Case No. F074265

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

BIG OAK FLAT-GROVELAND UNIFIED SCHOOL DISTRICT, DAVE URGUHART and JIM FROST,
Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF TUOLUMNE,
Respondent,

JANE DOE,
Real Party in Interest.

[PROPOSED] AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF PETITIONERS BIG OAK FLAT-GROVELAND UNIFIED SCHOOL DISTRICT, DAVE URQUHART AND JIM FROST

From the Tuolumne County Superior Court
Case No. CV59658
The Honorable Kevin M. Seibert

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I. INTRODUCTION

In general, under the California Government Claims Act (Gov. Code, §§ 810-996.6), a claimant may not file a lawsuit against a public entity for money or damages without first presenting a written claim to the public entity. (Gov. Code, §§ 905, 910.) The Legislature has exempted fifteen types of claims from the claims presentation requirement, though local agencies may adopt their own claim presentment requirements for such claims. (Gov. Code, §§ 905, subds. (a)-(o), 935.) The question before this Court is whether one of the exempted claims – claims for childhood sexual abuse – is also exempt from the statutory authorization provided to local agencies to adopt their own claim presentment requirement for such a claim. As the Court considers this very important question, the California State Association of Counties[1] urges this Court to keep in mind the history and purposes of the Government Claims Act.

The claims presentment process in the Government Claims Act is more than a procedural requirement. It serves an important function in the

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[1] The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

scheme of public entity liability, and is part of the careful balancing of competing policies undertaken by the Legislature when the Government Claims Act was enacted. As such, courts should require that any limitations to the claims presentment process be found only when the Legislature uses specific, unmistakably clear language of its intent to make such changes.

As Petitioners make clear in their briefing, there is no such language in the exemption for childhood sexual abuse claims. This Court should therefore adhere to clear language of the statute and the policies underlying public agency liability and immunity, and grant the petition for writ of mandate.

II. ARGUMENT

A. Historical Background of the Government Claims Act

In attempting to understand how to implement Government Code[2] section 905, subdivision m, and section 935, it is important to understand how the Government Claims Act was developed and its intended purposes.

1. The concept of absolute sovereign immunity is part of California's historic common law.

Since the founding of our State, government agencies have provided necessary services to the people they govern, a unique and vulnerable

[2] Future statutory references are to the California Government Code unless otherwise stated.

position that the Legislature determined warrants a higher level of protection against legal claims than private entities. (Calif. Law Rev. Comm., 4 Reports Recommendations and Studies 807 (1963).) The unique nature of the government's relationship with the public is evident in the types of services it provides, including its power to issue and revoke licenses, quarantine sick persons, prosecute and incarcerate violators of the law, administer prison systems, and build and maintain thousands of miles of streets, sidewalks, and highways. In historic times, the practical necessity of exercising these government functions led to creation of the doctrine of sovereign immunity, which generates from the legal fiction that the king can do no wrong. (*See People v. Superior Court of San Francisco* (1947) 29 Cal.2d 754, 756.) This doctrine had general acceptance in California's common law. (*Ibid.*) The general rule was that neither the State nor its political subdivisions could be sued without their consent. (*Whittaker v. County of Tuolumne* (1892) 96 Cal. 100, 101.) As such, government entities in California were generally immune from liability for acts undertaken in a governmental capacity. (*Elson v. Public Utilities Commission* (1975) 51 Cal.App.3d 577, 582.)

By the 1960's, the common law doctrine of sovereign immunity in California had been "riddled with exceptions and inconsistencies." (*Elson, supra,* 51 Cal.App.3d at p. 583.) In 1961, the California Supreme Court essentially abolished common law sovereign immunity in *Muskopf v.*

Corning Hospital District (1961) 55 Cal.2d 211, and *Lipman v. Brisbane Elementary School District* (1961) 55 Cal.2d 224. The basic rule established by the Court in *Muskopf* and *Lipman* was that government officials could be held liable for their negligent performance of ministerial duties, but were entitled to immunity for discretionary decisions. (*Muskopf, supra,* 55 Cal.2d at p. 220; *Lipman, supra,* 55 Cal.2d at p, 229.)

In response, the State Legislature enacted a moratorium suspending the effects of the *Muskopf* and *Lipman* decisions (Stats 1961 ch 1404 § 1), and appointed a Law Revision Commission to thoroughly study the issue of governmental immunity and make policy recommendations. The work of the Law Revision Commission became, in essence, the first version of the Government Claims Act, which was enacted in 1963. (Stats 1963 ch 1681 § 1.)

2. The Government Claims Act strikes a careful balance between competing policy considerations.

The Law Review Commission's sovereign immunity study undertook a detailed analysis of the policy considerations both in support of and against the concept of sovereign immunity. (*See generally* Calif. Law Rev. Comm., 4 Reports Recommendations and Studies (1963).) Supporting sovereign immunity is the separation of powers doctrine – the notion that the judiciary should not second-guess the decisions and judgments of governmental agencies. (*See, e.g., Johnson v. State of Calif.*

(1968) 69 Cal.2d 782, 794; *Nunn v. State of Calif.* (1984) 35 Cal.3d 616, 622.) Similarly, it is well established that in discharging their duties, public employees should be permitted to exercise their judgment without fear of liability or the burden of a trial. (*Johnson, supra,* 69 Cal.2d at p. 790.)

In his 569-page report to the Legislature in 1963, Professor Van Alstyne summarized the importance of a comprehensive scheme for determining liability as follows:

> The need for order and predictability is great for efficient and foresighted planning of governmental activities and their fiscal ramifications becomes extremely difficult if not impossible when the threat of possibly immense but unascertainable tort obligations hangs like a dark cloud on the horizon. Moreover, it would seem entirely likely that the danger of tort liability may, in certain areas of public responsibility, so seriously burden the public entity as to actually interfere with the prosecution of programs deemed essential to the public welfare. A comprehensive legislative solution, formulated on a sound theoretical foundation and modified to meet the exigencies of practical public administration of the powers vested in government, appears to be the only acceptable alternative.

(Calif. Law Rev. Comm., *A Study Relating to Sovereign Immunity*, p. 268 (1963).)[3]

In support of eliminating sovereign immunity is the idea of fairness. As the California Supreme Court noted in *Lipman*, it is "unjust in some circumstances to require an individual injured by official wrongdoing to

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[3] This publication is available on the California Law Revision Commission's website at: http://www.clrc.ca.gov/pub/Printed-Reports/Pub050.pdf.

bear the burden of his loss, rather than distribute it throughout the community." (*Lipman, supra*, 55 Cal.2d at p. 230.)

The Government Claims Act is the Legislature's attempt at reconciling these two competing policy considerations. In striking the balance between the objectives, the Act has both substantive and procedural elements.[4] Substantively, the statute abolished all common law based on the doctrine of absolute sovereign immunity. (*Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450.) Instead, all government liability must be based on statute. (*Elson v. Public Utilities Commission* (1975) 51 Cal.App.3d 577.) The general rule in California since 1963 is sovereign immunity, with government liability limited to exceptions specifically set forth by statute. (*Wright v. State of Calif.* (2004) 122 Cal.App.4th 659.) Those exceptions include direct liability for a breach of mandatory duties and derivative liability for certain employee negligence. (Gov. Code, §§ 815.2, 815.6.)

But in addition to these more substantive provisions, the Government Claims Act adopted certain procedural requirements as part of striking the balance between the competing policy concerns. In other words, the Legislature determined that it would allow government liability

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[4] As is explained fully below, the elements that are generally procedural in nature within the Governments Claims Act are actually essential elements in proving a cause of action in court.

only under specified conditions, including compliance with certain procedural safeguards. Part of this careful balancing includes the Legislature's determination that a local agency can require a claim even when the Legislature has otherwise exempted it.

B. The claims presentment requirement is an important element in the overall statutory scheme of the Government Claims Act and should not be disregarded without specific direction from the Legislature.

The Law Revision Commission and the Legislature undertook a comprehensive review of government sovereign immunity before settling on the basic principles now set forth in the Government Claims Act. The claim presentment requirement is an essential component of the statutory scheme. Under the relevant provisions, a public entity can be found liable, but unlike private defendants, liability can only be established if the plaintiff shows it has complied with the claim presentment requirement.

The claim presentment requirement serves several very important functions. It provides the public entity with prompt notice of the events leading up to the claim so that an investigation can take place while evidence and witnesses are fresh. It allows ample opportunity for the possibility of settlement, thereby avoiding expenditure of public funds in needless litigation. Further, it allows the public entity to be informed in advance as to possible liability and indebtedness to facilitate budgeting for upcoming fiscal years. Finally, it allows some injured parties to be

compensated quickly and promotes deterrence of injury-causing activity. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 738; *Lewis C. Nelson & Sons, Inc. v. Clovis Unified School Dist.* (2001) 90 Cal.App.4th 64; *Munoz v. State of Calif.* (1995) 33 Cal.App.4th 1767; *Life v. County of Los Angeles* (1991) 227 Cal.App.3d 894; *Mohlmann v. City of Burbank* (1986) 179 Cal.App.3d 1037.) Thus, the balancing undertaken by the Legislature in developing the claim process protects the interest of both the public agency and individual claims.

Our courts have consistently found that the claim presentment requirement is more than a procedural element of a claim, but is an essential element to a cause of action. (*State of Calif. v. Superior Court* (2004) 32 Cal.4th 1234; *Wood v. Riverside General Hosp.* (1994) 25 Cal.App.4th 1113.) A failure to allege compliance with the claim presentment statute constitutes a failure to state a cause of action, and is subject to a general demurrer. (*State of Calif. v. Superior Court* (2004) 32 Cal.4th 1234.) In enacting the Government Claims Act "[t]he Legislature did not intend '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.'" (*Id.* at p. 1243 (*citing Williams v. Horvath* (1976) 16 Cal.3d 834, 838).) Thus, presenting a timely claim to a

public entity is more than mere procedure, and it serves a different purpose than an ordinary statute of limitations.

C. The same policy considerations apply to a local agency's ability to require claims where the State has otherwise waived the claims requirement.

The same policy considerations described above apply to Section 935. That provision, in place since the Government Claims Act adoption in 1963, is also part of the careful balancing between sovereign immunity and public agency liability. As explained fully above, the general principle underlying the Government Claims Act is public agency liability only where it is expressly permitted by statute, with a claims process to protect the public fisc and provide a speedy resolution for claimants where appropriate.

Though Respondent argues that it undermines Section 905(m) to allow local agencies to require claims under Section 935 (Return to Writ Petition, pp. 12-15), when considered in light of the overall purposes and structure of the Government Claims Act, the process is entirely appropriate. The State can waive the claim requirement for the types of claims listed in Section 905, which will be the rule for claims against the State. But local agencies do not have to accept that waiver. Instead, local agencies can adopt local ordinances or policies that keep in place the claim requirement. That has been the statutory scheme since the initial adoption of the

Government Claims Act in 1963, and no court has found inconsistencies between Sections 905 and 935.

Given the careful policy balancing that has taken place in creating the Government Claims Act and the general rule of government immunity with limited waiver only where all of the elements of the statute are satisfied, courts should not find that the requirements of the Act have been changed by amendments to other statutory provisions unless the Legislature has so indicated using specific statutory language. Assuming otherwise based on mere inferences or supposed evidence of intent upsets a statutory scheme that has been the fundamental basis for public agency liability for more than half a century.

III. CONCLUSION

Claim presentment requirements in the Government Claims Act serve very important purposes in California's scheme of sovereign immunity. Courts have consistently found that compliance with the claim presentment requirement is an element of a claim, and not a mere procedural requirement. There is good reason for this conclusion — the statutory regime currently in place for holding public entities liable came at the end of a thorough study and debate of the principles of sovereign immunity.

This Court must be mindful of the history and purposes of the Government Claims Act in considering the issues presented by this case.

Any changes to the Government Claims Act – including the ability of local agencies to require claims in cases in which the State has otherwise exempted them – should be found only where the Legislature has unmistakably indicated such an intent in clear statutory language. To do otherwise would upset the balance between competing policy interests that was carefully crafted in the Government Claims Act.

For these reasons, CSAC respectfully requests that this Court grant the petition for writ of mandate and set aside the trial court order overruling Petitioners' demurrers.

Dated: November 30, 2016

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Calif. State Association of Counties

CERTIFICATION OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the word count feature in my Microsoft Word software, this brief contains 2,360 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 30th day of November, 2016 in Sacramento, California.

Respectfully submitted,

By: _____
JENNIFER B. HENNING
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