Case No. F074265

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

BIG OAK FLAT-GROVELAND UNIFIED SCHOOL DISTRICT et al.,

Petitioners,

vs.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF TUOLUMNE,

Respondent.

JANE DOE,

Real Party in Interest.

From the Superior Court, County of Tuolumne, Case No. CV59658
Honorable Kevin M. Seibert, Judge

APPLICATION FOR LEAVE TO FILE AND BRIEF OF *AMICUS CURIAE* CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE IN SUPPORT OF PETITIONERS

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TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL, APPELLATE DISTRICT, DIVISION	Court of Appeal Case Number: F074265
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	FOR COURT USE ONLY
APPELLANT/PETITIONER: Big Oak Flat-Groveland Unified School District RESPONDENT/REAL PARTY IN INTEREST: Jane Doe	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party (*name*): California School Boards Association

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(1)	
(2)	
(3)	
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Date: December 1, 2016

Sloan Simmons
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

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APPLICATION FOR LEAVE TO FILE AMICUS BRIEF

TO THE HONORABLE BRAD R. HILL, PRESIDING JUSTICE, AND ASSOCIATE JUSTICES OF THE CALIFORNIA COURT OF APPEAL, FIFTH APPELLATE DISTRICT:

Leave is hereby requested to file the accompanying Brief of *Amicus Curiae* on behalf of the California School Boards Association's Education Legal Alliance ("CSBA," " ELA" or "*Amicus Curiae*") in this matter in support of Petitioners Big Oak Flat-Groveland Unified School District et al.

INTEREST OF *AMICUS CURIAE*

This case concerns, in part, whether within the framework of the California Government Claims Act ("GCA") (Gov. Code, § 900 et seq.),[1] section 905, subdivision (m), constitutes a unique and previously unrecognized exception to the authority of local public entities, including California school districts and county boards of education, to institute local claim presentation policies pursuant to section 935 that apply directly to and require presentation of claims listed in section 905. While the present dispute involves only Petitioners Big Oak Flat-Groveland Unified School District et al. ("Petitioner") and Real Party in Interest Jane Doe ("Real Party"), the Court's resolution of this case presents serious implications for the thousand-plus California public school districts and county offices of education, let alone the totality of all local public entities in California. If the Respondent Superior Court's ruling and rationale is not corrected by this Court, the ability of school districts and other local public entities to craft local claim presentation requirements under the plain meaning of section 935—local policies that serve exacting and well-founded purposes under the GCA—will be thwarted, the long history and utilization of local claim presentation policies under section 935 upended, and a slippery slope

[1] Unless otherwise noted, all code references hereinafter are to the Government Code.

to nullification of section 935 and the local policies adopted pursuant to same set in motion.

ELA fully acknowledges and is sensitive to the reality that the issue before the Court in this case seemingly pits the right of alleged victims of sexual abuse to file lawsuits against a public entity against the public policy and purposes of the GCA. This is not lost on *Amicus Curiae*, and ELA respects and supports the right of alleged victims of such abuse to seek redress. However, ELA has a substantial interest in the outcome of this case because of its broader implications.

CSBA is an association of virtually all of the state's more than 1,000 school districts and county offices of education. It brings together school governing boards and their districts and county offices of education on behalf of California's school children. CSBA is a member-driven association that supports the governance team of school districts, including board members, superintendents, and senior administrative staff, in their complex leadership roles. CSBA develops, communicates, and advocates the perspective of California school districts and county offices of education. As an advocate for its constituent members, ELA has determined that this case affects the ability of California school districts and county offices of education to effectively enact, maintain and enforce local claim presentation requirements under section 935 that govern the presentation of claims otherwise exempt from the GCA's general claim requirements pursuant to section 905, which serve compelling and numerous purposes and sound public policy.

BRIEF OF *AMICUS CURIAE* WILL ASSIST THE COURT

Amicus Curiae's Brief will assist the Court in three ways. First, the Brief provides an overview of the long-recognized, foundational and well-thought-out public policy purposes underpinning the GCA's claim presentation requirements. Second, the Brief highlights the direct nexus to

these GCA purposes and the discretion of local public entities to craft and adopt local claim presentation requirements under section 935 that cover claims otherwise exempt pursuant to section 905 from the GCA's general claim requirements—a deliberative policy-making act taken by no less than half, if not significantly more, of the State's public school districts and county offices of education. Correspondingly, and with these legislative purposes in mind, the negative consequences to school districts and county offices of education, were this Court to agree with the Superior Court, are illuminated. Third, this Brief addresses inaccuracies and weaknesses in Real Party's arguments before this Court not otherwise fully addressed to date. This Court's understanding of these propositions is essential for the Court's proper resolution of this case.

CONCLUSION

For the foregoing reasons, *Amicus Curiae* respectfully requests that the Court accept the accompanying Brief for filing in this case.

Dated: December 1, 2016

Respectfully submitted,

LOZANO SMITH

/s/ Sloan R. Simmons
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CALIFORNIA SCHOOL
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INTRODUCTION

Petitioners Big Oak Flat-Groveland Unified School District et al. ("Petitioner") is but one school district out of over 1,000 school districts and county offices of education in California. Like so many of that larger group, however, Petitioner duly enacted a policy and procedures governing the presentation of claims for money or damages against it, consistent with the express authority permitted local public entities in California under Government Code section 935.[2] Consistent with the express terms of section 935, undisturbed judicial precedent, and decades of consensus understanding, Petitioner's claim requirements under its section 935 policy required claimants like Real Party in Interest Jane Doe ("Real Party") to timely submit a claim to Petitioner before initiating a lawsuit for money or damages, including for any claim otherwise exempted from the Government Claims Act's ("GCA") (Gov. Code, § 900 et seq.) claim presentation requirements by section 905. Despite Real Party's failure to comply with Petitioner's section 935 policy, Respondent Superior Court ("Superior Court") overruled Petitioner's demurrer asserted on the grounds that Real Party's failure to comply with Petitioner's local claim presentation requirements barred Real Party's claim regarding alleged molestation.

Amicus Curiae California School Boards Association's Education Legal Alliance ("CSBA," " ELA" or "*Amicus Curiae*") fully acknowledges and is sensitive to the reality that the issue before the Court in this case seemingly pits the right of alleged victims of sexual abuse to file lawsuits against a public entity against the public policy and purposes of the GCA. This is not lost on *Amicus Curiae*, and ELA respects and supports the right of alleged victims of such abuse to seek redress. Yet, because the Court's ruling on the facts of this case present broader implications beyond claims

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[2] Unless otherwise noted, all code references hereinafter are to the Government Code.

under section 905, subdivision (m), ELA has direct and significant concerns with the Superior Court's ruling below, and the ramifications of its ruling and rationale were this Court to agree with same. Such an outcome is inconsistent with the numerous, documented and concrete public policies and purposes that underpin the GCA, and correspondingly local claim presentation policies and requirements established under section 935. Adoption of the Superior Court's and Real Party's view would be the first of its kind, and would gut the meaning and purpose of the authority granted to local public entities under section 935, i.e., simply because claims under section 905, subdivision (m), are otherwise subject to a delineated statute of limitations under Code of Civil Procedure section 340.1 cannot and should not mean that such claims are free from the scope of section 935 policies enacted by local public entities. Every type of claim set forth under section 905 that are generally exempt from the GCA's general claim presentation requirements have stand-alone and applicable limitation periods, but are still subject to policies enacted by local public entities under section 935. To agree with the Superior Court and Real Party, would result in an exception swallowing the long-established rule and understanding of these laws.

As explained in this Brief, critical for the Court's consideration in this case are: (1) the well-established purposes of the claim presentation requirements of the GCA, as well as (2) how those purposes are directly at issue and served by local policies adopted under section 935, and the harm and disruption that would result to school districts, county offices of education, and other local public entities, were such policies upended. Moreover, flaws in several of Real Party's arguments are highlighted for the Court, all of which confirm that the Court should grant Petitioner's Petition for Writ of Mandate.

ARGUMENT

I. THE PUBLIC POLICY AND PRACTICAL IMPORTANCE OF THE GCA CLAIM PRESENTATION REQUIREMENTS FOR LOCAL PUBLIC ENTITIES ARE PARAMOUNT TO THE COURT'S PROPER ADJUDICATION OF THIS MATTER.

Central to *Amicus Curiae's* interest in this case, the Superior Court's ruling and Real Party's position before this Court presently seek to ignore and undo decades of precedent and policy that underpin local educational agencies' claim presentation policies adopted pursuant to section 935. This Court should not follow this path. As explained below, the GCA's long-standing and deferred-to public purposes compel a ruling by this Court in Petitioner's favor.

The GCA claim presentation requirements serve substantial policy goals and purposes. As explained by the Court of Appeal,

> [One] of the reasons for this type of legislation is to prevent public funds from being consumed in needless litigation by affording the public entity an opportunity for amicable adjustment before it is charged with the cost of suit and other expenses. Another reason is that it provides the public body responsible for making preparations for the fiscal year with an opportunity to be informed in advance as to the indebtedness or liability that it may be expected to meet. A third reason is to give the public entity prompt notice of a claim in order to enable it to investigate the merits of the claim while the evidence is still fresh and the witnesses are available [citations]. The fourth reason is to afford the public entity a chance to correct the conditions or practices which gave rise to the claim . . . .

(*Stanley v. City & County of San Francisco* (1975) 48 Cal.App.3d 575, 581, citations omitted.)

Before and after the *Stanley* court's apt explanation in 1975, this State's high court and other appellate courts have repeatedly impressed upon these foundational public policies when interpreting and applying the GCA:

> courts and commentators have considered prompt notice important for several reasons: to allow (1) early investigation of the facts, (2) informed fiscal planning in light of prospective liabilities, (3) settlement of claims before the initiation of costly civil litigation, and (4) avoidance of similarly caused future injuries or liabilities.

(*Minsky v. City of Los Angeles* (1974) 11 Cal.3d 113, 123.) Put another, but similar way:

> The claim-filing requirement of the Government Claims Act serves several purposes: (1) to provide the public entity with sufficient information to allow it to make a thorough investigation of the matter; (2) to facilitate settlement of meritorious claims; (3) to enable the public entity to engage in fiscal planning; and (4) to avoid similar liability in the future.

(*Page v. MiraCosta Community Coll. Dist.* (2009) 180 Cal.App.4th 471, 492-93, quoting *Westcon Construction Corp. v. County of Sacramento* (2007) 152 Cal.App.4th 183, 200; *Westcon Const. Corp.*, 152 Cal.App.4th at 200-01, citing *TrafficSchoolOnline, Inc. v. Clarke* (2003) 112 Cal.App.4th 736, 742; *Canova v. Trustees of Imperial Irrigation Dist. Employee Pension Plan* (2007) 150 Cal.App.4th 1487, 1493 [same].)

Consistent with these authorities and well-founded propositions, and certainly applicable to the facts at hand in this case, a central purpose of requiring claim presentation to California public entities is to permit prompt, and accurate investigation into the alleged wrong-doing or harm, and to settle those claims if appropriate without the time and expense of costly litigation. (See, e.g., *Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699, 709 [“We conclude, therefore, that a document constitutes a ‘claim as presented’ triggering sections 910.8, 911 and 911.3, if it discloses the existence of a ‘claim’ which, if not satisfactorily resolved, will result in a lawsuit against the entity. [Citation.] A public entity’s receipt of written notice that a claim for monetary damages exists and that litigation may ensue[,] places upon the public entity the responsibility, and gives it the

opportunity, to notify the potential plaintiff pursuant to sections 910.8 and 911 of the defects that render the document insufficient under sections 910 and 910.2 and thus might hamper investigation and possible settlement of the claim. *Such a written notice claiming monetary damages thereby satisfies the purposes of the claims act—to facilitate investigation of disputes and their settlement without trial if appropriate* ([Citation.])"], emphasis added; *Myers v. County of Orange* (1970) 6 Cal.App.3d 626, 637 ["The purpose of the claims statute is to permit the public entity to make an early investigation of the facts and to enable it to decide whether the problem calls for litigation or settlement."].) "The requisite timely claim presentation before commencing a lawsuit [thus] . . . permits the public entity to investigate while tangible evidence is still available, memories are fresh, and witnesses can be located." (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 213, citing *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1214, *City of San Jose v. Super. Ct.* (1974) 12 Cal.3d 447, 455, and *Barkley v. City of Blue Lake* (1996) 47 Cal.App.4th 309, 316.) Correspondingly, as stated by the State's high court: "The purpose of the claims statutes is not to prevent surprise, but 'to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation.'" (*City of Stockton v. Super. Ct.* (2007) 42 Cal.4th 730, 738, quoting *City of San Jose*, 12 Cal.3d at 455.)

The importance of affirming these purposes undergirding GCA claim presentation is even more compelling when the Court considers the parallel (if not preeminent) goal of correcting and deterring the harms alleged by a claimant. As the court in *Martell v. Antelope Valley Hospital Medical Center* (1998) 67 Cal.App.4th 978, explained:

> The claims-presentation requirements . . . serve two basic purposes [citation]: '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' . . . .*

(*Martell*, 67 Cal.app.4th at 981, citing Cal. Government Tort Liability Practice (Cont. Ed. Bar 3d ed. 1992) § 6.6, p. 635 and *City of San Jose*, 12 Cal.3d at 455, emphasis added.) Said another way by the California Supreme Court: "Requiring a person allegedly harmed by a public entity to first present a claim to the entity, before seeking redress in court, *affords the entity an opportunity to promptly remedy the condition giving rise to the injury, thus minimizing the risk of similar harm to others*." (*Shirk*, 42 Cal.4th at 213, citation omitted & emphasis added.)[3]

All of these forceful purposes together help to ensure that local public entities, who serve their constituents by way of budgeted-for public services, are able "to engage in fiscal planning for potential liabilities and to avoid similar liabilities in the future." (*Baines Pickwick Ltd. v. City of Los Angeles* (1999) 72 Cal.App.4th 298, 303; see *City of Stockton*, 42 Cal.4th 7at 738; *Shirk*, 42 Cal.4th at 213 ["Fresh notice of a claim permits early assessment by the public entity, allows its governing board to settle meritorious disputes without incurring the added cost of litigation, and gives it time to engage in appropriate budgetary planning."], citations omitted; *Loehr v. Ventura County Community Coll. Dist.* (1983) 147 Cal.App.3d 1071, 1079 ["Such [claim] requirements allow the governmental entity an opportunity to settle claims before suit is brought, permit an early investigation of the facts, facilitate fiscal planning for

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[3] The *Shirk* court also cited the following in support of this proposition of policy and practicality: *Johnson v. San Diego Unified School Dist.* (1990) 217 Cal.App.3d 692, 696–97, *Roberts v. State of California* (1974) 39 Cal.App.3d 844, 848, and Recommendation: Claims, Actions and Judgments Against Public Entities and Public Employees (Dec. 1963) 4 Cal. Law Revision Com. Rep. (1963) pp. 1008–09.

potential liabilities, and help avoid similar liabilities in the future."], citing *Minsky*, 11 Cal.3d at 123 and *Stanley*, 48 Cal.App.3d at 581.) Put well by the *Shirk* court:

> The [claim] notice requirement under the government claims statute thus is based on a recognition of the special status of public entities, according them greater protections than nonpublic entity defendants, because unlike nonpublic defendants, public entities whose acts or omissions are alleged to have caused harm will incur costs that must ultimately be borne by the taxpayers.

(*Shirk*, 42 Cal.4th at 213.)

Consistent with ensuring support for the purposes of the GCA and its claim presentation requirements cited above, courts have also expressly held and stated since the inception of the GCA, that it was not created to expand the rights of plaintiffs suing public entities, but to limit potential liability to public entities. Indeed, the California Supreme Court has repeated this principle in numerous decisions. (E.g., *Brown v. Poway Unified School Dist.* (1993) 4 Cal.4th 820, 829 ["[T]he intent of the [GCA] is not to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances: immunity is waived only if the various requirements of the act are satisfied."]; *Williams v. Horvath* (1976) 16 Cal.3d 834, 838 [same]; accord *Teter v. City of Newport Beach* (2003) 30 Cal.4th 446, 451; *Caldwell v. Montoya* (1995) 10 Cal.4th 972, 985; *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1127-28.)

Moreover, it is also well-settled that concomitant with upholding the purposes that the GCA's claim presentation requirements, "the filing of a claim for damages 'is more than a procedural requirement, it is a condition precedent to plaintiff's maintaining an action against [public entity] defendants, in short, an integral part of plaintiff's cause of action.'" (*Williams*, 16 Cal.3d at 842; see also *Shirk*, 42 Cal.4th at 209, citing *State v.*

Super. Ct. (2004) 32 Cal.4th 1234, 1240 [“*Bodde*”]; *City of San Jose v. Super. Ct.* (1974) 12 Cal.3d 447, 454 [“In actions for damages against local public entities, the claims statutes require timely filing of a proper claim as condition precedent to the maintenance of the action . . . Compliance with the claims statutes is mandatory . . .; and failure to file a claim is fatal to the cause of action.”], citations omitted.) “Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action.” (*Shirk*, 42 Cal.4th at 209, citing *Bodde*, 32 Cal.4th at 1245; see also *Sofranek v. Merced County* (2007) 146 Cal.App.4th 1238, 1246 [“Failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity . . . Before a cause of action may be stated, a plaintiff must allege either compliance with this procedure or circumstances excusing compliance.”], citations omitted.) As such, consistent with the policy aims on which the GCA is founded, the GCA was established to limit claims against public entities and only allow claims under circumstances where potential plaintiffs satisfied all requirements in the claim process. Real Party’s failure to file a government claim in this matter raises the same concerns as those echoed by the courts since the inception of the GCA.

All told, there is a long history of judicial agreement, reliance upon, and deference to the known purposes underlying the GCA and its claim presentation requirements. It is thus no mystery why these strong public policy purposes have governed courts’ analysis of GCA issues. The important safeguards of prompt notice, the ability to investigate, the potential for timely resolution of claims, and the ability to plan to avoid future similar incidents, and correct and prevent against similar alleged wrongs, all drive local public entities’ ability to more fairly and efficiently

handle claims. These aims interact seamlessly with a central foundation of the GCA of restraining the liability of public entities to "rigidly delineated" circumstances. As discussed below, these purposes are also directly at issue and served by claimants' adherence to and courts' affirming of local claim presentation policies and procedures adopted pursuant to section 935.

II. LOCAL PUBLIC ENTITY CLAIM PRESENTATION POLICIES UNDER SECTION 935 SHARE THE SAME IMPORTANT UNDERLYING POLICY PURPOSES AS THE GCA MORE GENERALLY, AND IF REAL PARTY'S VIEW OF SECTIONS 905(m) AND 935 WERE ADOPTED BY THIS COURT, THOSE PURPOSES WOULD BE DIRECTLY UNDERMINED.

In the same manner that courts have supported the foundational principles and purposes of the GCA described above, regarding the reasons the claim presentation requirement is important to the fabric of the civil justice system and public entity operations, courts have also supported the application of policies adopted pursuant to section 935. In adding section 935, the Legislature provided local public agencies with the express and unambiguous authority to create and adopt their own claim presentation requirements for those claims otherwise exempted by section 905. The same fundamental purposes of claim presentation described above apply to claims subject to local public entity policies and procedures enacted pursuant to section 935, and to do away with, or even chip away at, that proposition results in significant and negative consequences to school districts, county offices of education and other local public entities.

As accurately and persuasively explained by Petitioner (see, e.g., Petitioner's Pet. for Writ of Mandate at 25-28), the GCA authorizes a public entity to promulgate its own rules for presentation of claims that otherwise fall within the exemptions in Government Code section 905. (See Gov. Code, § 935; *Cal. School Employees' Ass'n v. Azusa Unified School Dist.* (1984) 152 Cal.App.3d 580, 586-587 ["*Azusa*"].) In *City of*

Ontario v. Superior Court, the Court of Appeal correctly framed the rule relative to section 905 and policies adopted under section 935, in the following manner: "sections 905 and 935, read together, are perfectly clear. Section 905 creates exemptions from the state-mandated claims procedure; section 935 permits local public entities to enact their own procedures to cover the exempted claims." (*City of Ontario v. Superior Court* (1993) 12 Cal.App.4th 894, 901-02.) When a public entity establishes such a procedure, presentation of claims according to that procedure is *mandatory* and brings the otherwise exempt claim within the requirements of the GCA. (Gov. Code, §§ 935, subd. (a), (b); see also *Brown*, 4 Cal.4th at 829 ["[T]he intent of the [GCA] is not to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances…."]; *Sofranek*, 146 Cal.App.4th at 1246 ["Failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity . . . Before a cause of action may be stated, a plaintiff must allege either compliance with this procedure or circumstances excusing compliance."].)

As explained by Petitioner (Petitioner's Pet. for Writ of Mandate at 14-17, 25-26, 33-34; Petitioner's Reply at 11-13), multiple courts have specifically analyzed the ability of local public entities to establish their own claims procedures to cover claims exempted by section 905. (See *Cal. School Employees Ass'n v. Governing Bd. of So. Orange Cty. Community Coll. Dist.* (2004) 124 Cal.App.4th 574, 592 ["section 935 authorized local public entities to require notice for claims excepted under Government Code section 905. The statutory purpose underlying the notice provisions is furthered whether a claim for monetary relief is part of an equitable action or stands on its own."]; *Tapia v. County of San Bernardino* (1994) 29 Cal.App.4th 375, 383-84; *City of Ontario*, 12 Cal.App.4th at 898

[section 935 "then expressly permits the local public entity to establish a claim requirement, so long as the procedures are similar to, and not more restrictive than, those established by the Tort Claims Act."]; *id.* at 900 ["But, of course, section 905 does not stand alone; it is modified by section 935. In our view section 935 does constitute express consent to the imposition of the specified requirements."]; *Calvao v. Super. Ct.* (1988) 201 Cal.App.3d 921, 922 ["section 905 requires all claims for money or damages against local public entities be brought in accordance with the Tort Claims Act except '[claims] by public employees for fees, salaries . . . or other expenses . . . .' (Gov. Code, § 905, subd. (c).) As to these excepted claims, the local public entity is to adopt appropriate rules and regulations (Gov. Code, § 935)."]; *Azusa*, 152 Cal.App.3d at 587, fn. 3 ["A reasonable construction of the language of . . . section 935, when taken as a whole, permits a local entity to adopt the claims procedures prescribed by the Government Code or some other procedure for claims otherwise excepted from the filing requirements of Government Code section 900 et seq."]; see also *Del Norte Disposal, Inc. v. Dept. of Corrections* (1994) 26 Cal.App.4th 1009, 1013 [recognizing local entity policy authority under section 935]. *Adler v. Los Angeles Unified School Dist.* (1979) 98 Cal.App.3d 280, 287 ["Defendants call our attention to . . . section 935, subdivision (a), which authorizes a local public entity to impose a claims procedure upon claims exempted by the just-mentioned section 905 . . . ."].)

With this in mind, it is indisputable the Legislature determined to exempt certain types of claims from the GCA's general claim presentation requirements under section 905, *but that the Legislature also determined to* permit local public entities to adopt policies pursuant to section 935 to require claim presentation for such otherwise exempt claims. On those legal facts, it is also unquestionable that upholding and enforcing a local public entity's claim procedure under section 935 (whether that entity is a

school district, county office of education, community college district, city, county or hospital district, etc.), which requires claim presentation for those claims otherwise exempt under section 905—directly and forcefully serves the claim presentation purposes of the GCA overall, including to allow a local public entity:

> (1) sufficient information to allow it to make an early, thorough investigation of the matter;
>
> (2) informed fiscal planning in light of prospective liabilities;
>
> (3) to facilitate settlement of claims before the initiation of costly civil litigation;
>
> (4) to avoid similar liability in the future; and
>
> (5) to prevent against similarly caused future injuries, i.e., to correct the conditions or practices which gave rise to the claim.

(See *Minsky*, 11 Cal.3d at 123; *Page*, 180 Cal.App.4th at 492-93; *Martell*, 67 Cal.app.4th at 981.)

A determination to the contrary by this Court would have significant and negative impacts on school districts, county offices of education, and other local public entities. By its very nature, agreement with the Superior Court's reasoning in this case would push policies adopted under section 935 down the slippery slope to irrelevance. This is because to agree with the Superior Court and Real Party, the Court would need to agree with the proposition that the mere existence of a standalone statute of limitations for a given claim listed under section 905 is an adequate basis to remove it from section 935's applicability. (See Real Party's Return at 18, 22; see also Petitioner's Reply at 11-16.) If this were to result, then this Court's opinion would create an opening for every prospective plaintiff who would have otherwise been subject to a local public entity's policy and procedure

adopted under section 935 to make the same argument asserted here by Real Party. With that policy-driven requisite under the GCA and section 935 dismantled, the thousands of policies adopted by local public entities—adopted to serve the underlying policy goals and purposes set forth in detail above—would be rendered essentially nugatory.

At the same time, the enumerated purposes of the claim presentation requirements, including those local procedures enacted by school districts and county offices of education, would all be missed, to the detriment of the local constituencies they serve, including potential claimants. Interest and commitment in preventing further or future harms as soon as possible, lost. Preservation of precious and finite resources, budgeted and planned for other purposes, at risk. The opportunity for prompt and accurate investigation of claims of alleged wrong-doing, vanished with time. And the ability to make sensible and prudent decisions as to litigation versus settlement, wasted.

These potential consequences are real, and directly contrary to the GCA's well-crafted intent. This Court should therefore affirm the importance of these purposes of the GCA consistent with the control and discretion to adopt local claim presentation requirements under section 935, and grant Petitioner's Petition for Writ of Mandate.

III. REAL PARTY'S CASE LAW AND THEORIES ARE UNPERSUASIVE, AND THIS COURT SHOULD NOT RELY UPON THEM TO UNDO THE DISCRETION AND AUTHORITY OF LOCAL PUBLIC ENTITIES UNDER SECTION 935.

Amicus Curiae briefly notes here errors and deficiencies in the Real Party's arguments where additional information is to the Court's benefit.

First, various cases cited by Real Party as purported support for the understanding of section 905, subdivision (m), in the context of local policies adopted pursuant to section 935, do not stand for the support stated.

In *J.P. v. Carlsbad Unified School District* (2014) 232 Cal.App.4th 323, out of the Fourth Appellate District, and in a footnote constituting *dicta*, the Court of Appeal merely recognized the new inclusion of exempt claims under section 905, subdivision (m), under the GCA. (*J.P.*, 232 Cal.App.4th at 233, fn. 6; see Real Party's Return at 1, 12.) There is no discussion of section 935 in the case; the footnote is the only discussion regarding section 905, subdivision (m), in the case, was unnecessary to the court's holding, and in itself is consistent with mere explanation of any claim listed within section 905, i.e., claims that are exempt from the GCA's general claim presentation requirements—but otherwise not outside the reach of section 935. Such *dicta* is not persuasive or on point, let alone controlling here. (E.g., *Landeros v. Torres* (2012) 206 Cal.App.4th 398, 412.)

Real Party's reliance upon *S.M. v. Los Angeles Unified School District* (2010) 184 Cal.App.4th 712, out of the Second Appellate District, is of the same ilk. (See Real Party's Return at 1, 12.) The cited-to portions of the opinion are again a mere footnote, and like in *J.P.*, the Court's discussion is limited to recognition of section 905, subdivision (m), as one of the types of claims generally exempt from the GCA's ordinary claim presentation requirements via section 905. (See *S.M.*, 183 Cal.App.4th at 721, fn. 6.) Again, the opinion contains no reference, let alone substantive discussion, of section 935 or the interaction of policies adopted by local public entities under that provision with otherwise exempt claims under section 905. *S.M.* does not support Real Party's contentions.

Finally, Real Party also turns to the newly minted *A.M. v. Ventura Unified School District* (2016) 3 Cal.App.4th 1252. (See Real Party's Return at 12.) Like *S.M.*, *A.M.* arises out of the Second Appellate District, and while the *A.M.* court does briefly discuss the enactment of section 905, subdivision (m), and its relationship with Code of Civil Procedure section 340.1 (see *A.M.*, 3 Cal.App.4th at 1257-58), the opinion is again absolutely

silent as to section 935, any local claims presentation policy adopted pursuant to same, or authoritative legal discussion on point. As a result, *J.P.*, *S.M.* and *A.M.* add nothing to the Court's analysis in this matter, and even if partially or wholly on point, would not be binding precedent on this Court. (See *In re Marriage of Shaban* (2001) 88 Cal.App.4th 398, 409 ["there is no 'horizontal stare decisis' within the Court of Appeal . . ."]; *McCallum v. McCallum* (1987) 190 Cal.App.3d 308, 315 fn. 4 ["A decision of a court of appeal is not binding in the courts of appeal . . . ."], citations omitted.)

Second, Real Party has equated without distinction a "statute of limitations" or "limitations period" with a statutory claim presentation requirements. (See Real Party's Return at 18, 22.) While both may have analogous results in that they require a claimant/plaintiff to take certain action within designated periods of time, they are two different legal propositions. (See *Myers*, 6 Cal.App.3d at 637 ["We recognize, of course, that strictly speaking, the statutes requiring the presentation of a claim within one year are not statutes of limitations."]; see also *Gutierrez v. Mofid* (1985) 39 Cal.3d 892, 901 ["The 100-day government claim requirement is an obstacle *in addition to the normal* ***limitations period*** applicable to the tort alleged."], emphasis in original; *Gallo v. Super. Ct.* (1988) 200 Cal.App.3d 1375, 1381 ["[T]here are important distinguishing factors between claim-filing requirements and statutes of limitations."]; California Courts, The Judicial Branch of California, at http://www.courts.ca.gov/9618.htm [last accessed on Nov. 30, 2016] [distinguishing between general statutes of limitation and government claim procedures].) This distinction should not be lost on the Court, in that while Code of Civil Procedure section 340.1 quite clearly establishes an applicable statute of limitations for initiating litigation for certain types of claims—just as is the case for other applicable statutes of limitation

applicable to *all* other claims listed within section 905—that limitations period does not speak to or constitute legal directives with regard to local public entity claim presentation requirements and timelines authorized under section 935 for over half a century.

Third, and although raised by Petitioner, deserving of further emphasis (see Petitioner's Reply at 8-10), there is nothing in the legislative history of Senate Bill 640 (2007-2008 Reg. Sess.) contemporary to the bill's adoption that suggest the Legislature considered section 935 whatsoever, let alone intended to create an exception to the ability of local public entity policies under section 935 to cover claims otherwise exempt under section 905. Silence on this point wholly negates any value of the referenced legislative history to the Court's decision. (See, e.g., *Kahn v. The Dewey Group* (2015) 240 Cal.App.4th 227, 236 ["Whatever the Legislature may have intended when it enacted section 1013—an issue we do not reach—the question before us is section 1010.6, not section 1013. Even assuming that the Legislature intended to limit the application of section 1013 to the party being served, nothing suggests it had the same intention 19 years later when it adopted section 1010.6. *Indeed, the legislative history of section 1010.6 is completely silent on this issue*."], emphasis added; *Peltier v. McCloud River R.R. Co.* (1995) 34 Cal.App.4th 1809, 1822 ["In effect, the discretionary dismissal statutes would be repealed by implication as to all cases where a dismissed plaintiff could obtain such an affidavit. We may not adopt such a construction of section 473 unless compelled to do so. The legislative history cited by plaintiff, *which is silent as to the discretionary dismissal statutes*, does not compel this construction."], emphasis added.)

Thus, even if the Court found it necessary to go beyond the plain terms of sections 905 and 935, and the judicial gloss that breaths the understood meaning into those statutes' interaction, the legislative history is

of no moment, and section 935's full or partial repeal by implication is barred by black letter standards of statutory construction. (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 477 ["[A]ll presumptions are against a repeal by implication."], citations omitted; *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 379 ["Repeals by implication are not favored, and we do not recognize them unless two apparently conflicting laws cannot be harmonized."].)

CONCLUSION

Based on the foregoing and for those reasons set forth in Petitioner's papers, *Amicus Curiae* respectfully requests that this Court grant Petitioner's Petition for Writ of Mandate.

Dated: December 1, 2016

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204(c) of the California Rules of Court, counsel hereby certifies that the word count of the Microsoft® Office Word 2013 word-processing computer program used to prepare this brief (excluding the cover, tables, and this certificate) is 5,173 words.

Dated: December 1, 2016

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PROOF OF SERVICE

I, Destiny Kaylor, am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within entitled cause; my business address is One Capitol Mall, Suite 640, Sacramento, CA 95814.

On December 1, 2016, I served the attached:

APPLICATION FOR LEAVE TO FILE, AND BRIEF OF *AMICUS CURIAE* CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE IN SUPPORT OF PETITIONERS

on the interested parties in said cause, by placing a true copy thereof enclosed in a sealed envelope addressed as follows and I caused delivery to be made by the mode of service indicated below:

SEE ATTACHED SERVICE LIST

[X] (Regular U.S. Mail) on all parties in said action in accordance with Code of Civil Procedure Section 1013, by placing a true and correct copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth above, at Lozano Smith, which mail placed in that designated area is given the correct amount of postage and is deposited at the Post Office that same day, in the ordinary course of business, in a United States mailbox in the County of Contra Costa.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed December 1, 2016, at Sacramento, California.

Destiny Kaylor

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