES UNIFIED SCHOOL DISTRICT v. S.C. (JANE DOE)**
Case Number: **S269608**
Lower Court Case Number: **B307389**

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

2/28/2022

Date

/s/Alan Charles Dell'Ario

Signature

Dell'Ario, Alan Charles (60955)

Last Name, First Name (PNum)

Law Offices of A. Charles Dell'Ario

Law Firm