

S286798

S_____

**IN THE
SUPREME COURT OF CALIFORNIA**

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT,
Petitioner,

v.

THE SUPERIOR COURT OF CONTRA COSTA COUNTY,
Respondent.

A.M.M.,
Real Party in Interest.

AFTER A PUBLISHED DECISION BY THE FIRST APPELLATE DISTRICT, DIVISION FIVE • No. A169314
SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA, JOHN P. DEVINE, JUDGE • No. C22-2774

PETITION FOR REVIEW

HORVITZ & LEVY LLP

ROBERT H. WRIGHT (BAR No. 155489)
*PEDER K. BATALDEN (BAR No. 205054)
3601 WEST OLIVE AVENUE, 8TH FLOOR
BURBANK, CALIFORNIA 91505-4681
(818) 995-0800 • FAX: (844) 497-6592
rwright@horvitzlevy.com
pbatalden@horvitzlevy.com

FAGEN FRIEDMAN & FULFROST, LLP

ROY A. COMBS (BAR No. 123507)
DAVID R. MISHOOK (BAR No. 273555)
1525 FARADAY AVENUE, SUITE 300
CARLSBAD, CALIFORNIA 92008-7372
(760) 304-6000 • FAX: (760) 304-6011
rcombs@f3law.com
dmishook@f3law.com

ATTORNEYS FOR PETITIONER
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	4
ISSUE PRESENTED.....	7
INTRODUCTION	8
STATEMENT OF THE CASE	14
A. Doe invokes Assembly Bill No. 218 and sues West Contra Costa Unified School District.....	14
B. The District demurs on the ground that AB 218 is unconstitutional. The superior court overrules the demurrer on that ground and the Court of Appeal denies writ relief.....	15
LEGAL ARGUMENT	16
I. The Court of Appeal held AB 218 does not violate the California Constitution’s gift clause. That holding exacerbates rifts in earlier cases meriting review.	16
A. The court reimagined the claim presentation requirement, breaking from prior precedent and creating uncertainty for all public entities.	16
B. The Court of Appeal’s holding that AB 218 serves a public purpose conflicts with decisions of other courts.	20
II. This Court should grant review to clarify the proper application of the political subdivision rule.	24
A. The United States Supreme Court first articulated the rule, but its later decisions cast doubt on its scope and viability.....	24
B. This Court’s decisions largely follow federal decisions, contributing to the same doctrinal confusion and warranting review.	27

C. But for the political subdivision rule, the District’s due process defenses should prevail.	31
CONCLUSION.....	33
CERTIFICATE OF WORD COUNT	34

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Butt v. State of California</i> (1992) 4 Cal.4th 668.....	30
<i>Carr v. State of California</i> (1976) 58 Cal.App.3d 139	31, 32
<i>Chapman v. State</i> (1894) 104 Cal. 690	10, 16, 17, 18
<i>City of Newark v. State of New Jersey</i> (1923) 262 U.S. 192 [43 S.Ct. 539, 67 L.Ed. 943]	25, 30
<i>City of Oakland v. Garrison</i> (1924) 194 Cal. 298	23
<i>Conlin v. Board of Sup’rs of City and County of San Francisco</i> (1893) 99 Cal. 17	21
<i>Coral Construction, Inc. v. City and County of San Francisco</i> (2010) 50 Cal.4th 315.....	28
<i>County of Alameda v. Carleson</i> (1971) 5 Cal.3d 730	20, 23
<i>Gomillion v. Lightfoot</i> (1960) 364 U.S. 339 [81 S.Ct. 125, 5 L.Ed.2d 110]	25, 26
<i>Hunter v. City of Pittsburgh</i> (1907) 207 U.S. 161 [28 S.Ct. 40, 52 L.Ed. 151].....	24, 25, 26, 27
<i>In re Real Estate Title and Settlement Services Antitrust Litigation</i> (3d Cir. 1989) 869 F.2d 760	30

<i>Jordan v. California Dept. of Motor Vehicles</i> (2002) 100 Cal.App.4th 431	22
<i>Orange County Foundation v. Irvine Co.</i> (1983) 139 Cal.App.3d 195	21, 23
<i>Quigley v. Garden Valley Fire Prot. Dist.</i> (2019) 7 Cal.5th 798.....	10, 11, 18, 19
<i>Rogers v. Brockette</i> (5th Cir. 1979) 588 F.2d 1057.....	29, 30
<i>Romer v. Evans</i> (1996) 517 U.S. 620 [116 S.Ct. 1620, 134 L.Ed.2d 855] ...	27, 28
<i>Rubenstein v. Doe No. 1</i> (2017) 3 Cal.5th 903.....	9
<i>Santa Monica Community College Dist. v. Public Employment Relations Bd.</i> (1980) 112 Cal.App.3d 684	26
<i>Shirk v. Vista Unified School Dist.</i> (2007) 42 Cal.4th 201.....	9, 16, 20
<i>Star-Kist Foods, Inc. v. County of Los Angeles</i> (1986) 42 Cal.3d 1	27, 28, 29, 30
<i>State of California v. Superior Ct.</i> (2004) 32 Cal.4th 1234.....	7, 10, 11, 16, 18, 19
<i>Stone v. Alameda Health System</i> (Aug. 15, 2024, S279137) __ Cal.5th __ [2024 WL 3819163]	13
<i>Washington v. Seattle School Dist. No. 1</i> (1982) 458 U.S. 457 [102 S.Ct. 3187, 73 L.Ed.2d 896].....	27, 28, 30
<i>Wells v. One2One Learning Foundation</i> (2006) 39 Cal.4th 1164.....	13
<i>William Danzer & Co. v. Gulf & S.I.R. Co.</i> (1925) 268 U.S. 633 [45 S.Ct. 612, 69 L.Ed. 1126]	30, 32

<i>Williams v. Horvath</i> (1976) 16 Cal.3d 834	19
--	----

Constitutional Provisions

Cal. Constitution, art. IX, § 5.....	29, 30
§ 14.....	29, 30
Cal. Constitution, art. XVI, § 6	10, 16

Statutes

Assembly Bill No. 218 (2019–2020 Reg. Sess.)	passim
Government Code § 810 et seq.	8
§ 905.8.....	18
Welfare & Institutions Code § 14456.....	22

Miscellaneous

4 Cal. Law Revision Com. Rep. (1963) p. 1001.....	18
Matthew A. De Stasio, <i>A Municipal Speech Claim Against Body Camera Video Restrictions</i> (2018) 166 U. Pa. L.Rev. 961	26

PETITION FOR REVIEW

ISSUE PRESENTED

Public entities enjoy sovereign immunity except as limited by the Government Claims Act, which comprehensively regulates their potential tort liability. As part of the Claims Act, before suing a public entity, a plaintiff generally must present a timely claim for damages. This claim presentation requirement is not a statute of limitations designed to weed out claims resting on stale evidence. Instead, the claim presentation requirement enables public entities to plan ahead, including budgeting for and settling disputes early, recognizing that taxpayers ultimately bear the costs incurred by public entities. To promote effective planning, the claim presentation requirement operates as a precondition to liability, so public entities are not belatedly saddled with unforeseen expenses. In fact, a plaintiff who does not timely present a claim has no cause of action. (*State of California v. Superior Ct.* (2004) 32 Cal.4th 1234, 1240–1243.)

Assembly Bill No. 218 (2019–2020 Reg. Sess.) (AB 218) permits the filing of childhood sexual assault lawsuits otherwise barred by the passage of time. AB 218 both reopened the statute of limitations and eliminated the claim presentation requirement for plaintiffs whose time to present a claim already expired.

The question in this case is whether the Legislature violated the gift clause of the California Constitution, or the due process clauses of the California and federal Constitutions, when it eliminated the claim presentation requirement retroactively.

INTRODUCTION

AB 218 repealed the requirement in the Government Claims Act (Claims Act) (Gov. Code, § 810 et seq.) that childhood sexual assault plaintiffs timely present their claims to public entities before filing suit. The question presented is whether AB 218 violates the state and federal Constitutions by retroactively dispensing with this requirement.

This question has divided dozens of superior courts in numerous cases statewide. (See, e.g., District RJN 65–110; Doe RJN 8, 75–392.) The Court of Appeal in this case issued the first decision addressing this question, with the benefit of a dozen amicus briefs. (Typed opn. 3, fn. 3.) But the Court of Appeal’s published opinion did not settle the controversy. There are many more pending appeals and writs presenting the same question. (E.g., *Roe #2 v. Superior Court* (B334707, writ pending) [court ordered additional briefing]; *San Luis Coastal Unified School District v. Superior Court* (B337957, writ pending); *Doe v. Acalanes Union High School District* (A169013, app. pending); *D.H. v. West Contra Costa Unified School District* (A169354, app. pending).)

This Court should not wait for conflicting decisions to emerge at the appellate level before granting review. The conflicting results in the superior courts demonstrate the need for review in this Court. The stakes could not be higher or more urgent. AB 218 is forcing school districts to divert critical public funds away from the education of today’s students to pay out individual claims arising from events that occurred decades ago.

(See Schools Ins. Auth. ACB 7 [AB 218 is an “unfunded mandate on public schools which are now required to meet this cost out of education budgets already strained to the limit”], 15–16 [estimating “more than \$1.4 billion” to resolve “AB 218 claims filed against California public K-12 schools” (original formatting omitted)].) And superior courts and litigants need legal guidance now in order to address the rising tide of litigation.

As explained below, there are both legal and practical reasons for reviewing the Court of Appeal’s decision. We start with the legal reasons.

Real party in interest A.M.M., whom we will call Doe, alleges she was sexually assaulted while a student in the West Contra Costa Unified School District in the late 1970s and early 1980s. She did not present a claim to the District (then or later), thus she lost her ability to sue the District nearly 40 years ago. A “cause of action against the School District [i]s extinguished” when no claim is presented. (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 210 (*Shirk*), superseded by statute on another ground as stated in *Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 914–915.)

In 2019, the Legislature enacted AB 218, which in pertinent part eliminated the claim presentation requirement for childhood sexual assault suits. Doe then sued the District, claiming AB 218 relieved her of the obligation to present a claim. The District articulated multiple constitutional reasons why AB 218 should not be applied to Doe’s case. The Court of Appeal rejected them, but its reasoning revealed sharp disagreements

over the proper interpretation of this Court’s decisions, as well as multiple conflicts in lower court decisions.

First, AB 218 violates the gift clause, which provides that the “Legislature shall have no power . . . to make any gift or authorize the making of any gift, of any public money or thing of value to any individual” (Cal. Const., art. XVI, § 6.) The Legislature violates the gift clause when it “create[s] a liability against the state for any such past act of negligence upon the part of its officers.” (*Chapman v. State* (1894) 104 Cal. 690, 693 (*Chapman*), emphasis omitted.) AB 218 created new liability that did not previously exist—that is the “gift” or “thing of value” the Legislature conferred. Before AB 218, the District had sovereign immunity because Doe did not present a claim and thus did not satisfy all provisions of the Claims Act waiving that immunity. (*State of California v. Superior Ct.* (2004) 32 Cal.4th 1234, 1243 (*Bodde*)). AB 218 runs afoul of the gift clause by resurrecting Doe’s extinguished claims.

The Court of Appeal sidestepped the bar of the gift clause by reimagining the claim presentation requirement in a way that highlights a conflict between this Court’s decisions. The Court of Appeal relied on this Court’s decision in *Quigley v. Garden Valley Fire Prot. Dist.* (2019) 7 Cal.5th 798 (*Quigley*) to distinguish the state’s “substantive liability” for alleged wrongdoing from its “consent to suit.” According to the Court of Appeal, the District’s “substantive liability” existed since the alleged tortious conduct occurred, and AB 218 merely furnished Doe a remedy.

That decision brings into focus a fundamental tension in this Court’s decisions about the legal effect of the claim presentation requirement. Although this Court in *Quigley* mentioned the “substantive liability” of public entities, it did not address the claim presentation requirement. Yet if the Court of Appeal’s reading of *Quigley* is correct, that decision conflicts with *Bodde* and this Court’s other precedent defining the claim presentation requirement as an integral part of a plaintiff’s cause of action. (*Bodde, supra*, 32 Cal.4th at pp. 1240, 1243.) A plaintiff’s failure to satisfy the claim presentation requirement would eliminate a public entity’s “liability” (because under *Bodde* such a plaintiff has no cause of action) even as its “substantive liability” would persist (under *Quigley*). This bewildering tension calls out for clarification by this Court.

Second, the gift clause requires legislation to serve a “public purpose.” Lower courts disagree on how to analyze this requirement. Here, the Court of Appeal ascribed to AB 218 the public purpose of providing compensation to sexual assault victims. Sympathetic as that goal may be, it is a quintessentially *private* purpose because it benefits only the individuals whom AB 218 enables to sue. Other courts that have addressed public purpose analysis in earlier cases take a different approach, however. They focus on whether a statute provides adequate benefits, or “consideration,” to the state. As we explain below, applying that approach here would have yielded a different outcome, since AB 218 burdens (not benefits) the state. This conflict in lower court decisions also merits this Court’s review.

Finally, AB 218 violates state and federal due process principles by resurrecting extinguished claims. As to those claims, the District enjoyed a form of vested right, akin to immunity or repose. Yet the Court of Appeal bypassed those arguments by holding that the political subdivision rule deprived the District of “standing” to raise them.

Review is necessary to settle the District’s “standing” to assert its state and federal due process challenges. The political subdivision rule is a confusing and under-theorized doctrine. The United States Supreme Court developed the rule and initially held that a municipality may not challenge the laws of its state creator on federal constitutional grounds. But the high court has retreated from that categorical position and several exceptions have developed. This Court’s precedent has borrowed from federal decisions and it now reveals many of the same gaps and tensions that bedevil federal law.

There are good arguments for not applying the political subdivision rule to school districts specifically, and the Court of Appeal was too quick to dismiss them. More fundamentally, a rigid application of the rule fails to account for the evolving nature of local government autonomy and the increasing importance of local entities in protecting individual rights. A blanket denial of standing to local entities may leave citizens without an effective means of challenging potentially unconstitutional state actions. This Court’s guidance is needed.

On top of these important constitutional issues, the dozen amicus briefs submitted in the Court of Appeal attest to this

case’s statewide importance. Amici collected eye-opening statistics about the number of AB 218 cases and the nuclear verdicts they are producing. (E.g., SELF ACB 16 [reporting 374 claims and “Many more claims are expected”]; CUSD ACB 14 [1,000 cases filed in Northern California in 2022]; East Side ACB 13 [collecting eight- and nine-figure verdicts against public school districts].) The looming fiscal crisis enveloping school districts suggests AB 218 actually undermines the general welfare by threatening public schools with insolvency and taxpayers with providing bailouts. The Court of Appeal did not dispute—indeed, it appeared “not unsympathetic to”—a description of “AB 218 as ‘a massive intergenerational transfer of public moneys away from the current generation of children.’” (Typed opn. 33, fn. 19.)

This Court has been attentive to similar concerns before. (E.g., *Stone v. Alameda Health System* (Aug. 15, 2024, S279137) __ Cal.5th __ [2024 WL 3819163, at p. *23] [rejecting statutory interpretation subjecting local public entities to increased liability as befitting a scheme to “rob Peter to pay Paul”]; *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1193 [exposing school districts to increased liability could dramatically interfere with their constitutional mandate to provide free public education], 1195–1196 [worrying about school districts’ “fiscal ability to carry out their public missions”].)

These concerns are not academic. Insurance for school districts all but “disappeared long ago.” (SAFER ACB 22; see *Schools Ins. Auth.* ACB 13, 15, 17.) Many districts that had insurance coverage decades ago—when much of the alleged abuse

occurred—either cannot locate their insurance policies, or obtained those policies from insurers that are now defunct. (See East Side ACB 17; CASBO ACB 9.) The joint powers authorities that today protect many school districts are effective when they can plan ahead, but “AB 218 has pulled the rug out from underneath the risk-pooling model . . . well after relevant records have been destroyed per historic retention practices.” (SELF ACB 9; see *ibid.* at pp. 13–14.) Adding to these difficulties, school districts cannot meaningfully defend themselves in many cases: they cannot locate important witnesses and documents because of the age of the allegations. (LA County ACB 18–19 [state law required destruction of pertinent records in some instances]; CSBA/ELA ACB 19 [“the alleged perpetrators and other then-adult witnesses are at best no longer employed, and in most cases deceased”].)

*

This is a case of statewide legal and practical importance. This Court should grant the District’s petition for review.

STATEMENT OF THE CASE

A. Doe invokes Assembly Bill No. 218 and sues West Contra Costa Unified School District.

Doe alleges she was sexually assaulted by a counselor at a high school within the District between 1979 and 1983. (Typed opn. 2.) Doe claims that District employees were aware of the counselor’s conduct. (*Ibid.*)

Doe filed this lawsuit in December 2022. (Typed opn. 2.) Her operative complaint asserts eight causes of action for child

sexual abuse and various forms of intentional and negligent conduct. (*Ibid.*) Doe alleged that, because of AB 218, her lawsuit is not barred by her failure to present a timely claim to the District under the Claims Act. (*Ibid.*)

B. The District demurs on the ground that AB 218 is unconstitutional. The superior court overrules the demurrer on that ground and the Court of Appeal denies writ relief.

The District demurred and argued (among other grounds) that the Legislature’s retroactive elimination of the claim presentation requirement made AB 218 unconstitutional. (Typed opn. 2.) The superior court overruled the demurrer to the extent it challenged the constitutionality of AB 218. (*Ibid.*)

The District then filed a writ petition challenging the superior court’s constitutional ruling. (Typed opn. 2–3.) The Court of Appeal issued an order to show cause and received multiple additional briefs from Doe and the District, as well as ten amicus briefs supporting the District and two amicus briefs supporting Doe. (Typed opn. 3 & fn. 3.)

The Court of Appeal issued a published opinion denying writ relief. The court rejected the District’s gift clause and public purpose arguments (typed opn. 9–27) and held that the political subdivision rule barred consideration of the due process arguments the court was otherwise prepared to address (typed opn. 33–37 & fn. 20).

LEGAL ARGUMENT

- I. **The Court of Appeal held AB 218 does not violate the California Constitution’s gift clause. That holding exacerbates rifts in earlier cases meriting review.**
 - A. **The court reimagined the claim presentation requirement, breaking from prior precedent and creating uncertainty for all public entities.**

The Court of Appeal began its analysis on common ground established by this Court’s decisions. Article XVI, section 6, of the California Constitution prohibits the Legislature from conferring a “gift” or “thing of value.” “[I]t would violate the gift clause for the Legislature to retroactively authorize an action based on negligence, because ‘the [L]egislature has no power to *create* a liability against the state for any such past act of negligence upon the part of its officers.’ ” (Typed opn. 11, quoting *Chapman, supra*, 104 Cal. at p. 693.)

From these same principles, the District had argued that AB 218 was an impermissible gift because it satisfied the *Chapman* standard. Doe alleged misconduct by the District, a public entity. The misconduct allegedly occurred in the 1970s and 1980s. Doe had not timely presented a claim to the District, so she had no cause of action against the District before AB 218 was enacted. (*Shirk, supra*, 42 Cal.4th at p. 210 [a “cause of action against the School District [i]s extinguished” when no claim is timely presented]; *Bodde, supra*, 32 Cal.4th at p. 1240 [“the claim presentation requirement is a ‘state substantive limitation[] couched in procedural language’ ”].) Thus, by authorizing Doe to sue the District now, AB 218 enabled Doe to establish liability for

past conduct that was not actionable for decades before AB 218 was enacted. (PWM Reply 23–28.)

But the Court of Appeal rejected this analysis. (Typed opn. 10–20.) And in doing so, the Court of Appeal unearthed tensions on fundamental points governing public entity liability and the primacy of state sovereign immunity. Those points warrant this Court’s attention.

Relying on a separate portion of *Chapman*, the Court of Appeal held that what matters is “whether the underlying conduct for which the Legislature provided a right to sue was conduct for which the state was *liable at the time it occurred*.” (Typed opn. 12, original emphasis.) This was determinative, according to the court, because the District’s “substantive liability” sprang into existence at the moment of misconduct (in the 1970s and 1980s), and the Legislature was always free to furnish Doe a remedy later, as it eventually did in AB 218. (Typed opn. 13–15.) In other words, because “the District’s substantive liability existed when the alleged wrongful conduct occurred . . . , AB 218 imposes no new substantive liability under *Chapman*’s gift clause analysis.” (Typed opn. 15.)

The key step in the Court of Appeal’s analysis was to distinguish *liability* from *substantive liability*. (Typed opn. 13–15.) As the court saw it, the District was “substantively liable” all along—starting when the alleged misconduct occurred decades earlier. When Doe failed to present a timely claim, she could not prove the District’s “liability,” because a public entity is liable only if a claim is timely presented. But to the Court of Appeal

that did not matter because “the claims presentation requirement is not part of the District’s substantive liability.” (Typed opn. 13.) So long as the District’s “substantive liability” remained intact (and inchoate), Doe could await the day when the Legislature finally provided her a remedy by eliminating the claim presentation requirement.

The Court of Appeal drew its reasoning¹ from this Court’s decision in *Quigley, supra*, 7 Cal.5th 798, which mentions the “substantive liability” of public entities a handful of times in describing the historical origins of the Claims Act and its waiver of sovereign immunity. If *Quigley*’s use of “substantive liability” carries the meaning identified by the Court of Appeal here, however, then it presents an intractable conflict with this Court’s decisions in *Chapman, Bodde*, and their progeny. In *Chapman*, this Court did not mention “substantive liability.” Instead, the Court said “the legislature has no power to create a *liability* against the state for any such past act of negligence upon the part of its officers.” (*Chapman, supra*, 104 Cal. at p. 693, emphasis altered.) And later in *Bodde*, this Court defined claim presentation requirements as “ ‘ ‘elements of the plaintiff’s cause of action’ ’ ” that “ ‘confine potential governmental *liability* to rigidly delineated circumstances . . . if the various requirements

¹ The Court of Appeal also drew upon Government Code section 905.8, which it understood to mean that “ ‘the claims presentation provisions do not impose substantive liability.’ ” (Typed opn. 13, quoting 4 Cal. Law Revision Com. Rep. (1963) p. 1001, 1028.) Indeed, claim presentation requirements do not *impose* any kind of liability, they are *prerequisites* to liability. The statute is therefore irrelevant here.

of the [Claims A]ct are satisfied.’ ” (*Bodde, supra*, 32 Cal.4th at pp. 1240, 1243, emphasis altered, quoting *Williams v. Horvath* (1976) 16 Cal.3d 834, 838, 840.) Taken together, these cases say a public entity is not *liable* unless a claim is timely presented, and the Legislature may not change that after the fact. Yet that conclusion is irreconcilable with the Court of Appeal’s stance (drawn from *Quigley*) that substantive liability existed all along—whether or not a claim is presented—and that the barrier to recovery from failing to present a claim may be removed at any time.

These decisions need to be reconciled. That is reason enough to grant review. But in addition, the Court of Appeal’s approach to “substantive liability” calls into question the operation of the claim presentation requirement and precipitates other doctrinal problems that should be addressed.

The Court of Appeal erased the difference between claim presentation requirements and statutes of limitations. (Typed opn. 19 [“neither is a substantive aspect of the underlying tortious conduct for which the State has waived immunity”]; 20 [“When the Legislature waives either requirement, it exposes the public treasury to potential causes of action that were otherwise barred.”].) The Court of Appeal tried to cabin the mischief of its own reasoning. (Typed opn. 16 [“Although we agree that the claim presentation requirement and the statutes of limitations are distinct, the District has not shown the differences are material *for purposes of the gift clause*.”].) But it is unclear (and the Court of Appeal did not explain) why the type of challenge a

party raises should affect the analysis. In any event, the Court of Appeal’s apparent conflation of statutes of limitations and claim presentation requirements is difficult to square with *Shirk*, in which this Court explained that a law reviving causes of action barred by a statute of limitations did *not* circumvent the claim presentation requirement. (*Shirk, supra*, 42 Cal.4th at pp. 204–205.)

The Court of Appeal’s reasoning is deeply troubling to public entities, who rely on claim presentation requirements to plan their affairs and budget their resources. (See PWM Reply 13.) Their planning is not limited to processing lawsuits for which timely claims *were* presented; planning also embraces *not* saving resources for *unforeseen* lawsuits—those for which no claim was presented. But the Court of Appeal’s reasoning upends this long-held understanding of claim presentation requirements. Now, apparently, the Legislature is free at will to change *both* statutes of limitations *and* claim presentation requirements retroactively. That handicaps proper planning by responsible public entities and imperils their solvency. This Court’s review is warranted.

B. The Court of Appeal’s holding that AB 218 serves a public purpose conflicts with decisions of other courts.

To satisfy the gift clause, legislation must serve a public purpose. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 746 (*Carleson*)). Courts evaluate whether there is “a reasonable basis” to find that a public purpose supports the Legislature’s enactment. (*Ibid.*) This mode of analysis is not overly deferential

to the Legislature. As this Court has cautioned, the gift clause “is not to receive a strict and narrow interpretation, but its spirit[,] as well as its language[,] is to be followed.” (*Conlin v. Board of Sup’rs of City and County of San Francisco* (1893) 99 Cal. 17, 21 (*Conlin*).)

Here, the Court of Appeal found that the legislative purpose behind AB 218 is to provide compensation to individuals who were sexually abused. (Typed opn. 21 [AB 218 allows individuals to “ ‘seek compensation from the responsible parties’ ”], 21 [“ ‘availability of tort relief’ ”], 22 [“ ‘to seek justice’ ”].) In contrast, this Court has found that a similar purpose created a gift clause violation. In *Conlin*, the Court concluded that a law that appropriated money “for the ‘relief’ of the plaintiff” who “has not been able to obtain compensation” at a time when “there was no legal obligation in favor of the plaintiff” violated the constitution. (*Conlin, supra*, 99 Cal. at p. 22.) This case presents the same scenario. Before AB 218 was enacted, plaintiffs like Doe could not obtain money from school districts via litigation; their failure to present a timely claim meant no obligation existed on which they could sue. The conflict between the Court of Appeal’s decision and *Conlin* creates uncertainty warranting review.

The Court of Appeal’s decision conflicts with other appellate decisions as well. The court here concluded that paying money to victims via AB 218 served a *public* purpose, but other courts would likely find it to be an impermissibly *private* purpose, because only individual plaintiffs stand to gain. (*Orange County*

Foundation v. Irvine Co. (1983) 139 Cal.App.3d 195, 200–201 (*Orange County*) [“there must be some real benefit to the State which constitutes the ‘public purpose’ justifying the expenditure”]; accord, *Jordan v. California Dept. of Motor Vehicles* (2002) 100 Cal.App.4th 431, 450 [the unnecessary “expenditure of public funds” in litigation provides “no benefit to the public, only benefit to Attorneys”].) This Court rarely has had occasion to address the gift clause, and existing precedent does not supply a workable test for delineating public purposes from private purposes. This case provides a good vehicle for the Court to provide guidance.

The Court of Appeal papered over these tensions by analogizing AB 218 to general welfare programs that have survived gift clause scrutiny. (Typed opn. 24–27.) “[T]he public purpose underlying AB 218 is not fundamentally different from the public purpose involved in any of a number of other enactments providing assistance to other disadvantaged classes of persons ‘in the best interests of the general public welfare.’ ” (Typed opn. 27.) But in fact the difference is stark. AB 218 furnishes money by creating new liability against public entities that did not exist before; general welfare programs benefit society as a whole—not merely the individuals who receive benefits—and they operate independently of civil litigation. Moreover, AB 218 places no restrictions on the *use* of money obtained by plaintiffs; general welfare programs typically earmark funds, monitor usage for fraud and abuse, and audit performance. (E.g., Welf. & Inst. Code, § 14456 [“The [D]epartment [of Health Care Services] shall

conduct annual medical audits of each prepaid health plan”].) AB 218 contains no such safeguards. (Cf. *City of Oakland v. Garrison* (1924) 194 Cal. 298, 300–301 [public oversight of how funds are used is relevant to gift clause analysis].)

Furthermore, even if an analogy to general welfare programs were viable, the question remains whether the *public* actually *benefits* from AB 218. (See, e.g., *Orange County, supra*, 139 Cal.App.3d at pp. 200–201 [explaining that a law does not serve a “public purpose” if it returns “inadequate consideration” to the state].) It is debatable whether AB 218 returns a benefit to the public, especially since AB 218 imposes a significant *burden* on the public. As amici detailed in the Court of Appeal, the crippling verdicts attributable to AB 218 mean that taxpayers face paying for possible bailouts and receiving reduced school services, while the constitutional rights of current schoolchildren to an adequate public education are jeopardized. (E.g., Montecito ACB 13–14.) A court cannot deduce whether legislation has “a reasonable basis” (*Carleson, supra*, 5 Cal.3d at p. 746) without considering both its benefits and its burdens.

Rather than wading into this question, the Court of Appeal declined to address the point. According to the court, these issues are for the Legislature to weigh, not courts. (Typed opn. 27–33.) But that negated the District’s right to review and creates its own conflict with *Carleson*, which establishes the standard to apply in reviewing these very questions.

This case furnishes an excellent vehicle for examining whether providing for individual compensation violates the gift

clause, in part because there is no other colorable public purpose justifying AB 218. The Court of Appeal properly recognized that any analysis of “moral or equitable obligations” is foreclosed. (Typed opn. 7–8 & fn. 6.) Nor could a purpose to deter future misconduct justify AB 218. The Legislature never suggested a deterrence rationale, and the Court of Appeal here correctly declined to rely on one (typed opn. 27, fn. 15). Indeed, that rationale simply would not make sense. A decade before AB 218 was enacted, the Legislature eliminated the claim presentation requirement *prospectively*. (See typed opn. 9, fn. 7.) Eliminating the same requirement *retroactively* added nothing to the deterrence calculus. Thus, this case cleanly presents the question whether allowing a cause of action based on past conduct solely to compensate private individuals serves a public purpose under the gift clause.

II. This Court should grant review to clarify the proper application of the political subdivision rule.

A. The United States Supreme Court first articulated the rule, but its later decisions cast doubt on its scope and viability.

The United States Supreme Court initially applied the political subdivision rule in *Hunter v. City of Pittsburgh* (1907) 207 U.S. 161 [28 S.Ct. 40, 52 L.Ed. 151] (*Hunter*), in which the small town of Allegheny invoked due process in resisting annexation by Pittsburgh under state law. The high court rejected Allegheny’s effort categorically. “The number, nature, and duration of [municipal] powers . . . rests in the absolute discretion of the state,” which may “modify or withdraw all such

powers,” and even “destroy” the municipality. (*Id.* at pp. 178–179.) Because “there is nothing in the Federal Constitution which protects them from these injurious consequences” (*id.* at p. 179), municipalities like Allegheny may not present federal constitutional challenges to state law. (Accord, e.g., *City of Newark v. State of New Jersey* (1923) 262 U.S. 192, 196 [43 S.Ct. 539, 67 L.Ed. 943] (*City of Newark*) [“The city cannot invoke the protection of the Fourteenth Amendment against the state”].)

A half-century later, in *Gomillion v. Lightfoot* (1960) 364 U.S. 339 [81 S.Ct. 125, 5 L.Ed.2d 110] (*Gomillion*), the high court course-corrected its earlier, categorical approach to the political subdivision rule. *Gomillion* involved another boundary dispute—a Fifteenth Amendment challenge to a state law “which alters the shape of Tuskegee from a square to an uncouth twenty-eight-sided figure” that removed Black residents from the city. (*Id.* at p. 340.) The high court proffered “a correct reading of the seemingly unconfined dicta of *Hunter* and kindred cases” that was narrower than earlier cases suggested. (*Id.* at p. 344.) “[T]he Court has never acknowledged that the States have power to do as they will with municipal corporations regardless of consequences. Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution.” (*Id.* at pp. 344–345.) Apparently the municipalities in *Hunter* and earlier cases had lost because “the State’s authority [wa]s unrestrained by the particular prohibitions of the Constitution considered in those cases.” (*Id.* at

p. 344.) But *Gomillion* indicated this might not prove true of “relevant” constitutional arguments in future cases.

After zigzagging from *Hunter* to *Gomillion*, the high court retreated and has barely referenced the political subdivision rule since. Widespread confusion has ensued, as one scholar explains:

the Court has not offered a comprehensive rationale explaining what circumstances entail the doctrine’s application or absence. This lack of a roadmap has left the status of municipalities the subject of great confusion among scholars, which is best summarized by Kathleen Morris’s observation that “[t]hey are components of state governments except when they are not (but we do not know when or why), and they can bring constitutional claims except when they cannot (but we do not know when or why).”

(Matthew A. De Stasio, *A Municipal Speech Claim Against Body Camera Video Restrictions* (2018) 166 U. Pa. L.Rev. 961, 969 (hereafter De Stasio), fns. omitted.)

The criticism from lower courts and commentators has been unsparing. (*Santa Monica Community College Dist. v. Public Employment Relations Bd.* (1980) 112 Cal.App.3d 684, 690 [“we find this rule shocking in the abstract and unfair in its application to District”]; De Stasio, *supra*, at pp. 967–968 [“[the rule] has never been critically examined by the Court, despite being deployed inconsistently”; “[there is a] doctrinal thicket in the lower courts which is the result of its scattershot application”; “legal scholars view the *Hunter* doctrine as ‘analytically muddled’ and in need of an overhaul” (fns. omitted)].)

Perhaps the best example of the confusion in this area is that some cities and school districts have won relief in the United States Supreme Court as plaintiffs suing states on Fourteenth Amendment theories. (See typed opn. 36–37 and PWM Reply 41–42, both citing *Romer v. Evans* (1996) 517 U.S. 620 [116 S.Ct. 1620, 134 L.Ed.2d 855] (*Romer*) and *Washington v. Seattle School Dist. No. 1* (1982) 458 U.S. 457 [102 S.Ct. 3187, 73 L.Ed.2d 896] (*Seattle School District*).) How can those results be reconciled with a political subdivision rule meant to bar those municipalities’ claims entirely?

Here, the Court of Appeal applied the political subdivision rule to bar the District’s due process arguments against AB 218. (Typed opn. 33–38.) The court waved away any concerns about the consistency of high court precedent because the later *Romer* and *Seattle School District* cases did not discuss the political subdivision rule. (Typed opn. 37 & fn. 23.) But that underscores the need for review. Why was it necessary to apply the political subdivision rule in *Hunter*, but unnecessary to do so in *Romer* and *Seattle School District*? What legal principle explains the difference in a way that could be applied in this case and others?

B. This Court’s decisions largely follow federal decisions, contributing to the same doctrinal confusion and warranting review.

California cases have followed federal decisions, and the uncertainty in federal cases has infected state law. This Court invoked the political subdivision rule in *Star-Kist Foods, Inc. v. County of Los Angeles* (1986) 42 Cal.3d 1 (*Star-Kist*), although the

Court ultimately applied an exception and allowed municipal defendants to raise a Commerce Clause challenge. (*Id.* at p. 10.) More recently, however, this Court adjudicated the merits of a city’s Fourteenth Amendment challenge to a state law without mentioning the political subdivision rule. (*Coral Construction, Inc. v. City and County of San Francisco* (2010) 50 Cal.4th 315, 326–332.) This Court did not explain why it considered the political subdivision rule in *Star-Kist*, but not *Coral Construction*, mirroring the high court’s perplexing silence in *Romer* and *Seattle School District*.²

This case highlights four distinct areas of doctrinal uncertainty that make this case suitable for review.

First, most political subdivision rule cases involve municipal *plaintiffs* pursuing relief against states; it is unclear why this rule should bar a public entity *defendant* from challenging state laws in order to defend itself against *private plaintiffs*. The public entities in *Star-Kist* were defendants, but as this Court explained they were arguably “the ‘true’ plaintiffs in this controversy” (*Star-Kist, supra*, 42 Cal.3d at p. 5, fn. 6), so the Court had no need to analyze why the political subdivision rule should apply to true defendants (like the District here). *Star-Kist*

² Separately, this Court has never addressed whether the political subdivision rule would bar *state* constitutional challenges to state laws. A small number of lower courts have imported the rule from the federal constitutional context, either without any reasoning or by borrowing the reasoning that originated in the high court’s decisions. (See typed opn. 34.) This issue should be considered as well, alongside the application of the political subdivision rule to federal constitutional arguments.

also involved municipalities' duty to enforce state law (*id.* at p. 5), a feature common to cases involving assessments or injunctions. That feature is absent here, as it will be in many cases where private plaintiffs sue public entities for money damages. This case therefore falls into a gap this Court has yet to address.

Second, *Star-Kist* seemed to endorse a narrow reading of the political subdivision rule by “[a]ccepting” the Fifth Circuit’s framing that the rule should be “applied in two types of cases”: disputes over boundaries and benefits. (*Star-Kist*, *supra*, 42 Cal.3d at p. 8, discussing *Rogers v. Brockette* (5th Cir. 1979) 588 F.2d 1057 (*Rogers*).) Neither boundaries nor benefits are disputed here, yet the Court of Appeal found enough in *Star-Kist* to apply the political subdivision rule against the District. (Typed opn. 33–36.) That calls into sharp relief the uncertainty about how narrowly or broadly the rule applies.

Third, even if the political subdivision rule were sound in theory, there may be practical reasons not to apply it monolithically to *all* public entities. Not all public entities are alike, and school districts enjoy a unique role under the California Constitution, which obligates the Legislature to create and support public schools throughout the state. (Cal. Const., art. IX, §§ 5, 14.) This point went unheeded here: the Court of Appeal downplayed the District’s “bold but erroneous assertion” that “‘school districts are different and not subject to the political-subdivision rule.’” (Typed opn. 36.) But the point is open to debate. After all, some of the most significant decisions *not* applying the political subdivision rule have involved school

districts. (See *Rogers, supra*, 588 F.2d 1057, relied on in *Star-Kist, supra*, 42 Cal.3d 1 and *Seattle School District, supra*, 458 U.S. 457.) As the Third Circuit has explained, school districts—unlike states—are “accorded Fifth Amendment due process protection,” so “the Constitution can apply to them differently.” (*In re Real Estate Title and Settlement Services Antitrust Litigation* (3d Cir. 1989) 869 F.2d 760, 765, fn. 3.) There are contrary cases and arguments, to be sure, but the unique role of school districts in educating the next generation of citizens—a purpose so fundamental it is enshrined in our Constitution—adds to the list of reasons to grant review and settle these questions.

Fourth, applying the political subdivision rule monolithically can result in (inadvertently) *harming* the interests of the state that the rule is intended to protect. That is possible whenever a public entity mounts a defense that aligns with (rather than diverges from) the state’s interests. This case offers an example. As noted above, the state must “provide for a system of common schools” and ensure their support. (Cal. Const., art. IX, §§ 5, 14.) Accordingly, this Court has held that the *state* must safeguard schoolchildren’s constitutional right to public education by stepping in to fund insolvent local school districts. (See *Butt v. State of California* (1992) 4 Cal.4th 668, 685.) AB 218 poses that very threat here. (See *ante*, p. 23.) From this perspective, the District’s defensive challenge to AB 218 does not “invoke the protection of the Fourteenth Amendment *against* the state.” (*City of Newark, supra*, 262 U.S. at p. 196, emphasis added.) Instead, the District’s position should ultimately redound

to the benefit of the state, since AB 218 threatens to divert from public schools the funding the state is obligated to provide. At minimum, the District's position would avoid unnecessary bailouts caused by astronomical verdicts. It seems doubtful the political subdivision rule was intended to bar litigation in this posture.

For all of these reasons, the deployment of the political subdivision rule here is difficult to justify. This Court's review is warranted.

C. But for the political subdivision rule, the District's due process defenses should prevail.

If the political subdivision rule were not applied here, the merits of the District's arguments about due process should be considered. Those arguments are straightforward and persuasive, making this an ideal vehicle for the Court's consideration of the state and federal constitutional defenses the District presented.

Under the state Constitution, when the potential for liability against a public entity is extinguished because no claim is timely presented, a public entity's residual sovereign immunity (now rooted in the Claims Act) is restored. A new law disrupting that repose, one that (like AB 218) extends or eliminates the claim presentation period to create new liability or "resurrect" barred claims, violates due process. (*Carr v. State of California* (1976) 58 Cal.App.3d 139, 141–142, 147–148 (*Carr*) [refusing to enforce new statute extending claim presentation period against state defendants because once the statutory period lapsed, "appellants' right to bring an action was extinguished and

respondents gained immunity from any potential liability”]; see PWM Reply 16–21 [explaining the state Constitutional mooring of *Carr*].)

Similarly, under the federal Constitution, a law exposing a defendant to new liability that had previously expired violates due process. (*William Danzer & Co. v. Gulf & S.I.R. Co.* (1925) 268 U.S. 633, 635 [45 S.Ct. 612, 69 L.Ed. 1126]. (*Danzer*)) *Danzer* involved the interplay between an old law under which “the lapse of time not only barred the remedy, but also destroyed the liability of defendant to plaintiff,” and a new law that revived that very liability. (*Id.* at p. 636.) The United States Supreme Court refused to construe the new statute “retroactively to create liability” that had already been extinguished, for that “would be to deprive defendant of its property without due process of law in contravention of the Fifth Amendment.” (*Id.* at p. 637; PWM Reply 43–46.)

The parallels between *Carr*, *Danzer*, and this case are unmistakable. When Doe did not timely present to the District the claim alleged in this action, her potential claim was extinguished, a limitation on liability arose, and the District became effectively immune from suit. In lifting that limitation on liability long after the fact, AB 218 resurrected Doe’s claims just like the plaintiffs’ claims were resurrected in *Carr* and *Danzer*. In each case, the new statutes allowing plaintiffs to pursue causes of action for previously extinguished liability violate due process.

CONCLUSION

This Court should grant the District's petition for review.

September 9, 2024

HORVITZ & LEVY LLP

ROBERT H. WRIGHT

PEDER K. BATALDEN

FAGEN FRIEDMAN & FULFROST LLP

ROY A. COMBS

DAVID R. MISHOOK

By: _____



Peder K. Batalden

Attorneys for Petitioner

**WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT**

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.504(d)(1).)

The text of this petition consists of 6,623 words as counted by the program used to generate the petition.

Dated: September 9, 2024



Peder K. Batalden